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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**
11 **TUCSON DIVISION**

13 Defenders of Wildlife, et al.,)
14 Plaintiffs,)
15 v.)
16 S.M.R. Jewell, et al.,)
17 Defendants,)
18 and;)
19 Protect Americans Now, et al.,)
20 Defendant-Intervenors.)

No. 4:14-cv-02472-JGZ

STIPULATED SETTLEMENT
AGREEMENT

21 State of Arizona,)
22 Plaintiff,)
23 and;)
24 State of Colorado, New Mexico)
Department of Game and Fish, and)
25 State of Utah,)
26 Plaintiff-Intervenors;)
v.)
S.M.R. Jewell, et al.,)
27 Defendants.)

No. 4:15-cv-00245-JGZ

1
2 This Stipulated Settlement Agreement (“Agreement”) is entered into by and between
3 Plaintiffs Defenders of Wildlife, Center for Biological Diversity, Endangered Wolf Center,
4 David R. Parsons, Wolf Conservation Center and the State of Arizona (collectively,
5 “Plaintiffs”), Plaintiff Intervenor State of Utah (“State of Utah”), and Defendants S.M.R. Jewell,
6 in her official capacity as Secretary of the United States Department of the Interior; and the
7 United States Fish and Wildlife Service (collectively, “Defendants”) who, by and through their
8 undersigned counsel, state as follows:

9 WHEREAS, in 1976 the United States Fish and Wildlife Service (“Service”) listed the
10 Mexican wolf (*Canis lupus baileyi*) as endangered (41 Fed. Reg. 17,736);

11 WHEREAS, in 1978, the Service published a rule classifying the gray wolf (*Canis*
12 *lupus*) as an endangered population at the species level, thereby subsuming the separate
13 Mexican wolf listing into the listing for the gray wolf in the contiguous United States and
14 Mexico (43 Fed. Reg. 9,607);

15 WHEREAS, on January 16, 2015, the Service reclassified the Mexican wolf as an
16 endangered subspecies of the gray wolf (80 Fed. Reg. 2,488);

17 WHEREAS, the Endangered Species Act (“ESA”) requires the Service to develop and
18 implement plans for the conservation and survival of endangered and threatened species unless
19 the Service finds that such a plan will not promote the conservation of the species, 16 U.S.C. §
20 1533(f);

21 WHEREAS, in 1982 the Service issued a document entitled the “Mexican Gray Wolf
22 Recovery Plan”;

23 WHEREAS, Defenders of Wildlife, Center for Biological Diversity, Endangered Wolf
24 Center, David R. Parsons, and Wolf Conservation Center sent a letter to Defendants on
25 September 10, 2014 stating their intent to file suit to compel the Service to issue a recovery plan
26 pursuant to 16 U.S.C. § 1533(f)(1);

27 WHEREAS, on November 12, 2014, Defenders of Wildlife, Center for Biological
28 Diversity, Endangered Wolf Center, David R. Parsons, and Wolf Conservation Center filed

1 *Defenders of Wildlife et al. v. Jewell et al.*, 4:14-cv-02472-JGZ, alleging that the Service’s
2 failure to prepare a recovery plan for the Mexican wolf, pursuant to ESA Section 4(f), 16
3 U.S.C. § 1533(f), violates the ESA and/or the Administrative Procedure Act (“APA”), 5 U.S.C.
4 § 706(1);

5 WHEREAS, on January 29, 2015, Protect Americans Now, Colorado Farm Bureau,
6 New Mexico Farm and Livestock Bureau, Utah Farm Bureau, and Coalition for Arizona and
7 New Mexico Communities for Stable Economic Growth filed a motion to intervene in
8 *Defenders of Wildlife et al. v. Jewell et al.*, 4:14-cv-02472-JGZ, which was granted on July 13,
9 2015;

10 WHEREAS, on January 30, 2015, Defendants filed a motion to dismiss in *Defenders of*
11 *Wildlife et al. v. Jewell et al.*, 4:14-cv-02472-JGZ, which was denied on September 30, 2015;

12 WHEREAS, the State of Arizona Game and Fish Department sent a letter to Defendants
13 on January 6, 2015, stating its intent to file suit to compel the Service to issue a recovery plan
14 pursuant to 16 U.S.C. § 1533(f);

15 WHEREAS, on June 8, 2015, the State of Arizona filed *State of Arizona v. Jewell et al.*,
16 4:15-cv-00245-JGZ, alleging that the Service’s failure to prepare a new recovery plan for the
17 Mexican wolf, pursuant to ESA Section 4(f), 16 U.S.C. § 1533(f), violates the ESA and/or the
18 Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1);

19 WHEREAS, on September 1, 2015, the New Mexico Department of Game and Fish sent
20 a letter to Defendants S.M.R. Jewell and Daniel Ashe stating its intent to file suit to compel
21 Defendants to include the State of New Mexico in ongoing settlement discussion;

22 WHEREAS, on September 4, 2015, the New Mexico Department of Game and Fish
23 filed a motion to intervene in *State of Arizona v. Jewell et al.*, 4:15-cv-00245-JGZ, which was
24 granted on October 23, 2015;

25 WHEREAS, on September 1, 2015, the State of Colorado sent a letter to Defendants
26 Sally Jewell and Daniel M. Ashe notifying them of the State’s intent to file suit to compel
27 Defendants to comply with Section 4(f) of the ESA with regard to the Mexican wolf;

28

1 WHEREAS, on September 16, 2015, the State of Colorado filed a motion to intervene in
2 *State of Arizona v. Jewell et al.*, 4:15-cv-00245-JGZ, which was granted on October 23, 2015;

3 WHEREAS, the New Mexico Department of Game and Fish and the State of Colorado
4 decline to join the Agreement because they object to the final recovery plan deadline reflected
5 in Paragraph 1, but both parties have represented to the settling parties that they will not oppose
6 approval of the Agreement and intend to voluntarily dismiss their claims pursuant to Fed. R.
7 Civ. P. 41(a)(1)(A) within 7 days of the Court’s approval of this Agreement;

8 WHEREAS, on November 30, 2015, the State of Utah filed a motion to intervene in
9 *State of Arizona v. Jewell et al.*, 4:15-cv-00245-JGZ, which was granted on January 25, 2016;

10 WHEREAS, based on the available information, the Service believes that preparation of
11 a recovery plan for the Mexican wolf pursuant to Section 4(f) of the ESA, 16 U.S.C. § 1533(f),
12 will promote the conservation of the species;

13 WHEREAS, Plaintiffs, the State of Utah, and Defendants, through their authorized
14 representatives, and without any admission or final adjudication of the issues of fact or law with
15 respect to Plaintiffs’ and the State of Utah’s claims, have reached a settlement that they consider
16 to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs and the
17 State of Utah’s complaints;

18 WHEREAS, Plaintiffs, the State of Utah, and Defendants agree that settlement of this
19 action in this manner is in the public interest and is an appropriate way to resolve the dispute
20 between them;

21 NOW, THEREFORE, Plaintiffs, the State of Utah, and Defendants hereby stipulate and
22 agree as follows:

23 1. Pursuant to Section 4(f) of the ESA, 16 U.S.C. § 1533(f), as amended, the Service
24 agrees to complete a final recovery plan for the Mexican wolf and submit for publication in the
25 Federal Register a notice of availability of the recovery plan by November 30, 2017.

26 2. The Service agrees to complete an independent peer review of the draft recovery plan,
27 consistent with Section A(2) of the Department of Interior and Department of Commerce
28 Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (“Peer

1 Review Policy”), 59 Fed. Reg. 34,270 (July 1, 1994). Consistent with the Peer Review Policy,
2 the Service agrees to solicit and consider all available scientific and commercial information
3 from appropriate State agencies and other entities specified in Section A(2)(a) of the Peer
4 Review Policy, including but not limited to the State of Arizona, the State of New Mexico, the
5 State of Colorado, and the State of Utah.

6 3. In the interim period until the final recovery plan issues as specified in Paragraph 1, the
7 Service agrees to submit reports on the status of the recovery planning process to the Court and
8 to the parties at six-month intervals. The first status report will be due six months after approval
9 of this Agreement by the Court.

10 4. The Order entering this Agreement may be modified by the Court upon good cause
11 shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between
12 Plaintiffs, the State of Utah, and Defendants filed with and approved by the Court, or upon
13 written motion filed by one of the parties to the Agreement and granted by the Court. In the
14 event that any party to this Agreement seeks to modify the terms of this Agreement, including
15 the deadline specified in Paragraph 1, or in the event of a dispute arising out of or relating to
16 this Agreement, or in the event that any party to this Agreement believes that any other party
17 has failed to comply with any term or condition of this Agreement, the party seeking the
18 modification, raising the dispute, or seeking enforcement shall provide the other parties to this
19 Agreement with notice of the claim or modification. The parties to this Agreement agree that
20 they will meet and confer (either telephonically or in person) at the earliest possible time in a
21 good-faith effort to resolve the claim before seeking relief from the Court. If the parties to this
22 Agreement are unable to resolve the claim themselves, the aggrieved party may seek relief from
23 the Court. In the event that Defendants fail to meet the deadline in Paragraph 1 and have not
24 sought to modify it, the Plaintiffs and the State of Utah’s first remedy shall be a motion to
25 enforce the terms of this Agreement. This Agreement shall not, in the first instance, be
26 enforceable through a proceeding for contempt of court.

27 5. Defendants agree to pay Plaintiffs Defenders of Wildlife, Center for Biological
28 Diversity, Endangered Wolf Center, David R. Parsons, and Wolf Conservation Center’s

1 reasonable attorneys' fees and costs incurred in connection with their complaint and opposition
2 to the motion to dismiss, pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540(g), in the
3 amount of \$56,467.07. Plaintiffs agree to accept this amount in full satisfaction of any and all
4 claims, demands, rights, and causes of action for attorneys' fees and costs incurred in
5 connection with the above-captioned litigation pursuant to the ESA, 16 U.S.C. § 1540(g), and/or
6 any other statute and/or common law theory, through and including the date of this agreement.
7 Plaintiffs Defenders of Wildlife, Center for Biological Diversity, Endangered Wolf Center,
8 David R. Parsons, and Wolf Conservation Center agree that receipt of this payment from
9 Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this
10 matter, through and including the date of this agreement.

11 6. Plaintiff State of Arizona and Plaintiff Intervenor State of Utah agree to release any and
12 all claims for attorneys' fees and costs that they may have against Defendants under any
13 authority with respect to this litigation through and including the date of dismissal.

14 7. Plaintiffs' and the State of Utah's releases set forth in paragraphs 5-6 are expressly
15 limited to the above-captioned actions and do not apply to any other litigation including, but not
16 limited to, any ongoing and/or future litigation regarding the Mexican wolf recovery plan. By
17 this Agreement, Defendants do not waive any right to contest attorneys' fees claimed by
18 Plaintiffs, Intervenors, or their respective counsel, including hourly rates, in any future
19 litigation, or continuation of the present actions. Further, this Agreement has no precedential
20 value and shall not be used as evidence in any other attorneys' fees litigation.

21 8. Plaintiffs Defenders of Wildlife, Center for Biological Diversity, Endangered Wolf
22 Center, David R. Parsons, and Wolf Conservation Center agree to furnish Defendants with the
23 information necessary to effectuate the payment specified in paragraph 5 above. Defendants
24 agree to submit all necessary paperwork for the processing of the attorneys' fees award to the
25 Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. § 1540(g)(4), within
26 ten (10) days of the receipt of the necessary information from Plaintiffs Defenders of Wildlife,
27 Center for Biological Diversity, Endangered Wolf Center, David R. Parsons, and Wolf
28 Conservation Center or the approval of this Agreement by the Court, whichever is later.

1 Plaintiffs Defenders of Wildlife, Center for Biological Diversity, Endangered Wolf Center,
2 David R. Parsons, and Wolf Conservation Center's attorneys agree to send confirmation of the
3 receipt of the payment to counsel for Defendants within 14 days of such payment.

4 9. Plaintiffs, the State of Utah, and Defendants agree that this Agreement was negotiated
5 and entered into in good faith and that it constitutes a settlement of claims that were vigorously
6 contested, denied, and disputed. By entering into this Agreement, neither Plaintiffs, the State of
7 Utah, nor Defendants waive any claim or defense, except as expressly provided herein.

8 10. No provision of this Agreement shall be interpreted as, or constitutes, a commitment or
9 requirement that Defendants are obligated to spend funds in violation of the Anti-Deficiency
10 Act, 31 U.S.C. § 1341, or any other law or regulation.

11 11. No provision of this Agreement shall be interpreted to or constitute a commitment or
12 requirement that the Defendants take action in contravention of the ESA, the APA, or any other
13 law or regulation, either substantive or procedural. With respect to the procedures to be
14 followed in developing the final recovery plan and with respect to the substance of the final
15 recovery plan, nothing in this Agreement shall be construed to limit or modify the discretion
16 accorded to the Service by the ESA, APA, or general principals of administrative law. To
17 challenge any recovery plan issued pursuant to Paragraph 1, Plaintiffs and the State of Utah
18 must file a separate action. Defendants reserve the right to raise any applicable claims or
19 defenses to any substantive challenge raised by any party. The parties to this Agreement agree
20 that this paragraph shall be construed in a manner that is consistent with the provisions of
21 Paragraphs 1-3, *supra*, and not to negate the provisions of those paragraphs.

22 12. The Agreement contains all of the agreement between Plaintiffs, the State of Utah, and
23 Defendants, and is intended to be the final and sole agreement between them. Plaintiffs, the
24 State of Utah, and Defendants agree that any prior or contemporaneous representations or
25 understanding not explicitly contained in this written Agreement, whether written or oral, are of
26 no further legal or equitable force or effect.

27 13. The terms of this Agreement shall become effective upon entry of an order by the Court
28 (similar in substance to the attached Proposed Order) approving the Agreement.

1 14. Upon approval of this Agreement by the Court, all counts of Plaintiffs' and the State of
2 Utah's complaints shall be dismissed with prejudice. Notwithstanding the dismissal of
3 Plaintiffs' and the State of Utah's complaints, however, the parties to this Agreement hereby
4 stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with
5 the terms of this Agreement and to resolve any motions to modify such terms. *See Kokkonen v.*
6 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

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

10
11 DATED: April 26, 2016

12 Respectfully submitted,

13 JOHN C. CRUDEN
Assistant Attorney General

14
15 /s/ Nicole M. Smith
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21 Attorneys for Defendants in Case Nos. 4:14-
22 cv-02472-JGZ and 4:15-cv-00245-JGZ

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Attorney for Plaintiffs in Case
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