

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

Case No. 2:22-cv-14038-Rosenberg

CENTER FOR BIOLOGICAL)
DIVERSITY,)
)
Plaintiff,)
)
v.)
)
DEBRA HAALAND, in her official)
capacity as Secretary of the U.S.)
Department of the Interior; and U.S.)
FISH AND WILDLIFE SERVICE,)
)
Defendants.)
_____)

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiff Center for Biological Diversity and Defendants, United States Fish and Wildlife Service (“FWS”), and Debra Haaland, in her official capacity as Secretary of the United States Department of the Interior (collectively, “Defendants”), who, by and through their undersigned counsel, state as follows:

WHEREAS, on July 11, 2012, Plaintiff petitioned FWS to list the Cedar Key mole skink (*Plestiodon egregius insularis*) as an endangered or threatened species under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531, *et seq.*;

WHEREAS on July 1, 2015, FWS issued a finding, in accordance with 16 U.S.C. § 1533(b)(3)(A) (a “90-day finding”), that the petition presented substantial

information that listing the Cedar Key mole skink may be warranted. 80 Fed. Reg. 37568 (July 1, 2015);

WHEREAS, on December 19, 2018, FWS issued a finding, in accordance with 16 U.S.C. § 1533(b)(3)(B) (a “12-month finding”), in which the agency concluded that listing the Cedar Key mole skink under the ESA was not warranted. *See* 83 Fed. Reg. 65127 (Dec. 19, 2018);

WHEREAS, by letter dated April 7, 2021, Plaintiff notified FWS of its intent to sue under the ESA to challenge FWS’s not-warranted finding for the Cedar Key mole skink;

WHEREAS, on or around May 18, 2021, FWS responded to Plaintiff’s notification;

WHEREAS, on January 26, 2022, Plaintiff filed its Complaint challenging FWS’s not-warranted finding for the Cedar Key mole skink and alleging violations of the ESA and the Administrative Procedure Act (“APA”). *See* Docket (“Dkt.”) 1; and

WHEREAS, FWS now believes it is prudent to reconsider its not-warranted finding and to develop a new 12-month finding, in accordance with 16 U.S.C. § 1533(b)(3)(B), based on the best scientific and commercial data available and other information required by 16 U.S.C. § 1533(b)(1)(A), as to whether the Cedar Key mole skink warrants listing as an endangered or threatened species.

In light of the foregoing, Plaintiff and Defendants (collectively, the “Signatory Parties”) hereby agree to the following:

1. On or before July 31, 2024, FWS will submit to the Federal Register a new 12-month finding for the Cedar Key mole skink pursuant to 16 U.S.C. § 1533(b)(3)(B).

2. 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 Signatory Parties filed with and approved by the Court, or upon written motion filed by one of the Signatory Parties and granted by the Court. In the event that a Signatory Party seeks to modify the terms of this Agreement, including the deadline 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 Signatory Party seeking the modification, raising the dispute, or seeking enforcement shall provide the other party with notice of the claim. The Signatory 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 Signatory Parties are unable to resolve the claim themselves, either party may seek relief from the Court.

3. In the event that Defendants fail to meet the deadline specified in paragraph 1 and have not sought to modify it, Plaintiff's first remedy shall be a motion to enforce the terms of this Agreement, after following the dispute resolution procedures described above. This Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

4. This Agreement requires only that FWS take the action specified in paragraph 1. No provision of the Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the ESA, 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 FWS 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 determination required herein. To challenge any determination issued pursuant to this Agreement, Plaintiff will be required to file a separate action, and Defendants reserve the right to raise any applicable claims or defenses in response thereto.

5. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as an admission or concession 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. This Agreement is executed for the purpose of settling Plaintiff's Complaint, and no part of this Agreement shall have precedential value in any other context.

6. The Signatory Parties agree that the Agreement was negotiated in good faith and that it constitutes a settlement of claims disputed by them. By entering into this Agreement, the Signatory 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 Signatory Parties concerning Plaintiff's Complaint, and it

is intended to be the final and sole agreement between the Signatory Parties with respect thereto. The Signatory 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.

7. The undersigned representatives of each Signatory Party certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this Agreement and do hereby agree to the terms herein. Furthermore, each Signatory Party, by and through its undersigned representative, represents and warrants that it has the legal power and authority to enter into this Agreement and bind itself to the terms and conditions contained in this Agreement.

8. Plaintiff reserves its right to request attorneys' fees and costs from Defendants pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540(g), and 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. The Signatory Parties agree to the following schedule for addressing attorneys' fees and costs:

a. Within 45 days of the entry of an order by this Court approving this Agreement, Plaintiff will provide to Defendants an itemization of the attorneys' fees and costs that they seek to recover to allow Defendants to assess whether the settlement of such claims is possible.

b. Within 60 days of Defendants' receipt of this itemization of Plaintiff's proposed fees and costs, the Signatory Parties will notify the Court

as to whether they have reached a settlement as to the payment of Plaintiff's attorneys' fees and costs by Defendants.

c. If the Signatory Parties have not reached agreement on attorneys' fees and costs at the time they provide this post-receipt notice to the Court, the parties will submit a briefing schedule for Plaintiff's motion for attorneys' fees and costs. In the event that Plaintiff files such a motion, Defendants reserve the right to contest Plaintiff's entitlement to fees and the reasonableness of the amount of Plaintiff's claimed attorneys' fees and costs, including hourly rates and the number of hours billed.

9. 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, *see* 31 U.S.C. § 1341, or any other applicable appropriations law.

10. 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. Defendants reserve the right to contest Plaintiff's entitlement to any fees and costs claimed by Plaintiff or Plaintiff's counsel and the reasonableness of the amount of any claimed fees and costs, including hourly rates and the number of hours billed, in any future litigation or continuation of the present action.

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

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 Signatory Parties 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, until Defendants satisfy their obligations under paragraph 1 of the Agreement. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). The Signatory Parties further stipulate and respectfully request that the Court retain jurisdiction to oversee any motion for attorneys' fees and costs. *Id.*

Dated: May 12, 2022

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Dated: May 12, 2022

Respectfully submitted,

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