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

FRIENDS OF THE WILD SWAN, a non-profit organization, WILDEARTH GUARDIANS, a non-profit organization, and ALLIANCE FOR THE WILD ROCKIES, a non-profit organization,

Plaintiffs,

vs.

DAN VERMILLION, in his official capacity as Chairman of the Montana Fish, Wildlife, and Parks Commission, BOB REAM, in his official capacity as a Commissioner of the Montana Fish, Wildlife, and Parks Commission, MATTHEW TOURTLOTTE, in his official capacity as a Commissioner of the Montana Fish, Wildlife, and Parks Commission, LAWRENCE WETSIT, in his official capacity as a Commissioner of the Montana Fish, Wildlife, and Parks Commission, RICHARD STUKER, in his official capacity as a Commissioner of the Montana Fish, Wildlife, and Parks Commission, and JEFF HAGENER, in his official capacity as Director of the Montana Department of Fish, Wildlife, and Parks,

Defendants,

CV 13–66–M–DLC

ORDER

and

MONTANA TRAPPERS ASSOCIATION, NATIONAL TRAPPERS ASSOCIATION, TOBY LEWIS WALRATH, and WILLIAM JAMES KATS,

Defendant-Intervenors.

Before the Court is Plaintiffs' motion to dismiss. The motion comes at the close of a stipulated six-month stay, during which time Defendants agreed to present proposed regulatory changes to the Montana Fish, Wildlife & Parks Commission ("Commission") for approval. The parties tentatively settled this case upon drafting the proposed changes in February 2015, and Commission approval represented the final step in the resolution of this matter. Defendant-Intervenors opposed the tentative settlement and stipulated proposed regulatory changes at the time of the settlement conference before United States Magistrate Judge Jeremiah C. Lynch.

Defendants presented the proposed changes to the Commission on July 9, 2015. The Commission took public comment from proponents and opponents, including from Defendant-Intervenors, and ultimately approved the stipulated proposed regulatory changes in their entirety. Plaintiffs therefore filed the instant

motion to dismiss, wherein they also move the Court to approve the settlement agreement reached by the parties in February 2015 (Doc. 69-1) and retain limited jurisdiction to enforce the terms therein. Defendant-Intervenors oppose the motion to dismiss, and the Court agreed to refrain from ruling on the motion pending further briefing. Defendant-Intervenors thus filed a response on September 9, 2015, and Plaintiffs filed a reply on September 15, 2015. On September 16, 2015, Defendants filed a motion for leave to file their own reply, arguing that Defendant-Intervenors' brief raises sufficient questions to warrant an individual response.

The Court agrees with Plaintiffs that Defendant-Intervenors' opposition cannot preclude the settlement in this case. *See United States v. Carpenter*, 526 F.3d 1237, 1240-1241 (9th Cir. 2008) (vacating a district court's approval of a settlement agreement "[b]ecause the intervenors were not permitted to participate in the settlement review proceedings," but recognizing "that intervenors' consent is not required for approval of the settlement between the parties"); *Local Number 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 528-529 (1986) ("It has never been supposed that one party – whether an original party, a party that was joined later, or an intervenor – could preclude other parties from settling their own disputes and thereby withdrawing from litigation. Thus,

while an intervenor is entitled to present evidence and have its objections heard at the hearings on whether to approve a consent decree, it does not have power to block the decree merely by withholding its consent.") (citations omitted).

Moreover, while a non-settling defendant may object to a settlement "where it can demonstrate that it will sustain some formal legal prejudice as a result," Defendant-Intervenors' purported injuries are insufficient to meet this standard. *Smith v. Arthur Andersen LLP*, 421 F.3d 989, 998 (9th Cir. 2005) (citations omitted). The fact that, as a result of the regulatory changes, Defendant-Intervenors and other trappers may be left with obsolete traps, will have to check their traps more frequently, and may ultimately trap fewer animals, does not constitute formal legal prejudice sufficient to torpedo the parties' compromise. This is especially true given that, at this point in time, Defendant-Intervenors' remaining dispute lies, if at all, with Defendants and not with Plaintiffs – there is simply no live case or controversy between the parties as initially aligned in this matter, and no way to address Defendant-Intervenors' alleged injuries by keeping *this* matter on life support.

Defendant-Intervenors' interest in this litigation was sufficient to establish intervention-of-right status, and they participated in this matter to the extent contemplated by that status. They were parties to and participated in the

settlement conference. They received the fullest opportunity to influence the form and content of the stipulated regulations. Their apparent displeasure with the final product is insufficient to reject the parties' settlement.

Accordingly, IT IS ORDERED that Plaintiffs' motion to dismiss pursuant to the stipulated agreement (Doc. 72) is GRANTED. The stipulated agreement reached between Plaintiffs and Defendants (Doc. 69-1) is APPROVED. This case is DISMISSED WITH PREJUDICE, notwithstanding the Court's retention of limited jurisdiction to enforce the terms and conditions of the stipulated agreement. All pending motions in this matter are DENIED AS MOOT.

DATED this 22nd day of September, 2015.

Dana L. Christensen, Chief Judge
United States District Court