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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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