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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WILDEARTH GUARDIANS,)
)
Plaintiff,) Case No. 2:12-cv-00716-MMD-PAL
)
v.)
)
UNITED STATES DEPARTMENT OF)
AGRICULTURE, ANIMAL AND PLANT)
HEALTH INSPECTION SERVICE,)
)
Defendant.)

STIPULATION OF DISMISSAL

The Parties to this action, Plaintiff, WildEarth Guardians, and Defendant, the United States Department of Agriculture, Animal and Plant Health Inspection Service (“APHIS”), hereby stipulate that, upon entry of an Order by the Court approving the Parties’ Stipulated Settlement Agreement (attached as Exhibit A), and retaining jurisdiction to oversee compliance with the Agreement,¹ and for the reasons and pursuant to the terms set forth in the Settlement Agreement, Plaintiff’s claims shall be voluntarily dismissed with prejudice.

Respectfully submitted on this 5th day of October, 2016.

DANIEL G. BOGDEN
United States Attorney
BLAINE T. WELSH
Assistant United States Attorney

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

¹ See *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

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/s/Alison D. Garner
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PROOF OF SERVICE

I, Alison D. Garner, certify the following individuals were served with a copy of the foregoing on the date and via the method of service identified below:

Electronic Case Filing:

Julie Cavanaugh-Bill
julie@cblawoffices.org, fermina@cblawoffices.org, juliana.cblaw@gmail.com

Ashley Wilmes
awilmes@wildearthguardians.org

Dated this 5th day of October, 2016.

/s/ Alison D. Garner

ALISON D. GARNER
Attorney for Federal Defendants

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 WILDEARTH GUARDIANS,)
5 Plaintiff,) Case No. 2:12-cv-00716-MMD-PAL
6 v.)
7 UNITED STATES DEPARTMENT OF)
8 AGRICULTURE, ANIMAL AND PLANT)
9 HEALTH INSPECTION SERVICE,)
10 Defendant.)

11 **STIPULATED SETTLEMENT AGREEMENT**

12 Plaintiff, WildEarth Guardians, and Defendant, the United States Department of Agriculture,
13 Animal and Plant Health Inspection Service (“APHIS”), by and through their undersigned counsel
14 state as follows:
15

16 WHEREAS, the civil action entitled *WildEarth Guardians v. United States Department of*
17 *Agriculture, Animal and Plant Health Inspection Service*, No. 2:12-cv-00716-MMD-PAL, brought in
18 the U.S. District Court for the District of Nevada by Plaintiff, against the Defendant, APHIS, alleged
19 various claims related to APHIS’s 1994 Programmatic Environmental Impact Statement (“PEIS”) and
20 Nevada Environmental Assessment (“EA”) regarding predator damage management;

21 WHEREAS, on March 14, 2013, the district court granted in part and denied in part APHIS’s
22 motion to dismiss (ECF No. 31);

23 WHEREAS, on August 3, 2015, the U.S. Court of Appeals for the Ninth Circuit, in Case No.
24 13-16071, issued a mandate that reversed the district court’s decision on APHIS’s motion to dismiss
25 (ECF No. 63-1);
26

1 NOW, THEREFORE, through their undersigned counsel, Plaintiff and APHIS hereby enter
2 into this Settlement Agreement and Release (“Settlement Agreement”), and stipulate and agree as
3 follows:

- 4 1. APHIS agrees to post the following language, signed by the Wildlife Services Deputy
5 Administrator, on the APHIS-Wildlife Services’ National Environmental Policy Act web
6 page:
7

8 Notice Regarding APHIS-Wildlife Service’s Reliance on the 1994
9 Programmatic Environmental Impact Statement (“PEIS”) and 1995 Record of
10 Decision.

11 In the 21 years since the PEIS Record of Decision was issued, APHIS-Wildlife
12 Services has initiated the phase out of any reliance on the 1994 PEIS. Today,
13 most of APHIS-Wildlife Services National Environmental Policy Act (“NEPA”)
14 documents are not tiered to the PEIS. No new APHIS-Wildlife Services NEPA
documents signed after the date of this Notice will be tiered to the 1994 PEIS. In
the future, APHIS-Wildlife Services intends to revise or redo all of its NEPA
documents that are currently tiered to the 1994 PEIS.

15 APHIS also agrees to keep the foregoing notice posted on the APHIS-Wildlife Services
16 website until new NEPA decisions are complete and until no NEPA documents remain that
17 tier to the PEIS. APHIS-Wildlife Services also agrees to email its staff with the foregoing
18 notice within 30 days of execution of this Settlement Agreement.

- 19 2. APHIS agrees to complete new NEPA analysis for the Nevada predator damage management
20 program. Until a new NEPA decision is complete, APHIS may rely on the current NEPA
21 analysis for Nevada predator damage management activities, except as described in Paragraph
22 3.
23
24 3. APHIS agrees to immediately cease predator damage management activities in Wilderness
25 and Wilderness Study Areas in Nevada until the NEPA revision process identified in
26 Paragraph 2 is complete, with the caveat that APHIS-Wildlife Services may need to respond

1 should a public health and/or safety emergency arise in those areas, and that nothing in this
2 agreement shall preclude it from doing so. APHIS-Wildlife Services will provide email
3 notice to WildEarth Guardians of any such activities.

- 4
- 5 4. The Parties agree that they will submit the accompanying stipulation of dismissal and
6 proposed order dismissing the case with prejudice pursuant to Fed. R. Civ. P. 41, provided
7 that the Court shall retain jurisdiction as specified in Paragraph 5. *See Kokkonen v. Guardian*
8 *Life Ins. Co. of Am.*, 511 U.S. 375 (1994). If the Court does not dismiss the case pursuant to
9 the terms of the Settlement Agreement, it is voidable by any party.
- 10 5. The Parties agree that the Court should retain jurisdiction over this case solely to enforce the
11 terms of this Settlement Agreement. In the event that APHIS seeks to modify the terms of
12 this Settlement Agreement, it shall provide Plaintiff with notice of that request. In the event
13 of a dispute arising out of or relating to this Settlement Agreement, or in the event that either
14 party believes that the other party has failed to comply with any term or condition of this
15 Settlement Agreement, the party raising the dispute or seeking enforcement shall provide the
16 other party with notice of the claim. The Parties agree that they will meet and confer (either
17 telephonically or in-person) at the earliest possible time in a good faith effort to resolve any
18 requests, disputes or claims before seeking further relief. If the Parties are unable to resolve
19 the request, dispute or claim themselves within 60 days of the receipt of the notice of a
20 request, dispute or claim or such longer time to which they agree, then the Parties may seek
21 relief from this Court. The Parties agree that they will not seek contempt of court as an
22 available remedy for any alleged violation of this Agreement, and the Parties therefore
23 knowingly waive any right they might have to seek an order of contempt for any such
24 violation.
25
26

- 1 6. For purposes of this Settlement Agreement only, and without conceding liability for attorneys'
2 fees or costs, APHIS agrees to pay Plaintiff a total of \$91,954.90 in full and complete
3 satisfaction of any and all Plaintiff's claims, demands, rights, and causes of action pursuant to
4 the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d), and/or any other statute
5 and/or common law theory, for all attorneys' fees and costs related to this litigation.
6
- 7 7. Defendant's payment shall be accomplished by electronic funds transfer to the WildEarth
8 Guardians' Savings Account at Los Alamos National Bank. Plaintiff's attorney shall provide
9 to the undersigned counsel the appropriate account number and other information needed to
10 facilitate payment. APHIS shall submit the paperwork for the payment within 30 days after
11 the order of dismissal is entered by the Court, or within 30 days of Plaintiff providing the
12 necessary information to facilitate the payment, whichever is later. Plaintiff's attorney shall
13 provide notice to Defendant's attorney within 14 days of receipt of such payment.
14
- 15 8. Plaintiff agrees that payment as specified in Paragraph 6, from APHIS shall operate as a
16 release of Plaintiff's claims for attorneys' fees and costs in this matter.
- 17 9. Plaintiff's attorneys are receiving funds in trust for Plaintiff, and Plaintiff and its attorneys
18 agree to hold harmless APHIS in any litigation, further suit, or claim arising from the deposit
19 of the agreed-upon \$91,954.90 settlement amount into the Client Trust Account identified in
20 Paragraph 7.
21
- 22 10. This Agreement constitutes the complete and final resolution of all legal, equitable, and
23 administrative claims arising out of or in any way associated with Plaintiff's Complaint, as
24 amended by the Court's March 29, 2013 Order, ECF No. 34, in the above-captioned case and
25 which Plaintiff has asserted or could have asserted in this case. In exchange for Federal
26 Defendant's commitments in this Agreement, Plaintiff and its respective affiliates, successors,

1 and assigns hereby unconditionally and irrevocably release, waive, covenant not to sue, and
2 forever discharge Federal Defendant (including its past, present, and future officers, agents,
3 and affiliates) from any and all claims, causes of action, allegations, demands, suits,
4 judgments, liabilities, fees, interests, or obligations, whether known or unknown, foreseen or
5 unforeseen, disclosed or undisclosed, presently asserted or otherwise, regarding, arising out
6 of, or in any way associated with Plaintiff's Complaint in the above-captioned case.

7
8 Termination of this Agreement shall not vitiate this release, waiver, and covenant not to sue
9 with respect to any claims, causes of action, allegations, demands, suits, judgments, liabilities,
10 fees, interests, or obligations existing at or before the Agreement's termination.

11 11. The obligations in Paragraph 1 of this Settlement Agreement terminate when new NEPA
12 analyses that do not tier to the PEIS are complete and no NEPA documents remain that tier to
13 the PEIS. The obligations in Paragraphs 2 and 3 of this Settlement Agreement terminate
14 when APHIS issues a new NEPA decision for the Nevada predator damage management
15 program. Any challenge to the sufficiency of these analyses does not alter the termination of
16 this Settlement Agreement
17

18 12. This Settlement Agreement requires APHIS to fulfill only the commitments specified within
19 this agreement and does not limit its authority with regard to the substantive outcome of any
20 decision.
21

22 13. This Settlement Agreement is the result of compromise and settlement, and it is based on and
23 limited solely to the facts involved in the claims subject to this Settlement Agreement. This
24 Settlement Agreement does not represent an admission by any party to any fact, claim, or
25 defense concerning any issue in this case. Further, this Settlement Agreement has no
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JOHN C. CRUDEN
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Environment and Natural Resources Division

/s/Alison D. Garner
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Attorney for WildEarth Guardians

PROOF OF SERVICE

I, Alison D. Garner, certify the following individuals were served with a copy of the foregoing on the date and via the method of service identified below:

Electronic Case Filing:

Julie Cavanaugh-Bill
julie@cblawoffices.org, fermina@cblawoffices.org, juliana.cblaw@gmail.com

Ashley Wilmes
awilmes@wildearthguardians.org

Dated this 5th day of October, 2016.

/s/ Alison D. Garner
ALISON D. GARNER
Attorney for Federal Defendants

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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 WILDEARTH GUARDIANS,)
5 Plaintiff,) Case No. 2:12-cv-00716-MMD-PAL
6 v.)
7 ~~[PROPOSED]~~ ORDER)
8 UNITED STATES DEPARTMENT OF)
9 AGRICULTURE, ANIMAL AND PLANT)
10 HEALTH INSPECTION SERVICE,)
11 Defendant.)

11
12 The Parties to this action have submitted a Stipulated Settlement Agreement and Stipulation
13 of Dismissal in this matter, ECF No. 67. Having reviewed the settlement agreement and stipulation
14 of dismissal, and good cause appearing, I hereby approve the Parties' Stipulated Settlement
15 Agreement. The Court retains jurisdiction over this matter to oversee compliance with the
16 Agreement. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). I also approve
17 the Parties' Stipulation of Dismissal. Plaintiffs' claims are hereby dismissed with prejudice and this
18 case is closed.

19
20 IT IS SO ORDERED.

21
22 DATED THIS 5th day of October, 2016.

23
24 
25 _____
26 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE