

1 Lauren M. Rule (ISB # 6863), *pro hac vice*  
ADVOCATES FOR THE WEST  
2 P.O. Box 1612  
Boise, ID 83701  
3 (208) 342-7024  
(208) 342-8286 (fax)  
4 lrule@advocateswest.org

5 Erik B. Ryberg (AZB # 023809)  
312 South Convent Ave.  
6 Tucson, AZ 85701  
(520) 622-3333  
7 ryberg@seanet.com

8 *Attorneys for Plaintiff*

9 Dennis K. Burke  
United States Attorney  
10 District of Arizona

11 Ignacia S. Moreno  
Assistant Attorney General  
12 Environment and Natural Resources Division

13 Tyler Welti  
Trial Attorney, CA Bar #257993  
14 Environment and Natural Resources Division  
Natural Resources Section  
15 P.O. Box 663  
Washington D.C. 20044-0663  
16 202-305-0481 (tel) 202-305-0506 (fax)  
Tyler.Welti@usdoj.gov

17 *Attorneys for Defendant*

18  
19  
20 UNITED STATES DISTRICT COURT  
21 FOR THE DISTRICT OF ARIZONA

22  
23 WESTERN WATERSHEDS PROJECT, )

24 Plaintiff, )

25 vs. )

26 BUREAU OF LAND MANAGEMENT, )

27 Defendant. )

Case No.: 08-cv-1472-MHM

**STIPULATED SETTLEMENT  
AGREEMENT**

1           The Parties to this action, by and through their undersigned counsel of record, hereby  
2 agree to the following Stipulated Settlement Agreement (“Settlement Agreement”) in order to  
3 resolve this action informally and avoid the need for further litigation before the Court.

4           1.       Plaintiff’s Second Claim for Relief and the portion of their First Claim for Relief  
5 related to the compatibility determination have already been dismissed pursuant to the Court’s  
6 Order of June 12, 2009 (Dckt. No. 65). *See* Plaintiff’s Second Amended Complaint ¶¶ 72 & 82  
7 (First and Second Claims for Relief) (Dckt. No. 70); Stipulation on Second Amended Complaint  
8 (Dckt. No. 77) (recognizing that Plaintiff’s Second Claim for Relief and the portion of the First  
9 Claim for Relief seeking to compel completion of a grazing compatibility determination were  
10 dismissed by the Court).

11           2.       In order to resolve and settle the portion of Plaintiff’s First Claim For Relief  
12 related to the Sonoran Desert National Monument Resource Management Plan (“SDNM RMP”),  
13 the parties agree that:

14                   A.       The Bureau of Land Management (“BLM”) will complete the SDNM  
15 RMP and issue a Record of Decision by December 15, 2011.

16                   B.       BLM will include within the SDNM RMP a determination of whether  
17 livestock grazing on the five allotments north of Highway 8 is compatible with protecting the  
18 objects identified in Presidential Proclamation 7397, 66 Fed. Reg. at 7354 (Jan. 22, 2001).

19                   C.       Until the SDNM management plan is completed and a Record of Decision  
20 issued, the parties agree to the following:

21                           i.       BLM will continue to implement the Off-Road Vehicle use  
22 restrictions that are currently in place on the SDNM, as described in 73 Fed. Reg.  
23 27844-45 (May 14, 2008).

24                           ii.       BLM will subject any decision to construct or authorize any new,  
25 permanent range improvements for cattle grazing on the SDNM to National  
26 Environmental Policy Act review, and BLM will provide Plaintiff with all  
27 required public notices.

28                           iii.       BLM will continue to consider applications for ephemeral grazing

1 on the SDNM in accordance with applicable laws, regulations, and other  
2 guidance, including but not limited to the Lower Gila South RMP/EIS (1988) and  
3 2005 amendment, the Maricopa Wilderness Management Plan (1995), the 1988  
4 Desert Tortoise Range Wide Plan, Instruction Memorandum AZ-94-018, and the  
5 Arizona Standards for Rangeland Health and Guidelines for Grazing  
6 Administration.

7 iv. In accordance with these authorities, should BLM authorize  
8 ephemeral grazing, BLM will conduct ephemeral grazing monitoring trips prior to  
9 the initial authorization and on 30-day intervals starting 60 days after the initial  
10 authorization, for as long as ephemeral grazing is authorized. In accordance with  
11 these authorities, in Categories I and II desert tortoise habitat, BLM will conduct  
12 monitoring trips at 30-day intervals beginning 60 days after the initial  
13 authorization or March 31, whichever is sooner, for as long as ephemeral grazing  
14 is authorized. BLM will provide Plaintiff with a monitoring report and data  
15 within two weeks of the date of each ephemeral grazing monitoring trip. If BLM  
16 determines upon such monitoring that it will not authorize further ephemeral  
17 grazing that season, BLM will notify the permittee to promptly remove livestock  
18 that were grazing under the prior ephemeral authorization within 15 days. Any  
19 member of the public, including Plaintiff, may request that BLM, at BLM's  
20 discretion, allow that member of the public to accompany BLM on ephemeral  
21 grazing monitoring trips on the SDNM. BLM will provide Plaintiff 72 hours  
22 notice, by email at the email address [greta@westernwatersheds.org](mailto:greta@westernwatersheds.org), of monitoring  
23 trips on the SDNM to allow Plaintiff to make such requests. If BLM should allow  
24 Plaintiff to accompany BLM on ephemeral grazing monitoring trips, Plaintiff will  
25 observe the monitoring and will not in any way interfere with or attempt to  
26 influence the monitoring.

27 v. Should BLM receive an application for ephemeral grazing, before  
28 processing the first such application received during each calendar year, BLM

1 will provide Plaintiff with an opportunity to accompany BLM on a field trip, on  
2 which BLM will demonstrate ephemeral grazing application processing and  
3 monitoring methods. To this end, BLM will provide Plaintiff with 72 hours  
4 notice, by email at the email address listed above, of the field trip opportunity,  
5 including the field trip's location and time of departure.

6 vi. Plaintiff agrees not to initiate any further litigation specifically  
7 challenging BLM's management of the SDNM, so as to facilitate BLM's  
8 completion of the SDNM RMP. This provision does not preclude Plaintiff from  
9 initiating litigation challenging BLM actions related to land outside of the  
10 Monument, even if such litigation indirectly impacts land within the monument.  
11 Notwithstanding this provision, should BLM hereafter renew any grazing permits  
12 for allotments within the SDNM prior to completion of the SDNM RMP or  
13 authorize any new, permanent range improvements, Plaintiff may challenge such  
14 permit renewals or range improvement authorizations in a new lawsuit.

15 4. BLM agrees to pay Plaintiff \$28,284.00 in full and complete satisfaction of any  
16 and all claims, demands, rights, and causes of action pursuant to the Equal Access to Justice Act,  
17 28 U.S.C. § 2412(d), and/or any other statute and/or common law theory, for all attorneys' fees  
18 and costs incurred by Plaintiff, individually and/or severally, in this litigation. Plaintiff agrees  
19 that receipt of such payment shall constitute a release of any and all claims Plaintiff may have to  
20 attorney fees and costs under any and all laws, regulations, and other authorities.

21 5. BLM's payment, as identified in Paragraph 4 above, shall be accomplished by  
22 electronic fund transfer into Plaintiff's attorney's trust account within 60 days after the Court's  
23 dismissal of this Action as provided in paragraph 6 and receipt of all information necessary to  
24 process the payment, whichever is sooner.

25 6. Plaintiff hereby relinquishes its claim against BLM regarding the portion of the  
26 First Claim for Relief related to the SDNM RMP, and agrees that the Court may enter the  
27 accompanying Proposed Order of Dismissal dismissing this case in its entirety, with prejudice.

28 7. The Parties request, and will specify in the Proposed Order of Dismissal to be

1 submitted to the Court, that the Court retain jurisdiction over this matter until BLM has issued a  
2 Record of Decision for the SDNM Management Plan, for the limited purpose of enforcing the  
3 terms of the Settlement Agreement. At least 30 days prior to bringing any action to enforce this  
4 Settlement Agreement and Order of Dismissal, the party contemplating the action must bring its  
5 dispute to the attention of the other party, in writing, and both parties must make a good faith  
6 effort to resolve the dispute informally within 30 days thereafter. The parties understand that the  
7 District Court's review of any action related to this Settlement Agreement would be governed by  
8 the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*. The parties agree not to seek to invoke  
9 the contempt powers of the Court in aid of enforcement of this Settlement Agreement.

10 8. No provision of this Settlement Agreement shall be interpreted as a commitment  
11 or requirement that the Federal Defendants take actions in contravention of the Federal Land  
12 Policy and Management Act, the National Environmental Policy Act, the Administrative  
13 Procedure Act, or any other law or regulation, substantive or procedural. This Settlement  
14 Agreement shall be subject to any statutory changes, and nothing in this Settlement Agreement  
15 shall be interpreted as, or shall constitute, a commitment or requirement that Defendant obligate  
16 or pay funds, or take any other action in contravention of the Anti-Deficiency Act, 31 U.S.C.  
17 §1341, or any other applicable law regarding the expenditure of public funds.

18 9. Nothing in this Settlement Agreement, and no actions taken by any Party hereto  
19 with regard to this Settlement Agreement, shall be construed as an admission by any Party of  
20 liability as to any of the matters settled. Nothing in this Settlement Agreement shall be utilized  
21 for the purpose of precedent or argument in any other case. No action taken by any Party in  
22 effectuating this Settlement Agreement may be used as an admission of liability in any respect in  
23 any future or pending demand, administrative proceeding, litigation, or similar action involving  
24 any of the Parties. This Settlement Agreement shall not bind any Party as to any claim or issue  
25 except those specifically addressed herein.

26 10. The undersigned representatives of the Parties certify that they are fully-  
27 authorized by the respective Parties whom they represent to enter into the terms and conditions  
28 of this stipulation and to legally bind such Parties to it.

1 11. No supplement, modification, or amendment of this Settlement Agreement shall  
2 be binding unless executed in writing by all of the Parties.

3 12. This Settlement Agreement represents the entirety of the Parties' commitments  
4 with regard to settlement. The terms of this Settlement Agreement shall become effective upon  
5 approval by the Court of this stipulation.

6  
7 **IT IS SO STIPULATED.**

8  
9 Dated this 10th day of February, 2010

10  
11 /s/Lauren M. Rule  
12 Lauren M. Rule (ISB # 6863)  
13 ADVOCATES FOR THE WEST  
14 P.O. Box 1612  
Boise, ID 83701  
(208) 342-7024  
(208) 342-8286 (fax)  
lrule@advocateswest.org

15 *Attorney for Plaintiff*

16 DENNIS K. BURKE  
17 United States Attorney  
District of Arizona

18 IGNACIA S. MORENO  
19 Assistant Attorney General  
Environment and Natural Resources Division

20 /s/ Tyler Welti  
21 by Lauren M. Rule (with permission)  
Tyler Welti (CA Bar No. 257993)  
22 Trial Attorney  
United States Department of Justice  
23 Environment and Natural Resources Division  
Natural Resources Section  
24 P.O. Box 663  
Washington D.C. 20044-0663  
25 202-305-0481 (tel) 202-305-0506 (fax)  
Tyler.Welti@usdoj.gov

26 *Attorneys for Federal Defendant*  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of February 2010, I caused a true and correct copy of the foregoing STIPULATED SETTLEMENT AGREEMENT to be electronically filed with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the following counsel of record in this matter:

Tyler G. Welti  
Tyler.Welti@usdoj.gov

Erik B. Ryberg  
ryberg@seanet.com

James S. Angell  
jangell@earthjustice.org

Alexander Hays  
alexander\_hays@nthp.org

s/Lauren M. Rule  
Lauren M. Rule (ISB # 6863)