

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

|                                   |   |                 |
|-----------------------------------|---|-----------------|
| FRIENDS OF ANIMALS, <u>et al.</u> | ) |                 |
|                                   | ) | Civ. No. 10-357 |
| Plaintiffs,                       | ) |                 |
|                                   | ) |                 |
| v.                                | ) |                 |
|                                   | ) |                 |
| KEN SALAZAR, Secretary, U.S.      | ) |                 |
| Department of the Interior,       | ) |                 |
|                                   | ) |                 |
| Defendant.                        | ) |                 |
|                                   | ) |                 |

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**STIPULATED SETTLEMENT AGREEMENT AND ~~[PROPOSED]~~ ORDER**

This Stipulated Settlement Agreement is made between Plaintiffs Friends of Animals and WildEarth Guardians and Defendant Ken Salazar, Secretary of the Interior.

WHEREAS, on January 29, 2008, Plaintiffs submitted to the United States Fish and Wildlife Service (“Service”) a petition to list the following fourteen species as threatened or endangered species pursuant to the ESA: Blue-throated macaw (*Ara glaucogularis*); Blue-headed macaw (*Propyrrhura couloni*); Crimson shining parrot (*Prosopeia splendens*); Great green macaw (*Ara ambiguous*); Greycheeked parakeet (*Brotogeris pyrrhoptera*); Hyacinth macaw (*Andorhynchus hyacinthinus*); Military macaw (*Ara militaris*); Philippine cockatoo (*Cacatua haematuropygia*); Red-crowned parrot (*Amazona viridigenalis*); Scarlet macaw (*Ara macao*); Thick-billed parrot (*Rhynchopsitta pachyrhyncha*); White cockatoo (*Cacatua alba*); Yellow-billed parrot (*Amazona collaria*); and Yellow-crested cockatoo (*Cacatua sulphurea*);<sup>1</sup>

WHEREAS, on July 14, 2009, the Service issued a 90-day finding determining that Plaintiffs’ petition presented substantial information indicating listing may be warranted for

<sup>1</sup> The Thick-billed parrot is already listed as endangered under the ESA, and the Blue-throated macaw has been designated as warranted but precluded since 1994. Thus, Plaintiffs seek to compel the Service to issue a 12-month finding with respect to the remaining twelve species.

twelve species;

WHEREAS, the Service has not yet issued a 12-month finding on the petition;

WHEREAS, WildEarth Guardians, by letter dated October 24, 2009, and Friends of Animals, by letter dated December 2, 2009, provided Defendant with written notice of their intent to sue under the ESA;

WHEREAS, on March 2, 2010, Plaintiffs filed this action challenging Defendant's failure to issue the 12-month finding on the Petition;

WHEREAS, Plaintiffs seek an order declaring that Defendant violated the ESA by failing to issue the 12-month finding according to the time frame established by the ESA, and by failing to list the twelve species as threatened or endangered. Plaintiffs ask the Court to order Defendant to issue a 12-month finding on each of the species within 60 days. Plaintiffs also seek costs of litigation, including attorneys fees;

WHEREAS, the parties, 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 the disputes set forth in Plaintiffs' Complaint, and the parties agree that settlement of this action in this manner is in the public interest;

ACCORDINGLY, THE PARTIES AGREE AND STIPULATE AND IT IS HEREBY ORDERED AS FOLLOWS:

1. No later than July 29, 2011, the Service shall deliver to the Office of the Federal Register for publication a determination whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing activity ("12-month finding"), see 16 U.S.C. § 1533(b)(3)(B), for no less than four (4) of the petitioned species.

2. No later than September 30, 2011, the Service shall deliver to the Office of the Federal Register for publication a 12-month finding for no less than four (4) of the petitioned species.

3. No later than November 30, 2011, the Service shall deliver to the Office of the Federal Register for publication a 12-month finding for the remaining species.

4. Either party may seek to modify the deadlines for the actions specified in Paragraphs 1-3 for good cause shown, consistent with the Federal Rules of Civil Procedure. In that event, or in the event that either party believes that the other party has failed to comply with any term or condition of this Settlement Agreement (“Agreement”), the parties shall use the dispute resolution procedures specified in Paragraph 5 below. This Stipulated Settlement Agreement may be modified or amended only by order of this Court.

5. In the event that either party seeks to modify the terms of this Agreement, including the deadline for the actions specified in Paragraphs 1-3, 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 written notice of the claim. The parties agree that they will meet and confer (in-person not required) at the earliest possible time in a good-faith effort to resolve the claim before pursuing relief from the Court. If the parties are unable to resolve the claim within a reasonable time, either party may seek relief from the Court.

6. No party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable timeline for making a 12-month finding in any other proceeding regarding Defendant’s implementation of the ESA.

7. Defendant agrees to settle all of Plaintiffs' claims for costs and attorneys' fees in this matter for a total of \$7,048.50. Payment will be made payable in that amount to Friends of Animals. Defendant agrees to submit all necessary paperwork for the processing of the attorneys' fee award to the Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. § 1540(g)(4), within ten (10) business days of receipt of the court order approving this Agreement. Plaintiffs agree to accept payment of such amount in full satisfaction of any and all claims for attorneys' fees and costs of litigation to which Plaintiffs are entitled in the above-captioned litigation, through and including the date of this Agreement. Plaintiffs agree that receipt of this payment from Defendant shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this matter, through and including the date of this Agreement.

8. Plaintiffs reserve the right to seek additional fees and costs incurred subsequent to this agreement arising from a need to enforce or defend against efforts to modify the underlying schedule outlined in Paragraphs 1-3, or for any other unforeseen continuation of this action. Defendant does not waive any right to contest fees claimed by Plaintiffs or Plaintiffs' counsel, including the hourly rate, in any future litigation, or continuation of the present action. Further, this stipulation as to attorneys' fees and costs has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

9. Plaintiffs' Complaint shall be dismissed with prejudice upon approval of this Stipulated Settlement Agreement by the Court. The parties 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 America, 511 U.S. 375 (1994).

10. This Settlement Agreement contains all of the agreements between the Parties, and is intended to be the final and sole agreement between the Parties. The Parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Settlement Agreement, whether written or oral, are of no further legal or equitable force or effect.

11. Nothing in this Settlement Agreement shall be construed or offered in evidence in any proceeding as an admission or concession of wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Settlement Agreement. Defendant does not waive any defenses they may have concerning the claim settled under this Settlement Agreement or any similar claims brought in the future by any other party. This Settlement Agreement is executed solely for the purpose of compromising and settling Plaintiffs' Complaint and nothing herein shall be construed as precedent in any other context.

12. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendant takes action in contravention of the ESA, the Administrative Procedure Act ("APA"), or any other law or regulation, either substantive or procedural. Nothing in this Stipulated Settlement Agreement shall be construed to limit or modify the discretion accorded to the Defendant 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 other than as set forth in paragraphs 1 and 2, or as to the substance of any final determination. To challenge any final rule issued in accordance with this Agreement, Plaintiffs will be required to file a separate action and otherwise comply with applicable legal requirements. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Defendant is obligated to pay any funds exceeding those available, or take any

action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.

13. Each of the parties' undersigned representatives certifies that they are fully authorized to enter into and execute the terms and conditions of this Stipulated Settlement Agreement, and do hereby agree to the terms herein.

Respectfully submitted this 21st day of July, 2010.

/s/ Michael R. Harris (by KBF with permission)

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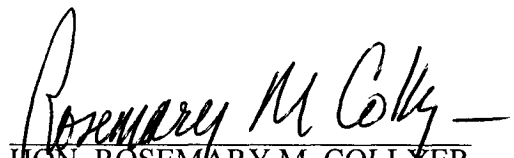
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Counsel for Defendant

IT IS SO ORDERED:

Dated: 21 July 2010

  
HON. ROSEMARY M. COLLYER  
UNITED STATES DISTRICT JUDGE