

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

WESTERN WATERSHEDS PROJECT,
CENTER FOR BIOLOGICAL DIVERSITY,
FRIENDS OF THE CLEARWATER,
WILDEARTH GUARDIANS, and
PREDATOR DEFENSE,

Plaintiffs,

v.

TODD GRIMM, Idaho Director,
Wildlife Services; USDA WILDLIFE
SERVICES,

Defendants.

No. 1:16-cv-218-BLW

SETTLEMENT AGREEMENT AND
STIPULATION OF DISMISSAL

This Settlement Agreement and Stipulation of Dismissal (“Settlement Agreement” or “Agreement”) is entered into by and between Plaintiffs Western Watersheds Project, Center for Biological Diversity, Friends of the Clearwater, WildEarth Guardians, and Predator Defense, and Defendants Todd Grimm and USDA Wildlife Services. By and through undersigned counsel, the Parties state as follows:

WHEREAS, this action was filed on June 1, 2016, in which Plaintiffs alleged that Defendants violated the National Environmental Policy Act (“NEPA”) by failing to complete an environmental impact statement (“EIS”) for its gray wolf control activities in Idaho and instead issuing a flawed environmental assessment (“EA”), and by refusing to complete a supplemental NEPA analysis to consider significant new information, ECF No. 1 ¶¶ 4, 74-92. Plaintiffs sought relief reversing and remanding the EA, ordering Wildlife Services to complete an EIS and/or a

supplemental NEPA analysis, and ordering a halt to gray wolf control and killing activities in Idaho until Wildlife Services has prepared a valid NEPA analysis, *id.* ¶¶ 5, A-G;

WHEREAS, Defendants dispute Plaintiffs' allegations and deny that Plaintiffs are entitled to the requested relief, ECF No. 9;

WHEREAS, the Parties briefed cross motions for summary judgment, and on January 4, 2018, the District Court denied Plaintiffs' motion, granted Defendants' cross motion and dismissed the case on the basis that Plaintiffs did not have standing to bring the case, ECF Nos. 30 & 31;

WHEREAS, Plaintiffs appealed the District Court's order and judgment to the Ninth Circuit on January 30, 2018, ECF No. 32;

WHEREAS, on March 4, 2019, the U.S. Department of Agriculture Animal and Plant Health Inspection Service issued a notice in the Federal Register of its intent to include gray wolves in a new EIS that would cover predator damage management activities in Idaho, 84 Fed. Reg. 7,326 (March 4, 2019);

WHEREAS, on April 23, 2019, the Ninth Circuit Court of Appeals held that Plaintiffs did have standing, reversed the District Court, and remanded the case for further proceedings, ECF No. 36;

WHEREAS, the Parties entered into settlement negotiations to attempt to achieve a resolution that would avoid further litigation of this case;

WHEREAS, the Parties, through their authorized representatives, have reached an agreement that they consider to be a fair and adequate resolution of the disputes set forth in Plaintiffs' Complaint, including Plaintiffs' claims for attorneys' fees and costs:

NOW, THEREFORE, it is stipulated by and between the parties as follows:

1. Until Wildlife Services completes an EIS for its predator damage management activities in Idaho that includes its gray wolf damage management activities, Wildlife Services agrees to the following terms:

A. Wildlife Services will not use lethal methods to target gray wolves on any of the following public lands in Idaho:

- Federally-designated Wilderness areas (Boulder-White Cloud Complex, Big Jacks Creek, Little Jacks Creek, Bruneau-Jarbridge Rivers, Craters of the Moon, Frank Church-River of no Return, Gospel-Hump, Hells Canyon, North Fork Owyhee, Owyhee River, Pole Creek, Sawtooth, and Selway-Bitterroot Wildernesses);
- the Sawtooth National Recreation Area;
- the Hells Canyon National Recreation Area; and
- the Sawtooth Valley (portion within the Sawtooth National Recreation Area and 10 miles beyond the intersection of Highway 21 and Highway 75 in Stanley) and the Wood River Valley (5 miles east and west of Highway 75 at Bellevue (along the line of the Muldoon Canyon Road) and north to the Sawtooth National Recreation Area) as depicted in the map attached as Exhibit 1.

B. Wildlife Services will not use game cameras or other surveillance technologies to locate or otherwise target gray wolves in Wilderness areas in Idaho.

C. Wildlife Services will not use lethal methods to target gray wolves on private lands in Idaho unless those methods respond to a witnessed or documented, confirmed livestock depredation or a gray wolf attack. Wildlife Services will document all prior uses of non-lethal methods employed when lethal controls are implemented in its record-keeping system for operational activities.

D. Wildlife Services will annually provide Plaintiffs with all gray wolf depredation investigation reports from the previous year by July 31, and will provide Plaintiffs with a copy of the state fiscal year ending (July 1 to June 30) summary report on gray wolf depredation investigations and control actions that it prepares for the Wolf

Depredation Control Board each year.

E. Wildlife Services will not kill gray wolves for ungulate protection in Idaho.

F. Wildlife Services will not use snares to target gray wolves in Idaho on public lands. Wildlife Services will only use foothold traps with offset jaws, pan-tension devices set to a minimum of eight pounds of resistance, and swivels.

G. All traps Wildlife Services sets for gray wolves in Idaho will be checked within 72 hours.

H. Wildlife Services will not use M-44s in Idaho.

I. Wildlife Services will continue to comply with the 2016 Biological Opinion (BiOp) issued to Wildlife Services from the U.S. Fish and Wildlife Service (FWS) until such document is superseded. On August 28, 2019, FWS issued a letter determining that the 2016 BiOp is valid indefinitely as long as reinitiation of formal consultation is not triggered. The August 28 letter from FWS also states that the agencies will review incidents involving take of grizzly bear or Canada lynx within a year of any such incident. Per the Term of Action included in the 2016 BiOp, the agencies will meet every 5 years (first meeting to occur in 2021), to update biological information and ensure that conservation measures are being implemented and are effective. "Occupied habitat" for Canada lynx and grizzly bears, as that phrase is used in the 2016 BiOp, is equivalent to the FWS' current range for those species as depicted in the attached September 4, 2019 Section 7 Booklet (Exhibit 2), until such document is superseded.

2. Subject to Paragraph 3 below, the parties agree to settle Plaintiffs' claim to attorney's fees and costs in this litigation for a total payment of \$154,242.05, pursuant to the

Equal Access to Justice Act, 5 U.S.C. § 2412 *et seq.* or any other statute, in full and complete satisfaction of any and all claims, demands, rights, and causes of action Plaintiffs may have for the recovery of attorney's fees or litigation costs in this matter.

3. Defendants' payment, as identified in Paragraph 2 above, shall be accomplished by electronic funds transfer to Advocates for the West's IOLTA account on behalf of Plaintiffs. Counsel for Plaintiffs will provide counsel for Defendants the appropriate account number and other information needed to facilitate payment. Defendants shall submit the necessary paperwork for the payment within thirty (30) days after issuance of the Order described in paragraph 7 below and Plaintiffs provide the information necessary to facilitate payment.

4. Advocates for the West acknowledges that it is receiving payment on behalf of Plaintiffs and that Advocates for the West will distribute the appropriate settlement proceeds to Plaintiffs. Plaintiffs agree to this procedure. Counsel for Plaintiffs shall confirm payment within ten (10) days of receipt. Plaintiffs also acknowledge that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the award of attorneys' fees and costs Plaintiffs' delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

5. Plaintiffs and their attorneys agree to hold harmless Defendants in any litigation, further suit, or claim arising from the payment of the agreed upon \$154,242.05 settlement amount.

6. The Settlement Agreement will remain in effect until Wildlife Services issues a final EIS for predator damage management activities in Idaho that includes gray wolves.

7. The Parties stipulate and agree, and hereby request, that the Court enter an order approving this Settlement Agreement, retaining jurisdiction to enforce the Agreement, and

dismissing this action with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).

8. The Court will retain jurisdiction over this matter solely to oversee compliance with the terms of this Settlement Agreement. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994). Any dispute over compliance with any provision of this Settlement Agreement shall proceed as set forth in Paragraph 9.

9. In the event that any Party believes another Party to be in breach of this agreement, such Party must give notice to the other Party at the earliest possible date. The other Party shall have 14 days to respond to the claim of breach. If such a response is provided, the Parties shall have 30 days to meet and confer regarding the alleged breach, and any potential remedy. Notice from Plaintiffs should be provided to Wildlife Services and to undersigned counsel for Defendants. The Parties agree that neither will seek contempt of court as a remedy for any violation of this Settlement Agreement, and the Parties therefore knowingly waive any right that they might have to seek an order for contempt for any such violation. No Party shall seek action by this Court or any other court regarding the alleged breach until either (a) the expiration of the meet and confer period, or (b) the Parties have reached an impasse during the meet and confer period.

10. This Agreement constitutes the complete and final resolution of all legal, equitable, and administrative claims arising out of or in any way associated with this action. In acknowledgement of and in exchange for the promises and other consideration contained in this Agreement and the payment by Defendants to Plaintiffs referenced in Paragraph 2 above, Plaintiffs and their respective affiliates, successors, and assigns hereby unconditionally and irrevocably release, waive, covenant not to sue, and forever discharge Defendants (including its past, present, and future officers, agents, and affiliates) from any and all claims, causes of action,

allegations, demands, suits, judgments, liabilities, fees, interests, or obligations, whether known or unknown, foreseen or unforeseen, disclosed or undisclosed, presently asserted or otherwise, regarding, arising out of, or in any way associated with this action.

11. Nothing in this Agreement prohibits Plaintiffs from filing future lawsuits against Defendants to challenge any future final agency action undertaken by Defendants, including any final agency action that relies on the final EIS contemplated by this settlement agreement.

12. This Agreement does not constitute, and shall not be construed as, an admission or concession on the part of any party with respect to any fact, claim, or defense in this action. This Agreement shall have no precedential value. Plaintiffs and Defendants agree that this Agreement will not be used as evidence or otherwise in any pending or future civil or administrative action against Defendants, or the United States, or any agency or instrumentality of the United States. Defendants do not waive any defenses they may have concerning the claims settled under this Agreement.

13. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants are obligated to spend funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

14. The Agreement contains all of the agreements between Plaintiffs and Defendants, and is intended to be the final and sole agreement between them. Plaintiffs and Defendants agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

15. The undersigned representatives of each Party certify that they are fully authorized by the Parties they represent to agree to the Court's entry of the terms and conditions

of this Agreement and do hereby agree to the terms herein.

16. This Agreement becomes effective on the date the Court issues the Order referenced in paragraph 7 above.

Respectfully submitted this 11th day of March, 2020,

/s/ Lauren M. Rule (by permission)

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