

No. 25-2034

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

NEW MEXICO CATTLE GROWERS' ASSOCIATION, ET AL.;

Plaintiffs-Appellant,

v.

UNITED STATES FOREST SERVICE, ET AL.;

Defendants-Appellees; and

CENTER FOR BIOLOGICAL DIVERSITY;

Intervenor-Defendant-Appellee

On Appeal from the United States District Court
for the District of New Mexico
No. 1:23-cv-150-JB-GBW
Hon. Judge James O. Browning

**MOTION TO DISMISS
APPEAL AS MOOT**

Brian Segee
Center for Biological Diversity
226 W. Ojai Ave., Ste. 101-442
Ojai, CA 93023-3278
Telephone: (805) 750-8852
bsegee@biologicaldiversity.org

Marc Fink
Center for Biological Diversity
209 East 7th Street
Duluth, MN 55805
Telephone: (218) 464-0539
mfink@biologicaldiversity.org

*Attorneys for Intervenor-Defendant-
Appellee*

DISCLOSURE OF OTHER PARTIES' POSITION

Pursuant to Tenth Circuit Rule 27.1, counsel for Intervenor contacted counsel for Federal Appellees and Appellants regarding the relief sought.

Counsel for Federal Appellees states that the United States takes no position on the motion to dismiss the case as moot and that Federal Appellees do not intend to file a response to the motion. Federal Appellees further note that the filing of a dispositive motion tolls the briefing deadlines under Tenth Circuit Rule 27.3(C).

Intervenor's counsel emailed Appellants' counsel (Dan McGuire, Jessica Blome, Steve Scholl) at 9:07 a.m. pacific time on Monday, December 1 for Appellants' position on the motion and asked for a response by 10 a.m. central time on Tuesday, December 2. None of the three attorneys representing Appellants has provided any response to or acknowledgment of the email, and thus Appellants' position on the motion is unknown.

INTRODUCTION

This case, brought by New Mexico Cattle Growers' Association and several additional organizational and individual plaintiffs, arises from the U.S. Forest Service's February 16, 2023, decision authorizing removal of a feral (unowned and undomesticated) cattle herd from the Gila National Forest. The removal actions authorized under the decision are complete; indeed, no feral cattle have been detected in the area since operations were conducted in 2023. *See* Exh. A (Withdrawal Decision). In addition, and relatedly, the Forest Service has now withdrawn its decision authorizing the action. *Id.* Intervenor Center for Biological Diversity accordingly moves for Cattle Growers' case challenging the removal decision to be dismissed as moot.

BACKGROUND

Descended from domesticated cattle abandoned by a grazing permittee in the 1970s, the unmanaged feral herd that has now been removed from the Gila National Forest was fouling water quality and degrading tens of miles of streamside forests within the heart of the Gila Wilderness, negatively impacting habitat for endangered birds, fish, amphibians and reptiles, including yellow-billed cuckoo, southwestern willow flycatcher, loach minnow, spokedace, Chiricahua leopard frog, northern Mexican garter snake, and narrow-headed garter snake. ECF No. 1, at 27-29, 33-35.

Beginning in 1998, the Forest Service authorized numerous efforts to remove the Gila feral cattle herd by ground-based means of capture and removal, including nine “gather contracts.” These efforts failed to meaningfully reduce the feral herd size. Moreover, due to stress or injury, approximately half of the captured cattle died or were euthanized before they could be herded or brought out of the wilderness. ECF No. 1, at 31-33.

After repeatedly trying these removal efforts, the Forest Service charted a different course. In February 2022, the agency authorized U.S.D.A. Animal and Plant Health Inspection Service (“APHIS”) to conduct a single operation to remove feral cattle through aerial gunning. For the first time, these efforts successfully removed a significant number of cattle, but the herd still persisted. ECF No. 1, at 29-30.

In 2023, the Forest Service proposed additional operations to complete the feral herd removal. After conducting new analysis under the National Environmental Policy Act (NEPA), Wilderness Act, Endangered Species Act, and other laws, on February 16, 2023, the Forest Service approved the “Gila Wilderness Feral Cattle Removal Project” (“Project”), with the goal of removing the remaining population of feral cattle from the Gila Wilderness. In addition to authorizing ground-based methods, the Project authorized APHIS to conduct additional aerial lethal removals for small (3-week) operational windows in

February from 2023 to 2025. The Project’s stated purpose was to protect and restore riparian health, water quality, threatened and endangered species habitat, and wilderness character within the Gila Wilderness. ECF No. 1, at 34-35.

In accord with this decision, removal efforts were undertaken in the Gila Wilderness from February 2023 to December 2023. Exh. A. Surveys conducted since that time have not documented feral cattle or their sign within the Gila National Forest. As the Forest Service’s withdrawal explains, “[n]o feral cattle, nor signs of their presence, have been documented in the Gila Wilderness since removal efforts were completed in 2023.” The agency “anticipate[s] that resource conditions, especially in riparian areas frequented by the feral cattle, will continue to recover,” and concludes that “the desired outcomes of this project have been achieved.” Consequently, the Forest Service formally withdrew its decision authorizing the Project on November 13, 2025. Exh. A.

ARGUMENT

BECAUSE NO FERAL CATTLE REMAIN IN THE GILA NATIONAL FOREST AND THE CHALLENGED DECISION HAS BEEN WITHDRAWN, THIS APPEAL IS MOOT AND SHOULD BE DISMISSED.

Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction. *Beattie v. United States*, 949 F.2d 1092, 1093 (10th Cir. 1991). This Article III “case-or-controversy requirement subsists through all stages of federal judicial proceedings,

trial and appellate.” *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477 (1990); *Chihuahuan Grasslands All. v. Kempthorne*, 545 F.3d 884, 891 (10th Cir. 2008).

Here, Cattle Growers’ lawsuit challenging the Forest Service and APHIS February 23, 2023 decisions to authorize and implement the Project’s removal operations has been mooted by the completion of the actions authorized under the challenged decisions. The lawsuit, which alleged violations of Forest Service regulations and NEPA, and which sought to enjoin the Forest Service and APHIS from using lethal aerial techniques, was rejected on all counts by the district court. *N.M. Cattle Growers’ Ass’n v. United States Forest Serv.*, No. 23-cv-150-JB, 2025 U.S. Dist. LEXIS 16121, 2025 WL 327265 (D.N.M. Jan. 29, 2025); ECF No. 1, at 19-259.

Since that time, additional Forest Service surveys have confirmed that the operations achieved the Project’s goal, and that no feral cattle remain within the Gila National Forest. The Project in fact now appears to have successfully removed all remaining feral cattle in the first year of authorized operations. Reflecting this success, the Forest Service formally withdrew its decision authorizing the challenged aerial operations and other removal efforts approved under the Project on November 13, 2025. Exh. A.

A case becomes moot when it is “impossible for the court to grant any effectual relief whatsoever to the prevailing party.” *In re Western Pac. Airlines*,

Inc., 181 F.3d 1191, 1994 (10th Cir. 1999). Accordingly, “if an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, [the court] must dismiss the case, rather than issue an advisory opinion.” *Fleming v. Gutierrez*, 785 F.3d 442, 445 (10th Cir. 2015) (internal quotation and citations omitted).

In this case, it is “impossible” for a court to provide “effectual relief” because the Gila feral cattle herd has been successfully removed and the Forest Service’s 2023 decision authorizing the Project is no longer operative. Because Cattle Growers’ litigation thus no longer presents a “live case or controversy,” the Court should dismiss the appeal as moot. *Gutierrez*, 785 F.3d at 444; see also *Fund for Animals, Inc. v. U.S. Bureau of Land Mgmt.*, 460 F.3d 13, 22 (D.C. Cir. 2006) (ruling that challenges to already completed gathers of wild horses were moot) (internal quotation marks and citations omitted); *Cloud Found., Inc. v. Salazar*, 999 F. Supp. 2d 117, 127 (D.D.C. 2013) (holding that a challenge to categorical exclusion based on previously completed gathers was moot).

The removal efforts challenged by Cattle Growers in this case focused on a single feral cattle herd arising from unusual circumstances unlikely to be repeated. The feral herd was the only such herd to exist on the Gila National Forest and has now been removed. Even assuming *some* potential exists that stray individual feral cattle remain—not an impossible proposition given the size and ruggedness of the

Gila Wilderness—the action would still only recur *if* the Forest Service again chose to take action, and even then only *if* that action again included aerial gunning operations. This unlikely, and highly speculative chain of potential future events falls short of any “reasonable expectation” of recurrence and also underscores how “[p]articular decisions to remove” feral cattle, like those made with respect to wild horses and burros, “are highly fact-specific.” *Fund for Animals*, 460 F.3d at 22. The Cattle Growers’ current case challenging the Project thus “cannot be saved from mootness on the ground that it raises issues or wrongs capable of repetition yet evading review.” *Id.* (internal quotations and citations omitted).

Respectfully Submitted this 2nd day of December, 2025.

s/ Brian Segee
Brian Segee
Center for Biological Diversity
226 W. Ojai Ave., Ste. 101-442
Ojai, CA 93023-3278
(805) 750-8852
bsegee@biologicaldiversity.org

Marc Fink
Center for Biological Diversity
209 East 7th Street
Duluth, MN 55805
Telephone: (218) 464-0539
mfink@biologicaldiversity.org

Attorneys for Intervenor Defendant Appellee

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(c) and Tenth Circuit Rule 25.3, I hereby certify that on this December 2, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the Appellate CM/ECF system.

/s/ Brian Segee

Brian Segee

Attorney for Intervenor-Defendant-Appellee

Exhibit A



File Code: 1950; 1570; 1920**Date:** 11/13/2025**Subject:** Gila Wilderness Feral Cattle Removal Decision Memo Withdrawal**To:** Michiko Martin, Southwestern Regional Forester

I am writing to document the withdrawal of my February 16, 2023, Decision Memorandum for the Gila Wilderness Feral Cattle Removal Project on the Wilderness District of the Gila National Forest. This withdrawal is effective immediately. All documents referenced in this letter are available on the project page: <https://www.fs.usda.gov/r03/gila/projects/archive/63204>.

The Gila Wilderness comprises approximately 560,000 acres of mostly rugged and remote terrain within the Gila National Forest. As described in detail in the project proposal, in the mid-1970s, a grazing permittee abandoned his cattle on the Redstone Allotment in the Gila Wilderness. The adverse resource impacts of the progeny of these abandoned animals on the Wilderness is well documented. Prior efforts since the 1990s attempted to control and remove the feral cattle, but without long-term success due to their wild nature and the remote location and rugged topography of the Gila Wilderness.

The purpose and objective of the Gila Wilderness Feral Cattle Removal Project was to protect and restore riparian health, water quality, habitat for several federally threatened and endangered species, and wilderness character within the Gila Wilderness by removing feral cattle. As described in the Decision Memorandum (pp. 5-6), this project authorized “treatment of unauthorized, feral cattle utilizing a combination of lethal and non-lethal methods to remove the remaining population of feral cattle from the Gila Wilderness.”

In accord with the Decision Memorandum, removal efforts were undertaken in the Gila Wilderness from February 2023 to December 2023 which resulted in removal of 47 head of cattle. The Forest subsequently conducted project monitoring following removal efforts in 2023 (Decision Memorandum, p. 6). No feral cattle, nor signs of their presence, have been documented in the Gila Wilderness since removal efforts were completed in 2023. It is anticipated that resource conditions, especially in riparian areas frequented by the feral cattle, will continue to recover; the desired outcomes of this project have been achieved. For these reasons, the objective of the February 2023 Gila Wilderness Feral Cattle Removal Project having been met, this decision is no longer needed and is hereby withdrawn.

CAMILLE
HOWES

CAMILLE HOWES
Forest Supervisor

Digitally signed by
CAMILLE HOWES
Date: 2025.11.13
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Cc: Jeffrey Shearer, Brian Stultz

