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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WILDEARTH GUARDIANS,

Plaintiff,

v.

KEITH LANNOM, in his official capacity as
Payette National Forest Supervisor;
UNITED STATES FOREST SERVICE;
DANIEL ASHE, in his official capacity as
Director of the U.S. Fish and Wildlife Service;
UNITED STATES FISH AND WILDLIFE SERVICE,

Defendants.

Case No.: 1:16-cv-00428-BLW

JOINT MOTION TO STAY

Plaintiff WildEarth Guardians and Defendants Keith Lannom, in his official capacity as Payette National Forest Supervisor; the United States Forest Service; Daniel Ashe, in his official capacity as Director of the United States Fish and Wildlife Service; and the United States Fish and Wildlife Service (collectively, "Federal Defendants") jointly move this Court to stay this

proceeding until January 30, 2018. The parties provide the following grounds in support of this motion:

1. On December 15, 2015, Plaintiff sent a letter titled “Sixty-Day Notice of Intent to Sue Under § 7 of the Endangered Species Act” to Federal Defendants, and others, outlining alleged ESA violations. *See* Attachment A.

2. On July 5, 2016, Plaintiff sent a letter titled “Sixty-Day Notice of Intent to Sue Under § 7 of the Endangered Species Act and National Environmental Policy Act” to Federal Defendants outlining alleged ESA violations. *See* Attachment B.

3. Federal Defendants state that on August 25, 2016, Keith Lannom, the Forest Supervisor for Payette National Forest, responded to Plaintiff’s letter. *See* Attachment C. Supervisor Lannom’s letter stated that the Forest Service had begun the process of reinitiating watershed consultations in the fall of 2015 in order to complete the reinitiation of consultation on the 2007 Payette National Forest Travel Management Plan. *Id.* Plaintiff states that it never received this letter.

4. On September 21, 2016, Plaintiff filed its Complaint, alleging that Federal Defendants are in violation of Section 7 of the ESA by: (1) failing to reinitiate and complete consultation on the Payette National Forest Travel Management Plan after the United States Fish and Wildlife Service designated areas of the Payette National Forest as bull trout critical habitat; (2) failing to reinitiate and complete consultation on the Payette National Forest Travel Management Plan in light of new climate change information that may affect bull trout and its designated critical habitat in a way or to an extent not previously considered; (3) failing to ensure that the continued implementation of the Payette National Forest Travel Management Plan is not likely to jeopardize the continued existence of bull trout or result in the destruction or adverse

modification of bull trout critical habitat; and (4) making an irreversible and irretrievable commitment of resources in violation of Section 7(d), 16 U.S.C. § 1536(d). ECF No. 1 at 23.

5. On September 22, 2016, Supervisor Lannom, sent Plaintiff a letter. *See* Attachment D. Supervisor Lannom advised Plaintiff that the Forest Service had begun the process to renew watershed consultations in the fall of 2015 to replace expiring Biological Assessments related to the 2007 Payette National Forest Travel Management Plan. *Id.*

6. On October 21, 2016, the Forest Service sent a letter to the United States Fish and Wildlife Service, “reconfirm[ing] that the Payette National Forest [] reinitiated formal and informal Endangered Species Act [] Section 7 consultation for the Forest ongoing Federal actions consultation, which includes the 2007 Travel Plan, by letter of December 6, 2010.” *See* Attachment E. The letter also outlined projected dates for when benchmarks would be reached in the consultation process. *Id.* Based on those projections, Federal Defendants “anticipate[] that consultation can be completed not later than December 15, 2017, barring unforeseen circumstances.” *Id.*

7. Because Federal Defendants assert that they intend to complete ESA Section 7 consultation, barring unforeseen circumstances, by December 15, 2017, the parties request a stay of the current litigation, until January 30, 2018, to allow Federal Defendants to devote their resources to completing the consultation process and for Plaintiff to review the completed Biological Opinion. The stay would conserve the parties’ and the Court’s limited resources by avoiding potentially unnecessary litigation.

8. The parties have agreed that Federal Defendants will provide written status updates to the Court approximately every 90 days during the stay from the date of the filing of this motion (on April 3, 2017; July 3, 2017; October 2, 2017; and January 8, 2018) advising of

the progress made during the consultation process. The status updates shall include, as applicable: (1) a concise statement about whether a draft biological assessment, concurrence letter, non-concurrence letter, or biological opinion has been completed as part of the Payette National Forest Travel Management Plan consultation; (2) a concise statement about the current status of any biological assessments, concurrence letters, non-concurrence letters, and biological opinions drafted as part of the Payette National Forest Travel Management Plan consultation; (3) a copy of any finalized biological assessments, concurrence letters, non-concurrence letters, and biological opinions completed as part of the Payette National Forest Travel Management Plan consultation; (4) a concise statement about any additional studies completed in connection with the Payette National Forest Travel Management Plan consultation; (5) a concise statement about whether the benchmarks listed in Attachment E have been completed by the dates outlined in Attachment E and whether Federal Defendants expect the next benchmark to be met by the outlined date; (6) whether Federal Defendants initiated formal consultation on the Payette National Forest Travel Management Plan; (7) the current estimated date of consultation completion; and (8) if the current estimated date of consultation completion has changed from December 15, 2017, a concise statement about why the completion date has changed. The parties additionally agree that Federal Defendants will provide Plaintiff with a copy of any and all final Biological Opinion(s) related to the Payette National Forest Travel Management Plan within 10 business days of it being finalized and signed via email to Plaintiff's counsel.

9. If necessary, Federal Defendants will provide Plaintiff with prompt notice of any delays (including wildfire-related delays) that impact the dates outlined in Attachment E for the consultation benchmarks. Federal Defendants will provide Plaintiff with prompt notice of these delays by emailing Plaintiff's counsel.

10. If Federal Defendants have completed consultation on the Payette National Forest Travel Management Plan by December 15, 2017, the parties intend to file a stipulation of dismissal pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure. Although the parties intend to file a stipulation of dismissal pursuant to Rule 41(a)(1)(A)(ii) should consultation be completed by December 15, 2017, a final determination on the appropriateness of such a stipulation will be made after reviewing any consultation documents produced by Federal Defendants.

11. If Federal Defendants have completed consultation on the Payette National Forest Travel Management Plan by December 15, 2017, the parties shall either jointly file a stipulation of dismissal pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure by January 30, 2018 or jointly file a status report with the Court by January 30, 2018 informing the Court of the status of the case and the parties' intent for how the case should proceed.

12. This proposed stay would also stay: (1) the requirement for counsel to meet and confer pursuant to Dist. Idaho L. Rule 16.1(a); (2) Federal Defendants' deadline to answer or otherwise respond to the Complaint on January 11, 2017; and (3) the requirement to notify the Court of a need for a new Scheduling Conference by January 11, 2017. *See* ECF No. 8, 13.

Therefore, the parties jointly and respectfully request that the Court stay the current litigation until January 30, 2018. A proposed order will be emailed to the Court pursuant to ECF Procedure 12.

Dated: January 9, 2017

Respectfully submitted,

JOHN C. CRUDEN, Assistant Attorney General
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S. JAY GOVINDAN, Assistant Chief

/s/ Kaitlyn Poirier

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of January, 2017, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

John R. Mellgren, Attorney for Plaintiff

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