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

Defenders of Wildlife, et al.,  
Plaintiffs,  
v.  
Sally Jewell, et al.,  
Defendants.

No. CV-14-02472-TUC-JGZ  
**ORDER**

Pending before the Court is a Joint Motion to Enter Stipulated Settlement Agreement, filed on April 26, 2016, by Plaintiffs Defenders of Wildlife, *et al.*, and Defendants Sally Jewell and the United States Fish and Wildlife Service (collectively, “the moving parties”).<sup>1</sup> (Doc. 50.) Defendant-Intervenors Protect Americans Now, *et al.* (PAN), filed an objection on May 13, 2016, requesting that this Court either reject the proposed settlement agreement or accept the agreement after fashioning a conditional requirement to secure access to the Mexican gray wolf’s historic range in Mexico. (Doc. 53.) The moving parties filed a Reply on May 20, 2016. (Doc. 54.) For the reasons stated herein, the Court will grant the joint motion and enter the stipulated settlement agreement.

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<sup>1</sup> Plaintiff State of Arizona, Plaintiff-Intervenor State of Utah, and Federal Defendants in related case No. CV-15-00245-TUC-JGZ, *Arizona v. Jewell, et al.*, are also signatories to the present settlement agreement. Plaintiff-Intervenors State of Colorado and New Mexico Department of Game and Fish in case No. CV-15-00245-TUC-JGZ did not join the settlement, but have indicated that they do not oppose the entry of settlement and will voluntarily dismiss their claims within seven days of the Court approving the settlement. (*See* doc. 47 in CV-15-00245-TUC-JGZ.)

**FACTUAL / PROCEDURAL BACKGROUND**

1  
2 A subspecies of the gray wolf, the Mexican gray wolf (*Canis lupus baileyi*) is  
3 native to the forested and mountainous terrain of the American Southwest and northern  
4 Mexico. (63 Fed. Reg. 1752 (Jan. 12, 1998).) The Mexican gray wolf was first listed as  
5 an endangered subspecies under the Endangered Species Act (ESA) in 1976. (*Id.*) In  
6 1978, the subspecies listing was subsumed by the designation of the entire gray wolf  
7 species as endangered throughout North America, with the exception of Minnesota,  
8 where the species was listed as threatened. (*Id.*) In 2015, the Mexican gray wolf was  
9 again listed as an endangered subspecies. (80 Fed. Reg. 2488 (Jan. 16, 2014); *see* 50  
10 C.F.R. 17.11(h).)

11 In 1982, the United States Fish and Wildlife Service (FWS) released a document  
12 entitled “Mexican Wolf Recovery Plan.” (63 Fed. Reg. 1752, 1753; *see* doc. 19-2.) This  
13 document set the following objective: “To conserve and ensure the survival of *Canis*  
14 *lupus baileyi* by maintaining a captive breeding program and re-establishing a viable,  
15 self-sustaining population of at least 100 Mexican wolves in the middle to high elevations  
16 of a 5,000-square-mile area within the Mexican wolf’s historic range.” (Doc. 19-2, p. 25.)  
17 In the decades since the publication of the 1982 Plan, a captive breeding program and a  
18 reintroduction program were implemented. (63 Fed. Reg. 1752, 1753.) In 1998, FWS  
19 designated an experimental population pursuant to Section 10(j) of the Endangered  
20 Species Act, and Mexican gray wolves were reintroduced into the wild. (*See id.* at 1752.)  
21 As of 2013, there were 83 successful wildborn wolves, and in 2014, the captive  
22 population had reached 248. (80 Fed. Reg. 2512, 2515, 2516.) Although FWS has on at  
23 least three occasions initiated a revision process for the 1982 Recovery Plan, it has on  
24 each occasion failed to issue a final revised recovery plan. (*See* Mexican Wolf  
25 Conservation Assessment (2010), doc. 22-5, ex. 4, p. 11; 1995 Final Environmental  
26 Impact Statement, doc. 22-8, ex. 7, p. 6.)

27 In their present cause of action Plaintiffs Defenders of Wildlife, Center for  
28 Biological Diversity, Endangered Wolf Center, David R. Parsons, and Wolf Conservation

1 Center challenge the alleged failure of FWS to prepare a recovery plan for the Mexican  
2 gray wolf as required by Section 4(f) of the ESA, 16 U.S.C. § 1533(f). The Complaint for  
3 Declaratory and Injunctive Relief requests that the Court (I) find that the continued  
4 failure to prepare a legally sufficient recovery plan is a violation of ESA § 4(f), 16 U.S.C.  
5 § 1533(f), and constitutes agency action unlawfully withheld or unreasonably delayed  
6 under the Administrative Procedure Act (APA), 5 U.S.C. § 706(1); and (II) order FWS to  
7 prepare and implement a scientifically based, legally valid recovery plan for the Mexican  
8 gray wolf, with a draft plan required within six months of the Court's judgment, and a  
9 final recovery plan required within six months thereafter. (Doc. 1.) Protect Americans  
10 Now, the Colorado Farm Bureau, the New Mexico Farm and Livestock Bureau, the Utah  
11 Farm Bureau, and the Coalition of Arizona and New Mexico Communities for Stable  
12 Economic Growth intervened as defendants in this action on July 13, 2015. (Doc. 30.)

13 On September 30, 2015, the Court denied Federal Defendants' motion to dismiss  
14 for lack of jurisdiction and for failure to state a claim. (Doc. 35.) Shortly thereafter, the  
15 parties jointly moved to stay the litigation for 60 days to permit the parties to obtain  
16 approval of a settlement agreement. (Doc. 38.) The Court granted the stay (doc. 39), and,  
17 following the termination of the sixty-day stay, granted the parties four additional  
18 extensions of time to obtain the necessary approval and finalize documents for the  
19 settlement agreement. (Docs. 41, 43, 46, 49.) On April 26, 2016, after approximately six  
20 months of negotiation and finalization, Plaintiffs and Federal Defendants filed the present  
21 Motion to Enter Stipulated Settlement Agreement. (Doc. 50.)

22 The primary substantive provisions of the proposed settlement agreement are  
23 summarized as follows: (1) FWS will complete a final recovery plan for the Mexican  
24 gray wolf pursuant to Section 4(f) of the ESA and submit for publication in the Federal  
25 Register a notice of availability of the recovery plan by November 30, 2017; (2) FWS  
26 will complete an independent peer review of the draft recovery plan consistent with  
27 Section A(2) of the Department of Interior and Department of Commerce Interagency  
28 Cooperative Policy for Peer Review in Endangered Species Act Activities, through which

1 it will solicit and consider all available scientific and commercial information from  
2 appropriate state agencies and other entities, including the State of Arizona, the State of  
3 New Mexico, the State of Colorado, and the State of Utah; (3) FWS will submit reports  
4 on the status of the recovery planning process to the Court and to the parties at six-month  
5 intervals; and (4) Federal Defendants will pay Plaintiffs' reasonable attorneys' fees and  
6 costs incurred in connection with Plaintiffs' complaint and opposition to Defendants'  
7 motion to dismiss, in the amount of \$56,467.07. (Doc. 50-1.) Under the terms of the  
8 proposed settlement agreement FWS will carry out these actions in accordance with all  
9 applicable laws and regulations, and with the discretion accorded to the agency under the  
10 ESA and the APA. (*Id.* at 7.) Additionally, all counts of Plaintiffs' claims will be  
11 dismissed with prejudice, and Plaintiffs will release any remaining claims for attorneys'  
12 fees and costs in this matter. (*Id.* at 6, 8.)

### 13 STANDARD OF REVIEW

14 Approval of a proposed consent decree is committed to the sound discretion of the  
15 court.<sup>2</sup> *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). “[A] district court  
16 should enter a proposed consent judgment if the court decides that it is fair, reasonable,  
17 and equitable and does not violate the law or public policy.” *Sierra Club, Inc. v.*  
18 *Electronic Controls Design, Inc.*, 909 F.2d 1350, 1355 (9th Cir. 1990); *see United States*  
19 *v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990) (“Before approving a consent decree, a  
20 district court must be satisfied that it is at least fundamentally fair, adequate and  
21 reasonable.”) (citations omitted).

22 “The Court’s review of the Consent Decree is conducted in light of the public  
23 policy favoring settlement.” *United States v. Chevron U.S.A., Inc.*, 380 F. Supp. 2d 1104,  
24 1111 (N.D. Cal. 2005). Thus, “[t]he district court’s role in reviewing the essentially

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26 <sup>2</sup> The parties’ proposed settlement agreement provides that status reports will be  
27 submitted to the Court at six-month intervals, and that the parties may modify the  
28 agreement with Court approval. (Doc. 50-1, p. 5.) Accordingly, the Court finds that the  
agreement is subject to the standards for consent decrees and other judicially approved  
settlements. *See United States v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990) (“A consent  
decree is essentially a settlement agreement subject to continued judicial policing.”).

1 private agreement among the parties is ‘limited to the extent necessary to reach a  
2 reasoned judgment that the agreement is not the product of fraud or overreaching by, or  
3 collusion between, the negotiating parties.’” *Oregon*, 913 F.2d at 586 (quoting *Officers*  
4 *for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th  
5 Cir. 1982)).

6 Where the agreement affects the public interest, the court has a duty to protect that  
7 interest. *Oregon*, 913 F.2d at 581. However, “courts should pay deference to the  
8 judgment of the government agency which has negotiated and submitted the proposed  
9 judgment.” *S.E.C. v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984) (citing cases).  
10 Accordingly, “the court need not require that the decree be ‘in the public’s *best interest*’  
11 if it is otherwise reasonable.” *Oregon*, 913 F.2d at 581 (quoting *Randolph*, 736 F.2d at  
12 529) (emphasis in original).

## 13 DISCUSSION

### 14 I. The proposed agreement is fair, equitable, and reasonable.

#### 15 A. Procedural Fairness

16 In reviewing the moving parties’ proposed agreement the Court has the duty to  
17 ensure that “the agreement is not the product of fraud or overreaching by, or collusion  
18 between, the negotiating parties.” *Oregon*, 913 F.2d at 586; *see Hanlon*, 150 F.3d at 1028  
19 (“[T]he question we address is not whether the final product could be prettier, smarter or  
20 snazzier, but whether it is fair, adequate, and free from collusion.”). “Once the court is  
21 satisfied that the decree was the product of good faith, arms-length negotiations, a  
22 negotiated decree is presumptively valid and the objecting party has a heavy burden of  
23 demonstrating that the decree is unreasonable.” *Oregon*, 913 F.2d at 581 (internal  
24 quotations and citations omitted).

25 Here, the settlement agreement was the product of fair, careful negotiation. The  
26 Court was first informed of settlement negotiations in November, 2015, when the Court  
27 granted a request to stay the litigation, pending agency approval of a proposed settlement.  
28 Thereafter, the Court granted numerous requests for extensions while the parties finalized

1 the terms of the settlement over the next six months. *See Hanlon*, 150 F.3d at 1027  
2 (settlement was procedurally fair where negotiations spanned several months and  
3 included numerous meetings). All parties would have been aware of the ongoing  
4 negotiations, as these documents were filed in the Court’s docket. Moreover, there has  
5 been no objection to the manner in which the negotiations were conducted, and there is  
6 no evidence to suggest the agreement was the product of collusion or anything other than  
7 fair, careful negotiation. Accordingly, the Court finds that the proposed agreement meets  
8 the requirement for procedural fairness.

9 **B. Equitable / Substantive Fairness**

10 In determining whether a consent decree is equitable, courts look to whether the  
11 decree is substantively fair, considering the standpoint of both the signatories and  
12 nonparties to the decree. *See Turtle Island Restoration Network v. U.S. Dep’t of*  
13 *Commerce*, 834 F. Supp. 2d 1004, 1016-17 (D. Haw. 2011), *aff’d*, 672 F.3d 1160 (9th  
14 Cir. 2012). However, “it is not the duty of the court to determine whether ‘the settlement  
15 is one which the court itself might have fashioned, or considers ideal,’” and the court  
16 should refrain from substituting its judgment for that of the parties. *Chevron U.S.A.*, 380  
17 F. Supp. 2d at 1111 (citing *United States v. BP Expl. & Oil Co.*, 167 F. Supp. 2d 1045,  
18 1049 (N.D. Ind. 2001)). “Rather, the court’s approval is nothing more than an amalgam  
19 of delicate balancing, gross approximations and rough justice.” *Oregon*, 913 F.2d at 581  
20 (internal citations and quotations omitted).

21 Here, the Court finds that the proposed agreement is substantively fair and  
22 equitable to both the signatories and nonparties to the agreement. Critically, the proposed  
23 settlement agreement does not set forth substantive provisions of a recovery plan or  
24 otherwise mandate any particular aspect of recovery. Rather, the agreement merely sets a  
25 date by which a recovery plan for the Mexican gray wolf will be completed and  
26 submitted for publication. The agreement expressly states that the final recovery plan be  
27 completed in accordance with the terms of the ESA, the APA, and applicable agency  
28 regulations. This would include the requirements of notice and public comment that

1 accompany agency actions under the APA. Further, the Court notes that third parties are  
2 expressly accounted for in the agreement through the requirement that FWS solicit  
3 scientific information from states and other appropriate entities.

4 Because the proposed agreement merely sets a date by which FWS will draft a  
5 final recovery plan, without defining the substantive terms that plan or limiting the  
6 participation of any party in the planning process, the Court finds that the proposed  
7 agreement is substantively fair to both signatories and nonparties.

### 8 C. Reasonableness

9 The Court finds that the proposed agreement is reasonable. The existing recovery  
10 plan was promulgated in 1982, when there were only seven captive Mexican gray wolves  
11 in existence. Since that time, the circumstances surrounding Mexican gray wolf recovery  
12 efforts have changed significantly: captive breeding programs were established in the  
13 United States and Mexico, and in 1998 a population of wolves was released into the wild.  
14 There are now several hundred wolves in the wild or in captivity. The existing recovery  
15 plan, which set a goal of reestablishing a population of one hundred wolves, does not  
16 address these changed circumstances. Moreover, as the parties note in their Joint Motion,  
17 Plaintiffs and Defendants will benefit by the agreement: Plaintiffs obtain a new recovery  
18 plan and Defendants minimize their litigation risk by ensuring that the plan can be  
19 completed on a manageable timeline. For these reasons, the Court finds that terms of the  
20 proposed agreement are reasonable.

### 21 II. The proposed agreement does not violate law or public policy.

22 “Because it is a form of judgment, a consent decree must conform to applicable  
23 laws.” *Oregon*, 913 F.2d at 580-81 (internal citations omitted). “However, a consent  
24 decree need not impose all the obligations authorized by law.” Rather, “[t]he court need  
25 only be satisfied that the decree represents a ‘reasonable factual and legal  
26 determination.’” *Id.* “As long as the consent decree comes within the general scope of the  
27 case made by the pleadings, furthers the objectives upon which the law is based, and does  
28 not violate the statute upon which the complaint was based, the parties’ agreement may

1 be entered by the court.” *Electronic Controls Design*, 909 F.2d at 1355 (internal  
2 quotation marks and citations omitted).

3 The purpose of the ESA is to conserve threatened and endangered species. 16  
4 U.S.C. § 1531(b). Consistent with this purpose, FWS has an obligation under Section 4(f)  
5 of the ESA to develop and implement recovery plans for the conservation and survival of  
6 species listed as endangered or threatened under the Act. 16 U.S.C. § 1533(f). Although  
7 the Mexican gray wolf has been listed as an endangered species or subspecies since 1976,  
8 the existing recovery plan for the Mexican gray wolf has not been updated since 1982,  
9 when it was first promulgated, in spite of significant changes to the circumstances  
10 surrounding Mexican wolf recovery. By requiring a new plan to issue, the Court finds  
11 that the proposed agreement represents a reasonable factual and legal determination for  
12 the parties and falls directly within the general scope of the case made by the pleadings.

13 Because the proposed agreement requires FWS to create a new recovery plan for  
14 the Mexican gray wolf by November 2017, and to do so in accordance with the terms of  
15 the ESA, the Court finds that the proposed agreement furthers the purpose of the ESA,  
16 does not violate its terms or policies, and is in the public’s interest.

### 17 **III. Intervenor’s Objections**

18 PAN argues that the proposed agreement is “substantively unfair and wholly  
19 unreasonable.” Specifically, PAN contends that because FWS currently has access to  
20 only ten percent of the wolf’s historic range (the remaining ninety percent being located  
21 in Mexico), any recovery planning efforts at this stage are “doomed to fail.” PAN further  
22 contends that the recovery effort places undue burden on the communities and taxpayers  
23 who reside in Arizona and New Mexico. PAN asks this Court to reject the proposed  
24 agreement, or at a minimum fashion a requirement that FWS first ensure the “viability  
25 and safety of the human population of the United States” by securing access to the  
26 remaining ninety percent of the wolf’s historic range in Mexico.

27 As an initial matter, the Court notes that it may not condition its approval of the  
28 proposed agreement on the requirement that FWS first secure access to the wolf’s historic

1 range in Mexico. In evaluating a proposed consent decree, the court does not have the  
2 “ability to delete, modify or substitute certain provisions” of the proposed agreement.  
3 *Hanlon*, 150 F.3d at 1026 (internal citations and quotations omitted). Rather a proposed  
4 settlement “must stand or fall in its entirety.” *Id.* Even where a parties’ objection is in  
5 keeping with the purposes behind the applicable law, a district court may not  
6 substantially change the terms of a decree without any adjudication of the issues. *United*  
7 *States v. Armour & Co.*, 402 U.S. 673, 682-83 (1971). Thus, the Court rejects PAN’s  
8 proposal that the Court fashion a modification to the agreement that FWS secure access  
9 to the wolf’s historic range in Mexico.

10 Moreover, the Court finds PAN has not met its “heavy burden” of showing that  
11 the proposed agreement is unreasonable or otherwise invalid, such that rejecting the  
12 agreement in its entirety would be warranted. *See Oregon*, 913 F.2d at 581. PAN  
13 challenges the amount of land dedicated to the recovery efforts, and the effect that  
14 recovery effort has had on surrounding communities. In effect, these objections have little  
15 to do with the terms of the proposed agreement and are more readily understood as a  
16 challenge to the recovery effort as a whole. Under the proposed agreement, FWS will  
17 complete a final recovery plan for the Mexican wolf on a designated timeline. The  
18 substantive terms of the recovery plan are not before this Court at this time. To the extent  
19 PAN seeks to challenge terms of a proposed recovery plan, it may do so through the  
20 administrative procedures provided by the APA and the ESA.

### 21 CONCLUSION

22 For the reasons stated above, the Court finds the proposed settlement to be fair,  
23 equitable, and reasonable, and consistent with the objectives of the ESA.

24 Accordingly,

25 IT IS ORDERED that the moving parties’ Joint Motion to Enter Stipulated  
26 Settlement Agreement (doc. 50) is GRANTED.

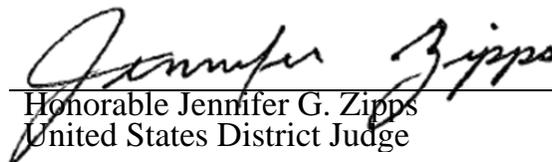
27 IT IS FURTHER ORDERED that the Stipulated Settlement Agreement, attached  
28 hereto, is APPROVED and ADOPTED as an Order of the Court. The parties shall

1 comply with the terms of the Agreement, which is hereby incorporated by reference and  
2 entered into the record of this proceeding.

3 IT IS FURTHER ORDERED that Plaintiffs' Complaint (doc. 1) is DISMISSED  
4 WITH PREJUDICE. The Clerk of the Court shall close the case.

5 As stated in the Agreement, the Court retains jurisdiction to oversee compliance  
6 with the Agreement.

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8 Dated this 17th day of October, 2016.

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12 Honorable Jennifer G. Zippo  
13 United States District Judge  
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9 **IN THE UNITED STATES DISTRICT COURT**  
 10 **FOR THE DISTRICT OF ARIZONA**  
 11 **TUCSON DIVISION**

13	Defenders of Wildlife, et al.,	)	
14	Plaintiffs,	)	No. 4:14-cv-02472-JGZ
15	v.	)	
16	S.M.R. Jewell, et al.,	)	
17	Defendants,	)	
18	and;	)	<b>STIPULATED SETTLEMENT</b>
19	Protect Americans Now, et al.,	)	<b>AGREEMENT</b>
20	Defendant-Intervenors.	)	
21	State of Arizona,	)	
22	Plaintiff,	)	
23	and;	)	
24	State of Colorado, New Mexico	)	No. 4:15-cv-00245-JGZ
25	Department of Game and Fish, and	)	
26	State of Utah,	)	
27	Plaintiff-Intervenors;	)	
28	v.	)	
	S.M.R. Jewell, et al.,	)	
	Defendants.	)	

1  
2 This Stipulated Settlement Agreement (“Agreement”) is entered into by and between  
3 Plaintiffs Defenders of Wildlife, Center for Biological Diversity, Endangered Wolf Center,  
4 David R. Parsons, Wolf Conservation Center and the State of Arizona (collectively,  
5 “Plaintiffs”), Plaintiff Intervenor State of Utah (“State of Utah”), and Defendants S.M.R. Jewell,  
6 in her official capacity as Secretary of the United States Department of the Interior; and the  
7 United States Fish and Wildlife Service (collectively, “Defendants”) who, by and through their  
8 undersigned counsel, state as follows:

9 WHEREAS, in 1976 the United States Fish and Wildlife Service (“Service”) listed the  
10 Mexican wolf (*Canis lupus baileyi*) as endangered (41 Fed. Reg. 17,736);

11 WHEREAS, in 1978, the Service published a rule classifying the gray wolf (*Canis*  
12 *lupus*) as an endangered population at the species level, thereby subsuming the separate  
13 Mexican wolf listing into the listing for the gray wolf in the contiguous United States and  
14 Mexico (43 Fed. Reg. 9,607);

15 WHEREAS, on January 16, 2015, the Service reclassified the Mexican wolf as an  
16 endangered subspecies of the gray wolf (80 Fed. Reg. 2,488);

17 WHEREAS, the Endangered Species Act (“ESA”) requires the Service to develop and  
18 implement plans for the conservation and survival of endangered and threatened species unless  
19 the Service finds that such a plan will not promote the conservation of the species, 16 U.S.C. §  
20 1533(f);

21 WHEREAS, in 1982 the Service issued a document entitled the “Mexican Gray Wolf  
22 Recovery Plan”;

23 WHEREAS, Defenders of Wildlife, Center for Biological Diversity, Endangered Wolf  
24 Center, David R. Parsons, and Wolf Conservation Center sent a letter to Defendants on  
25 September 10, 2014 stating their intent to file suit to compel the Service to issue a recovery plan  
26 pursuant to 16 U.S.C. § 1533(f)(1);

27 WHEREAS, on November 12, 2014, Defenders of Wildlife, Center for Biological  
28 Diversity, Endangered Wolf Center, David R. Parsons, and Wolf Conservation Center filed

1 *Defenders of Wildlife et al. v. Jewell et al.*, 4:14-cv-02472-JGZ, alleging that the Service’s  
2 failure to prepare a recovery plan for the Mexican wolf, pursuant to ESA Section 4(f), 16  
3 U.S.C. § 1533(f), violates the ESA and/or the Administrative Procedure Act (“APA”), 5 U.S.C.  
4 § 706(1);

5 WHEREAS, on January 29, 2015, Protect Americans Now, Colorado Farm Bureau,  
6 New Mexico Farm and Livestock Bureau, Utah Farm Bureau, and Coalition for Arizona and  
7 New Mexico Communities for Stable Economic Growth filed a motion to intervene in  
8 *Defenders of Wildlife et al. v. Jewell et al.*, 4:14-cv-02472-JGZ, which was granted on July 13,  
9 2015;

10 WHEREAS, on January 30, 2015, Defendants filed a motion to dismiss in *Defenders of*  
11 *Wildlife et al. v. Jewell et al.*, 4:14-cv-02472-JGZ, which was denied on September 30, 2015;

12 WHEREAS, the State of Arizona Game and Fish Department sent a letter to Defendants  
13 on January 6, 2015, stating its intent to file suit to compel the Service to issue a recovery plan  
14 pursuant to 16 U.S.C. § 1533(f);

15 WHEREAS, on June 8, 2015, the State of Arizona filed *State of Arizona v. Jewell et al.*,  
16 4:15-cv-00245-JGZ, alleging that the Service’s failure to prepare a new recovery plan for the  
17 Mexican wolf, pursuant to ESA Section 4(f), 16 U.S.C. § 1533(f), violates the ESA and/or the  
18 Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1);

19 WHEREAS, on September 1, 2015, the New Mexico Department of Game and Fish sent  
20 a letter to Defendants S.M.R. Jewell and Daniel Ashe stating its intent to file suit to compel  
21 Defendants to include the State of New Mexico in ongoing settlement discussion;

22 WHEREAS, on September 4, 2015, the New Mexico Department of Game and Fish  
23 filed a motion to intervene in *State of Arizona v. Jewell et al.*, 4:15-cv-00245-JGZ, which was  
24 granted on October 23, 2015;

25 WHEREAS, on September 1, 2015, the State of Colorado sent a letter to Defendants  
26 Sally Jewell and Daniel M. Ashe notifying them of the State’s intent to file suit to compel  
27 Defendants to comply with Section 4(f) of the ESA with regard to the Mexican wolf;

28

1           WHEREAS, on September 16, 2015, the State of Colorado filed a motion to intervene in  
2 *State of Arizona v. Jewell et al.*, 4:15-cv-00245-JGZ, which was granted on October 23, 2015;

3           WHEREAS, the New Mexico Department of Game and Fish and the State of Colorado  
4 decline to join the Agreement because they object to the final recovery plan deadline reflected  
5 in Paragraph 1, but both parties have represented to the settling parties that they will not oppose  
6 approval of the Agreement and intend to voluntarily dismiss their claims pursuant to Fed. R.  
7 Civ. P. 41(a)(1)(A) within 7 days of the Court’s approval of this Agreement;

8           WHEREAS, on November 30, 2015, the State of Utah filed a motion to intervene in  
9 *State of Arizona v. Jewell et al.*, 4:15-cv-00245-JGZ, which was granted on January 25, 2016;

10           WHEREAS, based on the available information, the Service believes that preparation of  
11 a recovery plan for the Mexican wolf pursuant to Section 4(f) of the ESA, 16 U.S.C. § 1533(f),  
12 will promote the conservation of the species;

13           WHEREAS, Plaintiffs, the State of Utah, and Defendants, through their authorized  
14 representatives, and without any admission or final adjudication of the issues of fact or law with  
15 respect to Plaintiffs’ and the State of Utah’s claims, have reached a settlement that they consider  
16 to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs and the  
17 State of Utah’s complaints;

18           WHEREAS, Plaintiffs, the State of Utah, and Defendants agree that settlement of this  
19 action in this manner is in the public interest and is an appropriate way to resolve the dispute  
20 between them;

21           NOW, THEREFORE, Plaintiffs, the State of Utah, and Defendants hereby stipulate and  
22 agree as follows:

23           1. Pursuant to Section 4(f) of the ESA, 16 U.S.C. § 1533(f), as amended, the Service  
24 agrees to complete a final recovery plan for the Mexican wolf and submit for publication in the  
25 Federal Register a notice of availability of the recovery plan by November 30, 2017.

26           2. The Service agrees to complete an independent peer review of the draft recovery plan,  
27 consistent with Section A(2) of the Department of Interior and Department of Commerce  
28 Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (“Peer

1 Review Policy”), 59 Fed. Reg. 34,270 (July 1, 1994). Consistent with the Peer Review Policy,  
2 the Service agrees to solicit and consider all available scientific and commercial information  
3 from appropriate State agencies and other entities specified in Section A(2)(a) of the Peer  
4 Review Policy, including but not limited to the State of Arizona, the State of New Mexico, the  
5 State of Colorado, and the State of Utah.

6 3. In the interim period until the final recovery plan issues as specified in Paragraph 1, the  
7 Service agrees to submit reports on the status of the recovery planning process to the Court and  
8 to the parties at six-month intervals. The first status report will be due six months after approval  
9 of this Agreement by the Court.

10 4. The Order entering this Agreement may be modified by the Court upon good cause  
11 shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between  
12 Plaintiffs, the State of Utah, and Defendants filed with and approved by the Court, or upon  
13 written motion filed by one of the parties to the Agreement and granted by the Court. In the  
14 event that any party to this Agreement seeks to modify the terms of this Agreement, including  
15 the deadline specified in Paragraph 1, or in the event of a dispute arising out of or relating to  
16 this Agreement, or in the event that any party to this Agreement believes that any other party  
17 has failed to comply with any term or condition of this Agreement, the party seeking the  
18 modification, raising the dispute, or seeking enforcement shall provide the other parties to this  
19 Agreement with notice of the claim or modification. The parties to this Agreement agree that  
20 they will meet and confer (either telephonically or in person) at the earliest possible time in a  
21 good-faith effort to resolve the claim before seeking relief from the Court. If the parties to this  
22 Agreement are unable to resolve the claim themselves, the aggrieved party may seek relief from  
23 the Court. In the event that Defendants fail to meet the deadline in Paragraph 1 and have not  
24 sought to modify it, the Plaintiffs and the State of Utah’s first remedy shall be a motion to  
25 enforce the terms of this Agreement. This Agreement shall not, in the first instance, be  
26 enforceable through a proceeding for contempt of court.

27 5. Defendants agree to pay Plaintiffs Defenders of Wildlife, Center for Biological  
28 Diversity, Endangered Wolf Center, David R. Parsons, and Wolf Conservation Center’s

1 reasonable attorneys' fees and costs incurred in connection with their complaint and opposition  
2 to the motion to dismiss, pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540(g), in the  
3 amount of \$56,467.07. Plaintiffs agree to accept this amount in full satisfaction of any and all  
4 claims, demands, rights, and causes of action for attorneys' fees and costs incurred in  
5 connection with the above-captioned litigation pursuant to the ESA, 16 U.S.C. § 1540(g), and/or  
6 any other statute and/or common law theory, through and including the date of this agreement.  
7 Plaintiffs Defenders of Wildlife, Center for Biological Diversity, Endangered Wolf Center,  
8 David R. Parsons, and Wolf Conservation Center agree that receipt of this payment from  
9 Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this  
10 matter, through and including the date of this agreement.

11 6. Plaintiff State of Arizona and Plaintiff Intervenor State of Utah agree to release any and  
12 all claims for attorneys' fees and costs that they may have against Defendants under any  
13 authority with respect to this litigation through and including the date of dismissal.

14 7. Plaintiffs' and the State of Utah's releases set forth in paragraphs 5-6 are expressly  
15 limited to the above-captioned actions and do not apply to any other litigation including, but not  
16 limited to, any ongoing and/or future litigation regarding the Mexican wolf recovery plan. By  
17 this Agreement, Defendants do not waive any right to contest attorneys' fees claimed by  
18 Plaintiffs, Intervenor, or their respective counsel, including hourly rates, in any future  
19 litigation, or continuation of the present actions. Further, this Agreement has no precedential  
20 value and shall not be used as evidence in any other attorneys' fees litigation.

21 8. Plaintiffs Defenders of Wildlife, Center for Biological Diversity, Endangered Wolf  
22 Center, David R. Parsons, and Wolf Conservation Center agree to furnish Defendants with the  
23 information necessary to effectuate the payment specified in paragraph 5 above. Defendants  
24 agree to submit all necessary paperwork for the processing of the attorneys' fees award to the  
25 Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. § 1540(g)(4), within  
26 ten (10) days of the receipt of the necessary information from Plaintiffs Defenders of Wildlife,  
27 Center for Biological Diversity, Endangered Wolf Center, David R. Parsons, and Wolf  
28 Conservation Center or the approval of this Agreement by the Court, whichever is later.

1 Plaintiffs Defenders of Wildlife, Center for Biological Diversity, Endangered Wolf Center,  
2 David R. Parsons, and Wolf Conservation Center's attorneys agree to send confirmation of the  
3 receipt of the payment to counsel for Defendants within 14 days of such payment.

4 9. Plaintiffs, the State of Utah, and Defendants agree that this Agreement was negotiated  
5 and entered into in good faith and that it constitutes a settlement of claims that were vigorously  
6 contested, denied, and disputed. By entering into this Agreement, neither Plaintiffs, the State of  
7 Utah, nor Defendants waive any claim or defense, except as expressly provided herein.

8 10. No provision of this Agreement shall be interpreted as, or constitutes, a commitment or  
9 requirement that Defendants are obligated to spend funds in violation of the Anti-Deficiency  
10 Act, 31 U.S.C. § 1341, or any other law or regulation.

11 11. No provision of this Agreement shall be interpreted to or constitute a commitment or  
12 requirement that the Defendants take action in contravention of the ESA, the APA, or any other  
13 law or regulation, either substantive or procedural. With respect to the procedures to be  
14 followed in developing the final recovery plan and with respect to the substance of the final  
15 recovery plan, nothing in this Agreement shall be construed to limit or modify the discretion  
16 accorded to the Service by the ESA, APA, or general principals of administrative law. To  
17 challenge any recovery plan issued pursuant to Paragraph 1, Plaintiffs and the State of Utah  
18 must file a separate action. Defendants reserve the right to raise any applicable claims or  
19 defenses to any substantive challenge raised by any party. The parties to this Agreement agree  
20 that this paragraph shall be construed in a manner that is consistent with the provisions of  
21 Paragraphs 1-3, *supra*, and not to negate the provisions of those paragraphs.

22 12. The Agreement contains all of the agreement between Plaintiffs, the State of Utah, and  
23 Defendants, and is intended to be the final and sole agreement between them. Plaintiffs, the  
24 State of Utah, and Defendants agree that any prior or contemporaneous representations or  
25 understanding not explicitly contained in this written Agreement, whether written or oral, are of  
26 no further legal or equitable force or effect.

27 13. The terms of this Agreement shall become effective upon entry of an order by the Court  
28 (similar in substance to the attached Proposed Order) approving the Agreement.

1 14. Upon approval of this Agreement by the Court, all counts of Plaintiffs' and the State of  
2 Utah's complaints shall be dismissed with prejudice. Notwithstanding the dismissal of  
3 Plaintiffs' and the State of Utah's complaints, however, the parties to this Agreement hereby  
4 stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with  
5 the terms of this Agreement and to resolve any motions to modify such terms. *See Kokkonen v.*  
6 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

7 15. The undersigned representatives of each party certify that they are fully authorized by  
8 the party or parties they represent to agree to the Court's entry of the terms and conditions of the  
9 Agreement and do hereby agree to the terms herein.

10  
11 DATED: April 26, 2016

12 Respectfully submitted,

13 JOHN C. CRUDEN  
Assistant Attorney General

14  
15 /s/ Nicole M. Smith  
NICOLE M. SMITH, Trial Attorney  
16 CA Bar Number 303629  
U.S. Department of Justice  
17 Environment & Natural Resources Division  
Wildlife & Marine Resources Section  
18 Ben Franklin Station, P.O. Box 7611  
Washington, D.C. 20044-7611  
19 Telephone: (202) 305-0368  
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21 Attorneys for Defendants in Case Nos. 4:14-  
22 cv-02472-JGZ and 4:15-cv-00245-JGZ

23 /s/ Timothy J. Preso (with permission)

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Attorney for Plaintiffs in Case  
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