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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13  
14 CENTER FOR BIOLOGICAL DIVERSITY, *et al.*,

15 Plaintiffs,

16 v.

17 USDA APHIS WILDLIFE SERVICES, *et al.*,

18 Federal Defendants.  
19

Case No. 3:19-cv-05362-LB

**STIPULATED  
SETTLEMENT AGREEMENT**

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1 WHEREAS, Plaintiffs Center for Biological Diversity, Animal Legal Defense Fund, and Project  
2 Coyote/Earth Island Institute (“Plaintiffs”), brought claims pursuant to the Administrative Procedure Act  
3 (“APA”), 5 U.S.C. §§ 701-706, alleging violations of the National Environmental Policy Act (“NEPA”),  
4 42 U.S.C. §§ 4321-4347, and its implementing regulations, 40 C.F.R. §§ 1500-1508, against the U.S.  
5 Department of Agriculture Animal and Plant Health Inspection Service-Wildlife Services (“APHIS-  
6 Wildlife Services”) and Janet L. Bucknall in her official capacity as the Deputy Administrator of  
7 APHIS-Wildlife Services (“Federal Defendants”) (Plaintiffs and Federal Defendants, together,  
8 “Parties”);

9 WHEREAS, Plaintiffs’ claims allege that APHIS-Wildlife Services is violating NEPA and the  
10 APA by failing or refusing to supplement its NEPA analysis regarding wildlife damage management  
11 activities in California’s Sacramento District;

12 WHEREAS, Plaintiffs’ position is that significant new circumstances and information have  
13 emerged since APHIS-Wildlife Services completed its 1994 Programmatic Environmental Impact  
14 Statement and its 1997 Environmental Assessment (“EA”) and Finding of No Significant Impact  
15 (“FONSI”);

16 WHEREAS, the Parties have engaged in good faith settlement negotiations in an effort to avoid  
17 the time and expense of further litigation;

18 WHEREAS, Plaintiffs and Federal Defendants believe therefore that it is in the interests of the  
19 Parties, and judicial economy to resolve the claims in this action without additional litigation;

20 NOW THEREFORE, it is stipulated and agreed to by Plaintiffs and Federal Defendants as  
21 follows:

22 1. APHIS-Wildlife Services commits to the following:

- 23 a. By December 31, 2023, APHIS-Wildlife Services will issue a new Final  
24 Environmental Impact Statement (“FEIS”) and Record of Decision (“ROD”) that  
25 includes analysis of APHIS-Wildlife Services’ Wildlife Damage Management  
26 activities in California’s Sacramento District. If APHIS-Wildlife Services anticipates

1 that it will be unable to meet the deadline set out in this Paragraph, APHIS-Wildlife  
2 Services will confer with the Plaintiffs regarding the estimated time for completing  
3 the actions specified in the first sentence of this Paragraph. Federal Defendants  
4 reserve the right to seek to modify the Stipulated Settlement Agreement  
5 (“Agreement”) to extend time for completion of the actions specified in the first  
6 sentence of this Paragraph pursuant to Paragraph 6 below. Plaintiffs reserve the right  
7 to oppose any such extension.

8 b. Excluding activities for the protection of health and human safety,<sup>1</sup> activities  
9 targeting invasive species (including feral swine and nutria), and activities on behalf  
10 of threatened and endangered species, between the date that this Agreement is  
11 executed and the date that the ROD is signed, APHIS-Wildlife Services agrees to the  
12 following interim measures within the Sacramento District:

- 13 i. APHIS-Wildlife Services agrees not to use EPA-labeled pesticides targeting  
14 mammalian species;
- 15 ii. APHIS-Wildlife Services agrees not to use EPA-label 56228-63 (DRC-1339  
16 for bird control) in areas of the Sacramento District occupied by the state  
17 threatened tricolored blackbird (*Agelaius tricolor*);
- 18 iii. APHIS-Wildlife Services agrees to use only non-lead ammunition for all  
19 wildlife damage management activities, except when dispatching animals for  
20 which carcasses will be retrieved from the environment, subject to a 60-day  
21 transition period from the date of execution of this Agreement;
- 22 iv. APHIS-Wildlife Services agrees not to use body-gripping traps in the portion  
23 of the Sacramento National Wildlife Refuge Complex that is within the  
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25 <sup>1</sup> If APHIS-Wildlife Services undertakes activities for health and human safety that implicate any of the  
26 interim measures, APHIS-Wildlife Services agrees to provide Plaintiffs with a fiscal year report of the  
27 number and circumstances surrounding such activities by January 1 of the next fiscal year.

1 Sacramento District, National Parks, Wilderness Areas, and Wilderness Study  
2 Areas;

3 v. APHIS-Wildlife Services agrees not to conduct aerial operations in  
4 Wilderness Areas and Wilderness Study Areas;

5 vi. APHIS-Wildlife Services agrees to abide by the recommended gray wolves  
6 mitigation measures provided in the April 15, 2014, concurrence letter by the  
7 U.S. Fish and Wildlife Service (“FWS”) for APHIS-Wildlife Services’  
8 wildlife damage management activities in California until such document is  
9 superseded;

10 vii. APHIS-Wildlife Services agrees that all traps it sets will be checked daily;

11 viii. APHIS-Wildlife Services agrees to use best efforts to document cooperator-  
12 employed nonlethal predator damage management methods in its electronic  
13 recordkeeping system for operational activities;

14 ix. APHIS-Wildlife Services agrees not to engage in lethal beaver damage  
15 management in natural lakes, rivers, and streams within the Critical Habitat,  
16 as set forth by FWS, of the southwestern willow flycatcher, tidewater goby,  
17 Chinook salmon, Coho salmon, and Steelhead, except where beavers have  
18 blocked culverts, water control boxes, or other transportation crossings to the  
19 extent that fish passage is prevented.

20 x. APHIS-Wildlife Services agrees not to engage in debris management within  
21 Critical Habitat, as set forth by FWS, of the southwestern willow flycatcher,  
22 tidewater goby, Chinook salmon, Coho salmon, and Steelhead, including dam  
23 removal, except where the debris constitutes an obstruction to fish passage;  
24 and

25 xi. APHIS-Wildlife Services agrees not to implement certain non-lethal  
26 methodologies (including but not limited to pond levelers and flow devices)

1 that may impact water abundance or site character at fish rearing sites for  
2 Chinook salmon, Coho salmon, Steelhead, Green sturgeon and Pacific  
3 eulachon.

4 2. Definitions. The parties agree that the following terms used in this Settlement Agreement  
5 have the following definitions:

- 6 a. The term “body-gripping trap” is defined as a trap that grips the mammal’s body or  
7 body part, including, but not limited to, steel-jawed leghold traps, padded-jaw leghold  
8 traps, conibear traps, and snares. Cage and box traps, nets, suitcase-type live beaver  
9 traps, and common rat and mouse traps shall not be considered body-gripping traps.
- 10 b. The term “in areas occupied by gray wolves” as it appears in the April 15, 2014,  
11 concurrence letter from FWS for APHIS-Wildlife Services’ wildlife damage  
12 management activities in California is defined as, consistent with the consultation by  
13 FWS, areas where wolves are known to exist through reports and verification by the  
14 FWS and/or the California Department of Fish and Wildlife (“CDFW”).
- 15 c. The term “Sacramento District” is defined as areas within the boundaries of the  
16 following counties: Colusa, El Dorado, Lake, Marin, Napa, Placer, Sacramento,  
17 Solano, Sonoma, and Yolo.
- 18 d. The term “protection of health and human safety” is defined as activities, in response  
19 to a request received from any peace officer, to include, but not limited to, CDFW-  
20 Law Enforcement Division, California Highway Patrol, U.S. Fish and Wildlife Law  
21 Enforcement, state and county park rangers, county sheriff offices, city police offices,  
22 and city/county animal control offices, to wildlife that demonstrate aggressive action  
23 that has resulted in physical contact with a human or exhibits an immediate threat to  
24 public health and safety, given the totality of the circumstances. “Immediate threat”  
25 refers to wildlife that exhibits one or more aggressive behaviors directed toward a  
26 person that is not reasonably believed to be due to the presence of responders.

1 “Public safety” includes situations where wildlife remains a threat despite efforts to  
2 allow or encourage it through active means to leave the area.

3 e. The term “activities on behalf of threatened and endangered species” is defined as  
4 activities conducted at the direction of, and with the concurrence of, FWS or CDFW  
5 on behalf of federally or state listed threatened or endangered species.

6 f. The term “natural lakes, rivers, and streams” is defined as waterways unaltered by  
7 man. Waterways with leveed, riprapped, grouted, concreted, or otherwise man-made  
8 bounds shall not be considered natural lakes, rivers, or streams.

9 3. Attorneys’ Fees and Costs. The Parties have agreed to settle any and all of Plaintiffs’ claims  
10 for attorneys’ fees, costs, and expenses associated with this litigation for a lump sum of  
11 \$5,552.28. This Agreement represents the entirety of the undersigned Parties’ commitments  
12 with regard to settlement of claims for attorneys’ fees, costs, and expenses.

13 4. Modification. This Agreement may be modified by written stipulation between the Parties.  
14 In the event that either party seeks to modify the terms of this Agreement, the party seeking  
15 the modification will confer at the earliest possible time with the other party.

16 5. Subsequent NEPA Challenges. Nothing in this Agreement precludes any challenge by  
17 Plaintiffs to the validity or sufficiency of the NEPA analysis completed pursuant to  
18 Paragraph 1 above. Such challenges shall be made only upon (1) completion of the entire  
19 NEPA process following the issuance of APHIS-Wildlife Service’s FEIS and ROD, and (2)  
20 Plaintiffs’ exhaustion of any and all available administrative appeal opportunities. For any  
21 such challenge, judicial review will be conducted only to the extent allowed by, and pursuant  
22 to, the judicial review provisions of the APA.

23 6. Dispute Resolution. In the event of a dispute among the Parties concerning the interpretation  
24 or implementation of any aspect of this Stipulation, the disputing Party shall provide the  
25 other Party with a written notice outlining the nature of the dispute and requesting informal  
26 negotiations. The Parties shall meet and confer to attempt to resolve the dispute. If the

1 Parties cannot reach an agreed-upon resolution after 60 days following receipt of a written  
2 notice requesting informal negotiations or such longer time agreed to by the Parties, any  
3 Party may move the Court to resolve the dispute. No motion or other proceeding seeking to  
4 enforce this Agreement or for contempt of court shall be properly filed unless the Party  
5 seeking to enforce this Agreement has followed the procedure set forth in this Paragraph, and  
6 the Party believes there has been noncompliance with an order of the Court. In addition, this  
7 Agreement shall not, in the first instance, be enforceable through a proceeding for contempt  
8 of court.

- 9 7. Representative Authority. The undersigned representatives of Plaintiffs and Federal  
10 Defendants certify that they are fully authorized by the party or parties whom they represent  
11 to enter into the terms and conditions of this Agreement and to legally bind those parties to it.
- 12 8. Compliance with Other Laws. Nothing in this Agreement shall be interpreted as, or shall  
13 constitute, a commitment or requirement that Federal Defendants obligate or pay funds, or  
14 take any other actions in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any  
15 other applicable law. Nothing in this Agreement shall be construed to deprive a federal  
16 official of authority to revise, amend, or promulgate regulations, or to amend or revise land  
17 and resource management plans. Nothing in this Agreement is intended to, or shall be  
18 construed to, waive any obligation to exhaust administrative remedies; to constitute an  
19 independent waiver of the United States' sovereign immunity; to change the standard of  
20 judicial review of federal agency actions under the APA; or to otherwise extend or grant this  
21 Court jurisdiction to hear any matter, except as expressly provided in the Agreement.
- 22 9. Offsetting debts. Under 31 U.S.C. §§ 3711, 3716; 26 U.S.C. § 6402(d); 31 C.F.R. §§ 285.5,  
23 901.3; and other authorities, the United States will offset against the payment made pursuant  
24 to this Agreement Plaintiffs' delinquent debts to the United States, if any. *See Astrue v.*  
25 *Ratliff*, 560 U.S. 586 (2010).

1           10. Mutual Drafting and Other Provisions.

2           a. It is hereby expressly understood and agreed that this Agreement was jointly drafted  
3           by Plaintiffs and Federal Defendants. Accordingly, the Parties hereby agree that any  
4           and all rules of construction, to the effect that ambiguity is construed against the  
5           drafting party, shall be inapplicable in any dispute concerning the terms, meaning, or  
6           interpretation of the Agreement.

7           b. This Agreement contains all of the agreements between Plaintiffs and Federal  
8           Defendants, and is intended to be and is the final and sole agreement between  
9           Plaintiffs and Federal Defendants concerning the complete and final resolution of  
10          Plaintiffs' claims. Plaintiffs and Federal Defendants agree that any other prior or  
11          contemporaneous representations or understandings not explicitly contained in this  
12          Agreement, whether written or oral, are of no further legal or equitable force or  
13          effect. Any subsequent modifications to this Agreement must be in writing, and must  
14          be signed and executed by Plaintiffs and Federal Defendants.

15          c. This Agreement is the result of compromise and settlement, and does not constitute  
16          an admission, implied or otherwise, by Plaintiffs or Federal Defendants to any fact,  
17          claim, or defense on any issue in this litigation. This Agreement has no precedential  
18          value and shall not be used as evidence either by Federal Defendants or Plaintiffs in  
19          any other litigation except as necessary to enforce the terms of this Agreement.

20          Federal Defendants do not waive any defenses they may have concerning the claims  
21          settled under this Agreement.

22          11. Force Majeure. The Parties understand that notwithstanding their efforts to comply with the  
23          commitments contained herein, events beyond their control may prevent or delay such  
24          compliance. Such events may include natural disasters as well as unavoidable legal barriers  
25          or restraints, including those arising from actions of persons or entities that are not party to  
26          this Agreement.

1 12. Dismissal. Concurrently with this Agreement, the Parties shall file a stipulation of voluntary  
2 dismissal of this action. That stipulation will request that the Court retain jurisdiction to  
3 oversee compliance with the terms of this Agreement and to resolve any disputes arising  
4 under this Agreement and any motions to modify any of its terms. *See Kokkonen v.*  
5 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

6 13. Effective Date. The terms of this Agreement shall become effective upon execution of this  
7 Agreement. The Parties agree that this Agreement may be executed in one or more  
8 counterparts, each of which shall constitute an original, and all of which, taken together, shall  
9 constitute the same instrument. Facsimile or scanned signatures submitted by electronic mail  
10 shall have the same effect as an original signature in binding the Parties.

11 Respectfully submitted this 6th day of April, 2020.

13 /s/ Collette L. Adkins (with permission on  
14 April 6, 2020)

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