

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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CENTER FOR BIOLOGICAL)	
DIVERSITY,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	CASE NO. 1:12-cv-1920-RCL
S.M.R. JEWELL, Secretary, U.S.)	
Department of the Interior, and DAN)	
ASHE, Director, U.S. Fish and Wildlife)	
Service,)	
)	
<i>Defendants.</i>)	
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STIPULATED SETTLEMENT AGREEMENT AND [PROPOSED] ORDER

Plaintiff Center for Biological Diversity (“Plaintiff” or “Center”), and Defendants, S.M.R. Jewell, Secretary, U.S. Department of the Interior, and Dan Ashe, Director, U.S. Fish and Wildlife Service (“Defendants”) (collectively, the “Parties”), have agreed to settle the above-captioned case in its entirety on the terms memorialized in this Stipulated Settlement Agreement (“Stipulation”):

WHEREAS, on April 28, 1976, the U.S. Fish and Wildlife Service (“FWS”) published its final rule listing the Mexican gray wolf (*Canis lupus baileyi*) (“Mexican gray wolf”) as an endangered species under the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA”), 41 Fed. Reg. 17,736 (Apr. 28, 1976);

WHEREAS, on January 12, 1998, FWS published its regulation pursuant to ESA § 10(j) authorizing the reintroduction of Mexican wolves into eastern Arizona and southwestern

New Mexico, *Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico*, 63 Fed. Reg. 1,752 (Jan. 12, 1998) (“10(j) Rule”);

WHEREAS, on March 29, 2004, the Center submitted to the FWS a petition for rulemaking that formally requested, pursuant to the Administrative Procedure Act (“APA”), amendment of the Mexican wolf 10(j) Rule;

WHEREAS, on November 28, 2012, Plaintiff filed a Complaint for declaratory and injunctive relief, pursuant to the APA, challenging the FWS’s alleged failure to finalize amendments to the 10(j) Rule;

WHEREAS, on June 13, 2013, FWS published in the *Federal Register* a proposal revising the existing nonessential experimental population designation for the Mexican wolf and allowing for public comment on proposed revisions and modifications to the 10(j) Rule, 78 Fed. Reg. 35,719 (June 13, 2013) (“Proposed 10(j) Rule Modification”);

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

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

1. On or before January 12, 2015, FWS shall submit to the *Federal Register* for publication its final determination concerning the Proposed 10(j) Rule Modification.

2. Either party may seek to modify the deadline for the action specified in Paragraph 1 for good cause shown, consistent with the Federal Rules of Civil Procedure. In the event that either party believes that the other party has failed to comply with any term or condition of this Stipulation, the Parties shall use the dispute resolution procedures specified in Paragraph 3 below.

3. The Order entering this Stipulation 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 Stipulation, including the deadline specified in Paragraph 1, or in the event of a dispute arising out of or relating to this Stipulation, or in the event that either party believes that the other party has failed to comply with any term or condition of this Stipulation, the party seeking the modification, raising the dispute, or seeking enforcement shall provide the other party with notice of the claim. The Parties agree that they will meet and confer (either telephonically or in person) at the earliest possible time in a good faith effort to resolve the claim before seeking relief from the Court. If the Parties are unable to resolve the claim themselves, either party may seek relief from the Court. In the event that the FWS fails to meet the deadline specified in Paragraph 1, and has not sought by motion to modify it, Plaintiff's first remedy shall be a motion to enforce the terms of this Stipulation. This Stipulation shall not, in the first instance, be enforceable through a proceeding for contempt of court.

4. The Parties have not resolved Plaintiff's request for litigation costs including attorneys' fees, but the Parties intend to negotiate in an effort to reach an agreement on any such claim. If the Parties are unable to reach agreement within 60 days after entry of an order by the

Court ratifying this Stipulation, the Center reserves the right to file a claim with this Court, and the Defendants reserve the right to oppose and contest any such claim.

5. No party shall use this Stipulation or the terms herein as evidence of what does or does not constitute a reasonable timeline for taking any decision or making any determination under 16 U.S.C. § 1539 in any other proceeding regarding the FWS's implementation of the ESA.

6. Subject to the qualifications in paragraph 7, no provision of this Stipulation shall be interpreted as, or constitute, a commitment or requirement that the Defendants take action in contravention of the ESA, the APA, or any other law or regulation, either substantive or procedural. Nothing in this Stipulation shall be construed to limit or modify the discretion accorded to the FWS 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.

7. Nothing in this Stipulation shall be interpreted as, or shall constitute, a requirement that the 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 appropriations law.

8. The terms of this Stipulation constitute the entire agreement of the Parties, and no statement, agreement, or understanding, oral or written, which is not contained herein, shall be recognized or enforced. Except as expressly stated herein, this Stipulation supersedes all prior agreements, negotiations, and discussions between the Parties with respect to the subject matters addressed herein.

9. This Stipulation may be modified or amended only by order of this Court.

10. Each of the Parties' undersigned representatives certifies that they are fully authorized to enter into and execute the terms and conditions of this Stipulation, and do hereby agree to the terms herein.

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

12. This Stipulation has no precedential value and shall not be used as evidence of such in any litigation or in representations before any forum or public setting.

13. Upon approval of this Stipulation by the Court, all counts of Plaintiff's Complaint shall be dismissed with prejudice. However, Plaintiff reserves the right to challenge any final 10(j) rule that is issued by the FWS. The Defendants reserve all defenses to any such challenge. Notwithstanding the dismissal of this action, however, the Parties hereby stipulate and respectfully request that the Court retain jurisdiction to resolve any claims regarding attorneys' fees and costs, oversee compliance with the terms of this Stipulation and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

Dated: July 29, 2013.

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Respectfully submitted,

/s/ Amy R. Atwood (with permission)

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/s/ J. Brett Grosko

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[PROPOSED] ORDER

The terms and conditions of this Stipulated Settlement Agreement are hereby adopted as an enforceable ORDER of this Court, and this matter is hereby DISMISSED with prejudice.

Dated: This ____th day of _____, 2013.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2013, I caused the foregoing to be served via United States mail to the attorneys of record.

/s/ J. Brett Grosko

J. Brett Grosko