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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION**

Center for Biological Diversity;
Lower San Pedro Watershed
Alliance; and San Carlos Apache
Tribe,

Plaintiffs,

v.

U.S. Fish and Wildlife Service;
and U.S. Bureau of Land

Case No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Complaint for Declaratory and Injunctive Relief

1 Management,
2 Defendants.

3
4 **INTRODUCTION**

5 1. Within the Sky Islands, the Galiuro Mountains are home to a diverse
6 variety of wildlife, including at least six species listed as threatened or endangered
7 under the Endangered Species Act. The San Pedro Watershed supports the highest
8 diversity of vertebrate species in the inland United States, including more than 400
9 bird species and 180 species of butterflies.

10 2. In the heart of this sensitive wildlife area, the U.S. Bureau of Land
11 Management (“BLM”), in consultation with the U.S. Fish and Wildlife Service
12 (“the Service”), approved the Copper Creek Exploration Project (the “Project”), an
13 exploratory drilling project that authorizes a network of 67 drill pads to search for
14 copper. This ongoing Project is facilitated by 70,000 gallons of groundwater
15 pumped per month, per drill rig, from the already depleted Lower San Pedro
16 Watershed.

17 3. BLM authorized the Project despite ignoring photographic evidence
18 that the imperiled Mexican spotted owl is found in the area, and refusing to
19 address the impacts of the massive drawdowns of water on the already overdrawn
20 San Pedro River and the threatened western yellow-billed cuckoo that makes its
21 home along the River. Further, BLM authorized the project without consulting
22 with the San Carlos Apache Tribe, which made several written requests for such
23 consultation between 2024 and 2025.

24 4. Plaintiffs bring this lawsuit for declaratory and injunctive relief,
25 seeking an Order (1) declaring that BLM and the Service violated the Endangered
26 Species Act (“ESA”), the National Environmental Policy Act (“NEPA”), and the
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1 Administrative Procedure Act (“APA”); (2) vacating the Service’s unlawful Letter
2 of Concurrence regarding impacts to the yellow-billed cuckoo and requiring
3 reinitiation of ESA Section 7 consultation; (3) vacating BLM’s unlawful
4 Environmental Assessment (“EA”) and requiring new NEPA analysis; (4)
5 ordering BLM to initiate consultation concerning the impacts of the Project to
6 Mexican spotted owl found in the Project Area as required by ESA Section 7; (5)
7 vacating BLM’s Decision Record that relies on the Concurrence and EA; (6)
8 enjoining exploratory drilling activities pending completion of lawful ESA Section
9 7 consultation and NEPA analysis; and (7) declaring that BLM violated the
10 National Historic Preservation Act (“NHPA”) for failing to engage in consultation
11 with the San Carlos Apache Tribe.

12 **JURISDICTION**

13 5. This Court has jurisdiction over this action pursuant to 16 U.S.C. §
14 1540(c), (g) (ESA citizen suit provision), 5 U.S.C. §§ 701-706 (APA review of
15 agency action and failure to act), 28 U.S.C. § 1331 (federal question), and
16 28 U.S.C. §§ 2201–2202 (declaratory and injunctive relief).

17 6. Venue is proper in the United States District Court for the District of
18 Arizona pursuant to 28 U.S.C. § 1391(c) and § 1391(e)(1) because Plaintiffs reside
19 in this judicial district and because all or a substantial part of the events or
20 omissions giving rise to this litigation occurred within this judicial district. BLM
21 and Service officials who authorized the decisions at issue maintain offices within
22 this judicial district and the decisions were made and signed within this judicial
23 district. Venue is proper in the Tucson Division because BLM’s Safford Office,
24 located in Graham County, issued the EA and Decision Record at issue in this
25 lawsuit. *See* LRCiv 77.1(c).

PARTIES

7. Plaintiff Center for Biological Diversity (“the Center”) is a national, non-profit conservation organization that works through science, law, and policy to protect imperiled wildlife and their habitats. The Center is incorporated in California and headquartered in Tucson, Arizona, with offices throughout the United States. The Center has more than 101,600 active members throughout the country, including 4,600 in Arizona.

8. The Lower San Pedro Watershed Alliance (“LSPWA”) is an all-volunteer landowner-based conservation organization headquartered in Mammoth, Arizona, at Copper Creek’s confluence with the San Pedro River. LSPWA’s mission is to protect the ecological integrity and associated indigenous cultural heritage of the Lower San Pedro region of Arizona, primarily through voluntary and effective actions by local citizens. With over 250 members, LSPWA resides and works within the watershed it seeks to protect from inappropriate exploitation of natural resources.

9. The San Carlos Apache Tribe (“Tribe”) is a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934. The Tribe’s ancestral lands include what is now known as the San Pedro Valley, Galiuro Mountains, and Aravaipa Canyon, including where the Project is located. Copper Creek and the surrounding area are also home to many plants, animals, and natural springs that are sacred to the Apache. It is the express policy of the Tribe that government-to-government consultation may only occur before the San Carlos Council.

10. The Center and LSPWA bring this action on behalf of their members, including but not limited to Melissa Crytzer Fry, who use and enjoy the Copper Creek and the surrounding area for a variety of purposes including hiking, photography, viewing wildlife, camping, monitoring trail cameras, birdwatching,

1 and engaging in other scientific and recreational activities. The Center's and
2 LSPWA's members' use and enjoyment of these areas is significantly enhanced
3 knowing that threatened and endangered species are still likely to occur in these
4 areas.

5 11. For example, Center member and LSPWA member and Chair of
6 LSPWA's Board of Directors Melissa Crytzer Fry lives in Mammoth, Arizona,
7 approximately 8 miles from the Project Area. Ms. Fry visits the Project Area on at
8 least a monthly basis to hike, camp, photograph scenery and wildlife, and view
9 wildlife and wildlife signs. Ms. Fry's most recent visit to Copper Creek was on
10 August 16, 2026, when she explored backcountry roads, searched for Mexican
11 spotted owl, and viewed and photographed scenery.

12 12. Ms. Fry's use and enjoyment of the Copper Creek area hinges upon
13 and is significantly enhanced by her knowledge that threatened and endangered
14 species, including Mexican spotted owls and yellow-billed cuckoos, may be
15 present in the area. Ms. Fry plans to return to Copper Creek and the Project Area
16 in September and October 2026 to recreate, camp, look for and photograph
17 wildlife, and enjoy the autumn colors. Witnessing drilling occur in these species'
18 habitat has harmed her enjoyment of the area as well as impaired her enjoyment
19 of, and her ability to educate others during, nature viewing trips she has taken
20 others on to Copper Creek due to the operation of heavy machinery. Vacating
21 BLM's approval of the Project will halt the harm being done to Ms. Fry.

22 13. San Carlos Apache Tribe member Vernelda Grant is the Tribe's
23 Historic Preservation Officer. Ms. Grant is dedicated to preserving and guarding
24 the archaeological, historic, and sacred sites belonging to the Tribe as well as the
25 Tribe's ancestral lands. According to traditional Apache belief, the entire Galiuro
26 Mountain range from the San Pedro Valley to its peaks is one integrated living
27 being that has a relationship with Ms. Grant and other Apaches.

1 14. Ms. Grant last visited the Galiuro Mountains in 2020 with her late
2 husband, Gilbert Patiño, to harvest fruits from saguaro cacti, agave, and other
3 native plants. Ms. Grant plans to return to the Galiuro Mountains and Project Area
4 in the fall or winter of 2026 with Apache students and other community members
5 who are part of the bands that lived in the area. Her enjoyment of and ability to
6 visit the area is greatly impacted by Defendants' approval of exploratory drilling
7 and will continue to be impacted if the Project continues.

8 15. For Apaches, Copper Creek and the Galiuro Mountains are a source
9 of life; according to traditional Apache beliefs, this place is a living creature with a
10 soul that possesses holy spirits and beings. *See* Keith Basso, *Wisdom Sits in*
11 *Places: Landscape and Language Among the Western Apache* (University of New
12 Mexico Press, 1996). Ms. Grant is concerned that a lowering of the water table
13 due to Project activities will cause Copper Creek to run dry, a harm that causes
14 distress to her and other members of those bands and clans from the area.

15 16. The Copper Creek Exploratory Drilling Project is causing and will
16 continue to cause Plaintiffs and their members, supporters, and staff concrete
17 injuries to their aesthetic, recreational, spiritual, scientific, and safety interests.

18 17. Defendant U.S. Fish and Wildlife Service is the agency within the
19 Department of the Interior charged with implementing the ESA, including Section
20 7(a)(2)'s consultation requirements. The Secretary of the Interior has delegated
21 administration of the ESA to the Service. 50 C.F.R. § 402.01(b).

22 18. Defendant Bureau of Land Management is an agency within the
23 United States Department of the Interior. The BLM and its officers are responsible
24 for the lawful management of the federal lands within the Copper Creek Project
25 Area. Like all federal agencies, the BLM must comply with all applicable ESA
26 requirements, including Section 7 requirements.

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1 implementation of recovery plans, the prohibition against the “taking” of listed
2 species, and the requirement for interagency consultation. *Id.* §§ 1533(a)(3),
3 1533(f), 1536, 1538.

4 24. For example, ESA Section 7(a)(2) requires that “[e]ach Federal
5 agency shall, in consultation with ... [the Service], [e]nsure that any action
6 authorized, funded, or carried out by such agency ... is not likely to jeopardize the
7 continued existence of any endangered species or threatened species or result in
8 the destruction or adverse modification of [critical habitat].” *Id.* § 1536(a)(2). This
9 Section 7(a)(2) consultation is the “heart of the ESA.” *W. Watersheds Project v.*
10 *Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2011).

11 25. For each proposed action, the action agency must request from the
12 Service whether any listed or proposed species may be present in the area of the
13 proposed action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(c). If listed or
14 proposed species may be present in the project area, the action agency must
15 prepare a “biological assessment” to determine whether the listed species may be
16 affected by the proposed action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12.

17 26. If action agency may affect any listed species or critical habitat, the
18 agency must normally engage in “formal consultation” with the Service. 50 C.F.R.
19 § 402.14. During formal consultation, the Service must issue a biological opinion,
20 which must include a “detailed discussion” of the baseline of the listed species and
21 critical habitat and the project’s impacts on such species or habitat. *Id.* §
22 402.14(h). However, the action agency need not initiate formal consultation if, as a
23 result of the preparation of a biological assessment or as a result of informal
24 consultation with the Service, the agency determines, with the Service’s written
25 Concurrence, that the proposed action is not likely to adversely affect any listed
26 species or critical habitat. *Id.* §§ 402.13, 402.14(b)(1).

1 27. The “may affect” standard triggering the consultation requirement is
2 low. *See Ctr. for Biological Diversity v. BLM*, 698 F.3d 1101, 1122 (9th Cir. 2012)
3 (“[P]etitioners need to show only that an effect on listed species or critical habitat
4 is plausible.”).

5 28. In assessing a proposed action’s impact on ESA listed-species,
6 federal agencies must “use the best available scientific and commercial data.” 16
7 U.S.C. § 1536(a)(2). This requirement “prohibits an agency from disregarding
8 available scientific evidence that is in some way better than the evidence it relies
9 on.” *Kern Cnty. Farm Bureau v. Allen*, 450 F.3d 1072, 1080 (9th Cir. 2006)
10 (alterations omitted) (quoting *Sw. Ctr. For Biological Diversity v. Babbitt*, 215
11 F.3d 58, 60 (D.C. Cir. 2000)).

12 29. An action agency’s duties do not end with the issuance of a
13 biological opinion or concurrence. Section 7 of the ESA imposes an independent
14 and continuing obligation upon the action agency to avoid jeopardizing the
15 existence of a listed species or adversely modify critical habitat. 16 U.S.C. §
16 1536(a)(2). In other words, an action agency “cannot be relieved of its duty to
17 adhere to the ESA simply through compliance with the [biological opinion or
18 concurrence]; it has an independent duty to ensure that its reliance is not arbitrary
19 or capricious.” *Ctr. for Biological Diversity v. Bernhardt*, 595 F. Supp. 3d 890,
20 900 (D. Ariz. March 31, 2022) (citing *Pyramid Lake Paiute Tribe of Indians v.*
21 *U.S. Dep’t of Navy*, 898 F.2d 1410, 1415 (9th Cir. 1990)). Consequently, an action
22 agency’s reliance on an inadequate, incomplete, or flawed concurrence violates the
23 ESA. *See Ctr. for Biological Diversity v. U.S. BLM*, No. CV-24-00141, 2026 U.S.
24 Dist. LEXIS 68876, at *30 (D. Ariz. Mar. 30, 2026) (holding that BLM violated
25 the ESA by relying on an unlawful concurrence).

26 30. During consultation, ESA Section 7(d) prohibits federal agencies
27 from making “any irreversible or irretrievable commitment of resources with
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1 respect to the agency action which has the effect of foreclosing the formulation or
2 implementation of any reasonable and prudent alternative measures which would
3 not violate” the ESA. 16 U.S.C. § 1536(d).

4 31. Because ESA Section 7 imposes an ongoing duty to ensure against
5 jeopardy and adverse modification of critical habitat, ESA implementing
6 regulations require reinitiation of consultation: (a) if the amount or extent of taking
7 specified in the incidental take statement is exceeded; (b) if new information
8 reveals effects of the action that may affect listed species or critical habitat in a
9 manner or to an extent not previously considered; (c) if the identified action is
10 subsequently modified in a manner that causes an effect to the listed species or
11 critical habitat that was not considered in the biological opinion; or (d) if a new
12 species is listed or critical habitat designated that may be affected by the identified
13 action. 50 C.F.R. § 402.16(a)(1)–(4).

14 The National Environmental Policy Act

15 32. “NEPA is our basic national charter for protection of the
16 environment.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208,
17 1215 (9th Cir. 1998). Congress enacted NEPA to “declare a national policy which
18 will encourage productive and enjoyable harmony between [humans] and [their]
19 environment; to promote efforts which will prevent or eliminate damage to the
20 environment and biosphere and stimulate the health and welfare of [humans];
21 [and] to enrich the understanding of the ecological systems and natural resources
22 important to the Nation.” 42 U.S.C. § 4321.

23 33. NEPA requires all federal agencies to prepare environmental
24 documents that analyze and disclose the reasonably foreseeable effects of their
25 actions and ensure that environmental information is available to public officials
26 and citizens before decisions are made and before actions are taken. *Id.* § 4332(C).

1 34. Specifically, NEPA requires all federal agencies to prepare an
2 environmental impact statement for “major Federal actions significantly affecting
3 the quality of the human environment.” *Id.* This detailed statement must describe
4 the environmental impacts of the proposed action in detail and assess a reasonable
5 range of alternatives to the proposed action. *Id.*

6 35. If an agency is uncertain whether a proposed action may have a
7 significant effect on the human environment, the agency may prepare an
8 environmental assessment. *Id.* § 4336(b)(2). An EA should be a “concise public
9 document” that briefly describes the proposal, the environmental impacts of the
10 proposed action, and the environmental impacts of the alternatives considered. *Id.*

11 The National Historic Preservation Act

12 36. Congress enacted the National Historic Preservation Act (“NHPA”),
13 54 U.S.C. §§ 300101 *et seq.*, in 1966, with the express intent that “the historical
14 and cultural foundations of the Nation should be preserved as a living part of our
15 community life and development in order to give a sense of orientation to the
16 American people.”

17 37. Section 106 of the NHPA requires that, prior to issuance of a federal
18 permit or license, federal agencies shall take into consideration the effects of an
19 “undertaking” on historic properties.” 54 U.S.C. § 306108. Agencies “must
20 complete the section 106 process . . . prior to the issuance of any license.” 36
21 C.F.R. § 800.1(c).

22 38. The NHPA defines undertaking as “a project, activity, or program
23 . . . requiring a Federal permit, license, or approval.” 54 U.S.C. § 300320; 36
24 C.F.R. § 800.16(y).

25 39. Early in the NHPA process, an agency must determine the area of
26 potential effects of a federal undertaking. 36 C.F.R. § 800.4(a)(1). The area of
27 potential effect is defined by regulation to include the area “within which an
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1 undertaking may directly or indirectly cause alterations in the character or use of
2 historic properties. ... The area of potential effect is influenced by the scale and
3 nature of an undertaking and may be different for different kinds of effects caused
4 by the undertaking.” *Id.* § 800.16(d).

5 40. The NHPA Section 106 process requires federal agencies involved
6 in undertakings to make a reasonable and good faith effort to identify and disclose
7 historic properties within affected areas, evaluate the potential adverse effects of
8 the federal undertaking to the historic properties, and seek ways to avoid,
9 minimize, or mitigate any adverse effects to the historic properties. 36 C.F.R. §§
10 800.4-800.6.

11 41. The Section 106 process requires consultation with Indian Tribes on
12 federal undertakings that potentially affect sites that are culturally significant to
13 Indian Tribes. 36 C.F.R. § 800.2(c)(2); 54 U.S.C. § 302706 (properties “of
14 traditional religious and cultural importance to” a Tribe may be included on the
15 National Register, and federal agencies “shall consult with any Indian Tribe . . .
16 that attaches religious or cultural significance” to such properties). Consultation
17 must occur regarding sites with “religious and cultural significance” even if they
18 occur on ancestral or ceded land outside of a Tribe’s reservation boundaries. 36
19 C.F.R. § 800.2(c)(2)(ii)(D).

20 42. The NHPA established the Advisory Council on Historic
21 Preservation (“ACHP”), an independent federal agency with the primary mission
22 to encourage historic preservation in the government and across the nation.

23 43. Section 800.2(c)(2)(ii)(B) of the ACHP’s regulations remind federal
24 agencies that “the Federal Government has a unique legal relationship with Indian
25 tribes set forth in the Constitution of the United States, treaties, statutes, and court
26 decisions. Consultation with Indian tribes should be conducted in a sensitive
27 manner respectful of tribal sovereignty. Nothing in this part alters, amends,
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1 repeals, interprets or modifies tribal sovereignty, any treaty rights, or other rights
2 of an Indian tribe, or preempts, modifies or limits the exercise of such rights.”

3 44. Section 800.2(c)(2)(ii)(C) of the ACHP’s regulations further states
4 “[c]onsultation with an Indian tribe must recognize the government-to-government
5 relationship between the Federal Government and Indian tribes. The agency
6 official shall consult with representatives designated or identified by the tribal
7 government.”

8 45. Section 302706(b) of the NHPA (54 U.S. Code) specifically requires
9 that “[i]n carrying out its responsibilities under [Section 106], a Federal agency
10 shall consult with any Indian tribe . . . that attaches religious and cultural
11 significance to [historic properties that may be affected by the undertaking].”

12 46. The NHPA and its implementing regulations specifically provide
13 that “[c]onsultation [with Indian tribes] should commence early in the planning
14 process, in order to identify and discuss relevant preservation issues” 36
15 C.F.R. § 800.2(c)(2)(ii)(A), and that federal agencies must provide tribes with “a
16 reasonable opportunity to identify [their] concerns about historic properties, advise
17 on the identification and evaluation of historic properties, including those of
18 traditional religious and cultural importance, articulate [their] views on the
19 undertaking’s effects on such properties, and participate in the resolution of
20 adverse effects.” *Id.* This requirement imposes on agencies the duty to consult
21 with tribes in a “manner respectful of tribal sovereignty.” *Id.* § 800.2(c)(2)(ii)(B).

22 47. Acting “in consultation with . . . any Indian tribe . . . that might
23 attach religious and cultural significance to properties within the area of potential
24 effects, the agency official shall take steps necessary to identify historic properties
25 within the area of potential effects.” *Id.* § 800.4(b).

26 48. If the agency determines that no historic properties will be affected
27 by the undertaking, it must provide notice of such finding to state and tribal
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1 historic preservation offices, and the ACHP. *Id.* § 800.4(d). The regulations give
2 those parties the opportunity to object to such a finding, which elevates the
3 consultation process further. *Id.*

4 49. If the agency finds that historic properties are affected, it must
5 provide notification to all consulting parties and invite their views to assess
6 adverse effects. *Id.* Any adverse effects to historic properties must be resolved,
7 involving all consulting parties and the public. *Id.* § 800.6. If adverse effects
8 cannot be resolved, the process is elevated again to the ACHP and the head of the
9 agency undertaking the action. *Id.* §800.7. Until this process is complete, the
10 action in question cannot go forward.

11 **STATEMENT OF FACTS**

12 The Mexican Spotted Owl



22 *Photo credit: Apache Sitgreaves National Forest*

23 50. The Mexican spotted owl (*Strix occidentalis lucida*) is a nocturnal
24 raptor with a mostly dusky body mottled by irregular white and brown spots on its
25 abdomen, back, and head, and white stripes on its tail feathers.

51. Reaching up to 19 inches in length and 45 inches in wingspan, the Mexican spotted owl is one of the largest owls in North America. While spotted owls are solitary in non-breeding season, they are monogamous and generally form long-term, territorial bonds with their mates.

52. Mexican spotted owls are habitat specialists that nest in late seral forests and rocky canyons. Forests used for roosting and nesting often contain uneven-aged, multistory mature or old-growth stands with complex structure and high canopy cover. Mexican spotted owls use a wider variety of cover type for foraging than for roosting or nesting. These include pinyon-juniper woodlands, mixed-conifer and ponderosa pine forests, cliff faces and terraces between cliffs, and riparian zones. A Mexican spotted owl's home range consists of up to 2,500 acres during non-breeding season and up to 1,300 acres during breeding season.

53. Spotted owls forage at night and can become disoriented by bright lights as well as loud noises from activities such as drilling projects.¹ Noise and light pollution generated by nighttime drilling disturbs the natural behaviors of owls that depend on undisturbed conditions for hunting, breeding, and social structures.² The combination of artificial light and industrial noise can disorient Mexican spotted owls, interrupt behavioral patterns, and contribute to long-term

¹ U.S. Fish and Wildlife Serv., Mexican Spotted Owl Recovery Plan, First Revision (*Strix occidentalis lucida*), (Sept. 2012) at 56 (citing Frid, A. & L.M. Dill, Human-Caused Disturbance Stimuli as a Form of Predation Risk, 6 *Conservation Ecology* 11 (2002)).

² *Id.* (citing Payne, R.S., Acoustic Location of Prey by Barn Owls (*Tyto alba*), 54 *J. Experimental Biology* 535 (1971); Martin, G.R., Sensory Capacities and the Nocturnal Habitat of Owls (*Strigiformes*), 128 *Ibis* 266 (1986)); *see also* Sordello, R. et al., A Narrative Review of the Impact of Anthropogenic Light and Noise on Owls, 169 *Ibis* 5 (2025) (reviewing scientific literature on the effects of artificial light at night and anthropogenic noise on owls and concluding that such disturbances impair communication, hunting success, breeding, and health, and should be minimized through conservation and land-management measures).

1 habitat degradation and thus survival of the species. These compounding impacts
2 further degrade Mexican spotted owl habitat in areas already facing multiple
3 environmental pressures.³

4 54. Mexican spotted owls can also be impacted by the construction and
5 use of roads and trails through loss and fragmentation of habitat. Roads and trails
6 through Mexican spotted owl habitat may fragment habitat continuity, alter natural
7 movement patterns, and increase disturbance to resident owls.⁴

8 55. The Center petitioned the Service in 1989 to protect the Mexican
9 spotted owl under the ESA, and the Service listed the owl as a threatened species
10 in 1993.

11 The Yellow-Billed Cuckoo



21
22 ³ Senzaki, Masayuki, Taku Kadoya & Clinton D. Francis, Direct and Indirect
23 Effects of Noise Pollution Alter Biological Communities in and Near Noise-
24 Exposed Environments, 287 *Proc. Royal Soc'y B: Biological Sciences* 20200406
25 (2020); see also Mathiaparanam, K.J., R.A. Mulder & R. Hale, Anthropogenic
26 Double Jeopardy: Urban Noise and Artificial Light at Night Interact
27 Synergistically to Influence Abundance, 363 *Environmental Pollution* 125078
(2024).

28 ⁴ U.S. Fish and Wildlife Serv., Mexican Spotted Owl Recovery Plan, First
Revision (*Strix occidentalis lucida*), (Sept. 2012), at 45.

Photo credit: Flickr Creative Commons/Jay Bass

56. The yellow-billed cuckoo (*Coccyzus americanus*) is a medium-sized, neotropical migrant bird about 12 inches in length, with grayish-brown and white plumage, reddish primary flight feathers, boldly patterned tail feathers, and a blue-black and yellow bill.

57. After the Center petitioned the Service in 1998 to protect the cuckoo under the ESA, the Service listed the western distinct population segment of the cuckoo as threatened in 2014. Within the western distinct population segment, the cuckoo nests from southern British Columbia, Canada, to southern Sinaloa, Mexico. Cuckoo breeding habitat across the distinct population segment exists primarily in riparian woodlands along low-gradient streams, broad floodplains, and open riverine valleys that provide wide floodplain conditions.

58. The cuckoo has disappeared throughout most of its former range due to habitat loss and degradation from urban and agricultural development, water diversions, groundwater pumping, livestock grazing, and other human disturbances. In the Southwest, breeding habitat is often narrower, less sheltered, patchier, or sparser than elsewhere. Despite this, southeastern Arizona is one of the few remaining strongholds for this species.

59. In the desert, foothills, and mountain xeroriparian washes and drainages of southeastern Arizona, perennial flows are vital to cuckoo survival. Drainages may flow only briefly in the ephemeral drainages where cuckoos breed, with no sustained flow or standing water. Additionally, food availability for the cuckoo is largely influenced by the health, density, and species composition of understory and overstory vegetation—which, in turn, depend on natural and abundant groundwater dynamics. Thus, depletion of the groundwater table is devastating for cuckoo habitat in southeastern Arizona.

60. Moreover, as with most birds, artificial light and noise pollution disrupts the cuckoo's breeding, navigation, and foraging behaviors.⁵ The Service and the listing petition for the cuckoo specifically identify mining and groundwater diversions as primary threats to the cuckoo's continued existence.⁶

The San Pedro River Watershed

61. The San Pedro Watershed supports the highest diversity of vertebrate species in the inland United States, along with more than 400 bird species and 180 species of butterflies.

62. The San Pedro River Watershed and its tributaries, including Copper Creek, serve as important habitat for both migratory birds and year-round resident species, many of which rely on dark skies and the absence of noise pollution for navigation, foraging, and breeding behaviors.

⁵ See, e.g., Senzaki, Masayuki, Taku Kadoya, Clinton D. Francis, Direct and indirect effects of noise pollution alter biological communities in and near noise-exposed environments, 287 *Procs. of the Royal Soc'y Biological Sciences* (2020); U.S. Fish and Wildlife Serv., Threats to Birds: (Collisions & Nighttime Lighting), available at: <https://www.fws.gov/story/threats-birds-collisions-nighttime-lighting> (last visited August 20, 2026); see also Mathiapparanam, K. J., Mulder, R. A., & Hale, R., Anthropogenic double jeopardy: Urban noise and artificial light at night interact synergistically to influence abundance, 363 *Env't Pollution* 125078 (2024).

⁶ U.S. Fish and Wildlife Serv., Biological Opinion on Ongoing Grazing on the Coronado National Forest, Graham, Cochise, Pima, Pinal, and Santa Cruz Counties, Arizona and Hidalgo County, New Mexico (Sept. 30, 2021) at 174 ("[T]he primary threat to the cuckoo is loss or fragmentation of high-quality riparian habitat suitable for nesting . Habitat loss and degradation results from several interrelated factors, including alteration of flows in rivers and streams, mining, encroachment into suitable habitat from agricultural and other development activities on breeding and wintering grounds, stream channelization and stabilization, diversion of surface and ground water for agricultural and municipal purposes, livestock grazing, wildfire, establishment of nonnative vegetation, drought, and prey scarcity due to pesticides." (citation omitted)); *Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Western Distinct Population Segment of the Yellow-billed Cuckoo (Coccyzus americanus)*, 79 Fed. Reg. 59,992, 60,026 (Oct. 3, 2014).

63. The Galiuro Mountains, within which Copper Creek is located, is home to a diverse variety of wildlife, including at least six species listed as threatened or endangered under the Endangered Species Act.

64. Within the Galiuro range, Bassett Peak rises over 3000 feet above the semi-desert savannas of Sulphur Springs and the San Pedro Valley. Over 60% of the range is Madrean pine-oak woodland, a vegetative system recognized by Conservation International as a global conservation hotspot.⁷

65. Despite being one hour's drive from Tucson, the Copper Creek area is still free from paved roads and remains lightly traveled, providing a safe haven for wildlife with minimal disturbance aside from livestock use.

66. Habitat loss and fragmentation are the leading threats to the biodiversity of this area. The Copper Creek Project Area lies within a designated wildlife connectivity corridor established by the Arizona Game and Fish Department to connect the Santa Catalina Mountains and the Rincon Wildland Block with the Galiuro Wildland Block.⁸ Numerous species use this critical movement zone to migrate, forage, and breed.⁹

67. The San Pedro River remains the last major undammed river in the American Southwest, and as a result, its watershed "contains four of the rarest habitats in the southwest, a rich diversity of plants and animals, and a number of nationally significant paleontological and cultural sites."¹⁰ The Lower San Pedro

⁷ Mittermeier, R.A., et al., *Hotspots Revisited: Earth's Biologically Richest and Most Endangered Terrestrial Ecoregions* (2004).

⁸ Arizona Game and Fish Department, *Pima County Wildlife Connectivity Assessment: Detailed Linkages Santa Catalina/Rincon – Galiuro Linkage Design* (Aug. 2012).

⁹ *Id.*

¹⁰ Bureau of Land Management (BLM), *San Pedro Riparian National Conservation Management Plan* (July 2019) at 1.1.2.

1 River also contains the longest contiguous stretch of designated cuckoo critical
2 habitat—including at Copper Creek’s confluence with the San Pedro River.

3 68. Perennial stretches of the Lower San Pedro River play a crucial role
4 as wildlife corridors, connecting species such as the Mexican spotted owl and the
5 cuckoo between the Gila River and the upper San Pedro and its tributaries.¹¹

6 The Copper Creek Exploratory Project

7 69. The Copper Creek Project is an exploratory drilling operation in
8 search of copper deposits on 1,300 acres of BLM-managed public land near the
9 small town of Mammoth, Arizona. Approximately two miles of Copper Creek fall
10 within the Project Area. Roughly nine miles downstream, Copper Creek flows into
11 the San Pedro River.

12 70. In the northern Galiuro Mountains, overlooking the San Pedro River,
13 BLM approved mineral exploration requiring the excavation and leveling of 67
14 drill pads, each about one-quarter acre, with 18 acres of associated surface
15 disturbance. This drilling network expands on the 4 acres of surface disturbance
16 authorized under a separate BLM “notice-level” approval, and extensive drilling
17 on adjacent state and private land. According to BLM’s EA, “exploration activities
18 are expected to be conducted on up to all 67 drill pads within the Project Area 24
19 hours per day, 365 days per year, as weather permits, for 2 to 3 years.” EA at 10.

20 71. After BLM’s publication of the Draft EA in February 2025, the
21 Center, LSPWA, the Tribe, and others submitted public comments identifying
22 numerous environmental concerns with the Project in April 2025.

23 72. On June 13, 2025, a third-party environmental consulting company
24 submitted a Biological Evaluation (“BE”) to BLM. The BE determined that the
25 Copper Creek Exploration Project may affect, but is not likely to adversely affect

26 ¹¹ See BLM, Final Environmental Assessment: Copper Creek Exploration Project
27 (June 30, 2025) (“EA”), at Figure 6.

1 the threatened yellow-billed cuckoo, triggering informal consultation with the
2 Service under ESA Section 7(a)(2). BLM engaged in informal consultation with
3 the Service regarding impacts on the cuckoo. However, based on an assertion that
4 the Mexican spotted owl is not present in the Project Area, the agencies did not
5 engage in ESA consultation regarding impacts on the Mexican spotted owl.

6 73. Just two weeks later, the Service issued a letter concurring with
7 BLM's no-adverse-effect determination for the cuckoo.

8 74. On June 30, 2025, BLM released its final environmental assessment
9 ("EA"), Finding of No Significant Impact ("FONSI") and Decision Record.

10 75. Most relevant to this Complaint, the EA, BE, Decision Record, and
11 Concurrence, among other deficiencies, insufficiently analyze the impacts of the
12 Project's light pollution, extensive groundwater use, and increased traffic noise.

13 76. Moreover, contrary to the agencies' unsupported statements that the
14 Mexican spotted owl is not present in the area, the Center's and LSPWA's
15 comments on BLM's Draft EA included photographic evidence of a Mexican
16 spotted owl less than half a mile from numerous of the Project's 67 drill pads,
17 shown in the photo below.¹²

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19
20 ¹² See Center EA Comment at 8 n.6; LSPWA EA Comment at 10, *see also* AZ
21 Central, Camera-trap images show wildlife diversity in the Lower San Pedro River
22 Watershed, The Arizona Republic, March 24, 2025. (publishing photograph of a
23 "Mexican spotted owl, currently listed as threatened under the Endangered Species
24 Act," that was "captured on a camera-trap by a local citizen scientist near the
25 proposed Copper Creek mine exploration project"); Hobbs, Justin, Mining project
26 near San Pedro River moves forward, despite concerns over water, wildlife, and
27 tribal sites, ABC15 ARIZONA, Aug. 8, 2025 ("A photo provided to ABC15 by a
28 source close to the project shows one of the [threatened Mexican spotted] owls
just a quarter mile from a proposed drill site. The photo was taken in October
2024. Despite that evidence, the final Environmental Assessment stated the
species was 'not present' in the area.").



Mexican spotted owl detected within the vicinity of the Copper Creek Project, October 2024.

Photo credit: Lower San Pedro Watershed Alliance

77. Artificial Lighting: Pursuant to the EA and Decision Record, all light fixtures are required to be hooded, shielded, and pointed downwards in order to minimize impacts to wildlife: “All fixed lighting would be hooded and shielded. Lights would be directed down toward the interior of the drilling operations to minimize light pollution onto any adjacent lands as viewed from a distance, except for safety in unforeseeable circumstances such as a medical emergency.” EA at 12, *see also id.* at 15, 48, 72 (requiring that “all lighting fixtures would be hooded and shielded, face[d] downward and directed on to the pertinent site only” in an effort to “minimize impacts [to wildlife habitat connectivity]” by minimizing light pollution at night); *id.* at 48 (concluding that light impacts will be “spatially limited,” in reliance on a study using lights “aimed directly downward at 90-degree intervals”).

1 78. These light mitigation requirements were key to BLM’s conclusion,
2 and the Service’s Concurrence, that the Project is not likely to adversely affect the
3 western yellow-billed cuckoo. *See* BE at 25-27 (noting “design features and BMPs
4 [best management practices] are expected and intended to minimize impacts to
5 wildlife,” and affirming that “design features and BMPs from the Draft EA”
6 including “design features for nighttime lighting at the drilling locations,” “are
7 expected to minimize potential impacts on the Yellow-billed Cuckoo”);
8 Concurrence at 4–5 (“[D]esign features for nighttime lighting at the drilling
9 locations would attenuate lighting effects by more than 99 percent within less than
10 90 ft from the lighting sources. This attenuation ensures that the riparian habitat
11 remains minimally affected by artificial lighting. ... [P]otential effects to yellow-
12 billed cuckoos from nighttime lighting during project activities are insignificant
13 because all external lighting at pads will be minimized to reduce disorientation and
14 other effects to migrating cuckoos to an insignificant level.”).

15 79. Light pollution is well-known to negatively impact wildlife—
16 specifically migratory birds such as the cuckoo. As explained in the BE:

17
18 Artificial lighting from the Project has the potential to impact
19 migratory birds including the yellow-billed cuckoo. Beyond habitat
20 avoidance or attraction, artificial lighting can: Disrupt circadian
21 rhythms, affecting sleep, hormone production, and metabolic
22 processes in birds, mammals, amphibians, and insects; Alter
23 migratory navigation for nocturnal species, particularly birds and
24 some bat species; Suppress melatonin production, which plays a role
in immune function and reproduction; Interfere with insect
populations, many of which are drawn to light sources, leading to
increased mortality and reduced prey availability for insectivores.

25 BE at 25–26; *see also* EA at 62 (“Artificial lighting from the Project has the
26 potential to impact migratory birds including the yellow-billed cuckoo.”);
27 Concurrence at 4 (“As described in the BE, the following effects to the western
28

1 yellow-billed cuckoo could occur as a result of the proposed action: ... nighttime
2 lighting”).

3 80. For many of the same reasons, artificial light also impacts Mexican
4 spotted owls,¹³ a largely nocturnal hunter.¹⁴

5 81. Despite the requirement stated repeatedly in the EA, Decision
6 Record, BE, and Concurrence that all light fixtures be shielded, hooded, and
7 pointed directly downwards, it appears that these baseline mitigation measures are
8 not being followed. On March 22, 2026, a LSPWA member took the following
9 photographs of a Project drill rig. The pictured light fixtures do not appear to be
10 hooded, shielded, or aimed directly downwards.

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26 ¹³ See *supra* note 3.

27 ¹⁴ See U.S. Fish and Wildlife Serv., Mexican Spotted Owl Recovery Plan, First
28 Revision (*Strix occidentalis lucida*), (Sept. 2012) at 5..



Photographs taken by the Lower San Pedro Watershed Alliance on March 22, 2026. 32°45'05.5"N, 110°28'39.6"W.

82. On April 10, 2026, the Center and LSPWA submitted a letter to BLM requesting that BLM require compliance with the light mitigation measures required by the EA, Decision Record, and ESA consultation documents. BLM did not respond.

83. Moreover, Plaintiffs' public comment on the Draft EA specifically pointed out that existing "notice-level" operations in the Copper Creek area were not following light mitigation measures. Plaintiffs' comment specifically stated that a site visit revealed "[l]ights were not hooded." Center EA Comment at 23.

84. Noise: BLM acknowledged in its BE that the Copper Creek Exploration Project will increase noise pollution both at drill sites and on access roads. BE at 19. Specifically, the BE states that "[n]oise emission increases ...

1 would be localized to one or two active pads *and access road locations.*” *Id.*
2 (emphasis added).

3 85. A key piece of the Project approved by the EA is the expansion of
4 existing roads and the development of new roads, including the widening of
5 62,958 feet of existing roads from 8 feet to 12 feet wide. EA at 7. Of these roads,
6 1,200 feet are within riparian areas. *Id.* at 8.

7 86. It is well-established that road construction and traffic noise can
8 decrease species abundance and alter biological communities and that increased
9 noise from drilling and related activities may disturb cuckoos in the Project Area.¹⁵

10 87. Despite acknowledging that the Project will “increase[]” noise
11 emissions on access roads, the agencies failed to assess how increased traffic noise
12 will affect wildlife—instead, the agencies only evaluated noise emissions from
13 drill pads. *See* EA at 19–20; Concurrence at 5 (only assessing noise increases at
14 drill sites). Neither BLM nor the Service measured or estimated the Project’s noise
15 emission increases on roads—let alone assess how the increased road noise will
16 affect the cuckoo or other wildlife.

17 88. Moreover, BLM also makes the unsupported assertion that “[n]oise
18 from Project equipment during travel would be transient and similar to the existing
19 noise from recreational and ranching traffic.” BE at 19; *but see* EA at 11
20 (explaining that the Project will require, among other equipment, two drill rigs,
21 two light plants, a fuel truck, a backhoe or excavator, a bulldozer, a 3,500-gallon
22 water truck, a UTV, four generators, two “Solid Removal Units,” a forklift truck,
23 and up to ten 4WD pickup trucks, with potential “[a]dditional equipment”
24 including rotary drills).

25
26
27 ¹⁵ *See supra* note 5.

1 89. BLM’s statements that noise will increase and that noise will stay
2 the same are inconsistent. Additionally, BLM provides no data to support its
3 assertion that noise from recreation or ranching traffic will be similar to heavy
4 machinery and frequent trucks driving to and from drill sites.

5 90. Groundwater Withdrawals: The Project requires substantial
6 groundwater withdrawals from wells hydrologically connected to Copper Creek
7 and the Lower San Pedro Watershed. Specifically, the Project authorizes
8 groundwater withdrawals of approximately 70,000 gallons per month per drill rig,
9 with up to two drill rigs to operate at any given time. This extensive groundwater
10 pumping, which is occurring in addition to drilling and associated groundwater
11 withdrawal on adjacent private and state land, is unprecedented in Copper Creek.

12 91. The EA also acknowledges that groundwater declines are “the
13 primary driver of declines of riparian species” and that groundwater pumping can
14 result in “reduced surface water flow and reduces use of groundwater
15 (evapotranspiration) by plants.” EA at 25.

16 92. Despite this enormous and unprecedented volume of groundwater
17 withdrawals—and the acknowledgment that groundwater withdrawals affect
18 riparian habitat and the species that depend on it—BLM expressly states that it did
19 not attempt to evaluate the impacts of groundwater pumping on the cuckoo:

20
21 Project impacts to surface water and groundwater levels resulting
22 from groundwater pumping are unknown. Those water levels, and the
23 habitats and communities dependent upon them, may be affected by
24 the Project. There is a potential risk of reduction or cessation of flows,
declines or elimination of pools, and lowering of the groundwater
table in Upper Copper Creek.

25 BE at 23. The EA also reflects the uncertainty in the Project’s impacts to
26 surface water and groundwater levels. EA at 79.

1 93. Rather than *assessing* the impacts of the Projects expansive
2 groundwater withdrawals, BLM relies on an “Adaptive Management Plan”
3 (“AMP”) to justify its unsupported conclusion that groundwater pumping will not
4 adversely impact riparian resources or the yellow-billed cuckoo.

5 94. Both the EA and BE refer to the Adaptive Management Plan as the
6 mitigation measure for the impacts to groundwater and a means to monitor the
7 groundwater use. BE at 5, EA at 25.

8 95. The Service’s seven-page Concurrence likewise fails to assess the
9 impacts of groundwater withdrawals on the cuckoo’s habitat. Instead, the Service
10 simply states it “do[es] not expect significant effects to cuckoo habitat from
11 groundwater pumping” because BLM has an AMP. Letter of Concurrence at 5.

12 96. While the AMP provides for groundwater monitoring, it does not
13 prohibit groundwater withdrawals that reduce groundwater levels or degrade
14 riparian habitat. Instead, BLM will require that Project groundwater pumping be
15 reduced only if the “BLM determines that Project groundwater pumping is the
16 cause of a parameter falling below the expected range.” BE at 6. This framework
17 is arbitrary for several reasons. First, the AMP does not explain how BLM will
18 make such a determination.¹⁶ Moreover, if groundwater levels fall below critical
19 levels—regardless of the cause—further pumping will decimate the watershed and
20 riparian-dependent species like the cuckoo.

21 97. Additionally, the AMP protocol is unenforceable because BLM
22 decision makers retain discretion over the degree of any pumping reductions.

23
24 ¹⁶ See *Ctr. for Biological Diversity v. Moore*, No. CV-23-00354, 2026 WL
25 2409453, at *8 (D. Ariz. Aug. 18, 2026) (finding that a BiOp violated the ESA
26 because its requirement that effects be directly attributable the agency action failed
27 to specify “which agency will make this determination, what metrics it will use to
28 measure causation, and what amount of causation is sufficient to trigger reinitiated
consultation”).

1 Specifically, the BE provides that “some flexibility to determine the actual
2 percentage of reductions based on the available data for any given evaluation
3 period is reserved at the discretion of BLM decision makers.” BE at 7.

4 98. Further, the Adaptive Management Plan only monitors groundwater
5 impacts for the duration of the Project, despite BLM’s acknowledgement that
6 impacts to groundwater “could be delayed and have effects after the pumping-
7 induced change occurs and after the Project is completed.” *Id.* at 23–24.

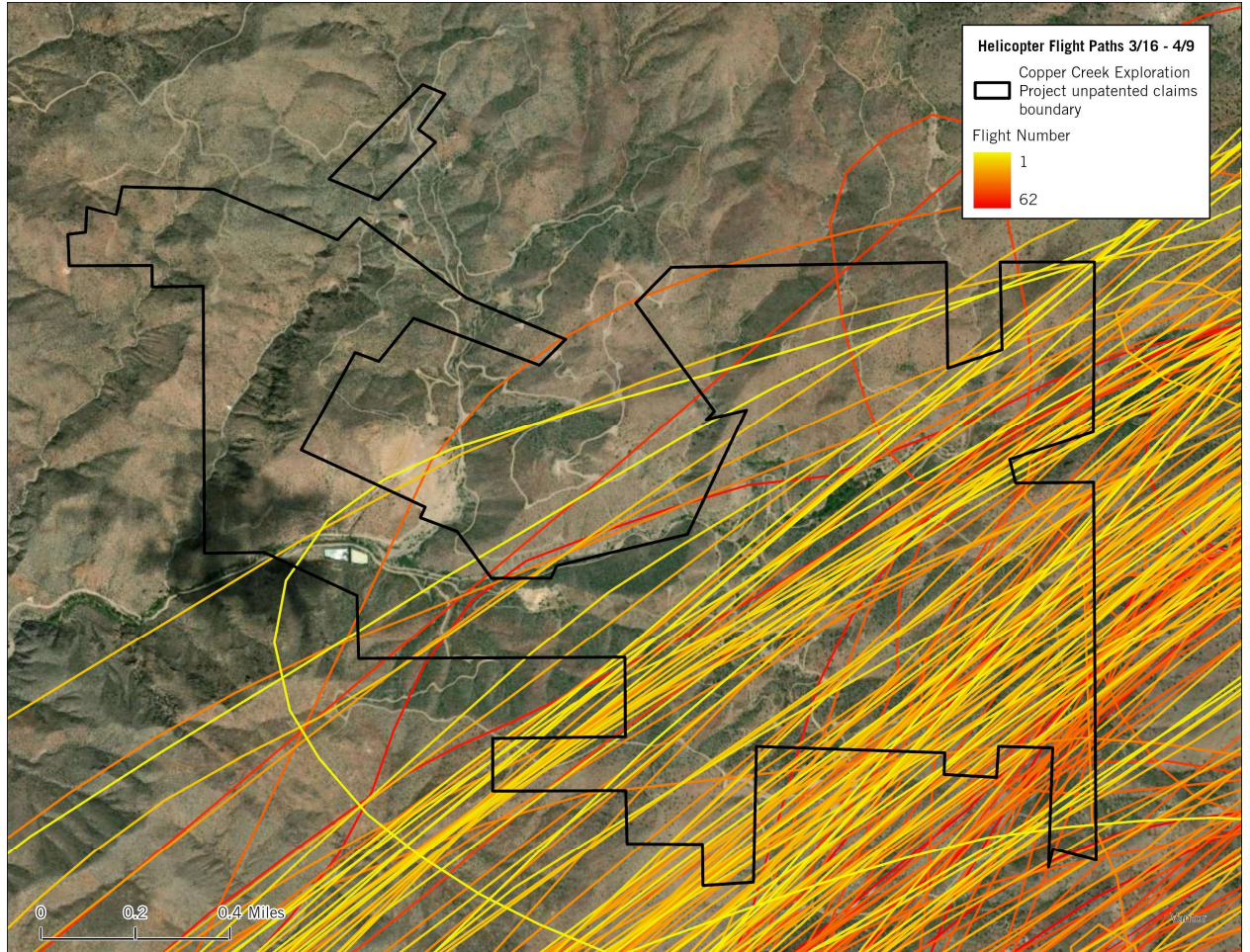
8 99. Perhaps most importantly, the EA, BE, and Concurrence do not
9 explain whether the AMP’s generic thresholds correspond to the yellow-billed
10 cuckoo’s habitat requirements or whether implementation of the AMP would
11 prevent adverse effects to cuckoo habitat.¹⁷

12 100. The agencies’ conclusions regarding the Project’s impacts on
13 groundwater arbitrarily rely on future monitoring to resolve uncertainties that must
14 be analyzed during consultation. The agencies acknowledge that the effects of the
15 Project’s groundwater pumping are unknown and may include reductions in spring
16 flows and declines in groundwater levels. Rather than evaluate those uncertain
17 effects using the best available scientific and commercial data, the agencies defer
18 analysis until after Project implementation.

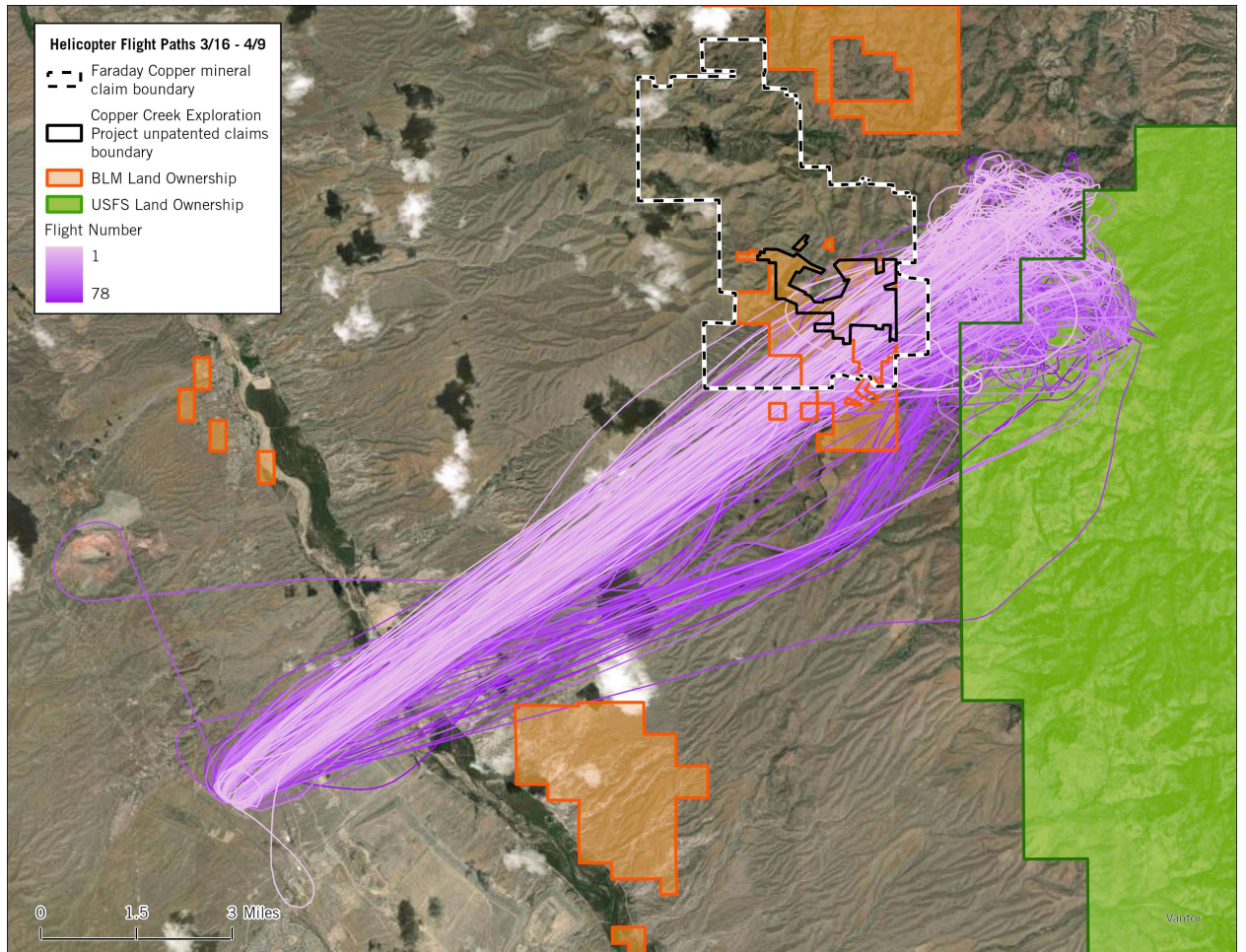
19 101. Helicopter Flights: Beginning March 16, 2026, extensive helicopter
20 overflights, consistent with “line surveying” for mineral deposits, were reported in
21 the Project Area. Line surveying is a mineral exploration technique in which
22 helicopters fly survey lines over a project area while carrying sensitive instruments
23 on a cable beneath the helicopter. This survey technique requires helicopters to fly
24 extremely low to the ground. The following map depicts the flight paths of the
25 approximately 62 helicopter survey flights over the Copper Creek Project Area

26 ¹⁷ See *Ctr. for Biological Diversity*, 2026 WL 2409453, at *8 (rejecting agency’s
27 reliance on generic grazing metrics as a measure of impacts to species).

1 from March 16, 2026, to April 9, 2026. Concerningly, these flight paths are
2 directly overhead of the location where Mexican spotted owls have been
3 repeatedly documented.



19 *Map of helicopter flight paths over Copper Creek Exploration Project Area*
20 *from March 16 – April 9, 2026. Compiled using data from FlightRadar24.*



Maps of helicopter flight paths over Copper Creek Exploration Project Area from March 16 – April 9, 2026. Compiled using data from FlightRadar24.

102. The Plan of Operations submitted to BLM does not disclose any use of helicopters for the exploration project. The Plan of Operation states that “[t]ransport of personnel and equipment within the Project Area will be by unpaved roads.” No helicopter use whatsoever—for transport, mineral surveying, or any other purpose—was disclosed. Pursuant to 43 C.F.R. § 3809.601(b), BLM may suspend project operations if the corporation fails to comply with the approved Plan of Operations.

1 103. None of BLM’s or the Service’s environmental review documents—
2 the EA, Decision Record, BE, or Concurrence—disclose or analyze the impacts of
3 helicopter overflights on wildlife. Low-altitude helicopter overflights can cause
4 significant noise and visual disturbances to wildlife.¹⁸ Moreover, low-altitude
5 helicopter activity can physically disturb the ground through high-velocity air
6 movement caused by “rotor wash.”¹⁹ These disturbances are known to impact
7 wildlife—including birds—by causing behavioral changes, habitat abandonment,
8 and breeding and foraging disruptions.²⁰

9 104. It is unclear from the EA, Decision Record, BE, and Concurrence
10 whether BLM or the Service was aware when these documents were issued that
11 the helicopter flights would occur. Regardless, the agencies must assess the
12 helicopter surveys’ significant impacts on threatened and endangered species—

13 ¹⁸ See, e.g., Anderson, B.A., A Literature Review of the Effects of Helicopter
14 Disturbance and Noise on Selected Wildlife Species (2007).

15 ¹⁹ See, e.g., *id.* at 4-32.

16 ²⁰ See, e.g., *id.*; Delaney, D.K. et al., Effects of Helicopter Noise on Mexican
17 Spotted Owls, 63 *J. Wildlife Mgmt.* 60, 74 (1999) (finding that low-altitude
18 helicopter overflights can cause Mexican spotted owls to flush, and recommending
19 conservation measures to mitigate disturbance, including prohibiting flights within
20 a 105-meter radius of a Mexican spotted owl and separating overflights by a
21 minimum of 7 days); Stokes, T., Helicopter Effects Upon Nesting White-Bellied
22 Sea-Eagles and Upon Smaller Birds at an Isolated Protected Location, 20 *Corella*
23 25, 27 (1996) (“In all such cases involving repeated intense short-term exposure to
24 piercing sound and wind, the eagles could be expected to leave the nest and
25 remain away during operation of the helicopter. Habituation is most unlikely to
26 ever occur. Therefore, if it is essential that helicopters be used near raptor nests,
27 authorities must choose times in the birds’ breeding cycles where such activity is
28 least likely to disrupt the breeding.”); Mason, J. Tate et al., Anthropogenic Noise
Impairs Owl Hunting Behavior, 199 *Biological Conservation* 29, 31 (2016)
(chronic noise levels above 61 dBA caused by compressor station so interfered
with the hearing of Northern saw-whet owls that the owls were unable to capture
any mice at all); Senzaki, Masayuki et al., Traffic Noise Reduces Foraging
Efficiency in Wild Owls, 6 *Sci. Reps.* 30602, 30603 (2016) (traffic noise levels of
40 dBA reduced long-eared and short-eared owls’ ability to detect prey, while
noise levels of 80 dBA made prey detectability virtually impossible).

1 either at the time the environmental documents were issued or now through
2 renewed ESA consultation.

3 105. Procedural History: On June 30, 2025, BLM issued its Decision
4 Record for the Copper Creek Exploration Project. On July 28, 2025, LSPWA
5 submitted a request to the BLM Arizona State Director to review and stay BLM's
6 Decision Record. The Center and the Tribe likewise submitted a joint review and
7 stay request on July 29, 2025. On July 31, 2025, the State Director denied both
8 requests.

9 106. On April 10, 2026, the Center and LSPWA submitted a letter to
10 BLM alerting the agency to the use of unhooded and unshielded lighting within
11 the Project Area, in violation of BLM's EA. BLM did not respond.

12 107. On April 28, 2026, Plaintiffs provided all Defendants with a 60-day
13 notice of intent to sue identifying the ESA violations described in this Complaint.

14 108. The Service sent Plaintiffs a letter acknowledging the notice of
15 intent to sue on June 17, 2026. In a single sentence, the Service denied any
16 violations of the ESA regarding the yellow-billed cuckoo. The Service did not
17 address the presence of Mexican spotted owl in the Project Area. BLM did not
18 respond to the notice of intent to sue.

19 109. More than 60 days have passed since Defendants received the notice
20 letter.

21 110. On information and belief, the Copper Creek Exploration Project is
22 ongoing, and exploratory mining activities have not been completed.

23 The Tribe Repeatedly Requested Consultation For Historic Properties in
24 Copper Creek

25 111. The entire Lower San Pedro Valley including the foothills of the
26 Galiuro Mountains and, in particular, Copper Creek lie within the aboriginal
27 territory of the Western Apache people.

1 112. According to Traditional Apache belief and practice, to which many
2 members of the Tribe subscribe to this day, running water from streams, creeks,
3 springs, and seeps—like those found in the Copper Creek Project Area—are
4 important, profound, and sacred places of communion with Apache deities.

5 113. Several bands of Apache people, including the Pinal, San Carlos,
6 and Aravaipa bands lived, hunted, and harvested traditionally and culturally
7 important foods, medicines, and resources in and around the Copper Creek Project
8 Area before the United States Government removed the Apache people to the San
9 Carlos Reservation and imprisoned them there.

10 114. To this day, members of the Tribe return to the Copper Creek Project
11 Area to pray in and among its waters and harvest traditionally and culturally
12 important foods, medicines, and resources.

13 115. On August 30, 2022, Faraday Copper sent a letter to the Tribe
14 providing notice about the Copper Creek Project.

15 116. On September 15, 2022, Tribe Chairman Terry Rambler sent a letter
16 to Faraday Copper’s President and CEO and its Vice President for Corporate
17 Development and Sustainability advising that “[t]he Tribe and its members have
18 had a deep, historical presence in the [Project] area . . . for hundreds of years” and
19 that the area “is part of the aboriginal territory of [the] Tribe.” Chairman Rambler
20 advised that “the impact of mining on water supplies is of deep concern, and we
21 would be most interested to understand the impacts of the Project on the
22 surrounding San Pedro River, seeps, creeks, springs and aquifers.”

23 117. On July 2, 2024, Chairman Rambler sent a letter to BLM State
24 Director Raymond Suazo expressing the Tribe’s concerns about BLM’s failure to
25 consult with the Tribe about the Copper Creek Project, including that:

- 26 a. BLM failed to “first consult[] with the Tribe” before progressing
27 the Project;

- 1 b. “the drilling may be affecting the Tribe’s cultural and ancestral
2 resources, water rights, and downstream interests”;
- 3 c. “[i]n August 2023, BLM officials notified the Tribe . . . of its
4 plans to complete NEPA analysis of the Faraday exploration
5 plan by January 2024,” but in June 2024, “without further
6 communications with the Tribe, BLM provided Faraday Copper
7 with Notice-level approval to conduct drilling at 11 sites on
8 BLM land in Copper Creek”; and
- 9 d. BLM failed to follow its regulatory and policy requirements to
10 consult with affected Tribes including (1) informing all
11 potentially impacted Tribes of exploration notices; (2) allowing
12 Tribes to confidentially identify specific geographic areas of
13 interest; (3) inviting Tribes to participate in pre-exploration and
14 mining plan submission meetings; (4) exploring
15 intergovernmental teams that include officials from the Tribe;
16 (5) consulting on reclamation plans and post-mining land uses;
17 and (6) making additional efforts to include the Tribe.

18 118. Accordingly, Chairman Rambler asked BLM to “suspend the drilling
19 and make plans to meet with the San Carlos Council, the Tribe’s governing body.”
20 Chairman Rambler also asked BLM to “promptly coordinate with Vernelda Grant,
21 the Tribe’s Historic Preservation Officer, regarding places associated with the
22 Tribe’s history that may exist within impacted lands.”

23 119. On September 17, 2024, Chairman Rambler sent a letter to Secretary
24 of Interior Deb Haaland and BLM Director Tracy Stone-Manning expressing
25 “grave concern with a lack of response and failure to consult by [BLM] Arizona
26 State Director Suazo regarding Notice-Level exploratory mining operations by
27 Faraday Copper.” Chairman Rambler stated that the Copper Creek Project Area
28

1 holds “major cultural importance to [the] Tribe,” is “very close to [the] Tribe’s
2 trust lands,” and that “the drilling may be affecting the Tribe’s cultural and
3 ancestral resources, water rights, and downstream interests.”

4 120. Chairman Rambler further wrote that “BLM has yet to complete
5 substantive steps in the processes required by the National Environmental Policy
6 Act or to otherwise learn about and analyze [the Tribe’s] concerns.” Again,
7 Chairman Rambler asked that “drilling be suspended until BLM complete[s]
8 meetings with the San Carlos Council, the Tribe’s governing body, and
9 consultations with Ms. Vernelda Grant, the Tribe’s Historic Preservation Officer.”

10 121. On April 14, 2025, Chairman Rambler sent a letter to State Director
11 Suazo and other BLM employees, providing public comments on the Draft
12 Environmental Assessment that BLM prepared for the Copper Creek Project. In
13 the letter, Chairman Rambler expressed concerns about how the Copper Creek
14 Project “threatens the Tribe’s cultural, traditional, and religious practices and
15 resources.” Chairman Rambler identified that “many cultural sites are located
16 nearby,” including “both prehistoric and historic burial sites, and remnants of pit
17 houses and stone houses, where traditional pottery and personal objects may still
18 be found.” Chairman Rambler’s letter also advised BLM of “the many springs
19 close to Copper Creek [that] are sacred to members of the Tribe” and that the
20 Tribe’s members “make offerings to springs before approaching them and often
21 make another upon leaving,” that members use “spring water . . . in sacred
22 ceremonies, including both coming of age ceremonies and also cultural and
23 religious cleansing ceremonies.”

24 122. Chairman Rambler further wrote that “[t]he EA fails to consider the
25 presence of natural springs in the Copper Creek area or how Faraday’s substantial
26 pumping will deplete these springs [and] cause them to dry up, possibly forever”;

1 and that these losses “would be devastating to tribal members who depend on
2 these springs.”

3 123. Chairman Rambler further wrote that “additional traffic for road
4 expansion[] brings a substantial risk that sacred areas will become subject to
5 looting and desecration.”

6 124. On June 11, 2025, Chairman Rambler sent a letter to BLM’s Safford
7 Field Office, requesting consultation related to the Draft Environmental
8 Assessment for the Copper Creek Project “to discuss areas of traditional and
9 cultural importance.” Chairman Rambler acknowledged that BLM held a “Tribal
10 Listening Session” in May 2025, where Vernelda Grant, the Tribe’s Historic
11 Preservation Officer, presented information about cultural resources in the Copper
12 Creek Project Area and in response to which BLM asked Ms. Grant to discuss the
13 Project further, but clarified that “meaningful consultation can only occur before
14 the San Carlos Council, the Tribe’s governing body.”

15 125. At no time did BLM respond to Chairman Rambler’s letters, much
16 less by scheduling one of the requested consultations.

17 126. At no time did BLM appear before the San Carlos Council to discuss
18 the Copper Creek Project or its impacts on the Tribe’s cultural resources.

19 127. On information and belief, BLM did not, at any time, perform a
20 Section 106 process in which it (1) determined the area of potential effect of the
21 Copper Creek Project; (2) make a reasonable and good faith effort to identify and
22 disclose historic properties within such area of potential effect; (3) evaluate
23 potential adverse effects on any historic properties; (4) seek ways to avoid,
24 minimize, or mitigate any adverse effects to such historic properties; or (5) consult
25 with the Tribe, ACHP, of Arizona State Historic Preservation Office concerning
26 any of the above, even though the Tribe repeatedly sought to consult with BLM on
27 these very subjects.

1 **CLAIMS FOR RELIEF**

2 **I. Violations of the Endangered Species Act**

3 ***Claim 1: BLM is in ongoing violation of ESA Section 7(a)(2) by failing to***
4 ***consult on the Project's impact on Mexican spotted owl.***

5 128. Plaintiffs hereby incorporate by reference all preceding paragraphs.

6 129. Pursuant to the ESA, BLM is required to consult with the Service if
7 its action may affect any listed species or critical habitat. 16 U.S.C. § 1536(a)(2);
8 50 C.F.R. § 402.14(a).

9 130. The “may affect” standard triggering consultation is low. *See Am.*
10 *Bird Conserv. v. FCC*, 545 F.3d 1190, 1191 (9th Cir. 2008); *Ctr. for Biological*
11 *Diversity v. BLM*, 698 F.3d 1101, 1122 (9th Cir. 2012) (“[P]etitioners need to
12 show only that an effect on listed species or critical habitat is plausible.”).

13 131. “Where actions ‘may affect’ listed species, ‘the burden is on the
14 Federal agency to show the absence of likely, adverse effects to listed species or
15 critical habitat as a result of its proposed action in order to be excepted from the
16 formal consultation obligation.’” *Ctr. for Biological Diversity*, 698 F.3d at 1122
17 (quoting 51 Fed. Reg. at 19949).

18 132. In assessing a proposed action’s impact on ESA listed-species,
19 federal agencies must “use the best available scientific and commercial data.” 16
20 U.S.C. § 1536(a)(2).

21 133. Plaintiffs provided photographic evidence demonstrating the
22 presence of Mexican spotted owl in the Project Area.

23 134. Well-established science demonstrates that exploratory drilling near
24 Mexican spotted owls affects the species. Due to the chronic and widespread
25 nature of the Copper Creek Exploration Project’s impacts on the spotted owl, there
26 is also a high likelihood that not only will resident owls be greatly affected but the
27 owls may permanently abandon territories in the impacted area.

1 135. BLM ignored the data provided by Plaintiffs proving the presence of
2 Mexican spotted owl in the Project Area, violating the ESA's requirement to base
3 its determination on the "best scientific and commercial data available." *Id.*

4 136. BLM violated and remains in ongoing violation of the ESA by
5 failing to initiate and complete consultation on the impacts of the Copper Creek
6 Exploratory Drilling Project on the Mexican spotted owl, despite information
7 demonstrating the owl is present in the Project Area. *Id.*

8 ***Claim 2: The Service unlawfully concurred and BLM arbitrarily relied on***
9 ***the Service's Concurrence concerning the cuckoo, in violation of Section***
10 ***7(a)(2) of the ESA.***

11 137. Plaintiffs hereby incorporate by reference all preceding paragraphs.

12 138. In preparing its Letter of Concurrence, the Service failed to properly
13 consider the impacts to the yellow-billed cuckoo in the Project Area.

14 139. The Service's Letter of Concurrence is arbitrary and capricious and
15 inconsistent with the best available science because, among other reasons, it fails
16 to: assess the consequences of the Project's groundwater withdrawals on the
17 cuckoo's habitat, improperly relies on an inadequate and unenforceable AMP, and
18 fails to meaningfully assess the impacts of the increased traffic caused by the
19 Project.

20 140. Therefore, the Service's determination in the Letter of Concurrence
21 that the Copper Creek Exploratory Drilling project is not likely to adversely affect
22 any threatened or endangered species, or critical habitat, is unsupported, arbitrary
23 and capricious and not in accordance with law. *Id.* § 1536(a)(2); 5 U.S.C. §
24 706(2)(A).

25 141. Additionally, BLM's reliance on the Service's Letter of Concurrence
26 violates BLM's independent and continuing duty to ensure that its authorization
27 and implementation of the Copper Creek Exploratory Drilling Project is not likely
28

1 to jeopardize the continued existence of any threatened or endangered speices, in
2 violation of Section 7 of the ESA. 16 U.S.C. § 1536(a)(2); *see also Ctr. for*
3 *Biological Diversity v. U.S. BLM*, No. CV-24-00141, 2026 U.S. Dist. LEXIS
4 68876, at *30 (D. Ariz. Mar. 30, 2026) (holding that BLM violated the ESA by
5 relying on an unlawful concurrence).

6 ***Claim 3: BLM and the Service violated, or are in violation of, ESA Section***
7 ***7(a)(2) by failing to address the extensive helicopter flights.***

8 142. Plaintiffs hereby incorporate by reference all preceding paragraphs.

9 143. Beginning in March 2026, extensive low-altitude helicopter
10 operations were conducted over the Copper Creek Project Area in connection with
11 mineral exploration activities. The flights were consistent with helicopter-
12 supported geophysical or line-survey exploration methods associated with mineral
13 development.

14 144. Low-altitude helicopter operations generate substantial noise, visual
15 disturbance, and rotor wash, all of which may affect wildlife behavior, breeding,
16 foraging, movement, and habitat use.

17 145. The BE and Concurrence contain no analysis of helicopter noise,
18 flight frequency, flight altitude, disturbance to wildlife, impacts to listed species
19 and rotor wash, all of which may affect wildlife behavior, breeding, foraging,
20 movement and habitat use.

21 146. Because the BLM and Service did not discuss helicopter use in any
22 environmental review document, it is unclear whether either agency was aware
23 when these documents were issued that the helicopter flights would occur. If the
24 agencies were aware that this helicopter use would occur, the Service's
25 Concurrence—and BLM's reliance on the Concurrence—was arbitrary and
26 violated the agencies' duty under ESA Section 7(a)(2) to include these flights in
27 the baseline and to assess the impacts of the Project on ESA-listed species, the
28

1 cuckoo and spotted owl. 16 U.S.C. § 1536(a)(2); *see Motor Vehicle Mfrs. Ass’n*,
2 463 U.S. at 43 (noting an agency acts arbitrarily when it “fail[s] to consider an
3 important aspect of the problem”).

4 147. If, alternatively, the agencies were not aware during ESA
5 consultation that helicopter use would occur, the agencies must reinitiate
6 consultation to address the impacts of the helicopter flights on ESA-listed species,
7 including the cuckoo and spotted owl. The ESA’s implementing regulations
8 require reinitiation of consultation, as relevant here:

9
10 If new information reveals effects of the action that may affect listed
11 species or critical habitat in a manner or to an extent not previously
12 considered;

13 [or]

14 If the identified action is subsequently modified in a manner that
15 causes an effect to the listed species or critical habitat that was not
16 considered in the biological opinion or written concurrence

17 50 C.F.R. § 402.16(a)(2)–(3). The extensive helicopter overflights over the Project
18 Area constitute new information, and/or a modification of the Project, that impacts
19 ESA- species—including the cuckoo and spotted owl—in a manner and to an
20 extent not considered in the Concurrence.

21 148. In the absence of the required consultation, BLM is in ongoing
22 violation of its obligations under ESA Section 7 to ensure that its actions are not
23 likely to jeopardize the continued existence of the Mexican spotted owl and
24 yellow-billed cuckoo. 16 U.S.C. § 1536(a)(2).

25 149. Plaintiffs and their members are injured by BLM’s and the Service’s
26 violations of ESA Section 7(a)(2) and failure to reinitiate and complete
27 consultation.

1 ***Claim 4: BLM and the Service are in ongoing violation of ESA Section***
2 ***7(a)(2) by failing to reinitiate and complete consultation on the yellow-***
3 ***billed cuckoo.***

4 150. Plaintiffs hereby incorporate by reference all preceding paragraphs.

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

10 152. The ESA requires reiniation of consultation if (a) the amount or
11 extent of taking specified in the incidental take statement is exceeded; (b) if new
12 information reveals effects of the action that may affect listed species or critical
13 habitat in a manner or to an extent not previously considered; (c) if the identified
14 action is subsequently modified in a manner that causes an effect to the listed
15 species or critical habitat that was not considered in the biological opinion; or
16 (d) if a new species is listed or critical habitat designated that may be affected by
17 the identified action. 50 C.F.R. § 402.16(a)(1)–(4).

18 153. Similarly, federal courts require BLM and the Service to reinitiate
19 consultation where a concurrence was based on mitigation measures that were
20 ineffective or not implemented. *See Ctr. for Biological Diversity v. U.S. BLM*, No.
21 CV-24-00141, 2026 U.S. Dist. LEXIS 68876, at *28–30 (D. Ariz. Mar. 30, 2026).

22 154. Despite the requirement stated repeatedly in the EA, Decision
23 Record, BE, and Concurrence that all light fixtures be shielded, hooded, and
24 pointed directly downwards, evidence provided by Plaintiffs, presented to the
25 Service and BLM on April 10, 2026, indicates that these mitigation measures are
26 not being followed. BLM’s determination, and the Service’s Concurrence, that the
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1 Project would not affect the cuckoo were contingent on the implementation of the
2 light pollution mitigation measures.

3 155. Thus, the Project proponent's failure to implement the light pollution
4 mitigation measures constitutes new information, and/or a modification of the
5 Project, that impacts ESA-listed species—including the cuckoo and spotted owl—
6 in a manner and to an extent not considered in the Concurrence. 50 C.F.R. §
7 402.16(a)(2)–(3).

8 156. BLM and the Service have violated and remain in ongoing violation
9 of the ESA by failing to reinitiate and complete consultation on the Copper Creek
10 Exploratory Project to address the lack of light pollution mitigation measures. 16
11 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.16(a)(2)–(3).

12 157. The ongoing failure of BLM and the Service to reinitiate and
13 complete ESA Section 7 consultation on the ongoing impacts of the exploratory
14 drilling activities within Copper Creek on threatened and endangered species, and
15 critical habitat, violates the ESA. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.16(a).

16 158. In the absence of the required reinitiated consultation, BLM is in
17 ongoing violation of its obligation under ESA Section 7 to ensure that its actions
18 are not likely to jeopardize the continued existence of the Mexican spotted owl
19 and the yellow-billed cuckoo, or result in the destruction or adverse modification
20 of designated critical habitat. 16 U.S.C. § 1536(a)(2).

21 159. Plaintiffs and their members are injured by BLM's and the Service's
22 violations of ESA Section 7(a)(2) and failure to reinitiate and complete
23 consultation.

24 160. BLM's and the Service's violations of ESA Section 7(a)(2) are
25 subject to judicial review under the ESA citizen suit provision, 16 U.S.C. §
26 1540(g)(1), and/or the APA, 5 U.S.C. §§ 701-706.

27 **II. Violations of NEPA**

1 ***Claim 5: BLM violated NEPA by failing to take a hard look at impacts to***
2 ***Mexican spotted owl and yellow-billed cuckoo.***

3 161. Plaintiffs hereby incorporate by reference all preceding paragraphs.

4 162. NEPA requires federal agencies to take a “hard look” at the
5 environmental effects of their proposed actions. 42 U.S.C. § 4332(2)(C);
6 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350, 109 S. Ct. 1835,
7 104 L. Ed. 2d 351 (1989). An agency conducts a “hard look” “by providing a
8 reasonably thorough discussion of the significant aspects of the probable
9 environmental consequences” of a proposed action. *Ctr for Biological Diversity v.*
10 *Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1194 (9th Cir. 2008).

11 163. The Supreme Court recently held that the action agency must
12 consider the direct effects of a proposed project on the environment. *Seven Cnty.*
13 *Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 145 S. Ct. 1497, 221 L. Ed. 2d
14 820 (2025). Therefore, BLM is required to analyze the impacts of the Project,
15 specifically, the direct effects on Mexican spotted owl and yellow-billed cuckoo.

16 164. BLM’s analysis fails to satisfy NEPA due to BLM’s failure to (1)
17 assess the impacts of the Project on Mexican spotted owl; and (2) adequately
18 analyze regional impacts of groundwater withdrawals.

19 165. First, BLM’s conclusion of “no effect” on Mexican spotted owls due
20 to their lack of presence in the Project area is arbitrary and capricious because it is
21 contrary to the information before the agency.

22 166. Prior to issuance of the Final EA, Plaintiffs submitted information
23 documenting the repeated presence of Mexican spotted owls in the Project Area,
24 including photographic evidence showing a Mexican spotted owl within
25 approximately one-half mile of numerous proposed drill pads. Plaintiffs
26 specifically alerted BLM that the Project was likely to affect the species.

1 167. BLM did not address this information and instead relied upon
2 unsupported statements that suitable habitat was absent and that no records existed
3 within three miles of the Project Area.

4 168. Because BLM arbitrarily concluded that the species was absent, the
5 agency failed to analyze the Project's impacts on the Mexican spotted owl,
6 including but not limited to: continuous drilling noise generated by up to two drill
7 rigs operating around the clock; increased road traffic and associated noise;
8 nighttime industrial lighting; vegetation clearing and habitat fragmentation; road
9 widening and increased human activity; helicopter-related disturbances associated
10 with Project activities; and cumulative impacts when combined with existing and
11 foreseeable mining activities in the Copper Creek area.

12 169. Second, BLM failed to evaluate the Project's groundwater
13 withdrawals in the context of existing and reasonably foreseeable pumping
14 throughout the Copper Creek and Lower San Pedro Watershed, including
15 withdrawals associated with historic, ongoing, and anticipated mining activities.

16 170. NEPA requires federal agencies to analyze environmental impacts
17 using accurate scientific information and reasonable forecasting. Agencies may
18 not defer analysis of environmental impacts by relying on future studies or
19 uncertain adaptive management measures. 42 U.S.C. § 4332(D)–(E); *see*
20 *Aqualliance v. U.S. Bureau of Reclamation*, 287 F. Supp. 3d 969, 1054 (E.D. Cal.
21 2018) (holding that an agency violated NEPA by failing to explain how planned
22 mitigation measures would be effective).

23 171. The Copper Creek Exploration Project authorizes withdrawals of
24 approximately 70,000 gallons of groundwater per month for each active drill rig,
25 with up to two drill rigs operating simultaneously for as long as two to three years.

26 172. BLM acknowledged that Project impacts to groundwater and surface
27 water from pumping are “unknown.” EA at 79.

1 173. BLM further conceded that the Project “may disrupt the
2 water/sediment balance, lowering the transport capability of the stream, affecting
3 aquatic habitat and surface water expression. Reductions in surface water would
4 reduce available habitat for aquatic wildlife and aquatic vegetation ... and
5 availability for terrestrial wildlife.” *Id.* at 78.

6 174. Despite acknowledging these risks, BLM failed to quantify or take a
7 hard look at the likely effects of Project pumping on groundwater resources,
8 riparian ecosystems, surface flows, or connected habitats.

9 175. BLM’s approval of the Copper Creek Exploration Project therefore
10 violated NEPA, 42 U.S.C. § 4332, and was arbitrary, capricious, an abuse of
11 discretion, and otherwise not in accordance with law, in violation of the APA, 5
12 U.S.C. § 706(2)(A).

13 **III. Violations of the National Historic Preservation Act**

14 ***Claim 6: BLM violated NHPA Section 106 by failing to engage in***
15 ***consultation with the San Carlos Apache Tribe.***

16 176. Plaintiffs hereby incorporate by reference all preceding paragraphs.

17 177. BLM’s decision licensing or otherwise authorizing the Copper Creek
18 Project is a final agency action within the meaning of the Administrative
19 Procedure Act. *See* 5 U.S.C. §§ 701, *et seq.*

20 178. To drill on BLM Land, Faraday Copper requires a federal permit or
21 license from BLM; accordingly, the Copper Creek Project is an “undertaking” of
22 BLM within the meaning of the NHPA.

23 179. Because the Copper Creek Project is an undertaking, BLM was
24 required to satisfy Section 106 of the NHPA *before* authorizing the Copper Creek
25 Project and allowing Faraday Copper to begin drilling.

26 180. By failing to (1) determine the area of potential effect of the Copper
27 Creek Project; (2) make a reasonable and good faith effort to identify and disclose
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1 historic properties within such area of potential effect; (3) evaluate potential
2 adverse effects on any historic properties; (4) seek ways to avoid, minimize, or
3 mitigate any adverse effects to such historic properties; and (5) consult with the
4 Tribe, ACHP, of Arizona State Historic Preservation Office concerning any of the
5 above, BLM failed to meet its Section 106 consultation obligations. *See* 36 C.F.R.
6 §§ 800.4-800.6; 800.16(d)

7 181. By failing to consult with the Tribe concerning areas and properties
8 of traditional cultural and religious importance, despite the Tribe's numerous
9 requests for the same, BLM failed to meet its Indian-tribe specific Section 106
10 consultation obligations, thereby depriving the Tribe of "a reasonable opportunity
11 to identify its concerns about historic properties, advise on the identification and
12 evaluation of historic properties . . . articulate its views on the undertaking's
13 effects on such properties, and participate in the resolution of adverse effects." 36
14 C.F.R. § 800.2(c)(2)(ii)(A).

15 182. Because of its failure to consult with the Tribe before licensing or
16 otherwise authorizing the Copper Creek Project, BLM has exposed numerous
17 culturally significant historic properties of the Tribe to destruction, looting and
18 other adverse effects that could have been avoided or mitigated.

19 183. Because BLM licensed or otherwise authorized the Copper Creek
20 Project without consulting with the Tribe or otherwise satisfying its Section 106
21 obligations, the Tribe is an aggrieved person within the meaning of the
22 Administrative Procedure Act, and BLM's decision licensing or otherwise
23 authorizing the Copper Creek Project constitutes an abuse of discretion and is not
24 in accordance with law. *See* 5 U.S.C. § 706(2)(A).

25 184. The Tribe is entitled to a declaration that BLM failed to consult with
26 the Tribe concerning the Copper Creek Project and, therefore, that BLM's
27
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1 decision licensing or otherwise authorizing the Copper Creek Project constitutes
2 an abuse of discretion and is not in accordance with law. *See* 28 U.S.C. § 2201.

3 185. The Tribe is entitled to further relief that sets aside BLM's decision
4 to authorize the Copper Creek Project. *See* 5 U.S.C. § 706(2)(A); 28 U.S.C.
5 § 2202.

6 **REQUEST FOR RELIEF**

7 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment
8 providing the following relief:

9 1. Declare that the Service's Letter of Concurrence for the Copper
10 Creek Exploratory Drilling Project is arbitrary, capricious, and contrary to the
11 ESA and APA;

12 2. Declare that BLM violated the ESA and the APA by arbitrarily
13 relying on the Service's Letter of Concurrence in approving the Copper Creek
14 Exploratory Drilling Project;

15 3. Vacate and set aside the Service's Letter of Concurrence and BLM's
16 Decision Record and FONSI relying on the Concurrence;

17 4. Declare that BLM and the Service are in ongoing violation of ESA
18 by failing to initiate and complete consultation to address the Project's impacts on
19 the Mexican spotted owl;

20 5. Order BLM and the Service to reinitiate and complete consultation
21 by a date certain on the Copper Creek Exploratory Drilling Project;

22 6. Declare that BLM's issuance of the Copper Creek Exploratory
23 Drilling Project EA, Decision Record, and FONSI violates NEPA and is arbitrary,
24 capricious, an abuse of discretion, and contrary to law, in violation of the APA;

25 7. Declare that BLM failed to consult with the Tribe concerning the
26 Copper Creek Project and, therefore, BLM's decision licensing or otherwise
27

1 authorizing the Copper Creek Project constitutes an abuse of discretion and is not
2 in accordance with law;

3 8. Grant Plaintiffs their reasonable attorneys' fees and costs, expenses
4 and disbursements associated with this litigation as provided by the ESA, and/or
5 the Equal Access to Justice Act or other applicable statutes; and

6 9. Provide such other relief as the Court deems just and proper.
7

8 Respectfully submitted and dated this 24th day of August, 2026.
9

10 

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