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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**
15 **TUCSON DIVISION**

15 **Center for Biological Diversity,**) Case No. No. 4:20-cv-00020-DCB
16)
17 Plaintiff,)
18 v.) **STIPULATED SETTLEMENT**
19) **AGREEMENT**
20 **United States Forest Service;**)
21 **United States Fish and Wildlife Service,**)
22 Federal Defendants,)
23 and)
24 **Spur Ranch Cattle Company, et al.**)
25 Defendant-Intervenors.)

26 This Stipulated Settlement Agreement is entered into by and between Plaintiff
27 Center for Biological Diversity (hereafter “Plaintiff”), and Federal Defendants United
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1 States Fish and Wildlife Service and United States Forest Service (hereafter “Federal
2 Defendants”) (collectively, “the Parties”), who state as follows:

3 WHEREAS Plaintiff filed its “Amended Complaint for Declaratory and Injunctive
4 Relief,” ECF No. 29, on December 3, 2020;

5 WHEREAS Plaintiff’s Amended Complaint alleges that Federal Defendants have
6 violated various provisions of the Endangered Species Act (“ESA”) in relation to the
7 United States Forest Service’s administration of livestock grazing on grazing Allotments
8 within the Upper Gila River watershed on the Apache-Sitgreaves and Gila National
9 Forests;

10 WHEREAS Federal Defendants intend to reinitiate ESA consultations on
11 Allotments named in Plaintiff’s Amended Complaint consistent with the schedule
12 presented in Attachment 1 hereto;

13 WHEREAS the Forest Service will work to include updated descriptive
14 information and/or maps of areas to be excluded from livestock grazing when issuing
15 Annual Operating Instructions for the Allotments named in Plaintiff’s Amended
16 Complaint, to the extent consistent with existing Allotment Management Plans;

17 WHEREAS the Forest Service will work to include updated descriptive
18 information and/or maps of areas to be excluded from livestock grazing in the relevant
19 Allotment Management Plans for the Allotments named in Plaintiff’s Amended
20 Complaint when those Allotment Management Plans are revised in the future;

21 WHEREAS the Forest Service intends to participate in a future long-term
22 planning effort to address conservation issues with listed species in the areas of the
23 Allotments named in this litigation, with the specifics and feasibility of that planning
24 effort -- such as managing invasive species or conducting species surveys -- to be
25 determined during the planning process;

26 WHEREAS Plaintiff and Federal Defendants have reached an agreement to
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1 resolve this case, with the Parties agreeing to undertake and perform the measures set
2 forth in this Stipulated Settlement Agreement;

3 THEREFORE, pursuant to Federal Rule of Civil Procedure 41, Plaintiff and
4 Federal Defendants stipulate and agree as follows:

5 1. Definitions. The Parties agree that the following terms used in this
6 Agreement have the following definitions for purposes of this Agreement:

7 a. *Excess Livestock* means any livestock owned by the holder of a National
8 Forest System grazing permit, but grazing on National Forest System
9 lands in greater numbers, or at times or places other than permitted in
10 the grazing permit or authorized on the annual Bill for Collection.

11 b. *Unauthorized Livestock* means any livestock that is not authorized by
12 permit (or Bill for Collection) to be upon the land on which the
13 livestock is located and is not related to use authorized by a grazing
14 permit (i.e., livestock owned by other than a National Forest grazing
15 permit holder). Noncommercial pack and saddle stock used by
16 recreationists, travelers, other forest visitors for occasional trips, as well
17 as livestock to be trailed over an established driveway when there is no
18 overnight stop on Forest Service administered land do not fall under this
19 definition.
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21 2. The Forest Service will monitor riparian areas excluded from permitted
22 livestock grazing on National Forest System lands within or adjoining the grazing
23 allotments listed in Attachment 2 for the presence of excess or unauthorized livestock.
24 The excluded areas to be monitored are described in Attachment 2.

25 a. The Forest Service will conduct an initial inspection of the excluded
26 areas described in Attachment 2 within three months of the operative
27 date of this Stipulated Settlement Agreement.
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- b. In addition to the initial inspection, a minimum of two inspections of each location will be conducted annually (where each “year” begins and ends on the operative date of this Agreement and anniversaries of that operative date), except for closed or vacant Allotments, for which a minimum of one inspection will be conducted annually in addition to the initial inspection.
- c. Monitoring timing and frequency may vary depending upon individual allotment management, such as permitted season of use and time periods when livestock are authorized in pastures adjacent to excluded riparian areas.
- d. Monitoring will include the inspection of exclosure fences described in Attachment 2 on National Forest System lands that are intended to exclude livestock from the excluded riparian areas described in Attachment 2.

3. If the Forest Service detects excess or unauthorized livestock in any excluded riparian areas identified in Attachment 2, the agency will initiate the appropriate administrative process to remove those livestock from the area.

- a. If excess livestock are detected in excluded riparian areas, the Forest Service will make reasonable efforts, within one business day, to contact the owner and provide instructions for the livestock to be removed. The Forest Service will provide the livestock owner a specific time frame to remove the livestock (typically within 72 hours).
- b. The Forest Service will verify that excess livestock have been removed either through a site visit or discussion with the owner of the livestock.
- c. If the Forest Service cannot identify the owner of any livestock detected in excluded riparian areas, the Forest Service will use best efforts to

1 safely move any unauthorized or excess cattle discovered during
2 inspections out of excluded riparian areas, with the exception of moving
3 unauthorized or excess livestock that may pose safety risks to Forest
4 Service personnel performing the inspection.

5 4. If the Forest Service receives a report from Plaintiff or other parties that
6 excess or unauthorized livestock are present in an excluded riparian area identified in
7 Attachment 2, the Forest Service will make reasonable efforts to verify the presence of
8 livestock within two business days and, if present, will implement the appropriate
9 removal process described above in Paragraph 3.

10 a. Any reports of excess or unauthorized livestock in closed or excluded
11 riparian areas that Plaintiff submits to the Forest Service will include the
12 name of the supervising employee, the date and time of the discovery,
13 the location of the livestock (preferably GPS in NAD 83), the number of
14 livestock observed, and date-stamped photos if available.

15 b. If Plaintiff conducts independent assessments or monitoring of range
16 conditions in excluded or closed riparian areas identified in Attachment
17 2, Plaintiff will provide the Forest Service with any data or resulting
18 reports to the Forest Service within three months following the
19 observations. Plaintiff will notify the Forest Service within 24 hours or
20 as soon as practicable if it identifies any livestock in excluded or closed
21 riparian areas identified in Attachment 2.

22 5. If the Forest Service detects damage to fencing during monitoring described
23 in Paragraph 2, the Forest Service, depending upon maintenance responsibility, will
24 either repair the fence or instruct the associated grazing permittee to repair the fence.

25 a. Minor repairs (e.g., busted wire, closing gate) will be accomplished as
26 soon as practicable, and repairs requiring additional work (e.g., new
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1 wire and post to patch hole, removal of fallen trees) will be completed
2 within 14 days, to the extent reasonable and feasible, subject to
3 available funding.

4 b. The Forest Service will continue to work with permittees to identify
5 areas where livestock may be incidentally accessing closed or excluded
6 riparian areas through gaps in natural barriers and remedy those
7 situations, subject to available staffing and funding, and in compliance
8 with Federal law.

9 c. If the Forest Service identifies any particular riparian area(s) excluded
10 from authorized grazing on any particular Allotment(s) identified in
11 Attachment 2 where the agency determines that livestock intrusions are
12 a chronic issue, the Forest Service will initiate best efforts to determine
13 how to address those intrusions on a more permanent basis.

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15 6. The Forest Service will prepare quarterly reports listing any inspections
16 conducted under Paragraph 2 above, and subsequent actions taken, if any, under
17 Paragraphs 3-5. The Forest Service will provide these inspection reports to Plaintiff, and
18 will ensure that each report is signed by a Forest Service employee who prepared the
19 report.

20 7. The commitments made by the Forest Service in Paragraphs 1-6 will
21 commence on the date that this agreement is approved by the Court, and extend for a
22 period of three years from that date. Except as stated otherwise herein, the Forest Service
23 retains discretion in how it carries out its obligations under the Agreement.

24 8. Attorneys' Fees and Costs.

25 a. Federal Defendants agree to pay Plaintiff \$47,500.00 in full and
26 complete satisfaction of any and all claims, demands, rights, and causes
27 of action pursuant to the Equal Access to Justice Act ("EAJA"), 28

1 U.S.C. § 2412(d), ESA Section 11(g)(4), 16 U.S.C. § 1540(g)(4), and/or
2 any other statute and/or common law theory, for any and all attorneys’
3 fees and costs incurred in this litigation through the date of dismissal of
4 the action pursuant to Paragraph 9.

- 5 b. Federal Defendants’ payment as identified in Paragraph 8.a above, shall
6 be accomplished by electronic fund transfer into the Center for
7 Biological Diversity. Plaintiff’s counsel will provide the appropriate
8 account number, tax identification, and other information needed to
9 facilitate payment to undersigned counsel for Federal Defendants.
10 Federal Defendants shall submit the paperwork for the payment within
11 thirty (30) business days after this Stipulated Settlement Agreement is
12 approved by the Court or Plaintiff provides the necessary information as
13 required by this paragraph to facilitate the payment, whichever is later.
14 Plaintiff’s counsel shall notify undersigned counsel for Federal
15 Defendants when payment is received.
- 16 c. Plaintiff agrees that receipt of the full amount specified in Paragraph 8.a
17 above shall operate as a release of any and all claims for attorneys’ fees
18 and costs that Plaintiff has incurred in this litigation through the date of
19 dismissal of the action pursuant to Paragraph 9.
- 20 d. Plaintiff and its attorneys agree to hold harmless Federal Defendants in
21 any litigation, further suit, or claim arising from the payment of the
22 agreed-upon \$47,500.00 settlement amount pursuant to Paragraph 8.a.
23 Under 31 U.S.C. §§ 3711, 3716; 26 U.S.C. § 6402(d); 31 C.F.R. §§
24 285.5, 901.3; and other authorities, the United States will offset against
25 the attorney fee award Plaintiff’s delinquent debts to the United States,
26 if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).
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1 9. Plaintiff dismisses this action with prejudice, pursuant to Rule 41 of the
2 Federal Rules of Civil Procedure.

3 10. In the event there is a dispute over compliance with any term or provision
4 of this Stipulated Settlement Agreement, the disputing Party will notify the other Party in
5 writing of the nature of the dispute and, within 7 days after such notification, the Parties
6 will initiate discussions and attempt to resolve the dispute. If the Parties do not resolve
7 the dispute within 30 days thereafter, Plaintiff's option is to file a new case. Through this
8 Agreement, Federal Defendants do not waive any jurisdictional, procedural, or
9 substantive defenses to any new cases. The Parties agree not to seek to invoke the
10 contempt powers of this Court in aid of enforcement of this Agreement. Plaintiff does
11 not waive any right to bring other litigation regarding the Allotments encompassed by
12 this Agreement, including substantive challenges to any final agency actions resulting
13 from the reinitiated consultations.

14 11. The undersigned representatives of Plaintiff and Federal Defendants certify
15 that they are fully authorized by the Party or Parties whom they represent to enter into the
16 terms and conditions of this Stipulated Settlement Agreement and to legally bind those
17 Parties to it.

18 12. Nothing in this Stipulated Settlement Agreement shall be interpreted as, or
19 shall constitute, a commitment or requirement that Federal Defendants obligate or pay
20 funds, or take any other actions in contravention of the Anti-Deficiency Act, 31 U.S.C. §
21 1341, or any other applicable law. Nothing in this Stipulated Settlement Agreement shall
22 be construed to deprive a federal official of authority to revise, amend or promulgate
23 regulations, or to amend or revise land and resource management plans. Nothing in this
24 Stipulated Settlement Agreement is intended to or shall be construed to waive any
25 obligation to exhaust administrative remedies; to constitute an independent waiver of the
26 United States' sovereign immunity; to change the standard of judicial review of federal
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1 agency actions under the Administrative Procedure Act (“APA”); or to otherwise extend
2 or grant this Court jurisdiction to hear any matter, except as expressly provided in the
3 Stipulated Settlement Agreement.

4 13. It is hereby expressly understood and agreed that this Stipulated Settlement
5 Agreement was jointly drafted by Plaintiff and Federal Defendants. Accordingly, the
6 Parties hereby agree that any and all rules of construction, to the effect that ambiguity is
7 construed against the drafting Party, shall be inapplicable in any dispute concerning the
8 terms, meaning, or interpretation of the Stipulated Settlement Agreement.

9 14. This Stipulated Settlement Agreement contains all of the agreements
10 between Plaintiff and Federal Defendants, and is intended to be and is the final and sole
11 agreement between the Parties concerning the complete and final resolution of Plaintiff’s
12 claims. Plaintiff and Federal Defendants agree that any other prior or contemporaneous
13 representations or understandings not explicitly contained in this Stipulated Settlement
14 Agreement, whether written or oral, are of no further legal or equitable force or effect.
15 Any subsequent modifications to this Stipulated Settlement Agreement must be in
16 writing, and must be signed and executed by Plaintiff and Federal Defendants.

17 15. This Stipulated Settlement Agreement is the result of compromise and
18 settlement, and does not constitute an admission, implied or otherwise, by Plaintiff or
19 Federal Defendants to any fact, claim, or defense on any issue in this litigation. This
20 Stipulated Settlement Agreement has no precedential value and shall not be cited in any
21 other litigation.

22 16. The Parties understand that notwithstanding their efforts to comply with the
23 commitments contained herein, events beyond their control may prevent or delay such
24 compliance. Such events may include natural disasters as well as unavoidable legal
25 barriers or restraints, including those arising from actions of persons or entities that are
26 not party to this Stipulated Settlement Agreement. Force majeure shall not continue
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1 beyond the circumstances and conditions that prevent timely performance, and shall not
2 apply if alternative means of compliance are available. The Party claiming force majeure
3 shall have the burden of proof in proceedings to enforce or modify the Stipulated
4 Settlement Agreement.

5 17. This Stipulated Settlement Agreement contains all of the agreements
6 between the Parties, and is the final and sole agreement between the Parties regarding this
7 dispute. None of the provisions or obligations of this Stipulated Settlement Agreement
8 shall become effective and binding unless and until the Court enters its approval.
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10 Respectfully submitted on August 18, 2021.

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