

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
CENTER FOR BIOLOGICAL DIVERSITY,)	
)	
Plaintiff,)	
)	
v.)	No. 1:20-cv-00573-EGS
)	
DEBRA HAALAND, in her official capacity)	
as Secretary of the United States Department)	
of the Interior, et al.,)	
)	
Defendants,)	
_____)	

STIPULATED SETTLEMENT AGREEMENT REGARDING 83 SPECIES

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiff Center for Biological Diversity (“Center”) and Defendants United States Fish and Wildlife Service (“FWS”); Debra Haaland, in her official capacity as Secretary of the United States Department of Interior; and Martha Williams, in her official capacity as Director of FWS, (collectively, “Defendants”), who, by and through their undersigned counsel, state as follows:

WHEREAS, on November 20, 2019, Plaintiff sent a letter to Defendants stating its intent to file suit under the Endangered Species Act (“ESA”) to compel FWS to complete listing and critical habitat actions for 274 species;

WHEREAS, on January 17, 2020, FWS responded to Plaintiff’s November 20, 2019, letter and provided an update regarding the agency’s National Listing Workplan;

WHEREAS, on February 27, 2020, Plaintiff filed a complaint in the above-captioned action to compel FWS to complete listing and critical habitat actions by dates certain for 241 of the 274 species identified in Plaintiff’s November 20, 2019, letter, *see* Docket (“Dkt.”) 1 (“Complaint”), including the following 83 species: Amargosa tryonia (*Tryonia variegata*); Ash

Meadows pebblesnail (*Pyrgulopsis erythropoma*); Astylis sp. 1 (unnamed moth) (*Astylis sp. 1*); Atlantic pigtoe (*Fusconaia masoni*); Avernus cave beetle (*Pseudanophthalmus avernus*); Black-capped petrel (*Pterodroma hasitata*); Black Creek crayfish (*Procambarus pictus*); Blanco blind salamander (*Eurycea robusta*); Burrington (keeled) jumping-slug (*Hemphillia burringtoni*); Caddo madtom (*Noturus taylori*); Candy darter (*Etheostoma osburni*); Clear Lake hitch (*Lavinia exilicauda chi*); Comal Springs salamander (*Eurycea sp.*); Crossroads cave beetle (*Pseudanophthalmus intersectus*); Crystal springsnail (*Pyrgulopsis crystalis*); Cumberland Gap (Cudjo's) cave beetle (*Pseudanophthalmus hirsutus*); Dalles sideband snail (*Monadenia fidelis minor*); Desert massasauga (*Sistrurus catenatus ssp. edwardsii*); Distal-gland springsnail (*Pyrgulopsis nanus*); Doll's daisy (*Boltonia montana*); Fairbanks springsnail (*Pyrgulopsis fairbanksensis*); False spike (*Fusconaia mitchelli*); Georgia bully (*Sideroxylon thornei*); Graham's beardtongue (*Penstemon grahamii*); Great Basin silverspot (*Speyeria nokomis nokomis*); Hairy-peduncled beaked-rush (*Rhynchospora crinipes*); Hall's bulrush (*Schoenoplectus hallii*); Hamlin Valley pyrg (*Pyrgulopsis hamlinensis*); Heterocampa sp. 1 nr. Amanda (*Heterocampa sp. 1 nr. Amanda*); Hoko vertigo (*Vertigo sp.*); Illinois chorus frog (*Pseudacris illinoensis*); Island marble butterfly (*Euchloe ausonides insulanus*); Kern Canyon slender salamander (*Batrachoseps simatus*); Kern Plateau salamander (*Batrachoseps robustus*); Key ring-necked snake (*Diadophis punctatus acricus*); Lassics lupine (*Lupinus constancei*); Litodonta sp. 1 nr. Alpina (*Litodonta sp. 1 nr. Alpina*); Longitudinal gland pyrg (*Pyrgulopsis anguina*); Louisiana pine snake (*Pituophis ruthveni*); Median-gland Nevada pyrg (*Pyrgulopsis pisteri*); Minute tryonia (*Tryonia ericae*); Mt. Rainer white-tailed ptarmigan (*Lagopus leucura rainierensis*); Narrows (New River Valley) cave beetle (*Pseudanophthalmus egberti*); Natural Bridge cave beetle (*Pseudanophthalmus pontis*); North Park bugseed (Boat-shaped)

(*Corispermum navicular*); Northern Red-bellied cooter (*Pseudemys rubriventris*); Northern spotted owl (*Strix occidentalis caurina*); Northwestern moose (*Alces andersoni*); Paleback darter (*Etheostoma pallididorsum*); Panama City crayfish (*Procambarus econfinae*); Peppered chub (*Macrhybopsis tetranemus*); Pine Island rice rat (*Oryzomys palustris planirostris*); Pink pigtoe (*Pleurobema rubrum*); Point of Rocks tryonia (*Tryonia elata*); Popeye shiner (*Notropis ariommus*); Prostrate milkweed (*Asclepias prostrata*); Puget Oregonian snail (*Cryptomastix devia*); Relictual slender salamander (*Batrachoseps relictus*); Rim rock crowned snake (*Tantilla oolitica*); Rio Grande cooter (*Pseudemys gorzugi*); Rocky Mountain monkeyflower (*Mimulus gemmiparus*); Round hickorynut (*Obovaria subrotunda*); Saint Paul cave beetle (*Pseudanophthalmus sanctipauli*); Silvery phacelia (or sand dune phacelia) (*Phacelia argentea*); Slenderclaw crayfish (*Cambarus cracens*); South Branch Valley cave beetle (*Pseudanophthalmus potomaca potomaca*); Southeast Nevada pyrg (*Pyrgulopsis turbatrix*); Southern rubber boa (*Charina bottae umbratica*); Sportinggoods tryonia (*Tryonia angulate*); Spring Mountains dark blue butterfly (*Euphilotes ancilla cryptica*); Spring Mountains dark blue butterfly (*Euphilotes ancilla purpura*); Sub-globose snake pyrg (*Pyrgulopsis saxatilis*); Texas Hornshell (*Popenaias popeii*); Thomas' cave beetle (*Pseudanophthalmus thomasi*); Tidewater amphipod (*Stygobromus indentatus*); Tricolored bat (*Perimyotis subflavus*); Trispot darter (*Etheostoma trisella*); Tufted Puffin (*Fratercula cirrhata*); Western fanshell (*Cyprogenia aberti*); Western pond turtle (*Actinemys marmorata*); Wet Canyon talussnail (*Sonorella macrophallus*); White-tailed ptarmigan (Southern white tailed) (*Lagopus leucura altipetens*); and Yellow pond-lily (*Nuphar lutea spp. sagittifolia*);

WHEREAS, FWS has since completed listing and critical habitat actions for 50 species identified in Plaintiff's Complaint (Silvery phacelia (or sand dune phacelia), 87 Fed. Reg. 16,320

(Mar. 22, 2022); Blanco blind salamander, Georgia bully, and Rio Grande cooter, 87 Fed. Reg. 14,227 (Mar. 14, 2022); Western fanshell, 87 Fed. Reg. 12,338 (Mar. 3, 2022); Peppered chub, 87 Fed. Reg. 11,188 (Feb. 28, 2022); Prostrate milkweed, 87 Fed. Reg. 8,509 (Feb. 15, 2022); Graham's beardtongue, 87 Fed. Reg. 2,107 (Jan. 13, 2022); Panama City crayfish, 87 Fed. Reg. 546 (Jan. 5, 2022); Atlantic pigtoe, 86 Fed. Reg. 64,000 (Nov. 16, 2021); Black Creek crayfish and Hairy-peduncled beaked-rush, 86 Fed. Reg. 53,933 (Sept. 29, 2021); Amargosa tryonia, Ash Meadows pebblesnail, Burrington (keeled) jumping-slug, Crystal springsnail, Dalles sideband snail, Distal-gland springsnail, Fairbanks springsnail, Median-gland Nevada pyrg, North Park bugseed (Boat-shaped), Minute tryonia, Point of Rocks tryonia, Southern rubber boa, Southeast Nevada pyrg, Sportinggoods tryonia, Spring Mountains (early) dark blue butterfly, and Spring Mountains (late) dark blue butterfly, 86 Fed. Reg. 53,255 (Sept. 27, 2021); Pink pigtoe, 86 Fed. Reg. 49,989 (Sept. 27, 2021); Slenderclaw crayfish, 86 Fed. Reg. 50,264 (Sept. 8, 2021); False spike, 86 Fed. Reg. 47,916 (Aug. 26, 2021); Mt. Rainer white-tailed ptarmigan, 86 Fed. Reg. 31,668 (June 15, 2021); Texas Hornshell, 86 Fed. Reg. 30,888 (June 10, 2021); Hall's bulrush, 86 Fed. Reg. 25,806 (May 11, 2021); Candy darter, 86 Fed. Reg. 17,956 (Apr. 7, 2021); Northern spotted owl, 85 Fed. Reg. 81,144 (Dec. 15, 2020); Clear Lake hitch, Doll's daisy, Hamlin Valley pyrg, Longitudinal gland pyrg, Puget Oregonian snail, Rocky Mountain monkeyflower, Sub-globose snake pyrg, Tidewater amphipod, Tufted Puffin, and White-tailed ptarmigan (Southern white tailed), 85 Fed. Reg. 78,029 (Dec. 3, 2020); Trispot darter, 85 Fed. Reg. 61,614 (Sept. 30, 2020); Round hickorynut, 85 Fed. Reg. 61,384 (Sept. 29, 2020); Northwestern moose, 85 Fed. Reg. 57,816 (Sept. 16, 2020); Island marble butterfly, 85 Fed. Reg. 26,786 (May 5, 2020));

WHEREAS, as a result of the post-Complaint actions undertaken by FWS, Defendants contend that Plaintiff's claims as to these 50 species are moot;

WHEREAS, the parties, by and through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiff's claims, 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 with respect to these 50 species for which FWS has already completed listing and critical habitat actions as well as 33 additional species;¹

WHEREAS, the parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them with respect to these 83 species;

NOW, THEREFORE, the parties hereby stipulate and agree as follows:

1. On or before the following dates, FWS shall review the status of the following species and submit to the Federal Register 12-month findings as to whether the listing of these species as threatened or endangered is (a) not warranted, (b) warranted, or (c) warranted but precluded by other pending proposals, pursuant to 16 U.S.C. § 1533(b)(3)(B):

- a. Great Basin silverspot, Kern Canyon slender salamander, Kern Plateau salamander, Key ring-necked snake, Lassics lupine, Relictual slender salamander, Rim rock crowned snake, and Tricolored bat by September 30, 2022.
- b. Illinois chorus frog and Western pond turtle by September 30, 2023.

¹ Separately, Plaintiff's claim regarding the Dixie Valley toad (*Anaxyrus williamsi*), another species identified in Plaintiff's Complaint, was dismissed pursuant to a settlement agreement previously approved by this Court. *See* minute order, dated February 22, 2022; *see also* Dkt. 28.

2. On or before September 30, 2022, FWS shall submit to the Federal Register a proposed determination concerning the designation of critical habitat for the Louisiana pine snake, pursuant to 16 U.S.C. § 1533(a)(3)(A).

3. On or before December 31, 2023, FWS shall submit to the Federal Register a final listing determination for the Black-capped petrel, pursuant to 16 U.S.C. § 1533(b)(6)(A).

4. Plaintiff's claims with respect to the following 71 species shall be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii): Amargosa tryonia; Ash Meadows pebblesnail; *Astylis* sp. 1 (unnamed moth); Atlantic pigtoe; Avernus cave beetle; Black Creek crayfish; Blanco blind salamander; Burrington (keeled) jumping-slug; Caddo madtom; Candy darter; Clear Lake hitch; Comal Springs salamander; Crossroads cave beetle; Crystal springsnail; Cumberland Gap (Cudjo's) cave beetle; Dalles sideband snail; Desert massasauga; Distal-gland springsnail; Doll's daisy; Fairbanks springsnail; False spike; Georgia bully; Graham's beardtongue; Hairy-peduncled beaked-rush; Hall's bulrush; Hamlin Valley pyrg; *Heterocampa* sp. 1 nr. Amanda; Hoko vertigo; Island marble butterfly; *Litodonta* sp. 1 nr. Alpina; Longitudinal gland pyrg; Median-gland Nevada pyrg; Minute tryonia; Mt. Rainer white-tailed ptarmigan; Narrows (New River Valley) cave beetle; Natural Bridge cave beetle; North Park bugseed (Boat-shaped); Northern Red-bellied cooter; Northern spotted owl; Northwestern moose; Paleback darter; Panama City crayfish; Peppered chub; Pine Island rice rat; Pink pigtoe; Point of Rocks tryonia; Popeye shiner; Prostrate milkweed; Puget Oregonian snail; Rio Grande cooter; Rocky Mountain monkeyflower; Round hickorynut; Saint Paul cave beetle; Silvery phacelia (or sand dune phacelia); Slenderclaw crayfish; South Branch Valley cave beetle; Southeast Nevada pyrg; Southern rubber boa; Sportinggoods tryonia; Spring Mountains (early) dark blue butterfly; Spring Mountains (late) dark blue butterfly; Sub-globose snake pyrg; Texas

Hornshell; Thomas' cave beetle; Tidewater amphipod; Trispot darter; Tufted Puffin; Western fanshell; Wet Canyon talussnail; White-tailed ptarmigan (Southern white tailed); and Yellow pond-lily.

5. The order entering this Agreement 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 Agreement, including the deadlines specified in paragraphs 1-3, or in the event of a dispute arising out of or relating to this Agreement, or in the event that either party believes that the other party has failed to comply with any term or condition of this Agreement, 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.

6. In the event that Defendants fail to meet a deadline specified in paragraphs 1-3 and have not sought to modify it, Plaintiff's first remedy shall be a motion to enforce the terms of this Agreement, after following the dispute resolution procedures described above. This Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

7. With respect to Defendants, this Agreement requires only that FWS take the actions specified in paragraphs 1-3. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the

ESA, the Administrative Procedure Act (“APA”), or any other law or regulation, either substantive or procedural. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to 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 determination required herein. To challenge any final determination issued in accordance with this Agreement, Plaintiff will be required to file a separate action, and Defendants reserve the right to raise any applicable claims or defenses in response thereto.

8. No part of this Agreement shall have precedential value in any litigation or in representations before any court or forum or in any public setting. No party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable timeline for making determinations regarding the listing of or designation of critical habitat for any species.

9. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as an admission or concession of any wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Agreement or any similar claims brought in the future by any other party. Except as expressly provided in this Agreement, the parties do not waive or relinquish any legal rights, claims, or defenses they may have. This Agreement is executed for the purpose of settling Plaintiff’s Complaint, and nothing herein shall be construed as precedent having preclusive effect in any other context.

10. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that 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 applicable appropriations law.

11. The parties agree that this Agreement was negotiated in good faith and it constitutes a settlement of claims disputed by the parties. By entering into this Agreement, the parties do not waive any legal rights, claims, or defenses, except as expressly stated herein. This Agreement contains all of the terms of agreement between the parties concerning Plaintiff's Complaint, and is intended to be the final and sole agreement between the parties with respect thereto. The parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

12. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this Agreement and do hereby agree to the terms herein. Further, each party, by and through its undersigned representative, represents and warrants that it has the legal power and authority to enter into this Agreement and bind itself to the terms and conditions contained in this Agreement.

13. The terms of this Agreement shall become effective upon entry of an order by the Court approving the Agreement.

14. Plaintiff reserves its right to request attorneys' fees and costs from Defendants, and Defendants reserve their right to contest Plaintiff's entitlement to recover fees and the amount of any such fees and do not waive any objection or defenses they may have to Plaintiff's request. The parties agree that any request for attorneys' fees and costs related to these 83 species should be stayed until after the resolution of Plaintiff's remaining claims in this case. The parties therefore agree that the deadline for Plaintiff to file a potential motion for costs and attorneys' fees pursuant to Federal Rule of Civil Procedure 54(d) shall be stayed until 90 days

after the resolution of Plaintiff's remaining claims, so that the parties may seek to resolve any requested attorneys' fees and costs without this Court's further involvement.

15. Upon approval of this Agreement by the Court, Plaintiff's claims regarding these 83 species shall be dismissed with prejudice. Notwithstanding the dismissal of this action, however, the parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

Dated: April 26, 2022

Respectfully submitted,

/s/ Ryan Adair Shannon
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