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UNITED STATES DISTRICT COURT

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DISTRICT OF ARIZONA

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Center for Biological Diversity, and
Maricopa Audubon Society,

CV 21-411-TUC-RM (DTF)

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Plaintiffs,

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vs.

**STIPULATED SETTLEMENT
AGREEMENT**

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U.S. Bureau of Land Management, and
U.S. Fish and Wildlife Service,

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Defendants.

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This Stipulated Settlement Agreement is entered into by and between Plaintiffs
21 Center for Biological Diversity and Maricopa Audubon Society (hereafter “Plaintiffs”),
22 and Federal Defendants United States Fish and Wildlife Service and United States Bureau
23 of Land Management (hereafter “Federal Defendants”) (collectively, “the Parties”), who
24 state as follows:

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WHEREAS Plaintiffs filed their “Complaint for Declaratory and Injunctive
26 Relief,” ECF No. 1, on October 7, 2021 and their “Amended Complaint for Declaratory
27 and Injunctive Relief,” ECF No. 10 (hereafter “the Complaint”), on October 27, 2021;

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1 WHEREAS Plaintiffs' Complaint alleges that Federal Defendants have violated
2 the Freedom of Information Act ("FOIA") by delaying a response to Plaintiffs' May 24,
3 2021 FOIA request;

4 WHEREAS as of November 5, 2021 BLM provided all documents in response to
5 Plaintiffs' May 24, 2021 FOIA request and the parties agree that Plaintiffs' FOIA claim
6 is now moot;

7 WHEREAS Plaintiffs' Complaint also alleges that Federal Defendants have
8 violated various provisions of the Endangered Species Act ("ESA") in relation to the
9 United States Bureau of Land Management's administration of livestock grazing on
10 certain Allotments within the Gila Box Riparian National Conservation Area ("Gila Box
11 RNCA");

12 WHEREAS prior to Plaintiffs filing their Complaint, the Federal Defendants had
13 reinitiated appropriate ESA consultations on the Gila District Livestock Grazing
14 Program, including the Gila Box RNCA, and continue to amend that consultation with
15 the addition of newly listed species or proposed critical habitat;

16 WHEREAS the Allotments named in Plaintiffs' Complaint will be covered by the
17 consultation on the Gila District Livestock Grazing Program and the consultations on
18 those Allotments will include a review of all listed species occurring on the Allotments,
19 including the desert pupfish, Gila chub, Gila topminnow, loach minnow, spikedace, and
20 yellow-billed cuckoo, as part of the consultations, which will be completed no later than
21 14-months from the operative date of this Settlement Agreement;

22 WHEREAS the Bureau of Land Management provided Plaintiffs with maps that
23 show the location of pastures and enclosure fencing for the Allotments on May 31, 2022;

24 WHEREAS the Bureau of Land Management is undertaking efforts to remove
25 unauthorized livestock and intends to continue these efforts in earnest, conditions
26 permitting, including an inspection that took place March 25 and 26;

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1 WHEREAS the Bureau of Land Management will continue to coordinate with
2 associated permittees and/or livestock owners to address unauthorized livestock that are
3 discovered in areas in the Allotments that are excluded from grazing;

4 WHEREAS Plaintiffs and Federal Defendants have reached an agreement to
5 resolve this case, with the Parties agreeing to undertake and perform the measures set
6 forth in this Stipulated Settlement Agreement;

7 THEREFORE, pursuant to Federal Rule of Civil Procedure 41, Plaintiffs and
8 Federal Defendants stipulate and agree as follows:

9 1. The Bureau of Land Management will monitor riparian areas excluded from permitted
10 livestock grazing on Allotments named in Plaintiff's Complaint for the presence of
11 livestock. Those Allotments are the Bonita Creek, Johnny Creek, Zorilla, Gila,
12 Morenci and Bull Gap grazing Allotments, as described in the Gila Box RNCA
13 Management Plan, Environmental Assessment, and Decision Record (hereafter
14 "Allotments").

15 a. The Bureau of Land Management will monitor the excluded riparian areas on
16 the Allotments for the presence of livestock and conduct a minimum of two
17 inspections as part of the monitoring annually in accordance with this
18 Agreement (where each "year" begins and ends on the operative date of this
19 Agreement and anniversaries of that operative date).

20 b. Timing and frequency of inspections may vary depending upon conditions on
21 the ground, such as whether there is sufficient water to float watercraft on the
22 Gila River through the Gila Box RNCA.

23 c. If animals are detected within excluded areas, the Bureau of Land Management
24 will work with the associated permittee and/or livestock owner to determine
25 how the animals gained access to the area, and determine appropriate
26 corrective actions including, but not limited to, fence repairs.

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- 1 d. Additionally, as part of the monitoring effort described in Paragraph 1.a the
2 Bureau of Land Management agrees to pay special attention and inspect the
3 following areas:
- 4 i. Water gap fences that serve to exclude livestock from entering the
5 riparian area along the Gila River in the Gila Box RNCA at the
6 following locations: Gila River on the east end of the Gila Box RNCA
7 boundary; the San Francisco River at the confluence of the Gila River;
8 and, Eagle Creek at the confluence of the Gila River;
 - 9 ii. Gates on the Gila and Smuggler's Peak Allotments that serve to exclude
10 livestock from entering the riparian area north of the Gillard Hot
11 Springs.
- 12 2. If the Bureau of Land Management detects livestock in any excluded riparian areas
13 identified in Paragraph 1(a), the agency will initiate the appropriate administrative
14 process to remove those livestock from the area.
- 15 a. If branded livestock traceable to an owner are detected in excluded riparian
16 areas, the Bureau of Land Management will make reasonable efforts to contact
17 the owner of the livestock within two business days after the unauthorized use
18 is detected and provide instruction for removal.
 - 19 b. The Bureau of Land Management will verify that the livestock have been
20 removed either through a site visit or discussion with the owner of the
21 livestock. All actions associated with detection, permittee/livestock owner
22 contact, and removal will be documented.
 - 23 c. If the Bureau of Land Management cannot identify the owner of livestock
24 detected in excluded riparian areas, the Bureau of Land Management will make
25 reasonable efforts to safely remove the livestock.
- 26 3. If the Bureau of Land Management receives a timely report from Plaintiffs or other
27 parties that livestock are present in an excluded riparian area identified in Paragraph
28 1(a), the Bureau of Land Management will make reasonable efforts to verify that

1 livestock are present. If the Bureau of Land Management is able to verify that
2 livestock are present in such areas, it will make reasonable efforts to notify the
3 permittee and/or livestock owner of the presence of livestock within two business
4 days and will implement the appropriate removal process described above in
5 Paragraph 2.

- 6 a. Plaintiffs will notify the Bureau of Land Management within 24 hours, or as
7 soon as practicable, if they identify any livestock in excluded riparian areas
8 identified in Paragraph 1(a). Any reports and documentation of unauthorized
9 livestock that Plaintiffs submit to the Bureau of Land Management will include
10 the name and affiliation of the individual, the date and time of the discovery,
11 the location of the livestock (preferably UTM in NAD 83), the number, color
12 or markings, brands, or ear tags of livestock observed, and date-stamped
13 photos of the livestock with identifiable features of the animal to the extent
14 possible. Upon notification by Plaintiffs, the Bureau of Land Management will
15 determine whether any reported livestock are part of an authorized cattle
16 trailing and provide that information to Plaintiffs within 7-10 business days.
- 17 b. If notification from Plaintiffs or other parties is delayed, lacks information
18 requested in Paragraph 3(a), and/or only includes recent evidence of tracks
19 and/or droppings, the Bureau of Land Management will make a reasonable
20 effort to seek out and detect any livestock associated with that notification. If
21 livestock are detected, the Bureau of Land Management will follow the process
22 identified in Paragraph 2.
- 23 c. If Plaintiffs conduct independent assessments, inspections, or monitoring of
24 conditions in excluded riparian areas, identified in Paragraph 1a, Plaintiffs will
25 provide the Bureau of Land Management with any data or resulting reports
26 within three months following the observations.
- 27 4. If the Bureau of Land Management detects damage to fencing during monitoring
28 described in Paragraph 1(a), the Bureau of Land Management, will either repair the

1 fence, have the fence repaired, or instruct the associated grazing permittee to repair
2 the fence.

3 a. Minor repairs (e.g., busted wire, closing gate) will be accomplished as soon as
4 practicable. Repairs requiring additional work (e.g., new wire and posts to
5 repair sections of fence, removal of fallen trees) will be completed within 14
6 days, to the extent reasonable and feasible, subject to accessibility to the site,
7 available materials, and funding. Coordination with grazing permittees to
8 inspect and repair water gaps will occur as soon as practicable after storms that
9 cause stream levels to rise to a level that could impact and damage fences and
10 when it is safe to do so.

11 b. The Bureau of Land Management will work with permittees to continue to
12 identify areas where livestock may be incidentally accessing excluded riparian
13 areas through gaps in natural barriers and remedy those situations, subject to
14 available staffing and funding, and in compliance with Federal law.

15 c. If the Bureau of Land Management identifies any particular riparian area(s)
16 excluded from authorized grazing on any particular Allotment(s) identified in
17 Paragraph 1 where the agency determines that livestock intrusions are a
18 chronic issue, the Bureau of Land Management will initiate best efforts to
19 determine how to address those intrusions on a more permanent basis.

20 5. The Bureau of Land Management will provide Plaintiffs quarterly reports listing
21 inspections conducted under Paragraph 1 above, and subsequent actions taken, if any,
22 under Paragraphs 2-4.

23 6. The commitments made by the Bureau of Land Management in Paragraphs 1-5 will
24 commence on the date that this Agreement is approved by the Court and extend until
25 the ESA consultation is completed. Except as stated otherwise herein, the Bureau of
26 Land Management retains discretion in how it carries out its obligations under the
27 Agreement.

28 7. Attorneys' Fees and Costs.

- 1 a. Federal Defendants agree to pay Plaintiffs \$10,000.00 in full and complete
2 satisfaction of any and all claims, demands, rights and causes of action
3 pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d),
4 ESA Section 11(g)(4), 16 U.S.C. § 1540(d)(4), and/or any other statute and/or
5 common law theory, for any and all attorneys’ fees and costs incurred in this
6 litigation through the date of dismissal of the action pursuant to Paragraph 8.
- 7 b. Federal Defendants’ payment identified in Paragraph 7.a above, shall be
8 accomplished by electronic fund transfer into a bank account for the Center for
9 Biological Diversity. Plaintiffs’ counsel will provide the appropriate account
10 number, tax identification, and other information needed to facilitate payment
11 to undersigned counsel for Federal Defendants. Federal Defendants shall
12 submit the paperwork for the payment within thirty (30) business days after
13 this Stipulated Settlement Agreement is approved by the Court or Plaintiffs
14 provide the necessary information as required by this paragraph to facilitate the
15 payment, whichever is later. Plaintiffs’ counsel shall notify undersigned
16 counsel for Federal Defendants when payment is received.
- 17 c. Plaintiffs agree that receipt of the full amount specified in Paragraph 7.a above
18 shall operate as a release of any and all claims for attorneys’ fees and costs that
19 Plaintiffs have incurred in this litigation through the date of dismissal of the
20 action pursuant to Paragraph 8.
- 21 d. Plaintiffs and their attorneys agree to hold harmless Federal Defendants in any
22 litigation, further suit, or claim arising from the payment of the agreed-upon
23 \$10,000 settlement amount pursuant to Paragraph 7.a. Under 31 U.S.C. §§
24 3711, 3716; 26 U.S.C. § 6402(d); 31 C.F.R. §§ 285.5, 901.3; and other
25 authorities, the United States will offset against the attorney fee award
26 Plaintiffs’ delinquent debts to the United States if any. *See Astrue v. Ratliff*,
27 560 U.S. 586 (2010).
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1 8. Plaintiffs dismiss the Complaint without prejudice, pursuant to Rule 41 of the Federal
2 Rules of Civil Procedure. However, the Parties agree that Plaintiffs may only refile
3 one or more of their original claims if they establish that there has been a material
4 breach of this Agreement. The Parties agree that a “material breach” is defined as
5 BLM’s failure to conduct a minimum of two inspections annually, as defined by
6 Paragraph 1.a, and/or BLM’s failure to make reasonable efforts to contact owners of
7 branded livestock in excluded areas, pursuant to Paragraphs 2 and 3. The Parties agree
8 that if conditions preclude BLM from safely or reasonably accessing portions of the
9 excluded riparian Allotments, that shall not constitute a material breach so long as
10 BLM has made a reasonable effort to complete the inspection where feasible.

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

22 10. The undersigned representatives of Plaintiffs and Federal Defendants certify that they
23 are fully authorized by the Party or Parties whom they represent to enter into the
24 terms and conditions of this Stipulated Settlement Agreement and to legally bind
25 those Parties to it.

26 11. Nothing in this Stipulated Settlement Agreement shall be interpreted as, or shall
27 constitute, a commitment or requirement that Federal Defendants obligate or pay
28 funds, or take any other actions in contravention of the Anti-Deficiency Act, 31

1 U.S.C. § 1341, or any other applicable law. Nothing in this Stipulated Settlement
2 Agreement shall be construed to deprive a federal official of authority to revise,
3 amend or promulgate regulations, or to amend or revise land and resource
4 management plans. Nothing in this Stipulated Settlement Agreement is intended to or
5 shall be construed to waive any obligation to exhaust administrative remedies; to
6 constitute an independent waiver of the United States' sovereign immunity; to change
7 the standard of judicial review of federal agency actions under the Administrative
8 Procedure Act ("APA"); or to otherwise extend or grant this Court jurisdiction to hear
9 any matter, except as expressly provided in the Stipulated Settlement Agreement.

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

15 13. This Stipulated Settlement Agreement contains all of the agreements between
16 Plaintiffs and Federal Defendants and is intended to be and is the final and sole
17 agreement between the Parties concerning the complete and final resolution of
18 Plaintiffs' claims. Plaintiffs and Federal Defendants agree that any other prior or
19 contemporaneous representations or understandings not explicitly contained in this
20 Stipulated Settlement Agreement, whether written or oral, are of no further legal or
21 equitable force or effect. Any subsequent modifications to this Stipulated Settlement
22 Agreement must be in writing, and must be signed and executed by Plaintiffs and
23 Federal Defendants.

24 14. This Stipulated Settlement Agreement is the result of compromise and settlement, and
25 does not constitute an admission, implied or otherwise, by Plaintiffs or Federal
26 Defendants to any fact, claim, or defense on any issue in this litigation. This
27 Stipulated Settlement Agreement has no precedential value and shall not be cited in
28 any other litigation.

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

10 16. This Stipulated Settlement Agreement contains all of the agreements between the
11 Parties, and is the final and sole agreement between the Parties regarding this dispute.
12 None of the provisions or obligations of this Stipulated Settlement Agreement shall
13 become effective and binding unless and until the Court enters its approval.

14 Respectfully submitted this 11th day of August, 2022.

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