

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

FRIENDS OF THE WILD SWAN,  
et al.,

*Plaintiffs,*

vs.

DEB HAALAND, in her official  
capacity as Secretary of the  
Interior, et al.,

*Federal-Defendants.*

Case No. 9:20-cv-00173-DWM

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

**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, Friends of the Wild Swan, Rocky Mountain Wild, San Juan Citizens Alliance, WildEarth Guardians, Cascadia Wildlands, Oregon Wild, and

Wilderness Workshop (collectively, “Plaintiffs”) and Defendants, Debra Haaland, in her official capacity as Secretary of the Interior, the United States Department of the Interior, 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 December 11, 2017 determination to forgo preparing a recovery plan for the distinct population segment of Canada lynx (“lynx”) occurring in the contiguous United States under Section 4(f)(1) of the Endangered Species Act (“ESA”).

WHEREAS, in October 2017, the Service completed a Species Status Assessment (“lynx 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 ESA and recommended removing lynx from the list of threatened and endangered species.

WHEREAS, on December 11, 2017, the Service issued a determination regarding recovery planning for lynx, in which it found that a recovery plan would not promote the conservation of the species and was therefore exempt from recovery planning. At the time, the Service had intended to submit a proposed rule to delist the lynx to the Federal Register.

WHEREAS, Plaintiffs sent the Service a notice of intent to sue letter, dated July 15, 2020, alleging violations of the ESA related to the Service's December 11, 2017 recovery planning determination.

WHEREAS, on December 1, 2020, Plaintiffs filed a complaint challenging the Service's December 11, 2017 decision to forgo recovery planning for lynx. (ECF Doc. 1).

WHEREAS, the Service no longer intends to submit a proposed rule to delist lynx to the Federal Register and will instead prepare a recovery plan for lynx under ESA Section 4(f)(1). 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' claims, 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 December 1, 2023, the Service will either submit a notice of availability of the draft recovery plan for lynx to the Federal Register or post a notice of availability of the draft recovery plan on the Service's website. The draft recovery plan will be made available for public review and comment.

2. Within one year of the Service publishing the draft recovery plan for lynx or posting a notice of availability of the draft recovery plan on its website, the Service will post the final recovery plan on its website.

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 a valid reason to forego recovery planning.

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. The Service reserves its right to contest Plaintiffs' request for reimbursement of attorneys' fees and costs and does not waive any objection or defenses it 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) during 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 the Court sign and approve this Agreement thereby adopting its terms and dismissing the case with prejudice.

Respectfully submitted this 29th day of October 2021.

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

*/s/ Matthew K. Bishop*

Matthew K. Bishop  
John R. Mellgren  
Western Environmental Law  
Center  
103 Reeder's Alley  
Helena, Montana 59601  
Ph: (406) 324-8011  
bishop@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  
D.C. Bar No. 1044400  
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  
Tel: (202) 598-9741  
E-mail: michelle.spatz@usdoj.gov

*Attorneys for Defendants*