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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT,	)	Civ. No. 06-277-BLW
	)	
Plaintiff,	)	
	)	
v.	)	<b>AMENDED JOINT STIPULATION</b>
	)	<b>ON REMAND</b>
U.S. FISH AND WILDLIFE SERVICE,	)	
	)	
Defendant.	)	
	)	
_____	)	

Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) and Defendant U.S. FISH AND WILDLIFE SERVICE (“the Service”), by and through their undersigned counsel, hereby submit this amendment to the Joint Stipulation on Remand (Dckt. No. 130) and stipulate to the following procedures and deadlines for remand in this matter:

WHEREAS, the Court entered summary judgment for WWP on December 4, 2007, which set aside and remanded the Service's 12-month finding, issued in 2005, that determined that listing the greater sage-grouse as threatened or endangered under the Endangered Species Act was "not warranted" (Dckt. No. 119); and

WHEREAS, on February 29, 2008 the Court approved the Stipulation on Remand (Dckt. No. 130), which established a contingent May 2009 deadline for a new 12-month finding on greater sage-grouse; and

WHEREAS, the May 2009 deadline for the new 12-month finding was contingent on an updated conservation assessment on Greater sage-grouse having been published in the journal *Studies in Avian Biology* in November 2008 (hereinafter "the Monograph"); and

WHEREAS, the publication date for the Monograph was continued significantly and as of the date of this filing the Monograph has not been published; and

WHEREAS, Paragraph 2 of the Stipulation on Remand states that, if the Monograph did not publish in November 2008, as was anticipated, WWP and the Service "will confer on reasonable extension of these deadlines to allow sufficient time for public comment and Service incorporation of the updated Conservation Assessment into its status review before making a new listing determination"; and

WHEREAS, on April 29, 2009, the Service received final, "in-press" copies of 14 of the 25 chapters that are expected to be included in the forthcoming Monograph; and

WHEREAS, the Service expects that by July 2009 it will have received, as final in-press documents, all 25 chapters that are expected to be included in the Monograph; and

WHEREAS, counsel for the WWP and the Service have conferred regarding a reasonable extension of the deadlines for the new 12-month finding pursuant to Paragraph 2 of the Stipulation on Remand; and

WHEREAS, the Endangered Species Act ("ESA") requires the Service to base its listing decisions on the "best scientific and commercial data available," 16 U.S.C. § 1533(b)(1)(A); and

WHEREAS, WWP and the Service agree that the following schedule for a new 12-month finding is consistent with Section 4(b)(1)(A) of the ESA, 16 U.S.C. § 1533(b)(1)(A), and is in their best interests;

NOW, THEREFORE, WWP AND THE SERVICE STIPULATE TO THE FOLLOWING PROCEDURES AND DEADLINES:

1. WWP and the Service acknowledge and agree that neither the ESA nor its implementing regulations require the Service to conduct a public review and/or comment period regarding information being considered by the Service in its preparation of a 12-month petition finding. However, given the unique circumstances of this particular case, the Service will notify the parties to this litigation in writing within seven days of its receipt of all Monograph chapters in final, in-press form, and provide information on the Service's website as to where the Monograph chapters can be viewed via the Internet. Said notice will commence a period of 30 days for the public to provide any additional information relevant to the scientific documents to be published in the Monograph.

2. WWP and the Service acknowledge and agree that the 30-day period provided for in Paragraph 1 shall commence only after the Service has received all Monograph chapters in final, in-press form. The Service currently expects that this will occur by July 2009. If the Service has not received final, in-press copies of all Monograph chapters by July 2009, WWP and the Service agree that the Service may dispense with the public input period provided in Paragraph 1 and will proceed with completing the 12-month finding for the greater sage-grouse pursuant to Paragraph 3, which finding will be based on the best scientific and commercial data available to the Service (and will include consideration of information contained in the Monograph chapters that the Service has received, as well as any other scientific information provided to or obtained by the Service).
3. The Service will submit its new 12-month finding on greater sage-grouse to the Federal Register for publication by February 26, 2010. WWP and the Service acknowledge and agree that the Service will submit its new 12-month finding to the Federal Register by February 26, 2010 even if all final, in-press Monograph chapters are not available to the Service at that time, consistent with ESA Section 4(b)(1)(A), 16 U.S.C. § 1533(b)(1)(A).
4. WWP and the Service agree that the extension of time in this Second Stipulation On Remand is intended, in part, to accommodate the Service's timing and workload concerns; and that the February 26, 2010 date for the Service to submit a new 12-month finding for the greater sage-grouse to the Federal Register is

intended to be a firm, binding deadline. However, WWP and the Service agree that if highly unusual and unforeseen circumstances arise that make it impossible or imprudent for the Service to submit the 12-month finding to the Federal Register by the February 26, 2010 deadline, then WWP and the Service will confer on a further extension of those deadlines. Should WWP and the Service be unable to reach agreement on an extension, either party may move the Court for relief, based on a showing of highly unusual and unforeseen circumstances that warrant a further extension of time.

5. WWP and the Service agree and acknowledge that this Stipulation is a compromise to avoid further litigation only and has neither precedential value as to the merits of any claims in this litigation nor any precedential value in any future litigation.
6. Nothing in this Stipulation shall be interpreted as or constitute a commitment or requirement that the Service take actions in contravention of the ESA or any other law or regulation, either substantive or procedural.

IT IS SO STIPULATED.

Dated: May 29, 2009

/s/ Laird Lucas  
Laurence ("Laird") J. Lucas (ISB # 4733)  
Attorney for Plaintiff

Dated: May 29, 2009

/s/ Robert P. Williams  
Robert P. Williams, U.S. Department of Justice  
Attorney for Federal Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 29th day of May, 2009, 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:

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