

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

FOREST GUARDIANS, <u>et. al</u> ,)	
)	Civ. No. 1:06-cv-02115-GK
Plaintiffs,)	
)	
v.)	
)	
DIRK KEMPTHORNE, <u>et. al</u> ,)	
)	
Defendants.)	
)	
)	
)	
)	

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement is made between Plaintiffs Forest Guardians, Public Employees For Environmental Responsibility, Center For Native Ecosystems, Wildlands Conservation Alliance, Jews Of The Earth, Con Slobodchikoff, David Lightfoot, Ana Davidson, and Bob Luce (collectively “Plaintiffs”) and Defendants Dirk Kempthorne, Secretary of the Interior, and Dale Hall, Director of the U.S. Fish and Wildlife Service (“FWS”).

WHEREAS, on February 23, 2004, Forest Guardians, as well as 73 individuals, realtors, homebuilders, religious organizations, small business owners, and conservation organizations, submitted a petition to list the Gunnison’s prairie dog as a threatened or endangered and to designate critical habitat under the Endangered Species Act (“ESA”). The Petition argued that listing the Gunnison’s prairie dog is warranted, citing significant population declines, habitat loss and degradation, ongoing threats to habitat, continuing loss due to shooting, unrestricted poisoning, threats attributed to disease, inadequate regulatory mechanisms, and other factors including drought.

WHEREAS, on February 7, 2005, Defendants published in the Federal Register a

negative 90-day finding on Plaintiffs' Petition to list the Gunnison's prairie dog as threatened or endangered under the ESA, concluding that the Petition did not present substantial scientific information indicating listing may be warranted. 71 Fed. Reg. 6241-6248 (Feb. 7, 2006) ("90-day finding");

WHEREAS, by letter dated August 17, 2006, Plaintiffs provided written notice of their intent to sue regarding the 90-day finding on the Petition to list the Gunnison's prairie dog;

WHEREAS, on December 13, 2006, Plaintiffs filed their Complaint challenging Defendants' 90-day finding for the Gunnison's prairie dog, consisting of one Claim for Relief alleging violations of the ESA, 16 U.S.C. § 1533, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A);

WHEREAS, Plaintiffs sought a declaratory judgment, a Court order requiring Defendants to issue a new positive 90-day finding and complete a 12-month finding on the petition to list the Gunnison's prairie dog, after conducting a status review and requesting public comment, and reasonable attorney fees and costs;

WHEREAS, the parties, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs' claim, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs' Complaint, and the parties agree that settlement of this action in this manner is in the public interest;

WHEREAS, by entering into this settlement, Plaintiffs do not endorse Defendants' negative 90-day finding on the petition to list the Gunnison's prairie dog;

ACCORDINGLY, THE PARTIES AGREE AND STIPULATE AS FOLLOWS:

1. FWS shall undertake a review of the status of the Gunnison's prairie dog and provide for public notice and comment. No later than February 1, 2008, FWS shall deliver to the Office of the Federal Register for publication a determination whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing activity ("12-month finding"). See 16 U.S.C. § 1533(b)(3)(B). FWS shall also deliver via electronic mail a copy of the 12-month finding to Plaintiffs' counsel on February 1, 2008, after the 12-month finding has been submitted to the Office of the Federal Register.

2. Either party may seek to modify the deadline for the action specified in Paragraph 1 for good cause shown, consistent with the Federal Rules of Civil Procedure. This Stipulated Settlement Agreement may be modified or amended only by order of this Court.

3. No party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable timeline for making a warranted, not warranted, or warranted but precluded determination in any other proceeding regarding Defendants' implementation of the ESA.

4. Plaintiffs' Complaint shall be dismissed without prejudice upon approval of this Stipulated Settlement Agreement by the Court. Notwithstanding such dismissal, nothing herein shall preclude Plaintiffs from bringing a new lawsuit challenging the 12-month finding on the Gunnison's prairie dog. The parties 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).

5. Defendants agree that Plaintiffs are entitled to recover their reasonable attorney fees and costs in this action. Despite good faith efforts, however, the Parties have been unable to

resolve the amount of reasonable fees and costs. Upon the approval of this Settlement Agreement, the Parties will submit for the Court's approval a proposed briefing schedule to resolve Plaintiffs' fee claim.

6. This Settlement Agreement contains all of the agreements between the Parties, and is intended to be the final and sole agreement between the Parties. The Parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Settlement Agreement, whether written or oral, are of no further legal or equitable force or effect.

7. Nothing in this Settlement Agreement shall be construed or offered in evidence in any proceeding as an admission or concession of wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Settlement Agreement. Defendants do not waive any defenses they may have concerning the claim settled under this Settlement Agreement or any similar claims brought in the future by any other party. This Settlement Agreement is executed solely for the purpose of compromising and settling Plaintiffs' Complaint and nothing herein shall be construed as precedent in any other context.

8. Nothing in this Stipulated Settlement Agreement shall be construed to limit or modify the discretion accorded to the Defendants by the ESA, the APA, or general principles of administrative law. Defendants contend that no provision of this Settlement Agreement can be interpreted as or constitute a commitment or requirement that the Defendants are obligated or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341. In the event, however, Defendants contend in the future that compliance with this Settlement Agreement would be in contravention of the Anti-Deficiency Act, Plaintiffs reserve the right to argue that the Anti-Deficiency Act does not excuse compliance with this Settlement Agreement.

9. Each of the parties' undersigned representatives certifies that they are fully authorized to enter into and execute the terms and conditions of this Stipulated Settlement Agreement, and do hereby agree to the terms herein.

Respectfully submitted,

Dated: June 29, 2007

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Attorneys for Defendants

IT IS SO ORDERED:

Dated: _____

GLADYS KESSLER
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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