

RAFAEL M. GONZALEZ, JR.
UNITED STATES ATTORNEY
ROBERT B. FIRPO, CA STATE BAR NO. 243991
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
1290 WEST MYRTLE STREET, SUITE 500
BOISE, ID 83702
TELEPHONE: (208) 334-1211
FACSIMILE: (208) 334-9375
Email: Robert.Firpo@usdoj.gov

Attorneys for the Federal Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT,
WILDEARTH GUARDIANS, and
PREDATOR DEFENSE,

Plaintiffs,

v.

USDA APHIS WILDLIFE SERVICES, U.S.
FOREST SERVICE, and BUREAU OF
LAND MANAGEMENT,

Defendants.

Case No. 1:20-cv-00213-BLW

SETTLEMENT AGREEMENT

It is hereby stipulated between the undersigned parties and their attorneys that this action be settled, compromised, and dismissed in accordance with the following terms:

RECITALS

Procedural Background

A. Plaintiffs Western Watersheds Project (WWP), WildEarth Guardians, and Predator Defense (collectively, Plaintiffs) filed the above captioned lawsuit on May 7, 2020,

alleging that Defendants Wildlife Services (WS), Bureau of Land Management (BLM), and the United States Forest Service (USFS) (collectively, Defendants) violated the National Environmental Policy Act (NEPA) in various ways related to WS' predator damage management actions (not including wolves) in Idaho. *See* ECF No. 1 (Complaint).

B. Defendants moved to dismiss the original Complaint. *See* ECF No. 6 (Defendants' motion to dismiss). Plaintiffs filed an Amended Complaint on August 3, 2020. *See* ECF No. 9 (Amended Complaint). Plaintiffs' Amended Complaint alleged four claims. Specifically, Plaintiffs' Amended Complaint alleged that:

- i. WS violated NEPA by taking predator damage management actions in Idaho without an adequate NEPA analysis, *see* Amend. Compl. ¶¶ 113-121 (Claim 1);
- ii. WS violated NEPA by taking predator damage management actions in Idaho without first supplementing its 1996 and 2002 NEPA analyses for its predator damage management actions, *see id.* ¶¶ 122-128 (Claim 2);
- iii. WS, BLM, and USFS violated NEPA by using annual work plans in Idaho to authorize predator damage management actions on federal lands without a proper site-specific NEPA analysis, *see id.* at ¶¶ 129-135 (Claim 3); and
- iv. WS violated NEPA by operating the Pocatello Supply Depot without an adequate NEPA analysis, *see id.* at ¶¶ 136-142 (Claim 4).

C. On September 11, 2020, Defendants moved to dismiss Claim 4 (related to the Pocatello Supply Depot) from the Amended Complaint. *See* ECF No. 18. The Court granted Defendants' motion on December 11, 2020. *See* ECF No. 28 (Memorandum Decision and Order).

D. On February 9, 2021, Defendants filed an Answer addressing the three remaining claims in the Amended Complaint. *See* ECF No. 29. Defendants thereafter lodged the Administrative Records. *See* ECF No. 30.

Settlement Discussions

E. After reviewing the filings and Administrative Records in the case, the Plaintiffs and Defendants (collectively, the Parties) decided to explore the possibility of resolving this case amicably and without protracted litigation. To that end, the Parties filed a series of joint motions requesting that the case be stayed to facilitate settlement discussions. The Court granted those motions and stayed the case starting in June 2021.

F. The Parties have explored settlement as part of good-faith settlement negotiations since June 2021. Now, and based on those discussions, the Parties have reached a resolution that they believe fairly resolves the pending and above-captioned case.

SETTLEMENT AGREEMENT

1. WS agrees to abide by the conditions outlined in Attachment 1 to this Settlement Agreement (Agreement). *See* Attachment #1 (Agreement on NEPA and Interim Measures).

2. In exchange for WS' agreement to comply with Paragraph 1 (above) and Attachment #1 to this Agreement, Plaintiffs agree that the Parties will file a joint motion to dismiss the above captioned case and all remaining claims with prejudice. Plaintiffs and their respective affiliates, successors, and assigns hereby unconditionally and irrevocably release, waive, covenant not to sue, and forever discharge WS, BLM, and USFS (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 Defendants' actions in Idaho challenged in the above-captioned case.

3. This Agreement is not an admission of liability or fault on the part of WS, BLM, USFS, or those agencies' agents, servants, or employees, and it is specifically denied that any of those agencies are liable to Plaintiffs. This Agreement is not an admission about the merits of the underlying claims by Plaintiffs. This Agreement is entered into by the Parties for the purpose of compromising the disputed claims and avoiding the expenses and risks of further litigation. This Agreement shall have no precedential value. The Parties agree that this Agreement will not be used as evidence or otherwise in any pending or future civil or administrative action against the Plaintiffs, the 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. Nothing in this Agreement prohibits Plaintiffs from filing future lawsuits against Defendants to challenge any action not challenged in this lawsuit, including any action that relies on the final EIS contemplated by this Agreement.

4. At the time of execution of this Agreement, the Parties agree to file a Joint Motion to Dismiss the above-captioned action with prejudice. The Parties will attach this Agreement to the motion and include its terms as part of the proposed order.

5. Defendants agree to pay Plaintiffs \$50,000 in full and complete satisfaction of any and all claims arising from the subject matter of this suit, including but not limited to all attorneys' fees, costs, and expenses incurred by Plaintiffs in this action.

6. Defendants' payment (described in Paragraph 5) shall be accomplished by one or more electronic funds transfers, and may be done from separate accounts from one or more agencies. Plaintiffs' counsel shall provide to Defendants' counsel 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 (1) Plaintiffs' counsel provides the information necessary to facilitate payment, and (2) the Court has granted the joint motion to dismiss. Plaintiffs' counsel shall notify Defendants' counsel when payment is received.

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

8. Plaintiffs and their attorneys agree to hold harmless Defendants in any litigation, further suit, or claim arising from the payment of the agreed upon \$50,000.00 described in Paragraph 5.

9. This Agreement may be modified by written stipulation between the Parties. 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. Any subsequent modifications to this Agreement must be in writing, and must be signed and executed by Plaintiffs and Defendants.

10. In the event of a dispute among the Parties concerning the interpretation or implementation of any aspect of this Agreement, 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

Agreement or for contempt of court shall be properly filed unless the Party seeking to enforce this Agreement 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 Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

11. No provision of this Agreement shall be interpreted as, or constitutes, a commitment or requirement that the Defendants are obligated to spend funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation. Nothing in this 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 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 Administrative Procedure Act; or to otherwise extend or grant this Court jurisdiction to hear any matter, except as expressly provided in the Agreement.

12. 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 federal government shutdowns, natural disasters, complications arising from the COVID-19 pandemic, as well as unavoidable legal barriers or restraints, including those arising from actions of persons or entities that are not party to this Agreement.

14. The persons signing this Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the Agreement.

ATTACHMENT #1 to SETTLEMENT AGREEMENT

(Agreement on NEPA and Interim Measures)

TERMS

1. Wildlife Services will issue the Final Environmental Impact Statement (EIS) and Record of Decision (ROD) analyzing its wildlife damage management activities in Idaho as described in 84 Fed. Reg. 26,809 (June 10, 2019) and 84 Fed. Reg. 7,326 (March 4, 2019) by December 31, 2024.
2. In the Final EIS for Idaho described in Term 1, Wildlife Services will consider an alternative that includes the following elements:
 - a. No lethal work in Wilderness Areas and Wilderness Study Areas (except for human health and safety);
 - b. Restricted wolf damage management on public lands as described in Term 1.A of the settlement in *Western Watersheds Project, et al. v. Grimm*, No. 1:16-cv-218-BLW (ECF Nos. 47 & 47-1);
 - c. Restricted predator damage management in Areas of Critical Environmental Concern and National Monuments consistent with this settlement,
 - d. No use of Compound-1080 and sodium cyanide (M-44s);
 - e. 72-hour trap check requirement;
 - f. No lethal preventive predator damage management or wolf damage management;
 - g. No predator damage management or wolf damage management for the benefit of natural resources, including for ungulate protection, (except Northern Idaho ground squirrels);
 - h. No lethal predator damage management or wolf damage management unless in response to a witnessed or documented, confirmed livestock depredation or attack;
 - i. Wildlife Services will not use snares to target gray wolves in Idaho on public lands. When using foothold traps for wolf damage management, Wildlife Services will only use foothold traps with offset jaws, pan-tension devices set to a minimum of eight pounds of resistance, and swivels;
 - j. No use of gas cartridges or fire to kill predators (including but not limited to wolves and coyotes) in dens.

ATTACHMENT #1 to SETTLEMENT AGREEMENT

(Agreement on NEPA and Interim Measures)

3. Between the date that the Settlement Agreement and Joint Motion to Dismiss are executed and filed in *Western Watersheds Project, et al. v. USDA APHIS Wildlife Services, et al.*, 20-CV-213-BLW, and the date the EIS described in Term 1 (above) is completed and an associated final ROD is signed, Wildlife Services agrees to the following interim measures in the State of Idaho:
 - a. Wildlife Services will not use Livestock Protection Collars, or otherwise use Compound-1080, for predator damage management in Idaho;
 - b. Wildlife Services will not use gas cartridges or fire to kill wolves in dens in Idaho;
 - c. Wildlife Services will not use body-gripping traps for predator damage management in Idaho;
 - d. Wildlife Services will make best efforts to have traps checked in Idaho within 72 hours. Beginning with Fiscal Year 2022 (October 1, 2021-September 30, 2022), Wildlife Services will provide Plaintiffs with a fiscal year report on or about March 15 of the following year summarizing by County the number of instances, if any, in which traps were checked after 72 hours;
 - e. Lethal preventive predator damage management will be limited to two (2) flights over any U.S. Forest Service (USFS) or Bureau of Land Management (BLM) grazing allotment per calendar year. When conducting lethal preventive predator damage management on USFS or BLM lands, Wildlife Services may only conduct lethal preventive predator damage management on the following number of allotments on the specified BLM Districts and National Forest:
 - Boise BLM District—8
 - Twin Falls BLM District—16
 - Idaho Falls BLM District—26
 - Coeur D’Alene BLM District—2
 - Caribou Targhee National Forest—8
 - f. Wildlife Services will not conduct predator damage management in Wilderness Areas or Wilderness Study Areas in Idaho, except Wildlife Services may conduct predator damage management to protect human health and safety. Wildlife Services will notify Plaintiffs via e-mail of such actions no later than 72 hours after taking an action.

ATTACHMENT #1 to SETTLEMENT AGREEMENT

(Agreement on NEPA and Interim Measures)

- g. Wildlife Services will not conduct lethal predator damage management in Areas of Critical Environmental Concern in Idaho, except Wildlife Services may conduct lethal corrective predator damage management in the following Areas of Critical Environmental Concern: (a) Boise Front, (b) Hixon Columbian Sharp-Tailed Grouse Habitat, (c) Long-billed Curlew Habitat, (d) Mud Flat “Shoofly” Oolite, (e) Snake River, (f) Upper Snake Complex (including Nine Mile Knoll and St. Anthony Dunes), and (g) North Manan Butte.

Wildlife Services may conduct lethal predator damage management to protect human health and safety in any Areas of Critical Environmental Concern, but if it does so, Wildlife Services agrees to notify Plaintiffs via e-mail of such actions no later than 72 hours after taking an action.

- h. Wildlife Services will not conduct lethal predator damage management in National Monuments in Idaho, except Wildlife Services may conduct limited lethal corrective predator damage management in the portions of Craters of the Moon that are not Wilderness Study Areas. Additionally, Wildlife Services may conduct lethal predator damage management to protect human health and safety in any National Monument, but if it does so, Wildlife Services agrees to notify Plaintiffs via e-mail of such actions no later than 72 hours after taking an action.
- i. In addition to normal recording of Wildlife Services-Idaho employee use of lethal methods, Wildlife Services-Idaho employees will record in Wildlife Services’ electronic recordkeeping system for operational activities (1) all Wildlife Services-Idaho employee use of nonlethal methods; (2) all Wildlife Services-Idaho employee recommendation of use of lethal and nonlethal methods to cooperators; and (3) will use best efforts to record in the electronic recordkeeping system for operational activities current cooperator-employed lethal and nonlethal methods.
- j. Wildlife Services will not conduct predator damage management to benefit natural resources in Idaho, including for ungulate protection, except Wildlife Services may conduct predator damage management to protect the Northern Idaho ground squirrel.

- 4. Wildlife Services will not use M-44s in Idaho until the date the EIS described in Term 1 is completed and an associated final ROD is signed. In addition, Wildlife Services will consider alternative(s) in the EIS that preclude the use of M-44s in Idaho.