

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	
)	
v.)	1:08-CV-472-CKK
)	
KENNETH SALAZAR,)	
Secretary of the Interior,)	
Defendant,)	

STIPULATED SETTLEMENT

Plaintiff WildEarth Guardians (“WildEarth”) and Defendant Ken Salazar, in his official capacity as Secretary of the Interior (“Secretary”), by and through their undersigned counsel, state as follows:

WHEREAS, on June 18, 2007, WildEarth submitted a petition to the Secretary to list 475 species in the U.S. Fish and Wildlife Service’s (“Service”) Southwest Region as endangered or threatened under the Endangered Species Act (“ESA”).

WHEREAS, on July 24, 2007, WildEarth submitted a petition to the Secretary to list 206 species in the Service’s Mountain-Prairie Region as endangered or threatened under the ESA.

WHEREAS, within 90 days after receiving a petition and to the maximum extent practicable, the Secretary has a non-discretionary duty to make initial findings as to “whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. §1533(b)(3)(A).

WHEREAS, on March 19, 2008, WildEarth filed a Complaint for declaratory and injunctive relief alleging that the Secretary failed to comply with the non-discretionary duty to

make initial 90-day findings on all 674 species included in the two petitions above.^{1/} 16 U.S.C. §1533(b)(3)(A).

WHEREAS, on January 6, 2009, the Service published 90-day findings on 270 of the 475 species listed in the Southwest Region petition. 74 Fed. Reg. 419. On February 5, 2009, the Service published 90-day findings on 165 of the 206 species listed in the Mountain-Prairie Region petition. 74 Fed. Reg. 6,122. WildEarth's claims concerning the Secretary's failure to make 90-day findings regarding these species are now moot.

WHEREAS, to date, the Service has not made 90-day findings on the remaining 200 species from the Southwest petition and has not made 90-day findings on the remaining 39 species^{2/} from the Mountain-Prairie petition.

WHEREAS, WildEarth and the Service, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to WildEarth's claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in WildEarth's Complaint.

WHEREAS, WildEarth and the Service agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them.

^{1/} Though WildEarth's original petitions totaled 681 species, WildEarth included six species in both petitions because they were found in both geographic regions and one species was included under two different scientific names. Accordingly, the total number of species included in the two petitions is 674.

^{2/} The Service will not issue a 90-day finding for the *Sphaeralcea gierischii*, one of the remaining 39 species on the Mountain-Prairie petition, as it is already a candidate for listing as Endangered or Threatened under the ESA, and as such, is listed on the Candidate Notice of Review. 73 Fed. Reg. 75176, 75178 (Dec. 10, 2008). Accordingly, under this agreement, the Service will issue 90-day findings for each of the remaining 38 species listed in the Mountain-Prairie petition on the table below. (See paragraph 1A).

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

1. Pursuant to 16 U.S.C. § 1533(b)(3)(A), the Service agrees to make a finding for each species listed in WildEarth's June 18, 2007, and July 24, 2007, petitions for which no finding has been made, according to the following schedule:

- A. On or before August 9, 2009, the Service shall submit to the Federal Register a finding as to whether WildEarth's petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted for each the following thirty-eight species (not including the *Sphaeralcea gierischii*), identified in WildEarth's petition to list species in the Mountain-Prairie Region:

Scientific name	Common Name
<i>Astragalus microcymbus</i>	Skiff Milk-vetch
<i>Astragalus schmolliae</i>	Schmoll's Milk-vetch
<i>Corispermum navicula</i>	Boat-shaped Bugseed
<i>Draba weberi</i>	Weber's Whitlow-grass
<i>Eriogonum brandegeei</i>	Brandegee's Wild Buckwheat
<i>Lednia tumana</i>	Meltwater Lednian Stonefly
<i>Ammicola sp. 2</i>	Washington Dusksnail
<i>Discus brunsoni</i>	Lake Disc
<i>Oreohelix amariradix</i>	Bitterroot Mountainsnail
<i>Oreohelix carinifera</i>	Keeled Mountainsnail
<i>Oreohelix sp. 3</i>	Bearmouth Mountainsnail
<i>Oreohelix sp. 4</i>	Drummond Mountainsnail
<i>Oreohelix sp. 31</i>	Byrne Resort Mountainsnail
<i>Lepidomeda copei</i>	Northern Leatherside Chub
<i>Pyrgulopsis anguina</i>	Longitudinal Gland Pyrg
<i>Pyrgulopsis hamlinensis</i>	Hamlin Valley Pyrg
<i>Pyrgulopsis saxatilis</i>	Sub-globose Snake Pyrg
<i>Astragalus hamiltonii</i>	Hamilton's Milk-vetch
<i>Astragalus iselyi</i>	Isely's Milk-vetch
<i>Astragalus sabulosus</i>	Cisco Milk-vetch
<i>Camissonia exilis</i>	Cottonwood Spring Suncup

<i>Cryptantha semiglabra</i>	Pipe Springs Cryptantha
<i>Eriogonum soredium</i>	Frisco Buckwheat
<i>Frasera gypsicola</i>	Sunnyside Green-gentian
<i>Lepidium ostleri</i>	Ostler's Pepper-grass
<i>Lesquerella navajoensis</i>	
<i>Lomatium latilobum</i>	Canyonlands Lomatium
<i>Lygodesmia doloresensis</i>	Dolores River Skeleton-plant
<i>Penstemon flowersii</i>	Flowers' Penstemon
<i>Trifolium friscanum</i>	Frisco Clover
<i>Ironoquia plattensis</i>	Platte River Caddisfly
<i>Sisyrrinchium sarmentosum</i>	Pale Blue-eyed-grass
<i>Catinella gelida</i>	Frigid Ambersnail
<i>Abronia ammophila</i>	Yellowstone Sand Verbena
<i>Agrostis rossiae</i>	Ross' Bentgrass
<i>Boechera (Arabis) pusilla</i>	Fremont County Rockcress
<i>Astragalus proimanthus</i>	Precocious Milk-vetch
<i>Penstemon gibbensii</i>	Gibben's Beardtongue

- B. On or before December 9, 2009, the Service shall submit to the Federal Register a finding as to whether WildEarth's petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted for each the following two-hundred species, identified in WildEarth's petition to list species in the Southwest Region:

Scientific name	Common Name
<i>Acarospora clauzadeana</i>	A lichen
<i>Adenophyllum wrightii</i>	Wright's Dogweed
<i>Adhemarius blanchardorum</i>	Blanchard's Sphinx Moth
<i>Afilia sp. 1</i>	A Notodontid Moth
<i>Agalinis navasotensis</i>	Navasota False Foxglove
<i>Agapema galbina</i>	Tamaulipan Agapema
<i>Albiorix anophthalmus</i>	A Cave Obligate Pseudoscorpion
<i>Amergoniscus centralis</i>	A Cave Obligate Isopod
<i>Amergoniscus gipsocolus</i>	A Cave Obligate Isopod
<i>Amoreuxia gonzalezii</i>	Santa Rita Yellowshow
<i>Amsonia tharpii</i>	Tharp's Blue-star
<i>Anacroneuria wipukupa</i>	A Stonefly

<i>Aphrastochthonius pachysetus</i>	A Cave Obligate Pseudoscorpion
<i>Apodemia chisosensis</i>	Chisos Metalmark
<i>Archeolarca cavicola</i>	Grand Canyon Cave Scorpion
<i>Arenaria livermorensis</i>	Livermore Sandwort
<i>Argemone arizonica</i>	Arizona Prickle-poppy
<i>Argia sabino</i>	Sabino Dancer
<i>Asclepias prostrata</i>	Prostrate Milkweed
<i>Ashmunella carlsbadensis</i>	Guadalupe Woodlandsnail
<i>Ashmunella hebardii</i>	Hacheta Grande Woodlandsnail
<i>Ashmunella kochii</i>	San Andreas Woodlandsnail
<i>Ashmunella levettei</i>	Huachuca Woodlandsnail
<i>Ashmunella macromphala</i>	Cook's Peak Woodlandsnail
<i>Ashmunella mearnsii</i>	Big Hatchet Woodlandsnail
<i>Aspidoscelis arizonae</i>	Arizona Striped Whiptail
<i>Astragalus hypoxylus</i>	Huachuca Milk-vetch
<i>Astylis sp. 1</i>	A Notodontid Moth
<i>Automeris patagoniensis</i>	Patagonia Eyed Silkmoth
<i>Batesimalva violacea</i>	Purple Gay-mallow
<i>Berberis harrisoniana</i>	Kofka Barberry
<i>Bonamia ovalifolia</i>	Bigpod Bonamia
<i>Bouteloua kavi</i>	Kay Gramma
<i>Cambarus subterraneus</i>	Delaware County Cave Crayfish
<i>Cambarus tartarus</i>	Oklahoma Cave Crayfish
<i>Carex mckittrickensis</i>	Guadalupe Mountain Sedge
<i>Castilleja ornata</i>	Glowing Indian-paintbrush
<i>Ceuthothrombium cavaticum</i>	A Cave Obligate Mite
<i>Chitrellina chiricahuae</i>	A Cave Obligate Pseudoscorpion
<i>Cicindela theatina</i>	Colorado Tiger Beetle
<i>Comaldessus stygius</i>	Comal Springs Diving Beetle
<i>Cooperia smallii</i>	Small's Rainlily
<i>Cryptantha ganderi</i>	Gander's Cryptantha
<i>Cylloepus parkeri</i>	Parker's Cylloepus Riffle Beetle
<i>Cyprinella lepida</i>	Plateau Shiner
<i>Cyprinella sp. 2</i>	Nueces Shiner
<i>Cyprinodon pecosensis</i>	Pecos Pupfish
<i>Cyprinodon tularosa</i>	White Sands Pupfish
<i>Daedalochila hippocrepis</i>	Horseshoe Liptooth
<i>Dalea bartonii</i>	Cox's Dalea
<i>Dalea tentaculoides</i>	Gentry's Indigobush
<i>Echeandia texensis</i>	A plant
<i>Eleocharis cylindrica</i>	Cylinder Spikerush

<i>Erigeron acomanus</i>	Acoma Fleabane
<i>Erigeron bistiensis</i>	Bisti Fleabane
<i>Erigeron piscaticus</i>	Fish Creek Fleabane
<i>Eriogonum mortonianum</i>	Morton's Wild Buckwheat
<i>Escobaria guadalupensis</i>	Guadalupe Pincushion Cactus
<i>Euglandina texasiana</i>	Glossy Wolfsnail
<i>Euhyparpax rosea</i>	A Notodontid Moth
<i>Euphorbia aaron-rossii</i>	Marble Canyon Spurge
<i>Eurycea neotenes</i>	Texas Salamander
<i>Eurycea robusta</i>	Blanco Blind Salamander
<i>Eurycea sp. 6</i>	Pedernales River Springs Salamander
<i>Eurycea sp. 8</i>	Comal Springs Salamander
<i>Eurycea tridentifera</i>	Comal Blind Salamander
<i>Fryxellia pygmaea</i>	Fryxell's Pygmy Mallow
<i>Fusconaia lananensis</i>	Triangle Pigtoe
<i>Gambusia clarkhubbsi</i>	San Felipe Gambusia
<i>Genistidium dumosum</i>	Brush-pea
<i>Geomys streckeri</i>	Strecker's Pocket Gopher
<i>Glossopetalon texense</i>	Texas Grease Bush
<i>Grimmia americana</i>	A plant
<i>Haideoporus texanus</i>	Edwards Aquifer Diving Beetle
<i>Hedyotis pooleana</i>	Jackie's Bluet
<i>Helicodiscus nummus</i>	Wax Coil
<i>Heterocampa sp. 1 nr. amanda</i>	A Notodontid Moth
<i>Hexalectris revoluta</i>	Chisos Coralroot
<i>Holospira hamiltoni</i>	Hamilton Holospira
<i>Holospira mesolia</i>	Widemouth Holospira
<i>Holospira oritis</i>	Mountain Holospira
<i>Holospira pasonis</i>	Robust Holospira
<i>Holospira pityis</i>	Pinecone Holospira
<i>Holospira riograndensis</i>	Rio Grand Holospira
<i>Holospira vucatanensis</i>	Bartsch Holospira
<i>Holsingerius samacos</i>	A Cave Obligate Amphipod
<i>Humboldtiana edithae</i>	Boulder Slide Threeband
<i>Hydroptila ouachita</i>	A Purse Casemaker Caddisfly
<i>Hydroptila protera</i>	A Caddisfly
<i>Ictalurus sp. 1</i>	Chihuahua Catfish
<i>Kallstroemia perennans</i>	Perennial Caltrop
<i>Lachlania dencyannae</i>	A Mayfly
<i>Lampsilis bracteata</i>	Texas Fatmucket
<i>Lesquerella kaibabensis</i>	Kaibab Bladderpod

<i>Limnephilus adapus</i>	A Caddisfly
<i>Lirceolus smithii</i>	Texas Troglotic Water Slater
<i>Litodonta sp. 1 nr. alpina</i>	A Notodontid Moth
<i>Lycaena ferrisi</i>	Ferris's Copper
<i>Macrhybopsis tetranema</i>	Arkansas River Speckled Chub
<i>Maricopella allynsmithi</i>	Squaw Park Talussnail
<i>Marstonia comalensis</i>	Comal Siltsnail
<i>Melanoplus sp. 22</i>	An invertebrate
<i>Melanoplus sp. 26</i>	An invertebrate
<i>Melanoplus sp. 36</i>	An invertebrate
<i>Melanoplus sp. 48</i>	An invertebrate
<i>Melanoplus sp. 52</i>	An invertebrate
<i>Melanoplus sp. 62</i>	An invertebrate
<i>Melanoplus sp. 9</i>	An invertebrate
<i>Microdynerus arenicolus</i>	Antioch Potter Wasp
<i>Neoleptoneta anopica</i>	A Cave Obligate Spider
<i>Notophthalmus meridionalis</i>	Black-spotted Newt
<i>Omphalora arizonica</i>	A lichen
<i>Oncopodura prietoi</i>	A Cave Obligate Springtail
<i>Opuntia aureispina</i>	Golden-spined Prickly-pear
<i>Opuntia densispina</i>	Big Bend Prickly-pear
<i>Orconectes saxatilis</i>	Kiamichi Crayfish
<i>Oreohelix pilsbryi</i>	Mineral Creek Mountainsnail
<i>Palaemonetes holthuisi</i>	A Cave Obligate Decapod
<i>Papaipema eryngii</i>	Rattlesnake-master Borer Moth
<i>Paramexiweckelia ruffoi</i>	Ruffo's Cave Amphipod
<i>Paronychia congesta</i>	Bushy Whitlow-wort
<i>Pediomelum humile</i>	Rydberg's Scurfpea
<i>Pediomelum pentaphyllum</i>	Chihuahua Scurfpea
<i>Perityle cochisensis</i>	Cochise Rockdaisy
<i>Perityle huecoensis</i>	Hueco Mountains Rockdaisy
<i>Perityle saxicola</i>	Fish Creek Rock Daisy
<i>Perityle warnockii</i>	River Rockdaisy
<i>Phreatodrobia imitata</i>	Mimic Cavesnail
<i>Phylocentropus harrisi</i>	A Caddisfly
<i>Pisidium sanguinichristi</i>	Sangre de Cristo Peaclam
<i>Pleurobema riddellii</i>	Louisiana Pigtoe
<i>Potamilus amphichaenus</i>	Texas Heelsplitter
<i>Potamilus metnecktavi</i>	Salina Mucket
<i>Procambarus brazoriensis</i>	Brazoria Crayfish
<i>Procambarus nechesae</i>	Neches Crayfish

<i>Procambarus nigrocinctus</i>	Blackbelted Crayfish
<i>Procambarus texanus</i>	Bastrop Crayfish
<i>Protophila arca</i>	San Marcos Saddle-case Caddisfly
<i>Pseudosinella vita</i>	A Cave Obligate Springtail
<i>Pseudosubulina cheatumi</i>	Chisos Foxsnail
<i>Ptomaphagus cocytus</i>	A Cave Obligate Beetle
<i>Pyrgulopsis arizonae</i>	Bylas Springsnail
<i>Pyrgulopsis bacchus</i>	Grand Wash Springsnail
<i>Pyrgulopsis conica</i>	Kingman Springsnail
<i>Pyrgulopsis davisi</i>	Limpia Creek Springsnail
<i>Pyrgulopsis glandulosa</i>	Verde Rim Springsnail
<i>Pyrgulopsis metcalfi</i>	Naegele Springsnail
<i>Pyrgulopsis montezumensis</i>	Montezuma Well Springsnail
<i>Pyrgulopsis pecosensis</i>	Pecos Springsnail
<i>Pyrgulopsis simplex</i>	Fossil Springsnail
<i>Quadrula aurea</i>	Golden Orb
<i>Quercus acerifolia</i>	Mapleleaf Oak
<i>Quercus boyntonii</i>	Boynton's Sand Post Oak
<i>Quercus graciliformis</i>	Slender Oak
<i>Quercus robusta</i>	Robust Oak
<i>Quercus tardifolia</i>	Chisos Mountains Oak
<i>Radiocentrum ferrissi</i>	Fringed Mountainsnail
<i>Rana subaquavocalis</i>	Ramsey Canyon Leopard Frog
<i>Rhododon angulatus</i>	Lonestar Sand-mint
<i>Riccia californica</i>	A plant
<i>Salvia pentstemonoides</i>	Big Red Sage
<i>Satan eurystomus</i>	Widemouth Blindcat
<i>Selinocarpus maloneanus</i>	Malone Mountains Moonpod
<i>Senna ripleyana</i>	Ripley's Senna
<i>Solanum leptosepalum</i>	Tigna Potato
<i>Sonorella christenseni</i>	Clark Peak Talussnail
<i>Sonorella eremita</i>	San Xavier Talussnail
<i>Sonorella grahamensis</i>	Pinaleno Talussnail
<i>Sonorella huecoensis</i>	Hueco Mountains Talus Snail
<i>Sonorella macrophallus</i>	Wet Canyon Talussnail
<i>Sonorella papagorum</i>	Black Mountain Talussnail
<i>Sonorella pedregosensis</i>	Leslie Canyon Talussnail
<i>Sonorella sp. 1</i>	A Terrestrial Snail
<i>Sonorella todseni</i>	Dona Ana Talussnail
<i>Sophora gypsophila</i>	Gypsum Necklace
<i>Sphaeromicola moria</i>	A Cave Obligate Shrimp

<i>Sphingicampa blanchardi</i>	A Royal Moth
<i>Sphingicampa raspa</i>	A Royal Moth
<i>Sphinx eremitoides</i>	Sage Sphinx
<i>Sphinx smithi</i>	A Sphinx Moth
<i>Stallingsia maculosus</i>	Manfreda Giant-skipper
<i>Stellaria porsildii</i>	Porsild's Starwort
<i>Streptocephalus moorei</i>	Spinythumb Fairy Shrimp
<i>Stygobromus limbus</i>	Border Cave Amphipod
<i>Texiweckelia relicta</i>	A Cave Obligate Amphipod
<i>Thymoites minero</i>	A Cave Obligate Spider
<i>Tomocerus grahami</i>	A Cave Obligate Springtail
<i>Toxolasma corvunculus</i>	Southern Purple Lilliput
<i>Trogloglanis pattersoni</i>	Toothless Blindcat
<i>Tryonia gilae</i>	Gilae Tryonia
<i>Tryonia quitobaquिताe</i>	Quitobaquito Tryonia
<i>Ursia furtiva</i>	A Notodontid Moth
<i>Ursia sp. 1</i>	A Notodontid Moth
<i>Valerianella nuttallii</i>	Nuttall's Corn-salad
<i>Xanthoparmelia planilobata</i>	A lichen
<i>Yucca necopina</i>	Brazos River Yucca

In consideration of the Service's agreement to meet these deadlines, WildEarth agrees to dismiss this action with prejudice.

2. Either party may seek to modify the deadline for any actions specified in Paragraph 1 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 3.

3. 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 actions specified in Paragraph 1, 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) at the earliest possible time in a good-faith effort to resolve the claim before pursuing relief from the Court. If the parties are unable to resolve the claim within a reasonable time, either party may seek relief from the Court.

4. No party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable time line for issuing a 90-day finding under 16 U.S.C. § 1533 or in any other proceeding regarding the Service's implementation of the ESA.

5. Defendant agrees that Plaintiff is the "prevailing party" in this action, and agrees to pay Plaintiffs reasonable attorneys' fees and costs, pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540 (g). Therefore, Defendant agrees to settle all of Plaintiff's claims for costs and attorneys' fees in the above-captioned litigation for a total of \$17,492.00. A check will be made payable in that amount to WildEarth Guardians, 6439 E. Maplewood Ave., Centennial, CO 80111.

6. Defendant agrees to submit all necessary paperwork for the processing of the attorneys' fee award to the Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. § 1540(g)(4), within ten (10) business days of receipt of the court order approving this stipulation.

7. Plaintiff agrees to accept payment of \$17,492.00 in full satisfaction of any and all claims for attorneys' fees and costs of litigation to which Plaintiff is entitled in the above-captioned litigation, through and including the date of this agreement.

8. Plaintiff agrees that receipt of this payment from Defendant shall operate as a release of Plaintiff's claims for attorneys' fees and costs in this matter, through and including the date of this agreement.

9. Plaintiff reserves the right to seek additional fees and costs incurred subsequent to this agreement arising from a need to enforce or defend against efforts to modify the underlying schedule outlined in Paragraph 1, or for any other unforeseen continuation of this action.

10. Defendant does not waive any right to contest fees claimed by Plaintiff or Plaintiff's counsel, including the hourly rate, in any future litigation, or continuation of the present action. Further, this stipulation as to attorneys' fees and costs has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

11. Subject to the qualifications in Paragraph 12, no provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendant takes action in contravention of the Endangered Species Act, the Administrative Procedure Act, or any other law or regulation, either substantive or procedural. Nothing in this Settlement 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.

12. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendant is obligated to spend funds in violation of the Anti-Deficiency

Act, 31 U.S.C. § 1341. In response, Plaintiff asserts that this Agreement does not create a conflict with the Anti-Deficiency Act because the duty to make petition findings is required in non-discretionary terms by the ESA and because the Anti-Deficiency Act would not excuse compliance with a pre-existing court-approved Agreement. Plaintiff may assert this position if Defendant fails to comply with the terms of this Agreement for reasons of insufficient appropriations. Defendant reserves all legal and equitable defense to any argument by Plaintiff that the Anti-Deficiency Act does not apply to non-discretionary duties required by the ESA.

13. 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.

14. 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.

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

16. Upon approval of this Agreement by the Court, all counts of Plaintiff's First 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 13th day of March, 2009,
JOHN C. CRUDEN, Acting Assistant Attorney General

JEAN E. WILLIAMS, Section Chief
LISA L. RUSSELL, Assistant Chief
s/ Rickey D. Turner Jr.
RICKEY D. TURNER JR.
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife and Marine Resources Section
P.O. Box. 7369
Washington, D.C. 20044-7369
(202) 305-0229
rickey.turner@usdoj.gov

Attorneys for Defendants

s/ James Jay Tutchton (w/ permission by RDT)
JAMES JAY TUTCHTON, *Pro Hac Vice*
1536 Wynkoop Street, Suite 300
Denver, CO 80202
(720) 301-3843
jtutchton@wildearthguardians.org

Attorney for Plaintiff

PROPOSED ORDER

The terms and conditions of this Stipulated Settlement Agreement are hereby adopted as an enforceable ORDER of this Court.

Dated: this _____ day of _____ 2009.

United States District Judge

