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Counsel for Plaintiffs

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

WILDEARTH GUARDIANS et al.,	)	
	)	
Plaintiffs,	)	Case No. 9:14-cv-0250-DLC
	)	
vs.	)	(Consolidated with Case Nos.
	)	14-246-M-DLC and 14-247-
SALLY JEWELL, in her official capacity as	)	M-DLC)
Secretary of the Interior; the UNITED STATES	)	
DEPARTMENT OF THE INTERIOR;	)	CONSOLIDATED
DANIEL ASHE, in his official capacity as	)	RESPONSE TO THE
Director of the U.S. Fish and Wildlife Service;	)	IDAHO FARM BUREAU
THE U.S. FISH AND WILDLIFE SERVICE,	)	FEDERATION'S, THE
	)	AMERICAN PETROLEUM
Federal-Defendants.	)	INSTITUTE'S, AND THE
	)	STATE OF MONTANA'S
	)	MOTIONS TO INTERVENE
	)	

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Plaintiffs, WildEarth Guardians *et al.*, (Guardians), hereby submit this consolidated response to: (a) the Idaho Farm Bureau Federation *et al.*'s (Farm Bureau's) January 30, 2015, motion to intervene or, in the alternative, be admitted as *amicus curiae* (Doc. 14)<sup>1</sup>; (b) the American Petroleum Institute *et al.*'s (API's) February 4, 2015, motion to intervene (Doc. 18); and (c) the State of Montana's and Montana Department of Fish, Wildlife and Parks (Montana's) February 6, 2015, motion to intervene (paper copy, no ECF document filed) in this matter. In response to these three motions to intervene, and in anticipation of additional motions, Guardians hereby states as follows:

1. On December 18, 2014, this Court granted the Plaintiffs' and Federal-Defendants' (the Parties') joint motion to consolidate *Defenders of Wildlife v. Jewell*, CV-14-246-M-DLC, *Center for Biological Diversity et al. v. Jewell*, CV-14-247-M-DLC, and *WildEarth Guardians et al. v. Jewell*, CV-14-250-M-DLC, because all three cases center on Federal-Defendants' August, 2014 listing decision regarding the North American wolverine. Doc. 11 at 3.

2. On December 18, 2014, this Court also adopted the Parties' joint case management plans in these consolidated cases, with some modifications. Doc. 12. The joint case management plans submitted by the Plaintiffs and Federal-Defendants and approved by this Court were the result of a significant amount of

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<sup>1</sup> Citations are to documents filed in case number 14-250.

scheduling, negotiation, and back-and-forth between the Parties. Finding agreement on specific deadlines for filing and reviewing the administrative record and briefing this matter on the merits (cross-motions for summary judgment) amongst three separate Plaintiff coalitions and Federal-Defendants was a difficult task.

3. Pursuant to the agreed upon joint case management plans adopted by this Court, an administrative record in this consolidated case is to be filed today, on February 13, 2015. Doc. 12 at 1. Any motions to supplement the record or challenge the record are to be filed by March 20, 2015. *Id.* If there are no outstanding disputes concerning the administrative record Plaintiffs' motions for summary judgment and briefs in support (limited to 6,500 words each) are to be filed on April 10, 2015. *Id.* at 2. Federal-Defendants' combined cross motion for summary judgment and responses to Plaintiffs' motions (limited to 6,500 words each) are due May 29, 2015. *Id.* Plaintiffs' combined responses and replies to Federal-Defendants' cross-motion (limited to 3,250 words each) are due July 3, 2015, and Federal-Defendants' replies (limited to 3,250 words each) are due August 7, 2015. *Id.*

4. On January 30, 2015, the Farm Bureau filed a motion to intervene in this matter, maintaining its members will "suffer economic harm, as well as restrictions on their property and liberty interests" if Guardians succeeds in obtaining an order

from this Court compelling Federal-Defendants to list the wolverine as a threatened species. Doc. 14 at 1-2.

5. On February 4, 2015, API filed a motion to intervene asserting the need to protect their interests in “avoiding the substantial operational costs and constraints” that an “unwarranted” listing of the wolverine could have on its members, some of whom “own, lease, or otherwise operate on, or adjacent to land that [the U.S. Fish and Wildlife Service] identifies as wolverine habitat” and operate facilities that “emit greenhouse gases and produce products that emit greenhouse gases . . .” Doc. 18 at 1-2.

6. On February 6, 2015, Montana filed a motion to intervene claiming that Guardians’ challenge to Federal-Defendants’ decision not to list wolverines “may result in Montana being divested of its authority to continue managing wolverines and wolverine habitat within its borders.” Brief in Support at 3.

7. In addition to the Farm Bureau, API, and Montana, counsel for Guardians as has been informed that the National Trappers Association and the states of Idaho and Wyoming may also seek to intervene in this matter. This would bring the total number of parties seeking to intervene as defendants in this case to six: three non-governmental entities (the Farm Bureau, API, and possibly the trappers) and three governmental entities (Montana and possibly Idaho and Wyoming).

8. Guardians believe the Farm Bureau's, API's, and Montana's allegations of harm and interests in this case – all of which stem from the possibility that wolverines may be listed as a threatened species at some future, yet-to-be determined date – are premature, highly speculative, and tenuous at best. The Farm Bureau, for example, alleges its “interests will be adversely affected by the listing of the wolverine.” Doc. 14 at 1-2. The present litigation, however, is not a challenge to Federal-Defendants' decision to provide protective Endangered Species Act (ESA) status to wolverine in the contiguous United States. Nor is Guardians seeking an order in this case automatically “compelling Federal-Defendants to list the wolverine in the lower forty-eight as a threatened species.” *See* Doc. 14 at 1. On the contrary, this case challenges Federal-Defendants' August 13, 2014, decision to withdrawal its proposed rule to list wolverines as a threatened species in the contiguous United States, i.e., a decision not to provide protective ESA status to wolverines. *See* Doc. 1 (Guardians' complaint). If successful, the remedy will not be “automatic” listing of wolverines, as alleged by the proposed-intervenors, but a remand order to Federal-Defendants to issue a new listing decision consistent with the Court's opinion and order. Only if this occurs, and only if, as a result of the remand process, Federal-Defendants ultimately decide to provide the species' protective ESA status, would any harm to the intervenors' alleged “interests” – assuming, *arguendo*, such allegations are even valid – occur.

Moreover, all proposed intervenors would have the opportunity to participate in this subsequent public rulemaking process and challenge any subsequent decision to list wolverines, if necessary.

9. That said, solely for the purposes of judicial efficiency and to avoid an additional round of litigation (including a possible appeal) on intervention from multiple parties in this case, Guardians does not oppose the Farm Bureau's, API's, or Montana's pending motions to intervene but respectfully requests this Court condition their participation (and any other future applications to intervene) in this case as follows:

(a) the non-governmental intervenors (Farm Bureau, API, and any future non-governmental applicants) must join in consolidated briefing, i.e., file a single consolidated summary judgment brief (6,500 words) and single consolidated summary judgment reply (3,250 words);

(b) the governmental intervenors (Montana and any future governmental applicants, e.g., Idaho and Wyoming) are required to join in consolidated briefing, i.e., file a single consolidated summary judgment brief (6,500 words) and single consolidated summary judgment reply (3,250 words);

(c) the non-governmental intervenors' consolidated summary judgment briefs and the governmental intervenors' consolidated summary judgment briefs shall be due a week after the deadlines for Federal-Defendants' briefs in this case.

*See* Doc. 12 at 2. Guardians' separate responses (6,500 words each) to the non-governmental intervenors' and governmental intervenors' summary judgment briefs will likewise be due a week later, on July 10, 2015. *See id.*

(d) the non-governmental intervenors and governmental intervenors may adopt, but may not repeat, arguments advanced by the Federal-Defendants.

10. If this Court issues an order incorporating these proposed conditions on intervention then, with the exception of a minor one week amendment, the Parties' joint case management plan approved by this Court (Doc. 12) will remain largely intact. If, however, intervention is not subject to these or similar conditions, then the Parties' joint case management plan approved by this Court (Doc. 12) will need to be changed and the briefing deadlines extended in order to give Guardians sufficient time to respond to three, and possibly six or more, additional briefs in this matter.

WHEREFORE, Guardians respectfully requests this Court condition intervention in this case as outlined above. In the alternative, Guardians requests this Court limit the Farm Bureau's, API's, and Montana's participation in this matter to *amicus curie*.

Respectfully submitted this 13th day of February, 2015.

/s/ Matthew K. Bishop  
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