

1 UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA
3 EASTERN DIVISION

4 COUNTY OF SAN BERNARDINO,) Case No. EDCV06-1179 VAP (RCx)
5 Plaintiff,)
6 vs.)
7 UNITED STATES OF AMERICA, UNITED) MUTUAL RELEASE AND SETTLEMENT
8 STATES DEPARTMENT) AGREEMENT
9 OF THE INTERIOR,)
10 Defendant,)
11 and)
12 NATIONAL PARKS CONSERVATION)
13 ASSOCIATION, CENTER FOR BIOLOGICAL)
14 DIVERSITY, AND SIERRA CLUB,)
15 Defendant-Intervenors)
16)
17)
18)
19)
20)

14 This Mutual Release and Settlement Agreement (“Settlement Agreement”) is
15 entered into by and between the United States of America (“United States”), on
16 behalf of the United States Department of the Interior; the County of San
17 Bernardino (“County”); and the National Parks Conservation Association, Center
18 for Biological Diversity, and Sierra Club (“Conservation Groups”). The United

1 States, the County and the Conservation Groups are collectively referred to as the
2 “Parties.”

3 WHEREAS, on October 26, 2006, the County filed a Complaint against the United
4 States and the Department of the Interior to quiet title in fourteen roads that the
5 County asserts constitute rights-of-way pursuant to the Act of July 26, 1866, ch.
6 262, § 8, 14 Stat. 251, 253, codified at 43 U.S.C. § 932 (“R.S. 2477”), repealed by
7 the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701 et seq.;

8 WHEREAS, the nature of the real property interest the County claims in these
9 roads is that of a non-exclusive highway right-of-way easement, and not a fee;

10 WHEREAS, ten of the right-of-way easements claimed by the County are located
11 on federally-owned land within the Mojave National Preserve (“Preserve”), which
12 is under the administrative jurisdiction of the National Park Service (“NPS”), and
13 the other four right-of-way easements claimed by the County are located on
14 federally-owned land within the California Desert Conservation Area (“CDCA”),
15 which is under the administrative jurisdiction of the Bureau of Land Management
16 (“BLM”);

17 WHEREAS, the Parties desire to resolve the disputed claims without further
18 litigation and have negotiated this Settlement Agreement in good faith in order to
19 resolve and settle all claims;

20 NOW, THEREFORE, in consideration of the mutual covenants, conditions and
agreements set forth herein, the Parties hereby agree as follows:

1. Right-of-Way Easements Located Within Mojave National Preserve

A. Agreement to Recognize Non Exclusive, Public Highway Right-of-way Easements

Subject to satisfaction of the terms and conditions contained in this Settlement Agreement, the United States hereby agrees to recognize in the (proposed) Stipulated Judgment (attached) that the County held valid legal interests in non-exclusive, public highway right-of-way easements over the following-identified Roads within the Preserve: Black Canyon Road, Cedar Canyon Road, Cima Road, Essex Road, Ivanpah Road, Kelbaker Road, Lanfair Road, and Morning Star Mine Road, except as to those segments of the roads that are specifically identified in Section 1.G hereof. The right, title and interest to be recognized in the aforementioned roads derives from state or federal law, and the origin of the right, title and interest depends on whether the County's title was perfected at a time when the lands underlying the roads were owned by the federal government. For those segments of the roads where the County's title was perfected at a time when the underlying lands were owned by the federal government, the United States intends to recognize that the County's right, title and interest derives from Revised Statute 2477 ("R.S. 2477"), Act of July 26, 1866, Ch. 262, § 8, 14 Stat. 251, 253, codified in 1873 as section 2477 of the Revised Statutes, recodified in 1938 as 43 U.S.C. § 932 (1970, repealed 1976). For those segments of the road where the County's right, title and interest was perfected at a time when the underlying lands were not owned by the federal government, the County's title derives from state law. In either case, the nature of the County's

1 interest in the roads is that of a non-exclusive, public highway right-of-way
2 easement.

3 B. Representation Regarding Public Highway Right-of-way Easements
4 Perfected under State Law

5 For those sections of the eight roads listed below where the County's right, title
6 and interest derives from state law, the County makes the following material
7 representations:

8 i. Throughout the entire period of time extending from
9 1872 to 1929, when the modern County Maintained Road System (CMRS) historic
10 road record was initiated, the County authorized or funded various roadway
11 related improvements within the boundaries of today's Mojave National
12 Preserve. Beginning in 1929 and extending to the present, the County prepared
13 yearly historic road maintenance books to record CMRS roadway entries,
14 deletions, maintenance, and road name changes.

15 ii. The eight roads listed below have been open to use for public
16 travel, and the public has frequently and continuously used the roads for various
17 purposes related to public travel, from at least the date of their inclusion in the
18 CMRS to the present. In addition, the alignments of the eight roads listed below
19 have not materially changed since at least 1973, and the current alignments are
20 consistent with County maps from that year.

iii. The County entered the eight roads listed below into the CMRS
historic road maintenance books on the following dates:

1 Black Canyon Road: Black Canyon Road is first listed as maintained by the
2 County of San Bernardino in the 1936 CMRS historic road maintenance
3 book.

4 Cedar Canyon Road: Cedar Canyon Road is first listed as maintained by the
5 County of San Bernardino in the 1948 CMRS historic road maintenance
6 book. Since 1941, however, the same general alignment of Cedar Canyon
7 Road (Cima to Lanfair via Govt. Hole) was maintained by the County under
8 the generic name of "Cima Roads."

9 Cima Road: Cima Road is first listed as maintained by the County of San
10 Bernardino in the 1929 CMRS historic road maintenance book.

11 Essex Road: Essex Road is first listed as maintained by the County of San
12 Bernardino in the 1933 CMRS historic road maintenance book.

13 Ivanpah Road: Portions of today's Ivanpah Road are first listed as
14 maintained by the County of San Bernardino in the 1929 CMRS historic road
15 maintenance book under the historic name "Goffs Road."

16 Kelbaker Road: Kelbaker Road is first listed as maintained by the County of
17 San Bernardino in the 1959 CMRS historic road maintenance book. Portions
18 of today's Kelbaker Road alignment have, however, been maintained by the
19 county since as early as 1931, under the name "Kelso Road."
20

1 Lanfair Road: Portions of today's Lanfair Road are first listed as maintained
2 by the County of San Bernardino in the 1929 CMRS historic road
3 maintenance book under the historic name "Goffs Road."

4 Morning Star Mine Road: Morning Star Mine Road is first listed as
5 maintained by the County of San Bernardino in the 1948 CMRS historic road
6 maintenance book.

7 iv. Taken together, these material facts establish that, for those
8 segments of the aforementioned roads where the County's right, title and
9 interest derives from state law, the County has perfected public highway right-of-
10 way easements through implied dedication, prescriptive easement rights, and/or
11 other means under state law.

12 C. Conveyance of Public Highway Right-of-Way Easements to the United
13 States

14 Within 120 days of the NPS's completion of the Environmental Site Assessments
15 described in section 8.A, and subject to the provisions of section 12.B, the County
16 agrees to donate and convey to the United States by quit claim deed all its right,
17 title and interest in Black Canyon Road, Cedar Canyon Road, Cima Road, Essex
18 Road, Ivanpah Road, Kelbaker Road, Lanfair Road, and Morning Star Mine Road
19 free and clear of all liens and encumbrances and pursuant to the conditions set
20 forth in this Settlement Agreement. In the aforementioned deeds, the County
shall also donate and convey to the United States all of the County's right, title
and interest in any and all improvements, culverts, drainage features, signs,
guardrails, cattle guards, turn-outs, cuts, fills and other man-made features

1 related to the roads conveyed to the United States. The County's conveyance to
2 the United States shall include its interests in all segments of the above-listed
3 roads located within the boundary of the Preserve, including those segments that
4 are located on lands not presently owned by the United States. The County
5 represents in good faith that it is authorized to effect such conveyances pursuant
6 to California Government Code § 50360 and California Public Resources Code §
7 8401. The United States is authorized to accept such conveyances pursuant to 16
8 U.S.C. § 410aaa-56. The County agrees that the quit claim deed(s) conveying all of
9 its right, title and interest in the aforesaid roads will include the relevant legal
10 descriptions provided to the County pursuant to section 6.E and will also be
11 executed (a) in substantially the same form as the example quit claim deed
12 included as Attachment A to this Settlement Agreement, (b) in compliance with
13 California Government Code § 50368 and California Public Resources Code §
14 8401, and (c) in a form acceptable to the Attorney General as required by 40
15 U.S.C. § 3111 and the regulations promulgated thereunder.

13 D. Nature of Interest Held by County in Kelso-Cima Road and New York
14 Mountain Road

15 The County makes the following material representations as to Kelso Cima Road
16 and New York Mountain Road.

17 i. Kelso Cima Road: Kelso Cima Road is first listed as maintained
18 by the County of San Bernardino in the 1929 CMRS historic road maintenance
19 book. Kelso Cima Road has been open to use for public travel, and the public has
20 frequently and continuously used the road for various purposes related to public

1 travel from the date of its inclusion in the CMRS. In addition, the current
2 alignment of Kelso Cima Road has not materially changed since 1973 and the
3 road's current alignment is consistent with County maps from that year. These
4 facts establish that for the segments of Kelso Cima Road where the County's right,
5 title and interest derives from state law, the County has perfected a public
6 highway right-of-way easement through implied dedication, prescriptive
7 easement rights, and/or other means under state law.

7 ii. New York Mountain Road: New York Mountain Road is first
8 listed as maintained by the County of San Bernardino in the 1935 CMRS historic
9 road maintenance book. New York Mountain Road is depicted on USGS maps
10 from 1955 and 1956 as an unimproved dirt road. In 2007, the County graded the
11 road. The current alignment of New York Mountain Road has not materially
12 changed since 1973 and is consistent with County maps from 1973. Since the
13 creation of Mojave National Preserve, New York Mountain Road has been
14 classified as a back country dirt road. It is only suitable for use by high clearance
15 vehicles. New York Mountain Road has been open to use for public travel from
16 the date of its inclusion in the CMRS. The road has been used by private property
17 owners and park visitors for recreational purposes. These facts establish that for
18 the segments of New York Mountain Road where the County's right, title and
19 interest derives from state law, the County has perfected a public highway right-
20 of-way easement through implied dedication, prescriptive easement rights,
and/or other means under state law.

1 E. Conveyance of Interest in Kelso-Cima Road and New York Mountain
2 Road to the United States

3 Within 120 days of the NPS's completion of the Environmental Site Assessments
4 described in section 8.A, and subject to the provisions of section 12.B, the County
5 agrees to donate and convey to the United States by quit claim deed all its right,
6 title and interest, if any, in Kelso-Cima Road and New York Mountain Road free
7 and clear of all liens and encumbrances and pursuant to the conditions set forth
8 in this Settlement Agreement. In the aforementioned deeds, the County shall
9 also donate and convey to the United States all of the County's right, title and
10 interest in any and all improvements, culverts, drainage features, signs,
11 guardrails, cattle guards, turn-outs, cuts, fills and other man-made features
12 related to Kelso-Cima Road and New York Mountain Road. The County's
13 conveyance to the United States shall include its interests in all segments of
14 Kelso-Cima Road and New York Mountain Road located within the boundary of
15 Mojave National Preserve, including those segments of Kelso-Cima Road and New
16 York Mountain Road that are located on lands not presently owned by the United
17 States. The County represents in good faith that it is authorized to effect such
18 conveyances pursuant to Government Code § 50360 and California Public
19 Resources Code § 8401. The United States is authorized to accept such
20 conveyances pursuant to 16 U.S.C. § 410aaa-56. The County agrees that the quit
claim deeds conveying all its right, title and interest in Kelso-Cima Road and New
York Mountain Road to the United States will include the relevant legal
descriptions provided to the County pursuant to section 6.E and will also be
executed (a) in substantially the same form as the example quit claim deed

1 included as Attachment A to this Settlement Agreement, (b) in compliance with
2 California Government Code § 50368 and California Public Resources Code §
3 8401, and (c) in a form acceptable to the Attorney General as required by 40
4 U.S.C. § 3111 and the regulations promulgated thereunder.

5 F. Intent to Convey, Agreement to Quiet Title, and Agreement to
6 Cooperate

7 The parties' intent with respect to the conveyances described in sections 1.C and
8 1.E is to ensure that all right, title and interest held by the County in the roads
9 listed in sections 1.A (Black Canyon Road, Cedar Canyon Road, Cima Road, Essex
10 Road, Ivanpah Road, Kelbaker Road, Lanfair Road, Morning Star Mine Road) and
11 1.D (Kelso-Cima Road and New York Mountain Road) is conveyed to the United
12 States so that the National Park Service is able to maintain and administer the
13 roads in accordance with applicable laws and policies governing the national
14 parks.

15 To this end, the County agrees to cooperate with the United States (including, but
16 not limited to, upon reasonable demand, by making County personnel available to
17 provide oral or written testimony, and by assisting and cooperating with the
18 production of relevant documentation) to defend any challenge to the United
19 States's title in the aforementioned roads.

20 G. Conveyance of Interests, If Any, In Certain State School Lands

The Parties acknowledge that the road sections listed below cross certain sections
of land that were granted by the United States to the State of California as state

1 school lands. The Parties further acknowledge that three of the listed state
2 school land sections remain in state ownership and that the remainder have been
3 reconveyed by the State of California to the United States.

4 State School Lands:

- 5 • Black Canyon Road: Section 16, T. 10 N., R. 15 E., SBM.
- 6 • Cima Road: Section 16, T. 15 N., R. 13 E., SBM.
- 7 • Essex Road: Section 16, T. 9 N., R. 15 E., SBM and Section 36, T. 9 N., R. 15
8 E., SBM (that portion conveyed by the State of California to the United
9 States in 1997).
- 10 • Kelbaker Road: Section 16, T. 12 N., R. 12 E., SBM; Section 16, T. 8 N., R. 13
11 E., SBM (that portion conveyed by the State of California to the United
12 States in 1997); and Section 36, T. 8 N., R. 12 E., SBM.
- 13 • Morning Star Mine Road: Section 16, T. 14 N., R. 14 E. SBM
- 14 • New York Mountain Road: Section 16, T. 13 N., R. 16 E., SBM

15 The parties agree that state school land sections underlying Cima Road, Morning
16 Star Mine Road, and New York Mountain Road remain in state ownership. The
17 other listed sections are no longer state school lands because they have been
18 conveyed to the United States by the State of California and are therefore now in
19 federal ownership. As part of the conveyances described in sections 1.C and 1.E.
20 of this Settlement Agreement, the County agrees to donate and convey to the

1 United States all right, title, and interest it holds, if any, in the aforementioned
2 present or former state school lands free and clear of all liens and encumbrances
3 and pursuant to the conditions set forth in this Settlement Agreement. The
4 United States takes no position at this time regarding whether or not the County
5 holds any right, title or interest in these present or former state school lands.

6 2. Right-of-Way Easements Located Within the CDCA.

7 Subject to satisfaction of the terms and conditions contained in this Settlement
8 Agreement, the United States agrees to recognize in the (proposed) Stipulated
9 Judgment (attached) that the County holds valid legal interests in non-exclusive,
10 highway right-of-way easements, derived from operation of R.S. 2477, over
11 certain segments of Goffs Road and Nipton Road within the CDCA ("CDCA Right-
12 of-way Easements"). The right-of-way easements in Goffs Road and Nipton Road
13 are subject to the terms, conditions, and limitations contained in this Settlement
14 Agreement and the attached (proposed) Stipulated Judgment (including
15 attachments). The United States agrees, once the terms and conditions contained
16 in this Settlement Agreement are satisfied, to stipulate to the attached
17 (proposed) Stipulated Judgment quieting title in the County to the CDCA Right-of-
18 way Easements subject to the terms, conditions, and limitations contained in this
19 Settlement Agreement and the (proposed) Stipulated Judgment (including
20 attachments).

The CDCA Right-of-way Easements are located exclusively on lands presently
owned by the United States. The CDCA Right-of-way Easements do not include

1 the segments of Goffs Road that are located within the following areas: T9N,
2 R17E, SBM, secs. 25; T9N, R18E, SBM, secs. 9; T9N, R18E, SBM, secs. 17. The
3 physical dimensions of each CDCA Right-of-way Easement are limited to and
4 defined by the geographic area of the particular road (including roadway surface,
5 shoulder, and pullouts) as the road exists as of the effective date of this
6 Settlement Agreement. The width of each CDCA Right-of-way Easement is
7 defined with reference to, and limited to the area encompassed by, the outside
8 edge of the existing road shoulder (or outside edge of existing road pull out where
9 a pull out exists). The physical dimensions of each CDCA Right-of-way easement
10 will be described for that particular right-of-way easement in the "Legal
11 Description" section of the CDCA Right-of-way Descriptions included as
12 Attachment 1 to the (proposed) Stipulated Judgment. The scope of use allowed
13 for each CDCA Right-of-way Easement is limited to the type and intensity of use
14 existing as of the effective date of this Settlement Agreement and is subject to the
15 additional limitations set forth in the (proposed) Stipulated Judgment (including
16 attachments). The factual background supporting the existence of R.S. 2477
17 rights-of-way over Goffs Road and Nipton Road is included in the (proposed)
18 Stipulated Judgment.

16 3. No Exclusive Jurisdiction

17 Notwithstanding California Government Code § 50370, the United States,
18 consistent with to 40 U.S.C. § 3112, states that it will not accept exclusive
19 jurisdiction over the roads to be conveyed to the United States under sections 1.C
20 and 1.E of this Settlement Agreement.

1 4. Removal of Roads from County Maintained Road System.

2 The County agrees to remove the roads listed in sections 1.A and 1.D , and all
3 other “highways” and “county highways” (as those terms are defined in the
4 California Streets and Highways Code) within the Preserve from the County
5 Maintained Road System within 180 days after the conveyance of the roads listed
6 in sections 1.A and 1.D to the United States.

7 5. Public Use of Roads.

8 The United States recognizes and acknowledges that the roads listed in sections
9 1.A and 1.D, except for New York Mountain Road, are open to public use, and that
10 public use of these roads, including vehicular traffic, is recognized in the Mojave
11 National Preserve General Management Plan (“Mojave GMP”). The United States
12 further recognizes and acknowledges that New York Mountain Road is considered
13 a “backcountry dirt road” under the Mojave GMP. Upon conveyance of the roads
14 listed in sections 1.A and 1.D to the United States, the NPS will maintain and
15 manage the roads in accordance and consistent with the Mojave GMP and
16 applicable NPS regulations then in force. Any proposed significant change in the
17 management status of these roads including, but not limited to, closure of any
18 road will be subject to a public process pursuant to applicable federal laws and
19 regulations including the National Environmental Policy Act (“NEPA”). Nothing in
20 this Settlement Agreement is intended to impair the NPS’ ability to close roads on
 an emergency basis (such as pursuant to 43 CFR § 46.150(a)), based on public
 safety concerns, or on a temporary or short-term basis to protect resources of the
 Preserve.

1 The parties explicitly recognize that the County may desire to contract with the
2 NPS to perform maintenance activities on the roads within the Preserve. To that
3 end the parties further recognize that the County may submit bids to the NPS as
4 part of the competitive contract award process for such maintenance projects
5 and nothing in this Settlement Agreement shall be construed to limit the County's
6 ability to do so.

6. Surveys of Nipton and Goffs Roads and Completion of Legal Descriptions.

7 A. The United States will, within 90 days of the effective date of this
8 Settlement Agreement, conduct a survey as described below of the claimed
9 sections of Nipton Road and Goffs Road. The parties intend the surveys to
10 document the currently existing character and alignment of each of these roads
11 and to provide the basis for the legal descriptions of each road that are to be
12 included in the (proposed) Stipulated Judgment. The United States and the
13 County shall evenly share the cost of the surveys.

14 B. The survey will record the centerline of each road using Global
15 Positioning System technology ("GPS") having a centimeter level of accuracy and
16 will reference relevant BLM Public Land Survey System corner monuments. GPS
17 points will be taken and recorded at the beginning and ending points of each road
18 and at significant angle breaks. GPS data will also be recorded to reflect the width
19 of each road (including road shoulders) at relevant points. The United States will
20 use its discretion to take and record GPS data (e.g., beginning and ends points
along the road) for road improvements such as pull-outs, daylight channels,
intersections, shoulders, and road maintenance structures. The survey will also
include field notes that provide a general description of surface composition,
number of lanes, and the types and general physical size of existing structures and

1 facilities within the scope of each right of way. The BLM will also include in the
2 survey field notes a general description of existing daylight channels that are
3 reasonable and necessary to provide drainage for the roads. In describing the
4 daylight channels, BLM will use the descriptions of the daylight channels included
5 in the County's recent surveys of Nipton and Goffs Roads, subject to field
6 verification by the BLM that the descriptions are accurate and describe daylight
7 channels that are reasonable and necessary for drainage of the roads, and
provided that no daylight channel will be described as extending into Mojave
National Preserve.

8 C. The United States shall provide the County and the Conservation
9 Groups with the option of having one designated representative present for each
10 of the surveys and will provide 15 days notice of the dates the surveys are
11 scheduled in order to facilitate participation by the County and Conservation
12 Groups. The BLM surveyor shall determine the appropriate GPS points to be
13 gathered, however, the County's representative and the Conservation Groups'
14 representative may request additional GPS points be gathered. The BLM surveyor
15 is under no duty to accommodate the request. The United States will provide the
16 GPS survey data in electronic form to the County and the Conservation Groups
17 within 30 days after the surveys are conducted. The County and the Conservation
18 Groups shall have 30 days from the date on which the United States delivers its
19 survey data to the County and the Conservation Groups in which to request
20 additions or corrections to the United State's survey ("requested survey
changes"). If the County or Conservation Groups do not notify the BLM of any
requested survey changes, the surveys shall be considered to be final ("final
surveys"). If the County or Conservation Groups notify the BLM of requested

1 survey changes, the United States, the Conservation Groups, and the County will
2 work in good faith to resolve the requested survey changes. The final surveys are
3 the work product of the BLM and are subject to its sole approval. If the County
4 and the Conservation Groups dispute the adequacy of a final survey, any party
5 may request that the Court resolve any disagreements relating to whether the
surveys accurately depict the road(s) at issue.

6 D. Using the final surveys, the BLM will provide the County with a legal
7 description of each of the CDCA Right-of-way Easements. The BLM may also use
8 data provided by the Federal Highway Administration in preparing legal
9 descriptions for the CDCA Right-of-way Easements. The legal descriptions for the
CDCA Right-of-way Easements shall be included in the (proposed) Stipulated
Judgment.

10 E. With regard to the roads within the Preserve listed in sections 1.A
11 and 1.D, within 60 days of execution of this Settlement Agreement, the NPS will
12 provide the County with a legal description of these roads which the County shall
13 include in the relevant deed for each road as provided in sections 1.C and 1.E
above.

14 7. Release and waiver concerning other potential rights-of-way.

15 The County agrees that execution and implementation of this Settlement
16 Agreement is in complete and full satisfaction of the County's claims in this action
17 and any additional claims the County may be entitled to make under existing state
18 or federal law relating to roads or travel routes, including any and all other
19 potential R.S. 2477 rights-of-way within the current boundaries of the Preserve
beyond those claimed in this action, and all claims or causes of action that the

1 County of San Bernardino now has or that may arise in the future in any way
2 growing out of or connected with the subject matter of the County's Complaint.
3 The County agrees to complete the actions and representations below in
4 implementation of this release and waiver:

5 A. Abandonment of any previous alignments. The County agrees that
6 the alignments identified in the legal descriptions for the roads listed in section
7 6.A and in the quit claim deeds for the roads listed in section 6.E shall describe
8 and constitute the only legally valid alignment of each highway right-of-way
9 easement and that any and all prior alignments ("abandoned alignments") shall
10 not constitute highway rights-of-way under R.S. 2477 or any other authority.
11 Within 120 days of the NPS's completion of the Environmental Site Assessments
12 described in section 8.A, and subject to the provisions of section 12.B, the County
13 will complete all necessary actions under California law (including the Public
14 Streets, Highways, and Service Right-of-way Easements Vacation Law, Sts. & H.C.
15 §§ 8300, et seq.) and County procedures to vacate, abandon and otherwise
16 relinquish all of its right, title and interest in the abandoned alignments.

17 B. Dismissal of Claims to Other Rights-of-way in CDCA. The County
18 agrees that the following roads within the CDCA do not constitute rights-of-way
19 under R.S. 2477 and agrees to stipulate to the [proposed] Stipulated Judgment
20 dismissing its claims to these Roads with prejudice.

(1) Halloran Springs Road

(2) Halloran Summit Road

C. Relinquishment of any other potential rights-of-way in Mojave
National Preserve. The County agrees that the right, title and interest that the

1 County holds in the roads listed in sections 1.A and 1.D constitute the full extent
2 of its valid road, public highway, and travel route interests within the boundary of
3 the Preserve. The County will not seek to quiet title to or otherwise assert any
4 interest in any other road, public highway, or travel route within the Preserve
5 pursuant to R.S. 2477 or any other existing authority. The County accordingly
6 releases, disclaims, waives and relinquishes any and all claims that it may have to
7 any road, public highway, or travel route within the Preserve except for the roads
8 listed in sections 1.A and sections 1.D. Within 120 days of the NPS's completion
9 of the Environmental Site Assessments described in section 8.A, and subject to
10 the provisions of section 12.B, the County will complete all necessary actions
11 under California law (including the Public Streets, Highways, and Service Right-of-
12 way easements Vacation Law, Sts. & H.C. §§ 8300, et seq.) and County procedures
13 to vacate, abandon and otherwise relinquish any and all interests that it may have
14 to any road, public highway, or travel route within the Preserve, excepting
15 therefrom the interests that the County holds in the roads listed in sections 1.A
16 and 1.D which the County will convey to the United States.

13 D. General release of all claims. The County of San Bernardino hereby
14 releases, acquits and forever discharges the United States of and from any and all
15 claims, demands, liabilities or causes of action at law or in equity whatsoever,
16 direct or indirect, known or unknown, foreseen or unforeseen, that the County of
17 San Bernardino now has or that may arise in the future against the United States
18 because of or in any way growing out of or connected with the Quiet Title Act
19 claims related to R.S. 2477 contained in the County's Complaint. THE COUNTY OF
20 SAN BERNARDINO EXPRESSLY WAIVES ITS RIGHTS GRANTED UNDER CALIFORNIA
CIVIL CODE §1542 AND ANY OTHER PROVISION OF LAW THAT PROVIDES THAT A

1 GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT GRANTEE DOES NOT
2 KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE
3 RELEASE, WHICH IF KNOWN BY THE GRANTEE MUST HAVE MATERIALLY AFFECTED
4 THE GRANTEE'S AGREEMENT TO RELEASE THE UNITED STATES. Subject to the
5 limitations below, the United States hereby releases, acquits and forever
6 discharges the County of and from any and all civil claims, demands, liabilities or
7 causes of action at law or in equity whatsoever, direct or indirect, known or
8 unknown, foreseen or unforeseen, that the United States now has because of or
9 in any way growing out of or connected with the Quiet Title Act claims related to
10 R.S. 2477 contained in the County's Complaint. The County acknowledges that
11 the United States' release is expressly limited to presently extant, non-criminal
12 claims, demands, liabilities or causes of action, which arise because of, grow out
13 of, or are connected with, the Quiet Title Act claims related to R.S. 2477
14 contained in the County's Complaint, and that such release does not apply to or
15 include claims, demands, liabilities or causes of action related to hazardous
16 substances, petroleum products, or damage to natural or cultural resources.

13 8. Conditions Precedent to Execution and Filing of (Proposed) Stipulated
14 Judgment.

15 The following actions will be completed prior to the Parties execution and filing
16 for entry of the (proposed) Stipulated Judgment:

17 A. Within 8 months of the execution of this Settlement Agreement, the
18 United States will complete environmental site assessments on the roads being
19 conveyed by the County to the United States. The environmental site
20 assessments shall also address the areas commonly referred to as "borrow pits"

1 and “asphalt mixing tables” that were used by the County for road maintenance
2 purposes. Any issues regarding environmental remediation, as reflected in
3 section 12.B, will be resolved to the satisfaction of the United States. The
4 locations of the “borrow pits/asphalt mixing tables” referenced above are set
5 forth below.

6 i. **Kelbaker Road, North**, approximately 200 yards south of I-15
7 on the east side of Kelbaker Road. (X Nad 83-585043.218352/Y Nad83-
8 3902203.792213), 1.41 acres.

9 ii. **Ivanpah Road**, at the intersection of Ivanpah Road and
10 Morning Star Mine Road. (X Nad83-646724.214329/Y Nad83-3920657.307693),
11 2.16 acres.

12 iii. **Kelso-Cima Road**, approximately 4 miles south of Cima Road
13 on the east side of Kelso-Cima Road. (X Nad83-634152.873537/Y Nad83-
14 3889715.770373), 1.2 acres.

15 iv. **Kelbaker Road, South (2 sites)**, approximately 0.1 miles north
16 of I-40 on the west side of Kelbaker Road. (X Nad83-620817.794489/Y Nad-
17 3843528.874407), 2.1 acres.

18 v. **Black Canyon Road**, at the intersection of Black Canyon Road
19 and Essex Road. (X Nad-643941.959747/Y Nad-3864094.435695), 0.38 acres.

20 B. The County will complete the conveyances described in sections 1.C
and 1.E. The United States may object to the form or content of any deed

1 conveying these interests and may reject a deed based on the outcome of the
2 United State’s title review process. Deeds shall not be deemed accepted by the
3 United States until the United States notifies the County in writing that its title
4 review process is complete and that the deeds are accepted. If the United States
5 objects to any deed, or to title evidence related to any deed, the United States
6 will attempt to resolve the matter with the County within 60 days. If the County
7 and the United States are unable to resolve the matter, the United States may
8 terminate this Settlement Agreement in whole, or, at its option, with regard to
9 the road in question.

10 C. Final legal descriptions of the roads listed in sections 1.A and 1.D and
11 the CDCA Right-of-way Easements will be completed.

12 D. The County will complete, and provide appropriate documentation to
13 the Parties of all actions necessary and appropriate to vacate, abandon and
14 relinquish: (1) the abandoned prior alignments previously associated with the
15 roads listed in § 1.A and § 1.D and the CDCA Right-of-way Easements as provided
16 in section 7.A.; (2) any other potential claimed rights-of-way in the Preserve as
17 provided in section 7.C.

18 9. Execution and Filing of [Proposed] Stipulated Judgment.

19 Within 30 days of completion of the actions described in section 8, the Parties will
20 finalize and execute a [Proposed] Stipulated Judgment and file with the Court a
Joint Motion for Entry of Stipulated Judgment requesting the Court to enter the
[Proposed] Stipulated Judgment. The [Proposed] Stipulated Judgment will be

1 substantially the same as the draft [Proposed] Stipulated Judgment attached
2 hereto as Attachment B, except, where noted, the [Proposed] Stipulated
3 Judgment submitted to the Court will incorporate the legal descriptions described
4 above.

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10. Recordation.

For notation purposes, the NPS will provide to the BLM copies of the deeds for the roads listed in sections 1.A and 1.D, and the County will provide copies to the BLM of the documentation referenced in section 8.D within 10 days of finalization of those documents. The BLM will take appropriate steps to note the stipulated judgment, the deeds for the roads listed in sections 1.A and 1.D, and the documentation referenced in section 8.D to the Master Title Plat records of the United States within 60 days of entry of the Stipulated Judgment. To the extent those documents have been provided to the BLM, BLM will provide evidence of notation of those documents to the other Parties. Further, the County shall record the stipulated judgment entered by the Court, the deeds for the roads listed in sections 1.A and 1.D, and the documentation referenced in section 8.D, in the official records of the San Bernardino County Recorder's Office within ten days of entry of the Stipulated Judgment, and will provide copies of those recorded documents to the other Parties.

11. Status Quo to Be Maintained in Interim.

The Parties agree that the terms of the Agreement executed March 19, 2008, between the Parties shall remain in effect until the Court enters the Stipulated Judgment and Order.

12. Termination of Settlement Agreement.

1 This Settlement Agreement may be terminated in writing as follows:

2 A. Failure to deliver deeds. If the County fails to deliver to the United
3 States deeds in accordance with section 1 conveying its interest in the roads listed
4 in sections 1.A and 1.D to the United States, the United States may elect to
5 terminate this Settlement Agreement with 30 days notice to the other Parties. If
6 any of the conveyances from the County to the United States referenced herein
7 are held to be unlawful or otherwise invalid, the United States, at its sole
8 discretion, may elect to void this Settlement Agreement in its entirety or as to a
9 particular road.

10 B. Environmental site assessments. If an environmental site assessment
11 process discloses that the acquisition of any of the roads listed in sections 1.A or
12 1.D could expose the United States to environmental liabilities, or that the
13 “borrow pit” or “asphalt mixing table” areas could expose the United States to
14 environmental liabilities, the United States may elect to terminate this Settlement
15 Agreement in its entirety or as to a particular road or roads by providing 30 days
16 advance written notice to the other Parties. Alternatively, the United States, at its
17 option, may seek to negotiate an agreement with the County regarding
18 remediation of any environmental contamination identified in an environmental
19 site assessment. If such a remediation agreement cannot be reached within 60
20 days, or such other period as agreed upon by the United States and the County,
the United States may terminate this Settlement Agreement as provided herein.

C. Failure to Vacate, Abandon and Relinquish. If, within the timeframes
specified in section 7, the County fails to complete, and provide appropriate
documentation to the Parties of, actions necessary and appropriate to vacate,
abandon and relinquish: (1) the abandoned prior alignments previously

1 associated with the roads listed in sections 1.A and 1.D and the CDCA Right-of-
2 way Easements as provided in section 7.A.; (2) the other claimed rights-of-way in
3 the Preserve as provided in section 7.C.; and (3) the other claimed rights-of-way
4 in the CDCA as provided in section 7.B., the parties will work together in good
5 faith to negotiate an extension of time to complete these requirements. Absent
6 agreement, the United States or the Conservation Groups may elect to terminate
7 this Settlement Agreement with 30 days notice to the other Parties.

8 D. Failure to obtain Court's approval of Stipulated Judgment. If the
9 Court does not enter a Stipulated Judgment in the form of the (proposed)
10 Stipulated Judgment attached to this Settlement Agreement within 180 days of it
11 being filed with the Court pursuant to section 9, this Settlement Agreement shall
12 be void, unless within 30 days or some other period agreed upon by the parties in
13 writing, each of the parties agrees in writing that the Settlement Agreement will
14 remain in force.

15 13. No Third Party Rights.

16 Nothing in this Settlement Agreement or in the documents implementing the
17 Settlement Agreement shall be construed as creating any right or benefit,
18 substantive or procedural, enforceable at law or in equity, in or to any person or
19 entity not a party to this Settlement Agreement against the United States, the
20 County, the Conservation Groups, their agencies, officers or any other person.

14. Reservations.

This Settlement Agreement has been entered into based upon good faith
negotiations for the purpose of resolving this litigation by compromise and
settlement and nothing in this Settlement Agreement or in the documents

1 implementing the Settlement Agreement shall be construed or offered in
2 evidence in any proceeding as an admission by any Party as to any fact, claim or
3 defense in this action, or as precedent as to the merits of any claim or defense, or
4 for any other purpose in any other proceeding, other than those seeking approval
or implementation of this Settlement Agreement.

5 15. Parties to bear own costs and fees.

6 Each party shall bear its own costs and fees in this litigation.

7 16. ESA Consultation Costs. The parties expressly agree, with respect to the
8 rights-of-way to be conveyed to the United States within Mojave National
9 Preserve, if after the rights-of-way are successfully conveyed to the United States,
10 the National Park Service initiates consultation with the United States Fish and
11 Wildlife Service pursuant to Section 7 of the Endangered Species Act with respect
12 to any proposed maintenance activities or projects on those conveyed rights-of-
13 way, that the County will not bear any cost nor incur any obligations in
14 connection with any mitigation or compliance alternatives that may result from
15 such consultation, except with respect to any maintenance activities or projects
proposed, sponsored or conducted in partnership with the County, in which case
the NPS and the County will agree to share in the costs if the project is to
proceed.

16 17. Compliance with other laws.

17 Nothing in this Settlement Agreement or in the documents implementing this
18 Settlement Agreement shall be interpreted as, or shall constitute, a commitment
19 or requirement that the United States obligate or pay funds, or take any other
20 action, in contravention of the Anti-Deficiency Act, 31 U.S.C. 1341, or any other

1 applicable appropriations law. Nothing in this Settlement Agreement or in the
2 documents implementing the Settlement Agreement shall be interpreted as or
3 constitute a commitment by the United States to take action in contravention of
4 the Administrative Procedure Act, NEPA, the ESA, or any other law or regulation,
5 substantive or procedural. Nothing in this Settlement Agreement or in the
6 documents implementing the Settlement Agreement shall be construed to
7 deprive the United States of authority to revise, amend or promulgate
8 regulations.

7 18. Binding effect.

8 The provisions of this Settlement Agreement shall apply to and be binding upon
9 each of the Parties including, but not limited to, their officers, directors,
10 employees, successors, and assigns. The undersigned representatives of each
11 Party certify that they are fully authorized by the Party or Parties they represent
12 to execute this Settlement Agreement. The County represents that the San
13 Bernardino County Board of Supervisors has reviewed and approved this
14 Settlement Agreement.

13 19. Entire agreement.

14 This Settlement Agreement, the [Proposed] Stipulated Judgment and the other
15 documents implementing the Settlement Agreement constitute the entire
16 agreement of the Parties concerning the rights and obligations discussed herein
17 and subject to dispute in this suit. No other agreement shall govern the rights of
18 the Parties with respect to the matters resolved by this Settlement Agreement,
19 the [Proposed] Stipulated Judgment and the other documents implementing the
20

1 Settlement Agreement. No modification, alteration or amendment to this
2 Settlement Agreement shall be valid unless written and executed by all Parties.

3 20. Effective date.

4 This Settlement Agreement shall become effective upon execution by all the
5 Parties.

6 21. Settlement Agreement Product of Negotiation.

7 This Settlement Agreement is the product of negotiation and preparation by the
8 parties hereto and their respective attorneys of record. The Settlement
9 Agreement shall be construed as a whole according to its plain meaning and not
strictly for or against any party.

10 22. Opportunity to Obtain Legal Advice.

11 In entering into this Settlement Agreement, the parties hereto represent that
12 they have had an opportunity to obtain the legal advice of attorneys of their own
13 choice, and that the terms of this Settlement Agreement are fully understood and
14 voluntarily accepted by them. The parties hereto further represent that they do
15 not rely and have not relied upon any representation or statement made by any
16 party or any other person with regard to the subject matter, basis or effect of the
Settlement Agreement, other than the express provisions contained in this
Settlement Agreement.

17 23. Additional Documents.

18 The parties hereto, without further consideration, agree to work in good faith to
19 execute and deliver the documents contemplated by this Settlement Agreement

1 and any additional documents that are reasonably necessary to consummate the
2 Settlement Agreement.

3 24. Remedies.

4 The Parties agree that the only remedies for breach of this Settlement Agreement
5 shall be enforcement of the terms of this Settlement Agreement or termination of
6 this Settlement Agreement as provided in Section 12 herein. The Parties further
7 agree not to seek contempt proceedings based on any breach of this Settlement
8 Agreement.

9 IN WITNESS WHEREOF, the Parties have executed this Settlement
10 Agreement as of the dates set forth below.

11 IGNACIA S. MORENO
12 Assistant Attorney General
13 Environment and Natural Resources Division

14 Dated May 31, 2012

15 _____
16 JOSEPH H. KIM
17 Trial Attorney
18 Natural Resources Section
19 Environment and Natural Resources
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ATTORNEYS FOR FEDERAL DEFENDANTS, UNITED STATES OF AMERICA on behalf of DEPARTMENT OF THE INTERIOR

JEAN-RENE BASLE
County Counsel

Dated _____

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Dated _____

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ATTORNEYS FOR DEFENDANT-INTERVENORS,
NATIONAL PARKS CONSERVATION ASSOCIATION,
CENTER FOR BIOLOGICAL DIVERSITY, and SIERRA
CLUB

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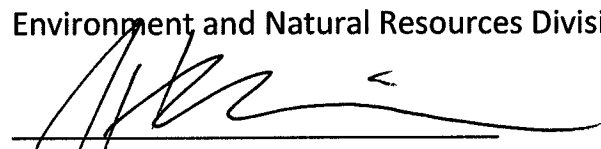
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IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

Dated May 31, 2012




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ATTORNEYS FOR FEDERAL DEFENDANTS, UNITED STATES OF AMERICA on behalf of DEPARTMENT OF THE INTERIOR

JEAN-RENE BASLE
County Counsel

Dated MAY 31, 2012



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JEAN-RENE BASLE
County Counsel

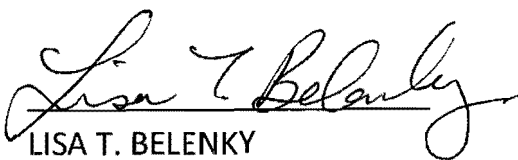
Dated _____

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