

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01959-AP

WILDEARTH GUARDIANS, a non-profit organization,

Petitioner,

v.

STEVE GUERTIN, in his official capacity as director of U.S. Fish & Wildlife Service's Mountain-Prairie Region;

ROWAN GOULD, in his official capacity as acting director of the U.S. Fish & Wildlife Service;

UNITED STATES FISH & WILDLIFE SERVICE, a federal agency;

KEN SALAZAR, in his official capacity of Secretary of the Interior; and

UNITED STATES DEPARTMENT OF THE INTERIOR, a federal department,

Respondents.

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**JOINT CASE MANAGEMENT PLAN FOR PETITION FOR REVIEW OF AGENCY  
ACTION IN ENVIRONMENTAL CASES**

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## 1. APPEARANCES OF COUNSEL

### For Petitioner:

Matthew K. Bishop Western Environmental Law Center 103 Reeder's Alley Helena, MT 59601 (406) 324-8011 (tel.) (406) 443-6501 (fax) bishop@westernlaw.org	Geoff Hickcox Western Environmental Law Center 679 E. 2nd Ave., Suite 11B Durango, CO 81301 (970) 385-6680 (tel.) (970) 385-6804 (fax) hickcox@westernlaw.org
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### For Respondent:

JOHN H. MARTIN, Trial Attorney U.S. Department of Justice Environment & Natural Resources Division Wildlife & Marine Resources Section 999 18th Street, South Terrace Suite 370 Denver, CO 80202 (303) 844-1383 (303) 844-1350 (fax) Email: john.h.martin@usdoj.gov	
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## 2. STATEMENT OF LEGAL BASIS FOR SUBJECT MATTER JURISDICTION

Petitioners allege that the Court has jurisdiction based on the presentation of federal question, 28 U.S.C. § 1331, and that this Court has the authority to review Federal Defendant's action complained of herein, and grant the relief requested, pursuant to the APA, 5 U.S.C. § 701 et seq., and the ESA's citizen suit provision, 16 U.S.C. § 1540 (g).

Federal Respondents anticipate raising Petitioners' lack of standing and the statute of limitations as jurisdictional defenses.

## 3. DATES OF FILING OF RELEVANT PLEADINGS

### **A. Date Petition for Review Was Filed:**

August 17, 2010.

**B. Date Petition for Review Was Served on U.S. Attorney's Office:**

August 23, 2010

**C. Date Answer to Petition Was Filed:**

October 25, 2010

**4. STATEMENT REGARDING WHETHER THIS CASE RAISES UNUSUAL CLAIMS OR DEFENSES**

n/a

**5. OTHER MATTERS**

The parties are currently exploring the potential for settlement of this matter. Should settlement negotiations produce an agreement, or should such negotiations require additional time, the parties will so notify the Court and jointly request a modification of the scheduling order as necessary. Otherwise, the parties will adhere to the schedule proposed below.

**6. BRIEFING SCHEDULE**

**A. Deadline for Filing Administrative Record:**

January 7, 2011

**B. Deadline for Parties to Confer on Record Disputes:**

The parties shall confer on record disputes no later than 30 days following the filing of the administrative record.

**C. Deadline for Filing Motions to Complete and/or Supplement the Administrative Record:**

Motions to complete and/or supplement the administrative record shall be filed no later than 30 days following the parties meeting to confer on record disputes. Subsequent briefing of a motion to complete and/or supplement the administrative

record shall comply with D.C. Colo. L. Civ. R. 7.1( C).

**D. Petitioner's Opening Brief Due:**

Petitioner's opening brief on the merits shall be due 30 days following the deadline for filing motions to complete and/or supplement the record, if no such motions are filed. Alternatively, if such motion is filed, petitioner's opening brief on the merits shall be filed 30 days following resolution of the motion to complete and/or supplement the administrative record.

**E. Respondent's Response Brief Due:**

Respondent's response brief on the merits shall be filed no later than 30 days following the filing of petitioner's opening brief.

**F. Petitioner's Reply Brief (If Any) Due:**

Petitioner's reply brief shall be filed no later than 15 days following the filing of Respondent's response brief

**7. STATEMENTS REGARDING ORAL ARGUMENT**

**Joint Statement:**

Petitioners and Respondent's jointly request that oral argument be scheduled at the Court's earliest convenience following completion of briefing on the merits. The parties believe oral argument is appropriate for the purpose of emphasizing the parties' arguments and defenses, as well as clarifying points on which the Court may have questions.

**8. CONSENT TO EXERCISE OF JURISDICTION BY MAGISTRATE JUDGE**

**Indicate below the parties' consent choice.**

**A. ( ) All parties have consented to the exercise of jurisdiction of a**

**United States Magistrate Judge.**

- B. ( X ) All parties have not consented to the exercise of jurisdiction of a United States Magistrate Judge.**

**9. OTHER MATTERS**

PARTIES FILING MOTIONS FOR EXTENSION OF TIME OR CONTINUANCES MUST COMPLY WITH D.C.COLO.LCivR 5.1(G) BY SUBMITTING PROOF THAT A COPY OF THE MOTION HAS BEEN SERVED UPON ALL ATTORNEYS OF RECORD AND ALL PRO SE PARTIES. PARTIES FILING MOTIONS FOR EXTENSION OF TIME OR CONTINUANCES MUST COMPLY WITH D.C. COLO. LCivR 6.1(E) BY SERVING SUCH MOTION UPON THE MOVING ATTORNEY'S CLIENT.

**10. AMENDMENTS TO JOINT CASE MANAGEMENT PLAN**

*The parties agree that the Joint Case Management Plan may be altered or amended only upon a showing of good cause.*

DATED this 17<sup>th</sup> day of November, 2010.

BY THE COURT:  
s/John L. Kane  
U.S. DISTRICT COURT JUDGE

APPROVED:

<u>/s/ Matthew Bishop</u> Matthew K. Bishop Western Environmental Law Center 103 Reeder's Alley Helena, MT 59601 (406) 324-8011 (tel.) (406) 443-6501 (fax) bishop@westernlaw.org	<u>/s/ Geoff Hickcox</u> Geoff Hickcox Western Environmental Law Center 679 E. 2nd Ave., Suite 11B Durango, CO 81301 (970) 385-6680 (tel.) (970) 385-6804 (fax) hickcox@westernlaw.org  Attorney(s) for Petitioner(s)
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<p>SETH BARSKY, Acting Chief KRISTEN L. GUSTAFSON, Assistant Chief <u>/s/ John H. Martin</u> JOHN H. MARTIN, Trial Attorney (CO #32667) U.S. Department of Justice Environment &amp; Natural Resources Division Wildlife &amp; Marine Resources Section 999 18<sup>th</sup> Street, South Terrace Suite 370 Denver, CO 80202 (303) 844-1383 (303) 844-1350 (fax) Email: john.h.martin@usdoj.gov</p>	<p>OF COUNSEL: AMANDA KOEHLER Office of the Solicitor United States Department of the Interior Lakewood, CO 80215</p> <p>Attorney for Respondent(s)</p>
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