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*Attorneys for Defendants*

11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **FOR THE DISTRICT OF ARIZONA**  
 13 **TUCSON DIVISION**

14 Center for Biological Diversity, a  
 15 non-profit organization; Maricopa  
 16 Audubon Society, a non-profit  
 17 organization,

18 Plaintiffs,

19 v.

20 United States Fish and Wildlife  
 21 Service, et al.,

22 Defendants.

Case No.: 4:20-cv-00525-LCK

**STIPULATED SETTLEMENT  
 AGREEMENT**

23  
 24 This Stipulated Settlement Agreement (“Agreement”) is entered into by and  
 25 between Defendants, the U.S. Fish and Wildlife Service (“Service”) and Debra  
 26 Haaland, in her official capacity as Secretary of the United States Department of  
 27 Stipulated Settlement Agreement

1 the Interior<sup>1</sup> and Plaintiffs, Center for Biological Diversity (“Center”), and  
2 Maricopa Audubon Society (collectively, the “Parties”) who, by and through their  
3 undersigned counsel, state as follows:

4  
5 WHEREAS, on December 14, 2017, Plaintiffs petitioned the Service for  
6 revision of the existing critical habitat for the endangered Mount Graham red  
7 squirrel (*Tamiasciurus hudsonicus grahamensis*) under the Endangered Species Act  
8 (“ESA”), 16 U.S.C. §§ 1531, *et seq.*;

9  
10 WHEREAS, on September 6, 2019, the Service issued a 90-day finding on  
11 Plaintiffs’ petition to revise the Mount Graham red squirrel’s critical habitat,  
12 pursuant to 16 U.S.C. § 1533(b)(3)(D)(i), concluding that Plaintiffs’ petition  
13 presented substantial scientific or commercial information indicating that revision  
14 of the existing critical habitat may be warranted, 84 Fed. Reg. 46,927;

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17 WHEREAS, on September 16, 2020, Plaintiffs sent Defendants a letter  
18 stating their intent to file suit to compel the Service to issue a 12-month finding  
19 pursuant to 16 U.S.C. § 1533(b)(3)(D)(ii) indicating how it intends to proceed with  
20 the requested revision;

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27 <sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Ms. Haaland is substituted for David  
Bernhardt, formerly Secretary of the United States Department of the Interior.

1 WHEREAS, on November 30, 2020, Plaintiffs filed the above-captioned  
2 action to compel the Service to issue a 12-month finding on the petition to revise  
3 the critical habitat designation, ECF No. 1;

4  
5 WHEREAS, the Parties, through their authorized representatives, and  
6 without any final adjudication of the issues of fact or law with respect to Plaintiffs'  
7 claims, have negotiated a settlement that they consider to be a just, fair, adequate,  
8 and equitable resolution of the disputes set forth in Plaintiffs' complaint;

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10 WHEREAS, the Parties agree that settlement of this action in this manner is  
11 in the public interest and is an appropriate way to resolve Plaintiffs' complaint;

12  
13 NOW, THEREFORE, the Parties hereby stipulate and agree as follows:

- 14 1. No later than July 29, 2021, the Service shall submit to the Office of the  
15 Federal Register for publication a 12-month finding indicating how it intends  
16 to proceed with the requested revision of the critical habitat designation for  
17 the Mount Graham red squirrel pursuant to 16 U.S.C. § 1533(b)(3)(D)(ii);
- 18  
19 2. The Order entering this Agreement may be modified by the Court upon good  
20 cause shown, consistent with the Federal Rules of Civil Procedure, by written  
21 stipulation between the Parties filed with and approved by the Court, or upon  
22 written motion filed by one of the Parties and granted by the Court. In the  
23 event that either Party seeks to modify the terms of this Agreement, including  
24 the deadline specified in Paragraph 1, or in the event of a dispute arising out  
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of or relating to this Agreement, or in the event that either Party believes that the other Party has failed to comply with any term or condition of this Agreement, the Party seeking the modification, raising the dispute, or seeking enforcement shall provide the other Party with notice of the claim or modification. The Parties agree that they will meet and confer (either telephonically or in person) at the earliest possible time in a good-faith effort to resolve the claim before seeking relief from the Court. If the Parties are unable to resolve the claim themselves, either Party may seek relief from the Court.

3. In the event that Defendants fail to meet the deadline in Paragraph 1 and have not sought to modify this Agreement, Plaintiffs' first remedy shall be a motion to enforce the terms of this Agreement, after following the dispute resolution procedures described above. This Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.
4. This Agreement requires only that Defendants take the action specified in Paragraph 1. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the ESA, the Administrative Procedure Act ("APA"), or any other law or regulation, either substantive or procedural. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to

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Defendants by the ESA, APA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any determinations made pursuant to Paragraph 1 of the Agreement. To challenge the 12-month finding issued under Paragraph 1, Plaintiffs must file a separate action. Defendants reserve the right to raise any applicable claims or defenses to such challenges.

5. No part of this Agreement shall have precedential value in any litigation or in representations before any court or forum or in any public setting. No Party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable timeline for issuing a 12-month finding on a petition to revise critical habitat.

6. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as an admission or concession of any wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Agreement or any similar claims brought in the future by any other party. Except as expressly provided in this Agreement, none of the Parties waives or relinquishes any legal rights, claims, or defenses it may have. This Agreement is executed for the purpose of settling Plaintiffs' complaint, and nothing herein shall be construed as precedent having preclusive effect in any other context.

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7. Without waiving any defenses or making any admissions, Defendants agree to pay Plaintiffs \$3,513 in attorneys’ fees and costs. Plaintiffs agree to accept the \$3,513 from Defendants in full satisfaction of any and all claims, demands, rights, and causes of action for any and all attorneys’ fees and costs Plaintiffs reasonably incurred in connection with the above captioned litigation through the signing of this Agreement.

8. Plaintiffs agree to furnish Defendants with the information necessary to effectuate the payment set forth by Paragraph 7. Payment will be made to the Center by electronic funds transfer. Defendants agree to submit all necessary paperwork for the processing of the attorneys’ fees award to the Department of Treasury’s Judgment Fund Office within fifteen (15) days from receipt of the necessary information from Plaintiffs or from approval of this Agreement by the Court, whichever is later.

9. By this agreement, Defendants do not waive any right to contest fees and costs claimed by Plaintiffs or Plaintiffs’ counsel in any future litigation or continuation of the present action.

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

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11. The Parties agree that this Agreement was negotiated in good faith and that it constitutes a settlement of claims that were dispute by the Parties. By entering into this Agreement, none of the Parties waive any legal rights, claims, or defenses except as expressly stated herein. This Stipulation contains all of the terms of agreement between the Parties concerning the complaint, and is intended to be the final and sole agreement between the Parties with respect thereto. The Parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

12. The undersigned representatives of each Party certify that they are fully authorized by the Party or Parties they represent to agree to the terms and conditions of this Agreement and do hereby agree to the terms herein. Further, each Party, by and through its undersigned representative, represents and warrants that it has the legal power and authority to enter into this Agreement and bind itself to the terms and conditions contained in this Agreement.

13. The terms of this Agreement shall become effective upon entry of an Order by the Court ratifying this Agreement.

1 14. Upon adoption of this Agreement by the Court, all counts of Plaintiffs'  
2 complaint shall be dismissed with prejudice. Notwithstanding the dismissal  
3 of this action, however, the Parties hereby stipulate and respectfully request  
4 that the Court retain jurisdiction to oversee compliance with the terms of this  
5 Agreement and to resolve any motions to modify such terms. *See Kokkonen*  
6 *v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).  
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9 Respectfully submitted April 12, 2021.

10 JEAN E. WILLIAMS,  
11 Acting Assistant Attorney General  
12 SETH M. BARSKY, Section Chief  
13 MEREDITH L. FLAX, Assistant Section Chief

14 /s/ Davis A. Backer  
15 DAVIS A. BACKER  
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*Attorney for Plaintiffs*