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6 **IN THE UNITED STATES DISTRICT COURT**
7
8 **FOR THE DISTRICT OF ARIZONA**

9 _____
10 **Neighbors of the Mogollon Rim, Inc.,**

11 Plaintiff,

12 v.

13 **United States Forest Service,**

14 Federal Defendant.
15
16 _____

)
)
) No. 2:18-cv-01111-DLR
)
)
) **THE PARTIES’**
) **SETTLEMENT AGREEMENT**
) **AND STIPULATION OF**
) **DISMISSAL**
)
)
)

17 This Settlement Agreement and Stipulation of Dismissal (“Settlement Agreement”
18 or “Agreement”) is entered into by and between Plaintiff Neighbors of the Mogollon
19 Rim, Inc., and Federal Defendant United States Forest Service. By and through
20 undersigned counsel, the Parties state as follows:

21 WHEREAS, this action was filed on April 11, 2018, in which Plaintiff alleged that
22 the Forest Service’s Annual Operating Instructions (“AOIs”) for livestock grazing on the
23 Bar X Allotment on the Tonto National Forest in Arizona violated the Federal Land
24 Policy and Management Act (“FLPMA”), the National Forest Management Act
25 (“NFMA”), the National Environmental Policy Act (“NEPA”), and their implementing
26 regulations, *see* ECF No. 1;
27

1 WHEREAS, the Forest Service has amended the 2018 AOI for the Bar X
2 Allotment to remove the Turkey/Colcord Pasture from authorized use and to reduce the
3 total authorized use to be the same as or less than use authorized under the term grazing
4 permit for the Bar X Allotment;

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

9 NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES
10 AS FOLLOWS:

11 1. The Forest Service will continue to ensure that future AOIs, or any other
12 type of annual authorizations, for the Bar X Allotment are consistent with the existing
13 term grazing permit for the Bar X Allotment while this Settlement Agreement is in effect.

14 2. The Forest Service will provide copies of any future AOIs or other annual
15 authorizations for the Bar X Allotment to Plaintiff upon request while this Settlement
16 Agreement is in effect.

17 3. The Forest Service will provide actual livestock use numbers grazed under
18 the 2018 AOI and future AOIs or other annual authorizations for the Bar X Allotment to
19 Plaintiff upon request once the relevant grazing season is completed, while this
20 Settlement Agreement is in effect.

21 4. The Settlement Agreement will remain in effect until the Forest Service
22 issues a new term livestock grazing permit and Allotment Management Plan for the Bar
23 X Allotment, accompanied by a new NEPA analysis and a new consultation under the
24 Endangered Species Act ("ESA"), as appropriate. Any challenge to the new permit and
25 new Allotment Management Plan based on any claim under NEPA, the ESA, or any other
26 law will be brought in a new lawsuit.

1 5. Plaintiff has indicated that it will make a claim for attorneys' fees, costs,
2 and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412. The Parties agree
3 to employ good faith efforts to reach an expeditious resolution of this claim. If a
4 negotiated resolution of this claim cannot be reached, Plaintiff will file an application
5 with the Court for its claimed attorneys' fees, costs, and expenses, consistent with 28
6 U.S.C. § 2412. By this agreement, Federal Defendant does not waive any right to contest
7 any attorneys' fees, costs, and expenses claimed by Plaintiff.

8 6. No Party shall use this Settlement Agreement or the terms herein as
9 evidence of what does or does not constitute lawful action under FLPMA, NFMA,
10 NEPA, the ESA, implementing regulations, or any other law in any litigation or
11 administrative process. Nor shall this Settlement Agreement or the terms herein be used
12 to dictate or justify the process or level of analysis under any law that the Forest Service
13 must follow or apply in issuing a new term livestock grazing permit and Allotment
14 Management Plan for the Bar X Allotment.

15 7. This Settlement Agreement shall not constitute an admission of liability or
16 fault on the part of Federal Defendant or any of its officers, agents or employees.

17 8. The Parties stipulate and agree, and hereby request, that the Court approve
18 this Settlement Agreement and enter an order dismissing this action with prejudice
19 pursuant to Federal Rule of Civil Procedure 41(a)(2). The terms of this Settlement
20 Agreement will not go into effect until the Court enters that order of dismissal.

21 9. The Parties agree that the Court may retain jurisdiction over this matter
22 solely to oversee compliance with the terms of this Settlement Agreement. *See Kokkonen*
23 *v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994). Any dispute over compliance with any
24 provision of this Settlement Agreement shall proceed as set forth in Paragraph 10.

25 10. In the event that any Party believes another Party to be in breach of this
26 agreement, such Party must give notice to the other Party at the earliest possible date.

1 The other Party shall have 14 days to respond to the claim of breach. If such a response
2 is provided, the Parties shall have 60 days to meet and confer regarding the alleged
3 breach, and any potential remedy. Notice from Plaintiff should be provided to the Forest
4 Service and to undersigned counsel for Federal Defendant. The Parties agree that neither
5 will seek contempt of court as a remedy for any violation of this Settlement Agreement,
6 and the Parties therefore knowingly waive any right that they might have to seek an order
7 of contempt for any such violation. No Party shall seek action by this Court or any other
8 court regarding the alleged breach until either (a) the expiration of the meet and confer
9 period, or (b) both Parties agree, in writing, that they have reached an impasse. Nothing
10 in this section is intended to create a cause of action that would not otherwise exist, or to
11 invest this Court with authority that it would not otherwise have.

12 11. No provision of this Settlement Agreement shall be interpreted as or
13 constitute a commitment or requirement that the United States is obligated to pay funds in
14 contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provision of
15 law.

16 12. The Parties agree that this Settlement Agreement was negotiated in good
17 faith and that this Agreement constitutes a full and complete settlement of claims in this
18 case. By entering into this Agreement, the Parties do not waive any claim or defense.

19 13. The undersigned representatives of each Party certify that they are fully
20 authorized by the Party they represent to agree to the Court's entry of the terms and
21 conditions of this Agreement and do hereby agree to the terms herein.

22
23 Respectfully submitted this 9th day of October, 2018,

24 JEFFREY H. WOOD
25 Acting Assistant Attorney General
26 Environment & Natural Resources Division
27 United States Department of Justice

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of October, 2018, I filed the foregoing document electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Andrew A. Smith

Andrew A. Smith

U.S. Department of Justice