

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE HUMANE SOCIETY OF THE UNITED)
STATES, CENTER FOR BIOLOGICAL)
DIVERSITY, FRIENDS OF ANIMALS AND)
THEIR ENVIRONMENT, BORN FREE USA,)
AND HELP OUR WOLVES LIVE,)

Plaintiffs,)

v.)

KEN SALAZAR, Secretary of the Department of)
the Interior; UNITED STATES DEPARTMENT)
OF THE INTERIOR; and UNITED STATES FISH)
AND WILDLIFE SERVICE,)

Defendants.)

Civil No. 1:09-cv-1092-PLF

STIPULATED SETTLEMENT AGREEMENT AND PROPOSED ORDER

The Parties, The Humane Society of the United States, Center for Biological Diversity, Friends of Animals and Their Environment, Born Free USA, and Help Our Wolves Live (collectively "Plaintiffs"), and Secretary Salazar, the United States Department of the Interior, and the United States Fish and Wildlife Service (collectively "Defendants") have agreed to settle the above-captioned case in its entirety on the terms memorialized in this Stipulated Settlement Agreement ("Stipulation"):

WHEREAS on February 8, 2007, the United States Fish and Wildlife Service published a *Final Rule Designating the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment; Removing the Western Great Lakes Distinct Population Segment of the Gray Wolf From the List of Endangered and Threatened Wildlife*, 72 Fed. Reg. 6052 (Feb. 8, 2007) ("2007 Final Rule");

WHEREAS a legal challenge was brought against the 2007 Final Rule;

WHEREAS on September 29, 2008, this Court issued an opinion and order that vacated the 2007 Final Rule and remanded it back to the United States Fish and Wildlife Service for further proceedings (“Remand Order”);

WHEREAS the United States Fish and Wildlife Service undertook further proceedings on remand;

WHEREAS without providing notice or an opportunity for public comment on those proceedings, on April 2, 2009, the United States Fish and Wildlife Service published a *Final Rule to Identify the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment and to Revise the List of Endangered and Threatened Wildlife*, 74 Fed. Reg. 15070 (April 2, 2009) (“2009 Final Rule”);

WHEREAS on June 15, 2009, Plaintiffs filed a complaint in this Court alleging that Defendants violated the Endangered Species Act (“ESA”), the Administrative Procedure Act (“APA”), and the Court’s Remand Order by publishing the 2009 Final Rule;

WHEREAS on June 15, 2009, Plaintiffs also filed a motion for preliminary injunction and memorandum in support alleging that Defendants violated the notice and comment requirement of the APA, the ESA’s best available science requirement, and this Court’s Remand Order by publishing the 2009 Final Rule;

WHEREAS Defendants concede that they erred by publishing the 2009 Final Rule without providing for notice and comment as required by APA Section 553, 5 U.S.C. § 553;

WHEREAS Plaintiffs and Defendants, through their authorized representatives, without any further admission of legal fault or error, and without final adjudication of the remaining

issues of fact or law with respect to Plaintiffs' claims, have reached a settlement resolving this action;

WHEREAS the Parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve this dispute;

THE PARTIES THEREFORE STIPULATE AS FOLLOWS:

1. The 2009 Final Rule is vacated and remanded back to the United States Fish and Wildlife Service for further proceedings consistent with the ESA, the APA, and this Court's Remand Order. As of the date of the Court's Order approving this Stipulation, wolves in the Western Great Lakes DPS are returned to the listing status under the ESA that they had before the 2009 Final Rule went into effect. *See* 73 Fed. Reg. 75356 (Dec. 11, 2008).

2. If Defendants publish another rule in response to the Remand Order and the vacatur effected by this Order, Defendants will provide notice of proposed rulemaking and open a minimum of a 60-day public comment period on the proposed rule.

3. Except as explicitly provided in this Stipulation, nothing in this Stipulation shall be construed to modify or limit the discretion afforded to Defendants under the ESA or principles of administrative law on remand. No provision of this Stipulation shall be interpreted as constituting a commitment or requirement that the United States is obligated to pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provision of law. No provision of this Stipulation shall be interpreted as constituting a commitment or requirement that Defendants take actions in contravention of the ESA, APA, or any other law or regulation, either substantive or procedural.

4. Pursuant to Federal Rule of Civil Procedure 41(a)(2) and the terms of this

Stipulation, the above-captioned case is hereby dismissed in its entirety, with prejudice as to all claims relating to the 2009 Final Rule (74 Fed. Reg. 15070). By entering this agreement, Plaintiffs do not waive their right to raise any and all challenges to any other regulation issued by the United States Fish and Wildlife Service.

5. Plaintiffs reserve the right to seek attorneys' fees and costs under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412. Defendants reserve the right to contest Plaintiffs' entitlement to attorneys' fees and costs, including but not limited to Plaintiffs' entitlement to any fees whatsoever, hourly rates, number of hours expended, and specific fees or expenses. The Parties agree to employ good faith efforts to reach an expeditious negotiated resolution of the matter of attorneys' fees and costs.

6. The Court retains jurisdiction to enforce the terms of this Order.

Dated: June 29, 2009

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Free USA, and Help Our Wolves Live

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED:

PAUL L. FRIEDMAN
United States District Judge