

1 MONTANA FIRST JUDICIAL DISTRICT
2 LEWIS AND CLARK COUNTY

3 HELENA HUNTERS AND ANGLERS)
4 ASSOCIATION, a non-profit organization)
5 FRIENDS OF THE WILD SWAN, a non-profit)
6 organization; MONTANA ECOSYSTEM)
7 DEFENSE COUNCIL, a non-profit organization;)
8 GEORGE WUERTHNER, an individual; NATIVE)
9 ECOSYSTEMS COUNCIL, a non-profit)
10 organization; ALLIANCE FOR THE WILD)
11 ROCKIES, a non-profit organization; SWAN)
12 VIEW COALITION, a non-profit organization;)
13 WILDEARTH GUARDIANS, a non-profit)
14 organization, and FOOTLOOSE MONTANA, a)
15 non-profit organization,)

16 Plaintiffs,)

17 vs.)

18 JOE MAURIER, in his official capacity as)
19 Director of The Montana Fish, Wildlife and Parks,)
20 MONTANA FISH, WILDLIFE AND PARKS, an)
21 agency of the State of Montana; BOB REAM, in)
22 his official capacity as chairman of the Montana)
23 Fish, Wildlife and Parks Commission; and the)
24 MONTANA FISH, WILDLIFE AND PARKS)
25 COMMISSION, a regulatory entity of the State)
26 of Montana,)

27 State-Defendants.)
28)

BDV-2012-868

JOINT MOTION TO VACATE
JANUARY 10, 2013, HEARING
AND AMEND CASE
MANAGEMENT PLAN

29 The Parties, by and through the undersigned counsel, hereby submit this joint motion to
30 vacate the January 10, 2013, preliminary injunction hearing and amend the Parties' joint case
31 management plan in this matter. In support of this joint motion, the Parties state as follows:

32 1. On October 11, 2012, Plaintiffs filed a complaint for declaratory and injunctive relief
33 against the Montana Department of Fish Wildlife and Parks and Montana Fish Wildlife and
34 Parks Commission (collectively "the Department").
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1 2. On October 30, 2012, the Parties filed a stipulation and joint case management plan
2 outlining how this matter should proceed.

3 3. On November 1, 2012, this Court issued an order granting the Parties' stipulation and
4 joint case management plan.

5 4. On November 2, 2012, Plaintiffs filed a motion for a preliminary injunction and
6 supporting memorandum in order to preserve the status quo and prevent additional wolverine
7 mortalities until such time as this Court can resolve this matter on the merits (pursuant to the
8 Parties' approved plan). On November 16, 2012, the Department filed a response in opposition
9 to Plaintiffs' motion for a preliminary injunction. On November 26, 2012, Plaintiffs filed a reply
10 in support of its motion for a preliminary injunction.

11 5. On November 28, 2012, Plaintiffs file a motion for a temporary restraining order
12 ("TRO") asking this Court to enjoin the Department from authorizing the trapping, snaring, and
13 killing of wolverines in Montana until such time as this Court is able to resolve Plaintiffs' motion
14 for a preliminary injunction (the 2012-2013 wolverine trapping season in Montana runs from
15 December 1, 2012 to February 15, 2013). The Department filed a response in opposition to
16 Plaintiffs' motion for a TRO and Plaintiffs' filed a reply.

17 6. On November 30, 2012, this Court issued an order granting Plaintiffs' motion for a
18 TRO and enjoining the Department from authorizing the trapping, snaring, or killing of
19 wolverines in Montana until a decision on Plaintiffs' motion for a preliminary injunction is
20 issued.

21 7. This Court's November 30, 2012, order granting Plaintiffs' motion for a TRO set a
22 hearing on Plaintiffs' motion for a preliminary injunction for January 10, 2013, at 1:30pm.

23 8. On December 5, 2012, the Department filed a motion to expedite the January 10,
24 2013, preliminary injunction hearing date in this matter. On December 21, 2012, this Court
25 issued an order denying the Department's motion for an expedited hearing.

26 9. On January 4, 2013, counsel for the Department informed counsel for Plaintiffs that
27 the January 10, 2013, preliminary injunction hearing date did not work for the Department due to
28 scheduling conflicts with witnesses and needed to be vacated. Plaintiffs agreed to join in the

1 Department's motion to vacate the January 10, 2013, hearing date so long as this Court's order
2 granting Plaintiffs' TRO remained in place.

3 10. The U.S. Fish & Wildlife Service is likely to issue a proposed rule to list wolverine
4 as a threatened species under the Endangered Species Act ("ESA") in the coming weeks (a
5 proposed rule is expected to be sent to the Federal Register by January 18, 2013).

6 11. The wolverine trapping season (suspended to date by this Court's November 30,
7 2013 order granting Plaintiffs' motion for a TRO) ends February 15, 2013.

8 WHEREFORE, the Parties respectfully request that this Court sign the attached proposed
9 order vacating the January 10, 2013, preliminary injunction hearing in this matter and amending
10 the Parties' joint case management plan as follows:

11 (1) On or before March 1, 2013, the Parties will jointly notify this Court: (1) whether a
12 hearing on Plaintiffs' motion for a preliminary injunction is still necessary and needs to be
13 scheduled; (2) whether Plaintiffs' motion for a preliminary injunction is withdrawn; and/or (3)
14 whether the Parties have reached a stipulated agreement regarding Plaintiffs' motion for a
15 preliminary injunction. This Court's November 30, 2012, order granting Plaintiffs' motion for a
16 TRO will remain in effect. The Department is enjoined from authorizing the trapping (unless for
17 non-lethal research purposes), snaring, or killing of wolverines in Montana until Plaintiffs'
18 motion for a preliminary injunction is resolved.

19 (2) On December 14, 2012, the Department filed an administrative record in this matter.
20 The Parties will endeavor to resolve any disagreements concerning the contents of the
21 administrative record filed in this case informally, amongst themselves. If unable to do so,
22 Plaintiffs will have until April 5, 2013, to file any motions objecting to the contents of the record
23 or seeking to supplement the record;

24 (3) if no disputes concerning the content of the record arise, Plaintiffs will file a motion
25 for summary judgment and supporting materials by April 19, 2013, the Department will file a
26 consolidated cross-motion for summary judgment and response to Plaintiffs' motion by May 20,
27 2013, Plaintiffs will file a consolidated response to the Department's motion and reply by June
28 21, 2013, and the Department will file a reply by July 21, 2013.

1 Respectfully submitted this 7th day of January, 2013.

2 WESTERN ENVIRONMENTAL LAW CENTER

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20 zzipfel@mt.gov
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22 CERTIFICATE OF SERVICE

23 I hereby certify that on the 7th day of January, 2013, I e-mailed and sent a copy of this
24 document, via U.S. Mail, on the following counsel of record for State-Defendants:

25 Rebecca Jakes-Dockter
26 Zach Zipfel
27 Montan Fish Wildlife and Parks, Legal Unit
28 1712 9th Ave.
Helena, MT 59620-0701

Matthew K. Bishop