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10  
11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**  
13 **TUCSON DIVISION**

14 Center for Biological Diversity, a non-  
15 profit organization; and Maricopa Bird  
Alliance, a non-profit organization,

16 Plaintiffs,

17 v.

18 U.S. Bureau of Land Management; and  
19 U.S. Fish and Wildlife Service,

20 Defendants.  
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Case No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. Plaintiffs Center for Biological Diversity (“Center”) and Maricopa Bird  
3 Alliance bring this action against the U.S. Bureau of Land Management (“BLM”) and  
4 U.S. Fish and Wildlife Service (“FWS”) for violations of the Endangered Species Act  
5 (“ESA”) concerning the BLM’s management of livestock grazing on the Las Cienegas  
6 National Conservation Area (“Las Cienegas NCA”) in Pima and Santa Cruz Counties,  
7 Arizona.

8 2. Congress created the Las Cienegas NCA in 2000 “to conserve, protect, and  
9 enhance for the benefit and enjoyment of present and future generations the unique and  
10 nationally important aquatic, wildlife, vegetative, . . . riparian” and other resources and  
11 values of the NCA. 16 U.S.C. § 460ooo-3(a).

12 3. The Las Cienegas NCA encompasses much of the upper Cienega Creek  
13 watershed. The significant resources within the NCA include five of the rarest habitat  
14 types in the southwest: cienegas, cottonwood-willow riparian areas, sacaton grasslands,  
15 mesquite bosques, and semidesert grasslands. The NCA provides important habitat for  
16 numerous threatened and endangered species, including the southwestern willow  
17 flycatcher, yellow-billed cuckoo, Gila topminnow, Gila chub, desert pupfish, Chiricahua  
18 leopard frog, and northern Mexican garter snake.

19 4. The BLM prepared a “Resource Management Plan” for the Las Cienegas  
20 NCA in 2003, which prohibits cattle grazing within approximately 3,919 acres of land  
21 within the NCA, primarily to protect riparian and aquatic areas for the protection of  
22 wildlife, including threatened and endangered species. Plaintiffs have repeatedly  
23 monitored the Las Cienegas NCA, and each time documented significant environmental  
24 harm caused by cattle within the riparian areas where cattle grazing is prohibited.  
25 Plaintiffs provided their survey results to the BLM and FWS, without any meaningful  
26 response by the agencies. The BLM’s own recent “land health evaluation” confirms the  
27 harm that livestock grazing is causing and the need for increased protection of the  
28 riparian habitat that the imperiled species require.

1           5.       Plaintiffs challenge the failure of BLM and FWS to reinitiate and complete  
2 ESA Section 7 consultation regarding the ongoing implementation of the BLM's  
3 Resource Management Plan, and the agency's management of livestock grazing on the  
4 Las Cienega NCA. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.16(a). The BLM and FWS  
5 are in ongoing violation of the ESA for failing to reinitiate consultation despite new  
6 information and modifications of the action revealing effects of the action that are  
7 affecting listed species and critical habitat to an extent not previously considered, and due  
8 to FWS' listing of new species and designation of new critical habitat that may be  
9 affected by the BLM's authorized livestock grazing on the NCA. 50 C.F.R. § 402.16(a).

10           6.       Plaintiffs seek a declaratory judgment that the BLM and FWS are in  
11 ongoing violation of the ESA, and injunctive relief compelling the agencies to promptly  
12 reinitiate and complete consultation on the BLM's management of livestock grazing on  
13 the Las Cienega NCA. Plaintiffs seek further injunctive relief to protect listed species on  
14 the NCA pending the completion of the reinitiated consultation.

15           7.       Plaintiffs also challenge BLM's failure to consult with FWS under ESA  
16 Section 7 on the BLM's decision in 2025 to re-issue the permit for livestock grazing  
17 within the Empire-Cienega Allotment, and to issue other related grazing decisions and  
18 authorizations on this Allotment. 16 U.S.C. § 1536(a)(2). Plaintiffs seek a declaratory  
19 judgment that the BLM violated the ESA when it re-issued this permit without ESA  
20 consultation, and injunctive relief to compel the required consultation.

21           8.       Plaintiffs also seek an order compelling BLM to comply with the agency's  
22 2003 Resource Management Plan, as required by the Federal Land Policy and  
23 Management Act ("FLPMA"). 43 U.S.C. § 1732(a). That Plan required the BLM to  
24 (1) update its grazing plan for the Empire-Cienega Allotment, where the vast majority of  
25 riparian habitat within the Las Cienegas NCA is located, and (2) construct perimeter  
26 fencing around approximately 2,319 acres of public lands not allocated to livestock on  
27 that allotment. The BLM has unreasonably delayed completing both of these duties for  
28

1 more than two decades, constituting unreasonable delay that the BLM must promptly  
2 remedy.

### 3 **JURISDICTION AND VENUE**

4 9. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c),  
5 (g) (action arising under ESA citizen suit provision); 5 U.S.C. §§ 701-706 (APA review  
6 of agency action and failure to act); and 28 U.S.C. § 1331 (federal question jurisdiction).  
7 The Court may grant the relief requested under the ESA, 16 U.S.C. § 1540(g); the APA,  
8 5 U.S.C. § 706(2); and 28 U.S.C. §§ 2201-2202 (declaratory and injunctive relief).

9 10. On March 25, 2026, Plaintiffs provided sixty days' notice of intent to file  
10 suit pursuant to the ESA's citizen suit provision. 16 U.S.C. § 1540(g). More than 60  
11 days have passed since the receipt of Plaintiffs' notice letter by the BLM and FWS. The  
12 agencies have not acted to remedy their continuing ESA violations by the date of this  
13 complaint's filing.

14 11. Venue is proper in the United States District Court for the District of  
15 Arizona pursuant to 28 U.S.C. § 1391(e)(1) because a substantial part of the events or  
16 omissions giving rise to Plaintiffs' claims occurred and continue to occur in this District.  
17 Venue is proper in the Tucson Division because a substantial part of the events or  
18 omissions giving rise to Plaintiffs' claims occurred and continue to occur in Pima and  
19 Santa Cruz counties, and because one of the Plaintiffs (Center for Biological Diversity)  
20 resides in Tucson (Pima County). LRCiv 77.1(a).

### 21 **PARTIES**

22 12. Plaintiff Center for Biological Diversity is a non-profit environmental  
23 organization dedicated to the protection of endangered species and wild places through  
24 science, policy, and environmental law. The Center is headquartered in Tucson, Arizona,  
25 with offices throughout the United States. The Center has more than 93,000 members and  
26 over 1.8 million online activists who are dedicated to the protection of endangered  
27 species and wild places. More than 3,900 Center members reside in Arizona.

28

1           13.     The Center for Biological Diversity brings this action on its own behalf,  
2 and on behalf of its members who derive aesthetic, recreational, inspirational, spiritual,  
3 scientific, and educational benefits from the public lands and waters within the Las  
4 Cienegas NCA, including the Empire-Cienega Allotment, and within the areas and  
5 habitat where threatened and endangered species and their critical habitat may be found.  
6 The Center's members who have used and enjoyed, and intend to continue using and  
7 enjoying, the Las Cienegas NCA include, but are not limited to, Russ McSpadden and Dr.  
8 Robin Silver.

9           14.     The Center for Biological Diversity's members, including but not limited to  
10 Russ McSpadden and Dr. Robin Silver, use and enjoy the Las Cienegas NCA, including  
11 the Empire-Cienega Allotment, and in particular the NCA's riparian areas, for a variety  
12 of purposes including hiking, photographing scenery and wildlife, viewing wildlife and  
13 wildlife sign, camping, monitoring trail cameras, birdwatching, and engaging in other  
14 scientific and recreational activities. The areas of the allotments that the Center's  
15 members use and enjoy include specific areas where critical habitat for threatened and  
16 endangered species has been designated, and where these imperiled species may be found  
17 or have been found in the past. The Center's members' use and enjoyment of these areas  
18 is significantly enhanced knowing that these endangered species are still likely to be  
19 present in these areas.

20           15.     Mr. McSpadden regularly visits the Las Cienegas NCA and the Empire-  
21 Cienega Allotment several times year. During his most recent visit on May 10, 2026, he  
22 enjoyed the NCA and the Allotment after checking wildlife trail cameras in the Santa  
23 Rita Mountains. During that visit to the Las Cienegas NCA and the Empire-Cienega  
24 Allotment, he camped, observed wildlife and habitat conditions, and enjoyed the riparian  
25 landscape and surrounding grasslands. Mr. McSpadden has plans to continue visiting the  
26 riparian areas of the Las Cienegas NCA and Empire-Cienega Allotment regularly,  
27 including during the 2026 summer monsoon season, when he intends to camp with his  
28 son and observe the seasonal rains, flowing waters, wildlife activity, and ecological

1 conditions within the NCA and the Allotment. He also plans to return to Las Cienegas in  
2 October 2026 while conducting additional trips to check wildlife trail cameras in the Sky  
3 Island mountain ranges. During that trip, Mr. McSpadden intends to once again camp,  
4 observe wildlife and habitat conditions, photograph scenery and wildlife, and experience  
5 the ecological diversity and connectivity of the landscape at the NCA and the Allotment  
6 and the surrounding Sky Islands.

7 16. Dr. Silver's has visited the Las Cienegas NCA and the Empire-Cienega  
8 Allotment dozens of times starting in the early 1970s, before Congress designated these  
9 lands as a National Conservation Area. He visits the area for photography, wildlife  
10 observation, research, recreation, educational activities, aesthetic enjoyment, and spiritual  
11 and psychic renewal. His most recent visit was on June 14, 2025. Mr. Silver has plans to  
12 regularly visit the Las Cienegas NCA and Empire-Cienega Allotment in the future, and  
13 concrete plans to do so in the summer of 2026, to enjoy the area's remaining scenery,  
14 search for birds, including the yellow-billed cuckoo, engage in recreational pursuits, and  
15 for spiritual and psychic renewal.

16 17. The areas of the Las Cienegas LCA, including the Empire-Cienega  
17 Allotment, that Mr. McSpadden, Dr. Silver, and other Center members intend to continue  
18 to use and enjoy include areas where critical habitat for the threatened and endangered  
19 species has been designated, and where these imperiled animals may still be found. The  
20 aesthetic, recreational, inspirational, spiritual, scientific, and educational interests of Mr.  
21 McSpadden, Dr. Silver, and other Center members have been and will continue to be  
22 adversely affected and irreparably injured if Defendants' ongoing violations of the ESA,  
23 FLPMA, and the APA continue. These are actual, ongoing, concrete injuries caused by  
24 Defendants' legal violations. The relief sought will redress these injuries.

25 18. Plaintiff Maricopa Bird Alliance is a nonprofit organization with more than  
26 3,000 members dedicated to the study and enjoyment of birds and other wildlife, and to  
27 the protection and restoration of habitat in the Southwest. Maricopa Bird Alliance is run  
28

1 by volunteers and strives to protect and restore wildlife habitat through education and  
2 community involvement.

3 19. Maricopa Bird Alliance has undertaken ongoing efforts to protect habitats  
4 for imperiled species throughout the arid Southwest. The Bird Alliance has played a  
5 strong role in protecting endangered and threatened species in the southwest through  
6 public education efforts, field surveys, public field trips, and position papers. The Bird  
7 Alliance has been intimately involved in riparian protection efforts throughout the  
8 Southwest since the 1950s. For example, on February 2, 1998, Maricopa Audubon (the  
9 Bird Alliance's predecessor) was a petitioner with the Center for Biological Diversity for  
10 federal endangered species listing protection for the western yellow-billed cuckoo. This  
11 action resulted in FWS designating the cuckoo as threatened on October 3, 2014. In  
12 addition, the Bird Alliance conducts field trips with members of the organization and  
13 non-members from the general public to critical habitat areas of species listed under the  
14 ESA, including the cuckoo.

15 20. Maricopa Bird Alliance brings this action on behalf of itself and its  
16 adversely affected members, including but not limited to Dr. Robin Silver. The  
17 educational, scientific, aesthetic, conservation, and recreational interests of the Bird  
18 Alliance's members, including Dr. Robin Silver, within the public lands and waters of the  
19 Las Cienegas NCA and the Empire-Cienega Allotment therein have been and continue to  
20 be harmed by livestock grazing. The Bird Alliance's members intend to continue using  
21 and enjoying the riparian areas and critical habitat within the Las Cienegas NCA,  
22 including the Empire-Cienega Allotment, including in summer of 2026. Unless the Court  
23 grants the requested relief, Maricopa Bird Alliance's members will continue to be  
24 adversely affected and irreparably injured by Defendants' failures to comply with the  
25 law. The requested relief would redress these injuries.

26 21. Defendant U.S. Bureau of Land Management is an agency within the  
27 Department of the Interior, and has issued decisions identifying lands as open to livestock  
28 grazing and limits on such actions in the Las Cienegas Resource Management Plan, and

1 has issued grazing authorizations including the 2025 grazing permit for the Empire-  
2 Cienega Allotment, other term grazing permits, allotment management plans, and/or  
3 annual operating instructions for livestock grazing within the Las Cienegas NCA. Like  
4 all federal agencies, BLM must comply with all applicable ESA requirements, including  
5 the ongoing duty to comply with ESA Section 7 requirements in relation to those  
6 decisions, permits, and authorizations. BLM must also comply with FLPMA, which  
7 requires that that agency’s actions comply with the applicable resource management plan.

8 22. Defendant U.S. Fish and Wildlife Service is the agency within the  
9 Department of the Interior that is charged with implementing the ESA, and shares  
10 responsibility with BLM for reinitiating and completing consultation under ESA  
11 Section 7 in relation to the grazing authorizations.

## 12 LEGAL BACKGROUND

### 13 I. The Las Cienegas National Conservation Area Act

14 23. Congress enacted the Las Cienegas National Conservation Area Act in  
15 2000 in order to conserve, protect, and enhance for the benefit and enjoyment of present  
16 and future generations the unite and nationally important aquatic, wildlife, vegetative,  
17 archaeological, paleontological, scientific, cave, cultural, historical, recreational,  
18 educational, scenic, rangeland, and riparian resources and values of the conservation area,  
19 while allowing livestock grazing and recreation to continue in appropriate areas. 16  
20 U.S.C. § 460000-3(a).

21 24. The Las Cienegas NCA consists of approximately 42,000 acres of public  
22 lands in Pima and Santa Cruz counties. 16 U.S.C. § 460000-3(b).

23 25. The Secretary of Interior is directed to manage the Las Cienegas NCA “in a  
24 manner that conserves, protects, and enhances its resources and values,” pursuant to the  
25 Federal Land Policy and Management Act, 43 U.S.C. §§ 1701, *et seq.*, and other  
26 applicable law. 16 U.S.C. § 460000-4(a).

27  
28

1           26.     The BLM is directed to prepare a comprehensive management plan for the  
2 long-term management of the Las Cienegas NCA, in order to fulfill the purposes for  
3 which the NCA was established. 16 U.S.C. § 460000-5(a).

4           27.     The management plan must include provisions to ensure the protection of  
5 aquatic, wildlife, vegetative, riparian, recreational, and other resources and values  
6 described in the Act. 16 U.S.C. § 460000-5(b)(1).

## 7     **II.     The Endangered Species Act**

8           28.     The Congress enacted the Endangered Species Act in 1973 to provide “a  
9 program for the conservation of . . . endangered species and threatened species.” 16  
10 U.S.C. § 1531(b). The ESA, 16 U.S.C. §§ 1531-1544, is “the most comprehensive  
11 legislation for the preservation of endangered species ever enacted by any nation.” *Tenn.*  
12 *Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental purposes are “to provide  
13 a means whereby the ecosystems upon which endangered species and threatened species  
14 depend may be conserved [and] to provide a program for the conservation of such  
15 endangered species and threatened species.” 16 U.S.C. § 1531(b).

16           29.     To achieve these objectives, the ESA directs the Secretary of the Interior,  
17 through FWS, to determine which species of plants and animals are “threatened” and  
18 “endangered” and place them on the list of protected species. *Id.* § 1533. An  
19 “endangered” or “threatened” species is one “in danger of extinction throughout all or a  
20 significant portion of its range,” or “likely to become endangered in the near future  
21 throughout all or a significant portion of its range,” respectively. *Id.* § 1532(6), (20).

22           30.     Once a species is listed, the ESA provides procedural and substantive  
23 protections to ensure the species’ continued survival, and its ultimate recovery, including  
24 the designation of critical habitat, the preparation and implementation of recovery plans,  
25 the prohibition against the “taking” of listed species, and the requirement for interagency  
26 consultation. *Id.* §§ 1533(a)(3), 1533(f), 1536, 1538. “Critical habitat” is the area that  
27 contains the physical or biological features essential to the “conservation” of the species  
28

1 and which may require special protection or management considerations. *Id.*  
2 § 1532(5)(A).

3 31. ESA Section 7(a)(1) requires each federal agency, in consultation with  
4 FWS, to carry out programs for the conservation of threatened and endangered species.  
5 *Id.* § 1536(a)(1). The ESA defines “conserve” and “conservation” to mean “the use of all  
6 methods and procedures which are necessary to bring any endangered species or  
7 threatened species to the point at which the measure provided pursuant to this chapter are  
8 no longer necessary.” *Id.* § 1532(3).

9 32. ESA Section 7(a)(2) requires that “[e]ach Federal agency shall, in  
10 consultation with . . . [FWS], [e]nsure that any action authorized, funded, or carried out  
11 by such agency . . . is not likely to jeopardize the continued existence of any endangered  
12 species or threatened species or result in the destruction or adverse modification of  
13 [critical habitat].” *Id.* § 1536(a)(2). This Section 7(a)(2) consultation process has been  
14 described as the “heart of the ESA.” *W. Watersheds Project v. Kraayenbrink*, 632 F.3d  
15 472, 495 (9th Cir. 2011).

16 33. Pursuant to the ESA implementing regulations, an action will “[j]eopardize  
17 the continued existence” of a listed species if it “reasonably would be expected, directly  
18 or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a  
19 listed species in the wild by reducing the reproduction, numbers, or distribution of that  
20 species.” 50 C.F.R. § 402.02. “Recovery” is defined as “improvement in the status of  
21 listed species to the point at which [ESA] listing is no longer appropriate.” *Id.* § 402.02.

22 34. FWS’s regulations define an agency “action” to mean “all activities or  
23 programs of any kind authorized, funded, or carried out, in whole or in part, by Federal  
24 agencies.” *Id.* § 402.02.

25 35. During the consultation process, federal agencies must “use the best  
26 scientific and commercial data available.” 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(d).

27 36. For each proposed action, the action agency must request from FWS  
28 whether any listed or proposed species may be present in the area of the proposed action.

1 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(c). If listed or proposed species may be  
2 present in the project area, the action agency must prepare a “biological assessment” to  
3 determine whether the listed species may be affected by the proposed action. 16 U.S.C.  
4 § 1536(c)(1); 50 C.F.R. § 402.12.

5 37. If the action agency determines that its proposed action may affect any  
6 listed species or critical habitat, the agency must normally engage in “formal  
7 consultation” with FWS. 50 C.F.R. § 402.14. However, the agency need not initiate  
8 formal consultation if, as a result of the preparation of a biological assessment or as a  
9 result of informal consultation with FWS, the agency determines, with FWS’s written  
10 concurrence, that the proposed action is not likely to adversely affect any listed species or  
11 critical habitat. *Id.* §§ 402.13, 402.14(b)(1).

12 38. To complete the formal Section 7 consultation process, FWS must provide  
13 the action agency with a “biological opinion” explaining how the proposed action will  
14 affect listed species and/or critical habitat. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14(h).

15 39. If FWS concludes in the biological opinion that the proposed action is  
16 likely to jeopardize the continued existence of a listed species, or result in the destruction  
17 or adverse modification of critical habitat, FWS must suggest “reasonable and prudent  
18 alternatives” to avoid those results. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(2).

19 40. If FWS concludes in the biological opinion that the action is not likely to  
20 jeopardize the continued existence of a listed species, or result in the destruction or  
21 adverse modification of critical habitat, the agency must provide an “incidental take  
22 statement” with the biological opinion, specifying the amount or extent of such incidental  
23 taking on the species and any “reasonable and prudent measures” that FWS considers  
24 necessary or appropriate to minimize such impact, and setting forth the “terms and  
25 conditions” that must be complied with by the action agency to implement those  
26 measures. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

27 41. The reinitiation of formal consultation under the ESA is required and must  
28 be requested by FWS or the action agency for agency actions over which the action

1 agency retains, or is authorized to exercise, discretionary involvement or control, if:  
2 (1) the amount or extent of taking specified in the incidental take statement is exceeded;  
3 (2) new information reveals effects of the action that may affect listed species or critical  
4 habitat in a manner or to an extent not previously considered; (3) the identified action is  
5 subsequently modified in a manner that causes an effect to the listed species or critical  
6 habitat that was not considered in the biological opinion or written concurrence; or (4) a  
7 new species is listed or critical habitat designated that may be affected by the identified  
8 action. 50 C.F.R. § 402.16(a)(1)-(4).

9 42. An agency is not required to reinitiate consultation after the approval of a  
10 resource management plan prepared pursuant to FLPMA, 43 U.S.C. § 1712, upon the  
11 listing a new species or designation of new critical habitat if the plan has been adopted by  
12 the agency as of the date of the listing or designation, provided that any authorized  
13 actions that may affect the newly listed species or designated critical habitat will be  
14 addressed through a separate action-specific consultation. 50 C.F.R. § 402.16(b).

15 43. After the initiation or reinitiation of Section 7 consultation, the action  
16 agency is prohibited from making “any irreversible or irretrievable commitment of  
17 resources with respect to the agency action which has the effect of foreclosing the  
18 formulation or implementation of any reasonable and prudent alternative measures which  
19 would not violate subsection (a)(2).” 16 U.S.C. § 1536(d).

20 44. ESA Section 9 makes it “unlawful for any person” to “take any  
21 [endangered] species within the United States or the territorial sea of the United States.”  
22 *Id.* § 1538(a)(1)(B). This prohibition on “take” also applies to certain threatened species.  
23 *Id.* § 1538(a)(1)(G); 50 C.F.R. § 17.31(a). The term “take” is defined broadly as “to  
24 harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to  
25 engage in any such conduct.” *Id.* § 1532(19).

### 26 **III. The Federal Land Policy and Management Act**

27 45. The Federal Land Policy and Management Act (“FLPMA”) requires the  
28 BLM to “develop, maintain, and . . . revise” land use plans in order to carry out its

1 obligations to manage the public lands “in a manner that will protect the quality of  
2 scientific, historical, ecological, environmental, air and atmospheric, water resource, and  
3 archeological values” and “preserve and protect certain public lands in their natural  
4 condition.” 43 U.S.C. §§ 1701(a)(8), 1712(a)–(c); 43 C.F.R. § 1610.5-5.

5 46. Once BLM has developed a “resource management plan” (“RMP”), the  
6 agency must manage the public lands “in accordance with” the RMP. 43 U.S.C.  
7 § 1732(a). All resource management authorizations and actions must conform to the  
8 RMP. 43 C.F.R. § 1600.1610.5-3(a).

9 **IV. The Administrative Procedure Act**

10 47. The Administrative Procedure Act (“APA”) mandates that a reviewing  
11 court “shall . . . compel agency action unlawfully withheld or unreasonably delayed,” 5  
12 U.S.C. § 706(1), and shall “hold unlawful and set aside agency actions, findings, and  
13 conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not  
14 in accordance with law.” 5 U.S.C. § 706(2)(A).

15 **FACTUAL BACKGROUND**

16 **I. The Las Cienegas National Conservation Area**

17 48. The Las Cienegas NCA encompasses much of the upper Cienega Creek  
18 watershed in southeastern Pima County and northeastern Santa Cruz County.

19 49. The Las Cienegas NCA includes five of the rarest habitat types in the  
20 southwestern United States: cienegas, cottonwood-willow riparian areas, sacaton  
21 grasslands, mesquite bosques, and semidesert grasslands. BLM, Las Cienegas RMP and  
22 Record of Decision (July 2003) at 1.

23 50. The Las Cienegas NCA provides habitat for numerous threatened and  
24 endangered species including the southwestern willow flycatcher, yellow-billed cuckoo,  
25 Gila topminnow, Gila chub, Chiricahua leopard frog, and northern Mexican garter snake.

26 **II. The BLM’s 2003 Resource Management Plan for the Las Cienegas NCA**

27 51. The BLM completed a Resource Management Plan (“RMP”) for the Las  
28 Cienegas NCA in 2003.

1           52.     Within the RMP, the BLM designated all of the planning area’s public  
2 lands as the Empire-Cienega Area of Critical Environmental Concern (“ACEC”). Las  
3 Cienegas RMP at 21.

4           53.     Pursuant to the 2003 RMP, the objective is to achieve and maintain  
5 properly functioning condition on 100% of the riparian areas within the Las Cienegas  
6 NCA by 2005. *Id.* at 8.

7           54.     The RMP includes a “fish and wildlife management objective” to restore  
8 and maintain the native diversity, natural distribution, and abundance of fish and wildlife  
9 species in the Sonoita Valley, including through implementing recovery plans. *Id.* at 9.

10          55.     The RMP directs the BLM to use an ecosystem approach to manage the  
11 rare habitats within the LCA to support the threatened and endangered species. *Id.* at 11.  
12 The RMP further requires the BLM to manage suitable habitats for the recovery of native  
13 fish and wildlife populations. *Id.* at 9.

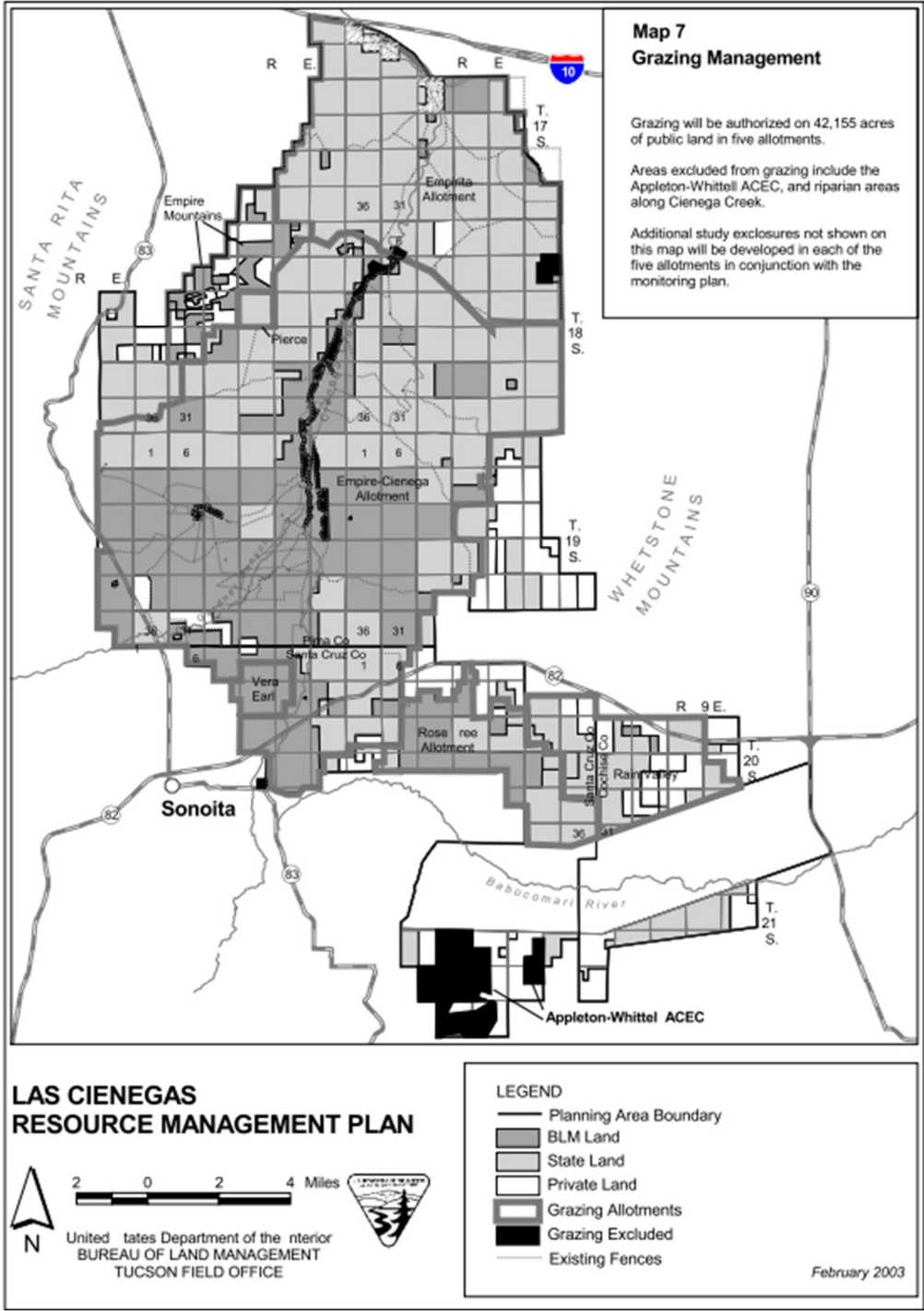
14          56.     The RMP explicitly excludes from livestock grazing 3,919 acres within the  
15 five grazing allotments, including 2,319 acres within the Empire-Cienega Allotment. *Id.*  
16 at 21, 25 (Table 4).

17          57.     The RMP generally excludes livestock from “riparian pastures.” *Id.* at 56  
18 (“BLM will authorize grazing use in riparian pastures and exclosures only at designated  
19 livestock crossing lanes and watering areas or to meet resource objectives”). The areas  
20 excluded from grazing include the riparian areas along Cienega Creek; most of these  
21 excluded areas are within the Empire-Cienega Allotment.

22          58.     The following map from page 23 of the RMP identifies in black the riparian  
23 areas that are “excluded from grazing” under the RMP:

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59. The RMP identifies the following “management action” for implementation on the Empire-Cienega Allotment: “Establish study enclosures on the approximately 2,319 acres of public lands not allocated to livestock grazing by constructing perimeter fencing (GM19).” RMP at 57.

1           60. Pursuant to the RMP, the fences of all exclosures within the Empire-  
2 Cienega livestock grazing allotment that have occupied Chiricahua leopard frog, desert  
3 pupfish, Gila chub, Gila topminnow and/or southwestern willow flycatcher habitat will  
4 be checked at least once when the adjacent pasture is being used. *Id.* at 57. If there is a  
5 problem with the fence, and livestock are in that pasture, the fence must be repaired  
6 within one week of the fence problem being discovered. *Id.* at 57-58.

7           61. The RMP directs the BLM to inspect and maintain riparian exclosure  
8 fences maintained for Gila topminnow and Gila chub habitat within the Empire-Cienega  
9 Allotment at least once annually just prior to the use of lands adjacent to the exclosures.  
10 *Id.* at 59.

11           62. The RMP requires the BLM to prepare an annual report each year which  
12 summarizes the implementation of the proposed action and any incidental take that  
13 occurred of Chiricahua leopard frog, desert pupfish, Gila chub, Gila topminnow, and  
14 southwestern willow flycatcher. *Id.* at 79. The RMP states that this report is one of the  
15 “required terms and conditions” of FWS’s 2002 biological opinion for the RMP which is  
16 necessary “to document the levels of take and determine the effectiveness of conservation  
17 measures.” *Id.* at 78.

18           63. The RMP states: “The interim grazing plan for the Empire-Cienega  
19 allotment (BLM 1995) ... will be modified to incorporate the goals, objectives, and  
20 actions in this plan.” *Id.* at 56.

### 21 **III. The FWS’s 2002 Biological Opinion for the Las Cienegas NCA RMP**

22           64. In October 2002, FWS completed its Biological Opinion for the Las  
23 Cienegas NCA RMP, pursuant to ESA Section 7.

24           65. The 2002 Biological Opinion addresses the impacts to numerous threatened  
25 and endangered species, including the southwestern willow flycatcher, Gila topminnow,  
26 Chiricahua leopard frog, and the Gila chub which was proposed for listing at that time.  
27 FWS, Las Cienegas NCA Resource Management Plan Biological Opinion (Oct. 4, 2002).

28

1           A.     Chiricahua leopard frogs

2           66.     FWS explained in the Biological Opinion that Chiricahua leopard frogs  
3 have been found in several locations in the Las Cienegas NCA, including Cienega Creek  
4 and Empire Gulch. *Id.* at 88.

5           67.     FWS recognized that “[a]dverse effects to the Chiricahua leopard frog and  
6 its habitat as a result of grazing may occur under certain circumstances,” including  
7 “trampling of egg masses, tadpoles, and frogs; deterioration of watersheds; erosion and/or  
8 siltation of stream courses; elimination of undercut banks that provide cover for frogs;  
9 loss of wetland and riparian vegetation and backwater pools; and spread of disease.” *Id.*  
10 at 93.

11          68.     In its analysis for the Chiricahua leopard frog, FWS recognized that  
12 livestock periodically go through, under, or over fences, and that fences go down from  
13 tree fall, fires, and floods; and gates are left open. *Id.* at 94. However, FWS still  
14 determined that due to the requirement in the RMP to exclude most livestock grazing in  
15 riparian and aquatic habitat through fencing and exclosures, only periodic, light impacts  
16 to the leopard frog are expected within the exclosures. *Id.*

17          B.     Gila chub

18          69.     The Gila chub was proposed as an endangered species at the time FWS was  
19 preparing the 2002 Biological Opinion. *Id.* at 107. The Gila chub occupies three  
20 drainages within the Las Cienegas NCA: Cienega Creek, Empire Gulch, and Mattie  
21 Canyon. *Id.* at 110.

22          70.     At the time FWS was preparing the 2002 Biological Opinion, FWS was  
23 proposing the designation of 19 miles of critical habitat in Cienega Creek, including 9  
24 miles within the Las Cienegas NCA. *Id.* “Cienega Creek is considered the only stable-  
25 secure population of Gila chub.” *Id.*

26          71.     Empire Gulch also had 3.2 miles of proposed critical habitat, although the  
27 last documented Gila chub in Empire Gulch was in 2001. *Id.* Empire Gulch contains the  
28

1 necessary habitat parameters to continue to support the extant population of Gila chub.

2 *Id.*

3 72. FWS acknowledged in the Biological Opinion that livestock grazing may  
4 affect Gila chub including through the trampling of fish, the deterioration of watersheds,  
5 the erosion and siltation of stream courses, the loss of wetland and riparian vegetation  
6 and backwater pools, and the spread of disease. *Id.* at 113. Moreover, livestock use,  
7 crossing, and watering at Cienega Creek, Mattie, Canyon, or Empire Gulch could trample  
8 or ingest small numbers of Gila chub causing injury or mortality. *Id.* And heavy grazing  
9 and bank trampling may reduce the quality and quantity of the chub's habitat. *Id.*

10 73. In its analysis for the Gila chub, FWS recognized that livestock periodically  
11 go through, under, or over fences, and that fences go down from tree fall, fires, and  
12 floods; and gates are left open. *Id.* However, FWS still determined that due to the  
13 requirement in the RMP to exclude most livestock grazing in riparian and aquatic habitat  
14 through fencing and exclosures, only periodic, light impacts to the chub are expected  
15 within the exclosures. *Id.*

16 C. Gila topminnow

17 74. The Gila topminnow is present in Cienega Creek, Empire Gulch, and  
18 Mattie Canyon. *Id.* at 123. FWS acknowledged that livestock grazing may result in  
19 adverse effects to Gila topminnow, including through "trampling of fish; deterioration of  
20 watersheds; erosion and siltation of stream courses; loss of wetland and riparian  
21 vegetation and backwater pools; and spread of disease." *Id.* at 127.

22 75. FWS further recognized that livestock use, crossing, and watering at  
23 Cienega Creek, Mattie Canyon, or Empire Gulch could trample or ingest small numbers  
24 of Gila topminnow causing injury or mortality. *Id.* at 128. Additionally, heavy grazing  
25 and bank trampling could reduce the quality and quantity of habitat for Gila topminnow.  
26 *Id.*

27 76. In its analysis for the Gila topminnow, FWS recognized that livestock  
28 periodically go through, under, or over fences, and that fences go down from tree fall,

1 fires, and floods; and gates are left open. *Id.* However, FWS still determined that due to  
2 the requirement in the RMP to exclude most livestock grazing in riparian and aquatic  
3 habitat through fencing and exclosures, only periodic, light impacts to the topminnow are  
4 expected within the exclosures. *Id.*

5 D. Southwestern willow flycatcher

6 77. The southwestern willow flycatcher is a small grayish-green passerine bird.  
7 It has a grayish-green back and wings, a whitish throat, light gray-olive breast, and pale  
8 yellowish belly. It is one of four currently recognized willow flycatcher subspecies. It is  
9 a neotropical migrant species that breeds in the southwestern United States and migrates  
10 to Mexico, Central America, and possibly northern South America. *Id.* at 154.

11 78. The southwestern willow flycatcher was listed as endangered in 1995. *Id.*  
12 Its decline has been attributed to loss, modification, and fragmentation of riparian  
13 breeding habitat, loss of wintering habitats, and brood parasitism by the brown-headed  
14 cowbird. *Id.* at 155. Habitat loss and degradation are caused by, among other things,  
15 livestock grazing. *Id.*

16 79. About four miles of Cienega Creek are classified as having suitable habitat  
17 for the southwestern willow flycatcher, and about 9.5 miles of Cienega Creek and Empire  
18 Gulch are classified as having potential habitat. *Id.* at 158.

19 80. FWS recognized in the Biological Opinion that livestock grazing may  
20 adversely affect the southwestern willow flycatcher, including through the deterioration  
21 of watersheds, the erosion and siltation of stream courses, and the loss of wetland and  
22 riparian vegetation. *Id.* at 162-63.

23 81. The southwestern willow flycatcher could also be adversely affected by the  
24 livestock creek crossings, and due to inadequately maintained livestock exclosures. *Id.* at  
25 163.

26 E. FWS' "no jeopardy" determination, and Incidental Take Statement

27 82. For each of the Chiricahua leopard frog, Gila chub, Gila topminnow, and  
28 southwestern willow flycatcher, FWS concluded in the 2003 Biological Opinion that the

1 RMP was not likely to jeopardize their continued existence. *Id.* at 95, 115, 129, 164. For  
2 each of these species, FWS based its conclusion in part on “conservation actions” that  
3 “should minimize effects to the species,” which included the BLM’s prohibition of  
4 livestock grazing on 3,919 acres of riparian and aquatic habitat from livestock grazing  
5 through fencing and exclosures. *Id.* at 95, 115, 129, 164.

6 83. For each of the Chiricahua leopard frog, Gila chub, Gila topminnow, and  
7 southwestern willow flycatcher, FWS determined that the RMP would result in some  
8 “taking” of these species and therefore included an “Incidental Take Statement.” *Id.* at  
9 95-97, 115-17, 129-31, 164-65. FWS noted that under the RMP, livestock use in riparian  
10 areas of Cienega Creek is limited to crossing lanes. *Id.* at 41, 94, 113, 128.

11 84. For each of the Chiricahua leopard frog, Gila chub, Gila topminnow, and  
12 southwestern willow flycatcher, FWS included a mandatory term and condition within  
13 the incidental take statement for the Biological Opinion which required BLM to prepare:

14 An annual report ... which summarizes the implementation of the proposed  
15 action and any incidental take that occurred. We are especially interested in  
16 an analysis of the effectiveness of the conservation measures and terms and  
17 conditions.

17 *Id.* at 97, 117, 131, 166.

18 85. For each of the Chiricahua leopard frog, Gila chub, Gila topminnow, and  
19 southwestern willow flycatcher, FWS included a mandatory term and condition within  
20 the incidental take statement for the Biological Opinion which required BLM to

21 Check the fences of all exclosures that have ... occupied habitat at least once  
22 when the adjacent pasture is being used. If there is a problem with the fence,  
23 and livestock are [present] in that pasture, [the BLM must] repair the fence  
24 within one week of the fence problem being discovered. If cattle are not in  
25 the adjacent pasture, [the BLM must] repair the fence before livestock are  
26 returned to the pasture.

24 *Id.* at 98, 118. *See also id.* at 132 (using “fence” instead of “fences” in first sentence), 167  
25 (same).

1 **IV. The Empire Cienega Allotment.**

2 86. Virtually all of the riparian critical habitat for threatened and endangered  
3 species within the Las Cienegas NCA lies within a single grazing allotment, the Empire-  
4 Cienega Allotment.

5 87. On information and belief, BLM has not modified the 1995 interim grazing  
6 plan for the Empire-Cienega Allotment (BLM 1995) since 2003, despite the fact that the  
7 2003 RMP stated that the grazing plan “will be modified to incorporate the goals,  
8 objectives, and actions in this” RMP. 2003 RMP at 56.

9 88. BLM reissued a ten-year grazing permit for the Empire-Cienega Allotment  
10 in 2025, effective on March 1 of that year.

11 89. On information and belief, BLM and FWS have never consulted on the  
12 site-specific impacts of permit issuance or livestock grazing within the Empire-Cienega  
13 Allotment subsequent to the adoption of the 2003 Las Cienegas NCA RMP, and did not  
14 do so with respect to the 2025 ten-year permit issuance.

15 **V. Subsequent ESA Consultations Concerning the Las Cienegas NCA or BLM’s**  
16 **Gila District**

17 90. In 2008, FWS prepared a Biological Opinion concerning in part aquatic  
18 conservation measures at Las Cienegas NCA including the creation and restoration of  
19 wetlands, and the reestablishment of populations of certain threatened and endangered  
20 species. FWS, Biological Opinion on Aquatic Species Conservation at the San Pedro  
21 Riparian and Las Cienegas National Conservation Areas, Arizona (Dec. 31, 2008). FWS  
22 stated in the 2008 Biological Opinion: “Because the actions proposed for Las Cienegas  
23 NCA implement the approved Resource Management Plan, the incidental take  
24 anticipated here is in addition to the incidental take anticipated in that [biological  
25 opinion].” *Id.* at 29. The 2008 Biological Opinion does not purport to address the effects  
26 of livestock grazing on listed species within the Las Cienegas NCA.

27 91. In 2012, FWS prepared a Biological Opinion to modify the management of  
28 livestock watering sites (described as specific earthen ponds and above-ground storage

1 tanks) on the Las Cienegas NCA, and the release and translocation of threatened and  
2 endangered species to those sites. FWS, Reinitiation of Biological Opinion on the Las  
3 Cienegas National Conservation Area Resource Management Plan (22410-2002-F-0162)  
4 in Pima and Santa Cruz Counties, Arizona (Feb. 21, 2012) at 1-2. This consultation was  
5 necessary because the proposal to reestablish protected wildlife into these ponds and  
6 tanks constituted “a departure from the management of earthen ponds described in the  
7 Las Cienegas RMP.” *Id.* at 3. The February 2012 Biological Opinion did not revisit or  
8 address the impacts of livestock grazing on riparian habitat within the NCA.

9 92. In May 2012, FWS completed a Biological Opinion on the Gila District  
10 Livestock Grazing Program. Although BLM’s Gila District includes the Las Cienegas  
11 NCA, this Biological Opinion specifically stated that the proposed action subject to  
12 consultation “excludes the . . . Las Cienegas Natural Conservation Area.” FWS,  
13 Biological Opinion on the Gila District Livestock Grazing Program (May 21, 2012) at 8.

14 93. In January 2024, FWS “reinitiated” consultation on the May 2012 Gila  
15 District Biological Opinion. FWS, Draft Reinitiated Biological Opinion on Livestock  
16 Grazing on Bureau of Land Management Administered Lands in the Gila District,  
17 Tucson and Safford Field Offices (Jan. 31, 2024) at 1. Because this 2024 Biological  
18 Opinion concerned reinitiated consultation on the May 2012 Biological Opinion, which  
19 did not address livestock grazing within the Las Cienegas NCA, the 2024 Biological  
20 Opinion also did not address livestock grazing within the Las Cienegas NCA.

21 94. In January 2026, FWS consulted with BLM on a proposal to install above-  
22 ground storage tanks, drinkers, and pipelines to provide water for livestock within the  
23 Empire-Cienega Allotment within Las Cienegas National Conservation Area. FWS,  
24 BLM Proposed Modification and Use of Livestock Watering Facilities for the Release of  
25 Aquatic Threatened and Endangered Species on Las Cienegas National Conservation  
26 Area, Santa Cruz and Pima Counties (Jan. 7, 2026). FWS stated that “[t]he proposed  
27 action for this consultation does not change the BLM’s livestock management.” *Id.* at 20.

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1           95. None of these later Biological Opinions replace or supersede the 2002  
2 Biological Opinion for the Las Cienegas NCA RMP, and none of these later Biological  
3 Opinions alter or affect the decisions made by the BLM in the 2003 Las Cienegas RMP  
4 concerning which lands are generally open for livestock grazing within the Las Cienegas  
5 NCA.

## 6 **VI. New Listings and Critical Habitat Designations**

7           96. FWS has listed additional threatened and endangered species that occur  
8 within the Las Cienega NCA since completion of the 2002 Biological Opinion for the  
9 RMP. FWS has also designated critical habitat within the Las Cienegas NCA since  
10 completion of the 2002 Biological Opinion.

### 11 A. Yellow-billed cuckoo

12           97. In 2014, FWS listed the western distinct population segment of the yellow-  
13 billed cuckoo as a threatened species. 79 Fed. Reg. 59992 (Oct. 3, 2014). FWS  
14 determined that the western yellow-billed cuckoo meets the definition of a threatened  
15 species under the ESA, and is likely to become endangered throughout its range within  
16 the foreseeable future, based on the immediacy, severity, and scope of the threats to its  
17 continued existence. *Id.*

18           98. In designating the cuckoo as a threatened species, FWS explained the  
19 adverse effects of livestock grazing on the cuckoo and its habitat. 79 Fed. Reg. at 60020-  
20 21. For example, the long-term cumulative effects of livestock grazing involve changes  
21 in the structure and composition of riparian vegetation which may affect the suitability of  
22 habitat for cuckoo breeding and prey population abundance. *Id.* at 60020.

23           99. In 2021, FWS designated critical habitat for the western distinct population  
24 segment of the yellow billed cuckoo. 86 Fed. Reg. 20798 (April 21, 2021). FWS  
25 designated approximately 298,845 acres, including within Arizona. *Id.* at 20798.

26           100. FWS' critical habitat designation specifically includes suitable habitat  
27 within the Las Cienegas NCA. *Id.* at 20867. This unit was considered by FWS to be  
28 occupied by cuckoo at the time it was listed as a threatened species, and lists

1 “overgrazing” as one of the “threats” to critical habitat. *Id.* at 20867, 20853 (addressing  
2 Gardner Canyon unit).

3 B. Northern Mexican gartersnake

4 101. In 2014, FWS listed the northern Mexican gartersnake as a threatened  
5 species. 79 Fed. Reg. 38678 (July 8, 2014).

6 102. FWS found that in as much as 90 percent of the northern Mexican  
7 gartersnakes’ historical distribution in the United States, the subspecies occurs at low to  
8 very low population densities or may even be extirpated. 79 Fed. Reg. at 38681. At the  
9 time of listing, there were only five northern Mexican gartersnake populations in the  
10 United States where the subspecies is considered viable, and all are located in Arizona.  
11 *Id.* FWS noted that the northern Mexican gartersnake’s status at Las Cienegas NCA was  
12 likely not viable, meaning it is present at low population density that could be threatened  
13 with extirpation. *Id.* at 38682-83.

14 103. FWS’s listing rule discusses scientific evidence showing gartersnake  
15 populations were significantly higher in areas that were excluded from grazing, where the  
16 streamside vegetation remained lush, due to the higher amounts of cover. 79 Fed. Reg. at  
17 38715. The listing rule also relied upon science that noted the importance of riparian  
18 vegetation for the maintenance of an adequate prey base. *Id.* Moreover, direct fatalities  
19 of amphibian species, in all life stages, from being trampled by livestock have been  
20 documented. *Id.*

21 104. In 2021, FWS designated critical habitat for the northern Mexican  
22 gartersnake. 86 Fed. Reg. 22518 (April 28, 2021). FWS designated approximately  
23 20,326 acres as critical habitat, including within Santa Cruz and Pima Counties, Arizona.  
24 *Id.*

25 105. In designating critical habitat, FWS stated: “In cases where poor livestock  
26 management results in fence lines in persistent disrepair, allowing unmanaged livestock  
27 access to occupied habitat, adverse effects from loss of vegetative cover, sedimentation,  
28 or alteration of prey base may result.” 86 Fed. Reg. at 22531.

1           106. The northern Mexican gartersnake critical habitat designation includes Unit  
2 6, the Cienega Creek Subbasin Unit. 86 Fed. Reg. at 22541. This unit consists of 2,083  
3 acres of habitat along 46 stream miles, including Cienega Creek and Empire Gulch. *Id.*  
4 The unit includes lands managed by the BLM on the Las Cienegas NCA. *Id.* The unit  
5 was determined to be occupied by the gartersnake at the time it was listed. *Id.*

6           C. Southwestern willow flycatcher critical habitat

7           107. In 2013, FWS designated critical habitat for the southwestern willow  
8 flycatcher. 78 Fed. Reg. 344 (Jan. 3, 2013). FWS designated approximately 1,227  
9 stream miles as critical habitat. *Id.*

10          108. The critical habitat designation stated that livestock management actions can  
11 harm flycatcher habitat because it “can reduce the volume and composition of riparian  
12 vegetation, prevent regeneration of riparian plant species, physically disturb nests, alter  
13 floodplain dynamics, facilitate brood parasitism (laying eggs in flycatcher nests) by brown-  
14 headed cowbirds, alter watershed and soil characteristics, alter stream shape, and facilitate  
15 the growth of flammable exotic plant species.” *Id.* at 381.

16          109. The southwestern willow flycatcher critical habitat designation includes an  
17 11.1 mile segment of Cienega Creek and two segments of Empire Gulch within the Las  
18 Cienegas NCA. *Id.* at 377.

19           D. Chiricahua leopard frog

20          110. In 2012, FWS designated critical habitat for the Chiricahua leopard frog.  
21 77 Fed. Reg. 16324 (March 20, 2012). FWS designated approximately 10,346 acres as  
22 critical habitat, including within Pima and Santa Cruz Counties of Arizona. *Id.*

23          111. The Chiricahua leopard frog critical habitat designation includes the Las  
24 Cienegas National Conservation Area Unit, which includes 1,354 acres of BLM managed  
25 lands, including reaches of Empire Gulch and Cienega Creek. 77 Fed. Reg. at 16351.  
26 This unit was occupied at the time of listing. *Id.*

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E. Gila chub

112. In 2005, FWS listed the Gila chub as an endangered species, and designated critical habitat for the chub. 70 Fed. Reg. 66664 (Nov. 2, 2005). FWS determined that because the Gila chub currently only exists as a few, small, isolated populations, and due the severity of threats to the species, the Gila chub is likely to become extinct throughout all or a significant portion of its range. *Id.*

113. FWS recognized in its listing determination for the Gila chub that livestock grazing can have adverse effects on the chub’s habitat including through destabilizing stream channels, disturbing riparian ecosystem functions, removal of riparian vegetation, and increased sediment in streams. 70 Fed. Reg. at 66680.

**VII. New Information and Modification of the 2003 RMP**

A. Plaintiffs’ monitoring and surveys

114. Staff of the Center for Biological Diversity and trained biologists on contract with the Center have conducted numerous field visits and surveys of the Las Cienegas NCA, and staff promptly notified the BLM and FWS of their findings.

115. On December 16, 2024, the Center sent a letter to the BLM and FWS to notify the agencies of a dismantled cattle enclosure fence and subsequent mass mortality of Chiricahua leopard frogs at the Maternity Well pond. This pond is also occupied by the Gila topminnow, and is included in the critical habitat designation for the northern Mexican gartersnake.

116. The following are two representative photos of the information provided to BLM and FWS on December 16, 2024, the first showing a deceased Chiricahua leopard frog along the trampled shoreline of the Maternity Well within the portion of the Las Cienegas NCA that is closed to livestock grazing under the 2003 RMP, and the second showing a branded cow at Maternity Well:

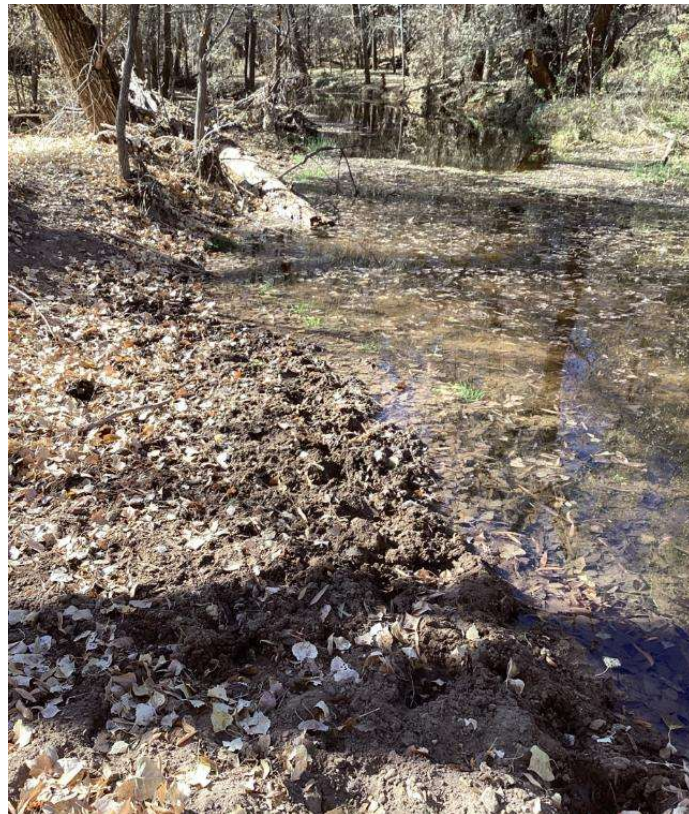
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117. After receiving no response to their December 16 letter, trained biologists on contract with the Center in December 2024 and January 2025 conducted detailed surveys of cattle impacts in all wetlands and riparian areas that are designated as critical habitat within the Empire-Cienega Allotment on the Las Cienegas NCA. The surveys documented numerous instances of damaged and nonfunctional exclusion fencing, and severe environmental harm to designated critical habitat caused by livestock cattle.

1           118. On April 14, 2025, the Center sent a letter to the BLM and FWS  
2 documenting significant, unauthorized grazing within the riparian areas that the 2003 Las  
3 Cienegas RMP closed to livestock grazing. This letter included 27 pages of photographs  
4 taken during the Center’s December/January surveys showing environmental harm to  
5 these riparian areas caused by unauthorized livestock grazing. The Center again received  
6 no response to its April 14 letter.

7           119. The following is representative photo provided to the BLM and FWS on  
8 April 14, 2025, showing trampled critical habitat for the yellow-billed cuckoo, northern  
9 Mexican gartersnake, and Gila chub within the portion of the Empire-Cienega Allotment  
10 on the Las Cienegas NCA that the 2003 Las Cienegas RMP closed to livestock grazing.



25           120. On May 14, 2025, Center staff visited wetlands and riparian areas  
26 designated as critical habitat on the Empire-Cienega Allotment within the Las Cienegas  
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1 NCA, and again found evidence of unauthorized, trespass cattle within areas closed to  
2 livestock grazing by the 2003 RMP.

3 121. The following is a representative photo from the Center’s May 28 letter to  
4 the BLM and FWS, taken during Center staff’s May 14, 2025 visit, again identifying  
5 environmental harm caused by livestock grazing within the portion of the Las Cienegas  
6 NCA that the 2003 Las Cienegas RMP closed to grazing:



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21 122. Following the Center’s May 28 letter, BLM staff emailed the Center and  
22 informed the Center that the agency “will be looking into the matter further.” Email of L.  
23 Brady, BLM to C. Bugbee, Center for Biological Diversity (May 29, 2025).

24 B. The Center’s 2024 Cuckoo Report, “Grazed to Death”

25 123. In June 2024, the Center completed its report entitled, “Grazed to Death:  
26 Livestock Production Adversely Modifying Majority of Drought-Stricken Western  
27 Yellow-billed Cuckoo Critical Habitat on Public Lands in Arizona and New Mexico.”  
28 The Center provided this report to BLM and FWS no later than March 2026.

1           124. The report’s summary states: Livestock grazing has adversely modified at  
2 least 57 percent of designated critical habitat of Western yellow-billed cuckoo (“cuckoo”)  
3 within public lands grazing allotments in Arizona and New Mexico. In those states, the  
4 U.S. Fish and Wildlife Service (“FWS”) has designated 55,550 acres of critical habitat  
5 for cuckoo within grazing allotments managed by the U.S. Forest Service (“FS”) and  
6 Bureau of Land Management (“BLM”). From 2021-2023, Center for Biological Diversity  
7 field biologists surveyed 39,170 (70 percent) of those acres for adverse modification from  
8 livestock grazing immediately prior to, or during, the cuckoo nesting and breeding  
9 season. Surveys found moderate to significant impacts and adverse modification across  
10 31,509 acres, which is 80 percent of critical habitat surveyed, and 57 percent of the  
11 critical habitat within public lands grazing allotments in Arizona and New Mexico.

12           C. The Center’s 2024 Northern Mexican Garter Snake Report, “Grazed to  
13 Death”

14           125. In September 2024, the Center completed its report entitled, “Grazed to  
15 Death: Livestock Production Adversely Modifying Most Critical Habitat for Northern  
16 Mexican Garter Snakes on Public Lands in Arizona.” The Center provided this report to  
17 the BLM and FWS no later than March 2026.

18           126. The report’s summary states: Livestock grazing has adversely modified at  
19 least 58% of the threatened northern Mexican garter snake’s designated critical habitat on  
20 public lands in Arizona and New Mexico. In 2021 the U.S. Fish and Wildlife Service  
21 designated 20,326 acres of critical habitat for garter snakes, 11,860 acres of which occur  
22 on public lands managed by the U.S. Forest Service and the Bureau of Land  
23 Management. From 2021 to 2023, Center for Biological Diversity field biologists  
24 surveyed 8,127 acres (69%) of the garter snake’s critical habitat on public land for  
25 adverse modification from livestock grazing. Surveys found moderate to significant  
26 impacts and adverse modification across 6,835 acres (84%) of the critical habitat on  
27 public lands surveyed and on 58% of all garter snake critical habitat on public lands  
28 managed by federal agencies.

1 D. The Center’s 2025 “Livestock Damage” Report

2 127. In March 2025, the Center issued a report detailing region-wide surveys of  
3 cattle damage to critical habitat spanning 2017 to 2024. The report is entitled “Livestock  
4 Damage to Aquatic and Riparian Critical Habitat in the U.S. Southwest: Field  
5 Assessment Results 2017-2024.” The Center provided this report to the BLM and FWS  
6 no later than March 2026. Evidence presented in this report demonstrates the range-wide  
7 scale of the ongoing, significant, and destructive grazing within designated critical habitat  
8 for ESA-listed species, including the Cuckoo and the Chub.

9 E. The BLM’s Annual Reports to FWS, as Required by the RMP and 2002  
10 Biological Opinion

11 128. The 2003 Las Cienegas RMP and the 2002 Biological Opinion require the  
12 BLM to prepare an annual report each year that documents and summarizes the  
13 implementation of the proposed action and any incidental take of ESA-listed species. On  
14 information and belief, the BLM has failed in some years to prepare these required  
15 annual reports. The annual reports that have been prepared generally fail to address  
16 incidental take or the annual fence inspections required by the RMP.

17 **VIII. Plaintiffs’ Notice Letter**

18 129. On March 25, 2026, Plaintiffs sent a sixty-day notice letter to the Secretary  
19 of Interior, and to the BLM and FWS, identifying the ESA violations that are included  
20 herein pursuant to the ESA’s citizen suit provision. *See* 16 U.S.C. § 1540(g).

21 130. Plaintiffs’ notice letter included information documenting: (1) additional  
22 evidence of trespass livestock in critical habitat riparian areas closed to livestock by the  
23 2003 RMP based on further surveys by Center staff and trained biologists on contract  
24 with the Center; (2) the results of cattle impacts surveys identifying the level of damage  
25 caused by livestock within areas closed to grazing; and (3) the results of surveys for  
26 fencing required to protect riparian critical habitat, which showed dozens of instances of  
27 missing, failed, or ineffective fences.  
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131. First, in surveys conducted on May 2-3, 2025 and October 7-15, 2025, Center staff and trained biologists on contract with the Center visited the Las Cienegas NCA to determine if livestock were continuing to be present and graze within the riparian area that the 2003 Las Cienegas RMP closed to grazing. The Center documented that unauthorized cattle continue to cause significant environmental harm to threatened and endangered species habitat within the riparian areas that the 2003 RMP closed to grazing. Center for Biological Diversity, Sixty-Day Notice of Intent to Sue (March 25, 2026), at Attachment 4.

132. The following is a representative photo from the Center’s May 2-3 survey, again identifying environmental harm caused by livestock grazing within those portions of the Las Cienegas NCA that the 2003 Las Cienegas RMP closed to grazing:

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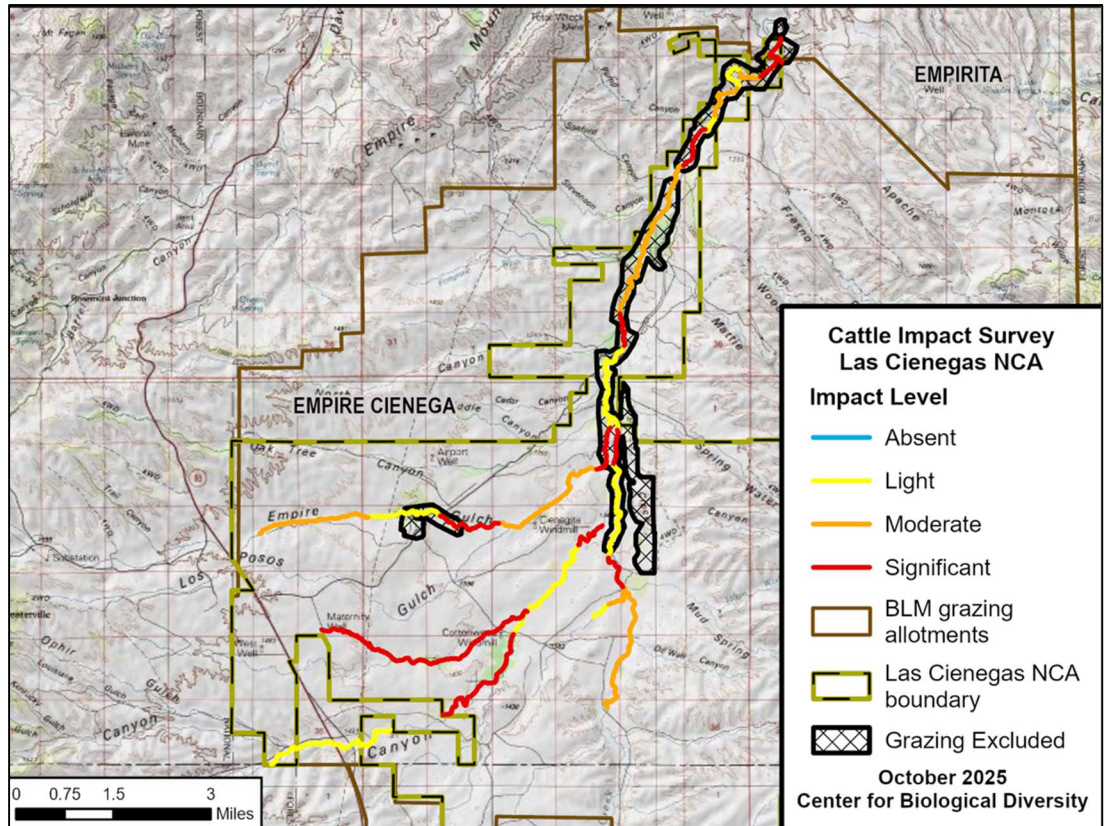


133. The following is a representative photo from the Center’s October 7-15 survey, notice letter to BLM and FWS, again identifying environmental harm caused by livestock grazing within the portion of the Las Cienegas NCA that the 2003 RMP closed to grazing:

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134. Second, the Center’s scientifically rigorous analysis, informed by standardized data collected by trained biologist on contract with the Center, and resulting from its October 2025 survey, showed that the majority of riparian critical habitat that the 2003 RMP closed to livestock grazing suffered from moderate or significant damage to habitat values attributable to livestock grazing. *Id.*, Attachment 4, at 32. The results of that analysis are presented on the map below.



*Grazing impact levels in designated critical habitat within the Las Cienegas National Conservation Area on the Gila District's Empire-Cienega allotment, October 2025.*

135. Third, while conducting cattle impact surveys from October 7-9, 2025, Center staff and biologists on contract with the Center undertook a focused survey of fence lines meant to delineate grazing enclosures as described in and required by the 2003 RMP. *Id.*, Attachment 5, at 1. Surveyors identified and photographed non-functional enclosures in dozens of locations which were failing to serve their intended purpose of excluding cattle from off-limits areas. *Id.* Surveyors also found large sections of supposed enclosure fence that appeared to have been deliberately dismantled. *Id.* In important designated perennial stream sections, surveyors found some required enclosure fencing entirely absent. *Id.* For example, along the west side of Empire Gulch near the confluence of Cienega Creek, surveyors could locate no evidence of enclosure fences for approximately three-quarters of a mile, and found significant damage that they attributed to livestock in designated critical habitat for the western yellow-billed cuckoo,

1 Southwestern willow flycatcher, northern Mexican garter snake, Chiricahua leopard frog,  
2 and Gila chub. *Id.*

3 136. FWS responded to Plaintiffs' March 2026 notice letter, stating that "each of  
4 the BiOps at issue was prepared consistently with the ESA and its implementing  
5 regulations." Letter of H. Whitlaw, FWS to C. Bugbee et al. (May 14, 2026). In doing  
6 so, FWS failed to address at all the notice letter's allegations concerning the need for the  
7 BLM and FWS to *reinitiate* consultation based on *new information and changes to the*  
8 *action*. As of the date of the filing of this complaint, the Center has not received a  
9 response to the notice letter from the BLM.

10 137. More than 60 days have elapsed since the agencies received the letter.

11 **IX. BLM's 2026 Land Health Evaluation.**

12 138. In May 2026, BLM released a "land health evaluation" report for the Las  
13 Cienegas NCA, which the agency stated "provides a comprehensive assessment of  
14 current rangeland conditions" in the area. BLM, LCNCA Complex Land Health  
15 Evaluation (May 8, 2026) at 1. The Land Health Evaluation concludes that: the riparian  
16 areas with the Empire-Cienega Allotment are failing to meet land health standards for  
17 riparian-wetland sites; nearly half of the monitored stretches of riparian habitat within the  
18 Allotment are not in proper functioning condition; and cattle grazing is a causal factor in  
19 the Allotment's failure to meet land health standards. *Id.* at 57 ("The Empire-Cienega  
20 allotment is not meeting Standard 2 because only 10 of the 19 reaches (53%) are the  
21 required PFC [proper functioning condition] Ranking"); *id.* at 75-78; Appendices at  
22 Figure A-9. The report recommends that within the Empire-Cienega Allotment,  
23 "[p]astures adjacent to Cienega Creek should be fully rested," "[a]ll riparian areas should  
24 be excluded from grazing, and new exclosure fencing should include a minimum buffer  
25 of 200 feet into the uplands from the riparian edge," and "[c]attle should be excluded  
26 from sensitive areas through fencing." *Id.* at 85.

1 **CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **The BLM and FWS Are in Ongoing Violation of ESA Section 7 for Failing to Reinitiate**  
4 **and Complete Consultation on the 2003 RMP for the Las Cienegas NCA.**

5 139. Plaintiffs incorporate by reference all preceding paragraphs.

6 140. ESA Section 7 requires BLM to consult with FWS to ensure that any action  
7 authorized, funded, or carried out by the action agency is not likely to jeopardize the  
8 continued existence of any threatened or endangered species, or result in the destruction  
9 or adverse modification of the critical habitat of such species. 16 U.S.C. § 1536(a)(2).  
10 The reinitiation of consultation is required and must be requested by the BLM or FWS  
11 where discretionary federal involvement or control over the action has been retained or is  
12 authorized by law, and if new information reveals effects of the action that may affect  
13 listed species or critical habitat in a manner or to an extent not previously considered, the  
14 action is modified in a manner that causes an effect to the listed species or critical habitat  
15 that was not considered in the biological opinion, or a new species is listed or critical  
16 habitat designated that may be affected by the identified action. 50 C.F.R. § 402.16(a).

17 141. FWS completed a Biological Opinion for the Las Cienegas RMP in 2002.  
18 Since 2002, new information has revealed effects of livestock grazing authorized by the  
19 RMP that may affect listed species and critical habitat in a manner and to an extent not  
20 previously considered. In addition, since 2002, the RMP has been modified in a manner  
21 that causes effects to listed species and critical habitat that was not considered in the  
22 Biological Opinion.

23 142. Specifically, the 2003 RMP required and assumed that cattle would be  
24 excluded from 3,919 acres of riparian critical habitat identified in the plan. The 2002  
25 Biological Opinion assumed that due to the requirement in the RMP to exclude most  
26 livestock grazing in riparian and aquatic habitat through fencing and exclosures, only  
27 periodic, light impacts to listed species, including the Gila Chub, Chiricahua leopard frog,  
28 and Gila topminnow were expected within the exclosures.

1           143. New information provided by the Plaintiffs indicates that BLM has failed to  
2 implement the RMP as assumed by the 2002 Biological Opinion by, among other things:

- 3           - failing to address chronic, ongoing cattle presence and harm throughout areas
- 4           identified as closed to livestock, and by failing to ensure effective fencing; and
- 5           - failing to check or inspect fences on exclosures within the Empire-Cienega
- 6           livestock grazing allotment that have occupied Chiricahua leopard frog, desert
- 7           pupfish, Gila chub, Gila topminnow and/or southwestern willow flycatcher
- 8           habitat at least once when the adjacent pasture is being used, and failing to
- 9           repair fences with “problem[s]” within one week.

10           144. New information provided by the Plaintiffs also indicates that BLM has  
11 failed to comply with the terms and conditions of the 2002 Biological Opinion by, among  
12 other things:

- 13           - failing to check or inspect fences on exclosures that have occupied Chiricahua
- 14           leopard frog, desert pupfish, Gila chub, Gila topminnow and/or southwestern
- 15           willow flycatcher habitat at least once when the adjacent pasture is being used,
- 16           and failing to repair fences with “problem[s]” within one week; and
- 17           - failing to prepare an annual report summarizing the implementation of the
- 18           proposed action and any incidental take that has occurred.

19           145. BLM’s 2026 Land Health Evaluation report provides further new  
20 information supporting that Plaintiffs provided, concluding that: the riparian areas with  
21 the Empire-Cienega Allotment are failing to meet land health standards for riparian-  
22 wetland sites; significant stretches of riparian habitat are not in proper functioning  
23 condition; and cattle grazing is a causal factor in the failure to meet land health standards.

24           146. All of this new information reveals effects of implementing the 2003 RMP  
25 that may affect listed species or critical habitat in the Las Cienegas NCA in a manner or  
26 to an extent not previously considered during consultation. This new information further  
27 demonstrates that BLM has modified the 2003 RMP in a manner that causes an effect to  
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1 the listed species or critical habitat that was not considered in the 2002 Biological  
2 Opinion.

3 147. Further, since the 2002 Biological Opinion and 2003 RMP, FWS has  
4 designated new species as threatened and endangered with extinction, and has designated  
5 new critical habitat, that may be affected by the RMP, again triggering the need to  
6 reinstate consultation on the RMP. 50 C.F.R. § 402.16(a)(4). While the ESA regulations  
7 do not require the BLM to reinstate consultation after the approval of an RMP upon the  
8 listing of new species or designation of new critical habitat, this regulatory exception  
9 only applies if “any authorized actions” that may affect these species or habitat “will be  
10 addressed through a separate action-specific consultation.” 50 C.F.R. § 402.16(b). No  
11 such action-specific consultation has occurred since the 2003 Biological Opinion, and  
12 thus this exception does not apply.

13 148. The BLM and FWS have violated and remain in ongoing violation of the  
14 ESA by failing to reinstate and complete consultation on the impacts of 2003 RMP for  
15 the Las Cienegas NCA despite the new information, modifications of the RMP, and new  
16 listings and critical habitat designations. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.16(a).

17 149. In the absence of the required reinstated consultation, BLM is in ongoing  
18 violation of its substantive obligation under ESA Section 7 to ensure that its actions are  
19 not likely to jeopardize any threatened or endangered species, or result in the destruction  
20 or adverse modification of designated critical habitat. 16 U.S.C. § 1536(a)(2).

## 21 **SECOND CLAIM FOR RELIEF**

22 The BLM Violated ESA Section 7 by Failing to Consult on the 2025 Decision Re-issuing  
23 the Livestock Grazing Permit for the Empire-Cienega Allotment.

24 150. Plaintiffs incorporate by reference all preceding paragraphs.

25 151. ESA Section 7 requires the BLM to consult with FWS to ensure that any  
26 action authorized, funded, or carried out by the action agency is not likely to jeopardize  
27 the continued existence of any threatened or endangered species, or result in the  
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1 destruction or adverse modification of the critical habitat of such species. 16 U.S.C.  
2 § 1536(a)(2).

3 152. On or about March 1, 2025, the BLM re-issued the permit for livestock  
4 grazing within the Empire-Cienega Allotment.

5 153. Livestock grazing within the Allotment “may affect,” at a minimum, the  
6 wildlife whose critical habitat designated pursuant to the ESA lies within the Empire-  
7 Cienega Allotment.

8 154. The BLM failed to consult concerning the impacts of re-issuing the permit  
9 for livestock grazing within the Empire-Cienega Allotment on or about March 1, 2025.

10 155. The BLM failed to consult on the impacts of any annual operating  
11 instructions or other livestock grazing decisions based on the 2025 permit for livestock  
12 grazing within the Empire-Cienega Allotment.

13 156. BLM’s failure to consult with FWS on BLM’s decision re-issuing the  
14 permit for livestock grazing within the Empire-Cienega Allotment, and issuing other  
15 grazing decisions pursuant thereto, violated ESA Section 7. 16 U.S.C. § 1536(a)(2).

16 157. In the absence of the required consultation, BLM is in ongoing violation of  
17 its substantive obligation under ESA Section 7 to ensure that its actions are not likely to  
18 jeopardize any threatened or endangered species, or result in the destruction or adverse  
19 modification of designated critical habitat. 16 U.S.C. § 1536(a)(2).

20 **THIRD CLAIM FOR RELIEF**

21 The BLM Has Violated FLPMA and the APA by Unlawfully Withholding and  
22 Unreasonably Delaying Discrete Actions Required by the 2003 RMP for the Las  
23 Cienegas NCA.

24 158. Plaintiffs incorporate by reference all preceding paragraphs.

25 159. The APA empowers federal courts to “compel agency action unlawfully  
26 withheld or unreasonably delayed.” 5 U.S.C. § 706(1).  
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1           160. FLPMA requires BLM to manage the Las Cienegas NCA “in accordance  
2 with” the 2003 RMP. 43 U.S.C. § 1732(a); *see also* 43 C.F.R. § 1610.5-3(a) (all resource  
3 management actions must conform to the approved RMP).

4           161. The 2003 Las Cienegas NCA RMP identifies the following “management  
5 action” for implementation on the Empire-Cienega Allotment: “Establish study  
6 exclosures on the approximately 2,319 acres of public lands not allocated to livestock  
7 grazing by constructing perimeter fencing (GM19).” 2003 RMP at 57.

8           162. In the 23 years since the BLM adopted the RMP, the BLM has failed to  
9 complete construction of the required perimeter fence around the study exclosures within  
10 the Empire Cienega Allotment.

11           163. The BLM’s failure to complete construction of the required perimeter fence  
12 for exclosures within the Empire Cienega Allotment constitutes action unlawfully  
13 withheld or unreasonably delayed, in violation of the APA, 5 U.S.C. § 706(1).

14           164. The 2003 Las Cienegas NCA RMP further states: “The interim grazing  
15 plan for the Empire-Cienega allotment (BLM 1995) . . . will be modified to incorporate  
16 the goals, objectives, and actions in this plan.” 2003 RMP at 56.

17           165. In the 23 years since the BLM adopted the RMP, the BLM has failed to  
18 modify the 1995 grazing plan for the Empire-Cienega Allotment to incorporate the goals,  
19 objectives, and actions in the 2003 Las Cienegas NCA RMP.

20           166. The BLM’s failure to modify the 1995 grazing plan for the Empire-Cienega  
21 Allotment to incorporate the goals, objectives, and actions in the 2003 Las Cienegas  
22 NCA RMP constitutes action unlawfully withheld or unreasonably delayed, in violation  
23 of the APA, 5 U.S.C. § 706(1).

24           167. The 2003 Las Cienegas NCA RMP requires the BLM to prepare an annual  
25 report each year which summarizes the implementation of the proposed action and any  
26 incidental take that occurred of Chiricahua leopard frog, desert pupfish, Gila chub, Gila  
27 topminnow, and southwestern willow flycatcher. 2003 RMP at 79.

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1 F. Order BLM to complete construction of the required perimeter fence  
2 around enclosures within the Empire Cienega Allotment by a date certain;

3 G. Declare that BLM's failure to modify the 1995 grazing plan for the Empire-  
4 Cienega Allotment to incorporate the goals, objectives, and actions in the 2003 Las  
5 Cienegas NCA RMP constitutes action unlawfully withheld or unreasonably delayed, in  
6 violation of the APA, 5 U.S.C. § 706(1).

7 H. Order BLM to complete modifications to the 1995 grazing plan for the  
8 Empire-Cienega Allotment to incorporate the goals, objectives, and actions in the 2003  
9 Las Cienegas NCA RMP by a date certain;

10 I. Declare that BLM's failure to prepare an annual report that addresses  
11 implementation of the actions proposed in the RMP, including the failure to address fence  
12 inspections and fence repair required by the RMP, or any take of listed species,  
13 constitutes action unlawfully withheld or unreasonably delayed, in violation of the APA,  
14 5 U.S.C. § 706(1);

15 J. Order BLM to prepare by a date certain an annual report, and to continue to  
16 prepare annual reports, that address the issues required per Paragraph I, above;

17 K. Order BLM to take the actions necessary to prevent any further irreversible  
18 and irretrievable adverse impacts to the threatened and endangered species that are found  
19 on the Las Cienegas NCA;

20 L. Grant Plaintiffs their reasonable attorneys' fees and costs associated with  
21 this action, as provided by the ESA, 16 U.S.C. § 1540(g)(4), and/or the Equal Access to  
22 Justice Act, 28 U.S.C. § 2412; and

23 M. Grant Plaintiffs such additional relief as the Court may deem just and  
24 proper.

25 Respectfully submitted June 8, 2026,  
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