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15 Attorney for Plaintiffs (*Admitted Pro Hac Vice*)

16 **IN THE UNITED STATES DISTRICT COURT FOR THE**
17 **DISTRICT OF ARIZONA**

18 CENTER FOR BIOLOGICAL DIVERSITY;
SIERRA CLUB; GLEN CANYON INSTITUTE;
19 LIVING RIVERS; and ARIZONA WILDLIFE
20 FEDERATION,

Case No:
3:06-00494 DGC

STIPULATION OF
DISMISSAL WITH
PREJUDICE

21 Plaintiffs,

22 v.

23 UNITED STATES BUREAU OF RECLAMATION;
24 and DIRK KEMPTHORNE, in his official
capacity as Secretary of the Department of the Interior,

25 Defendants.
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1 Respectfully submitted August 25, 2006.

2 /s/Matt Kenna

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22 /s/James J. DuBois

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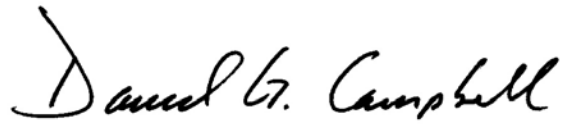
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1 Counsel for Defendants

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4 **IT IS SO ORDERED:**

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6 Handwritten signature of David G. Campbell in black ink.

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David G. Campbell
United States District Judge
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FEDERATION,

Case No:
3:06-00494 DGC

20 Plaintiffs,

21 v.

SETTLEMENT
AGREEMENT

22 UNITED STATES BUREAU OF RECLAMATION;
23 and DIRK KEMPTHORNE, in his official
capacity as Secretary of the Department of the Interior,

24 Defendants.
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1 WHEREAS, Center for Biological Diversity, Sierra Club, Glen Canyon Institute, Living
2 Rivers, and Arizona Wildlife Federation (hereafter jointly referred to as "Plaintiffs") in this action
3 filed suit against the Secretary of the Interior, the United States Bureau of Reclamation (hereafter
4 "Reclamation") and the United States (hereafter jointly referred to as "the Defendants") alleging
5 violations of the Grand Canyon Protection Act of 1992 (hereafter "GCPA"), Pub. L. No. 102-575,
6 106 Stat. 4699, the National Environmental Policy Act (hereafter "NEPA"), 42 U.S.C. § 4321, *et*
7 *seq.*, and the Endangered Species Act (hereafter "ESA"), 16 U.S.C. § 1531, *et seq.*, seeking an
8 order compelling the Defendants to undertake preparation of a Supplemental Environmental
9 Impact Statement pursuant to NEPA and initiation of formal consultation pursuant to section
10 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), regarding Reclamation's operation of federally-owned
11 Glen Canyon Dam, as well as other related management actions;

12 WHEREAS, pursuant to ESA section 11(g)(2)(a), 16 U.S.C. § 1540(g)(2)(a), prior to 60
13 days before Plaintiffs filed their complaint in this action, Plaintiffs notified the Defendants of their
14 intent to file suit, alleging a failure by the Defendants to undertake formal consultation pursuant
15 to section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), regarding the operation of Glen Canyon
16 Dam, among other alleged violations of federal law; and,

17 WHEREAS, since approximately 1995, Defendants have been in ongoing contact with the
18 U.S. Fish and Wildlife Service about conducting further analyses of the effects that current, and
19 prospective, Glen Canyon Dam operations, as well as other associated management actions by
20 Reclamation and other agencies within the Department of the Interior, may have on the humpback
21 chub, bonytail chub, razorback sucker and Colorado pikeminnow. Beginning in May, 2004,
22 Defendants, together with others including the Fish and Wildlife Service, have been actively
23 engaged in a process to look at long term science and management planning for dam operations
24 and other activities. Since that time, the Bureau of Reclamation has viewed formal consultation
25 as one likely outcome of this process;

26 WHEREAS, it is in the interest of the public, the parties, and judicial economy to resolve
27 this action without protracted litigation;

28 THEREFORE, without admission or adjudication of any question of fact or law, the parties

1 agree as follows:

2 1. Not later than January 31, 2007, Reclamation shall initiate environmental
3 documentation activities pursuant to NEPA and the ESA with respect to modification of current,
4 or other prospective, operations of Glen Canyon Dam and associated management actions of
5 Reclamation and other agencies within the Department of the Interior;

6 2. Although the United States does not concede or agree that formal consultation with
7 the U.S. Fish and Wildlife Service is required as of the time of this agreement, in furtherance of
8 such additional environmental documentation activities identified in Paragraph 1 above, the United
9 States agrees that under its authority to independently request formal consultation pursuant to 50
10 C.F.R. § 402.14, on or before May 1, 2008, Reclamation shall prepare and submit a biological
11 assessment(s) related to modification of current, or other prospective, operations of Glen Canyon
12 Dam and associated management actions to the U.S. Fish and Wildlife Service for the purpose of
13 initiating formal consultation;

14 3. It is the expectation of the parties that by September 30, 2008, with respect to the
15 documentation activities undertaken pursuant to Paragraphs 1 and 2 above, Reclamation will have
16 completed any respective NEPA documentation and that the United States Fish and Wildlife
17 Service will have completed a biological opinion(s), if found to be required, on the biological
18 assessment(s) related to modification of current, or other prospective, Glen Canyon Dam
19 operations and associated management actions previously submitted by Reclamation. However,
20 September 30, 2008 shall not be considered a deadline, pursuant to this agreement, for the
21 completion of any respective NEPA documentation or prospective biological opinion(s), if found
22 to be required;

23 4. Not later than October 15, 2008, Reclamation shall publish a notice in the Federal
24 Register, regarding the status of any respective NEPA and ESA documentation and consultation
25 efforts prepared pursuant to paragraphs 1 through 3 above;

26 5. The deadlines described/identified in paragraphs 1, 2, and 4 above of this Settlement
27 Agreement may only be modified by the parties by written stipulation, and by submitting the
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1 stipulation to the Court for its approval;

2 6. The Defendants agree to provide Plaintiffs, without further request, with copies of
3 any final biological assessment(s), final concurrence letter(s), and final biological opinion(s)
4 regarding the ESA consultation(s) described in paragraphs 1 through 3 above;

5 7. Notwithstanding the dismissal of this action, the parties agree that this Court shall
6 retain jurisdiction to oversee compliance with the terms of this agreement, as described in
7 Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994). The parties further agree
8 that they will first attempt to resolve any disputes related to compliance with this agreement among
9 themselves before invoking the jurisdiction of this Court to resolve compliance disputes;

10 8. In addition, Plaintiffs expressly reserve the right to challenge any final agency
11 action following the conclusion of the activities described in paragraphs 1 through 3 above.
12 Plaintiffs will provide a notice of intent to sue if they intend to challenge any such final agency
13 action pursuant to the ESA or other statute with an applicable notice requirement.

14 9. This Settlement Agreement is effective upon entry of the “Stipulation and Order
15 of Dismissal With Prejudice” (to which this Settlement Agreement is an attachment) by the Court.

16 10. The parties agree that this Settlement Agreement has no precedential value as to the
17 merits of any claims and shall not be used as evidence in any future dispute regarding the
18 applicability of the GCPA, NEPA, or the ESA.

19 11. No provision of this Settlement Agreement shall be interpreted as or constitute a
20 commitment or requirement that the Federal Defendants take actions in contravention of the
21 GCPA, NEPA, the ESA, or any other applicable federal law or regulation, either substantive or
22 procedural, nor shall this Settlement Agreement be interpreted to modify in any manner the duties
23 or roles and functions of the Glen Canyon Dam Adaptive Management Work Group, chartered
24 pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2. No provision of this
25 Settlement Agreement shall be interpreted or constitute a commitment or requirement that
26 Defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any
27 other applicable federal law or regulation.

12. The provisions of this Settlement Agreement shall apply to and be binding upon each of the Parties including, but not limited to, their officers, directors, servants, employees, successors, and assigns.

13. This Settlement Agreement and the accompanying "Stipulation and Order of Dismissal With Prejudice" constitute the entire agreement of the Parties concerning the rights and obligations discussed herein and subject to dispute in this suit. No other agreement shall govern the rights of the Parties with respect to the matters resolved by this Settlement Agreement, except in accordance with the express terms herein. No modification to this Settlement Agreement shall be valid unless written and executed by both parties.

Signed this 25th date of August, 2006.

/s/Matt Kenna
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OF COUNSEL
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M. Rodney Smith, Jr.

1 Department of the Interior

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