

Justin Augustine (CA Bar No. 235561)
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Phone: (916) 597-6189
Email: jaugustine@biologicaldiversity.org
Applicant Pro Hac Vice

Attorneys for Plaintiffs

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

CENTER FOR BIOLOGICAL
DIVERSITY; MARICOPA AUDUBON
SOCIETY; ARIZONA WILDLIFE
FEDERATION; ARIZONA DEER
ASSOCIATION; ARIZONA BIGHORN
SHEEP SOCIETY; and ARIZONA
SPORTSMEN FOR CONSERVATION;

Plaintiffs,

v.

UNITED STATES FOREST SERVICE;
and NEIL BOSWORTH, acting in his
official capacity as SUPERVISOR,
TONTO NATIONAL FOREST;

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF**

INTRODUCTION

1. Plaintiffs Center for Biological Diversity, Maricopa Audubon Society, Arizona Wildlife Federation, Arizona Deer Association, Arizona Bighorn Sheep Society, and Arizona Sportsmen for Conservation (“Plaintiffs”) bring this civil action for declaratory and injunctive relief, due to Federal Defendants’ failure to comply with the National Environmental Policy Act (“NEPA”) with respect to their actions regarding the Salt River horse herd on the Tonto National Forest.

2. On February 3, 2023, the Arizona Department of Agriculture (“AZDA”) and the United States Forest Service approved the Salt River Horse Management Plan. This Management Plan has been and continues to be administered and carried out by the State of Arizona and the Forest Service.¹ This Plan is an outgrowth of the 2017 Intergovernmental Agreement between the Arizona Department of Agriculture and the Tonto National Forest. This Intergovernmental Agreement has been and continues to be administered and carried out by the State of Arizona and the Forest Service. Independently, and together, the Management Plan and Intergovernmental Agreement dictate how the Salt River horse herd is managed and therefore determine the environmental impacts of the Salt River horse herd.

3. The Salt River horse herd’s population greatly exceeds the carrying capacity of the rare desert riparian area where the horses live—there are currently approximately 600 horses in an area that can only support 28-44 horses. Unfortunately, the Salt River Horse Management Plan fails to ameliorate this problem, and consequently, the ongoing environmental degradation caused by the horses will continue.

¹ See e.g., correspondence from Arizona Department of Agriculture Director Mark W. Killian to the Tonto National Forest, February 3, 2023, https://www.biologicaldiversity.org/programs/public_lands/grazing/pdfs/horses-MANAGEMENT-PLAN-20230203-COVER-LETTER.pdf : “This plan has been approved by the United States Forest Service and the Arizona Department of Agriculture to implement H.B. 2340 A.R.S. § 3-1491”

4. NEPA requires federal agencies to analyze and disclose the environmental effects of their actions to the public and decisionmakers *before* committing to those actions. The 2023 Salt River Horse Management Plan and 2017 Intergovernmental Agreement, however, were approved without any NEPA analysis.

5. Because Defendants' failure to comply with NEPA is resulting in severe, and unnecessary, environmental degradation, Plaintiffs seek a declaration that the Forest Service violated NEPA and ask the Court to vacate and set aside the Salt River Horse Management Plan and associated Intergovernmental Agreement, and enjoin their implementation, until the Forest Service complies with NEPA.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to the Administrative Procedure Act (APA), 5 U.S.C. sections 701-706; 28 U.S.C. section 1346 (United States as defendant); and 28 U.S.C. section 1331 (federal question jurisdiction), with claims arising under the APA and the National Environmental Policy Act (NEPA), 42 U.S.C. sections 4321 et seq., and its implementing regulations.

7. An actual controversy exists between the parties within the meaning of 28 U.S.C. section 2201(a). This Court may grant declaratory relief and additional relief pursuant to 28 U.S.C. sections 2201-2202 and 5 U.S.C. sections 701-706.

8. Venue is proper in this judicial district and Court pursuant to 28 U.S.C. section 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to the claims occurred in this district, and a substantial part of the property that is the subject of this action is situated in this district. Venue is also proper in the Phoenix Division pursuant to Civil Local Rules 77.1 and 5.1, because this case is founded on causes of action arising in the Phoenix Division.

PARTIES

9. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("the Center") is a national, nonprofit conservation organization that works through science, law, and policy

to protect imperiled species and their habitats. The Center is actively involved in species and habitat protection issues worldwide, including throughout the southwestern United States, and continues to actively advocate for increased protections for species and their habitats in Arizona and many of its public lands, including the Tonto National Forest. The Center has more than 89,000 active members across the country, including over 4,100 members living in Arizona. Many of these members have visited the Salt River area of the Tonto National Forest for recreational, scientific, educational, and other pursuits and intend to continue to do so in the future, and are particularly interested in protecting the many native, imperiled, and sensitive species and their habitats that may be affected there by horses. The Center brings this action on its own behalf and on behalf of its adversely affected members.

10. The Center's members use and enjoy the Salt River area of the Tonto National Forest for a variety of purposes, including hiking, camping, photographing scenery and wildlife, viewing wildlife and signs of wildlife, and engaging in other vocational, scientific, and recreational activities. This includes, but is not limited to, Center member Robin Silver, who most recently visited the Salt River area of the Tonto National Forest on April 2, 2023.

11. The Center's members intend to continue to use and enjoy the Salt River area of the Tonto National Forest frequently and on an ongoing basis in the future, including during the spring and summer of 2023. As just one example, Center member Robin Silver has plans to return on May 6, 2023.

12. The aesthetic, recreational, inspirational, spiritual, scientific, and educational interests of the Center's members have been and will continue to be adversely affected and irreparably injured if Defendants' ongoing violations of NEPA continue. The relief sought will redress the Center and its staff and members' injuries.

13. Plaintiff MARICOPA AUDUBON SOCIETY is a nonprofit organization with over 3,000 members dedicated to the study and enjoyment of birds and other

wildlife, and to the protection and restoration of their habitat in the Southwest. Maricopa Audubon is run by volunteers and strives to protect and restore wildlife habitat through education and community involvement. Maricopa Audubon has worked to protect wetlands in Arizona since July 1953.

14. Plaintiff ARIZONA SPORTSMEN FOR WILDLIFE CONSERVATION is a non-profit organization comprised of 33 member groups and over 20,000 individual sportsmen and women whose mission is to educate and inform sportsmen, wildlife conservation organizations throughout the state, and the public at large on important issues related to wildlife and wildlife habitat, and to provide, via grants or other sources, funding to conserve Arizona's wildlife populations through habitat enhancement initiatives.

15. Plaintiff ARIZONA WILDLIFE FEDERATION (AWF) is a non-profit organization with over 7,000 members, and is the state affiliate of the National Wildlife Federation with another 84,000 supporters in Arizona and 7.2 million members across the country. Founded in 1923, AWF's mission is to educate and inspire individuals and organizations to conserve wildlife and wildlife habitat in Arizona.

16. Plaintiff ARIZONA DESERT BIGHORN SHEEP SOCIETY is a non-profit organization, founded in 1967, whose members are dedicated to conservation and population enhancement of bighorn sheep in Arizona.

17. Plaintiff ARIZONA DEER ASSOCIATION is a non-profit organization whose members are dedicated to improving habitat and expanding Arizona's mule deer and Coues deer herds.

18. The recreational, aesthetic, conservation, educational, and scientific interests of Plaintiffs and their members in the wildlife, and ecosystems of the Tonto National Forest will be directly and adversely affected by Defendants' actions. If Defendants had carried out an adequate environmental review and fully complied with NEPA, they would likely have created a science-based Salt River Horse Management

Plan that meaningfully and adequately addresses the severe environmental damage that horses can cause. Proper environmental review would have made it more likely that Plaintiffs and their members would have better opportunities to observe and enjoy the species and habitats of the Tonto National Forest.

19. Plaintiffs' and Plaintiffs' members' injuries would be redressed by the relief sought.

20. Defendant UNITED STATES FOREST SERVICE is a federal government agency within the Department of Agriculture, which holds the National Forests in trust for the American people and is responsible for actions in the Tonto National Forest.

21. Defendant NEIL BOSWORTH is sued in his official capacity as the Supervisor of the Tonto National Forest. Supervisor Bosworth is directly responsible for horse management in the Tonto National Forest and for ensuring that all resource management decisions comply with applicable laws and regulations. Supervisor Bosworth signed the Intergovernmental Agreement and is responsible for the associated Salt River Horse Management Plan challenged here.

STATUTORY BACKGROUND

A. National Environmental Policy Act

22. The intent of the National Environmental Policy Act is “to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process,” and “to provide for informed decision making and foster excellent action.” 40 C.F.R. § 1500.1(a).

23. “Agencies should integrate the NEPA process with other planning and authorization processes at the earliest reasonable time to ensure that agencies consider environmental impacts in their planning and decisions, to avoid delays later in the process, and to head off potential conflicts.” 40 C.F.R. § 1501.2.

24. To accomplish its objectives, NEPA requires federal agencies to prepare either an environmental assessment (EA) or an environmental impact statement (EIS). 40

C.F.R. § 1501.3. In addition to addressing environmental impacts, the EA or EIS must consider alternatives that would avoid or minimize adverse impacts. 40 C.F.R. §§ 1501.5, 1502.1. Moreover, “[a]gencies shall not commit resources prejudicing selection of alternatives before making a final decision,” and NEPA documents “shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” 40 C.F.R. § 1502.2.

B. Administrative Procedure Act

25. The Administrative Procedure Act entitles those adversely affected by final agency actions to a right of judicial review. 5 U.S.C. §§ 702, 704.

26. The APA directs reviewing courts to “compel agency action unlawfully withheld or unreasonably delayed” and to “hold unlawful and set aside agency action, findings, and conclusions” that are found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* § 706(A).

FACTUAL BACKGROUND

27. The Salt River horse herd occupies the Tonto National Forest in an area designated by the Forest Service as the Lower Salt River Recreation Area.

28. The impacted area is one of the rare riparian areas in the Southwest where water is present year-round. Protection of this area is essential in order to provide habitat and sustainable water for wildlife, plants, and human communities. This is especially so in Arizona – over 90% of the riparian areas along Arizona’s major desert watercourses have been lost, altered, or degraded.

29. The current Forest Plan (from 1985) for the Tonto National Forest acknowledges the importance of protecting the Lower Salt River riparian area to support species like javelina, Gambel’s quail, and mule deer; to protect and enhance Yuma clapper rail habitat; and to rehabilitate bald eagle nesting habitat. The Forest Plan also emphasizes that rangelands should be managed to control livestock numbers so that

livestock use is within present grazing capacity, and areas in less than satisfactory condition will be treated with improved management.

30. Horses moved into Lower Salt River area from adjoining lands starting in the late 1970s after the Tonto National Forest terminated the area's Goldfield Allotment cow grazing operation of twelve cows because of inadequate forage and damage to the riparian area.

31. In December of 2017, the Tonto National Forest and the State of Arizona entered into an Intergovernmental Agreement regarding the management of the Salt River horse herd.

32. The Agreement delineates specific responsibilities for the Forest Service, including to “[c]onstruct fences as needed around the entire Salt River horse area designed to prevent the horses from endangering the public and to ensure that other livestock are prevented from joining the herd”; “fund and organize a collaborative process with interested parties designed to allow the collaborating members to create a proposed management plan for the Salt River horses”; “[c]onduct any necessary National Environmental Policy Act (‘NEPA’) analysis to provide necessary Federal authorizations for approved activities and facilities on Federal land needed for the management of the Salt River horse herd”; “[c]omplete the carrying capacity study that is currently being conducted by the University of Arizona and provide the complete results to the AZDA”; “[i]ssue any necessary Federal authorizations to AZDA for approved activities and facilities on Federal land needed for the management of the Salt River horse herd”; “[b]e responsible for the range and riparian monitoring within the designated Salt River horse area”; “[m]eet at least twice per year with AZDA to discuss any issues relevant to the horse herd, including health findings, range conditions or other matters which may affect the Salt River horse herd”; and “[p]rovide professional and technical expertise to the AZDA for the management of the Salt River horse herd as requested by AZDA.”

33. The Agreement also specifies responsibilities for the State of Arizona, including to “[b]e an active participant in the collaborative process with interested parties in order for the collaborating members to create a proposed management plan for the Salt River horse herd”; “[s]ubmit the proposed management plan as adopted by the interested parties in the collaborative process for the Salt River horse herd to the U.S. Forest Service for its review to initiate any necessary NEPA analysis and necessary federal authorization”; “[u]se Arizona’s State Procurement Office and procurement laws to secure one or more third parties to address issues related to the Salt River horses until the management plan is ready to be implemented”;² “[a]dhere to relevant federal and state laws regarding management of the horses, including but not limited to turning branded and gelded/spayed horses over to the owner or applicable government agency”; “[m]eet at least twice per year with U.S. Forest Service to discuss any issues relevant to the horse herd, including health findings, range conditions or other matters which may affect the Salt River horse herd”; and “[u]se Arizona’s State Procurement Office and procurement laws to secure one or more third parties to implement the management plan once necessary authorizations have been obtained.”

34. No NEPA analysis was conducted prior to the adoption of the 2017 Intergovernmental Agreement.

35. Moreover, despite the clear language of the Agreement, its mandates have not been followed by either the Forest Service or the State. As a result, the Salt River horse population greatly exceeds the area’s carrying capacity. The area has a carrying capacity of 28-44 horses according to scientists at the Rocky Mountain Research

² “The third party(ies) shall have responsibilities including but not limited to the following: Create and administer an equine birth control program designed to control the population of the Salt River horse herd. Monitor, identify, and seek veterinary treatment for any injured Salt River horses and be responsible for the proper removal of dead horses from the Salt River horse area. Provide reports at the joint meetings of the AZDA and U.S. Forest Service on the inventory of the horse herd, including health findings or any other matters relevant to the management of the Salt River horse herd.”

Station, yet there are estimated to be more than 600 horses in the area presently.³ The horses are being artificially fed to prevent mass starvation.

36. Overgrazing by the horse population has led to, and continues to cause, severe deterioration of the area. For example, range scientists from the University of Arizona observed that they “failed to document a single perennial [continually reoccurring] grass plant” in the area.

37. The 2017 Intergovernmental Agreement committed the Forest Service to fund and organize a collaborative process of interested parties to create a proposed long-term management plan for the Salt River horse herd. The Collaborative is comprised of members that include federal, state, and local agencies, neighboring Tribes, and other stakeholders. Stakeholders were selected to represent a balanced and diverse set of interests, to ensure a broad array of perspectives.

38. Due to the deteriorating conditions being caused by horse overgrazing, a majority of the Collaborative recommended a reduction of the Salt River horse herd to a maximum of approximately 100 horses. The intent was to achieve this reduction over a short period of time (less than two years) by (1) the return of horses to Tribal lands, (2) adoption, and (3) contraception administration.

39. Despite the fact that the Collaborative overwhelmingly voted to recommend a herd size of no more than 100 horses, the State of Arizona instead chose a Management Plan approach that indicates a timetable on the order of 25-35 years to reach a population of 200 horses.

40. The Forest Service has repeatedly informed the State of Arizona of its concerns regarding the State’s approach to managing the Salt River horse herd. For example, the Forest Service has noted that while “the [State] questions the assumptions and results presented in the forage report and carrying capacity determinations from the

³ The 2023 Salt River Horse Management Plan states that the Salt River horse herd consists of approximately 450 horses, but the Forest Service has noted that this number is “derived from outdated information.”

University of Arizona, FS Southwestern Region, and Rocky Mountain Research Center studies,” the Forest Service maintains its position that the results of those studies are “the best available science regarding carrying capacity in the [Salt River] horse management area.”

41. The Forest Service has further explained that the State’s desire to open the Usery Area to horses is misguided because the “Usery Area is heavily used by recreationists (i.e. cyclists) and has limited forage, no water availability, and is characterized by steep mountainous terrain that horses would be unable to access,” and “allowing it to be used would require construction of approximately seven additional miles of new fence along Bush Highway and Usery Pass road; construction of an overpass or underpass across the highway; development of additional feeding and watering stations; and outreach to recreational user groups.”

42. Despite its own findings regarding the carrying capacity of the Salt River area, and the impacts of wild horses to the area, the Forest Service has never prepared an EA or EIS, pursuant to NEPA’s public participation requirements, to disclose and address the environmental impacts of either the Intergovernmental Agreement or the Salt River Horse Management Plan.

43. Due to the Forest Service’s failure to adhere to its legal obligations, severe ongoing harm is occurring to this rare area and the wildlife that depends upon it. Endangered species are being harmed by the horse damage including the Yellow-billed Cuckoo, Southwestern Willow Flycatcher, and Yuma Clapper Rail. Native wildlife affected by the habitat damage includes mule deer, desert bighorn sheep, and quail. Mule deer have been driven out of the area because there is nothing left for them to eat, and desert bighorn sheep will likely suffer a similar fate if a science-based management plan is not implemented. Similarly, due to the horses consumption of tree saplings, there is little to no recruitment of the mature cottonwood trees that Desert Nesting Bald Eagles need to continue living in the area.

**CLAIMS FOR RELIEF
FIRST CLAIM
VIOLATION OF NEPA AND APA**

44. Plaintiffs incorporate by reference and re-allege all allegations set forth above.

45. NEPA requires federal agencies to examine the environmental impacts of any major federal action that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).

46. A “major Federal action” “means an activity or decision subject to Federal control and responsibility.” 40 C.F.R. § 1508.1(q).

47. The Forest Service’s approval of the 2017 Intergovernmental Agreement constitutes major federal action. This action may significantly impact the quality of the environment because it authorizes management of the Salt River horse herd that has led to, and will lead to, severe degradation of the riparian area where the horses live. The Forest Service must therefore prepare an EA or EIS to assess and disclose the environmental impacts of the agency’s management of the Salt River horse herd.

48. The Forest Service’s failure to comply with NEPA for its adoption of the 2017 Intergovernmental Agreement constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D). The Forest Service’s failure to prepare an EA or EIS also constitutes agency action unlawfully withheld or unreasonably delayed within the meaning of the APA. 5 U.S.C. § 706(1). As such, Defendants’ actions should be held unlawful and set aside.

**SECOND CLAIM
VIOLATION OF NEPA AND APA**

49. Plaintiffs incorporate by reference and re-allege all allegations set forth above.

50. NEPA requires federal agencies to examine the environmental impacts of any major federal action that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).

51. A “major Federal action” “means an activity or decision subject to Federal control and responsibility.” 40 C.F.R. § 1508.1(q).

52. The Forest Service’s association with, and approval of, the 2023 Salt River Horse Management Plan constitutes major federal action. This action may significantly impact the quality of the environment because it authorizes management of the Salt River horse herd that has led to, and will lead to, severe degradation of the riparian area where the horses live. The Forest Service must therefore prepare an EA or EIS to assess and disclose the environmental impacts of the agency’s management of the Salt River horse herd.

53. The Forest Service’s failure to comply with NEPA for its adoption of the 2023 Salt River Horse Management Plan constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D). The Forest Service’s failure to prepare an EA or EIS also constitutes agency action unlawfully withheld or unreasonably delayed within the meaning of the APA. 5 U.S.C. § 706(1). As such, Defendants’ actions should be held unlawful and set aside.

REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants and provide the following relief:

1. Declare that Defendants violated NEPA, and the APA, in approving the 2017 Intergovernmental Agreement;
2. Declare that Defendants violated NEPA, and the APA, in approving the 2023 Salt River Horse Management Plan;

3. Declare unlawful, vacate, and set aside Defendants' 2017 Intergovernmental Agreement;
4. Declare unlawful, vacate, and set aside Defendants' 2023 Salt River Horse Management Plan;
5. Pending the completion of adequate NEPA review, enjoin Defendants from proceeding with the 2017 Intergovernmental Agreement;
6. Pending the completion of adequate NEPA review, enjoin Defendants from proceeding with the 2023 Salt River Horse Management Plan;
7. Grant Plaintiffs such temporary restraining orders or preliminary or permanent injunctions as they may request;
8. Award Plaintiffs costs and reasonable attorneys' fees as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and any other statute;
9. Retain jurisdiction of this action to ensure compliance with its decree; and
10. Any other relief as the Court deems just and proper.

DATED: April 27, 2023

Respectfully submitted,

/s/ Justin Augustine

Justin Augustine (CA Bar No. 235561)
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Phone: (916) 597-6189
Email: jaugustine@biologicaldiversity.org
Applicant Pro Hac Vice
Attorneys for Plaintiffs