

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

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FRIENDS OF THE WILD SWAN;	)	)
MONTANA ENVIRONMENTAL	)	)
INFORMATION CENTER; and	)	)
NATURAL RESOURCES DEFENSE	)	)
COUNCIL;	)	) Case No. 9:13-cv-00061-DWM
	)	)
Plaintiffs,	)	)
	)	)
v.	)	)
	)	)
S.M.R. JEWELL, Secretary, U.S.	)	)
Department of the Interior, in her official	)	)
capacity; and UNITED STATES FISH	)	)
AND WILDLIFE SERVICE	)	)
	)	)
Defendants.	)	)
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**SETTLEMENT AGREEMENT AND RELEASE**

**I. GENERAL TERMS**

To resolve the Parties’ respective appeals in the U.S. Court of Appeals for the Ninth Circuit (Appeal Nos. 14-35923 and 14-35927), and the parties’ respective claims and defenses in No. 9:13-cv-00061-DWM, U.S. District Court for the District of Montana, the Plaintiffs Friends of the Wild Swan, Montana Environmental Information Center, and Natural Resources Defense Council (collectively, Plaintiffs) and Intervenor-Defendants Montana Department of Natural Resources and Conservation (DNRC) and the Montana Board of Land

Commissioners (Land Board) agree to the following:

1. DNRC shall adopt the Conservation Measures set forth in this Settlement Agreement (Agreement) by promulgating them as rules in DNRC's Forest Management Administrative Rules of Montana (ARMs) following statutory requirements of the Montana Administrative Procedures Act (MAPA) within six months following the entry of an order by the U.S. District Court for the District of Montana adopting the terms of this Agreement as an order of the Court. DNRC, following entry of an order by the U.S. District Court for the District of Montana adopting the terms of this Agreement, shall immediately submit these Conservation Measures to the U.S. Fish and Wildlife Service for appropriate processing under the terms of the Habitat Conservation Plan.
2. DNRC shall also include these Conservation Measures as habitat conservation standards in the Northern Continental Divide Ecosystem (NCDE) Conservation Strategy, which would remain in place following de-listing of the grizzly bear. DNRC, following entry of an order by the U.S. District Court for the District of Montana adopting the terms of this Agreement as an order of the Court, shall immediately submit these Conservation Measures to the U.S. Fish and Wildlife Service to be adopted into the Final NCDE Conservation Strategy.
3. Once codified in Forest Management ARMs and the NCDE Conservation

Strategy, any future modifications of these Conservation Measures would be done following formal procedures outlined in the NCDE Conservation Strategy, and revision of the Forest Management ARMs following MAPA rule-making procedures. Any changes made through formal rule-making require final approval by the Land Board. No such modifications or changes shall be made by DNRC or the Land Board while the DNRC Habitat Conservation Plan (HCP) remains in effect. Further, while these Conservation Measures complement the DNRC HCP in its current form, these Conservation Measures shall be required, with or without the HCP in place.

4. Except as provided in Part II.3 below, implementation of this Agreement will not prohibit or restrict existing and future activities that are located totally or partially in areas previously managed as “Stillwater Core” and that are located outside of lands identified in Attachment A as Grizzly Bear Security Zones (Security Zones). This includes projects that were affected by the injunction issued by the U.S. District Court for the District of Montana on August 21, 2014 in Case No. 9:13-cv-00061-DWM.

## II. CONSERVATION MEASURES

1. **Agreement Area:** Within the land area referenced in the DNRC HCP as the Stillwater Block (90,517 acres), which includes blocked lands on the

Stillwater and Coal Creek state forests, DNRC shall establish 7 Security Zones totaling 22,007 acres as identified in Attachment A.

2. To minimize adverse impacts to grizzly bears, DNRC shall comply with the following restrictions within the 7 Security Zones.
  - a. Motorized activities, including public, DNRC administrative, and DNRC commercial forest management activities, will be prohibited during the grizzly bear non-denning season each year, April 1 – November 15 (non-denning season).
  - b. Motorized activities will be allowed during the grizzly bear denning season only, November 16 – March 31 (denning season).
  - c. DNRC commercial forest management activities will be allowed during the denning season below 6,300 feet elevation.
  - d. No permanent road construction will be allowed.
  - e. The DNRC shall construct and reclaim any temporary roads and skid trails in a manner to prevent future use by motorized vehicles, including off-road vehicles, during the non-denning season.
  - f. When conducting DNRC commercial forest management activities near identified Security Zones during the non-denning season, the DNRC will minimize the duration of air- and ground-based harvest activities to the extent practicable, particularly in known areas of

seasonal importance for bears.

- g. DNRC will minimize the duration of administrative activities near Security Zones to the extent practicable.
  - h. The DNRC shall make efforts to design helicopter flight routes in a manner that avoids and/or minimizes flight time across Security Zones during the non-denning season, and/or known seasonally secure areas.
  - i. Where practicable, the DNRC shall design flight paths to occur greater than one mile from potentially affected Security Zones during the non-denning season, or areas of known seasonal importance.
  - j. Subject to Part II.2.f and g above, short-term disturbance will be allowed in any Security Zones at any time and for the necessary duration to address road sedimentation issues required by the HCP Aquatic Conservation Strategies and Forest Management ARMs.
3. On the remaining 68,510 acres of blocked lands outside of Security Zones, DNRC shall comply with the following measures:
- a. Access management and seasonal restrictions and road construction requirements will be implemented according to the DNRC HCP Transportation Plan measures that apply to Class B Lands as defined in the HCP (commitments GB-ST1, GB-ST4, and GB-ST5).

- b. Motorized public activities, DNRC commercial forest management activities and DNRC administrative activities are allowed during the denning and non-denning seasons as allowed by the DNRC HCP Transportation Plan.
4. Subject to the provisions of Part II.2.f-i above, DNRC will complete timber sale and forest improvement activities currently under contract that overlap Security Zones identified in Attachment A. DNRC will expedite these activities to shorten the amount of time disturbance will occur in Security Zones. These include:
  - a. activities on 27 acres of Upper Whitefish Timber Sale (approved by the Land Board on April 19, 2012) as identified in Attachment B; and
  - b. activities on 6 acres of Swedish Chicken Site Prep Project (contract signed on June 13, 2014) as identified in Attachment C.
5. Until DNRC completes activities under 4.a. and b. above, DNRC shall relocate 33 acres of Security Zone as mitigation to retain 22,007 acres of Security Zones at all times. Once these activities are complete, DNRC shall adhere to Security Zones as found in Attachment A.

### **III. ADDITIONAL TERMS OF THE AGREEMENT**

1. DNRC will complete corrective actions as specified in the HCP on high-risk sediment sites located within bull trout watersheds by 2027, and will


prioritize and complete corrective actions at high-risk sediment sites in bull trout critical habitat by 2024.

2. Plaintiffs waive their right to challenge future DNRC management of grizzly bear habitat that was previously Stillwater Core on the ground that such management violates the Endangered Species Act, 16 U.S.C. § 1531 et seq., as long as Conservation Measures for the Security Zones herein described remain as requirements in administrative rule and the NCDE Conservation Strategy and DNRC complies with them. Plaintiffs reserve their right to challenge DNRC non-compliance with any Conservation Measure requirements and/or any modification or change made to the Conservation Measure requirements by DNRC or the Land Board.
3. Plaintiffs and the State forever release and covenant not to sue or to file any administrative claim against one another with respect to any and all civil claims between them that were or could have been made in the underlying legal action concerning the DNRC HCP; provided, however, that nothing in this Agreement shall affect or impair claims to enforce this Agreement.
4. The parties to this Agreement agree that they will each bear their own attorneys' fees and costs and hereby release one another from any claims for such fees and costs. Plaintiffs reserve their right to seek an award of attorneys' fees and costs from the Federal Defendants in Case No. 9:13-cv-

00061-DWM, U.S. District Court for the District of Montana.

5. The undersigned representatives of each party certify that they are fully authorized by the party 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. None of the provisions or obligations of this Agreement shall become binding and effective unless and until the Court enters an Order adopting the terms of this Agreement. The Effective Date of this Agreement shall be the date the Court enters the Order.
6. The terms of this Agreement constitute the entire agreement of the Parties with regard to Plaintiff's claims set forth in the above-captioned case, and no statement, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced.
7. 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 America, 511 U.S. 375 (1994).

Dated: 10/5/2015



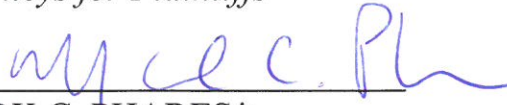
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Dated: 10/1/2015



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