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Attorney for Defendants

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CENTER FOR BIOLOGICAL)
DIVERSITY,)

Plaintiff,)

v.)

Case No. 2:19-cv-01700-JCC

USDA APHIS WILDLIFE SERVICES;)
JANET L. BUCKNALL, Deputy)
Administrator, USDA APHIS Wildlife)
Services,)

**STIPULATED SETTLEMENT
AGREEMENT**

Defendants.)

NOTE ON MOTION CALENDAR:
June 5, 2020

STIPULATED SETTLEMENT AGREEMENT 1
(C19-1700JCC)

United States Department of Justice - ENRD
P.O. Box 7611, Washington, D.C. 20044

Center for Biological Diversity
2400 NW 80th St. #146, Seattle, WA 98117

1 WHEREAS, Center for Biological Diversity (“Plaintiff”) brought claims pursuant to the
2 Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, alleging violations of the
3 National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4347, and its implementing
4 regulations, 40 C.F.R. §§ 1500-1508, against the U.S. Department of Agriculture Animal and
5 Plant Health Inspection Service-Wildlife Services (“APHIS-Wildlife Services”) and Deputy
6 Administrator Janet L. Bucknall, in her official capacity (“Defendants”);
7

8 WHEREAS, Plaintiff’s claims allege that APHIS-Wildlife Services is violating NEPA
9 and the APA by failing to supplement its NEPA analysis regarding Mammal Damage
10 Management activities in Washington;
11

12 WHEREAS, Plaintiff’s position is that significant new circumstances and information
13 have emerged since APHIS-Wildlife Services prepared its 1997 Environmental Assessment
14 (“EA”) and Decision and Finding of No Significant Impact (“FONSI”) for Predator Damage
15 Management in Washington, its 2008 EA and Decision and FONSI for Reducing Aquatic
16 Mammal Damage in Washington State, and its 2010 Summary Environmental Monitoring
17 Review of the Predator Damage Management in Washington EA and Supplement to the EA;
18

19 WHEREAS, Plaintiff and Defendants (jointly, “the Parties”) have engaged in good faith
20 settlement negotiations in an effort to avoid the time and expense of further litigation;
21

22 WHEREAS, Plaintiff and Defendants believe that it is in the interests of the Parties and
23 judicial economy to resolve the claims in this action without additional litigation;

24 NOW THEREFORE, it is stipulated and agreed to by Plaintiff and Defendants as
25 follows:
26
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1 1. NEPA Review. By April 15, 2021, APHIS-Wildlife Services will complete its final EA
2 and issue either: (a) the resulting decision notice/FONSI; or (b) a finding of significance and plan
3 to prepare an Environmental Impact Statement (“EIS”) for Mammal Damage Management in
4 Washington.

5
6 2. APHIS-Wildlife Services commits to the following: Except activities for the protection
7 of health and human safety,¹ activities targeting invasive species, and activities on behalf of
8 threatened and endangered species, between the date that this Stipulated Settlement Agreement
9 (“Agreement”) is executed and the date that a decision notice/FONSI is signed or an EIS is
10 completed, APHIS-Wildlife Services agrees to the following interim measures for mammal
11 damage management activities in the State of Washington:
12

13 a. APHIS-Wildlife Services agrees to use only non-lead ammunition for all mammal
14 damage management activities, except when dispatching animals for which carcasses
15 will be retrieved from the environment;
16

17 i. With respect to retrieving carcasses from the environment, in the very unlikely
18 event when lead ammunition is used, but the carcass ends up in an unexpected
19 location, APHIS-Wildlife Services personnel will use best efforts to retrieve
20 the carcass unless it cannot be safely retrieved;
21
22

23
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25 ¹ If APHIS-Wildlife Services undertakes activities for health and human safety that implicate any of the
26 interim measures, APHIS-Wildlife Services agrees to provide Plaintiff a fiscal year report of the number
27 and circumstances surrounding such activities by January 1 of the next fiscal year, provided that a NEPA
decision document has not been issued prior to the January 1 deadline.

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- b. APHIS-Wildlife Services agrees not to use the following EPA registered pesticides in mammal damage management activities on public lands:
 - i. gas cartridges;
 - ii. aluminum phosphide;
 - iii. strychnine oats;
 - iv. zinc phosphide wheat; and
 - v. anticoagulant rodenticides;
- c. APHIS-Wildlife Services agrees not to conduct aerial operations in Wilderness Areas and Wilderness Study Areas;
- d. APHIS-Wildlife Services agrees not to use neck snares;
- e. APHIS-Wildlife Services agrees not to use body-gripping traps in the following areas:
 - i. Little Pend Oreille National Wildlife Refuge;
 - ii. Colville National Forest;
 - iii. Okanogan-Wenatchee National Forest;
 - iv. Mt. Baker-Snoqualmie National Forest;
 - v. Wilderness Areas; and
 - vi. Wilderness Study Areas;
- f. APHIS-Wildlife Services agrees not to use “Quick-kill Body-grip Traps” or other Conibear-style traps unless they are placed underwater;
- g. APHIS-Wildlife Services agrees not to target wolves or cougars for lethal removal;

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- h. APHIS-Wildlife Services agrees to use best efforts to document cooperator-employed nonlethal mammal damage management methods in its electronic recordkeeping system for operational activities;
- i. APHIS-Wildlife Services agrees to abide by all applicable state laws; and
- j. APHIS-Wildlife Services agrees to abide by the conservation measures provided in the following documents issued by the U.S. Fish and Wildlife Service (“FWS”) and the National Marine Fisheries Service (“NMFS”), unless such documents are superseded in the interim:
 - i. July 21, 2014 letter of concurrence issued by FWS;
 - ii. July 21, 2014 Biological Opinion issued by FWS; and
 - iii. March 13, 2019 Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response issued by NMFS.

3. Definitions. The Parties agree that the following terms used in this Agreement have the following definitions:

- a. “Mammal Damage Management” means wildlife damage management activities in the State of Washington that were analyzed in the August 8, 1997 EA for Predator Damage Management in Washington, February 2010 Summary Environmental Monitoring Review of the Predator Damage Management in Washington EA and Supplement to the EA, and September 2008 EA for Reducing Aquatic Mammal Damage in Washington State.

1 Parties, any Party may initiate legal action to resolve the dispute. No motion or other proceeding
2 seeking to enforce this Agreement or for contempt of court shall be properly filed unless the
3 Party seeking to enforce this Agreement has followed the procedure set forth in this Paragraph,
4 and the Party believes there has been noncompliance with an order of the Court. In addition, this
5 Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of
6 court.
7

8 7. Representative Authority. The undersigned representatives of Plaintiff and Defendants
9 certify that they are fully authorized by the Party or Parties whom they represent to enter into the
10 terms and conditions of this Agreement and to legally bind those Parties to it.
11

12 8. Compliance with Other Laws. Nothing in this Agreement shall be interpreted as, or shall
13 constitute, a commitment or requirement that Defendants obligate or pay funds, or take any other
14 actions in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable
15 law. Nothing in this Agreement shall be construed to deprive a federal official of authority to
16 revise, amend, or promulgate regulations, or to amend or revise land and resource management
17 plans. Nothing in this Agreement is intended to, or shall be construed to, waive any obligation to
18 exhaust administrative remedies; to constitute an independent waiver of the United States'
19 sovereign immunity; to change the standard of judicial review of federal agency actions under
20 the APA; or to otherwise extend or grant this Court jurisdiction to hear any matter, except as
21 expressly provided in the Agreement.
22

23 9. Mutual Drafting and Other Provisions.

24 a. It is hereby expressly understood and agreed that this Agreement was jointly
25 drafted by Plaintiff and Defendants. Accordingly, the Parties hereby agree that any and all rules
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1 of construction, to the effect that ambiguity is construed against the drafting party, shall be
2 inapplicable in any dispute concerning the terms, meaning, or interpretation of the Agreement.

3 b. This Agreement contains all of the agreements between Plaintiff and Defendants,
4 and is intended to be and is the final and sole agreement between Plaintiff and Defendants
5 concerning the complete and final resolution of Plaintiff's claims. Plaintiff and Defendants agree
6 that any other prior or contemporaneous representations or understandings not explicitly
7 contained in this Agreement, whether written or oral, are of no further legal or equitable force or
8 effect. Any subsequent modifications to this Agreement must be in writing, and must be signed
9 and executed by Plaintiff and Defendants.
10

11 c. This Agreement is the result of compromise and settlement, and does not
12 constitute an admission, implied or otherwise, by Plaintiff or Defendants to any fact, claim, or
13 defense on any issue in this litigation. This Agreement has no precedential value and shall not be
14 used as evidence either by Defendants or Plaintiff in any other litigation except as necessary to
15 enforce the terms of this Agreement.
16

17 10. Force Majeure. The Parties understand that notwithstanding their efforts to comply with
18 the commitments contained herein, events beyond their control may prevent or delay such
19 compliance. Such events may include natural disasters as well as unavoidable legal barriers or
20 restraints, including those arising from actions of persons or entities that are not party to this
21 Agreement.
22

23 11. Attorneys' Fees and Costs. The Parties have agreed to settle any and all of Plaintiff's
24 claims for attorneys' fees, costs, and expenses associated with this litigation for a lump sum of
25 \$5,558.60. This Agreement represents the entirety of the undersigned Parties'
26
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1 commitments with regard to settlement of claims for attorneys' fees, costs, and expenses.

2 12. Offsetting Debts. Under 31 U.S.C. §§ 3711, 3716; 26 U.S.C. § 6402(d); 31 C.F.R. §§
3 285.5, 901.3; and other authorities, the United States will offset against the payment made
4 pursuant to this Agreement Plaintiff's delinquent debts to the United States, if any. *See Astrue v.*
5 *Ratliff*, 560 U.S. 586 (2010).

7 13. Dismissal. Concurrently with this Agreement, the Parties shall file a stipulation
8 requesting dismissal of this action. That stipulation will also request that the Court retain
9 jurisdiction to oversee compliance with the terms of this Agreement and to resolve any disputes
10 arising under this Agreement and any motions to modify any of its terms. *See Kokkonen v.*
11 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

13 14. Effective Date. The terms of this Agreement shall become effective upon execution of
14 this Agreement. The Parties agree that this Agreement may be executed in one or more
15 counterparts, each of which shall constitute an original, and all of which, taken together, shall
16 constitute the same instrument. Facsimile or scanned signatures submitted by electronic mail
17 shall have the same effect as an original signature in binding the Parties.

19 DATED this 27th day of May, 2020.

20 Respectfully submitted,

21 PRERAK SHAH
22 Deputy Assistant Attorney General
23 U.S. Department of Justice
24 Environment & Natural Resources Division

25 /s/ Emma L. Hamilton
26 EMMA L. HAMILTON
27 Trial Attorney
Natural Resources Section
P.O. Box 7611

28 STIPULATED SETTLEMENT AGREEMENT
(C19-1700JCC)

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