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16
17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF ARIZONA**
19

20 Center for Biological Diversity, a
21 non-profit organization; and
22 Maricopa Audubon Society, a non-
23 profit organization,

24 Plaintiffs,

25 v.

26 U.S. Forest Service; and U.S. Fish
27 and Wildlife Service,

28 Defendants.

Case No.: _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiffs Center for Biological Diversity (“Center”) and Maricopa Audubon Society bring this action against the U.S. Forest Service (“Forest Service”) and U.S. Fish and Wildlife Service (“FWS”) for violations of the Endangered Species Act (“ESA”) arising from Forest Service final agency actions authorizing domestic livestock grazing on 18 public lands allotments within the Verde River watershed on the Prescott, Coconino, and Tonto National Forests in Arizona, including the issuance of term grazing permits, allotment management plans (“AMPs”), and allotment annual operating instructions (“AOIs”), as well as the Forest Service’s failure to act to prevent unlawful livestock grazing on an additional 4 allotments that have been purportedly closed to grazing.

2. The Verde River is home to numerous ESA-listed species dependent on aquatic and riparian habitat, including yellow-billed cuckoo, Gila chub, and Southwestern willow flycatcher. In carrying out their consultation duties pursuant to section 7 of the ESA for the 18 individual grazing allotment authorizations challenged in this action, the Forest Service and FWS have determined that the effects of domestic livestock grazing are not likely to adversely impact these species or adversely modify their designated critical habitat. These determinations are primarily based on commitments to exclude streamside habitat from cattle and to conduct regular monitoring of riparian areas in order to ensure that the fencing exclusions remain intact and effective.

3. In 2019, the Center conducted intensive surveys of cattle impacts in riparian habitats for threatened and endangered species on National Forest grazing allotments within the Verde River watershed. Contrary to the commitments made by the Forest Service and FWS through the ESA section 7 process, these surveys documented widespread cattle grazing occupancy and damage, and damaged or nonexistent exclusion fencing, in dozens of locations inspected across the study area. The Center compiled the findings of these surveys into a comprehensive report and provided that report to the Forest Service and FWS in January 2020. In June 2020, the Center conducted follow-up

1 surveys to verify whether the Forest Service had remedied the unlawful grazing. In nearly
2 every area surveyed, unauthorized grazing continues. The results of these surveys were
3 also provided to the Forest Service.

4 4. The ESA places ongoing obligations on federal agencies to ensure that their
5 actions do not jeopardize the continued existence of endangered species or adversely
6 modify or destroy their designated critical habitat, including the duty to reinitiate section
7 7 consultations in four circumstances. 50 C.F.R. § 402.16(a)(1)-(4). Agencies must
8 reinitiate and complete consultation, for example, “[i]f the amount or extent of taking
9 specified in the incidental take statement is exceeded,” when “[n]ew information reveals
10 effects of the action that may affect listed species or critical habitat in a manner or to an
11 extent not previously considered,” or when “[t]he identified action is subsequently
12 modified in a manner that causes an effect to the listed species or critical habitat that was
13 not considered in the biological opinion.” *Id.* § 402.16(a)(1)-(3).

14 5. The Forest Service and FWS were required to reinitiate and complete
15 consultation when presented with evidence documenting extensive cattle use and
16 damaged or absent fencing exclusions on grazing allotments within the riparian
17 streamside areas of 22 specific allotments within the Verde River watershed on the
18 Prescott, Coconino, and Tonto National Forests. 18 of these allotments are permitted and
19 4 of these allotments are classified as vacant. The Forest Service’s failure to exclude
20 domestic livestock from occupied threatened and endangered species habitat, and
21 designated critical habitat, or to take immediate corrective action to remedy these
22 failures, undermines the Forest Service’s and FWS’ conclusions regarding the impact of
23 those specific grazing allotment authorizations on listed species and their designated
24 critical habitat, and triggers the specific reinitiation thresholds at 50 C.F.R. § 402.16(a).

25 6. In addition, the Forest Service and FWS were required to reinitiate and
26 complete consultation due to the listing and designation of critical habitat for threatened
27 or endangered species subsequent to the most recent section 7 consultations for the Verde
28 River allotments. Only one of these consultations was conducted during the past five

1 years, and several were conducted two decades or more ago. Since that time, FWS has
 2 listed several additional riparian-dependent species within the Verde River watershed as
 3 threatened or endangered with extinction, including yellow-billed cuckoo, Gila chub,
 4 narrow-headed and northern Mexican garter snakes, and Chiricahua leopard frog. These
 5 new listings, and associated proposed and final critical habitat designations, also trigger
 6 the reinitiation thresholds.

7 7. On March 5, 2020, Plaintiffs provided 60 days' Notice of its Intent ("NOI")
 8 to file this suit pursuant to the citizen suit provision of the ESA, 16 U.S.C. § 1540(g),
 9 with respect to the 22 Verde River watershed grazing allotments on the Prescott,
 10 Coconino, and Tonto National Forests. This detailed NOI contained much of the raw data
 11 underlying the surveys, including hundreds of photographic reference points.

12 8. On May 19, 2020, the Forest Service Southwestern Regional Forester
 13 responded to Plaintiffs' NOI. The response denies the findings of the Center's survey,
 14 stating that "[w]e did not identify any allotments that have compliance issues associated
 15 with existing consultation documents." FWS did not respond to the NOI. The agencies'
 16 responses therefore do not resolve the ESA violations alleged in Plaintiff's NOI.
 17 Accordingly, Plaintiffs seek declaratory and injunctive relief to enforce the agencies'
 18 mandatory ESA's requirements with respect to the 22 Verde River allotments described
 19 in this Complaint and listed in Table 1.

20 JURISDICTION AND VENUE

21 9. This Court has jurisdiction over this action pursuant to 16 U.S.C.
 22 § 1540(c),(g) (action arising under ESA citizen suit provision); 5 U.S.C. §§ 701-706
 23 (APA review of agency action and failure to act); and 28 U.S.C. § 1331 (federal question
 24 jurisdiction).

25 10. The Court may grant the relief requested under the ESA, 16 U.S.C.
 26 § 1540(g); the APA, 5 U.S.C. § 706(2); and 28 U.S.C. §§ 2201-2202 (declaratory and
 27 injunctive relief).
 28

1 study these ESA-listed species within their natural habitats, without the degradation or
2 destruction of that habitat resulting from unlawful or unauthorized livestock grazing.

3 17. Plaintiffs' members include individuals who regularly visit specific areas of
4 the Prescott, Coconino, and Tonto National Forests within the Verde River watershed that
5 are directly within, or impacted by, the specific grazing allotments at issue in this case.
6 Plaintiffs' members' use includes portions of the Verde River and Fossil Creek protected
7 under the Wild and Scenic Rivers Act—the only waterways protected by the Act within
8 the state of Arizona. Plaintiffs' members use also includes areas within the Verde River
9 watershed protected by the Wilderness Act that are impacted by the unauthorized
10 grazing, including the Fossil Springs, Mazatzal, Wet Beaver, Cedar Bench, and Pine
11 Mountain Wilderness areas.

12 18. Plaintiffs' members can demonstrate consistent and longstanding use and
13 enjoyment of the rivers and streams being degraded by unauthorized riparian grazing,
14 including the Verde River, East Verde River, Wet Beaver Creek, Fossil Creek, Red
15 Creek, Red Tank Draw, Walker Creek, Houston Creek, Tangle Creek, and Sycamore
16 Creek, as well as areas within those rivers' larger watersheds that are impacted by
17 unlawful grazing. Plaintiffs have members who have concrete plans to return to these
18 areas during the next year, including the upcoming fall and winter.

19 19. Plaintiffs' members and staff derive ecological, recreational, scientific,
20 educational, aesthetic, spiritual and other benefits from their use of the specific areas of
21 the Verde watershed within the Prescott, Coconino, and Tonto National Forests described
22 above. These interests of Plaintiffs' members, have been, are being, and will continue to
23 be adversely harmed by the Forest Service's and FWS' failure to meet their procedural
24 and substantive duties under section 7 of the ESA. Through the Forest Service's and
25 FWS' actions and failures to act, domestic livestock are accessing streamside riparian
26 areas, resulting in streambank trampling, soil compaction, removal of riparian vegetation,
27 and deposition of cattle feces, resulting in water quality degradation, dewatering of
28 streams, habitat destruction, and related adverse impacts to endangered species and other

1 natural resource values, which in turn significantly and directly harms Plaintiffs’
2 members. The injuries described are actual, concrete injuries presently suffered by
3 Plaintiffs and their members, and they will continue to occur unless this Court grants
4 relief. The relief sought herein—including an Order compelling the Forest Service and
5 FWS to reinitiate and complete section 7 consultations for the challenged actions while
6 taking immediate corrective actions to effectively exclude cattle from streamside and
7 riparian areas and remedy the damage caused by those cattle—would redress those
8 harms. Plaintiffs and their members have no other adequate remedy at law.

9 20. Defendant UNITED STATES FOREST SERVICE is an agency within the
10 Department of Agriculture, and has issued grazing authorizations including term grazing
11 permits, AMPs, and AOIs. Like all federal agencies, the Forest Service must comply with
12 all applicable requirements of the ESA, including the ongoing duty to comply with ESA
13 section 7 requirements in relation to those authorizations.

14 21. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is the
15 agency within the Department of the Interior that is charged with implementing the ESA,
16 and shares responsibility with the Forest Service for reinitiation and completion of
17 consultation under section 7 in relation to the grazing authorizations.

18 **LEGAL BACKGROUND**

19 22. The Endangered Species Act, 16 U.S.C. §§ 1531-1544, is “the most
20 comprehensive legislation for the preservation of endangered species ever enacted by any
21 nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental purposes
22 are “to provide a means whereby the ecosystems upon which endangered species and
23 threatened species depend may be conserved [and] to provide a program for the
24 conservation of such endangered species and threatened species” 16 U.S.C.
25 § 1531(b).

26 23. To achieve these objectives, the ESA directs the Secretary of the Interior,
27 through FWS, to determine which species of plants and animals are “threatened” and
28 “endangered” and place them on the list of protected species. *Id.* § 1533. An

1 “endangered” or “threatened” species is one “in danger of extinction throughout all or a
2 significant portion of its range,” or “likely to become endangered in the near future
3 throughout all or a significant portion of its range,” respectively. *Id.* § 1532(6), (20).

4 24. Once a species is listed, the ESA provides procedural and substantive
5 protections to ensure the species’ continued survival, and its ultimate recovery, including
6 the designation of critical habitat, the preparation and implementation of recovery plans,
7 the prohibition against the “taking” of listed species, and the requirement for interagency
8 consultation. *Id.* §§ 1533(a)(3), 1533(f), 1536, 1538.

9 25. Section 7(a)(1) of the ESA requires each federal agency, in consultation
10 with FWS, to carry out programs for the conservation of threatened and endangered
11 species. 16 U.S.C. § 1536(a)(1). The ESA defines “conserve” and “conservation” to
12 mean “the use of all methods and procedures which are necessary to bring any
13 endangered species or threatened species to the point at which the measure provided
14 pursuant to this chapter are no longer necessary.” 16 U.S.C. § 1532(3).

15 26. Section 7(a)(2) of the ESA requires that “[e]ach Federal agency shall, in
16 consultation with . . . [FWS], [e]nsure that any action authorized, funded, or carried out
17 by such agency . . . is not likely to jeopardize the continued existence of any endangered
18 species or threatened species or result in the destruction or adverse modification of
19 [critical habitat].” *Id.* § 1536(a)(2). This section 7(a)(2) consultation process has been
20 described as the “heart of the ESA.” *W. Watersheds Project v. Kraayenbrink*, 632 F.3d
21 472, 495 (9th Cir. 2011).

22 27. FWS’ 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.” 50 C.F.R. § 402.02.

25 28. If listed or proposed species may be present in the project area, the action
26 agency must prepare a “biological assessment” to determine whether the listed species
27 may be affected by the proposed action. 50 C.F.R. § 402.12.

28 29. If the action agency determines that its proposed action may affect any

1 listed species or critical habitat, the agency must normally engage in “formal
2 consultation” with FWS. *Id.* § 402.14. However, the agency need not initiate formal
3 consultation if, as a result of the preparation of a biological assessment or as a result of
4 informal consultation with FWS, the agency determines, with the written concurrence of
5 FWS, that the proposed action is not likely to adversely affect any listed species or
6 critical habitat. *Id.* §§ 402.13, 402.14(b)(1).

7 30. Through the formal section 7 consultation process, FWS prepares a
8 “biological opinion” as to whether the action is likely to jeopardize the species or destroy
9 or adversely modify critical habitat and, if so, suggests “reasonable and prudent
10 alternatives” to avoid that result. *Id.* § 402.14; 16 U.S.C. § 1536(b)(3)(A). If the
11 biological opinion concludes that the action is not likely to jeopardize the continued
12 existence of a listed species, and will not result in the destruction or adverse modification
13 of critical habitat, FWS must provide an “incidental take statement,” specifying the
14 amount or extent of such incidental taking on the species and any “reasonable and
15 prudent measures” that FWS considers necessary or appropriate to minimize such impact,
16 and setting forth the “terms and conditions” that must be complied with by the action
17 agency to implement those measures. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

18 31. Agencies must reinitiate consultation on agency actions over which the
19 action agency retains, or is authorized to exercise, discretionary involvement or control,
20 if: (1) the amount or extent of taking specified in the incidental take statement is
21 exceeded; (2) new information reveals effects of the action that may affect listed species
22 or critical habitat in a manner or to an extent not previously considered; (3) the identified
23 action is subsequently modified in a manner that causes an effect to the listed species or
24 critical habitat that was not considered in the biological opinion or written concurrence;
25 or (4) a new species is listed or critical habitat designated that may be affected by the
26 identified action. 50 C.F.R. § 402.16(a)(1)-(4).

27 32. After the initiation or reinitiation of section 7 consultation, the action
28 agency is prohibited from making “any irreversible or irretrievable commitment of

resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2).” 16 U.S.C. § 1536(d).

33. During the consultation process, federal agencies must “use the best scientific and commercial data available.” *Id.* § 1536(a)(2); 50 CFR § 402.14(d).

BACKGROUND

A. The Verde River Watershed

34. A major tributary of the Colorado River basin, the Verde River spans a 192-mile length through Arizona’s center, eventually joining the Salt River north of Mesa. The Verde River provides water for millions of Arizonans, including all of the domestic water for communities and rural households from the Prescott Valley through the Verde Valley, and supplies approximately 40 percent of the surface water that the Salt River Project delivers to Phoenix-area residents for municipal and agricultural use.

35. Federal lands comprise slightly less than two-thirds ($\approx 62\%$) of the Verde River watershed. The majority of this federal public land is managed by the Forest Service, as parts of the Prescott, Coconino, Tonto, and Kaibab National Forests, and includes several designated Wilderness areas, inventoried roadless areas, and the only two Wild and Scenic River segments in the state of Arizona.

36. The Verde River is a critical flyway for migratory birds, home to desert nesting bald eagles, and harbors one of the largest remaining native fish assemblages in Arizona. The Verde and its tributaries and wetlands are occupied by numerous ESA-listed threatened or endangered species which depend upon healthy and functioning streamside riparian and aquatic habitat, including: yellow-billed cuckoo, southwestern willow flycatcher, Mexican spotted owl, Chiricahua leopard frog, narrow-headed and northern Mexican garter snakes, Gila chub, razorback sucker, Gila topminnow, desert pupfish, spikedace, and loach minnow.

**B. Public Lands Grazing is a Primary Threat to Endangered Species
Dependent on Southwestern Streams**

37. Scientific study on the impacts of livestock grazing on aquatic and riparian habitats in the Southwest is extensive and universally shows severe and lasting negative impacts such that complete exclusion of cattle is widely accepted as a minimum baseline management strategy in preserving stream health. Livestock grazing has both direct and indirect effects on streams, and is a leading cause of species endangerment in the Southwest, including many of the ESA-listed species within the Verde River watershed.

38. Livestock directly affects riparian habitat through removal of riparian vegetation. Loss of riparian vegetation in turn raises water temperatures, reduces bank stability, and eliminates an important structural component of the stream environment that contributes to the formation of pools.

39. Grazing physically alters streambanks through trampling and shearing, leading to bank erosion. In combination, loss of riparian vegetation and bank erosion can alter channel morphology, resulting in downcutting and an increased width/depth ratio, all of which lead to a loss of pool habitats and shallow side and backwater habitats used by several of the listed species that are the subject of this lawsuit.

40. Livestock also indirectly impact aquatic and riparian habitats by compacting soils, altering soil chemistry, and reducing vegetation cover in upland areas, leading to increased severity of floods and sediment loading, lower water tables, and altered channel morphology.

41. One consequence of these impacts to watersheds is a reduction in the quantity and quality of pool habitat. A lowered water table, for example, results in direct loss of pool habitats, simply because water is not available to form pools. Increased erosion results in filling of pools with sediments. Channel incision and increased flood severity both can scour out pools, reducing habitat complexity and resulting in shallow, uniform streambeds, all of which harms the species at issue in this suit.

1
2 **C. The Forest Service and FWS Rely Upon Riparian Exclusions as a**
3 **Primary Basis for Endangered Species Act Compliance on**
4 **Verde River Allotments**

4 42. The Forest Service has recognized the negative impacts of livestock grazing
5 on the riparian resources of the Verde River watershed for decades. In 1979, for example,
6 the Prescott, Coconino, and Tonto National Forests issued an “Action Program for
7 Resolution of Livestock-Riparian Conflicts on the Salt River and Verde River,” which
8 noted the “severe deterioration” of the riparian plant communities from livestock grazing.

9 43. Nonetheless, prior to the late 1990s, the Forest Service routinely authorized
10 cattle grazing on Southwestern streams and riparian areas despite the mounting evidence
11 of its devastating impacts on those areas and the imperiled species that depend upon
12 them.

13 44. In *Sw. Ctr. for Biological Diversity v. U.S. Forest Serv.*, the Center in 1997
14 sued the Forest for its failure to fulfill its Endangered Species Act section 7 consultation
15 duties with respect to the impacts of 158 grazing allotments on southwestern willow
16 flycatcher, loach minnow, and spikedace, including numerous allotments within the
17 Verde River watershed. No. CV-97-666-TUC-JMR (D. Ariz. Oct. 23, 1997).

18 45. Under a resultant April 1998 settlement agreement, the Forest Service
19 agreed to immediately remove cattle from ninety-nine percent of riparian habitats within
20 the allotments at issue until FWS issued a biological opinion pursuant to section 7 of the
21 ESA.

22 46. These obligations catalyzed the Forest Service, in cooperation with FWS, to
23 develop a grazing consultation team, comprised of a leader, representative biologists, and
24 rangeland specialists from the Forest Service, with biologists and other advisors from
25 FWS. This interagency team developed “Grazing Guidance Criteria,” to guide ESA
26 section 7 consultations regarding grazing and to apply those criteria to all 962 grazing
27 allotments within USFS Region 3 (Southwestern Region.). *See Sw. Ctr. for Biological*
28

1 *Diversity v. U.S. Forest Serv.*, Nos. CV-97-666-TUC-JMR, CV-97-2562-PHX-SMM,
2 2001 U.S. Dist. LEXIS 25027, *6-8 (D. Ariz. Mar. 30, 2001).

3 47. Since that time, grazing exclusions, as well as annual monitoring to ensure
4 the effectiveness of those exclusions, have served as a cornerstone for ESA compliance in
5 relation to the Forest Service's decisions authorizing grazing on individual grazing
6 allotments.

7 48. Today, the Forest Service and FWS continue to utilize an iteration of the
8 Grazing Criteria, now called the "Master Framework for Streamlining Consultation on
9 Livestock Grazing Activities" (December 2015) (hereinafter referred to as "Grazing
10 Criteria"). The Grazing Criteria provides that the Forest Service and FWS can only
11 determine that livestock grazing is not likely to adversely affect the aquatic and riparian
12 dependent threatened and endangered species in the Verde River watershed, or destroy or
13 adversely modify their designated critical habitat, through robust protection of streamside
14 riparian habitats, typically achieved through year-long exclusion of cattle.

15 49. These riparian exclusions are only one component of the agencies' not
16 likely to adversely affect determination under section 7 of the ESA. The Forest Service
17 must also meet specific standards with respect to grazing in adjacent upland areas.

18 50. In order to make a "not likely to adversely affect" finding for ESA-listed
19 fish within the Verde River watershed including Gila chub, loach minnow, spikedace,
20 razorback sucker, Gila topminnow, and desert pupfish, the Grazing Criteria requires the
21 Forest Service to ensure that "[d]irect effects to listed species will be avoided by yearlong
22 exclusion of livestock from occupied ... habitats in the action area," as well as a
23 determination that impacts from upland livestock grazing "are determined to be
24 insignificant or discountable as measured through quantitative or qualitative measures
25 such as watershed health and condition, use levels, or sedimentation in critical habitat."
26 (p. 80).

27 51. In order to make a "not likely to adversely affect" finding for ESA-listed
28 birds within the Verde River watershed including Southwestern willow flycatcher and

1 yellow-billed cuckoo, the Grazing Criteria requires the Forest Service to ensure that
2 grazing activities “do not measurably or detectably reduce the suitability or regeneration”
3 of riparian streamside habitat, as well as making a required determination that potential
4 indirect effects are “insignificant or discountable.” (p. 31, 34).

5 52. In order to make a “not likely to adversely affect” finding for narrow-
6 headed and northern Mexican garter snake, the Grazing Criteria requires the Forest
7 Service to ensure that there “will be no livestock use or livestock management activities
8 where the species is reasonably certain to occur or where there is occupied habitat,” as
9 well as determinations that the impacts from upland livestock grazing are “insignificant
10 or discountable,” with “particular attention given to potential impacts to native fish,” and
11 that proposed livestock management activities “will not increase the likelihood that
12 bullfrogs, non-native, spiny-rayed fish, brown trout, or crayfish will colonize, be
13 introduced, or improve their status.” (p. 127, 132).

14 53. 18 of the 22 Verde River watershed allotments at issue in this suit have
15 most recently been considered in six separate Biological Opinions prepared by FWS. The
16 remaining 4 allotments are considered vacant by the Forest Service. In accordance with
17 the Grazing Criteria and substantive ESA obligations to avoid jeopardizing the continued
18 existence of listed species, or destroy or adversely modify designated critical habitat,
19 these consultations have relied upon Forest Service commitments to exclude livestock
20 from riparian areas, ensured through consistent Forest Service monitoring, to justify
21 conclusions of no effect or not likely to adversely affect determinations in relation to
22 aquatic or riparian dependent endangered species.

23 **D. The Center Documented Widespread and Significant Riparian**
24 **Damage on Grazing Allotments within the Verde River Watershed**

25
26 54. Plaintiff Center for Biological Diversity conducted on-the-ground
27 assessments in 2019 to determine if cattle are present within Verde River watershed
28 riparian areas that are purportedly excluded from cattle on 23 public lands grazing

1 allotments in the Prescott, Coconino, and Tonto National Forests. In total, the Center
2 surveyed riparian areas along 143.2 stream miles on the Verde and East Verde Rivers and
3 portions of major tributaries including Wet Beaver Creek, Fossil Creek, Walker Creek,
4 Houston Creek, Red Tank Draw, Tangle Creek, and Red Creek. Observations of cattle
5 impacts were collected for 350 distinct riparian segments, each generally $\frac{1}{4}$ to a mile in
6 length, and averaging 0.41 miles long.

7 55. In conducting the assessments, field surveyors recorded livestock grazing
8 impacts to riparian vegetation, soils, and streambanks, and documented the condition of
9 exclosure fencing. Data were collected in six categories and were scored based on the
10 severity and frequency of impacts. Stream reaches were ranked with absent, light,
11 moderate, or significant grazing impacts. All data is supported by more than 1,700
12 georeferenced photographs documenting livestock presence and their impacts.

13 56. These assessments documented that the purported fencing exclusions were
14 frequently in disrepair or simply nonexistent, resulting in widespread unauthorized cattle
15 presence with associated damage to riparian areas and occupied or suitable endangered
16 species habitat. Approximately 44% of stream miles were ranked with moderate to
17 significant impacts (62.6 miles), while only 30% of stream miles were absent of cattle
18 impacts (42.9 miles).

19 57. In numerous instances, surveyors observed cattle directly present in riparian
20 and streamside areas. In addition to branded cattle associated with the permitted
21 allotments, surveyors also observed “feral” or unbranded cattle (*i.e.*, not showing
22 evidence of human ownership) on 18 permitted allotments, as well as on 4 purportedly
23 vacant allotments.

24 58. The Center compiled these survey results into a detailed report in January
25 2020 and provided this report to the Forest Service. The Forest Service has not taken
26 adequate corrective action in response.

27 59. In June 2020, the Center conducted a follow-up spot survey on several
28 allotments surveyed in 2019, documenting continued extensive damage and recent cattle

1 impacts on those allotments. The Center provided the results of this June 2020 survey to
2 the Forest Service on August 4, 2020.

3 **E. Verde River Grazing Allotments: Specific Allegations**

4 60. On December 30, 2002, FWS issued a Biological Opinion for the Forest
5 Service's authorization of grazing on 16 allotments in the Verde River watershed on the
6 Prescott National Forest, including the **Muldoon, West Bear, China Dam, Sand Flat,**
7 **Perkinsville, Horseshoe, and Antelope Hills** allotments on the upper Verde River within
8 Chino Valley Ranger District, and the **Brown Springs** allotment on the Verde Ranger
9 District.

10 61. The December 30, 2002 Biological Opinion considered the impacts of
11 grazing on the loach minnow and spikedace, and their designated critical habitat. The
12 Biological Opinion states that "spikedace are potentially occupying the upper Verde
13 River complex" and that the Verde River is "likely occupied by spikedace" in the
14 Muldoon, China Dam, Sand Flat, Horseshoe, Antelope Hills, and Perkinsville
15 allotments." (p. 48). Although loach minnows are considered extirpated from the entire
16 Verde River system, FWS noted a "promising prospect of future reintroduction efforts"
17 for both loach minnow and spikedace in unoccupied stream reaches throughout the
18 watershed.

19 62. The December 20, 2002 Biological Opinion concludes that grazing in the
20 upper Verde allotments is not likely to jeopardize the continued existence of the
21 spikedace or loach minnow, or result in the destruction or adverse modification of their
22 designated critical habitat, based on the installation of fencing around riparian areas, and
23 monitoring regimes.

24 63. With respect to the seven upper Verde allotments, the December 30, 2002
25 Biological Opinion states that 3.6 miles of the Verde River within the Muldoon
26 Allotment, 9.7 miles of the Verde River within the West Bear Allotment, 3 miles of the
27 Verde River within the China Dam Allotment, 1.7 miles of the Verde River within the
28 Sand Flat Allotment, 1.6 miles of the Verde River within the Perkinsville Allotment, 3.4

1 miles of the Verde River within the Horseshoe Allotment, and 14.6 miles of the Verde
2 River within the Antelope Allotment is excluded from livestock use and regularly
3 monitored for unauthorized cattle.

4 64. The Center's 2019 surveys documented cattle impacts all along the
5 purportedly excluded Upper Verde River corridor within all of these allotments,
6 including 3.72 miles on the Muldoon allotment (NOI, p. 15-19), 8.84 miles on the West
7 Bear allotment (NOI, p. 20-31), 3.08 miles on the China Dam allotment (NOI, p. 31-47),
8 1.77 miles on the Sand Flat allotment (NOI, p. 38-47), 1.33 miles on the Perkinsville
9 allotment (NOI, p. 48-55), 3.46 miles on the Horseshoe allotment (NOI, p. 55-69), and
10 9.21 miles on the Antelope Hills allotment (NOI, p. 70-85).

11 65. These findings contradict the Forest Service's commitment in the
12 December 30, 2002 Biological Opinion to exclude cows from the Verde River on the
13 Muldoon, West Bear, China Dam, Sand Flat, Perkinsville, Horseshoe, and Antelope Hills
14 allotments, and demonstrate that the Forest Service has not been conducting required
15 monitoring or taken required corrective action to remove unauthorized cattle from
16 purportedly excluded riparian areas.

17 66. With respect to the Verde District allotment, the December 30, 2002
18 Biological Opinion states that the Brown Springs allotment contains 12 miles of the
19 Verde River, and that portions of the River are accessible to grazing through two "water
20 gap" access points.

21 67. The Center's 2019 surveys documented cattle impacts on 8.62 miles of the
22 purportedly excluded Verde River corridor within the Brown Springs allotment (at its
23 border with the 13-Mile Rock and Hackberry/Pivot Rock allotment) (NOI, p. 120-153).

24 68. These findings contradict the Forest Service's commitment to exclude cows
25 from the Verde River on the Brown Springs allotment and demonstrate that the Forest
26 Service has not been conducting required monitoring or taken required corrective action
27 to remove unauthorized cattle from purportedly excluded riparian areas.
28

69. In addition to this new information showing that the Verde River grazing exclusions are not being maintained or monitored, the December 30, 2002 Biological Opinion does not address several subsequently listed species and critical habitats that may be affected by the grazing authorizations, including razorback sucker, Southwestern willow flycatcher, yellow-billed cuckoo, and narrow-headed and northern Mexican garter snakes.

70. On August 14, 2014, FWS issued a Biological Opinion for the Forest Service's authorization of grazing on the **Windmill West** allotment on the Coconino National Forest. In that Biological Opinion, FWS concurred with Forest Service determinations that grazing was not likely to adversely affect ESA-listed riparian and aquatic species including southwestern willow flycatcher, yellow-billed cuckoo, loach minnow, spinedace, razorback sucker, and Gila topminnow, based on the Forest Service's commitment to exclude cattle from the Verde River and Oak Creek.

71. The Center's 2019 surveys documented cattle impacts on 1.30 miles of the purportedly excluded Verde River corridor within the Windmill West allotment (at its border with the Antelope Hills allotment) (NOI, p. 86-93).

72. These findings contradict the Forest Service's commitment to exclude cows from the Verde River on the Windmill West allotment and demonstrate that the Forest Service has not been conducting required monitoring or taken required corrective action to remove unauthorized cattle from purportedly excluded riparian areas.

73. On May 6, 2016, FWS issued a Biological Opinion for the Forest Service's authorization of grazing on eight allotments on the Coconino National Forest including the **Apache Maid, Beaver Creek, Walker Basin, 13-Mile Rock, Fossil Creek, and Hackberry/Pivot Rock allotments**. The May 6, 2016 Biological Opinion considered the impacts of grazing authorizations on yellow-billed cuckoo, narrow-headed and northern Mexican garter snakes, and Gila chub.

74. In the May 6, 2016 Biological Opinion, FWS agreed with the Forest Service's determination that only two of the allotments—Apache Maid and Beaver

1 Creek—had potential for adverse impacts to listed species or critical habitat. FWS also
2 concurred with “no effect” or “not likely to adversely affect” determinations on the
3 Walker Basin, 13-Mile Rock, Fossil Creek, and Hackberry/Pivot Rock allotments.

4 75. The FWS concurrences in the May 6, 2016 Biological Opinion are all based
5 on the Forest Service commitment to exclude livestock from the Verde River, as well as
6 tributary streams including Walker Creek, Red Tank Creek, and Wet Beaver Creek.
7 These three tributaries contain occupied habitat for Gila chub and yellow-billed cuckoos.

8 76. The Center’s 2019 surveys documented cattle impacts on more than 1.60
9 miles of the purportedly excluded Red Tank Draw within the Apache Maid allotment
10 (NOI, p. 91-100), 1.50 miles of the purportedly excluded Walker Creek within the
11 Walker Basin allotment (NOI, p. 112-120), nearly 2 miles of the purportedly excluded
12 Wet Beaver Creek and more than 2.6 miles of the purportedly excluded Red Tank Draw
13 within the Beaver Creek allotment (NOI p. 100-111), approximately 8.5 miles of the
14 purportedly excluded Verde River within the 13-Mile Rock allotment (at its boundary
15 with the Brown Springs and Hackberry/Pivot Rock allotments) (NOI, p. 120-153), and
16 2.6 miles of the purportedly excluded Verde River within the Fossil Springs allotment (at
17 its border with the Skeleton Ridge allotment) (NOI, p. 159-182 and p. 230-246).

18 77. These findings contradict the Forest Service’s commitment to exclude cows
19 from the Verde River and its tributaries on the Apache Maid, Beaver Creek, Walker
20 Basin, 13-Mile Rock, Fossil Creek, and Hackberry/Pivot Mountain allotments in the May
21 6, 2016 Biological Opinion, and demonstrate that the Forest Service has not been
22 conducting required monitoring or taken required corrective action to remove
23 unauthorized cattle from purportedly excluded riparian areas.

24 78. On September 8, 1995, FWS issued a Biological Opinion for the Forest
25 Service’s authorization of grazing on allotments including the **Cedar Bench allotment**
26 on the Tonto National Forest. Cedar Bench contains portions of the wild and scenic
27 Verde River and the southern portion of the allotment lies within the Mazatzal
28 Wilderness.

1 79. The Cedar Beach allotment contains portions of the Verde River, East
2 Verde River, and Fossil Creek. The September 8, 1995 Biological Opinion anticipated
3 that grazing of the Verde River would take place from mid-November to mid-March
4 every other year, and notes that livestock is able to access all three waters, but requires
5 the Forest Service to monitor riparian use and restrict such use where livestock is causing
6 damage.

7 80. The Center's 2019 surveys documented some of the most intensive damage
8 of all allotments on the Cedar Bench allotment. In all segments surveyed, the cattle
9 impacts were categorized as significant, including 3.74 miles of the Verde River, and
10 5.96 miles of the East Verde River (NOI, p. 247-308). An additional 7.90 miles of
11 significant cattle impacts were noted on the East Verde River in the adjacent Bull Springs
12 allotment, which is administratively closed to grazing and contained entirely within the
13 Mazatzal Wilderness (NOI, p. 318-364).

14 81. These findings demonstrate that the Forest Service has not been conducting
15 required monitoring on the Cedar Bench allotment or taken required corrective action to
16 exclude cattle from riparian areas as required by the September 8, 1995 Biological
17 Opinion.

18 82. In addition to this new information showing that purported riparian grazing
19 exclusions on the Cedar Bench allotment are not being maintained or monitored, the
20 September 8, 1995 Biological Opinion does not address several subsequently listed
21 species and critical habitats that may be affected by the grazing authorizations, including
22 loach minnow, spikedace, yellow-billed cuckoo, southwestern willow flycatcher, Gila
23 chub, and narrow-headed and northern Mexican garter snakes.

24 83. On June 25, 1997, FWS issued a Biological Opinion for the Forest
25 Service's authorization of grazing on allotments including the **Skeleton Ridge allotment**
26 on the Tonto National Forest. Skeleton Ridge, which now also includes the former Ike's
27 Backbone allotment, contains approximately 20 miles of the wild and scenic Verde River
28

1 and much of the southern portion of the allotment lies within the Mazatzal Wilderness,
2 while western portions of the allotment lie within Pine Mountain Wilderness.

3 84. The Skeleton Ridge allotment contains portions of the Verde River,
4 Houston Creek, and Fossil Creek. The June 25, 1997 Biological Opinion, addressing
5 impacts to razorback sucker and southwestern willow flycatcher, anticipated that
6 approximately 7 miles of river would be accessible to livestock, but requires the Forest
7 Service to monitor riparian use and restrict such use where livestock is causing damage.

8 85. The Center's 2019 surveys documented some of the most intensive damage
9 of all allotments on the Skeleton Ridge allotment. Cattle impacts were categorized as
10 significant on more than 10.5 miles of the Verde River, 2.1 miles of Fossil Creek (at the
11 border with Deadman Mesa allotment), and nearly 0.4 miles of moderate impacts at
12 Houston Creek (NOI, p. 159-299).

13 86. These findings demonstrate that the Forest Service has not been conducting
14 required monitoring on the Skeleton Ridge allotment, or taken required corrective action
15 as required by the June 25, 1997 Biological Opinion.

16 87. In addition to this new information showing that purported riparian
17 exclusions on the Skeleton Ridge allotment are not being maintained or monitored, the
18 June 25, 1997 Biological Opinion does not address several subsequently listed species
19 and critical habitats that may be affected by the grazing authorizations, including loach
20 minnow, spikedace, yellow-billed cuckoo, southwestern willow flycatcher, Gila chub,
21 and narrow-headed and northern Mexican garter snakes.

22 88. On December 19, 2000, FWS issued a Biological Opinion for the Forest
23 Service's authorization of grazing on the **Red Creek allotment** on the Tonto National
24 Forest. Red Creek contains the southernmost portion of the wild and scenic Verde River
25 and much of the eastern portion of the allotment lies within the Mazatzal Wilderness,
26 while the northwestern portion is within Pine Mountain Wilderness.

27 89. The Red Creek allotment contains 14 miles of the Verde River, as well as
28 an additional 5 miles of perennial waters on Red Creek and Tangle Creek. The December

1 19, 2000 Biological Opinion, addressing impacts to razorback sucker and southwestern
2 willow flycatcher, stated that no grazing would occur along the Verde River, and that
3 portions of Red Creek and Tangle Creek would also be excluded from grazing.

4 90. The Center's 2019 surveys documented more than 5 miles of significant
5 cattle impacts on Red Creek and 1.2 miles of significant cattle impacts on Tangle Creek
6 within the Red Creek allotment. (p. 365-496).

7 91. These findings contradict the Forest Service's commitment in the
8 December 19, 2000 Biological Opinion to exclude cows from Red Creek and Tangle
9 Creek within the Red Creek allotment and demonstrate that the Forest Service has not
10 been conducting required monitoring or taken required corrective action to remove
11 unauthorized cattle from purportedly excluded riparian areas.

12 92. In addition to this new information showing that the grazing exclusions are
13 not being maintained or monitored, the December 19, 2000 Biological Opinion does not
14 address several subsequently listed species and critical habitats that may be affected by
15 the grazing authorizations, including loach minnow, spikedace, yellow-billed cuckoo,
16 southwestern willow flycatcher, Gila chub, and narrow-headed and northern Mexican
17 garter snakes.

18 93. The Center's 2019 surveys documented cattle impacts on three allotments
19 which are officially considered vacant by the Forest Service, including 7.90 miles of
20 significant impacts on the purportedly excluded Verde River on the **Bull Springs**
21 **allotment** (NOI, p. 318-364), 2.5 miles of significant or moderate impacts on the
22 purportedly excluded Fossil Creek within the **Deadman Mesa allotment** (at its border
23 with the Skeleton Ridge allotment) (NOI, p. 237-246), and approximately 4.3 miles of
24 significant or moderate impacts on the purportedly excluded Verde River on the **Bartlett**
25 **allotment** (NOI, p. 508-526). In addition, the Forest Service acknowledges that
26 unauthorized cattle grazing occurs within riparian areas on the vacant **Sears Club/Chalk**
27 **Mountain allotment**.
28

F. The Forest Service's May 19, 2020 NOI Response

94. The Forest Service's May 19, 2020 NOI response acknowledges that "there are areas within or adjacent to allotments along the [Verde] River where unauthorized livestock are utilizing riparian and aquatic habitat for listed species," but also claims that the agency "did not identify any allotments that have compliance issues associated with existing consultation documents."

95. The NOI response further notes that the Prescott, Coconino, and Tonto National Forests "executed a contract to remove unauthorized and feral cattle from the Wild and Scenic portion of the Verde River to be completed during the Summer of 2020."

96. Most of the allotments at issue in this suit are not within the Verde Wild and Scenic River corridor. Moreover, the Center conducted spot surveys this summer that continued to document widespread unauthorized grazing in riparian areas along the Verde River. Finally, the Forest Service has taken no action to mitigate the extensive damage to riparian habitat that has been caused by the unauthorized grazing. Accordingly, the actions taken pursuant to the removal contract relied upon in the NOI response have, at best, only addressed the unauthorized riparian grazing in a piecemeal, incomplete, and ineffective manner.

CLAIMS FOR RELIEF

Claim I

Failure to Reinitiate and Complete ESA Section 7 Consultation to Ensure Ongoing Livestock Grazing Does Not Jeopardize Listed Species or Destroy or Adversely Modify Critical Habitat (ESA Violation of 16 U.S.C. § 1536(a)(2) and 50 C.F.R. § 402.16)

97. Plaintiffs incorporate all preceding paragraphs by reference.

98. The Forest Service has authorized livestock grazing on 18 grazing allotments identified in the paragraphs above through final agency actions including the issuance of term grazing permits, allotment management plans ("AMPs"), and allotment annual operating instructions ("AOIs").

1 99. The Biological Opinions prepared for the 18 permitted grazing allotments
2 rely on excluding cattle from riparian areas, and Forest Service monitoring to confirm the
3 ongoing effectiveness of those exclusions, as a primary means to ensure Endangered
4 Species Act compliance in relation to ESA-listed riparian and aquatic dependent species
5 within the Verde River watershed. The Biological Opinions did not consider impacts
6 arising from unauthorized feral or unbranded cattle within the 18 allotments.

7 100. Plaintiff Center for Biological Diversity conducted on-the-ground
8 assessments in 2019 to determine if cattle are present within the riparian areas that are
9 supposed to be excluded from cattle on the 18 permitted grazing allotments within the
10 Verde River watershed on the Prescott, Coconino, and Tonto National Forests, and
11 presented those assessments to the Forest Service and FWS in a January 2020 report.
12 These assessments documented that purported fencing exclusions were frequently in
13 disrepair or absent, resulting in widespread cattle presence and associated extensive
14 damage to riparian areas providing habitat for ESA-listed species. The Center's surveys
15 documented unauthorized grazing occurring by branded cattle, as well as feral or
16 unbranded cattle, on the 18 permitted grazing allotments.

17 101. The ESA places ongoing obligations on federal agencies to ensure that their
18 actions do not jeopardize the continued existence of endangered species or adversely
19 modify or destroy their designated critical habitat, including the duty to reinitiate section
20 7 consultation in four circumstances. 50 C.F.R. § 402.16(a)(1)-(4). Agencies must
21 reinitiate consultation, for example, "[i]f the amount or extent of taking specified in the
22 incidental take statement is exceeded," when "[n]ew information reveals effects of the
23 action that may affect listed species or critical habitat in a manner or to an extent not
24 previously considered," or when "[t]he identified action is subsequently modified in a
25 manner that causes an effect to the listed species or critical habitat that was not
26 considered in the biological opinion." *Id.* § 402.16(a)(1)-(3).

27 102. The grazing assessment reports provided the Forest Service and FWS with
28 documentation of extensively damaged, ineffective, or absent fencing and associated

1 riparian use and damage by branded, as well as feral and unbranded cattle on the 18
2 permitted grazing allotments. These findings contradict the requirements and
3 commitments made in the relevant Biological Opinions, and/or exceed the levels of
4 permissible incidental take established in those Biological Opinions, thus undermining
5 the legality of section 7 consultation decisions authorizing grazing on the identified
6 allotments, as all of these decisions relied upon the purported exclusion of cattle from
7 southwestern rivers and streams as a foundation for those decisions.

8 103. The Forest Service and FWS were required to reinitiate and complete
9 consultation when presented with evidence documenting extensive cattle use and
10 associated lack of Forest Service monitoring of the riparian streamside areas of specific
11 allotments within the Verde River watershed on the Prescott, Coconino, and Tonto
12 National Forests. The Forest Service's failure in fact to exclude domestic livestock, as
13 well as unbranded or feral livestock, from occupied threatened and endangered species
14 habitat specifically triggers the reinitiation thresholds at 50 C.F.R. § 402.16(a). By failing
15 to reinitiate and complete consultation despite the fact that the reinitiation criteria are
16 satisfied, the Forest Service and FWS are in violation of 50 C.F.R. § 402.16.

17 104. By failing to take effective actions to exclude livestock from these
18 allotments, the Forest Service is in ongoing violation of the substantive ESA section
19 7(a)(2) requirement that federal agencies ensure their actions are not likely to jeopardize
20 the continued existence of any listed species or result in the destruction or adverse
21 modification of designated critical habitat. 16 U.S.C. § 1536(a)(2).

22 105. Plaintiffs and their members are injured by the Forest Service's and FWS'
23 violations of ESA section 7(a)(2) and failure to reinitiate and complete consultation.

24 106. The Forest Service's and FWS' violations of section 7(a)(2) of the ESA are
25 subject to judicial review under the ESA citizen suit provision, 16 U.S.C. § 1540(g)(1),
26 and/or the APA, 5 U.S.C. §§ 701-706.
27
28

Claim II
Unlawful Irreversible or Irretrievable Commitment of Resources
Pending Completion of Consultation
(ESA Violation of 16 U.S.C. 1536(d))

107. Plaintiffs incorporate all preceding paragraphs by reference.

108. The Forest Service's May 19, 2020 NOI response letter does not acknowledge that the reinitiation of ESA consultation is required for the 18 permitted Verde River allotments. Cattle continue to access purportedly excluded riparian areas, even though the Forest Service and FWS have determined that such exclusion is necessary to avoid jeopardizing listed species or the destruction or adverse modification of their designated critical habitat.

109. ESA section 7(d) provides that once an agency initiates or reinitiates section 7 consultation, the agency "shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2)." 16 U.S.C. § 1536(d). The purpose of section 7(d) is to prevent harm to endangered species and designated critical habitat pending the completion of section 7 consultation.

110. The Forest Service has failed to exclude cattle from riparian areas occupied by listed threatened or endangered species, and/or containing designated critical habitat for such species, within the 18 permitted grazing allotments pending the completion of reinitiated consultation, in violation of ESA section 7(d), 16 U.S.C. § 1536(d).

111. Plaintiffs and their members are injured by the Forest Service's violations of ESA section 7(d).

112. The Forest Service's violations of section 7(d) of the ESA are subject to judicial review under the ESA citizen suit provision, 16 U.S.C. § 1540(g)(1), and/or the APA, 5 U.S.C. §§ 701-706

Claim III

**Failure to Develop and Implement a Program to Conserve Listed Species Impacted
by the Forest Service's Grazing Program and Unauthorized Grazing
(ESA Violation of 16 U.S.C. § 1536(a)(1))**

113. Plaintiffs incorporate all preceding paragraphs by reference.

114. The Forest Service has violated its affirmative obligation to “engage in consultation with the FWS” so as to “carry[] out programs for the conservation” of listed species impacted by its grazing program. 16 U.S.C. § 1536(a)(1). As detailed in this Complaint, permitted cattle, as well as feral or unbranded cattle, are routinely accessing streamside and riparian areas that are purportedly excluded from those livestock, causing widespread and significant damage to habitat occupied by endangered and threatened species, and/or their designated critical habitat.

115. This damage is occurring in the 18 permitted allotments, as well as the 4 allotments that are formally designated as vacant. Unlike the 18 permitted allotments, the Forest Service and FWS have engaged in no consultation regarding the impacts of grazing on the purportedly vacant allotments. The Center's surveys demonstrated that these vacant allotments—which are concentrated along the Verde River Wild and Scenic corridor and contain significant portions of designated Wilderness—are subject to some of the most intensive and damaging unauthorized grazing within the Verde River watershed.

116. The Forest Service's actions to remove unauthorized cattle from streamside and riparian areas on both the 18 permitted and 4 vacant allotments that are purportedly excluded from livestock have been, at best, ineffectual and temporary in nature. Fencing intended to exclude cattle is frequently absent, in disrepair, or otherwise ineffective. The Forest Service has not conducted required monitoring to ensure that cattle are in fact excluded from streamside and riparian areas, and has not implemented adequate enforcement actions to compel corrective action. The Forest Service's contracts to remove unauthorized permitted cattle, and feral or unbranded cattle, from purportedly

1 excluded streamside and riparian areas, have not been successful and have been limited to
 2 a small portion of the impacted areas within the 18 permitted allotments and 4 vacant
 3 allotments. Consequently, cattle continue to access streamside and riparian areas that are
 4 purportedly excluded from such cattle.

5 117. Even if the Forest Service was successful in finally excluding cattle from
 6 purportedly excluded streamside and riparian areas, the agency has failed to develop and
 7 implement, in consultation with FWS, corrective measures for mitigating the extensive
 8 damage this unauthorized grazing has caused to threatened or endangered species and/or
 9 their designated critical habitat on the 18 permitted allotments and 4 vacant allotments.
 10 16 U.S.C. § 1536(a)(1). The Forest Service's failure to "utilize [its] authorities . . . by
 11 carrying out programs for the conservation of endangered species" in consultation with
 12 and with the assistance of FWS violates section 7 (a)(1) of the ESA. *Id.*

13 **REQUEST FOR RELIEF**

14 Wherefore, Plaintiffs respectfully request that the Court:

15 1. Declare that the Forest Service and FWS are violating section 7(a)(2) of the
 16 Endangered Species Act and 50 C.F.R. § 402.16 by failing to reinitiate and complete
 17 consultation on the 18 permitted grazing allotments identified in the paragraphs above
 18 and listed in Table 1 in order to ensure that grazing activities on those allotments do not
 19 jeopardize the continued existence of listed species or result in the destruction or adverse
 20 modification of their designated critical habitat;

21 2. Declare that the Forest Service is violating Section 7(d) of the Endangered
 22 Species Act by failing to remove all cattle within purportedly excluded riparian areas on
 23 the 18 permitted grazing allotments identified above and listed in Table 1, pending the
 24 completion of reinitiated consultation;

25 3. Declare that the Forest Service is violating Section 7(a)(1) of the
 26 Endangered Species Act by failing, in consultation with and with the assistance of FWS,
 27 to develop and implement a program to conserve listed species impacted by the agency's
 28 grazing program, including the failure to mitigate damage caused by unauthorized

1 permitted cattle, and feral or unbranded cattle, to streamside and riparian streamside
2 providing habitat for listed species on the 18 permitted grazing allotments and 4 vacant
3 grazing allotments identified above and listed in Table 1;

4 4. Order the Forest Service to remove all cattle within purportedly excluded
5 riparian areas on the 18 permitted grazing allotments and 4 vacant grazing allotments
6 identified above and listed in Table 1 within ten days of this Court's Order;

7 5. Order the Forest Service to identify sources of unauthorized livestock use
8 in Verde River watershed riparian areas on the 18 permitted grazing allotments and 4
9 vacant grazing allotments identified above and listed in Table 1 within three months, and
10 within six months, make necessary repairs to fencing infrastructure to prevent future
11 unauthorized use. In areas where unauthorized cattle use cannot be remedied by existing
12 infrastructure, the Forest Service shall relocate fencing or close pastures to grazing as
13 necessary to prevent further unauthorized riparian grazing;

14 6. Order the Forest Service to commit to monthly inspection of riparian areas
15 within vacant allotments, and within excluded riparian areas on permitted allotments
16 when cattle are in a pasture adjacent to purportedly excluded riparian areas, and to
17 weekly inspections if there is a "water gap" in the pasture; further Order the Forest
18 Service to immediately make these inspections available through a website portal or
19 similar means;

20 7. Order the Forest Service and FWS to reinitiate and complete consultation
21 on the 18 permitted grazing allotments identified in the paragraphs above and listed in
22 Table 1;

23 8. Order the Forest Service, in consultation with and with the assistance of
24 FWS, to develop a program for the conservation of endangered and threatened species
25 impacted by the Forest Service's grazing program, including actions to mitigate damage
26 caused by unauthorized permitted cattle, and feral or unbranded cattle, to streamside and
27 riparian streamside providing habitat for listed species on the 18 permitted grazing
28 allotments and 4 vacant grazing allotments;

1 9. Grant Plaintiffs their reasonable attorneys' fees and costs associated with
2 this action, as provided by the ESA, § 1540(g)(4), or the Equal Access to Justice Act, 28
3 U.S.C. § 2412; and

4 10. Provide such additional relief as the Court may deem just and proper.

5 Respectfully Submitted this 17th day of September, 2020.

6 /s/ Brian Segee

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Table 1: Verde Watershed Allotments

#	Allotment	BiOp	Riparian Areas	Critical Habitat
1	Muldoon	12/30/02	Verde River	LM, RS, SD, YBC
2	West Bear/Del Rio	12/30/02	Verde River	LM, NHGS, RS, SD, YBC
3	China Dam	12/30/02	Verde River	LM, NHGS, RS, SD, YBC
4	Sand Flat	12/30/02	Verde River	LM, NHGS, RS, SD, YBC
5	Perkinsville	12/30/02	Verde River	LM, NHGS, RS, SD, YBC
6	Horseshoe	12/30/02	Verde River	LM, NHGS, RS, SD, YBC
7	Antelope Hills	12/30/02	Verde River	LM, NMGS, RS, SD, SWWF, YBC
8	Windmill West	8/14/14	Verde River	GC, LM, NMGS, RS, SD, SWWF, YBC
9	Brown Springs	12/30/02	Verde River, Gap Creek, Coldwater Creek.	RS, SD, SWWF, YBC
10	13-Mile Rock	5/6/16	Verde River, Cottonwood Springs, West Verde River	RS, SD, SWWF, YBC
11	Hackberry/Pivot Rock	5/6/16	Verde River	SWWF
12	Beaver Creek	5/6/16	Wet Beaver Creek, Red Tank Draw	GC
13	Apache Maid	5/6/16	Wet Beaver Creek, Red Tank Draw	GC, NHGS, NMGS, YBC
14	Walker Basin	5/6/16	Beaver Creek, Walker Creek	GC, YBC
15	Skeleton Ridge	6/25/97	Verde River, Houston Creek, Fossil Creek	RS, SWWF, YBC
16	Fossil Creek	5/6/16; 5/7/13	Verde River, Fossil Creek	CLF, LM, RS, SD, SWWF, YBC
17	Deadman Mesa	n/a-Vacant	Fossil Springs	LM, SD

18			Verde River, East Verde River, Fossil Creek	LM, RS, SD, SWWF, YBC
	Cedar Bench	9/8/95		
19		n/a-Vacant	East Verde River	NHGS
	Bull Springs			
20			Verde River, Red Creek, Tangle Creek, Zigzag Creek	SWWF
	Red Creek	12/19/00		
21	Sears Club/Chalk Mountain	n/a-Vacant		LM, RS, SD, SWWF, YBC
22		n/a-Vacant		LM, RS, SD, SWWF, YBC
	Bartlett			

CLF-Chiricahua leopard frog

GC-Gila chub

LM-Loach minnow

MSO-Mexican spotted owl

NHGS-Narrow-headed garter snake

NMGS-Northern Mexican garter snake

RS-Razorback sucker

SD-Spikedace

SWWF-Southwestern willow flycatcher

YBC-Yellow-billed cuckoo