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Attorneys for Defendants

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

WILDEARTH GUARDIANS,

Plaintiff,

vs.

UNITED STATES DEPARTMENT
OF AGRICULTURE ANIMAL AND
PLANT HEALTH INSPECTION
SERVICE; JANET L. BUCKNALL, in
her official capacity as Deputy
Administrator of the Animal and Plant
Health Inspection Service,

Defendants.

Case No. 9:19-cv-00187-DLC

**STIPULATED SETTLEMENT
AGREEMENT**

WHEREAS, WildEarth Guardians (“Plaintiff”), 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, in her official capacity (“Federal Defendants”);

WHEREAS, Plaintiff’s 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 Montana;

WHEREAS, Plaintiff’s position is that significant new circumstances and information have emerged since APHIS-Wildlife Services last prepared its 1997 Environmental Assessment and Decision and Finding of No Significant Impact for Western Montana, 1997 Environmental Assessment and Decision and Finding of No Significant Impact for Eastern Montana (collectively the “1997 EAs/FONSIs”), and 2012 Environmental Assessment and 2013 Finding of No Significant Impact and Decision for Gray Wolf Damage Management in Montana for the Protection of Livestock, Other Domestic Animals, Human Safety, and Other Resources;

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

WHEREAS, Plaintiff 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 Plaintiff and Federal Defendants as follows:

1. NEPA review: By May 15, 2021, APHIS-Wildlife Services expects to complete its final Environmental Assessment (“EA”) and issue either (a) the resulting decision notice/finding of no significant impact; or (b) a finding of significance and plan to prepare an Environmental Impact Statement (“EIS”) for Predator and Wolf Damage Management in Montana.
2. APHIS-Wildlife Services commits to the following: Except activities for the protection of health and human safety,¹ activities targeting invasive species, and activities on behalf of threatened and endangered species, between the date that this Stipulated Settlement Agreement (“Agreement”) is executed and the date that a decision notice/finding of no significant impact is

¹ If APHIS-Wildlife Services utilizes this exception for any of the interim measures, it will document such use in the agency’s electronic recordkeeping system for operational activities.

signed—or, if the EA results in a finding of significance, between the date that this Agreement is executed and the date an EIS is completed and an associated Record of Decision (“ROD”) is signed—APHIS-Wildlife Services agrees to the following interim measures for predator damage management (“PDM”) and wolf damage management (“WDM”) activities in the State of Montana:

- i. Not to use Sodium cyanide (M-44 devices) on all public lands and all lands in the following counties: Beaverhead, Blaine, Broadwater, Carbon, Carter, Cascade, Choteau, Daniels, Fergus, Flathead, Hill, Gallatin, Garfield, Glacier, Golden Valley, Jefferson, Judith Basin, Lake, Lewis & Clark, Lincoln, Madison, Meagher, Missoula, Mineral, Musselshell, Park, Petroleum, Phillips, Powder River, Ravalli, Richland, Roosevelt, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Valley, Wheatland, and Yellowstone.
- ii. Not to use the following EPA registered pesticides on public lands:
 - a. gas cartridges for denning;
 - b. Compound 1080; and
 - c. DRC-1339;
- iii. Not to use lead ammunition (except when carcasses will be removed) in Wilderness Areas, Wilderness Study Areas, Areas of Critical

Environmental Concern (“ACECs”), Research Natural Areas (“RNAs”), Wild & Scenic River corridors, National Park Service Lands, and National Wildlife Refuges;

- a. With respect to removing carcasses, when lead ammunition is used, but the carcass ends up in an unexpected location, APHIS-Wildlife Services’ personnel will use best efforts to remove the carcass unless it cannot be safely removed;
- iv. Not to carry out PDM or WDM activities in Wilderness Areas, Wilderness Study Areas managed by the U.S. Forest Service, ACECs, RNAs, Wild & Scenic River corridors, National Park Service Lands, and National Wildlife Refuges;
- v. Not to use “Quick-kill Body-grip Traps” or other Conibear-style traps;
- vi. Not to use neck snares for targeting black bears and grizzly bears;
- vii. Not to use foot snares to target coyotes, unless they incorporate a breakaway cable;
- viii. To ensure any foot-hold trap has offset jaws or is padded;
- ix. From March 1-November 30, all traps set for PDM activities will be checked on a “2-2-3” schedule (i.e. starting on a Monday, the first check within 48 hours, the second check within 48 hours, and the third check over the weekend within 72 hours; then cycle back to a 48

hours check on a Monday, etc.), unless the site is inaccessible or cannot safely be reached by employees due to hazardous weather or other exigency;

- x. Not to target for lethal take cougars or black bears on federal public lands;
- xi. Grizzly Bears: (1) To abide by the conservation measures provided in the June 8, 2012 Biological Opinion on the Effects of the Statewide Montana Wildlife Services' Wildlife Damage Program on Grizzly Bears, issued by the U.S. Fish and Wildlife Service ("FWS"), unless such document is superseded in the interim; and (2) APHIS-Wildlife Services will make publicly available on APHIS-Wildlife Services' state-specific website for the agency's work in Montana copies of completed 4(d) Take Report Forms submitted to FWS for grizzly bear activities conducted under the 2020 Technical Assistance Letter for Implementation of Grizzly Bear 4(d) rule. APHIS-Wildlife Services may redact information from these reports to the extent required by law;
- xii. Lynx: To abide by the conservation measures provided in the July 24, 2009 Biological Opinion on the Effects of the Statewide Montana

Wildlife Services' Wildlife Damage Program on Canada Lynx, issued by FWS, unless such document is superseded in the interim;

- xiii. Wolves: Consistent with, and in addition to, protocols agreed to by Montana Fish, Wildlife & Parks ("MFWP") when conducting lethal removal of gray wolves on public lands in Montana:
- a. Lethal wolf control actions will be based on the USFWS-approved Montana state wolf management plan;
 - b. Lethal control of wolves will be authorized only after confirmed livestock depredation(s) involving wolves, as determined by APHIS-Wildlife Services;
 - c. APHIS-Wildlife Services will use best efforts to confirm and document, in a manner readily available to the public upon request and in compliance with the law, livestock owner/operators' attempted use of: (1) non-lethal methods (e.g. range riders, guard dogs, protection of young lambs and calves on pastures and allotments), and (2) husbandry practices (e.g. removal of attractants; keeping nonambulatory, sick, and injured livestock safe and unavailable to wolves);
 - d. Upon confirmation of wolf/wolves as the cause of livestock depredation(s)/damage, APHIS-Wildlife Services, under MFWP

authorization, may responsibly identify, target, and remove the offending wolf/wolves;

- e. Authorization will be valid for a period of 45 days from the date of confirmation, except as specifically extended by MFWP. If additional depredations or damage are confirmed, the authorization period will start over;
- f. From March 1-November 30, all traps and snares set will be checked every 24 hours unless the site is inaccessible or cannot safely be reached by employees due to hazardous weather or other exigency; at all other times of the year, all traps and snares set will be checked every 48 hours unless the site is inaccessible or cannot safely be reached by employees due to hazardous weather or other exigency;
- g. APHIS-Wildlife Services shall make every effort to avoid lethal removal of non-problem wolves in areas near and adjacent to the site of depredation;
- h. If the depredation(s)/damage occur in an area without a collared pack and APHIS-Wildlife Services cannot determine which pack/wolves were involved, APHIS-Wildlife Services will attempt to radio-collar at least one wolf in the area;

- i. Within 24 hours of confirmation and initiation of control or collaring efforts, APHIS-Wildlife Services must contact the MFWP wolf specialist for that area;
- j. APHIS-Wildlife Services must notify the MFWP wolf specialist within 48 hours of any wolves collared or removed;
- k. Within 48 hours following termination of control efforts by APHIS-Wildlife Services, APHIS-Wildlife Services must notify the MFWP wolf specialist that control/collaring efforts are being terminated and provide a summary of final control results; and
- l. APHIS-Wildlife Services will make publicly available on APHIS-Wildlife Services' state-specific website for the agency's work in Montana copies of the Gray Wolf Depredation Investigation Reports prepared for MFWP related to depredations that result in the lethal removal of a wolf/wolves and include such information as part of the calendar year report(s) under subsection xv. APHIS-Wildlife Services may redact information from these reports to the extent required by law;
- xiv. Upon requests for lethal damage management assistance, APHIS-Wildlife Services shall use best efforts to seek information from the requester regarding any cooperator-employed nonlethal predator and

wolf damage management methods. Responses will be documented in the agency's electronic recordkeeping system for operational activities;

- xv. To make publicly available on APHIS-Wildlife Services' state-specific website for the agency's work in Montana a calendar year report(s) by March 1 of the following year summarizing:
 - a. The type of land class upon which APHIS-Wildlife Services conducted predator and wolf damage management activities;
 - b. The number and types of animals captured, by which method, whether targeted or unintentional capture, and final disposition of the animal;
 - c. The number of requests for assistance, involving which species, for which reason (livestock protection, health, safety, nuisance, property protection, etc.).
 - d. The types of non-lethal preventative measures that APHIS-Wildlife Services employed, assisted with, and/or documented from persons requesting lethal damage management assistance and any related information, if available, on the efficacy of such non-lethal measures;

3. Attorneys' Fees and Costs: The Parties have agreed to settle any and all of Plaintiff's claims for attorneys' fees, costs, and expenses associated with this litigation for a lump sum of \$3,650.00. This Agreement represents the entirety of the undersigned Parties' commitments with regard to settlement of claims for attorneys' fees, costs, and expenses.
4. Definitions: The parties agree that the following terms used in this Agreement have the following definitions:
 - i. "Predator Damage Management" and "PDM" means wildlife damage management activities in the State of Montana that were analyzed in the 1997 EA Predator Damage Management in Western Montana and the 1997 EA Predator Damage Management in Eastern Montana;
 - ii. "Wolf Damage Management" and "WDM" means wildlife damage management activities in the State of Montana that were analyzed in the October 2012 EA Gray Wolf Damage Management in Montana for the Protection of Livestock, Other Domestic Animals, Human Safety, and Other Resources;
 - iii. The term "protection of health and human safety" is defined as activities, in response to a request from MFWP, Montana Department of Livestock, FWS, tribes, and any peace officer, to include, but not limited to, state and county park rangers, county sheriff offices, city

police offices, and city/county animal control offices, directed at wildlife that demonstrate aggressive action that has resulted in physical contact with a human or exhibits an immediate threat to public health and safety, given the totality of the circumstances.

“Immediate threat” refers to wildlife that exhibit one or more aggressive behaviors directed toward a person that is not reasonably believed to be due to the presence of responders. “Public safety” includes, but is not limited to, situations where wildlife remains a threat despite efforts to allow or encourage the animal(s) through active means to leave the area.

iv. 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.

5. 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.

6. Subsequent NEPA Challenges. Nothing in this Agreement precludes any challenge by Plaintiff 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, and the corresponding decision document, for Predator Damage Management and Wolf Damage Management in Montana.
7. Dispute Resolution. 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.

8. Representative Authority. The undersigned representatives of Plaintiff 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 Agreement and to legally bind those parties to it.

9. Compliance with Other Laws. Nothing in this 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 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 APA; or to otherwise extend or grant this Court jurisdiction to hear any matter, except as expressly provided in the Agreement.

10. Mutual Drafting and Other Provisions.

- a. It is hereby expressly understood and agreed that this Agreement was jointly drafted by Plaintiff 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 Agreement.

- b. This Agreement contains all of the agreements between Plaintiff and Federal Defendants, and is intended to be and is the final and sole agreement between Plaintiff and Federal Defendants concerning the complete and final resolution of Plaintiff's claims. Plaintiff and Federal Defendants agree that any other prior or contemporaneous representations or understandings not explicitly contained in this Agreement, whether written or oral, are of no further legal or equitable force or effect. Any subsequent modifications to this Agreement must be in writing, and must be signed and executed by Plaintiff and Federal Defendants.
- c. This Agreement is the result of compromise and settlement, and does not constitute an admission, implied or otherwise, by Plaintiff or Federal Defendants to any fact, claim, or defense on any issue in this litigation. This Agreement has no precedential value and shall not be used as evidence either by Federal Defendants or Plaintiff in

any other litigation except as necessary to enforce the terms of this Agreement.

11.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 Agreement.

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 Agreement Plaintiff's delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

13.Dismissal. Concurrently with this 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 Agreement and to resolve any disputes arising under this Agreement 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 Agreement. The Parties agree that this 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 13th day of May 2020.

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/s/ Tyler M. Alexander

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