

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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,

Federal Defendants.

Case No. 1:20-cv-01031-PJK-SCY

**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 (jointly, “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 and Aquatic Rodent Damage Management activities in New Mexico;

WHEREAS, Plaintiff's position is that significant new circumstances and information have emerged since APHIS-Wildlife Services prepared its 2006 Environmental Assessment and Finding of No Significant Impact and Decision for Predator Damage Management in New Mexico and its 2011 Environmental Assessment and Finding of No Significant Impact and Decision for Aquatic Rodent Damage Management in New Mexico;

WHEREAS, 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 December 31, 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 Damage Management in New Mexico.

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 March 12, 2021 and the date that a decision notice/finding of no significant impact is signed—or, if the EA results in a finding of significance, between March 12, 2021 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 aquatic rodent damage management (“ARDM”) activities in the State of New Mexico:
- i. Not to use Sodium cyanide (M-44 devices) on public lands, including federal, state, county, and municipal lands;
 - ii. Not to use the following EPA registered pesticides as follows:
 - a. gas cartridges for denning on all federal public lands;
 - b. Compound 1080 on all federal public lands; and
 - c. DRC-1339 statewide;
 - iii. 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 damage

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.

management methods.² Responses will be documented in the agency's electronic recordkeeping system for operational activities;

- iv. Not to use "Quick-kill Body-grip Traps" or other Conibear-style traps;
- v. Not to use neck snares on federal public lands in the Albuquerque and Las Cruces Districts as depicted on the attached map;
- vi. Not to use neck snares in the Roswell District (as depicted on the attached map) where foxes are non-target animals;
- vii. Not to use foot snares to target coyotes;
- viii. To use only foot-hold traps that have offset jaws or are padded;
- ix. To discontinue lethal removal of black bears, cougars, and foxes on all federal public lands;
- x. To discontinue lethal removal of bobcats on federal public lands in the Las Cruces and Albuquerque Districts (as depicted on the attached map);
- xi. To discontinue lethal removal of beavers on all public and private lands in the State of New Mexico and to evaluate its obligations under NEPA, as applicable, if it chooses to resume the lethal removal of beavers in New Mexico in the future;
- xii. Not to conduct PDM activities on Wild & Scenic River corridors, on National Park Service Lands, within National Monuments, within National Wildlife Refuges, within Wilderness Areas, within Areas of Critical

² This provision does not apply to Mexican wolves, because that species is not covered in the 2006 EA for Predator Damage Management in New Mexico.

Environmental Concern (ACECs) and in the following Wilderness Study Areas:

- Continental Divide
 - Gila Lower Box (also proposed Wild and Scenic River Corridor)
 - Apache Box
 - Horse Mountain
 - El Malpais
 - Devil's Reach
 - Devil's Backbone
 - Sierra Ladrones
- xiii. To ensure a Wildlife Services-New Mexico District Supervisor reviews all wolf depredation investigation reports prepared by field employees in the Las Cruces District (as depicted on the attached map) before a livestock depredation determination is made; and
- xiv. To make publicly available on APHIS-Wildlife Services' state-specific website for the agency's work in New Mexico, an annual report of the prior calendar year (with the first report available by June 1, 2021) summarizing:
- The type of land class upon which APHIS-Wildlife Services conducted PDM activities;

- The number and types of animals captured, by which method, whether targeted or unintentional capture, and final disposition of the animal;
- The number of requests for assistance, involving which species, for which reason (livestock protection, health, safety, nuisance, property protection, etc.); and
- The types of non-lethal preventative measures that APHIS-Wildlife Services employed.

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 \$3,250. This Stipulated Settlement Agreement (the "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 New Mexico that were analyzed in the 2006 EA for Predator Damage Management in New Mexico;

ii. "Aquatic Rodent Damage Management" and "ARDM" means wildlife damage management activities in the State of New Mexico that were analyzed in the 2011 EA for Aquatic Rodent Damage Management in New Mexico;

iii. The term “protection of health and human safety” is defined as activities, in response to a request from the New Mexico Department of Game and Fish, the New Mexico Farm and Livestock Bureau, U.S. Fish and Wildlife Service, airport authorities, 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 expected date 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 any 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 in New Mexico.
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 all claims in this action with prejudice. 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 11th day of March, 2021.

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