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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

ROCKY MOUNTAIN ELK  
FOUNDATION, et al.,

Plaintiffs

v.

UNITED STATES DEPARTMENT  
OF THE INTERIOR, et al.,

Defendants

and

DEFENDERS OF WILDLIFE, et al.,

Defendant-Intervenors.

Case No. 25-cv-00029-DWM

**UNOPPOSED JOINT  
MOTION TO STAY THIS  
LITIGATION AND  
MEMORANDUM IN  
SUPPORT**

Plaintiffs and Federal Defendants (“Parties”) jointly move the Court to stay this litigation through October 31, 2026, based on the U.S. Fish and Wildlife Service’s rulemaking to reconsider the same rule challenged here. The Parties have conferred with counsel for Defendant-Intervenors the Center for Biological Diversity and Defenders of Wildlife, who stated that they take no position on this motion. In support of this joint motion, the Parties state as follows:

1. Plaintiffs the Rocky Mountain Elk Foundation and Property and Environment Research Center filed this lawsuit on March 10, 2025, challenging the U.S. Fish and Wildlife Service’s amendments to 50 C.F.R. §§ 17.31(a), 17.71(a), the “2024 Blanket Rule.” *See* Final Rule: Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants, 89 Fed. Reg. 23919; *see also* Complaint (ECF 1). Federal Defendants answered on May 12, 2025 (ECF 16).

2. The challenged 2024 Blanket Rule addressed the Endangered Species Act (ESA or Act) prohibitions under Section 9(a), 16 U.S.C. § 1538(a), that apply to threatened species.

3. Generally, Section 9(a) prohibits “take” and activities with unlawfully taken endangered species of fish or wildlife, *Id.*

§ 1538(a)(1)(B)-(C); *id.* § 1532(19) (“The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”). Section 9(a) prohibits certain other acts with endangered species of plants, *Id.* § 1538(a)(2)(B). And Section 9(a) also prohibits acts such as import, export, and certain activities in interstate or foreign commerce for endangered species of fish or wildlife or plants, 16 U.S.C. §§ 1538(a)(1)(A), (E)-(F); 1538(a)(2)(A), (C)-(D). Finally, Section 9 prohibits violating any regulation under the ESA pertaining to endangered or threatened species of fish or wildlife or plants. *Id.* §§ 1538(a)(1)(G); 1538(a)(2)(E).

4. In Section 4(d), Congress authorized the Service to extend Section 9(a)(1)-(2)’s prohibitions to threatened species. *Id.* § 1533(d).

5. In the 1970s, with some exceptions, the Service extended the Section 9(a) prohibitions, including the “take” prohibition for endangered fish or wildlife, to threatened species administered by the Service in blanket Section 4(d) rules that applied absent a species-specific 4(d) rule. *See, e.g.*, 40 Fed. Reg. 44411 (Sept. 26, 1975); 42 Fed. Reg. 32377 (June 24, 1977).

6. In 2019, FWS amended its regulations to remove the

blanket Section 4(d) rules at 50 C.F.R. §§ 17.31(a), 17.71(a), such that a species-specific 4(d) rule was required for each newly listed threatened species. 84 Fed. Reg. 44753 (Aug. 27, 2019).

7. In 2024, FWS issued the 2024 Blanket Rule, which Plaintiffs challenge here. That rule reinstated the blanket Section 4(d) rules at 50 C.F.R. §§ 17.31(a), 17.71(a), with modifications, while retaining the option to promulgate species-specific 4(d) rules. *See* 89 Fed. Reg. at 23919.

8. More recently, the Service has initiated a rulemaking process to reconsider the blanket Section 4(d) rules at 50 C.F.R. §§ 17.31(a), 17.71(a) for any newly listed threatened species and to consider returning to the approach under the 2019 rule. On that score, President Trump issued Executive Orders directing the Service to review its regulations. *See, e.g.*, 90 Fed. Reg. 8353 (EO 14154, § 3(c)); 90 Fed. Reg. 10583 (EO 14219, § 2(ii), (iii)). And the Secretary of the Interior ordered the Service to consider whether to “suspend, revise, or rescind” the 2024 Blanket Rule. *See* Secretarial Order 3418. Consistent with this direction, the Service has started drafting a proposed rule that reconsiders the 2024 Blanket Rule. *See* Declaration of Elizabeth Maclin. It intends to submit a proposed

rule to the Office of the Federal Register not later than October 31, 2025, and a final rule to the Office of the Federal Register not later than October 31, 2026. *Id.* ¶¶ 8-9.

9. During this rulemaking, whenever the Service proposes or finalizes a new listing of a species as threatened, it will concurrently issue through rulemaking a species-specific 4(d) rule for the species, including any Section 9(a) prohibitions for that species. *See* Maclin Decl. ¶ 10. The Service expressly retained this “option to promulgate species-specific section 4(d) rules” in the 2024 Blanket Rule, 89 Fed. Reg. at 23919, and it commits to exercise that discretion now, Maclin Decl. ¶ 10.

10. Considering this rulemaking and the Service’s commitment to issuing species-specific 4(d) rules for threatened species, the Parties agree that a stay of litigation through the rulemaking process is warranted. The power to stay proceedings is “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). A stay here will promote judicial efficiency by avoiding

potentially unnecessary litigation over the 2024 Blanket Rule. See *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979) (finding stays “pending resolution of independent proceedings which bear upon the case” can promote judicial efficiency and be “the fairest course for the parties”). The proposed stay also is of a finite duration, lasting only through the anticipated rulemaking process. And the stay will cause no hardship to the Parties. Plaintiffs and Defendants are jointly requesting a stay, which can be lifted upon a showing of good cause should unanticipated circumstances arise during the stay.

11. Nor will a stay harm Intervenor. Intervenor moved to intervene to oppose Plaintiffs’ claims. So long as Plaintiffs’ claims are stayed, Intervenor has no need to mount an opposition. Nor do Intervenor have a cognizable interest in precluding the Service from reconsidering its rules through notice and comment rulemaking. Finally, the Service will issue species-specific 4(d) rules for threatened species, in line with the ESA. See 16 U.S.C. § 1533(d).

All factors that the Court considers when evaluating a stay weigh strongly in favor of a stay of this litigation. For this reason,

the Parties respectfully request that the Court stay this case through October 31, 2026.

DATED: August 14, 2025 ADAM R.F. GUSTAFSON  
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*/s/ Michael R. Eitel*  
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DATED: August 14, 2025 */s/ Jonathan Wood*  
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*Counsel for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the attorneys of record.

/s/ Michael R. Eitel  
MICHAEL R. EITEL  
Senior Trial Attorney  
U.S. Department of Justice



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

ROCKY MOUNTAIN ELK FOUNDATION  
and the PROPERTY AND ENVIRONMENT  
RESEARCH CENTER,

*Plaintiffs,*

v.

U.S. DEPARTMENT OF THE INTERIOR  
and U.S. FISH AND WILDLIFE SERVICE,

*Defendants.*

Case No. 2:25-cv-00029-DWM

**DECLARATION OF ELIZABETH  
MACLIN**

I, Elizabeth Maclin, declare that the following statements are true and correct to the best of my knowledge and belief.

1. I am Acting Deputy Assistant Director for the Ecological Services Program of the U.S. Fish and Wildlife Service (“FWS”), an agency of the U.S. Department of the Interior (“DOI”), located in Washington, D.C. I have served in this position since February 10, 2025. In my capacity as the Acting Deputy Assistant Director for the Ecological Services Program, I am responsible to the Acting Assistant Director of the Ecological Services, Director of the FWS, and to the Secretary of the Interior for the administration of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, which includes the development of regulations and policies related to ESA implementation such as the final rule challenged in this case.
2. I am familiar with the final rule that the Department of the Interior promulgated in 2024 reinstating at 50 C.F.R. §§ 17.31(a) and 17.71(a) the option to apply general protective regulations (also referred to as the 4(d) blanket rule option) for threatened species under

section 4(d) of the ESA. See 89 Fed. Reg. 23919 (Apr. 5, 2024) (“Section 4(d) Blanket Rules”).

3. I am submitting this declaration in support of the Federal Defendants’ Motion to Stay the lawsuit filed by the Rocky Mountain Elk Foundation and the Property and Environmental Research Center challenging the Section 4(d) Blanket Rules.
4. FWS is reconsidering the 2024 revisions to the Section 4(d) Blanket Rules and has already drafted a proposed rule to rescind the blanket rule option for newly listed threatened species. FWS has transmitted the draft to OMB for interagency review. The rule now appears on OMB’s Regulatory Dashboard, “List of Regulatory Actions Currently Under Review,” available at <https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp>.
5. Several Executive Orders that the President signed in January and February have prompted FWS to re-evaluate a number of its ESA regulations, including the Section 4(d) Blanket Rules. First, on January 20, 2025, President Donald Trump signed Executive Order 14154, “Unleashing American Energy.” Section 3(b) of that Executive Order requires agency heads to begin implementing action plans to suspend, revise, or rescind all agency actions identified as unduly burdensome under the order. Second, on February 19, 2025, FWS was directed to review its regulations for consistency with statutory text through Executive Order 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative.” The order requires review of various classes of regulations, and section 2(a)(iii) specifically requires review of any “regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition.”
6. On February 3, 2025, Secretary of the Interior Burgum issued Secretarial Order 3418 (“S.O. 3418”), implementing EO 14154 in his Department. Section 4(b) of that Secretarial Order requires a plan to “suspend, revise, or rescind” the 2024 Section 4(d) Blanket Rules. FWS staff immediately initiated a process to implement the EO and S.O. 3418.

7. To consider the policies and priorities in the above-referenced Executive Orders, as well as recent caselaw, FWS has concluded that its 2024 revisions to Part 17, such as the Section 4(d) Blanket Rules, warrant further analysis through rulemaking.
8. FWS has prepared a timeline for reconsidering the Section 4(d) Blanket Rules, including development of a proposed rule, adherence to all requirements of the Administrative Procedure Act and completion of internal legal, management, and policy-level review, comment, and response. FWS has already submitted the proposed rule to OMB for review under Executive Order 12866, and OMB has posted it to its Regulatory Dashboard with a June 27, 2025, received date, beginning the 90-day interagency review period provided under EO 12866. FWS anticipates transmitting the proposed rule to the Federal Register no later than October 31, 2025. Under EO 12866, OMB may take up to 90 days to review a draft rule. Should OMB complete the interagency review process in less than 90 days, FWS would transmit the proposed rule to the Federal Register earlier, as immediately as practicable upon conclusion of the OMB process.
9. FWS will provide at least 30 days for public comment on the proposed rule, and to allow for any public outreach advisable, including, for instance, webinars for Tribes, the public, and interested stakeholders, as the agency provided for the 2024 rulemaking. FWS will then consider and respond to public comment, prepare a draft final rule, and anticipates submitting the draft final rule to OMB by August 1, 2026, for its 90-day interagency review period. FWS anticipates transmitting the final rule to the Federal Register following the conclusion of the OMB process, no later than October 31, 2026, or earlier should the OMB process conclude in less than 90 days.
10. During this rulemaking, whenever FWS proposes or finalizes listing a species as a threatened species, it will concurrently address through rulemaking a species-specific 4(d) rule for the species, including any Section 9(a) prohibitions for that species. FWS expressly retained this “option to promulgate species-specific section 4(d) rules” in the 2024 Blanket Rule, 89 Fed. Reg. at 23919, and it commits to exercise that discretion now.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 8th day of August, 2025.

**ELIZABETH  
MACLIN** Digitally signed by  
ELIZABETH MACLIN  
Date: 2025.08.08  
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Elizabeth Maclin  
Acting Deputy Assistant Director for Ecological Services  
U.S. Fish and Wildlife Service