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19 **IN THE UNITED STATES DISTRICT COURT**

20 **FOR THE DISTRICT OF ARIZONA**

21 Western Watersheds Project, et al.,

22 Plaintiffs,

23 v.

24 Anthony (Scott) Feldhausen, et al.,

25 Defendants.
26

No. CV-20-0149-TUC-JGZ

**STIPULATED
SETTLEMENT AGREEMENT**

1 This stipulated Settlement Agreement (“Agreement”) is entered into by and
2 between Plaintiffs Western Watersheds Project, Center for Biological Diversity, and
3 Sierra Club (“Plaintiffs”); and Defendants United States Bureau of Land Management
4 (“BLM”); Anthony (Scott) Feldhausen, BLM Gila District Manager; Raymond Suazo,
5 BLM Arizona State Director; United States Fish and Wildlife Service (“FWS”); Mark
6 Lamb, Acting Arizona Field Supervisor; and Martha Williams, FWS Director;
7 (collectively, the “Parties”), who, by and through their undersigned counsel, state as
8 follows:
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10

11 WHEREAS, in 2019, BLM approved a Final Environmental Impact Statement
12 (“FEIS”), Record of Decision (“ROD”), and Approved Resource Management Plan
13 (“RMP”) for the San Pedro Riparian National Conservation Area (“SPRNCA”), adopting
14 certain management provisions for livestock grazing and vegetation treatments;
15

16 WHEREAS, Plaintiffs filed this action on April 7, 2020, and amended their
17 complaint on June 22, 2020, alleging that BLM’s adoption of the RMP violated the
18 National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq., the Federal
19 Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1701 et seq., and the
20 Arizona-Idaho Conservation Act (“AICA”), 16 U.S.C. § 460xx et seq.;

21 WHEREAS, Plaintiffs further allege that FWS violated the Endangered Species
22 Act (“ESA”), 16 U.S.C. § 1531 et seq., by adopting an insufficient Biological Opinion,
23 by failing to ensure against jeopardy and take of certain listed species within SPRNCA,
24 and by failing to properly complete consultation on the effects of the RMP;
25

26 WHEREAS, BLM is conducting project-level analysis of existing grazing leases
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1 within SPRNCA, and through that allotment lease planning process will determine
2 whether to authorize continuing livestock grazing and, if so, any applicable terms and
3 conditions of such use;
4

5 WHEREAS, Defendants deny any violation of law; and

6 WHEREAS, the Parties have explored options for resolving this litigation, and
7 have determined that the Agreement will allow BLM to address the alleged violations of
8 law, while conserving the resources of the Parties and the Court.
9

10 NOW, THEREFORE, the Parties hereby stipulate and agree as follows:

11 1. BLM will address existing and continuing BLM-managed grazing within
12 SPRNCA, which occurs only on the Babocomari, Brunckow Hill, Three Brothers, and
13 Lucky Hills Allotments, through the SPRNCA allotment lease planning process. *See*
14 <https://eplanning.blm.gov/eplanning-ui/project/2013674/510>.
15

16 2. Defendants will document that any decisions relating to livestock grazing
17 on the four allotments or otherwise implementing RMP direction relating to livestock
18 grazing comply with applicable law, to include but not necessarily be limited to, NEPA,
19 FLPMA, AICA, and the ESA, and including by taking the actions described in the
20 remainder of this section.
21

22 a. Defendants will document that any such decisions are consistent with
23 AICA's command to "manage the [SPRNCA] in a manner that conserves, protects, and
24 enhances the [SPRNCA] and the aquatic, wildlife, archeological, paleontological,
25 scientific, cultural, educational, and recreational resources" of the SPRNCA and that
26 authorized uses, if any, "will further the primary purposes for which the [SPRNCA] is
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1 established.” *See* 16 U.S.C. § 460xx-1.

2 b. Defendants will prepare a Biological Assessment and Biological Opinion to
3 the extent required under Section 7 of the ESA, 16 U.S.C. § 1536, examining the impacts
4 of BLM’s proposed action in the SPRNCA allotment lease planning process on Huachuca
5 water umbel, southwestern willow flycatcher, desert pupfish, Gila topminnow, northern
6 Mexican gartersnake, yellow-billed cuckoo, and Arizona eryngo, as well as proposed and
7 Designated Critical Habitat.
8

9 3. In the course of conducting the SPRNCA allotment lease planning process,
10 BLM agrees to consider a “no grazing” alternative that would prohibit livestock grazing
11 on BLM-managed lands in the SPRNCA.
12

13 4. BLM agrees to complete and issue a final decision or decisions in the
14 aforementioned SPRNCA allotment lease planning process within seven months of the
15 date that this Agreement is fully executed, or within eight months of the date that this
16 Agreement is fully executed for any allotments for which BLM receives a protest to the
17 associated proposed decision.
18

19 5. If BLM finds, in the SPRNCA allotment lease planning process or
20 otherwise, that livestock grazing does not meet the AICA statutory criteria set forth in
21 U.S.C. § 460xx-1, then BLM will amend the SPRNCA RMP. BLM further agrees to
22 complete such an amendment within eighteen months of making the relevant finding.
23

24 6. During the completion of the SPRNCA allotment lease planning process
25 and up to the point that any decision(s) are finalized in that process, BLM agrees: (a) to
26 seek voluntary agreement from the lessees (i) to limit livestock grazing on the BLM
27

1 portion of the River Pasture of the Babocomari Allotment to the winter months and (ii) to
2 not use the riparian portion of the Brunckow Allotment; and (b) to inspect, maintain, and
3 repair, as BLM deems appropriate, allotment pasture fences on BLM-managed land to
4 include (i) fencing on the western boundary of the Three Brothers and Lucky Hills
5 Allotments; (ii) fencing parallel to the San Pedro River in the Southwest Pasture of the
6 Brunckow Hill Allotment; and (iii) internal fences in the River Pasture of the Babocomari
7 Allotment.
8

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10 7. During the completion of the SPRNCA allotment lease planning process
11 and up to the point that any decision(s) are finalized in that process, BLM further agrees
12 to undertake certain measures to address unauthorized and/or trespass grazing on BLM-
13 managed lands within the four SPRNCA Allotments, including:
14

15 (a) to receive information regarding alleged unauthorized and/or trespass
16 grazing submitted to the Tucson office email (BLM_AZ_TFOWEB@blm.gov) by
17 Plaintiffs, and—within a reasonable time following receipt of reasonable
18 allegations demonstrating that acts prohibited on public lands under 43 C.F.R. §
19 4140.1 have occurred on any of the SPRNCA allotments subject to this
20 Agreement—to determine whether a prohibited act as defined under 43 C.F.R. §
21 4140.1 has, in fact, occurred, and to determine whether any and all violations are
22 nonwillful, willful, or repeatedly willful under 43 C.F.R. § 4150;
23

24 (b) to acknowledge the receipt of any such information via email within
25 three business days, and provide Plaintiffs notice of any action taken to address the
26 reported trespass grazing within three business days of such action;
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1 (c) to maintain fencing and remove cattle from areas closed to grazing as
2 appropriate, in any event to be not less than twice a year, and as otherwise needed;
3 and
4

5 (d) if the measures in paragraphs 7(a) – (c) do not eliminate unauthorized
6 and/or trespass grazing in SPRNCA, to consider initiating administrative
7 enforcement proceedings pursuant to 43 C.F.R. Subpart 4150, which may include
8 impoundment and disposal under 43 C.F.R. § 4150.4, if appropriate.
9

10 8. BLM agrees that any decision authorizing any livestock grazing or
11 vegetation treatment must comply with applicable law, to include but not necessarily be
12 limited to, NEPA, FLPMA, AICA, and the ESA.

13 9. In exchange for the consideration set forth herein, Plaintiffs agree to
14 dismiss without prejudice their First through Fifth Claims for Relief in the First Amended
15 Complaint. Within five days of the execution of this Agreement, the Parties agree to
16 submit a stipulation of dismissal without prejudice, along with a copy of this Agreement.
17

18 10. Plaintiffs’ sole remedy for any dispute concerning the adequacy of any
19 decision issued under paragraphs 4 or 5, including the application of the terms of
20 paragraphs 2 or 3 in any such decision(s), shall be to seek administrative review or to file
21 a new civil action seeking judicial review under the Administrative Procedure Act
22 (“APA”), 5 U.S.C. §§ 701-06, or other applicable statute. Plaintiffs’ sole remedy for
23 BLM’s alleged non-compliance with this Agreement shall be to move for an order
24 compelling compliance (a) in the event BLM abdicates or fails to address its
25 commitments concerning interim measures specified in paragraphs 6 and 7, or (b) in the
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1 event BLM fails to comply with the timeframes in paragraphs 4 and 5. In no event shall
2 any term of this Agreement be construed as limiting any claims or defenses that Plaintiffs
3 or Defendants may raise in any such subsequent proceedings.
4

5 11. The Court shall retain jurisdiction over this Agreement for the purpose of
6 resolving any dispute that may arise under Paragraphs 10(a) and 10(b). Any such dispute
7 shall be resolved through the process set forth in paragraphs 11.a-c. The Court's
8 continuing jurisdiction shall continue until BLM's issuance of the final decisions
9 contemplated in paragraph 4 or completion of an RMP amendment under paragraph 5, if
10 appropriate, whichever is later, unless the parties have commenced the dispute resolution
11 process described below.
12

13 a. The parties agree that they will first attempt to resolve any disputes related
14 to non-compliance informally among themselves before invoking the jurisdiction of the
15 Court. If such a dispute arises, the complaining party shall notify the other parties in
16 writing of the dispute. If the parties do not reach a resolution within 30 days, the
17 complaining party may invoke the jurisdiction of the Court to resolve the dispute, as set
18 forth in paragraph 11.b.
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20

21 b. In the event the parties are unable to resolve a dispute regarding allegations
22 of non-compliance through informal means, Plaintiffs may move for an order compelling
23 compliance as contemplated in paragraph 10, in accordance with the procedures set forth
24 below:
25

26 (i) The complaining party shall file a motion, in accordance with the Local
27 Rules of this Court, requesting judicial resolution of the dispute. The parties may, by
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1 stipulation approved by the Court, alter the timetable for briefing the motion; otherwise,
2 briefing shall proceed as set forth in the Local Rules.

3 (ii) In exercising the retained jurisdiction to resolve disputes brought before the
4 Court, the Court shall limit its remedial relief to compelling agency action under
5 appropriate timeframes to achieve the purposes of this Agreement. The Court's decision
6 as to whether relief is appropriate should be guided by the following non-exhaustive list
7 of considerations: (1) the appropriate timing for compliance with paragraphs 4 and 5
8 must be governed by a rule of reason; (2) the reasons for the delay, taking into account
9 that BLM is a land management agency with numerous competing priorities and limited
10 resources; and (3) the nature and extent of the interests prejudiced by delay. Defendants
11 shall not be deemed to have breached this Agreement for any failure or delay in fulfilling
12 or performing any term of this Agreement (except for obligations under Paragraph 15)
13 when and to the extent such failure or delay is caused by or results from acts beyond
14 Defendants' reasonable control, including, without limitation, the following force
15 majeure events that frustrate the purpose of this Agreement: (a) inadequate appropriations
16 or funding (including due to sequestration); (b) supply-chain disruptions or other
17 complications preventing acquisition of supplies, equipment or labor; (c) wildfires and
18 other natural disasters (which may require temporary reassignment of staff); and (d) other
19 similar events beyond Defendants' reasonable control. In the event of any delay,
20 Defendants shall notify Plaintiffs and the Court as promptly as possible, describing the
21 force majeure event, Defendants' response to the force majeure event, and an estimated
22 date for compliance.
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1 c. The parties agree that contempt of court is not available as a remedy for any
2 alleged violation of any portion of this Agreement. The parties therefore knowingly
3 waive any right that they might have to seek an order for contempt for any such violation.
4 The parties also agree that a suit for monetary damages against BLM or any Defendant is
5 not available as a remedy for any alleged violation of any portion of this Agreement.
6

7 12. Nothing in this Agreement shall be construed to limit or modify the
8 discretion accorded Defendants by any applicable federal law or regulation, including the
9 APA, NEPA, FLPMA, AICA, the ESA, and their implementing regulations.
10

11 13. Nothing in this Agreement shall be interpreted as, or shall constitute, a
12 requirement that Defendants are obligated to pay any funds exceeding those available or
13 take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1342,
14 1511-1519, or any other applicable appropriations law.
15

16 14. The parties agree that this Agreement was negotiated in good faith and that
17 this Agreement constitutes a settlement of claims that were denied and disputed by
18 Defendants. By entering into this Agreement, the parties do not waive any claim or
19 defense.
20

21 15. Plaintiffs agree to accept payment of \$150,000 in full satisfaction of any
22 and all claims for attorneys' fees and costs of litigation to which Plaintiffs are entitled in
23 this matter through and including the date of this Agreement. Defendants' payment shall
24 be accomplished by an electronic transfer to a bank account, and Plaintiffs agree within
25 five (5) days of executing this Agreement to designate a payee and provide sufficient
26 information to Defendants to facilitate this transfer. Plaintiffs acknowledge that under 31
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1 U.S.C. §§ 3711, 3716; 26 U.S.C. § 6402(d); 31 C.F.R. §§ 285.5, 901.3; and other
2 authorities, that the United States will offset against the attorney fee award the delinquent
3 debts of Western Watersheds Project, Center for Biological Diversity, and Sierra Club
4 owed to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010). Plaintiffs
5 acknowledge that the above-referenced payee shall receive payment on behalf of all
6 Plaintiffs, and agree that the payee’s receipt of this payment from Defendants shall
7 operate as a release of Plaintiffs’ claims for attorneys’ fees and costs in this matter up to,
8 through, and including the date of this Agreement.
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11 16. The undersigned representatives of each party certify that they are fully
12 authorized by the party or parties they represent to agree to the terms and conditions of
13 this Agreement and do hereby agree to the terms herein.
14

15 Dated: August 1, 2022

Respectfully Submitted,

16
17 /s/ Todd C. Tucci (with consent)

Todd C. Tucci, *pro hac vice*

18 Idaho State Bar # 6526

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