

Attachment 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

UNITED STATES FISH AND WILDLIFE
SERVICE, et al.,

Defendants.

No. 3:22-cv-00858-SB

**STIPULATED SETTLEMENT
AGREEMENT**

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiff Center for Biological Diversity (“Center”), and Defendants U.S. Fish and Wildlife Service (“Service”); Martha Williams, in her official capacity as Director of the Service; and, Debra Haaland, in her official capacity as Secretary of the U.S. Department of the Interior (collectively, “Defendants”). In support of this Agreement, Plaintiff and Defendants (collectively, the “Parties”), by and through their undersigned counsel, state as follows:

WHEREAS, on December 14, 2020, Plaintiff petitioned the Service to list the Siuslaw hairy-necked tiger beetle (*Cicindela hirticollis Sulawesi*) as a threatened or endangered species under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-44;

WHEREAS, on September 29, 2021, the Service issued a positive 90-day finding that the petition presented substantial scientific or commercial information indicating that listing the Siuslaw hair-necked tiger beetle as an endangered or threatened species may be warranted. 86 Fed. Reg. 53,940 (September 29, 2021);

WHEREAS, on June 14, 2022, Plaintiff filed its Complaint, ECF No. 1, alleging violations of the ESA for failure to issue a 12-month finding for the Siuslaw hairy-necked tiger beetle pursuant to 16 U.S.C. § 1533(b)(3)(B) and failure to issue final listing rules for three other species (longsolid (*Fusconaia subrotunda*), Canoe Creek clubshell (*Pleurobema atearni*), and marron bacora (*Solanum conocarpum*)) pursuant to 16 U.S.C. § 1533(b)(6)(A);

WHEREAS, since Plaintiff filed the Complaint, the Service has published final listing rules concerning the marron bacora (87 Fed. Reg. 36,225, published June 16, 2022), Canoe Creek clubshell (87 Fed. Reg. 40,115, published July 6, 2022), and longsolid (88 Fed. Reg. 14,794, published Mar. 9, 2023);

WHEREAS, for any proposed regulation published in the Federal Register to list the Siuslaw hairy-necked tiger beetle after issuing the 12-month finding required by Paragraph 1 of this Agreement, the Service intends to make a final listing determination in accordance with the statutory deadlines provided in 16 U.S.C § 1533(b)(6)(A)-(B);

WHEREAS, the Parties, by and through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiff’s claim that the

Service failed to issue a 12-month finding for the Siuslaw hairy-necked tiger beetle within the timeframe outlined in 16 U.S.C. § 1533(b)(3)(B), have reached a settlement that they consider to be just, fair, adequate, and equitable;

THEREFORE, the parties hereby stipulate and agree as follows:

1. On or before August 19, 2026, the Service shall review the status of the Siuslaw hairy-necked tiger beetle and submit to the Office of the Federal Register a determination as to whether the listing of the Siuslaw hairy-necked tiger beetle as threatened or endangered is (a) not warranted; (b) warranted; or (c) warranted but precluded by other pending proposals, pursuant to 16 U.S.C. § 1533(b)(3)(B).

2. The order entering this Agreement may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between the parties filed with and approved by the Court, or upon written motion filed by one of the parties and granted by the Court. In the event that either party seeks to modify the terms of this Agreement, including the deadline specified in Paragraph 1, or in the event of a dispute arising out 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, and in any case within two business days, 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 a deadline specified in Paragraph 1 and

have not sought to modify it, Plaintiff's 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 the Service 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 the Service by the ESA, the 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 determination required herein, or as to the substance of any determination made pursuant to Paragraph 1. To challenge any final determination issued pursuant to Paragraph 1, Plaintiff must file a separate action, and Defendants reserve the right to raise any applicable claims or defenses in response thereto.

5. Without waiving any defenses or making any admissions, Defendants agree to pay Plaintiff \$3,977 in attorneys' fees and costs. Plaintiff agrees to accept the \$3,977 from Defendants in full satisfaction of any and all claims, demands, rights, and causes of action for any and all attorneys' fees and costs Plaintiff reasonably incurred in connection with the above-captioned litigation through the signing of this Agreement.

6. Plaintiff agrees to furnish Defendants with information necessary to effectuate the payment set forth in Paragraph 5. Payment will be made to Plaintiff by electronic funds transfer. Defendants agree to submit all necessary paperwork for the processing of the attorneys' fees award to the Department of the Treasury's Judgment Fund Office within fifteen (15) days from receipt

of the necessary information from the Center or from approval of this Agreement by the Court, whichever is later.

7. By this Agreement, Defendants do not waive any right to contest fees and costs claimed by Plaintiff or Plaintiff's counsel in any future litigation or continuation of the present action.

8. 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 making determinations regarding the listing of or designation of critical habitat for any species.

9. 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, the parties do not waive or relinquish any legal rights, claims, or defenses they may have. This Agreement is executed for the purpose of settling Plaintiff's claim that Service failed to issue a timely 12-month finding for the Siuslaw hairy-necked tiger beetle in accordance with 16 U.S.C. § 1533(b)(3)(B), Complaint, ¶¶ 43-58, 65-66, and nothing herein shall be construed as precedent having preclusive effect in any other context.

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.

11. The parties agree that this Agreement was negotiated in good faith and it constitutes a settlement of claims disputed by the parties. This Agreement contains all of the terms of agreement between the parties concerning Plaintiff's claim that the Service failed to issue a timely 12-month finding for the Siuslaw hairy-necked tiger beetle in accordance with 16 U.S.C. § 1533(b)(3)(B), Complaint, ¶¶ 43-58, 65-66, 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 approving the Agreement.

14. Upon approval of this Agreement by the Court, all counts of Plaintiff's Complaint shall be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1). Notwithstanding the dismissal of this action, however, the parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

DATED: May 15, 2023

/s/ Camila Cossio

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2023, I electronically filed the foregoing Stipulated Settlement Agreement using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Erika Furlong

ERIKA FURLONG

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