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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

SAVE THE YELLOWSTONE GRIZZLY,
Plaintiff

Plaintiff,

v.

UNITED STATES FISH AND WILDLIFE
SERVICE—MARTHA WILLIAMS, Director;
Defendant; and

JIM FREDERICKS, Director of Idaho
Department of Fish & Game; MATT
PIERON, Regional Supervisor of Idaho
Department of Fish & Game; CURTIS
HENDRICKS, Regional Wildlife Manager of
Idaho Department of Fish & Game;
Defendants-Counterclaimants-
Crossclaimants.

Case No. 4:23-cv-00363-DCN

STIPULATION OF DISMISSAL
AND SETTLEMENT
AGREEMENT

Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiff Save the Yellowstone Grizzly; Defendants United States Fish and Wildlife Service (USFWS) and Martha Williams, USFWS Director (collectively “Federal Defendants”); and Defendants-Counterclaimants-Crossclaimants Jim Fredericks, Director of Idaho Department of Fish & Game; Matt Pieron, Regional Supervisor of Idaho Department of Fish & Game; Curtis Hendricks, Regional Wildlife Manager of Idaho Department of Fish & Game (collectively, “Idaho Defendants”) hereby Stipulate to Dismissal of this action, according to the following terms and conditions:

I. STIPULATION OF DISMISSAL

1. The Parties jointly request that the Court enter the accompanying [Proposed] Order approving this Stipulation of Dismissal and Settlement Agreement.

2. This Stipulation of Dismissal and Settlement Agreement are conditioned on the Court’s retention of jurisdiction for the purpose of overseeing compliance with the Settlement Agreement and resolving any motion to modify consistent with the Federal Rules of Civil Procedure. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

3. Upon entry of the Court’s order approving the Stipulation of Dismissal and Settlement Agreement, this case will be dismissed under F.R.C.P. 41(a)(2) subject to Paragraph 2.

4. The Parties respectfully submit that the terms of this Stipulation of Dismissal and Settlement Agreement are proper, fair, reasonable and in the public interest, and accordingly the Court should approve them as set forth in the accompanying [Proposed] Order.

II. SETTLEMENT AGREEMENT

A. Recitals

5. Whereas, on August 14, 2023, Save the Yellowstone Grizzly (Plaintiff) filed a Complaint under § 9 of the Endangered Species Act (ESA) challenging federal and state actions

regarding the lethal removal of three grizzly bears near Tetonia, Idaho on November 9 and 10, 2022;

6. Whereas on September 29, 2023, Idaho Department of Fish and Game (IDFG) Officials (Idaho Defendants) answered this complaint and brought counterclaims and crossclaims; these counterclaims and crossclaims concerned interpretation of the ESA and 50 C.F.R. § 17.40(b), and the USFWS denial, on February 6, 2023, of Idaho’s petition (dated March 9, 2022) to delist grizzly bears in the lower-48 United States;

7. Whereas, 50 C.F.R. § 17.40(b) provides authority for state, tribal, and federal agency removal of ESA-listed nuisance grizzly bears under stated conditions;

8. Whereas, IDFG Wildlife Policy 3.0 for Wildlife Public Safety states “actions involving species listed as threatened or endangered under the Endangered Species Act (ESA) are regulated by the U.S. Fish and Wildlife Service, and any ‘take’ of ESA-listed species must be consistent with federal law and regulations”; and

9. Whereas, the Parties have negotiated a settlement that they consider to be in the public interest and a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiff’s Complaint and Idaho Defendants’ Answer, Counterclaims and Crossclaims.

Now, therefore, the Parties agree as follows:

B. Party Commitments

10. Unless a grizzly bear poses an immediate threat to human safety, IDFG will, continuing its current practice, seek concurrence from the USFWS Recovery Office before IDFG lethally removes any ESA-listed grizzly bear in Idaho. Situations in which IDFG is acting at the request of USFWS or another federal department or agency (e.g., U.S. Department of Agriculture, U.S. Department of the Interior, or agencies thereof) may be excluded from this practice because of prior federal agency coordination regarding removals.

11. At Plaintiff's request, IDFG's Upper Snake Region will include a Plaintiff representative on its distribution list for regional media releases. (The Region typically issues a timely media release after any lethal removal of grizzly bears by IDFG in the Idaho portion of the Greater Yellowstone ecosystem. The Region maintains its distribution list for all media releases for the Region, including grizzly-bear-related releases. The Region does not maintain a distribution list solely for grizzly-bear-related releases.)

12. Plaintiff may access information via the Interagency Grizzly Bear Study Team (IGBST) website, maintained by the U.S. Geological Survey, for all documented known and probable grizzly bear mortalities in the Greater Yellowstone Ecosystem. The link as of this date is: <https://www.sciencebase.gov/catalog/item/6234b687d34ec9f19eebd462>.

13. The commitments in Paragraphs 10 through 12 will be in effect for a period of three years from the effective date of this Agreement.

14. On or before January 31, 2026, the Service shall submit to the Office of the Federal Register a final rule complying with the ESA and its implementing regulations that revises or removes the entire ESA listing of grizzly bears in the lower-48 United States.

15. This Agreement is conditioned on the Court's retention of jurisdiction for the purpose of overseeing compliance with the Agreement and resolving any motion to modify the Agreement pursuant to the Federal Rules of Civil Procedure. See *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

16. Plaintiff will not seek payment of attorneys' fees and costs from Idaho Defendants under 16 U.S.C. § 1540 (g) or other applicable law. Plaintiff reserves its right to request reasonable attorneys' fees and costs from Federal Defendants, and Federal Defendants reserve their right to contest Plaintiff's entitlement to recover fees and the amount of any such fees, and

do not waive any objection or defenses they may have to Plaintiff's request. Plaintiff may file a motion for fees and costs within 60 days from the Court's approval of this Agreement, unless the Federal Defendants and Plaintiff are able to resolve the fee claim or seek additional time from the Court.

17. Upon approval of this Agreement by the Court, all of the claims in Plaintiff's Complaint and the Counterclaims and Crossclaims by Idaho Defendants in this matter shall be dismissed. Dismissal shall be with prejudice as to the claims, crossclaims, and counterclaims as they apply specifically to the lethal removal of three bears in Idaho on or about November 9-10, 2023, and as to the Service's 90-day finding, dated February 6, 2023, denying Idaho's March 9, 2022 petition for delisting of grizzly bears in the lower-48 States.

18. No provision of this Agreement shall be interpreted as constituting a commitment or requirement that the United States is obligated to pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provision of law. No provision of this Agreement shall be interpreted as constituting a commitment or requirement that the Federal Defendants take actions in contravention of the ESA, Administrative Procedure Act (APA), or any other law or regulation, either substantive or procedural.

19. No provision of this Agreement shall be interpreted as constituting a commitment or requirement that the State of Idaho, its agencies, or officials are obligated to pay funds or act in contravention of any provision of law, or in exceedance of, or in the absence of appropriation of funds by the Idaho legislature.

20. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as an admission or concession by any of the Parties of any wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Agreement or any similar claims

brought in the future by any other party. Except as expressly provided in this Agreement, the Parties do not waive or relinquish any legal rights, claims, or defenses they each may have.

21. Nothing in this Agreement shall be construed to limit or modify Federal Defendants' authority or discretion under the ESA, APA, or any other federal law or regulation. This Agreement is executed for the purpose of settling Plaintiff's claims and Idaho Defendants' counterclaims and crossclaims, and nothing herein shall be construed as precedent having preclusive effect in any other context.

22. The Parties agree that this Agreement was negotiated in good faith, and it constitutes a settlement of claims disputed by the Parties. By entering into this Agreement, the Parties do not waive any legal rights, claims, or defenses, except as expressly stated herein. This Agreement contains all of the terms of agreement between the Parties concerning Plaintiff's Complaint and the Counterclaims and Crossclaims by Idaho Defendants, and is intended to be the final and sole agreement between the Parties with respect thereto. The Parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

23. In the event of a disagreement between the Parties concerning the interpretation or completion of any aspect of this Agreement, the dissatisfied party shall provide the other parties with written notice of the dispute. The Parties shall meet and confer (in-person meeting not required) to attempt to resolve the dispute in good faith within 15 business days of the written notice, or such time thereafter as is mutually agreed. If the Parties are unable to resolve the claim themselves, any Party may seek relief from the Court. The Parties agree that contempt of court is not an available remedy under this Agreement.

24. Upon adoption of this Agreement by the Court, this Agreement shall apply to and be binding upon the Plaintiff, Federal Defendants, and Idaho Defendants and anyone acting on their behalf, including successors, employees, agents, elected and appointed officers, and assigns.

25. Each of the Plaintiff's, Federal Defendants', and Idaho Defendants' undersigned representatives certifies that he or she is fully authorized to enter into and execute the terms and conditions of this Agreement, and do hereby agree to the terms herein.

26. The terms of this Agreement shall become effective upon entry of an order by the Court adopting or approving the Agreement.

Respectfully submitted this 22nd day of February 2024.

/s/ Coby Howell
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Idaho by using the CM/ECF system, which will serve a copy of the same on the counsel of record.

/s/Coby Howell