

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

WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	
)	
v.)	
)	
DAVID BERNHARDT, in his)	
official capacity as Secretary of the)	Case No. 20-1035 (CKK)
U.S. Department of the Interior,)	
AURELIA SKIPWITH, in her)	
official capacity as Director of the)	
U.S. Fish and Wildlife Service, and)	
U.S. FISH AND WILDLIFE SERVICE,)	
)	
Defendants.)	

**JOINT MOTION TO APPROVE PARTIAL SETTLEMENT AGREEMENT
AND DISMISS THE NARROW-FOOT HYGROTUS DIVING BEETLE CLAIM**

Plaintiff Wildearth Guardians and Defendants, David Bernhardt, in his official capacity as Secretary of the U.S. Department of the Interior, Aurelia Skipwith, in her official capacity as Director of the U.S. Fish and Wildlife Service (the “Service”), and the Service (collectively, “Defendants”), jointly notify the Court that the parties have reached an agreement to settle the portion of Plaintiff’s claim related to the narrow-foot hygrotus diving beetle and therefore move for an order approving of the attached partial settlement agreement (the “agreement”) and dismissal of that portion of the claim with prejudice.

In this case, Plaintiff brings a single claim for relief alleging that Defendants failed to meet their mandatory obligation under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531–1544, to determine whether the listing of five freshwater aquatic species, the Rio Grande chub (*Gila pandora*), the Rio Grande sucker (*Catostomus plebeius*), the sturgeon chub (*Macrhybopsis gelida*), the sicklefin chub (*Macrhybopsis meeki*), and the narrow-foot hygrotus

diving beetle (*Hygrotus diversipes*), as a threatened or endangered species is warranted, not warranted, or warranted but precluded within 12 months of receipt of Plaintiff's petitions for listing. 16 U.S.C. § 1533(b)(3)(B).

The parties previously notified the Court that the parties would continue discussing the possibility of a partial settlement to resolve the portion of Plaintiff's claim pertaining to one of the petitioned species at issue. *See* Joint Report & Proposed Briefing Schedule ("Joint Report"), ECF No. 17 at 3-4. Since then, the parties have agreed on the terms of a settlement of the portion of Plaintiff's claim concerning the narrow-foot hygrotus diving beetle. The agreement resolves one part of Plaintiff's claim, thereby narrowing the issues the Court need address in these proceedings, but does not completely resolve Plaintiff's claim. Plaintiff intends to move for summary judgment on its claim with respect to the remaining four species according to the schedule set forth in the parties' Joint Report (ECF No. 17) and adopted by the Court on August 18, 2020.

Under the terms of the agreement, Defendants agree to submit to the Federal Register a determination as to whether the listing of the narrow-foot hygrotus diving beetle as threatened or endangered is not warranted; warranted; or warranted but precluded by other pending proposals, pursuant to 16 U.S.C. § 1533(b)(3)(B), on or before August 15, 2023. In consideration thereof, Plaintiff agrees to dismiss with prejudice its claim based on the narrow-foot hygrotus diving beetle. The parties respectfully request that the Court retain jurisdiction to oversee compliance with the terms of agreement, to resolve any motions to modify such terms, and to resolve any motions for attorneys' fees and expenses if necessary. The agreement becomes effective upon entry of an order by the Court approving the agreement.

In view of the above, the parties respectfully request an order from the Court approving the attached partial settlement agreement and dismissing with prejudice the portion of Plaintiff's claim based on the narrow-foot hygrotus diving beetle.

Dated: September 30, 2020

Respectfully submitted,

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