

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	C.A. No. 10-CV-00122 BRB-DJS
)	
v.)	JOINT MOTION TO DISMISS
)	
KEN SALAZAR, U.S. Secretary of the)	
Interior, sued in his official capacity,)	
)	
Defendant.)	
)	
)	
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On June 2, 2010, Plaintiff WildEarth Guardians and Defendant Ken Salazar, U.S. Secretary of the Interior, jointly moved this Court to dismiss this case pursuant to the terms of a stipulated settlement agreement and submitted a proposed order. At a hearing on June 4, the Court indicated that it could not enter the proposed order requested by the parties without further modification of the order and the settlement language.

WHEREFORE, the parties hereby jointly move this Court to dismiss this case pursuant to the terms of the attached revised Stipulated Settlement Agreement. The parties will submit a revised proposed order directly to the Court.

Respectfully submitted this 8th day of June, 2010,

/s/ Samantha Ruscavage-Barz
SAMANTHA RUSCAVAGE-BARZ
WildEarth Guardians
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Placitas, NM 87043

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Attorney for Plaintiff

IGNACIA S. MORENO
Assistant Attorney General
JEAN WILLIAMS, Section Chief

/s/ Daniel Pollak

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Of Counsel:

JANET SPAULDING
United States Department of the Interior
Office of the Solicitor
Southwest Regional Office

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2010, I electronically filed the foregoing Joint Motion to Dismiss with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record:

Samantha Ruscavage-Barz
samantha.ruscavagebarz@gmail.com

/s/ Daniel Pollak
DANIEL POLLAK
Trial Attorney

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

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WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 10-cv-00122 BRB-DJS
)	
KEN SALAZAR, U.S. Secretary of Interior,)	
sued in his official capacity)	
)	
Defendant.)	
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STIPULATED SETTLEMENT AGREEMENT

This Stipulation is entered into by and between Plaintiff WildEarth Guardians and Defendant Ken Salazar, in his official capacity as Secretary of the United States Department of the Interior.

WHEREAS, on October 15, 2008, the United States Fish and Wildlife Service (“Service”) received a petition from WildEarth Guardians dated October 9, 2008 to list the Wright’s marsh thistle (*Cirsium wrightii*) as a threatened or endangered species pursuant to the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544;;

WHEREAS, on September 10, 2009, the Service published a 90-day finding regarding the Wright’s marsh thistle, in which it concluded that the petition presented substantial scientific or commercial information indicating that listing the Wright’s marsh thistle may be warranted and initiating a status review to determine if listing the species is warranted;

WHEREAS, on February 11, 2010, Plaintiff filed this action to compel a 12-month finding on the petition;

WHEREAS, the parties, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiff's claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiff's complaint;

WHEREAS, the parties agree 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. On or before October 31, 2010, the Service shall submit to the Federal Register a 12-month finding as to whether Plaintiff's petition to list the Wright's marsh thistle is (a) not warranted; (b) warranted; or (c) warranted but precluded by other pending proposals, pursuant to 16 U.S.C. § 1533(b)(3)(B).

2. Either party may seek to modify the deadline for any of the actions specified in Paragraph 1 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 3 below.

3. The Order entering 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, including the deadline specified in Paragraph 1, 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. 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. No party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable time line for issuing a 12-month finding under 16 U.S.C. § 1533 in any other proceeding regarding the Service's implementation of the ESA.

5. Defendant agrees that Plaintiff is the "prevailing party" in this action, and agrees to pay Plaintiff's reasonable attorneys' fees and costs pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540 (g). Defendant therefore agrees to settle all of Plaintiff's claims for costs and attorneys' fees in this matter for a total of \$1,859.46. A check will be made payable in that amount to WildEarth Guardians, c/o Mona Kay, 312 Montezuma Avenue, Santa Fe, NM 87501. 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 order approving this Agreement.

6. Plaintiff agrees to accept payment of \$1,859.46 in full satisfaction of any and all claims for attorneys' fees and costs of litigation to which Plaintiff is entitled in this matter through and including the date of this Agreement.

7. Plaintiff agrees that receipt of this payment from Defendant shall operate as a release of Plaintiff's claims for attorneys' fees and costs in this matter, through and including the date of this Agreement.

8. The parties agree that Plaintiff reserves 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 Paragraph 1 or for any other continuation of this action. By this Agreement, Defendant does not waive any right to contest fees claimed by Plaintiff or Plaintiff's counsel, including the hourly rate, in any future litigation or continuation of the present action. Further, this Agreement as to attorneys' fees and costs has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

9. Subject to the qualifications in Paragraph 10, no provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendant 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 final determination.

10. 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.

11. The parties agree that this Agreement was negotiated in good faith and that this Agreement constitutes a settlement of claims that were denied and disputed by the parties. By entering into this Agreement, the parties do not waive any claim or defense.

12. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of this Agreement and do hereby agree to the terms herein.

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

14. Upon approval of this Agreement by the Court, all counts of Plaintiff's complaint shall be dismissed with prejudice.

Dated: June 8, 2010

Respectfully submitted,

/s/ Samantha Ruscavage-Barz
SAMANTHA RUSCAVAGE-BARZ
(NM Bar No. 23276)
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Attorney for Plaintiff

IGNACIA S. MORENO
Assistant Attorney General
JEAN E. WILLIAMS
Section Chief

/s/ Daniel Pollak
DANIEL J. POLLAK
Trial Attorney
United States Department of Justice

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Of Counsel:

JANET SPAULDING
United States Department of the Interior
Office of the Solicitor
Tulsa, OK

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2010, I electronically filed the foregoing Stipulated Settlement Agreement with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record:

Samantha Ruscavage-Barz
samantha.ruscavagebarz@gmail.com

/s/ Daniel Pollak

DANIEL J. POLLAK