

MARK SMITH, Assistant U.S. Attorney  
U.S. Attorney's Office  
2601 Second Avenue North, Suite 3200  
Billings, MT 59101  
Tel: (406) 247-4667; Fax: (406) 657-6058  
E-mail: [mark.smith3@usdoj.gov](mailto:mark.smith3@usdoj.gov)

TODD KIM, Assistant Attorney General  
SETH M. BARSKY, Chief  
MEREDITH L. FLAX, Assistant Chief  
MICHELLE M. SPATZ, Trial Attorney  
U.S. Department of Justice  
Environment & Natural Resources Division  
Wildlife & Marine Resources Section  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Tel: (202) 598-9741; Fax: (202) 305-0275  
E-mail: [michelle.spatz@usdoj.gov](mailto:michelle.spatz@usdoj.gov)

*Attorneys for Federal Defendants*

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

WILDEARTH GUARDIANS, a non-profit organization; and WILDERNESS WORKSHOP, a non-profit organization;

*Plaintiffs,*

v.

MARTHA WILLIAMS, in her official capacity as Principal Deputy Director of the United States Fish and Wildlife Service; and UNITED STATES FISH AND WILDLIFE SERVICE, a federal agency;

Case No. 9:20-cv-00097-DLC

**JOINT MOTION FOR  
ADOPTION OF PARTIES'  
STIPULATED  
SETTLEMENT  
AGREEMENT**

*Federal Defendants.*

## **JOINT MOTION**

The parties are pleased to inform the Court that they have reached a Stipulated Settlement Agreement (“Agreement”) in this case and respectfully request that the Court sign the attached proposed order adopting and approving the Agreement.

### **STIPULATED SETTLEMENT AGREEMENT**

This Agreement is entered into by and between Plaintiffs, WildEarth Guardians and Wilderness Workshop (collectively, “Plaintiffs”), and Federal Defendants the United States Fish and Wildlife Service (“Service”), and Martha Williams, in her official capacity as Principal Deputy Director of the Service (collectively, “Federal Defendants”), who, by and through their undersigned counsel, state as follows:

WHEREAS, this case challenges the Service’s alleged decision and/or failure to comply with this Court’s remand order in *WildEarth Guardians v. U.S. Department of the Interior*, 205 F. Supp.3d 1176 (D. Mont. 2016).

WHEREAS, in *WildEarth Guardians*, Plaintiffs (and other organizations) challenged the Service's 2014 final rule designating critical habitat for the threatened Canada lynx ("lynx") in the contiguous United States.

WHEREAS, in *WildEarth Guardians*, this Court upheld the Service's 2014 lynx critical habitat rule in some respects but found that the Service erred by: (a) excluding the southern Rockies (areas of Colorado) from the critical habitat designation; and (b) failing to properly consider whether areas of the Beaverhead-Deerlodge, Bitterroot, Nez Perce, Lolo and Helena National Forests qualified for lynx critical habitat. *WildEarth Guardians*, 205 F. Supp.3d at 1189.

WHEREAS, on September 7, 2016, this Court remanded the matter back to the Service to further evaluate and reconsider its 2014 lynx critical habitat rule consistent with the Court's order. *Id.* at 1190.

WHEREAS, in October 2017, the Service completed a Species Status Assessment ("SSA") report which summarized the status and potential future viability of lynx.

WHEREAS, on November 13, 2017, the Service issued a 5-year status review of lynx informed by the lynx SSA, in which the Service

concluded that, due to recovery, lynx no longer warranted protection under the Endangered Species Act (“ESA”) and recommended removing lynx from the list of threatened and endangered species.

WHEREAS, the Service has not reevaluated lynx critical habitat since 2017 because, based on its findings and conclusions in the SSA and 5-year status review, it had intended to submit a proposed rule to delist the lynx to the Federal Register.

WHEREAS, on July 1, 2020, Plaintiffs filed a complaint in the above-captioned action challenging the Service’s alleged decision and/or failure to comply with the Court’s remand order in *WildEarth Guardians*. (ECF Doc. 1).

WHEREAS, the Service no longer intends to submit a proposed rule to delist lynx to the Federal Register and will instead reevaluate its 2014 lynx critical habitat rule consistent with the Court’s remand order in *WildEarth Guardians*. The Service also intends to review and update the lynx SSA.

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 Plaintiffs’ claim, have reached a

settlement that they consider to be a just, fair, adequate, and equitable resolution of this case. The parties believe that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them.

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

1. By November 21, 2024, the Service will submit a proposed revised critical habitat rule for lynx to the Federal Register in accordance with this Court's decision in *WildEarth Guardians v. U.S. Department of the Interior*, 205 F. Supp.3d 1176 (D. Mont. 2016).

2. Within the statutory timeline, the Service will submit a final revised critical habitat rule to the Federal Register. *See* 16 U.S.C. § 1533(b)(6).

3. This Court's order approving 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, 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 or modification. 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.

4. In the event that the Service fails to meet any of the deadlines specified in paragraphs 1 or 2 of this Agreement and has not sought to modify the Agreement, Plaintiffs' 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.

5. This Agreement requires only that the Service take the action(s) specified in paragraphs 1 and 2. No provision of this

Agreement shall be interpreted as, or constitute, a commitment or requirement that the Service 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 the Service 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 made pursuant to paragraphs 1 of 2 of this Agreement. To challenge any final determination issued in accordance with this Agreement, Plaintiffs will be required to file a separate action, and the Service reserves the right to raise any applicable claims or defenses in response thereto.

6. The obligations imposed on the Service under this Agreement can only be undertaken using appropriated funds. No provision of this Agreement shall be interpreted as, or shall constitute, a commitment or requirement that the United States is obligated to pay funds or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provisions of law.

7. 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 unreasonable delay in complying with a court order to reconsider critical habitat.

8. 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 Plaintiffs' complaint, and nothing herein shall be construed as precedent having preclusive effect in any other context.

9. 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 Plaintiffs' 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 understandings not explicitly contained in this Agreement, whether written or oral, are of no further legal or equitable force or effect.

10. The undersigned representatives of each party certify that they are fully authorized by the 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.

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

12. Upon approval of this Agreement by the Court, all counts of Plaintiffs' complaint 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).

13. Notwithstanding this dismissal, Plaintiffs reserve their right to seek reimbursement for attorneys' fees and costs. Federal Defendants reserve the right to contest Plaintiffs' request for reimbursement of attorneys' fees and costs and do not waive any objection or defense they may have to Plaintiffs' request. The parties agree to the following schedule for resolving any request by Plaintiffs for reimbursement of attorneys' fees and costs:

(a) within 30 days after a Court order approving this Agreement, Plaintiffs will file a motion for fees and costs (and simultaneous motion to stay briefing on that motion for 90 days) that will include an itemization of the attorneys' fees and costs that it seeks to recover in this case. The parties agree to negotiate in good faith in order to resolve Plaintiffs' request for attorneys' fees and costs amongst themselves during the 90-day stay period;

(b) by the end of the 90-day stay period, the parties will notify the Court whether they have reached an agreement on attorneys' fees and costs and, if so, request approval of that agreement;

(c) if the parties have not reached an agreement on attorneys' fees and costs, Plaintiffs will have 30 days from the date that notice was provided to the Court that the parties were unable to reach an agreement to file a renewed and updated motion for attorneys' fees and costs with a new supporting memorandum and evidence (and briefing will proceed as provided in the Local Civil Rules).

WHEREFORE, the parties respectfully request that the Court sign and approve this Agreement thereby adopting its terms and dismissing the case with prejudice.

Respectfully submitted this 15th day of April 2022.

*PLAINTIFFS FRIENDS OF THE  
WILD SWAN, ROCKY MOUNTAIN  
WILD, SAN JUAN CITIZENS  
ALLIANCE, WILDEARTH  
GUARDIANS, CASCADIA  
WILDLANDS, OREGON WILD,  
AND WILDERNESS WORKSHOP*

/s/ John R. Mellgren

John R. Mellgren  
Matthew K. Bishop  
Western Environmental Law Center  
120 Shelton McMurphey Blvd.  
Suite 340  
Eugene, OR 97401  
[mellgren@westernlaw.org](mailto:mellgren@westernlaw.org)

*Attorneys for Plaintiffs*

*DEFENDANTS DEBRA HAALAND, THE U.S.  
DEPARTMENT OF THE INTERIOR, THE  
U.S. FISH AND WILDLIFE SERVICE, AND  
MARTHA WILLIAMS*

TODD KIM, Assistant Attorney General  
SETH M. BARSKY, Chief  
MEREDITH L. FLAX, Assistant Chief

/s/ Michelle M. Spatz

MICHELLE M. SPATZ, Trial Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Wildlife and Marine Resources Section  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
E-mail: michelle.spatz@usdoj.gov

*Attorneys for Defendants*