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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL
DIVERSITY; and CENTER FOR FOOD
SAFETY,

Plaintiffs,

v.

U.S. FISH AND WILDLIFE SERVICE;
BRIAN NESVIK, in his official capacity
as Director of the U.S. Fish and Wildlife
Service; and DOUG BURGUM, in his
official capacity as Secretary of the U.S.
Department of the Interior,

Defendants.

Case No. 3:26-cv-01281-TSH

**STIPULATED SETTLEMENT
AGREEMENT AND [PROPOSED] ORDER**

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between the Center for Biological Diversity and the Center for Food Safety (“Plaintiffs”) and the United States Fish and Wildlife Service (“Service”); Brian Nesvik, in his official capacity as Director of the Service; and Doug Burgum, in his official capacity as Secretary of the United States

1 Department of the Interior (“Defendants”), who, by and through their undersigned counsel, state
2 as follows:

3 WHEREAS, on December 12, 2024, the Service published a proposed rule to list the
4 Monarch Butterfly (*Danaus plexippus*) as a threatened species pursuant to the Endangered
5 Species Act (“ESA”), 89 Fed. Reg. 10662 (Dec. 12, 2024);

6 WHEREAS, on December 12, 2025, Plaintiffs sent a letter to Defendants stating Plaintiffs’
7 intent to file suit under the ESA to compel the Service to publish a final listing determination on
8 the proposed rule for the Monarch Butterfly;

9 WHEREAS, on February 3, 2026, the Service responded to Plaintiffs’ December 12,
10 2025, letter;

11 WHEREAS, on February 12, 2026, Plaintiffs filed a complaint in the above-captioned
12 action to compel the Service to publish a final listing determination on the proposed rule for the
13 Monarch Butterfly by a date certain, Dkt. No. 1;

14 WHEREAS, the Parties, by and through their authorized representatives, and without any
15 admission or final adjudication of the issues of fact or law with respect to Plaintiffs’ claims, have
16 reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the
17 disputes set forth in Plaintiffs’ Complaint;

18 WHEREAS, the Parties agree that the settlement of this action in this manner is in the
19 public interest and is an appropriate way to resolve the dispute between them;

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

- 21 1. On or before June 6, 2030, the Service shall submit to the Office of the Federal
22 Register for publication a final listing determination for the Monarch Butterfly,
23 pursuant to the ESA, 16 U.S.C. § 1533(b)(6).
- 24 2. In the event of a lapse in appropriations during the period between the signing of this
25 Agreement and the deadline set forth in Paragraph 1, the deadline set forth in
26 Paragraph 1 shall be extended by the number of calendar days between the first day
27 of the lapse in appropriations and the date the President signs into law a budget
28 appropriation such that funding is restored to the Department of the Interior.

- 1 3. The Order entering this Agreement may be modified by the Court upon good cause
2 shown, consistent with the Federal Rules of Civil Procedure, by written stipulation
3 between the Parties filed with and approved by the Court, or upon written motion
4 filed by one of the Parties and granted by the Court. In the event that either Party
5 seeks to modify the terms of this Agreement, including the deadline specified in
6 Paragraph 1, or in the event of a dispute arising out of or relating to this Agreement,
7 or in the event that either Party believes that the other Party has failed to comply with
8 any term or condition of this Agreement, the Party seeking the modification, raising
9 the dispute, or seeking enforcement shall provide the other Party with notice of the
10 claim or modification. The Parties agree that they will meet and confer (either
11 telephonically or in person) at the earliest possible time in a good-faith effort to
12 resolve the claim before seeking relief from the Court. If the Parties are unable to
13 resolve the claim themselves, either Party may seek relief from the Court.
- 14 4. In the event that Defendants fail to meet the deadline in Paragraph 1 and have not
15 sought to modify this Agreement, Plaintiffs' first remedy shall be a motion to enforce
16 the terms of this Agreement, after following the dispute resolution procedures
17 described above. This Agreement shall not, in the first instance, be enforceable
18 through a proceeding for contempt of court.
- 19 5. This Agreement requires only that Defendants take the action specified in Paragraph
20 1. No provision of this Agreement shall be interpreted as, or constitute, a commitment
21 or requirement that Defendants take action in contravention of the ESA, the
22 Administrative Procedure Act ("APA"), or any other law or regulation, either
23 substantive or procedural. Nothing in this Agreement shall be construed to limit or
24 modify the discretion accorded to Defendants by the ESA, APA, or general principles
25 of administrative law with respect to the procedures to be followed in making any
26 determination required herein, or as to the substance of any determinations made
27 pursuant to Paragraph 1 of the Agreement.
- 28

- 1 6. To challenge any final determination issued pursuant to Paragraph 1, Plaintiffs must
2 file a separate action and otherwise comply with applicable legal requirements.
3 Defendants reserve the right to raise any applicable claims or defenses to such
4 challenges.
- 5 7. No part of this Agreement shall have precedential value in any litigation or in
6 representations before any court or forum or in any public setting. No Party shall use
7 this Agreement or the terms herein as evidence with regard to any issue whatsoever,
8 including what does or not constitute a reasonable time for making a final listing
9 determination for any species pursuant to the ESA.
- 10 8. Nothing in this Agreement shall be construed or offered as evidence in any
11 proceeding as an admission or concession of any wrongdoing, liability, or any issue
12 of fact or law concerning the claims settled under this Agreement or any similar
13 claims brought in the future by any other party. Except as expressly provided in this
14 Agreement, none of the Parties waives or relinquishes any legal rights, claims or
15 defenses it may have. This Agreement is executed for the purpose of settling
16 Plaintiffs' Complaint, and nothing herein shall be construed as precedent having
17 preclusive effect in any other context.
- 18 9. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement
19 that Defendants are obligated to pay any funds exceeding those available, or take any
20 action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
21 applicable appropriations law.
- 22 10. The Parties agree that this Agreement was negotiated in good faith and it constitutes a
23 settlement of claims disputed by the Parties. By entering into this Agreement, the
24 Parties do not waive any legal rights, claims or defenses, except as expressly stated
25 herein. This agreement contains all of the terms of agreement between the parties
26 concerning Plaintiffs' Complaint and is intended to be the final and sole agreement
27 between the Parties with respect thereto. The Parties agree that any prior or
28 contemporaneous representations or understanding not explicitly contained in this

1 written Agreement, whether written or oral, are of no further legal or equitable force
2 or effect.

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

9 12. The terms of this Agreement shall become effective upon entry of an order by the
10 Court approving the Agreement.

11 13. Plaintiffs reserve their right to request attorneys' fees and costs from Defendants, and
12 Defendants reserve their right to contest Plaintiffs' entitlement to recover fees and the
13 amount of any such fees and do not waive any objection or defenses they may have to
14 Plaintiffs' request. The Parties agree to the following schedule for addressing
15 attorneys' fees and costs:

- 16 a. Within 45 days of the entry of an order by this Court approving this
17 Agreement, Plaintiffs will provide to Defendants an itemization of the
18 attorneys' fees and costs that they seek to recover to allow Defendants to
19 assess whether the settlement of such claims is possible.
- 20 b. Within 90 days of Defendants' receipt of this itemization of Plaintiffs'
21 proposed fees and costs, the Parties will notify the Court as to whether they
22 have reached a settlement as to the payment of Plaintiffs' attorneys' fees and
23 costs by Defendants.
- 24 c. If the Parties have not reached agreement on attorneys' fees and costs at the
25 time they provide this post-receipt notice to the Court, the Parties will either
26 submit a briefing schedule for Plaintiffs' motion for attorneys' fees and costs
27 or request additional time for Defendants to consider Plaintiffs' request. In the
28 event that Plaintiffs file a motion for attorneys' fees and costs, Defendants

1 reserve the right to contest Plaintiffs' entitlement and the reasonableness of
2 the amount of Plaintiffs' claimed attorneys' fees and costs, including hourly
3 rates and the number of hours billed.

4 14. Upon approval of this Agreement by the Court, all counts of Plaintiffs' Complaint
5 shall be dismissed with prejudice. Notwithstanding the dismissal of this action,
6 however, the Parties hereby stipulate and respectfully request that the Court retain
7 jurisdiction to oversee any motion for attorneys' fees and costs, compliance with the
8 terms of this Agreement, and to resolve any motions to modify such terms, until
9 Defendants have complied with the deadline specified in Paragraph 1. *See Kokkonen*
10 *v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).
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12 Dated: September 30, 2026

Respectfully submitted,

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14 ADAM R.F. GUSTAFSON, Principal Deputy Assistant
15 Attorney General
16 CAITLYN F. COOK
17 Trial Attorney
18 United States Department of Justice
Energy & Natural Resources Division

19 /s/ Nicole M. Smith
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ATTESTATION OF CONCURRENCE

In accordance with Civil Local Rule 5-1(i)(3), I hereby attest that I obtained concurrence in the filing for the signatures of all counsel indicated by a conformed signature (/s/) within this e-filed document.

s/ Nicole M. Smith

NICOLE M. SMITH

Assistant Section Chief, CA Bar. No. 303629

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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Nicole M. Smith

NICOLE M. SMITH

Attorney for Defendants