February 28, 2008 **CORRECTED VERSION**

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Dear Supervisors Ruiz, Smith and Snider,

RE: 1. Violations of law by Pinal County on Bureau of Land Management’s lower San Pedro Dudleyville Schwennesen conservation land. These violations include the destruction of federal property, the taking of a federally listed Endangered Species, the adverse modification of designated Critical Habitat, and the discharging of dredged materials into the San Pedro River without the legally required permit.

2. Notice of Intent to pursue legal action in 60 days against the Pinal County Board of Supervisors if these violations of Section 404 of the Clean Water Act, Sections 5, 9, 10, and 11 of the Endangered Species Act, Sections 4331 and 4332 of the National Environmental Policy Act, and Article VI, Clause 2 of the US Constitution are not stopped and corrected.

The Center for Biological Diversity is a non-profit, public interest conservation organization whose mission is to conserve imperiled native species and their threatened habitat. On behalf of our more than 40,000 members, we urge Pinal County and the Pinal County Board of Supervisors (“Pinal County”) to (1) stop and correct destruction of federal property, (2) to stop and correct violations of the Clean Water Act, the Endangered Species Act and the US Constitution, and (3) to abandon efforts to acquire federal property by eminent domain.

The Center for Biological Diversity’s involvement has now become necessary owing to Pinal County’s ongoing destruction of federal property on the San Pedro River within designated Critical Habitat for the endangered Southwestern Willow Flycatcher. These actions consist of bulldozing open and creating an open public thoroughfare road from a private, limited-access...
ranch vehicleway. These actions are causing accelerating erosion of streamside Critical Habitat including resulting, impending destruction of consistently occupied Southwestern Willow Flycatcher nest trees.

In 1996, federal Land and Water Conservation Funds were used by the Bureau of Land Management (“BLM”) to purchase a federal conservation easement from the Schwennesen family in order to protect, “scarce riparian plant communities including the ‘Cottonwood-Willow Gallery’ forest types” from erosion, dredging, damaging cattle grazing, ORVs, excessive groundwater pumping and other threats. These restrictions are focused on “Area 2 of exhibit B” of the property. Pinal County’s destructive activities are occurring within protected “Area 2.”

The “Baseline Documentation Report” accompanying the Conservation Easement states, “…The BLM and the Conservancy are currently working with willing landowners to purchase properties or Conservation Easements that provide long-term protection for riparian and wildlife habitat in several core areas along the San Pedro River. The Schwennesen parcel is a key tract to accomplishing protection of the Dudleyville-Cook’s Lake core area riparian corridor...

Species such as the federally listed Southwestern Willow Flycatcher are known to nest in the cottonwood-willow forest on the property…there is presently a good presentation of several tree age classes on the property indicating a vigorous, sustainable riparian forest. Because seedling cottonwoods and willows are very vulnerable to livestock grazing and ORV damage, important factors in maintaining riparian forest condition are resting the river bottom from grazing for one to two years following good tree establishment seasons and protection of seedling bars from ORV damage.”

In January 1993, the Romero Road Bridge across the San Pedro River near the BLM Schwennesen conservation land was damaged by flooding. Subsequently Pinal County asked George Gordon, the previous owner of the BLM Schwennesen conservation land, for a temporary emergency easement until the bridge could be repaired. On December 15, 1994, Mr. Gordon signed a “Temporary Highway Easement Agreement” with Pinal County for a “temporary easement…until the construction of a new bridge across the San Pedro River.” The temporary emergency easement was to “be automatically extended for additional one-year periods, unless written notice is given by either party…of an intent not to renew the Agreement…Upon termination of this Agreement, Pinal shall erect barriers across the highway to close said highway to the public…”

In the interim, Pinal County has never repaired the bridge.

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1 The legal definition of road for the BLM public lands is derived from the definition of “roadless” in the legislative history of Federal Land Policy and Management Act of 1976, Public Law 94-579, 43 U.S.C. sec 1701-1785. The word “roadless” refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road. (H.R. Rep. No. 94-1163 at 17 (1976).
4 Baseline Documentation Report, Exhibit C, Dudleyville-Cook’s Lake (Schwennesen Tract), David B. Harris, The Nature Conservancy, February 27, 1996.
Meanwhile, ORV trespass abuse of the temporary emergency easement and its resulting riparian damage has become an increasingly serious problem. Arizona Game and Fish Department (“AGFD”) signs on ORV paths leading off of the temporary emergency easement have been repeatedly vandalized and destroyed. The AGFD signs warned, “No Vehicle Access,” and “No OHV’s Beyond This Point.”

Pinal County sheriff’s officers increased their patrols. AGFD law enforcement officers repeatedly replaced their signs. A BLM law enforcement officer even visited the BLM Schwennesen conservation land to police, to patrol and to attempt to educate abusive ORV recreationists.

Unfortunately, AGFD and BLM warnings and Pima County sheriff patrols were not able to control the ORV abuse. As damage to the BLM Schwennesen conservation land and Schwennesen’s private property increased, the Schwennesens inquired of the Pinal County about the status of the Romero Road Bridge repair. The Schwennesens were told by Pinal County that, “there were no plans to reconstruct the bridge approaches that washed out, and nor would there ever be.”

Pinal County did acknowledge the existence of an established, unrestricted nearby alternative crossing of the San Pedro River that does not involve federal property or endangered species conflicts. This access is commonly known as the SmithCo or the ASARCO crossing. It is well maintained and has long been used as an unrestricted, open public road to cross the San Pedro River. Passage across the SmithCo/ASARCO requires no permission, features no limiting warning signs, and does not require the passage through a gate.

The Schwennesens had no choice but to exercise their contractual option within the Temporary Highway Easement Agreement to terminate the temporary emergency easement. The Schwennesens placed a non-locked ranch gate across the road to control the abusive ORV traffic. BLM placed signs on the gate stating “No Motor Vehicles,” and “Administrative Use Only…For questions call BLM Tucson Field Office (520) 258-7200.”

Emergency access has never been impeded by the Schwennesens or by BLM. The Schwennesens and the BLM have never threatened to impede emergency access. The ranch gate has never been locked.

Pinal County responded with seizure of the BLM Schwennesen conservation land via “eminent domain.” On February 6, 2008, the County secured a Temporary Restraining Order based on the assertions that (1) the BLM Schwennesen temporary easement is a public road, (2) that “the area of the road is not necessary to the purpose of the conservation easement”(3) that the BLM Schwennesen termination of the temporary emergency easement resulted in the denial of all access including access for emergency purposes, (4) that the nearby, readily available SmithCo/ASARCO crossing may not be available for public passage, (5) that the “Schwennesens do not have standing to assert any governmental immunity,” (6) that the US government has no objection to the eminent domain property seizure and access expansion, and (7) that increased vehicular access “involves no additional impact to either public or private uses.”

On February 7, 2008, Pinal County then bulldozed open a road, expanding it from a ranch vehicleway previously restricted to authorized motorized vehicles. The action resulted in the destruction of federal property. The action resulted in dredging in a “water of the US” without the required Clean Water Act permit and the legally mandated open public participation process. The action is resulting in ongoing destruction including accelerating erosion of streamside Critical Habitat and impending destruction of consistently occupied Southwestern Willow Flycatcher nest trees.

Pinal County secured the Temporary Restraining Order based on false assertions. We correct each one individually:

- **Pinal County assertion:** the BLM Schwennesen temporary emergency easement has been “formally open to the public for over 14 years.”

- **Correction:** The road that existed on the property prior to the temporary emergency easement was never a road by legal definition. It was a secluded, private, limited-access ranch vehicleway. This situation did not change with BLM’s purchase of the conservation easement.

Original owner Gordon agreed to the temporary emergency easement with the clearly expressed declaration:

“…Gordon does not want to convey fee title or a permanent easement across his property, but is willing to grant Pinal County a temporary easement for highway purposes, including a river crossing across the San Pedro River, for public use.”

The secluded, private, limited-access ranch vehicleway subjected to the temporary emergency easement has never been traveled without the knowledge and permission of the owners of the property (the Gordons, the Schwennesens, or the BLM) before or after signing of the Temporary Highway Easement Agreement. If this were not true, the County would not have needed to secure a temporary emergency easement in the first place.

When BLM purchased the conservation easement, previous restrictions remained in place, and new ones were codified. New restrictions specifically addressed ORV access and protection of the riparian area. The temporary emergency easement remained in effect for as long as it did because of the supreme patience with the County displayed by the Gordons and subsequently, by the Schwennesens and the BLM.

As the temporary emergency easement has been increasingly abused by ORV recreationists, the Schwennesens, the BLM and the Pinal County sheriff were increasingly unable to control the abusive entry and the resulting damage. Waiting proved futile for Pinal County to make good on its promise that the Temporary Highway Easement Agreement was indeed temporary “until the construction of a new bridge across the San Pedro River.”

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7 Ibid.
8 The legal definition of road for the BLM public lands is derived from the definition of “roadless” in the legislative history of Federal Land Policy and Management Act of 1976, Public Law 94-579, 43 U.S.C. sec 1701-1785. The word “roadless” refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road. (H.R. Rep. No. 94-1163 at 17 (1976).
11 Ibid.
Once the temporary emergency easement was terminated, the temporary easement road reverted back to its previous status as a private, limited-access ranch vehicleway. The new creation of an open, unrestricted road violates the BLM’s conservation agreement. It illegally seizes and modifies federal property without due process and in violation of multiple statutes.

**Pinal County assertion:** “[T]he area of the road is not necessary to the purpose of the conservation easement.”

**Correction:** Control of ORV access and prevention of ORV damage to the riparian area is central to the federal conservation easement on the BLM Schwennesen conservation land. BLM purchased the federal conservation easement in good part to maintain restricted access and to protect, “scarce riparian plant communities including the ‘Cottonwood-Willow Gallery’ forest types” from ORV damage. The “Baseline Documentation Report” accompanying the Conservation Easement specifically addresses BLM’s concerns:

“…Because seedling cottonwoods and willows are very vulnerable to livestock grazing and ORV damage, important factors in maintaining riparian forest condition are resting the river bottom from grazing for one to two years following good tree establishment seasons and protection of seedling bars from ORV damage.”

**Pinal County assertion:** “In fact, they [BLM and the Schwennesens] have cut off all such access [for emergency vehicles and personnel].”

**Correction:** Emergency access has never been impeded by the Schwennesens or by BLM. The Schwennesens and the BLM have never threatened to impede emergency access. The ranch gate has never been locked.

Upon termination of the temporary emergency easement, the Schwennesens placed a non-locked ranch gate across the road to control the abusive ORV traffic. BLM placed signs on the gate stating “No Motor Vehicles,” and “Administrative Use Only…For questions call BLM Tucson Field Office (520) 258-7200.”

**Pinal County assertion:** “There is no other public access in Pinal County’s system to cross the San Pedro River. The only other access is a privately owned and maintained road approximately 5 miles away, creating an additional 15-20 minute delay assuming the owner will permit the crossing. If the public is denied access across this alternate route, it would have serious ramifications with no access to cross the San Pedro for this entire region.”

**Correction:** Pinal County implies that the nearby, well-used, unrestricted SmithCo/ASARCO crossing is not still readily available for public passage and that its future

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14 Baseline Documentation Report, Exhibit C, Dudleyville-Cook’s Lake (Schwennesen Tract), David B. Harris, The Nature Conservancy, February 27, 1996.


16 Ibid.
availability is questionable. The SmithCo/ASARCO crossing has been and remains well maintained. It remains commonly used as an open public road. Passage across the SmithCo or ASARCO still requires no permission, features no limiting signage, does not require the passage through a gate, and has a non-intimidating, non-secluded approach. ASARCO continues to be very expressive of their commitment to continue the ongoing unrestricted use of the crossing.

Convenience for local ORV recreationists is the true underlying issue motivating Pinal County’s actions. Emergency access/use of the BLM Schwennesen conservation land is not, and has never been, an issue. Pinal County fails to mention the fact that after 15 years, the Romero Road Bridge remains unrepaired by Pinal County as promised.

Pinal County assertion: “The Schwennesens do not have standing to assert any governmental immunity.”

Correction: Pinal County does not enjoy immunity based on the Eleventh Amendment of the US Constitution shielding states from litigation. In addition, Pinal County’s actions are subject to the Article VI, Clause 2 of the US Constitution, the “Supremacy Clause.” This article of the US Constitution assures that the federal government cannot involuntarily be subjected to the laws of any state. Citizens’ rights to defend violations of the “Supremacy Clause” are well established.

Pinal County assertion: “The County does not believe BLM will raise any objection to the condemnation proceeding…It is unlikely it would object to keeping access to its own property open.”

Correction: BLM spent at least $140,000 to purchase a protective federal conservation easement in order to protect, “scarce riparian plant communities including the ‘Cottonwood-Willow Gallery’ forest types” from erosion, dredging, damaging cattle grazing, ORVs, excessive groundwater pumping and other threats. BLM continues to spend even more to maintain its conservation land.

Prohibitions included in BLM’s procurement contract include specifically, “Surface alteration or natural vegetation…any use or activity that causes or is likely to cause significant soil degradation or erosion…dredging…” “[P]rotection of seedling bars from ORV damage” is also among the expected actions resulting from BLM’s procurement.

BLM posted the emergency/administrative only access gate on the BLM Schwennesen conservation land with signs stating, “No Motor Vehicles,” and “Administrative Use Only…For questions call BLM Tucson Field Office (520) 258-7200.” BLM posted the emergency/administrative only access gate specifically to protect its conservation land from actions now perpetrated, promoted and facilitated by Pinal County.

17 “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” And See Alden v. Maine, 527 U.S. 706, 756, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999).
20 Ibid.
21 Baseline Documentation Report, Exhibit C, Dudleyville-Cook’s Lake (Schwennesen Tract), David B. Harris, The Nature Conservancy, February 27, 1996.
Pinal County assertion: “Keeping an existing road open involves no additional impact to either public or private uses.”

Correction: The historically secluded, private, limited-access ranch vehicleway was relieved of its temporary emergency easement after 15 years of inaction by Pinal County and after experiencing increasingly destructive, uncontrollable ORV trespass abuse. Pinal County’s actions are now promoting and facilitating accelerating erosion of streamside Critical Habitat including resulting, impending destruction of consistently occupied Southwestern Willow Flycatcher nest trees.

Pinal County’s actions violate the following statutes:

**Clean Water Act, Section 404: PERMITS FOR DREDGED OR FILL MATERIAL**
SEC. 404. (a) The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites...(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on...wildlife...

Because Pinal County’s actions involve federal conservation land within Critical Habitat of a federally listed Endangered Species, the action requires not only permit from the US Army Corps of Engineers, but consultation with the US Fish and Wildlife Service. Because the action involves a controversial action of significant impact to the environment an evaluation pursuant to the National Environmental Policy Act is also mandatory.

**National Environmental Policy Act, Section 4331: 42 USC Sec. 4331:** (a) The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth...resource exploitation...and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the federal Government...to use all practicable means and measures...in a manner calculated to foster and promote the general welfare to create and maintain conditions under which man and nature can exist in productive harmony...

(b) ...it is the continuing responsibility of the federal Government to use all practicable means...that the Nation may...(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations...(4) preserve important...natural aspects of our national heritage...

**National Environmental Policy Act Section, Section 4332: 42 USC Sec. 4332.** ...The Congress authorized and directs that, to the fullest extent possible...all agencies of the federal Government shall...(C) include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official
on...(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented...(iv) the relationship between local short-term uses of man’s environmental and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented...(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources...

National Environmental Policy Act implementing regulation 40 C.F.R. 1508.27:

“(a)...the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality...Both short- and long-term effects are relevant...(b)...The following should be considered in evaluating intensity:...(1)...A significant effect may exist even if the federal agency believes that on balance the effect will be beneficial...(3)... wetlands... ecologically critical areas...(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial...(6) The degree to which the action may establish a precedent for future actions with significant effect or represents a decision in principle about a future consideration...(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down or by breaking it down into small component parts…”

Endangered Species Act, Section 5: LAND ACQUISITION…SEC. 5. (a)

PROGRAM.-The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species pursuant to section 4 of this Act. To carry out such a program, the appropriate Secretary-(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and (2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition vested in him.

The BLM purchased the conservation easement to protect the federally listed, endangered Southwestern Willow Flycatcher.

Endangered Species Act, Section 9: PROHIBITED ACTS…SEC. 9. (a) GENERAL.- (1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to- (B) take any such species within the United States or the territorial sea of the United States:...(g) VIOLATIONS.-It is Unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.
The term “person” is defined in the ESA to include “any officer, employee, agent, department, or instrumentality…of any State, municipality, or political subdivision of a State…(or) any State, municipality, or political subdivision of a State…” 16 U.S.C. § 1532. Numerous cases have confirmed that agencies such as Pinal County and the Pinal County Board of Supervisors are responsible and liable for violations of the ESA, including Sierra Club v. Yeutter, 926 F.2d 429, 43-39 (5th Cir. 1991), Defenders of Wildlife v. EPA, 882 F.2d 1294, 1301 (8th Cir. 1989), Palila v. Hawaii Department of Land and Natural Resources, 639 F.2d 495, 497-98 (9th Cir. 1981), and Loggerhead Turtle, et al, v County Council of Volusia County, Florida (11th Cir. 1998). In another relevant case, the Court ruled “the stature not only prohibits the acts of those parties that directly exact the taking, but also bans those acts of a third party that bring about the acts exacting a taking. We believe that…a governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA” Strahan v. Coxe, et al, 127 F.3d 155 (1st Cir. 1997).

**Endangered Species Act, Section 10: EXCEPTIONS…SEC. 10. (a) PERMITS.- (1)**
The Secretary may permit, under such terms and conditions as he shall prescribe—(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity…(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies-(i) the impact which will likely result from such taking; (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps; (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and (iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan…. (B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that-(i) the taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the plan will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) the measures, if any, required under subparagraph (A)(iv) will be met; and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with…(c) NOTICE AND REVIEW.-The Secretary shall publish notice in the federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the
federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as part of any application shall be available to the public as a matter of public record at every stage of the proceeding.”

Pinal County does not have a Section 10 permit to take a listed Endangered Species.

Endangered Species Act, Section 11: PENALTIES AND ENFORCEMENT…SEC. 11. (a) CIVIL PENALTIES.— (1) Any person who knowingly violates…any provision of this Act…may be assessed a civil penalty by the Secretary of not more than $25,000 for each violation…(b) CRIMINAL VIOLATIONS.— (1) Any person who knowingly violates any provision of this Act…shall, upon conviction, be fined not more than $50,000 or imprisoned for not more than one year, or both….(c) DISTRICT COURT JURISDICTION.—The several district courts of the United States;…(e) ENFORCEMENT.—…(6) The Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this Act or regulation issued under authority thereof.

US Constitution, Article VI, Clause 2: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

In McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 4 L. Ed. 579 (1819), the US Supreme Court concluded that “the government of the Union, though limited in its power, is supreme within its sphere of action.” The federal government cannot involuntarily be subjected to the laws of any state.

Pinal County’s decision to destroy federal property, a federally listed Endangered Species and its designated Critical Habitat was a carefully calculated act. The action is obviously meant to intimidate and punish local citizens and BLM commitment to protect our Nation’s natural heritage. We copy the US Department of Justice and the US Attorney for Arizona, not only seeking assistance in stopping the destruction of federal property and in stopping and correcting blatant violations of the Clean Water Act, the Endangered Species Act, and the US Constitution, but also for consideration of an apparent violation of 18 U.S.C. 371: Conspiracy to commit offense or to defraud United States by Pinal County. This statute states,

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both."

We copy officials from Department of Interior, Bureau of Land Management, Fish and Wildlife Service and the US Army Corps of Engineers, not only seeking assistance in stopping the destruction of federal property and in stopping and correcting blatant violations of the Clean Water Act, the Endangered Species Act and the US Constitution, but also as a reminder of mandatory Endangered Species Act Section 2 obligation that all agencies “utilize their authorities in furtherance of the purposes of this Act.” We hope that these copied officials will
help remedy these violations of law so that future litigation against these officials’ and their respective agencies is not also necessary in order to assure compliance with law.

The Center for Biological Diversity hopes that Pinal County stops and corrects ongoing violations of law. Pinal County’s reversal of its errant eminent domain actions and rebuilding the emergency/administrative only access gate on the BLM Schwennesen conservation land would certainly diffuse this unfortunate situation.

If Pinal County’s illegal actions are not stopped and corrected within 60 days, the Center for Biological Diversity will have no choice but to seek judicial assistance in US District Court to enforce the law pursuant to Endangered Species Act Section 11(g) (“Citizen Suits” provision), pursuant to the Clean Water Act Section 505 (“Citizen Suits” provision), and pursuant to established judicial precedent for citizen defense of the “Supremacy Clause” of the US Constitution.22

If you have further questions, please contact Robin Silver, M.D., Founder/Board Member, Center for Biological Diversity, P.O. Box 39629, Phoenix, AZ 85069-9629, by mail; by phone: 602 246 4170, or by Email: rsilver@biologicaldiversity.org.

Sincerely,

Robin Silver, M.D.
Founder/Board Member

CCs:
US Department of Interior Secretary Dirk Kempthorne (FAX: 202-208-6956)
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US Bureau of Land Management Director Jim Caswell (FAX: 202-208-5242)
US Bureau of Land Management Arizona Director Elaine Zielinski (FAX: 602-417-9398)
US Fish and Wildlife Service Director Dale Hall (FAX: 202-208-6965)
US Fish and Wildlife Service Regional Director Benjamin Tuggle (FAX: 505-248-6910)
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