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

DEFENDERS OF WILDLIFE, et al.,
Plaintiffs,
v.
UNITED STATES FISH AND
WILDLIFE SERVICE, et al.,
Defendants.

No. 08-cv-280-TUC-DCB (lead case)

WILDEARTH GUARDIANS, et al.,
Plaintiffs,
v.
UNITED STATES FISH AND
WILDLIFE SERVICE, et al.,
Defendants.

No. 08-cv-820-TUC-DCB
(consolidated case)

**CONSENT DECREE
REGARDING CIV. No. 08-cv-280-TUC-DCB**

Defenders of Wildlife, the Center for Biological Diversity, Western Watersheds Project, the New Mexico Wilderness Alliance, the Sierra Club, the Southwest Environmental Center, the Grand Canyon Wildlands Council, the New Mexico Audubon Council, and the Wildlands Project (“Plaintiffs”) and the United States Fish and Wildlife Service, Ken Salazar, in his official capacity as the Secretary of the United States Department of the Interior, Sam Hamilton, in his official capacity as the

Director of the United States Fish and Wildlife Service, and Dr. Benjamin Tuggle, in his official capacity as the Director of Region 2 of the United States Fish and Wildlife Service (“Federal Defendants”), by and through their undersigned counsel, state as follows:

WHEREAS, on January 12, 1998, the United States Fish and Wildlife Service (“Service”) issued a final rule announcing its decision to reintroduce the endangered Mexican wolf into the Blue Range Wolf Recovery Area, a designated area within the subspecies’ probable historic range (the “10(j) Rule”). 63 Fed. Reg. 1752 (Jan. 12, 1998).

WHEREAS, the 10(j) Rule established the parameters of the Service’s reintroduction efforts (“the Mexican Wolf Reintroduction Project”).

WHEREAS, the Mexican Wolf Reintroduction Project is one component of the Service’s efforts to recover the Mexican wolf (“the Mexican Wolf Recovery Program”).

WHEREAS, the Mexican Wolf Reintroduction Project involves the releasing, translocation, management and conservation of wolves in the Blue Range Wolf Recovery Area.

WHEREAS, the Mexican Wolf Recovery Program is designed to conserve and ensure the survival of the Mexican wolf by maintaining a captive breeding program

and establishing viable wild populations in at least two areas, with a goal for the first population to become self-sustaining and reach at least 100 Mexican wolves in a 5,000 square mile area within the Mexican wolf's historic range.

WHEREAS, on October 31, 2003, the Service and a number of federal, state, local and tribal entities entered into a Memorandum of Understanding ("MOU") that, among other things, created the Adaptive Management Oversight Committee ("AMOC");

WHEREAS, the stated purpose of the MOU was to (i) continue a long term effort to reestablish Mexican wolves in the Blue Range Recovery Area; (ii) establish a framework to adaptively manage the Mexican Wolf Reintroduction Project; (iii) develop and implement interagency coordination and cooperation protocols; (iv) develop and facilitate the implementation of management practices; (v) recognize and respect the separate authorities of the signatories; and (vi) enhance awareness of the signatory agencies and other interested parties.

WHEREAS, on October 31, 2008, the MOU expired according to its own terms;

WHEREAS, on April 30, 2005, the AMOC issued a document entitled the Mexican Wolf Blue Range Reintroduction Project Adaptive Management Oversight Committee Standard Operating Procedure 13 ("SOP 13").

WHEREAS, the Service has at times used SOP 13 as a tool to guide its decision-making with regard to potential wolf control actions;

WHEREAS, on May 28, 2009, the AMOC issued a memorandum that purported to clarify SOP 13 (“Clarification Memo”);

WHEREAS, on May 1, 2008, Plaintiffs filed a complaint for declaratory and injunctive relief in United States District Court in Arizona, challenging the MOU and SOP 13. Dkt No. 1.

WHEREAS, on August 31, 2008, Plaintiffs filed their first amended complaint for declaratory and injunctive relief. Dkt. No. 13.

WHEREAS, on April 10, 2009, Plaintiffs filed their second amended complaint for declaratory and injunctive relief. Dkt. No. 33.

WHEREAS, the parties, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to the Plaintiffs’ claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs’ complaint;

WHEREAS, the parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The Service shall make no further decisions that relate to the Mexican Wolf Recovery Program pursuant to the MOU, which has expired and has no legal effect. The Service shall make no further decisions that relate to the Mexican Wolf Recovery Program pursuant to SOP 13 as issued on April 30, 2005, or as altered by the Clarification Memo on May 28, 2009. The Service recognizes that the AMOC does not oversee the actions of the Service and that the AMOC has no decision-making authority over the Service with regard to the Service's management of the Mexican Wolf Recovery Program or the Mexican Wolf Reintroduction Project. Within two weeks of the Court's order that enters this Consent Decree ("Agreement"), the Service shall issue a memorandum that affirms these commitments.

2. The Order entering this Agreement, including the deadline specified in Paragraph 1, may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between the parties filed with and approved by the Court, or upon written motion filed by one of the parties and granted by the Court. In the event that either party seeks to modify the terms of this Agreement, including the deadlines specified in Paragraph 1, or in the event of a dispute arising out of or relating to this Agreement, or in the event that either party believes that the other party has failed to comply with any term or condition of this Agreement, the party seeking the modification, raising the dispute, or seeking

enforcement shall provide the other party with notice of the claim. The parties will meet and confer (in-person not required) at the earliest possible time in a good-faith effort to resolve the claim before pursuing relief from the Court. If the parties are unable to resolve the claim after meeting and conferring, either party may pursue relief from the Court.

3. In the event that the Federal Defendants fail to meet a deadline specified in Paragraph 1 and the Federal Defendants have not sought to modify that deadline, Plaintiffs' first remedy shall be a motion to enforce the terms of this Agreement. This Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

4. Defendants agree that Plaintiffs are the prevailing party in this action, and agree to pay Plaintiffs' reasonable attorneys' fees and costs pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540(g). The parties agree to attempt to resolve Plaintiffs' claims for fees and costs expeditiously and without the need for Court intervention. The Court shall retain jurisdiction over the case for the purpose of resolving any dispute between the parties regarding Plaintiffs' claims for an award of fees and costs. If the parties are unable to resolve attorneys' fees and costs among themselves, Plaintiffs shall file any motion seeking such award within 45 days of the order adopting this Agreement. By this Agreement, Defendants do not waive any right to

contest fees claimed by Plaintiffs, including the hourly rate, in any continuation of the present action or any future litigation.

7. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the ESA, the Administrative Procedure Act (“APA”), or any other law or regulation, either substantive or procedural. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to the Service by the ESA, the APA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any final determination.

8. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

9. Nothing in this Agreement may be cited in connection with any other administrative or judicial proceeding in order to demonstrate acquiescence to the time deadlines provided in this Agreement or for any other reason.

10. The parties agree that this Agreement was negotiated in good faith and that this Agreement constitutes a settlement of claims that were denied and disputed by the

parties. By entering into this Agreement, the parties do not waive any claim or defense.

11. The undersigned representatives of each party certify that they are fully authorized by the party or 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.

12. The terms of this Agreement shall become effective upon entry of an order by the Court ratifying the Agreement.

13. Upon approval of this Agreement by the Court, all counts of Plaintiffs' complaint shall be dismissed with prejudice. Notwithstanding the dismissal of this action, however, the parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement and to resolve any motions to modify such terms. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375 (1994). In particular, in the event of unforeseen circumstances, Plaintiffs retain the right to seek emergency relief from the Court.

Respectfully submitted this 13th day of November, 2009.

/s/Erik Petersen

Attorney for Federal Defendants

/s/ Matt Kenna

/s/ Jason Rylander

Attorneys for Plaintiffs Defenders of Wildlife, et al.

IT IS SO ORDERED
