

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

DEFENDERS OF WILDLIFE, et al.,)	Case No. cv-09-77-M-DWM (Lead)
)	cv-09-82-M-DWM
Plaintiffs,)	(consolidated cases)
v.)	
)	SETTLEMENT AGREEMENT
KEN SALAZAR, et al.,)	
)	
Defendants.)	
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GREATER YELLOWSTONE)	
COALITION,)	
)	
Plaintiff,)	
v.)	
)	
KEN SALAZAR, et al.,)	
)	
Defendants.)	

For the purpose of resolving Civil Action Nos. 09-cv-77, 09-cv-82, and 08-cv-14 (D. Mont.) without further judicial review, and for no other purpose, Federal Defendants, the U.S. Fish and Wildlife Service (“FWS”), Ken Salazar, Secretary of the Department of the Interior and Rowan Gould, Acting Director of the FWS (collectively, “Federal Defendants”), and nine Plaintiffs, Defenders of Wildlife, Natural Resources Defense Council, Sierra Club, Center for Biological Diversity, Hells Canyon Preservation Council and Greater Yellowstone Coalition, Jackson Hole Conservation Alliance, Oregon Wild, Cascadia Wildlands Project, and Wildlands Network (formerly the Wildlands Project) (collectively “Settling Plaintiffs”)¹ hereby state as follows:

WHEREAS, on January 28, 2008, FWS issued a Final Rule entitled, “Revision of Special Regulation for the Central Idaho and Yellowstone Area Nonessential Experimental Populations of Gray Wolves in the Northern Rocky Mountains,” 73 Fed. Reg. 4720 (Jan. 28, 2008) (“2008 10(j) Rule”).

WHEREAS, on January 28, 2008, Defenders of Wildlife, Natural Resources Defense Council, Sierra Club, Humane Society of the United States, Center for Biological Diversity, Jackson Hole Conservation Alliance, Friends of the Clearwater, Alliance for the Wild Rockies, Western Watersheds Project, and Hells Canyon Preservation Council, filed a Complaint for Declaratory and Injunctive Relief challenging FWS’s 2008 10(j) Rule. See Docket No. 1, Defenders of Wildlife v. Hall, 08-cv-14-DWM (D. Mont.) (“10(j) Litigation”).

WHEREAS, on April 2, 2009, FWS published a Final Rule entitled, “Final Rule To Identify the Northern Rocky Mountain Population of Gray Wolf as a

¹ Plaintiff organizations that have not joined into this Settlement Agreement (collectively, “Non-Settling Plaintiffs”) are as follows: Humane Society of the United States; Friends of the Clearwater; Alliance for the Wild Rockies; and Western Watersheds Project.

Distinct Population Segment and To Revise the List of Endangered and Threatened Wildlife, 74 Fed. Reg. 15123 (Apr. 2, 2009) (“2009 Rule”).

WHEREAS, Defenders of Wildlife, Natural Resources Defense Council, Sierra Club, Humane Society of the United States, Center for Biological Diversity, Hells Canyon Preservation Council and Greater Yellowstone Coalition, Jackson Hole Conservation Alliance, Friends of the Clearwater, Alliance for the Wild Rockies, Oregon Wild, Cascadia Wildlands Project, Western Watersheds Project, and Wildlands Network (formerly the Wildlands Project) filed lawsuits, consolidated on June 12, 2009, to challenge the 2009 Rule. Defenders of Wildlife and Greater Yellowstone Coalition v. Salazar, 09-cv-77, 09-cv-82 (D. Mont.) (consolidated).

WHEREAS, on April 21, 2009, the Court in 08-cv-14 stayed the 10(j) Litigation pending resolution of litigation surrounding FWS’s 2009 Rule.

WHEREAS, on August 5, 2010, the Court issued an Order granting in part and denying in part Plaintiffs’ Motions for Summary Judgment and, on the same day, issued Judgment in favor of Plaintiffs. See Docket No. 164, 165.

WHEREAS, on August 5, 2010, the stay of the 10(j) Litigation was lifted and the parties proceeded to file cross-motions for summary judgment. See Docket Nos. 87, 89, 08-cv-14 (D. Mont.).

WHEREAS, the State of Idaho filed a Notice of Appeal on September 30, 2010 (Docket No. 166); the Idaho Farm Bureau, et al., filed a Notice of Appeal on September 30, 2010 (Docket No. 167); the State of Montana filed a Notice of Appeal on October 1, 2010 (Docket No. 168); Federal Defendants filed a Notice of Appeal on October 1, 2010 (Docket No. 172); the National Rifle Association and the Safari Club International filed a Notice of Appeal on October 1, 2010 (Docket No. 173); and the Sportsman for Fish and Wildlife, et al., filed a Notice of Appeal on October 13, 2010 (Docket No. 178).

WHEREAS, on October 19, 2010, the Ninth Circuit Court of Appeals consolidated the appeals (Case Nos. 10-35885, 10-35886, 10-35894, 10-35897, 10-35898, 10-35926) of the District Court's August 5, 2010 Order and Judgment.

WHEREAS, the Settling Plaintiffs and Federal Defendants (collectively, the "Parties") have engaged in settlement negotiations with respect to the above-captioned litigation and, through their authorized representatives and without any admission or final adjudication of the issues of fact or law relating to Plaintiffs' claims, have reached a settlement of the above-captioned litigation and the related 10(j) Litigation.

THEREFORE, in the best interests of the public, the Parties, and judicial economy, the Parties hereby agree to the following terms in settlement of any and all claims relating in any way to the above-captioned litigation and the related 10(j) Litigation:

1. This Agreement shall become effective and operative only upon a Court order in Defenders of Wildlife v. Salazar, 09-cv-77, 09-cv-82 (D. Mont.), that partially stays the effect of the Court's August 5, 2010 Order, specifically, that portion of the Order vacating and setting aside FWS's 2009 delisting rule (74 Fed. Reg. 15123) in the States of Idaho and Montana. The Parties agree to jointly request that the Court grant such a partial stay, and to request that the partial stay remain in effect and operative until FWS issues a new delisting regulation for gray wolves in the Northern Rocky Mountain region pursuant to paragraph 5, below. The Parties further agree to submit once every six months while the stay is in effect a joint status report to the Court in Defenders of Wildlife v. Salazar, 09-cv-77, 09-cv-82 (D. Mont.), regarding implementation of this Agreement. The Parties do not seek to vacate or otherwise modify the other aspects of the Court's August 5, 2010

Opinion and Judgment issued in Defenders of Wildlife v. Salazar, 09-cv-77, 09-cv-82 (D. Mont.).

2. Within thirty (30) days of this Agreement becoming operative pursuant to paragraph 1, Federal Defendants agree to withdraw the Opinion issued by the Solicitor of the Department of the Interior entitled: “The Meaning of ‘In Danger of Extinction Throughout All or a Significant Portion of Its Range’” (M-37013) (March 16, 2007) (“M-Opinion”).

3. Within sixty (60) days of withdrawing the M-Opinion referenced above in paragraph 2, Federal Defendants agree to publish in the Federal Register for public notice and an opportunity to comment a proposed interpretation of the Endangered Species Act’s (“ESA”) statutory term, “throughout all or a significant portion of its range.” 16 U.S.C. 1532(6), (20).

4. Federal Defendants agree and herein state that in issuing the 2009 Rule, FWS relied upon information, including management goals, predicted wolf population levels, and other elements provided for in: the State of Montana’s 2003 Final Gray Wolf Conservation and Management Plan; the State of Idaho’s 2002 Wolf Conservation and Management Plan; and the State of Idaho’s 2008 step-down Wolf Population Management Plan.

5. Upon (A) receipt from the State of Wyoming of a submission describing regulatory mechanisms, including but not limited to a wolf management plan, that FWS deems to be satisfactory, and (B) continued implementation of the State of Idaho’s and the State of Montana’s management plans referenced in paragraph 4 above or implementation of other management plans by the States of

Idaho and Montana that FWS deems to be satisfactory, Federal Defendants agree to publish in the Federal Register for public notice and an opportunity to comment a proposed regulation to designate a distinct population segment (“DPS”) of gray wolves in the Northern Rocky Mountain (“NRM”) region and remove ESA protections for the DPS (termed a “delisting rule”). Federal Defendants further agree to: (A) base any proposed and final delisting rule referenced in this paragraph on the ESA’s statutory factors (16 U.S.C. § 1533(a)(1)(A)-(E)) and on the basis of the best scientific and commercial data available (16 U.S.C. § 1533(b)(1)(A)); and (B) consider, in publishing any proposed and final delisting rule pursuant to this paragraph, the designation of a DPS that is identical to the DPS designated in the 2009 Rule and a DPS that is limited to the three recovery areas (Northwestern Montana, central Idaho, and the Yellowstone National Park area) identified in FWS’s Northern Rocky Mountain Wolf Recovery Plan (approved August 3, 1987). Nothing in this paragraph precludes or shall be interpreted as precluding Federal Defendants from issuing a proposed or final rule, to reclassify the status of wolves within the NRM region during the time that this agreement remains in effect.

6. Pursuant to Section 4(g) of the ESA, 16 U.S.C. § 1533(g), Federal Defendants agree to monitor the status of NRM wolves: (A) for not less than five (5) years in the States of Idaho and Montana, beginning on the date when the Court in Defenders of Wildlife v. Salazar, 09-cv-77, 09-cv-82 (D. Mont.) grants a partial stay as set forth in paragraph 1, above; and (B) for not less than five (5) years in any geographic area covered by a delisting rule issued pursuant to paragraph 5, above. During these five-year period(s), Federal Defendants further agree to: (A) annually publish an evaluation of the status and trends of wolves in the NRM DPS, as defined by the 2009 Rule; (B) work with state officials to acquire data

regarding wolf losses and all relevant wolf population data on a timely basis; (C) collect relevant data from other sources, as such data are available; and (D) solicit input from independent scientists regarding what information will be useful to making the assessment described in paragraph 8, below.

7. As part of the Section 4(g) monitoring activities, Federal Defendants agree to consider whether, in light of the data gathered by Federal Defendants pursuant to paragraph 6, above, any substantial changes in the wolf management plans by the States, referenced in paragraph 4, above, may constitute a significant risk to the well-being of the NRM wolves within the meaning of Section 4(b)(7) of the ESA, 16 U.S.C. § 1533(b)(7).

8. Not later than four years from the date on which the Court in Defenders of Wildlife v. Salazar, 09-cv-77, 09-cv-82 (D. Mont.), grants a partial stay as set forth in paragraph 1, above, Federal Defendants agree to secure from independent scientists an assessment of whether, according to what those scientists determine to be the best available scientific information and with the consideration of the monitoring data gathered pursuant to paragraph 6, above, wolves in the Northern Rocky Mountain Region are being managed in a way that reasonably assures the continued presence of a sustainable, genetically connected population of wolves within the Northern Rocky Mountain Region for the foreseeable future, and make such assessment available to the public.

9. Within seven (7) business days of this Agreement becoming operative pursuant to paragraph 1, above, Settling Plaintiffs agree to stipulate to the dismissal with prejudice of their claims challenging FWS's 2008 10(j) Rule in

Defenders of Wildlife v. Hall, 08-cv-14-DWM (D. Mont.), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

10. Settling Plaintiffs agree that they will not, either collectively or individually, file a lawsuit, raise claims against, or otherwise challenge in court before March 31, 2016 any final delisting or reclassification rule issued pursuant to paragraph 5, above.

11. Settling Plaintiffs agree that they will not, either collectively or individually, petition Federal Defendants to list either the NRM DPS (as defined by the 2009 Rule), or any wolf population or subpopulation located within the NRM DPS (as defined by the 2009 Rule), for a period of three years after this Agreement becomes operative pursuant to paragraph 1, above.

12. The Parties agree that nothing in this Agreement shall be interpreted or constitute a commitment or requirement that Federal Defendants pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the Parties agree this Agreement is not to be construed as a concession or admission by any Party as to the validity of any fact or legal position concerning the claims or defenses in Defenders of Wildlife v. Salazar, 09-cv-77, 09-cv-82 (D. Mont.), or in Defenders of Wildlife v. Hall, 08-cv-14 (D. Mont.).

13. Dispute Resolution – The Agreement is entered into among the Federal Defendants and the Settling Plaintiffs and is not intended to be construed as a court order or consent decree entered in Defenders of Wildlife v. Salazar, 09-cv-77, 09-cv-82, 08-cv-14 (D. Mont.). The sole remedy for any unresolved dispute under this Agreement is to move to lift the stay or terminate the Agreement

pursuant to the conditions set forth below. This Agreement is not otherwise judicially enforceable through contempt or any other means.

- a. Before FWS issues a rule that finalizes the proposed rule referenced above in paragraph 5, any Party may terminate this Agreement and request that the Court lift the partial stay referenced in paragraph 1, only by first: (1) informing, in writing, the Parties of a dispute under this Agreement; and (2) providing a 60-day period in which the parties agree to work, in good faith, to resolve any such dispute.
- b. After FWS has issued a rule that finalizes the proposed rule referenced above in paragraph 5, any Party may terminate this Agreement, only by first: (1) informing, in writing, the Parties of a dispute under this Agreement; and (2) providing a 60-day period in which the parties agree to work, in good faith, to resolve any such dispute.

14. The Parties agree that, should Congress, by statute, remove ESA protections for some or all of the wolves in the NRM region, or should the partial stay of the Court's remedy order referenced in paragraph 1 be dissolved, modified, or set aside before the issuance of a delisting rule pursuant to paragraph 5, above, this Agreement is dissolved and terminated, and all of its provisions become null and void. In any event, this Settlement Agreement terminates upon completion of the obligations set forth herein.

15. The Parties agree that nothing in this Agreement shall be construed to modify, limit, or alter the discretion afforded to Federal Defendants under the ESA, principles of administrative law, or any other applicable law or regulation

regarding the substance of any final decision taken hereunder by Federal Defendants.

16. This Agreement shall constitute a complete and final settlement of all Settling Plaintiffs' claims alleged in the above-described cases (Case Nos. 09-cv-77, 09-cv-82, 08-cv-14 (D. Mont.)) against Federal Defendants.

17. This Agreement in no way affects or relieves any Party of its responsibility to comply with any applicable federal, state, and local law or regulation.

18. This Agreement in no way affects the rights of the United States as against any person or entity not a party thereto. Nothing in this Agreement shall be construed to make any other person or entity not executing this Agreement a third-party beneficiary to this Agreement.

19. It is hereby expressly understood and agreed that this Agreement was jointly drafted by the Parties. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement. This Agreement shall be governed by and construed under federal law.

20. This Agreement contains all of the agreements between the Parties and is intended to be and is the final and sole agreement between the Parties concerning the complete and final resolution of plaintiffs' causes of action in these cases (Case Nos. 09-cv-77, 09-cv-82, 08-cv-14 (D. Mont.)). The Parties agree that

any other 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. Any subsequent modifications to this Agreement must be in writing, and must be signed and executed by the Parties.

21. The parties agree that the terms of this Agreement are specific to the unique facts of this case and are not precedential and shall not be cited as authority in any legal matter, except in any matter concerning the specific commitments made in this agreement.

22. The undersigned representatives of each party certify that they are fully authorized to consent to the terms and conditions of this Agreement and do hereby agree to the terms herein. Signature on a counterpart or authorization of an electronic signature shall constitute a valid signature.

Dated: March 18, 2011

/s/ Michael P. Senatore

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