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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

CENTER FOR BIOLOGICAL DIVERSITY, )  
WESTERN WATERSHEDS PROJECT, and )  
WILDEARTH GUARDIANS, )

Plaintiffs, )

v. )

USDA APHIS WILDLIFE SERVICES, *et al.*, )

Defendants. )

Case No. 19-CV-20-F

**STIPULATED SETTLEMENT  
AGREEMENT**

WHEREAS, Plaintiffs Center for Biological Diversity, Western Watersheds Project, and WildEarth Guardians (“Plaintiffs”), brought claims pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, alleging violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4347, and its implementing regulations, 40 C.F.R. §§ 1500-1508, against the U.S. Department of Agriculture Animal and Plant Health Inspection Service-Wildlife Services (“APHIS-Wildlife Services”) and Deputy Administrator Janet L. Bucknall (“Federal Defendants”);

WHEREAS, Plaintiffs’ claims allege that APHIS-Wildlife Services is violating NEPA and the APA by failing or refusing to supplement its NEPA analysis regarding Predator Damage Management activities in Wyoming;

WHEREAS, Plaintiffs’ position is that significant new circumstances and information have emerged since APHIS-Wildlife Services last prepared its 1997 Environmental Assessment and Finding Of No Significant Impact for the Western District (“1997 EA/FONSI”) and 1998 Environmental Assessment and Finding Of No Significant Impact for the Eastern District (“1998 EA/FONSI”);

WHEREAS, the Parties have engaged in good faith settlement negotiations in an effort to avoid the time and expense of further litigation;

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

NOW THEREFORE, it is stipulated and agreed to by Plaintiffs and Federal Defendants as follows:

1. NEPA Review: By January 8, 2021, APHIS-Wildlife Services will complete its final Environmental Assessment and issue either (a) the resulting decision notice/finding of no

significant impact; or (b) a finding of significance and plan to prepare an EIS for Predator Damage Management in Wyoming.

2. APHIS-Wildlife Services commits to the following: Except activities for the protection of health and human safety and activities targeting invasive species (including feral swine), between the date that this Agreement is executed and the date that a decision notice/finding of no significant impact is signed or an EIS is completed, APHIS-Wildlife Services agrees to the following interim measures for Predator Damage Management<sup>1</sup> activities in the State of Wyoming:

- a. Statewide:
  - i. APHIS-Wildlife Services agrees not to use “Quick-kill Body-grip Traps” or other Conibear-style traps;
  - ii. APHIS-Wildlife Services agrees to use neck snares that are breakaway snares designed to release heavier, nontarget animals;
  - iii. APHIS-Wildlife Services agrees not to use foot snares to target coyotes, in order to reduce non-target capture from these non-breakaway devices;
  - iv. APHIS-Wildlife Services agrees that any foot-hold trap will have offset jaws or be padded;
  - v. APHIS-Wildlife Services agrees not to use Compound 1080;
  - vi. APHIS-Wildlife Services agrees not to use anticoagulants; and

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<sup>1</sup> This Settlement Agreement relates only to those activities defined as APHIS-Wildlife Services’ Predator Damage Management activities in the State of Wyoming. For example, it does not apply to any actions or activities APHIS-Wildlife Services may take with respect to Gray Wolves, which are addressed by the Final Environmental Assessment for Gray Wolf Damage and Conflict Management in Wyoming (“Final Wolf EA”) and Decision Notice. The Final Wolf EA is not the subject of the present lawsuit and Plaintiffs have not waived any rights by this Settlement Agreement to challenge that decision.



means to leave the area. APHIS-Wildlife Services agrees to provide Plaintiffs an annual report of the number and circumstances surrounding activities undertaken for health and human safety that implicate any of the interim measures.

b. The terms “Quick-kill Body-grip Trap” and “Conibear-style traps” are defined as devices that close around the body or head of the animal in such a manner as to almost immediately kill the animal caught.

c. The term “occupied grizzly bear habitat,” as it appears in the March 10, 2015, concurrence letter from FWS, is defined as, consistent with the consultation by FWS, areas where grizzly bears are known to exist through reports and verification by the FWS and/or the WGFD.

4. Modification. This Agreement may be modified by written stipulation between the Parties. As an example, the Parties may agree to modify the deadline for completion of the Final EA or EIS in Paragraph 1 of this Agreement for good cause, including the need for more time to respond to public comments. In the event that either party seeks to modify the terms of this Agreement, the party seeking the modification will confer at the earliest possible time with the other party.

5. Subsequent NEPA Challenges. Nothing in this Settlement precludes any challenge by Plaintiffs to the validity or sufficiency of future NEPA analysis. Such challenges shall be made only upon completion of the entire NEPA process following the issuance of APHIS-Wildlife Services’ Final EA or EIS for Predator Damage Management.

6. Dispute Resolution. In the event of a dispute among the Parties concerning the interpretation or implementation of any aspect of this Stipulation, the disputing Party shall provide the other Party with a written notice outlining the nature of the dispute and requesting informal negotiations. The Parties shall meet and confer by phone or in person to attempt to resolve the dispute. If the Parties cannot reach an agreed-upon resolution after 60 days following receipt of a

written notice requesting informal negotiations or such longer time agreed to by the Parties, any Party may initiate legal action to resolve the dispute. No motion or other proceeding seeking to enforce this Stipulation or for contempt of court shall be properly filed unless the Party seeking to enforce this Stipulation has followed the procedure set forth in this Paragraph, and the Party believes there has been noncompliance with an order of the Court. In addition, this Stipulation shall not, in the first instance, be enforceable through a proceeding for contempt of court.

7. Representative Authority. The undersigned representatives of Plaintiffs and Federal Defendants certify that they are fully authorized by the party or parties whom they represent to enter into the terms and conditions of this Settlement Agreement and to legally bind those parties to it.

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

9. Mutual Drafting and Other Provisions.

a. It is hereby expressly understood and agreed that this Settlement Agreement was jointly drafted by Plaintiffs and Federal Defendants. Accordingly, the Parties hereby agree that

any and all rules of construction, to the effect that ambiguity is construed against the drafting party, shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of the Settlement Agreement.

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

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

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

11. Attorneys' Fees and Costs. The Parties have agreed to settle any and all of Plaintiffs' claims for attorneys' fees, costs, and expenses associated with this litigation for a lump sum of

\$4,300. This Settlement Agreement represents the entirety of the undersigned Parties' commitments with regard to settlement of claims for attorneys' fees, costs, and expenses.

12. Offsetting Debts. 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 payment made pursuant to this stipulation Plaintiffs' delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

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

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

DATED this 8th day of August 2019.

RESPECTFULLY SUBMITTED,

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