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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

UNITED STATES FISH AND WILDLIFE
SERVICE, *et al.*,

Defendants.

Case No. 2:25-cv-01174

**STIPULATED SETTLEMENT
AGREEMENT**

Plaintiff, Center for Biological Diversity, and Defendants, U.S Fish and Wildlife Service (“FWS”); Brian Nesvik, in his official capacity as Director of the FWS; and Doug Burgum, in his official capacity as Secretary of the U.S. Department of the Interior, by and through their undersigned representatives, enter into the following Stipulated Settlement Agreement (“Agreement”) for the purpose of resolving the above-captioned case. The parties thus agree and stipulate as follows:

1 WHEREAS, on September 26, 2023, Plaintiff submitted to FWS a petition to list Tecopa
2 bird's beak (*Chloropyron tecopense*) as threatened or endangered under the Endangered Species
3 Act ("ESA");

4 WHEREAS, in accordance with 16 U.S.C. § 1533(b)(3)(A), FWS issued a positive "90-
5 day finding" in response to Plaintiff's petition, in which FWS concluded that the petition
6 presented substantial information indicating that the listing of the species under the ESA "may be
7 warranted," *see* 89 Fed. Reg. 81388 (October 8, 2024);

8 WHEREAS, on January 14, 2025, Plaintiff notified Defendants by letter of its intent to
9 file suit to compel FWS to issue a 12-month finding pursuant to 16 U.S.C. § 1533(b)(3)(B) on its
10 petition;

11 WHEREAS, on March 10, 2025, FWS responded to Plaintiff's letter, explaining that the
12 12-month finding for Tecopa bird's beak is one of many actions FWS is diligently working to
13 complete;

14 WHEREAS, on July 1, 2025, Plaintiff filed suit to compel FWS to issue the required 12-
15 month finding identified above by a date certain, *see* ECF No. 1;

16 WHEREAS, the parties, by and through their authorized representatives, and without any
17 admission or final adjudication of the issues of fact or law with respect to Plaintiff's claim, have
18 reached a settlement that they consider to be in the public interest and a just, fair, adequate, and
19 equitable resolution of the disputes set forth in Plaintiff's complaint;

20 THEREFORE, the parties hereby stipulate and agree:

- 21 1. On or before September 13, 2028, FWS shall submit to the Office of the Federal Register
22 a 12-month finding as to whether listing Tecopa bird's beak as a threatened species or an
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1 endangered species is: (a) not warranted; (b) warranted; or (c) warranted but precluded by
2 other pending proposals, pursuant to 16 U.S.C. § 1533(b)(3)(B).

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4 2. In the event of a lapse in appropriations during the period between the signing of this
5 Agreement and the Service's fulfillment of the action specified in Paragraph 1, the
6 deadline set forth in Paragraph 1 shall be extended by the number of calendar days
7 between the first day of the lapse in appropriations and the date the President signs into
8 law a budget appropriation such that funding is restored to the Department of Interior.
9 Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that
10 Defendants are obligated to pay any funds exceeding those available or take any action in
11 contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable
12 appropriations law.
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- 14 3. Without waiving any defenses or making any admissions, Defendants agree to pay
15 Plaintiff \$6,205.00 in attorneys' fees and costs. Plaintiff agrees to accept \$6,205.00 from
16 Defendants in full satisfaction of any and all claims, demands, rights, and causes of
17 action for any and all attorneys' fees and costs Plaintiff reasonably incurred in connection
18 with the above-captioned litigation through the date of this Agreement.
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- 20 4. Plaintiff acknowledges that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 602(d), 31
21 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the
22 award of attorneys' fees and costs Plaintiff's delinquent debts to the United States, if any.
23 *See, Astrue v. Ratliff*, 560 U.S. 586 (2010).
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- 25 5. Plaintiff agrees to furnish Defendants with the information necessary to effectuate the
26 payment set forth in Paragraph 3. Payment will be made to the Center for Biological
27 Diversity by electronic funds transfer. Defendants agree to submit all necessary
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1 paperwork for the processing of the attorneys' fees award within fourteen (14) days from
2 receipt of the necessary information from Plaintiff or from approval of this Agreement by
3 the Court, whichever is later.

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- 5 6. Plaintiff reserves the right to seek additional fees and costs incurred subsequent to this
6 Agreement arising from a need to enforce or defend against efforts to modify the
7 deadlines in Paragraph 1.
- 8 7. Defendants do not waive any right to contest fees and costs claimed by Plaintiff or
9 Plaintiff's counsel in any future litigation or pursuant to Paragraph 6.
- 10 8. The Order entering this Agreement may be modified by the Court upon good cause
11 shown, consistent with the Federal Rules of Civil Procedure, by written stipulation
12 between the parties filed with and approved by the Court, or upon written motion filed by
13 one of the parties and granted by the Court.
- 14 9. In the event that either party seeks to modify the terms of this Agreement, including the
15 deadline specified in Paragraph 1, or in the event of a dispute arising out of or relating to
16 this Agreement, or in the event that either party believes that the other party has failed to
17 comply with any term or condition of this Agreement, the party seeking the modification,
18 raising the dispute, or seeking enforcement shall provide the other party with notice of
19 the claim or modification. The parties agree that they will meet and confer (either
20 telephonically or in person) at the earliest possible time in a good-faith effort to resolve
21 the claim before seeking relief from the Court. If the parties are unable to resolve the
22 claim themselves, either party may seek relief from the Court.
- 23 10. If Defendants fail to meet the deadline specified in Paragraph 1 above and have not
24 sought to modify such deadline, Plaintiff's first remedy shall be a motion to enforce the
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1 terms of this Agreement, after following the dispute resolution procedures described
2 above. This Agreement shall not, in the first instance, be enforceable through a
3 proceeding for contempt of court.
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5 11. This Agreement requires only that Defendants take action by the deadline specified in
6 Paragraph 1 and to pay attorneys' fees and costs as specified in Paragraph 3. The
7 Agreement does not limit the Service's authority with regard to the substantive outcome
8 of any determinations under the ESA pursuant to Paragraph 1. No provision of this
9 Agreement shall be interpreted as, or constitute, a commitment or requirement that
10 Defendants take action in contravention of the ESA, the Administrative Procedure Act
11 ("APA"), or any other law or regulation, either substantive or procedural. Nothing in this
12 Agreement shall be construed to limit or modify the discretion accorded to Defendants by
13 the ESA, APA, or general principles of administrative law with respect to the procedures
14 to be followed in making any determination required herein, or as to the substance of any
15 determinations made pursuant to Paragraph 1 of the Agreement. To challenge a final
16 determination issued pursuant to Paragraph 1, Plaintiff must file a separate action.
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18 Defendants reserve the right to raise any applicable claims or defenses to such challenges.
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20 12. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as
21 an admission or concession of any wrongdoing, liability, or any issue of fact or law
22 concerning the claims settled under this Agreement or any similar claims brought in the
23 future by any other party. Except as expressly provided in this Agreement, none of the
24 parties waives or relinquishes any legal rights, claims, or defenses it may have. This
25 Agreement is executed for the purpose of settling Plaintiff's complaint, and nothing
26 herein shall be construed as precedent having preclusive effect in any other context.
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1 13. The parties agree that this Agreement was negotiated in good faith and that it constitutes
2 a settlement of claims that were disputed by the parties. By entering into this Agreement,
3 the parties do not waive any claim or defense except as expressly stated herein. This
4 Agreement contains all terms of agreement between the parties and is intended to be the
5 final and sole agreement between the parties. The parties agree that any prior or
6 contemporaneous representations or understanding not explicitly contained in this written
7 Agreement, whether written or oral, are of no further legal or equitable force or effect.
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9 14. The undersigned representatives of each party certify that they are fully authorized by the
10 party or parties they represent to agree to the terms and conditions of this Agreement and
11 do hereby agree to the terms herein. Further, each party, by and through its undersigned
12 representative, represents and warrants that it has the legal power and authority to enter
13 into this Agreement and bind itself to the terms and conditions contained in this
14 Agreement.
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16 15. The terms of this Agreement shall become effective upon entry of an order by the Court
17 ratifying the Agreement.
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19 16. Upon the Court's adoption of this Agreement, all counts of Plaintiff's complaint shall be
20 dismissed with prejudice. Notwithstanding the dismissal of this action, however, the
21 parties hereby stipulate and respectfully request that the Court retain jurisdiction to
22 oversee compliance with the terms of this Agreement, and to resolve any motions to
23 modify such terms until Defendants have complied with the deadline specified in
24 Paragraph 1. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).
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26 Dated: October 15, 2026
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28 Respectfully submitted,

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