

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE FUND FOR ANIMALS,  
et al.,

Plaintiffs,

v.

BRUCE BABBITT, SECRETARY OF  
THE INTERIOR, et al.,

Defendants.

Civil Act. No. 94-1021 (PLF)

NATIONAL AUDUBON SOCIETY,  
et al.,

Plaintiffs,

v.

BRUCE BABBITT, SECRETARY OF  
THE INTERIOR, et al.,

Defendants.

Civil Act. No. 94-1106 (PLF)  
(Consolidated)

SETTLEMENT AGREEMENT

WHEREAS, plaintiffs filed this suit against the United States Secretary of the Interior, and the Director of the United States Fish and Wildlife Service (Service) challenging the Service's recovery plan for the grizzly bear;

WHEREAS, the Service is developing objective, measurable habitat-based recovery criteria for grizzly bears in the Greater

Yellowstone Ecosystem and once the Service has developed draft habitat-based recovery criteria, the Service intends to make the draft criteria available to the public for review and comment;

**WHEREAS**, any action by the Service to delist any grizzly bear population must comply with the standards and public participation requirements of section 4 of the Endangered Species Act (ESA) and the Service's listing regulations at 50 C.F.R. Part 424, including, in particular, 50 C.F.R. §§ 424.11(d), 424.16, and 424.18;

**WHEREAS**, it is in the interest of the public, the parties, and judicial economy to resolve this action without protracted litigation;

**THEREFORE**, the parties agree as follows:

1. Prior to the Service's release of its draft habitat-based recovery criteria for the grizzly bear, plaintiffs may submit comments to the Service and such comments will be considered part of the administrative record. The Service will convene a workshop during the public comment period on the draft habitat-based recovery criteria where all interested persons can present their ideas on the habitat needs for grizzly bear recovery and discuss proposals for habitat-based recovery criteria. The workshop will be convened in cooperation with the

members of the Interagency Grizzly Bear Committee (IGBC). The workshop will primarily address habitat-based recovery criteria for the Greater Yellowstone Ecosystem, since that is the initial area for which the habitat-based recovery criteria are being developed. A principal purpose of the workshop will be to allow non-IGBC scientists to present their views and ideas on the grizzly bear's habitat-based recovery needs.

2. The information and views presented at the workshop, together with all other information submitted to the Service during the public comment period on the draft recovery criteria will be considered by the Service before the habitat-based recovery criteria are finalized. When the Service finalizes the habitat-based recovery criteria it shall address in writing significant public comments, including those significant public comments offered at the workshop discussed in paragraph 1.

3. Prior to publishing any proposed rule to delist any grizzly bear population, the Service will establish habitat-based recovery criteria for that population's ecosystem in accordance with the process set forth in paragraphs 1 and 2 and applicable laws and regulations. In any such rulemaking to delist a grizzly bear population, the Service will utilize the habitat-based recovery criteria, as well as all other pertinent recovery

criteria that have been established, when addressing the five factors set forth in section 4(a)(1) of ESA. In addition, prior to publishing any proposed rule to delist any grizzly bear population, the Service will assess whether a threat is posed to that population by any of the five factors set forth in Section 4(a)(1) of the ESA.

4. The parties agree that, notwithstanding the Court's findings regarding the grizzly bear recovery plan, the parties do not read the Court's September 29, 1995, opinion as holding that the Service is required to incorporate into a recovery plan objective, measurable delisting criteria for a factor set forth in section 4(a)(1) of the ESA if that factor was not cited as a basis for the listing of the species and if information available at the time of the plan's drafting or amendment indicates the factor does not present a threat to the species.

5. The parties agree that, notwithstanding the Court's findings regarding the grizzly bear recovery plan, the parties do not read the Court's September 29, 1995 opinion as holding that the Service is required to incorporate into a recovery plan objective, measurable delisting criteria for a factor or part of a factor set forth in section 4(a)(1) of the ESA when the best scientific information available to the Service when the recovery

plan is prepared is not sufficient to enable the Service to establish objective, measurable recovery criteria for the factor and the Service explicitly commits in the recovery plan to develop such sufficient information and criteria within a reasonable period of time and to incorporate those criteria into a supplement to the recovery plan prior to delisting the species.

6. The parties will jointly move the district court to clarify that, notwithstanding the Court's specific findings regarding the grizzly bear recovery plan, its September 29, 1995, opinion does not hold that the Service is required in every recovery plan to analyze or evaluate all former habitat in establishing objective, measurable habitat-related recovery criteria.

7. The parties will dismiss their appeals of the District Court's September 29, 1995, decision in the D.C. Circuit and submit their settlement agreement to the district court along with a joint Rule 60(b) motion in order to modify the Court's September 29, 1995, ruling as detailed in the district court's January 29, 1997, opinion.

9. The parties will bear their own fees and costs with respect to activities undertaken following the filing of the notices of appeal. With regard to fees and costs incurred

litigating this case before the District Court, the parties shall attempt to negotiate a resolution of fees and costs for work performed in connection therewith. In the event the parties are unable to come to an agreement on these fees and costs, any party seeking fees and costs will file its application to the District Court for such fees within sixty days after the court's order amending the judgment and dismissing the action.

Dated: March 31, 1997.



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967 F.Supp. 6 (1997)

**The FUND FOR ANIMALS, et al., Plaintiffs,**  
**v.**  
**Bruce BABBITT, Secretary of the Interior, et al., Defendants.**  
**and**  
**NATIONAL AUDUBON SOCIETY, et al., Plaintiffs,**  
**v.**  
**Bruce BABBITT, Secretary of the Interior, et al., Defendants.**

Civil Nos. 94-1021 (PLF), 94-1106 (PLF).

**United States District Court, District of Columbia.**

May 5, 1997.

Eric Robert Glitzenstein, Meyer & Glitzenstein, Washington, DC, for **Fund for Animals**.

Howard I. Fox, Sierra Club Legal Defense **Fund**, Washington, DC, for National Audubon Society.

Joseph R. Perella, Environment & Natural Resources Div., Washington, DC, for Defendants.

## **ORDER**

PAUL L. FRIEDMAN, District Judge.

On consideration of the parties' joint motion for approval of their settlement agreement and limited relief under Rule 60(b), and in accordance with this Court's January 29, 1997, opinion, it is hereby ordered that the parties' settlement agreement is approved and it is further ordered that the Court's September 29, 1995, Opinion is hereby amended as follows:

(1) The clause in the last sentence of footnote 7, which reads, "and because under the statute that factor alone may have been sufficient to justify listing the bear, 50 C.F.R. § 424.11(c)" is hereby vacated; and

(2) The words "past" and "historic" in the last sentence of footnote 7 are hereby vacated.

The clerk is directed to submit a copy of the amended opinion with the vacated portions deleted to West's Reporting Service for publication.

This case is hereby dismissed, except with regard to any claim for attorneys fees' and costs, and except that any party may move to enforce any aspect of the Court's September 29, 1995, order as amended, or to enforce the settlement agreement filed with the Court along with the parties' joint Rule 60(b) motion;

Any claim for attorneys' fees and costs will be resolved in accordance with ¶ 8 of the parties' settlement agreement.

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