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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

17 WILDEARTH GUARDIANS,

18 Plaintiff,

19 v.

20 UNITED STATES FISH AND
21 WILDLIFE SERVICE and UNITED
22 STATES FOREST SERVICE,

23 Defendants.

24 CASE NO. 4:13-cv-151-RCC

25 **STIPULATION OF VOLUNTARY**
26 **DISMISSAL**

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1 WHEREAS, in this case, Plaintiff brought various claims under the Endangered
2 Species Act (“ESA”), 16 U.S.C. § 1533 *et seq.*, challenging Defendants’ conservation
3 strategy concerning the Mexican spotted owl (“owl”) in the 11 National Forests
4 comprising Forest Service Southwestern Region (Region 3). More specifically, Plaintiff
5 alleged that the decisions made in FWS’s programmatic 2012 Biological Opinions
6 (“BiOps”) for the 11 National Forests were arbitrary and capricious and that the Forest
7 Service was not complying with either its substantive or its procedural duties under the
8 ESA. ECF No. 10.

9 WHEREAS, Defendants disputed those claims and the Parties briefed summary
10 judgment. ECF Nos. 50-62.

11 WHEREAS, on September 12, 2019, the Court granted in part and denied in part
12 Plaintiff’s motion for summary judgment. ECF No. 89. The Court held that FWS failed to
13 adequately assess the owl’s recovery in its programmatic jeopardy analyses and that the
14 2012 programmatic “BiOps simply do not provide a route to recovery or way to
15 accurately assess it. The no-jeopardy determination is unsupported, arbitrary, and
16 capricious because the finding failed to account for recovery” of the owl. ECF No. 89 at
17 24. The Court also found that the USFS violated its substantive obligations under the
18 Section 7 (a)(2) ESA by relying on those BiOps. *Id.* at 36-37. The Court then granted an
19 injunction on all Forest Service timber management actions on the six National Forests
20 that operated under the 2012 programmatic BiOps – i.e., the Lincoln, Santa Fe, Cibola,
21 Carson, Tonto, and Gila National Forests – and ordered Defendants to reinstate Section 7
22 formal consultation under the ESA. ECF No. 89 at 38; ECF No. 98.

23 WHEREAS, pursuant to the Court’s order, Defendants reinstated formal
24 consultation on the Forest Plans for the Lincoln, Santa Fe, Cibola, Carson, Tonto, and
25 Gila National Forests.

26 WHEREAS, in December of 2019 Plaintiff sent 60-day notices of intent to sue
27 under the Endangered Species Act to Defendants regarding the Forest Plan BiOps for the
28 Apache-Sitgreaves, Cibola, Coconino, Coronado, Kaibab, and Prescott National Forests.

1 WHEREAS, the Parties subsequently agreed to narrow the scope of the Court's
2 injunction. ECF Nos. 99-102.

3 WHEREAS, Defendants filed a motion under Federal Rule of Civil Procedure
4 59(e) asking the Court to alter its summary judgment order. ECF No. 104. That motion is
5 pending.

6 WHEREAS, Defendants have completed reinitiated Section 7 formal consultation
7 on the Forest Plans for the Lincoln, Santa Fe, Cibola, Carson, Tonto, and Gila National
8 Forests and issued new BiOps for each of those Forest Plans, which supersede the BiOps
9 at issue in this lawsuit.

10 WHEREAS, Defendants filed motions to dissolve the Court's injunction, ECF
11 Nos. 112, 126, and Plaintiff opposed those motions. Those motions are pending.

12 WHEREAS, in order to resolve this lawsuit, the parties, through their authorized
13 representatives, and without any admission of fact or law with respect to Plaintiff's
14 claims, have reached an alternative arrangement to resolve the claims raised in Plaintiff's
15 lawsuit. *See* Attachment A hereto (October 26, 2020 response to WildEarth Guardians'
16 December 2019 60 day notices of intent to sue).

17 NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

- 18 1. All counts in the above-captioned lawsuit shall be, and upon entry of the order
19 below, dismissed with prejudice;
- 20 2. The current injunction is dissolved in its entirety;
- 21 3. Defendants withdraw all their pending motions; and
- 22 4. Defendants agree that Plaintiff is entitled to reasonable attorneys' fees and
23 costs pursuant to the fee shifting provisions of the Equal Access to Justice Act,
24 28 U.S.C. § 2412(d) and/or the ESA, 16 U.S.C. § 1540(g)(4). The Parties will
25 attempt to resolve the appropriate amount of fees and costs within 120 days of
26 entry of this stipulation. The Parties further agree that this Court will retain
27 jurisdiction to decide any dispute regarding attorneys' fees and costs. *See*
28 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994).

1 It is so stipulated.

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3 Dated: October 27, 2020

Respectfully Submitted,

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/s/ Steven Sugarman

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WILDEARTH GUARDIANS,

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UNITED STATES FISH AND
WILDLIFE SERVICE and UNITED
STATES FOREST SERVICE,

Defendants.

CASE NO. 4:13-cv-151-RCC

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Rickey D. Turner, Jr.
RICKEY D. TURNER, JR.