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16 UNITED STATES DISTRICT COURT
17 EASTERN DISTRICT OF CALIFORNIA

18
19 **EARTH ISLAND INSTITUTE**, a non-
20 profit corporation,

21 Plaintiff,

22 v.

23 **CICELY MULDOON**, in her official
24 capacity as Superintendent of Yosemite
25 National Park; **UNITED STATES**
26 **NATIONAL PARK SERVICE**, an
27 agency of the United States Department of
28 the Interior, **UNITED STATES**
DEPARTMENT OF THE INTERIOR,

Defendant.

No. 1:22-CV-00710-JLT-EPG

JOINT STIPULATION OF DISMISSAL

1 Plaintiff initiated this lawsuit challenging the National Park Service’s (“NPS”)
2 implementation of two projects (collectively, “projects”): the Wawona Road Project, which is
3 described in paragraphs 6 and 7 of Plaintiffs’ Second Amended Complaint ECF No. 105, and the
4 Yosemite Valley Project, which is described at paragraph 8 and 9 of that pleading. Plaintiffs’
5 Second Amended Complaint contains two claims with multiple sub-counts.

6 Claim One – which contains six sub-counts – asserts that NPS violated the National
7 Environmental Policy Act (“NEPA”) and the Administrative Procedure Act (“APA”). Claim
8 One, Count One alleges that NPS violated NEPA by implementing the projects without
9 completing an environmental impact statement (“EIS”) or environmental assessment (“EA”) or
10 identifying a proper categorical exclusion (“CE”). Claim One, Count Two alleges that no proper
11 categorical exclusion was identified for the projects and the CE packages used by NPS were an
12 improper substitute for an EIS or EA. Claim One, Count Three alleges that NPS’ 2004 Fire
13 Management Plan (“FMP”) is outdated and that NPS violated NEPA by tiering the CEs for the
14 projects to the FMP.¹ Claim One, Count Four alleges that the presence of extraordinary
15 circumstances precluded the use of CEs for the two challenged projects. Claim One, Count Five
16 alleges that NPS failed to take a hard look at the environmental impacts of the projects. And
17 finally, Claim One, Count Six alleges that NPS violated NEPA by failing to facilitate public
18 disclosure and comment.²

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23 ¹ The parties’ stipulated dismissal with prejudice only applies to Plaintiffs’ claim that the
24 CEs used to implement the Wawona Road Project and the Yosemite Valley Project were
25 improperly tiered to the FMP. To the extent Claim 1, Count 3 can be construed as directly
26 challenging the FMP itself or any other projects that may rely upon the FMP, that challenge will
27 be dismissed without prejudice.

28 ² As is the case for Claim 1, Count 3, the parties stipulated dismissal with prejudice of
Claim 1, Count 6 only applies to the public disclosure and commenting process for the two
challenged projects. To the extent Claim 1, Count 6 can be construed as challenging the FMP
itself or any other projects that may rely upon the FMP, that challenge will be dismissed without
prejudice.

1 Claim Two alleges that NPS violated the Organic Act and the APA by approving the
2 projects in violation of approved park management plans may result in the impairment of Park
3 resources.

4 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the parties agree to dismiss all
5 of Plaintiffs' claims. Because Plaintiffs' claims are limited to challenging the two disputed
6 projects, the parties agree to dismiss with prejudice Plaintiff's claims challenging NPS' decision
7 to implement the Wawona Road Project and the Yosemite Valley Project. As noted in footnote 1
8 and 2 of this stipulation, the parties do not intend for this stipulation of dismissal to have any
9 preclusive effect on future claims challenging different projects that rely upon the FMP or any
10 future claim challenging the FMP itself or its Environmental Impact Statement; however, the
11 parties do intend for this stipulation to finally resolve any litigation relating to the two challenged
12 projects.
13

14 Each party will bear its own costs, fees and expenses.
15

16 Respectfully submitted on this 22nd day of November 2023,
17

18 Todd Kim
19 Assistant Attorney General
20 U.S. Dept. of Justice
Environment & Natural Resources Division

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