

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY,  
Plaintiff,

v.

KEN SALAZAR and the U.S. FISH AND  
WILDLIFE SERVICE,  
Defendants.

CASE NO. 1:12-cv-1514-EGS

STIPULATED SETTLEMENT  
AGREEMENT

**FILED**  
APR 29 2013

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

Plaintiff Center for Biological Diversity (“Plaintiff”) and Defendants Ken Salazar, in his official capacity as U.S. Secretary of the Interior, and the U.S. Fish and Wildlife Service (“Service”) (“collectively, Defendants”), by and through their undersigned counsel, state as follows:

WHEREAS, on April 20, 2010, Plaintiff submitted a petition to the Service to list the Barbour’s map turtle (*Graptemys barbouri*), Big Blue Springs cave crayfish (*Procambarus horsti*), and black rail (*Laterallus jamaicensis*), as threatened or endangered species pursuant to the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*;

WHEREAS, on February 17, 2009, Plaintiff submitted a petition to the Service to list four Great Basin springsnail species as threatened or endangered species under the ESA: the bifid duct pyrg (*Pyrgulopsis peculiaris*), flag pyrg (*Pyrgulopsis breviloba*), hardy pyrg (*Pyrgulopsis marcida*), and Lake Valley pyrg (*Pyrgulopsis sublata*);

WHEREAS, the Service issued “90-day findings” pursuant to 16 U.S.C. § 1533(b)(3)(A) in response to the Center’s petitions on the seven species named above (“seven species”), which concluded that the petitions presented substantial information indicating that the listings of these

seven species under the ESA “may be warranted.” *See* 76 Fed. Reg. 59,836 (Sept. 27, 2011) (Barbour’s map turtle, Big Blue Springs cave crayfish, and black rail); 76 Fed. Reg. 56,608 (Sep. 13, 2011) (bifid duct pyrg, flag pyrg, hardy pyrg, and Lake Valley pyrg);

WHEREAS, Plaintiff sent a letter to Defendants on April 25, 2012, stating its intent to file suit to compel the Service to issue findings pursuant to 16 U.S.C. § 1533(b)(3)(B) as to whether listing of the bifid duct pyrg, flag pyrg, hardy pyrg, and Lake Valley pyrg was warranted, not warranted, or warranted but precluded (“12 month findings”); and sent similar letters regarding its intent to file suit to compel 12-month findings on the petitions to list the Barbour’s map turtle (sent May 22, 2012) and the Big Blue Springs Crayfish and black rail (sent on June 18, 2012);

WHEREAS, on September 13, 2012, Plaintiff filed this action to compel the Service to issue findings pursuant to 16 U.S.C. § 1533(b)(3)(B) as to whether listing the seven species as threatened or endangered under the ESA was warranted, not warranted, or warranted but precluded (“12-month findings”);

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

WHEREAS, the parties 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;

NOW, THEREFORE, the parties hereby stipulate and agree as follows:

1. By September 30, 2017, the Service shall submit to the Federal Register 12-month findings on the petitions to list the Barbour’s map turtle, Big Blue Springs cave crayfish,

bifid duct pyrg, flag pyrg, hardy pyrg, and Lake Valley pyrg. By September 30, 2018, the Service will submit to the Federal Register a 12-month finding on the petition to list the black rail.

2. Either party may seek to modify the deadlines 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 Settlement Agreement (“Agreement”), the parties shall use the dispute resolution procedures specified in Paragraph 3 below.

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 deadlines 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 notice of the claim. The parties agree that they will meet and confer (either telephonically or in-person) at the earliest possible time in a good-faith effort to resolve the claim before seeking relief from the Court. If the parties are unable to resolve the claim themselves, either party may seek relief from the Court. In the event that Defendants fail to meet a deadline and have not sought to modify it, Plaintiff’s first remedy shall be a motion to enforce the terms of this Agreement. This Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

4. No party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable timeline for issuing a 12-month finding under 16 U.S.C. § 1533 in any other proceeding regarding the Service's implementation of the ESA.

5. Defendants agree that Plaintiff is the "prevailing party" in this action, and agree to pay Plaintiff's reasonable attorneys' fees and costs pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540 (g). Defendants therefore agree to settle all of Plaintiff's claims for costs and attorneys' fees in this matter for a total of \$8,800. An electronic transfer will be made pursuant to account information that will be submitted to Defendants by Plaintiff. Defendants agree 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 order approving this Agreement.

6. Plaintiff agrees to accept payment of \$8,800 in full satisfaction of any and all claims for attorneys' fees and costs of litigation to which Plaintiff is entitled in this matter through and including the date of this Agreement.

7. Plaintiff agrees that receipt of this payment from Defendants 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.

8. The parties agree that 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 continuation of this action. By this Agreement, Defendants do not waive any right to contest fees claimed by Plaintiff or Plaintiff's counsel, including the hourly rate and number of hours, in any future litigation or continuation of the present action. Further, this Agreement as to attorneys' fees and

costs has no precedential value and shall not be used as evidence in any other attorneys' fees 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 ESA, the Administrative Procedure Act ("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. To challenge any final rule or other final agency action issued in accordance with this Agreement, Plaintiff will be required to file a separate action. Plaintiff reserves the right to challenge substantive decisions made by Defendants pursuant to Paragraph 1, above, and Defendants reserve the right to raise any applicable claims or defenses.

10. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Defendants are obligated 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 that this Agreement constitutes a settlement of claims that were 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 approval of this Agreement by the Court, all counts of Plaintiff's complaint shall be dismissed with prejudice. Notwithstanding the dismissal of this action, however, 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).

Dated: April 25, 2013

Respectfully Submitted,

IGNACIA S. MORENO,  
Assistant Attorney General  
SETH M. BARSKY, Chief  
KRISTEN L. GUSTAFSON,  
Assistant Chief

/s/ Daniel J. Pollak  
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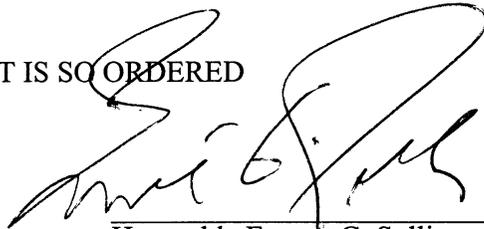
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*Attorney for Plaintiff*

PURSUANT TO STIPULATION IT IS SO ORDERED

Date: 4/26/13

A handwritten signature in black ink, appearing to read "Emmet G. Sullivan", written over a horizontal line.

Honorable Emmet G. Sullivan  
United States District Judge