



---

Intervenor-Defendants. )

---

Plaintiffs, the County of San Miguel, Colorado, Center for Biological Diversity, WildEarth Guardians, Public Employees for Environmental Responsibility, National Audubon Society, the Larch Company, Center for Native Ecosystems, Sinapu, Sagebrush Sea Campaign, Black Canyon Audubon Society, and Sheep Mountain Alliance, and Federal Defendants, Sam Hamilton, Director of the United States Fish and Wildlife Service, and Ken Salazar, Secretary of the United States Department of the Interior (collectively “Service”), by and through their undersigned counsel, state as follows:

WHEREAS, on April 7, 2006, the Service issued a “12-month finding,” pursuant to 16 U.S.C. §§ 1533(b)(3)(B) and 1533(B)(3)(C)(i), that listing the Gunnison sage-grouse, *Centrocercus minimus*, under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, was not warranted;

WHEREAS, on November 14, 2006, Plaintiffs filed a Complaint for Declaratory and Injunctive relief, pursuant to the ESA, and on October 24, 2007 filed an Amended Complaint for Declaratory and Injunctive relief, alleging that the 12-month finding on the Gunnison sage-grouse violated the ESA;

WHEREAS, on March 23, 2009, the Service notified the Court and the parties that it intended to seek a remand of the finding and to negotiate a settlement of Plaintiffs’ claims;

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’ claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set

forth in Plaintiffs' Amended Complaint;

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The Service agrees to reconsider its finding that listing the Gunnison sage-grouse is not warranted.
2. The Service agrees to notify the public that it is reconsidering its prior finding and that the public is invited to provide any relevant information.
3. On or before June 30, 2010, the Service shall submit to the Federal Register a 12-month finding, pursuant to 16 U.S.C. § 1533(b)(3)(B), that listing the Gunnison sage-grouse under the ESA is (a) warranted; (b) not warranted; or (c) warranted but precluded by higher priority listing actions.
4. Either party may seek to modify the deadline for the action specified in paragraph 3, above, for good cause shown consistent with the Federal Rules of Civil Procedure. In that event, or in the event that either party believes that the other party has failed to comply with any term or condition of this agreement, the parties shall use the dispute resolution procedures specified in paragraph 5.
5. The Order entering this agreement may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between the parties filed with and approved by the Court, or upon written motion filed by one of the parties and granted by the Court. In the event that either party seeks to modify the terms of this agreement, including the deadline for the action specified in paragraph 3, or in the event of a dispute arising out of or relating to this Agreement, or in the event that either party believes that the other party has failed to comply with any term or condition of this agreement, the party seeking the modification, raising the dispute or seeking enforcement, shall provide the other party with written notice of the claim. The parties

agree that they will meet and confer (in-person not required) in a good-faith effort to resolve the claim before pursuing relief from the Court. If the parties are unable to resolve the claim after conferring, either party may pursue relief from the Court.

6. This agreement only requires the Defendants to take action by the deadline specified in paragraph 3 and does not limit the Service's authority with regard to the substantive outcome of any determinations. To challenge any finding issued in accordance with this agreement, Plaintiffs will be required to file a separate action. Plaintiffs do not waive their ability to challenge substantive decisions made by the Defendants pursuant to paragraph 3, above, and Defendants do not waive any applicable claims or defenses.

7. No party shall use this agreement or the terms herein as evidence of what does or does not constitute a reasonable time line for making a determination pursuant to 16 U.S.C. § 1533 in this or any other proceeding regarding the Service's implementation of the ESA.

8. Defendants agree that Plaintiffs are the "prevailing parties" in this action, and agree to pay to Plaintiffs reasonable attorneys' fees and costs, pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540 (g). The parties agree to attempt to resolve Plaintiffs' claims for fees and costs expeditiously and without the need for Court intervention. The Court shall retain jurisdiction over the case for the purpose of resolving any dispute between the parties regarding Plaintiffs' claims for an award of fees and costs. If the parties are unable to resolve attorneys' fees and costs among themselves, Plaintiffs shall file any motion seeking such award within 30 days of the order adopting this Stipulated Settlement Agreement. By this Agreement, Defendants do not waive any right to contest fees claimed by Plaintiffs, including the hourly rate, in any continuation of the present action or any future litigation.

9. No provision of this agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the Endangered Species Act, the Administrative Procedure Act, 5 U.S.C. 551, *et seq.* (“APA”), or any other law or regulation, either substantive or procedural. Nothing in this agreement shall be construed to limit or modify the discretion accorded to the Service by the ESA, the APA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any final determination.

10. Nothing in this agreement shall be interpreted as, or shall constitute, a requirement that Defendants obligate to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

11. The parties agree that this agreement was negotiated in good faith and it constitutes a settlement of claims that were vigorously contested, denied, and disputed by the parties. By entering into this agreement the parties do not waive any claim or defense.

12. The undersigned representatives of each party certify that they are fully authorized by the party or parties 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.

13. The terms of this agreement shall become effective upon entry of an order by the Court ratifying the agreement.

14. Upon entry of this agreement by the Court, all counts of Plaintiffs’ Amended Complaint shall be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1). Notwithstanding the dismissal of this action, 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 Am., 511 U.S. 375 (1994).

Respectfully submitted this \_\_\_\_ day of August, 2009,

JOHN C. CRUDEN, Acting Assistant  
Attorney General  
JEAN E. WILLIAMS, Section Chief  
LISA L. RUSSELL, Asst. Section Chief

---

LAWSON E. FITE, Trial Attorney (Oregon  
Bar No. 055573)  
U.S. Department of Justice  
Environment & Natural Resources Division  
Wildlife & Marine Resources Section  
Ben Franklin Station  
P.O. Box 7369  
Washington, DC 20044-7369  
Phone: (202) 305-0217  
Fax: (202) 305-0275  
Email: lawson.fite@usdoj.gov

Attorneys for Federal Defendants

---

Amy R. Atwood  
D.C. Bar No. 470258  
CENTER FOR BIOLOGICAL DIVERSITY  
P.O. Box 11374  
Portland, OR 97211  
503-283-5474  
503-283-5528 fax  
atwood@biologicaldiversity.org

Geoff Hickcox, *pro hac vice*  
WESTERN ENVIRONMENTAL LAW

CENTER  
679 East Second Ave, Suite 11B  
Durango, CO 81301  
970-382-5902  
970-385-6804 (fax)  
ghickcox@gmail.com

Rebekah S. King, *pro hac vice*  
Assistant San Miguel County Attorney  
P.O. Box 791  
333 W. Colorado Ave., Third Floor  
Telluride, CO 81435  
970-728-3879  
970-728-3718 (fax)  
beckyk@sanmiguelcounty.org

Attorneys for Plaintiffs

**PROPOSED ORDER**

The terms and conditions of this Stipulated Settlement Agreement are hereby adopted as an enforceable ORDER of this Court, and this matter is hereby DISMISSED with prejudice.

Dated: this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE