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appearing *pro hac vice*  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
TUCSON DIVISION

|                                  |   |                                     |
|----------------------------------|---|-------------------------------------|
| WILDEARTH GUARDIANS,             | ) |                                     |
|                                  | ) |                                     |
| Plaintiff,                       | ) |                                     |
|                                  | ) | No. 13-151-RCC                      |
| vs.                              | ) |                                     |
|                                  | ) |                                     |
| UNITED STATES FISH AND WILDLIFE  | ) | <b>STIPULATION TO</b>               |
| SERVICE and UNITED STATES FOREST | ) | <b>MODIFY INJUNCTION</b>            |
| SERVICE,                         | ) |                                     |
|                                  | ) | [Expedited consideration requested] |
| Defendants.                      | ) |                                     |
| _____                            | ) |                                     |

The parties to this action hereby stipulate to a modification of the Court’s September 12, 2019 injunction in this matter that “timber management actions in Region 3 national forests must cease pending formal consultation.” ECF Doc. No. 89 at 39. The parties respectfully request that the Court approve this stipulation and enter it as Order of the Court.

Currently pending before the Court is the Federal Defendants' Motion to Alter the Court's Decision and to Clarify or Modify the Court's Injunction. ECF Doc No. 104. Pending the Court's resolution of this motion, the parties agree and stipulate that the following activities should be permanently excepted from the Court's injunction:

1. Projects entirely outside of Mexican spotted owl Protected Activity Centers, Mexican spotted owl critical habitat, and Mexican spotted owl recovery habitat as set out on Attachment 1 to the Federal Defendants' currently pending motion.
2. Prescribed burning projects, as set out on Attachment 3 to the Federal Defendants' currently pending motion, with the limitation that no trees greater than 9" dbh will be cut in Mexican spotted owl Protected Activity Centers in connection with such prescribed burning projects.
3. Commercial firewood gathering projects that are outside Mexican spotted owl habitat. There are three such projects set out on Attachment 5 to the Federal Defendants' currently pending motion. Insofar as commercial firewood gathering projects on the Gila National Forest are concerned, the parties stipulate that the two projects set out on Attachment 5 will not proceed while the September 12, 2019 injunction is in place, but that the U.S. Forest Service may authorize and allow commercial firewood gathering projects on equivalent acreage (272 acres) in the Gila National Forest that are entirely outside of Mexican spotted owl habitat.<sup>1</sup>

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<sup>1</sup>

For purposes of this paragraph, "Mexican spotted owl habitat" is defined as Protected Activity Centers, "protected habitat" as defined in the 1996 Standards and Guidelines, critical habitat, and recovery habitat.

4. The cutting of the U.S. Capitol Christmas tree.
5. Personal Christmas tree cutting.
6. The cutting of personal use forest products such as vigas and latillas.
7. Special product collection by tribes for ceremonial purposes.
8. The cutting of hazard trees, so long as the trees are individually and specifically identified as having a structural defect that presents a risk of injury to life or property. The parties stipulate that this paragraph does not contemplate the cutting of trees in connection with post-fire “salvage,” and that all trees cut pursuant to this paragraph will be left lying in place.

The parties further stipulate that their execution of this stipulation is intended solely to achieve the prompt release of the above enumerated categories of activities from the current injunction in this case. By executing this injunction, the parties do not concede or compromise any claim or defense set out in or arising from the Federal Defendants’ currently pending Motion to Alter the Court’s Decision and to Clarify or Modify the Court’s Injunction. Rather, this stipulation is a memorialization of the parties’

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limited agreement with respect to the specifically enumerated categories of actions set out herein.

Dated: October 21, 2019.

Respectfully submitted,

For the Plaintiff:

For the Federal Defendants:

/s/ Steven Sugarman

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/s/ Rickey Turner

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### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Stipulation to Modify was served on counsel of record on October 21, 2019 through the Court's electronic CM-ECF system.

/s/ Steven Sugarman

Steven Sugarman