

1 Graham Rex (AZ Bar No. 041061)
2 Center for Biological Diversity
3 P.O. Box 710
4 Tucson, AZ 85702-0710
(928) 519-3318
greg@biologicaldiversity.org

5 Edward B. Zukoski (CO Bar No. 26352)
6 Center for Biological Diversity
7 1536 Wynkoop Street, Suite 421
8 Denver, CO 80202
(303) 641-3149
tzukoski@biologicaldiversity.org
Pro Hac Vice Application Pending

9 *Attorneys for Plaintiffs*

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

13 Center for Biological Diversity, a non-
14 profit organization; and Maricopa Bird
Alliance, a non-profit organization,

15 Plaintiffs,

16 v.

17 U.S. Forest Service; and U.S. Fish and
18 Wildlife Service,

19 Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiffs Center for Biological Diversity (“Center”) and Maricopa Bird Alliance 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 livestock grazing on six public lands allotments within the upper Verde River watershed in the Prescott National Forest in Arizona, including the issuance of term grazing permits, allotment management plans, and allotment annual operating instructions. The six “Upper Verde Allotments” include: (1) the China Dam Allotment; (2) the Horseshoe Allotment; (3) the Muldoon Allotment; (4) the Perkinsville Allotment; (5) the Sand Flat Allotment; and (6) the West Bear/Del Rio Allotment.

2. The Verde River and its adjacent lands are home to numerous ESA-listed species dependent on aquatic and riparian habitat, including the western yellow-billed cuckoo (“Cuckoo”), the narrow-headed gartersnake (“Gartersnake”), and the Spikedace. In carrying out their consultation duties pursuant to ESA Section 7 for the livestock grazing authorizations for the Upper Verde Allotments, the Forest Service and FWS have determined that the effects of livestock grazing are not likely to adversely impact these species or adversely modify their designated critical habitat. The agencies based their determinations primarily on the Forest Service’s commitments to exclude cattle from streamside habitat 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 biological 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, including the six allotments at issue here. The Center compiled the findings of these surveys into a comprehensive

1 report and provided that report to the Forest Service and FWS in January 2020. In June
2 2020, the Center conducted follow-up surveys to verify whether the Forest Service had
3 remedied the unlawful grazing. In nearly every area surveyed, unauthorized grazing
4 continues. The Center also provided the results of these surveys to the Forest Service.

5 4. When the Forest Service and FWS declined to reinstate ESA consultation,
6 the Center sued both agencies in 2020. The parties settled the case with an agreement that
7 required the Forest Service to monitor riparian areas excluded from permitted livestock
8 grazing on the Prescott National Forest, to initiate action to remove livestock if they were
9 found, to monitor for and repair ineffective fences, and to provide quarterly reports
10 concerning unauthorized cattle use of riparian critical habitat from 2021 to 2024.

11 5. The quarterly reports the settlement required showed ongoing unauthorized
12 livestock use on the Prescott National Forest.

13 6. After the monitoring requirements of the settlement expired in late 2024, the
14 Center resumed its own surveys. Those surveys, conducted by professional biologists using
15 a standardized protocol, found evidence of continued livestock use and damage to the
16 riparian critical habitat within the six Upper Verde Allotments in 2025 and 2026. On April
17 29, 2026, the Center and the Maricopa Bird Alliance provided sixty days' Notice of their
18 Intent to file this suit pursuant to the citizen suit provision of the ESA, 16 U.S.C. § 1540(g),
19 with respect to the six Upper Verde River Allotments on the Prescott National Forest. This
20 notice letter contained some of the raw data underlying the 2025 and 2026 surveys,
21 including dozens of geo-referenced photographs.

22 7. The ESA places ongoing obligations on federal agencies to ensure that their
23 actions do not jeopardize the continued existence of threatened and endangered species or
24 adversely modify or destroy their designated critical habitat, including the duty to reinstate
25 Section 7 consultations in four circumstances. 50 C.F.R. § 402.16(a)(1)-(4). Agencies must
26 reinstate and complete consultation, for example, “[i]f the amount or extent of taking
27 specified in the incidental take statement is exceeded,” when “[n]ew information reveals
28 effects of the action that may affect listed species or critical habitat in a manner or to an

1 extent not previously considered,” or when “[t]he identified action is subsequently
2 modified in a manner that causes an effect to the listed species or critical habitat that was
3 not considered in the biological opinion.” *Id.* § 402.16(a)(1)-(3).

4 8. The Forest Service and FWS were required to reinitiate and complete
5 consultation when presented with evidence documenting extensive cattle use and damaged
6 or absent fencing exclusions on grazing allotments within the riparian streamside areas of
7 the six Upper Verde Allotments on the Prescott National Forest. The Forest Service’s
8 failure to exclude livestock from occupied threatened and endangered species habitat, and
9 designated critical habitat, or to take immediate corrective action to remedy these failures,
10 demonstrates the falsehood of the Forest Service’s and FWS’s conclusions regarding the
11 impact of those specific grazing allotment authorizations on listed species and their
12 designated critical habitat, and triggers the specific reinitiation thresholds at 50 C.F.R.
13 § 402.16(a).

14 9. The Forest Service and FWS each responded separately to Plaintiffs’ notice
15 letter, but neither committed to reinitiating the mandated ESA consultation. The agencies’
16 responses therefore do not resolve the ESA violations alleged in Plaintiffs’ 2026 notice
17 letter. Accordingly, Plaintiffs seek declaratory relief that Defendants are in ongoing
18 violation of the ESA for failing to adequately protect and conserve the threatened and
19 endangered species that reside within the Prescott National Forest and the Upper Verde
20 Allotments. Plaintiffs also seek injunctive relief to ensure adequate interim protection for
21 the threatened and endangered species, and their critical habitat, until Defendants comply
22 fully with the ESA.

23 JURISDICTION AND VENUE

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

11. The Court may grant the relief requested under the ESA, 16 U.S.C. § 1540(g); the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2); and 28 U.S.C. §§ 2201-2202 (declaratory and injunctive relief).

12. Venue is proper in the United States District Court for the District of Arizona pursuant to 28 U.S.C. § 1391(e)(1) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Venue is proper in the Tucson Division because one of the Plaintiffs (Center for Biological Diversity) resides in Tucson (Pima County). LRCiv 77.1(a).

PARTIES

13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit environmental organization dedicated to the protection of endangered species and wild places through science, policy, and law. The Center is headquartered in Tucson, Arizona, with offices throughout the United States. The Center has more than 101,000 members and over 1.8 million online activists who are dedicated to the protection of endangered species and wild places. More than 4,800 Center members reside in Arizona.

14. The Center for Biological Diversity brings this action on its own behalf, and on behalf of its members who derive aesthetic, recreational, inspirational, spiritual, scientific, and educational benefits from the public lands and waters of the lands within the Prescott National Forest along the upper Verde River, including the six allotments at issue here, and within the areas and habitat where threatened and endangered species and their critical habitat may be found. The Center's members who have used and enjoyed, and intend to continue using and enjoying, the Prescott National Forest and the six allotments at issue include, but are not limited to, Dr. Robin Silver and Mr. Bob Ellis.

15. The Center's members, including but not limited to Dr. Silver and Mr. Ellis, use and enjoy the Prescott National Forest and the six allotments at issue, and in particular the riparian areas along the upper Verde River, for a variety of purposes including hiking, photographing scenery and wildlife, viewing wildlife and wildlife sign, and engaging in other scientific and recreational activities. The areas of the six allotments that the Center's

1 members use and enjoy include specific areas where critical habitat for the Cuckoo,
2 Gartersnake, and Spikedace have been designated, and where these imperiled species may
3 be found or have been found in the past. The Center's members' use and enjoyment of
4 these areas is significantly enhanced knowing that these endangered species are still likely
5 to be present in these areas, and will be harmed if the Forest Service continues to authorize
6 livestock grazing without lawful Section 7 consultation with FWS.

7 16. Dr. Silver has been visiting the six allotments within the Prescott National
8 Forest since at least 1968 to enjoy hiking, photographing scenery and wildlife, viewing
9 wildlife and signs of wildlife, and engaging in other scientific and recreational activities.
10 Dr. Silver's most recent visits include a trip to riparian areas along the upper Verde River
11 within each of the six allotments at issue on September 30-October 1, 2026. Prior to his
12 Fall 2026 visit, Dr. Silver's documented visits to the Upper Verde Allotments include: trips
13 to the Muldoon, West Bear/Del Rio, and China Dam Allotments on January 15, 2002,
14 January 18, 2015, April 22, 2017, and May 24, 2020; a trip to the Horseshoe Allotment on
15 April 30, 2017; visits to the Perkinsville Allotment on May 18, 2009, May 12, 2011, June
16 20, 2011, April 30, 2017, and October 10, 2024; and to the Sand Flat Allotment on April
17 30, 2017.

18 17. Dr. Silver's educational and advocacy efforts to protect imperiled wildlife
19 and the water of the upper Verde River that those species rely on spans more than three
20 decades. For example, the Arizona Republic repeatedly published his images of bald eagles
21 nesting along the Verde River in the spring of 1989. As Conservation Chair of the Center,
22 Dr. Silver sent notices of intent to sue under the ESA in 2001 and 2004 concerning water
23 use that threatened flows on the upper Verde River. In 1998, Dr. Silver organized and
24 supervised the Center's efforts to obtain ESA protections for the Cuckoo by submitting to
25 FWS the February 2, 1998, petition to list the bird. In 2011, this effort culminated in a
26 settlement agreement that ultimately led to the agency formally listing the Cuckoo as
27 "threatened" in 2014. Thereafter, FWS formally designated as critical habitat 298,845 acres
28 in Arizona, including within the Upper Verde Allotments.

1 18. Dr. Silver has planned a fall 2027 visit to the six allotments to once again
2 enjoy the area and its wildlife and to enjoy the fall colors.

3 19. Mr. Ellis has been recreating on the upper Verde River, including within
4 lands of the six allotments, for about the past 30 years. He was a professor at Prescott
5 College for 20 years teaching a “Concepts of Ecology” course in which he took his students
6 for a full day on the upper Verde River within these allotments. After leaving Prescott
7 College, he became program director and then executive director of the Natural History
8 Institute in Prescott for 8 years, and in that role took the public to visit this stretch of the
9 upper Verde River. He has also spent many days backpacking in this part of the National
10 Forest. He visits the River and these allotments 6-7 times a year for personal enjoyment.
11 He has plans to continue his visits to these allotments with about the same regularity as he
12 has in the past, and plans to recreate there this month. As a long-time naturalist, he enjoys
13 looking for fish in the river and snakes in the grass, and has sought out and observed
14 yellow-billed cuckoos, and heard their beautiful call, on several occasions during their
15 breeding season.

16 20. The areas of the six allotments that Dr. Silver, Mr. Ellis, and other Center
17 members intend to continue to use and enjoy include areas where critical habitat for the
18 Cuckoo, Gartersnake, and Spikedace has been designated, and where these imperiled
19 animals may still be found. The aesthetic, cultural, recreational, inspirational, spiritual,
20 scientific, and educational interests of Dr. Silver, Mr. Ellis, and other Center members have
21 been and will continue to be adversely affected and irreparably injured if Defendants’
22 ongoing violations of the ESA continue. These are actual, ongoing, concrete injuries caused
23 by Defendants’ ESA violations. The relief sought will redress these injuries.

24 21. Plaintiff MARICOPA BIRD ALLIANCE is a nonprofit organization with
25 more than 3,000 members dedicated to the study and enjoyment of birds and other wildlife,
26 and to the protection and restoration of wildlife habitat in the Southwest. The Bird Alliance
27 is run by volunteers and strives to protect and restore wildlife habitat through education
28 and community involvement.

1 22. Maricopa Bird Alliance has undertaken ongoing efforts to protect habitats
2 for imperiled species throughout the arid Southwest. The Bird Alliance has played a strong
3 role in protecting endangered and threatened species in the Southwest since the 1950s
4 through public education efforts, field surveys, public field trips, and position papers. For
5 example, on February 2, 1998, Maricopa Audubon Society (the Bird Alliance's
6 predecessor name) was a petitioner with the Center for Biological Diversity for federal
7 endangered species listing protection for the western yellow-billed cuckoo. This action
8 resulted in FWS designating the Cuckoo as threatened on October 3, 2014. In addition,
9 Maricopa Bird Alliance conducts field trips with members of the organization and non-
10 members from the general public to critical habitat areas of species listed under the ESA,
11 including the Cuckoo.

12 23. Maricopa Bird Alliance brings this action on behalf of itself and its adversely
13 affected members, including but not limited to Dr. Robin Silver. The educational,
14 scientific, aesthetic, conservation, and recreational interests of the Bird Alliance's members
15 within the public lands and waters of the six Upper Verde Allotments, including Dr. Robin
16 Silver, have been and continue to be harmed by livestock grazing. The Bird Alliance's
17 members intend to continue using and enjoying the riparian areas and critical habitat within
18 the six Prescott National Forest Allotments along the upper Verde River, including through
19 Dr. Silver's upcoming trip in the fall of 2027. Unless the Court grants the requested relief,
20 Maricopa Bird Alliance's members will continue to be adversely affected and irreparably
21 injured by Defendants' failures to comply with the law. The requested relief would redress
22 these injuries.

23 24. Defendant UNITED STATES FOREST SERVICE is an agency within the
24 Department of Agriculture, and has issued grazing authorizations including term grazing
25 permits, allotment management plans, and/or annual operating instructions for livestock
26 grazing within the six Upper Verde Allotments. Like all federal agencies, the Forest
27 Service must comply with all applicable ESA requirements, including the ongoing duty to
28 comply with ESA Section 7 in relation to grazing authorizations.

1 25. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is the
2 agency within the Department of the Interior that is charged with implementing the ESA,
3 and shares responsibility with the Forest Service for reinitiating and completing
4 consultation under ESA Section 7 in relation to the grazing authorizations.

5 **LEGAL BACKGROUND**

6 **I. THE ENDANGERED SPECIES ACT**

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

13 27. To achieve these objectives, the ESA directs the Secretary of the Interior,
14 through FWS, to determine which species of plants and animals are “threatened” and
15 “endangered” and place them on the list of protected species. *Id.* § 1533. An “endangered”
16 or “threatened” species is one “in danger of extinction throughout all or a significant
17 portion of its range,” or “likely to become an endangered species within the foreseeable
18 future throughout all or a significant portion of its range,” respectively. *Id.* § 1532(6), (20).

19 28. Once a species is listed, the ESA provides procedural and substantive
20 protections to ensure the species’ continued survival, and its ultimate recovery, including
21 the designation of critical habitat, the preparation and implementation of recovery plans,
22 the prohibition against the “taking” of listed species, and the requirement for interagency
23 consultation. *Id.* §§ 1533(a)(3), 1533(f), 1536, 1538. “Critical habitat” is the area that
24 contains the physical or biological features essential to the “conservation” of the species
25 and which may require special protection or management considerations. *Id.* § 1532(5)(A).

26 29. ESA Section 7(a)(2) requires that “[e]ach Federal agency shall, in
27 consultation with . . . [FWS], [e]nsure that any action authorized, funded, or carried out by
28 such agency ... is not likely to jeopardize the continued existence of any endangered species

1 or threatened species or result in the destruction or adverse modification of [critical
2 habitat].” *Id.* § 1536(a)(2). This Section 7(a)(2) consultation process is the “heart of the
3 ESA.” *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2011).

4 30. FWS’s regulations define an agency “action” to mean “all activities or
5 programs of any kind authorized, funded, or carried out, in whole or in part, by Federal
6 agencies.” 50 C.F.R. § 402.02.

7 31. During the consultation process, federal agencies must “use the best
8 scientific and commercial data available.” 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(d).

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

15 33. If the action agency determines that its proposed action may affect any listed
16 species or critical habitat, the agency must normally engage in “formal consultation” with
17 FWS. 50 C.F.R. § 402.14. However, the agency need not initiate formal consultation if,
18 through a biological assessment or informal consultation with FWS, the agency determines,
19 with FWS’s written concurrence, that the proposed action is not likely to adversely affect
20 any listed species or critical habitat. *Id.* §§ 402.13, 402.14(b)(1).

21 34. To complete the formal Section 7 consultation process, FWS must provide
22 the action agency with a “biological opinion” explaining how the proposed action will
23 affect listed species and/or critical habitat. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14(h).

24 35. If FWS concludes in the biological opinion that the proposed action is likely
25 to jeopardize the continued existence of a listed species, or result in the destruction or
26 adverse modification of critical habitat, FWS must suggest “reasonable and prudent
27 alternatives” to avoid those results. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(2).

1 36. If FWS concludes in the biological opinion that the action is *not* likely to
2 jeopardize the continued existence of a listed species, or result in the destruction or adverse
3 modification of critical habitat, but the action will result in incidental “take” of ESA-listed
4 species, FWS must provide an “incidental take statement” with the biological opinion. 16
5 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i). The incidental take statement must specify the
6 amount or extent of such incidental taking on the species and any “reasonable and prudent
7 measures” that FWS considers necessary or appropriate to minimize such impact, and must
8 set forth the “terms and conditions” that must be complied with by the action agency to
9 implement those measures. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

10 37. Reinitiation of formal consultation under the ESA is required and must be
11 requested by FWS or the action agency if: (1) the amount or extent of taking specified in
12 the incidental take statement is exceeded; (2) new information reveals effects of the action
13 that may affect listed species or critical habitat in a manner or to an extent not previously
14 considered; (3) the identified action is subsequently modified in a manner that causes an
15 effect to the listed species or critical habitat that was not considered in the biological
16 opinion or written concurrence; or (4) a new species is listed or critical habitat designated
17 that may be affected by the identified action. 50 C.F.R. § 402.16(a)(1)-(4).

18 38. After the initiation or reinitiation of Section 7 consultation, the action agency
19 is prohibited from making “any irreversible or irretrievable commitment of resources with
20 respect to the agency action which has the effect of foreclosing the formulation or
21 implementation of any reasonable and prudent alternative measures which would not
22 violate subsection (a)(2).” 16 U.S.C. § 1536(d).

23 **FACTUAL BACKGROUND**

24 **I. THE UPPER VERDE RIVER AND ITS IMPERILED WILDLIFE**

25 39. The upper Verde River is home to numerous ESA-listed species dependent
26 on aquatic and riparian habitat federally designated as critical to the recovery of Cuckoo,
27 Gartersnake, and Spikedace. Designated critical habitat occurs on all six of the Upper
28 Verde Allotments. Livestock grazing on the Upper Verde Allotments is administered by

1 the Prescott National Forest, which is charged with insuring that its actions will not
2 jeopardize the continued existence of endangered or threatened species or adversely modify
3 their critical habitat. 16 U.S.C. § 1536(a)(2).

4 A. Western yellow-billed cuckoo.



5
6
7
8
9
10
11
12
13
14
15
16 *Photo credit: Flickr Creative Commons / Jay Bass*

17 40. The western yellow-billed cuckoo was listed as threatened under the ESA in
18 2014, and FWS designated critical habitat in 2021. 79 Fed. Reg. 59992 (Oct. 3, 2014); 86
19 Fed. Reg. 20798 (Apr. 21, 2021). Cuckoo face ongoing population declines owing
20 primarily to loss of native habitat. Once a fairly common summer resident throughout
21 Arizona, Cuckoo populations declined significantly starting in the 1970s, directly
22 paralleling the decline of its preferred breeding habitat, cottonwood-willow riparian forest.
23 78 Fed. Reg. 61621 (Oct. 3, 2013). Despite the extraordinary ecological and biodiversity
24 values of riparian forest ecosystems, these places have been the most disturbed and
25 degraded land type in the western United States in large part due to cattle grazing.¹

26
27 ¹ See Bock, C.E., Saab, V.A., Rich, T.D., & Dobkin, D.S., *Effects of livestock grazing on*
28 *neotropical migratory landbirds in western North America* (1993) (published in U.S.
Forest Serv., *General Technical Report RM-229: Status and management of Neotropical*
migratory birds (1993)).

1 41. Despite the importance of ground cover, understory, and multi-layered
2 vegetation to Cuckoo survival and reproduction, cattle grazing is well-known to degrade
3 these important features in riparian and aquatic habitats throughout the arid Southwest.
4 Loss of riparian habitat caused by grazing is an acknowledged, prominent, and ongoing
5 threat to Cuckoo reproduction. 79 Fed. Reg. 48538, 48555 (Aug. 15, 2014). According to
6 FWS, habitat degradation associated with livestock grazing is a recognized threat in 70 out
7 of 72 (97%) Cuckoo critical habitat units. *Id.* at 48558.

8 B. Narrow-headed gartersnake.



18 *Photo credit: U.S. Geological Survey*

19 42. The narrow-headed gartersnake is an imperiled reptile native to Arizona and
20 New Mexico that has declined dramatically throughout its range because of habitat
21 destruction, modification and fragmentation. Gartersnakes received ESA protection as a
22 threatened species in 2014, and critical habitat in 2021. 79 Fed. Reg. 38678 (July 8, 2014);
23 86 Fed. Reg. 58474 (Oct. 10, 2021). Primary Biological Features required by Gartersnakes
24 include: slow-moving water with in-stream pools, off-channel pools, and backwater
25 habitat; lentic wetlands including off-channel springs and cienegas; riparian habitat
26 adjacent to the ordinary high water mark that includes riparian vegetation; organic
27 structural features (e.g., dense aquatic and wetland vegetation, leaf litter) within the stream
28

1 channel for thermoregulation, shelter, foraging opportunities, and protection from
2 predators; and water quality with low or no pollutants. 85 Fed. Reg. at 23623-24.

3 43. Cattle grazing can diminish or eliminate these key features from riparian
4 ecosystems, cienegas and other wetlands. Grazing results in removal of dense vegetation
5 which decreases Gartersnake shelter, cover, foraging opportunities and protection from
6 predators. Grazing also damages stream channels and backwater pools by trampling banks
7 and shorelines, increasing sedimentation and fouling water quality with urine and feces.
8 These damages extend to adjacent uplands and lead to trampled and vegetatively
9 diminished slopes prone to erosion. According to FWS, activities that may destroy or
10 adversely modify the Gartersnake's critical habitat include, but are not limited to, poorly
11 managed livestock grazing, livestock grazing that results in waters heavily polluted by
12 feces, and actions that would remove, diminish, or significantly alter the structural
13 complexity of key natural habitat features in and adjacent to aquatic habitat. *Id.* at 23633.

14 C. Spikedace.



26 *Photo credit: U.S. Fish and Wildlife Service*

27 44. The Spikedace, a native Arizonan fish, has declined markedly in distribution
28 and abundance throughout its range due to riparian habitat degradation, water diversion,

1 groundwater pumping, and the introduction and spread of non-native predatory and
2 competitive fishes. Originally listed under the ESA as threatened in 1986, with critical
3 habitat designated in 2007, Spikedace were reclassified as endangered in 2012. 51 Fed.
4 Reg. 23769 (July 1, 1986); 72 Fed. Reg. 13356 (Mar. 21, 2007); 77 Fed. Reg. 10810 (Feb.
5 23, 2012). Over thirty years ago, remnant subpopulations in the upper Verde River, Eagle
6 Creek, and Aravaipa Creek in Arizona, and the Gila River in New Mexico occupied only
7 six percent of the species' former range.²

8 45. Spikedace typically occupy stream habitats less than a meter deep.³ A
9 dynamic diversity of instream zones (eddies, riffles, broad shallow gravel bars adjacent to
10 fast-flowing water) and periodic, recurrent flooding are essential to the feeding and
11 reproduction of the Spikedace by scouring sands and gravels.⁴ Spikedace fry and juveniles
12 tend to occupy shallow, peripheral portions of streams that have slow currents and sand or
13 fine gravel substrates but will also occupy backwater habitats. According to FWS, grazing
14 allotments "have contributed to the [Spikedace's] current habitat degradation," and any
15 activity that affects sedimentation, water quality, and removal of riparian vegetation, such
16 as cattle grazing, can affect Spikedace habitat quality and should be "avoided or corrected."
17 FWS, *Biological Opinion for Continuation of Livestock Grazing on the Coronado National*
18 *Forest* (2-21-98-F-399-R1) (Oct. 24, 2002), at 23. Degraded aquatic habitat is also a major
19 factor in the establishment and domination of aquatic ecosystems by non-native fish.

20 **II. LIVESTOCK GRAZING THREATENS RIPARIAN VALUES AND** 21 **WILDLIFE HABITAT.**

22 46. The Forest Service has long known of the damaging impacts of livestock
23 grazing on riparian areas of the Prescott National Forest. The 1986 Environmental Impact

24 ² Anderson, Allison A., & A. Hendrickson. *Geographic Variation in Morphology of Spikedace,*
25 *Meda Fulgida, in Arizona and New Mexico*, 39(2) THE SOUTHWESTERN NATURALIST 148,
155 (1994).

26 ³ Propst, D.L., Bestgen, K.R. & Painter, C.W., *Distribution, status, biology, and*
27 *conservation of the spikedace (Meda fulgida) in New Mexico* (1986) (published in FWS,
Endangered Species Report Series No. 15 (1986)).

28 ⁴ *Id.*

1 Statement for the Prescott Forest Plan stated: “Currently 99% of the Forest’s riparian acres
2 are in less than fair condition. *This situation can be attributed to livestock overgrazing and*
3 *the corresponding watershed condition.*” U.S. Forest Serv., *Final EIS, Prescott National*
4 *Forest Plan* (Nov. 1986) at 165 (emphasis added) (“2014 Forest Plan BiOp”). Litigation in
5 1997 resulted in livestock grazing being entirely suspended from riparian corridors along
6 the Verde River in May 1998. However, stray livestock were still known to graze some
7 riparian areas intensively following exclusion. *See* D. Neary et al., *Synthesis of Upper*
8 *Verde River research and monitoring 1993-2008, Gen. Tech. Rep. RMRS GTR-291* (2012)
9 at 37-38, 176.

10 47. More generally, scientific study on the impacts of livestock grazing on
11 aquatic and riparian habitats in the Southwest is extensive and universally shows severe
12 and lasting negative impacts such that complete exclusion of cattle is widely accepted as a
13 minimum baseline management strategy in preserving stream health. Livestock grazing
14 has both direct and indirect effects on streams, and is a leading cause of species
15 endangerment in the Southwest, including the ESA-listed species within the Prescott
16 National Forest.

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

21 49. Grazing physically alters streambanks through trampling and shearing,
22 leading to bank erosion. In combination, loss of riparian vegetation and bank erosion can
23 alter channel morphology, resulting in downcutting and an increased width/depth ratio, all
24 of which lead to a loss of pool habitats and shallow side and backwater habitats.

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

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

7 52. The U.S. Department of Justice has admitted that: “It is well-settled that
8 cattle and riparian areas do not mix.” U.S. Department of Justice Environment and Natural
9 Resources Division Senior Trial Attorney Andrew A. Smith, Hearing, *N.M. Cattle*
10 *Growers’ Ass’n v. U.S. Forest Serv.*, No. 1:23-cv-00150-JB-GBW (D.N.M. Feb. 1, 2024).

11 **III. RELEVANT CONSULTATIONS CONCERNING LIVESTOCK GRAZING.**

12 53. Livestock grazing on allotments within the Prescott National Forest is an
13 “activity . . . authorized” by a federal agency. *See* 50 C.F.R. § 402.02. Accordingly, the
14 issuance of grazing authorizations, including permits, allotment management plans
15 (“AMPs”), and annual operating instructions (“AOIs”), within the Prescott National Forest
16 triggers the Forest Service’s “duty under the ESA to consult with FWS to insure that [such]
17 agency action[s] . . . on Forest Service land would not likely jeopardize” ESA-listed species
18 or adversely modify critical habitat. *Or. Nat. Desert Ass’n v. U.S. Forest Serv.*, 465 F.3d
19 977, 989 (9th Cir. 2006).

20 54. Three ESA consultations are relevant to the Upper Verde Allotments: a 2002
21 biological opinion (“BiOp”) on 16 allotments; a 2014 BiOp on the Prescott National Forest
22 Plan; and 2017 concurrences on each of the Upper Verde Allotments. All of these
23 documents directly and explicitly state that there is no authorized grazing in the upper
24 Verde River riparian corridor, and Defendants’ determinations concerning the effects of
25 permitting livestock on ESA-listed species and critical habitat are based on that false
26 assumption.

27 A. The 2002 BiOp on 16 allotments (Spikedace and Loach Minnow).

28 55. The 2002 BiOp assessing the impacts from proposed and ongoing livestock

1 grazing activities on 16 allotments of the Verde River watershed (including the six that
2 comprise the Upper Verde Allotments) addresses impacts to two ESA-listed fish: the
3 Spikedace and the Loach Minnow. FWS, *Biological Opinion: Livestock Grazing Activities*
4 *on 16 Allotments of the Verde River Watershed* (Dec. 30, 2002) (“2002 BiOp”). This BiOp
5 does not address impacts to the Cuckoo or Gartersnake.

6 56. The 2002 BiOp repeatedly asserts that livestock are excluded from riparian
7 areas on the China Dam, Horseshoe, Muldoon, Perkinsville, Sand Flat, and West Bear/Del
8 Rio allotments. *See id.* at 11 (“A total of 116 riparian acres are present on the [China Dam]
9 allotment but are not accessible to grazing activity and are being monitored for stray cattle
10 to ensure exclusion.”); *id.* at 17 (“Approximately 149 riparian acres, adjacent to 3.4 miles
11 of designated critical habitat potentially occupied by spikedace on the Verde River, occur
12 within the [Horseshoe] allotment and are excluded from livestock use and will continue to
13 be monitored.”); *id.* at 40 (asserting livestock are “totally excluded” from critical habitat
14 within the Horseshoe Allotment); *id.* at 10 (“The 3.6 perennial miles, existing within the
15 Muldoon allotment, of critical habitat potentially occupied by spikedace on the Verde River
16 are excluded from livestock use and monitored for stray cattle.”); *id.* at 14 (“The 417
17 riparian acres within the [Perkinsville] allotment, adjacent to 1.6 miles of the Verde River
18 which is critical habitat potentially occupied by spikedace, are partially excluded from
19 livestock use [except during livestock crossings] as well as monitored for strays and
20 vegetative utilization.”); *id.* at 12 (“The 47 riparian acres within the [Sand Flat] allotment
21 are adjacent to 1.7 miles of critical habitat potentially occupied by spikedace on the Verde
22 River and are excluded from livestock use.”); *id.* at 36 (alleging livestock are “excluded”
23 from critical habitat on the Sand Flat Allotment); *id.* at 9 (asserting livestock are “excluded”
24 from riparian areas of the West Bear/Del Rio Allotment except “during river crossings”);
25 *id.* at 34 (same).

26 57. The 2002 BiOp concludes that authorizing cattle grazing within the Upper
27 Verde Allotments and ten others is not likely to jeopardize the continued existence of the
28 Spikedace, or result in the destruction or adverse modification of its critical habitat in part

1 because: “The Forest has installed fencing around the majority of the riparian corridor and
2 implemented two monitoring regimes in order to reduce the adverse effects of the action
3 to the spikedace and its critical habitat.” *Id.* at 70-71. The BiOp further finds “no jeopardy”
4 to the Spikedace because of “[t]he current integrity of the aquatic habitat [which] is due
5 largely to exclusion from livestock grazing within the riparian corridor. Livestock
6 exclusion is anticipated to continue with exception to the West Bear/Del Rio and
7 Perkinsville allotments where access to the Verde River and riparian community is to
8 occur” for stream crossings. *Id.* at 71.

9 58. The 2002 BiOp indicates that the “consultation period” for each allotment
10 was 10 years or shorter. *Id.* at 8, 10, 11, 12, 14, 16. This 10-year period for the six Upper
11 Verde Allotments expired in 2012 at the latest.

12 B. The 2014 Forest Plan Programmatic BiOp.

13 59. In 2014, FWS prepared a BiOp on the Prescott National Forest Plan. A Forest
14 Plan is a programmatic management document for the entire Forest. The 2014 BiOp
15 assumes that there is no grazing allowed along the upper Verde River, including within the
16 Upper Verde Allotments: “Livestock grazing has not been authorized in the river corridor
17 on the six allotments along the Verde River on the Prescott NF since 1998.” 2014 Forest
18 Plan BiOp at 61; *see also id.* at 68 (“Grazing allotments are not currently open to livestock
19 grazing along the riparian corridor.”); *id.* at 69 (“Livestock grazing has not been authorized
20 in the river corridor on the six allotments along the Verde River on the Prescott NF since
21 1998. The allotments within the Verde Valley are fenced off from livestock grazing
22 Site-specific NEPA analysis and ESA section 7 consultation would be required to authorize
23 grazing use along the river corridor.”).

24 60. The Forest Plan generally does not authorize site-specific actions. As the
25 2014 BiOp recognizes: “Although the [Forest Plan] is not a project-specific document, it
26 does provide the direction and guidance for designing and planning specific projects.” *Id.*
27 at 75. The 2014 BiOp suggests that a more detailed consultation would be necessary for
28 future, step-down actions because the Forest Plan consultation “does not eliminate the

1 requirement for site-specific project analyses and the need for site-specific informal or
2 formal ESA section 7(a)(2) consultation with the Fish and Wildlife Service (FWS) for
3 individual projects implemented under the [Forest Plan].” *Id.* at 4. Thus, consultation at the
4 Forest Plan level is not a substitute for consultation on site-specific actions such as annual
5 operating instructions, allotment management plans, or the issuance or renewal of livestock
6 grazing permits.

7 61. With the exception of the 2017 concurrence discussed below, the Forest
8 Service and FWS have not engaged in site-specific consultation concerning livestock
9 grazing decisions concerning the Upper Verde Allotments since the adoption of the Prescott
10 National Forest Plan in June 2015.

11 C. The 2017 allotment-specific concurrences.

12 62. The Forest Service and FWS entered into informal consultation concerning
13 livestock grazing on each of the Upper Verde Allotments that culminated in six FWS
14 concurrences, one for each allotment, in 2017. FWS’s concurrences for each of the
15 allotments address, as relevant here, the Gartersnake and the Cuckoo. They do not address
16 the Spikedace.

17 63. FWS’s 2017 concurrence for the China Dam Allotment concludes that there
18 will be “no direct or indirect effects to” any of the listed species, including Gartersnake or
19 its then-proposed critical habitat, “since no livestock grazing will be permitted in the along
20 the Verde River Corridor.” FWS, *China Dam Livestock Grazing Allotment Concurrence*
21 (Mar. 15, 2017) at 2. The concurrence makes a similar statement regarding impacts to the
22 Cuckoo: “There would be no direct or indirect effects to the cuckoo or riparian habitat
23 along the Verde River because livestock grazing is not permitted within the riparian
24 corridor.” *Id.* at 3.

25 64. FWS’s 2017 concurrences for four other allotments—Horseshoe, Muldoon,
26 Perkinsville, and West Bear—make nearly identical assertions. *See, e.g., id.* (“There would
27 be no direct or indirect effects to the cuckoo or riparian habitat along the Verde River
28 because livestock grazing is not permitted within the riparian corridor.”); FWS, *Horseshoe*

1 *Livestock Grazing Allotment Concurrence* (Mar. 15, 2017) at 3 (same); FWS, *Muldoon*
2 *Livestock Grazing Allotment Concurrence* (Mar. 15, 2017) at 3 (same); FWS, *Perkinsville*
3 *Livestock Grazing Allotment Concurrence* (Mar. 21, 2017) at 3 (same); FWS, *West Bear*
4 *Livestock Grazing Allotment Concurrence* (Mar. 21, 2017) at 3 (same). On information and
5 belief, the Sand Flat Allotment March 2017 concurrence is based on the same assumptions
6 and reaches the same conclusion.

7 D. Consultation Summary.

8 65. The 2002 BiOp addresses the impacts of livestock grazing on only the
9 Spikedace and the Loach Minnow and their critical habitat on the Upper Verde Allotments,
10 and assumes that riparian habitat on the Allotments is fenced and protected from cattle. By
11 its own terms, the 2002 BiOp expired in 2012. The Forest Service has not reinitiated
12 consultation on the impacts of allotment-specific grazing authorizations on these fish since
13 2002.

14 66. While the 2014 Forest Plan BiOp addressed the species at issue here at a
15 programmatic level, it did *not* purport to address the impacts of livestock grazing
16 authorizations on any of the individual allotments, and specifically anticipated that the
17 Forest Service and FWS would engage in subsequent consultation to address project-
18 specific decisions such as AMPs, permit renewals, and AOIs. That BiOp also assumed that
19 livestock were fenced out of the riparian critical habitat of the Upper Verde Allotments.

20 67. The 2017 concurrences also assumed cattle would be excluded from the
21 riparian areas of the Upper Verde Allotments, and also addressed only potential impacts to
22 the Gartersnake and the Cuckoo, thus not addressing the Spikedace.

23 **IV. 2020 LITIGATION AND SETTLEMENT**

24 68. In 2019, the Center conducted field surveys to determine whether cattle were
25 present within riparian areas specifically excluded from grazing along the Verde River,
26 including along the upper Verde River, and to document the extent and intensity of impacts
27 from cattle grazing across the Verde River ecosystem.

28 69. Contrary to the commitments made by the Forest Service and FWS through

1 the prior BiOps and concurrences, these 2019 biological surveys documented widespread
2 cattle grazing, occupancy, and damage, and nonfunctional exclusion fencing, in dozens of
3 locations inspected across the study area. The Center compiled the findings of these
4 surveys into a comprehensive report and provided that report to the Prescott National Forest
5 and FWS in March 2020. *See* Center for Biological Diversity, *Ravaged River: Cattle*
6 *Damage to Endangered Species Habitat in Arizona's Verde River Watershed* (Mar. 2020).⁵
7 In June 2020, the Center conducted a follow-up spot survey on several allotments surveyed
8 in 2019, documenting continued extensive damage and recent cattle impacts on those
9 allotments. The Center provided the results of this June 2020 survey to the Forest Service
10 on August 4, 2020.

11 70. On March 5, 2020, the Center and the Bird Alliance (known at the time as
12 Maricopa Audubon Society) submitted to the Forest Service and FWS a Notice of Intent
13 to file suit pursuant to the ESA's citizen suit provision, 16 U.S.C. § 1540(g), with respect
14 to 22 Verde River watershed grazing allotments on the Prescott, Coconino, and Tonto
15 National Forests. The notice letter provided evidence from the Center's 2019 surveys
16 documenting cattle impacts all along the purportedly excluded upper Verde River corridor
17 within all of these allotments, including 3.72 miles on the Muldoon Allotment, 8.84 miles
18 on the West Bear Allotment, 3.08 miles on the China Dam Allotment, 1.77 miles on the
19 Sand Flat Allotment, 1.33 miles on the Perkinsville Allotment, and 3.46 miles on the
20 Horseshoe Allotment.

21 71. The Center and the Bird Alliance (known at the time as Maricopa Audubon
22 Society) subsequently filed a complaint against the Forest Service and FWS on September
23 17, 2020, alleging that evidence of unauthorized grazing within the riparian critical habitat
24 of 18 public lands allotments within the Verde River watershed on the Prescott, Coconino,
25 and Tonto National Forests required the agencies to reinstate consultation on the impacts
26 of livestock grazing there. *Ctr. for Biological Diversity v. U.S. Forest Serv.*, No. 3:20-cv-

27 ⁵ Available at [https://www.biologicaldiversity.org/programs/public_land/lands/rivers/](https://www.biologicaldiversity.org/programs/public_land/lands/rivers/pdfs/Ravaged-River-Verde-Cattle-Impact-Survey.pdf)
28 [pdfs/Ravaged-River-Verde-Cattle-Impact-Survey.pdf](https://www.biologicaldiversity.org/programs/public_land/lands/rivers/pdfs/Ravaged-River-Verde-Cattle-Impact-Survey.pdf).

1 08243-DGC (D. Ariz. Sept. 17, 2020).

2 72. The parties settled the case via a stipulated agreement. *Id.*, Stipulated
3 Settlement Agreement, Doc. 23-1 (Oct. 5, 2021). The 2021 Agreement required the
4 Prescott National Forest to monitor riparian areas excluded from permitted livestock
5 grazing on National Forest System lands within or adjoining the active grazing allotments
6 along the Verde River for the presence of livestock at least twice per year. *Id.* at 3
7 (Paragraph 1(a)). If livestock were found, the Prescott National Forest agreed to initiate
8 appropriate administrative processes to remove those livestock from the area. *Id.* at 3-4
9 (Paragraphs 1(c), 2). If the Forest detected damage to fencing during these monitoring
10 efforts, the Forest agreed to repair the fence or instruct the associated grazing permittee to
11 repair it. *Id.* at 5-6 (Paragraph 4). The October 2021 settlement also required the Prescott
12 National Forest to provide quarterly livestock monitoring reports to the Center and the Bird
13 Alliance. *Id.* at 6 (Paragraph 5). The Forest Service agreed to implement these monitoring,
14 cattle removal, fence repair, and reporting provisions for three years. *Id.*

15 73. The Forest Service's reports required by the stipulated settlement agreement
16 demonstrated that unauthorized livestock grazing was persistent and ongoing during the
17 three-year life of the settlement, from 2021 to 2024. The Prescott National Forest reported
18 unauthorized trespass livestock within most of the Upper Verde Allotments early in the
19 settlement reporting period. For example, in November 2021, unauthorized/trespass cattle
20 were recorded on the Horseshoe, Muldoon, Perkinsville, and West Bear/Del Rio
21 allotments. Sporadic fence issues and subsequent cattle intrusions continued but appeared
22 to wane over time, although allotments were only required to be monitored twice a year
23 per the settlement agreement and only "fresh" cattle sign was reported.

24 74. By 2023, the Prescott National Forest reported consistent trespass grazing on
25 the Perkinsville Allotment, with unauthorized livestock documented in February, March,
26 and August of that year. The Forest subsequently reported that in January 2024, 19
27 unauthorized/trespass cows were removed from the off-limits riparian corridor of
28 Perkinsville Allotment. The Forest Service recorded further instances of

1 unauthorized/trespass livestock on the Perkinsville Allotment in May and June 2024, as
2 well as on the neighboring China Dam Allotment in May 2024.

3 **V. CENTER SURVEYS IN 2025 AND 2026.**

4 75. After the settlement agreement expired in the fall of 2024, Center staff and
5 contractors surveyed the Upper Verde Allotments. The surveyors, professional field
6 biologists, used a standardized protocol to observe and categorize designated critical
7 habitat along the upper Verde River in the six allotments, rating each segment's overall
8 impact level from cattle as absent, light, moderate, or significant. The February 2025
9 surveys documented numerous instances of unauthorized/trespass livestock and extensive
10 associated damage to protected critical habitat in five of the six Upper Verde Allotments,
11 all in areas that the Forest Service and FWS assumed were excluded, and protected, from
12 grazing. See Figure 1, a representative photo.



13
14
15
16
17
18
19
20
21
22
23
24
25
26 *Figure 1. Extensive, significant soil disturbances and trampling of off-limits critical*
27 *habitat on the China Dam Allotment. 34.909616, -112.248240. February 19, 2025.*

28 76. Center surveyors returned to the riparian habitat within the Upper Verde

1 Allotments in March 2026, and found higher rates than in 2025 of “moderate” to
2 “significant” damage from cattle in critical habitat for the listed species there. Surveyors
3 observed cattle grazing in riparian critical habitat that the Forest Service and FWS assumed
4 was closed to livestock, and found evidence of impacts from cattle grazing (such as feces,
5 trampled soil, grazed vegetation, and streambank degradation) on each of the six Upper
6 Verde Allotments. Surveyors deemed cattle impacts to be “moderate” or “significant” on
7 100% of the riparian critical habitat surveyed on the China Dam, Perkinsville, and Sand
8 Flat allotments. *See Figure 2 (representative photo).*



9
10
11
12
13
14
15
16
17
18
19 *Figure 2. Cattle linger around a denuded, eroding slope within off-limits riparian critical*
20 *habitat on the West Bear/Del Rio Allotment. 34.915946, -112.272823.*
21 *March 9, 2026.*

22 77. The maps below display the results of the 2026 surveys for each of the
23 Upper Verde Allotments overlaid on riparian critical habitat. *See Figures 3-6.*
24
25
26
27
28

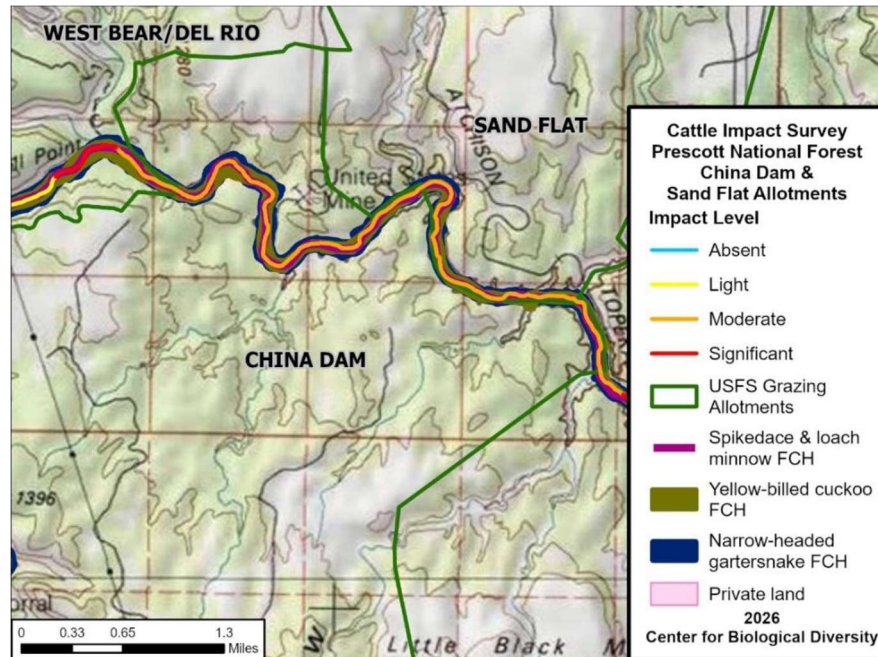


Figure 3. Cattle impact survey results in areas purportedly closed to livestock grazing in the China Dam and Sand Flat allotments in 2026.

100% of critical habitat riparian areas in both allotments was found to exhibit “moderate” cattle impacts.

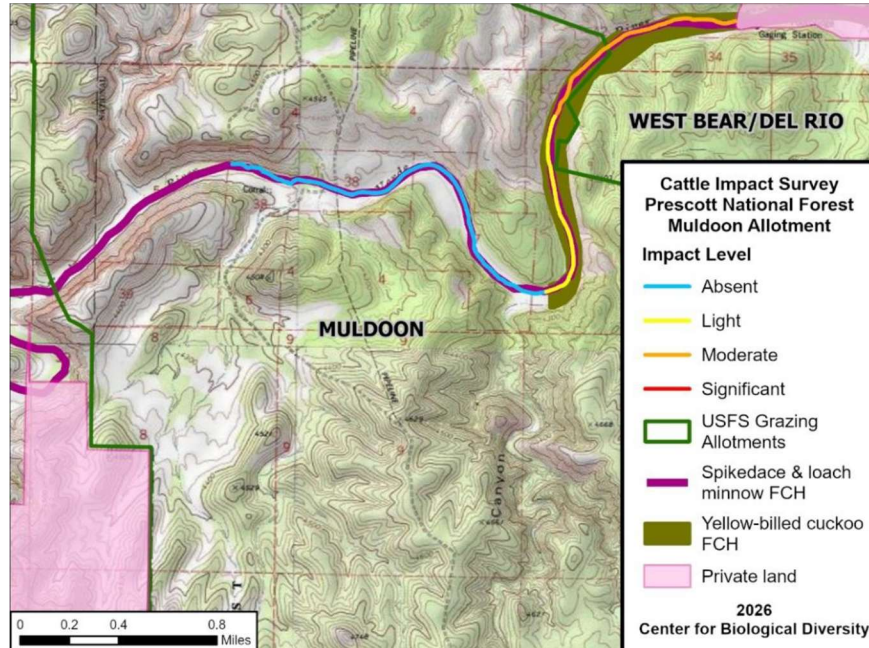


Figure 4. Cattle impact survey results in areas purportedly closed to livestock grazing in the Muldoon Allotment in 2026.

40% of critical habitat riparian areas in the Muldoon Allotment was found to exhibit “light” or “moderate” cattle impacts.

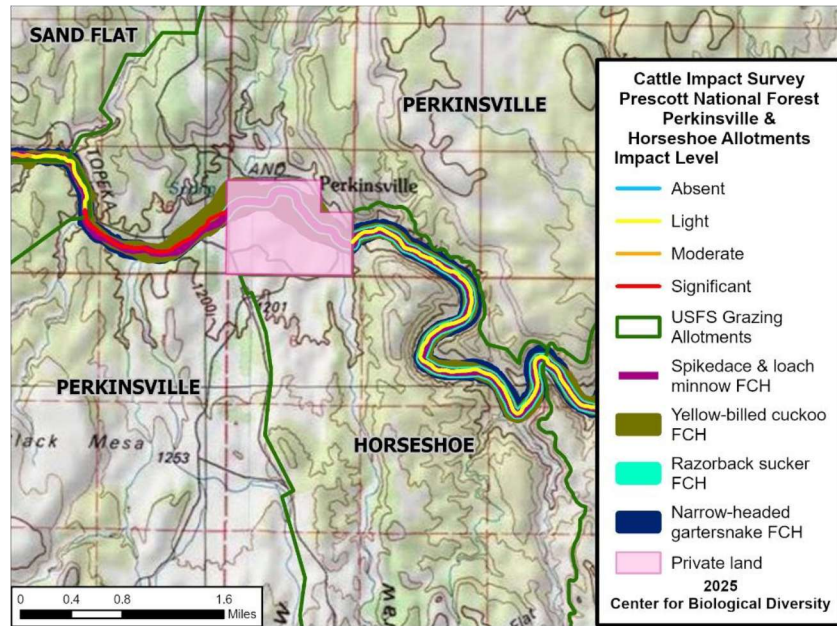


Figure 5. Cattle impact survey results in areas purportedly closed to livestock grazing in the Perkinsville and Horseshoe allotments in 2026. 70% of critical habitat riparian areas in the Horseshoe Allotment was found to exhibit “light” or “moderate” cattle impacts.

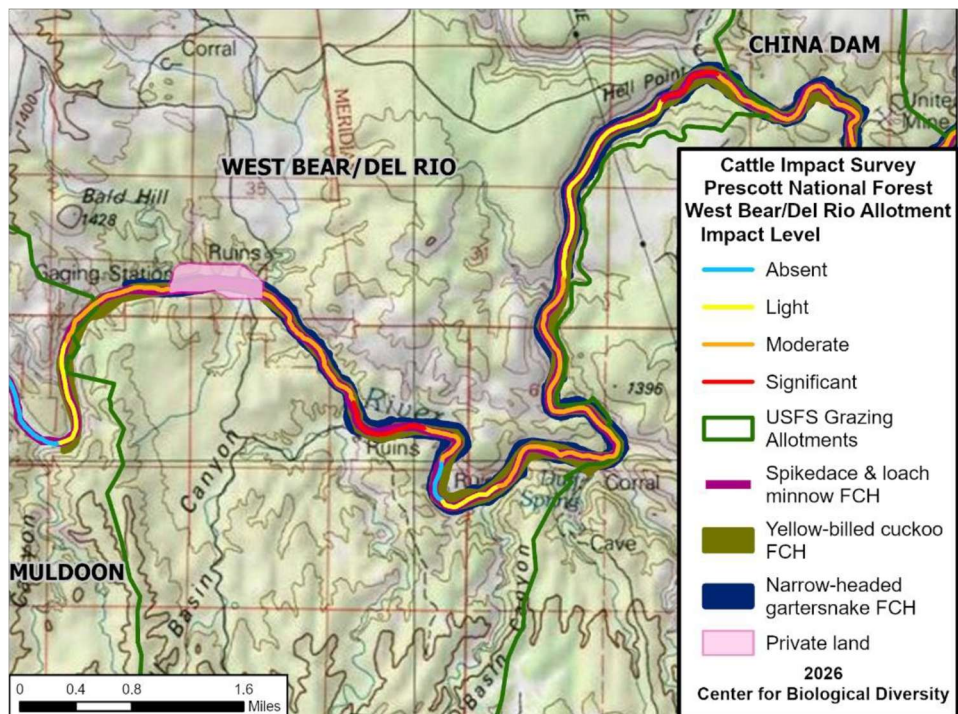


Figure 6. Cattle impact survey results in areas purportedly closed to livestock grazing in the West Bear/Del Rio Allotment in 2026. 73% of critical habitat riparian areas in the West Bear/Del Rio Allotment was found to exhibit “light” or “moderate” cattle impacts.

VIII. NEW INFORMATION IN 2026 REVEALS EFFECTS OF CATTLE GRAZING IN A MANNER AND TO AN EXTENT NOT CONSIDERED IN THE 2002 OR 2014 BIOLOGICAL OPINIONS, OR 2017 CONCURRENCES.

78. On April 29, 2026, Plaintiffs submitted to the Forest Service and FWS a sixty-day Notice of Intent to Sue for violations of the ESA, pursuant to 16 U.S.C. § 1540(g)(2)(A). That notice letter provided extensive and detailed evidence and documentation, gathered during the Center’s 2025 and 2026 surveys detailed above, demonstrating pervasive destructive cattle grazing within the critical habitat riparian areas of the six Upper Verde Allotments, in violation of the relevant ESA consultation documents and the ESA itself.

79. The April 2026 notice letter provided photographic evidence of unauthorized cattle impacts, and unauthorized livestock presence, within riparian critical breeding habitat within the six Upper Verde Allotments. *See, e.g.*, ¶¶ 73–75 above. This evidence contradicts the assumptions of the 2002 BiOp, the 2014 BiOp, and the 2017 concurrences that livestock would be excluded from riparian critical habitat in the Upper Verde Allotments along the upper Verde River.

80. The Forest Service responded on June 26, 2026, admitting that unauthorized livestock “occasionally access the Verde River corridor,” but asserting that these livestock “do so in violation of AMP, permit, and AOI restrictions and without authorization from the Forest Service. These occurrences are not a component of the federal action analyzed under ESA Section 7(a)(2) because they are not permitted or intended by the Forest Service.” Letter of S. Clawson, Supervisor, Prescott NF to C. Bugbee et al., Center for Biological Diversity (June 26, 2026).

81. The U.S. District Court for the District of Arizona has held that a federal land management agency must consult on the impacts of unauthorized livestock grazing that is a foreseeable result, and thus an indirect impact, of permitted livestock grazing on adjacent public lands. *Ctr. for Biological Diversity v. U.S. BLM*, 24-CV-00141-TUC-RM, 2026 WL 878924, at *7 (D. Ariz. Mar. 31, 2026) (“Defendants’ contention that there exists no

1 obligation to consult on the effects of illegal or unauthorized [grazing] is without merit;
2 allowing agencies to turn a blind eye to activities directly enabled but not expressly
3 authorized by their actions is an impermissible result under the ESA.”).

4 82. Neither the Forest Service nor FWS has committed to reinitiating
5 consultation on the Upper Verde Allotments in response to the April 2026 notice letter.

6 **CLAIM FOR RELIEF**

7 The Forest Service and FWS Are in Ongoing Violation of the ESA for Failing to 8 Reinitiate Consultation on the Six Upper Verde Allotments

9 83. Plaintiffs incorporate by reference all preceding paragraphs.

10 84. ESA Section 7 requires that the Forest Service consult with FWS to ensure
11 that any action authorized, funded, or carried out by the Forest Service is not likely to
12 jeopardize the continued existence of any threatened or endangered species, or result in the
13 destruction or adverse modification of the critical habitat of such species. 16 U.S.C.
14 § 1536(a)(2). The reinitiation of consultation is required and must be requested by the
15 Forest Service or FWS if new information reveals effects of the action that may affect listed
16 species or critical habitat in a manner or to an extent not previously considered, the action
17 is modified in a manner that causes an effect to the listed species or critical habitat that was
18 not considered in the biological opinion, or a new species is listed or critical habitat
19 designated that may be affected by the identified action. 50 C.F.R. § 402.16(a).

20 85. The Forest Service and FWS have violated and remain in ongoing violation
21 of the ESA by failing to reinitiate and complete consultation on the impacts to the Cuckoo,
22 Gartersnake, or the Spikedace regarding livestock grazing the Forest Service has
23 authorized on the China Dam, Horseshoe, Muldoon, Perkinsville, Sand Flat, and West
24 Bear/Del Rio allotments. The agencies failed to reinitiate consultation despite receiving
25 significant new information demonstrating that cattle grazing on each of the allotments has
26 adversely affected, and will continue to adversely affect, threatened and endangered
27 species and their critical habitat in a manner and to an extent not considered within, and/or
28

1 in violation of, the expired 2002 BiOp, the programmatic 2014 BiOp, and the 2017
2 concurrences. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.16(a).

3 86. The ongoing failure of the Forest Service and FWS to reinitiate and complete
4 consultation on the ongoing impacts of Forest Service-authorized livestock grazing on the
5 China Dam, Horseshoe, Muldoon, Perkinsville, Sand Flat, and West Bear/Del Rio
6 allotments on threatened and endangered wildlife, and their designated critical habitat,
7 violates the ESA. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.16(a).

8 87. In the absence of the required reinitiated consultation, the Forest Service is
9 in ongoing violation of its obligation under ESA Section 7 to ensure that its actions are not
10 likely to jeopardize the continued existence of the Gartersnake, the Cuckoo, or the
11 Spikedace, or result in the destruction or adverse modification of their designated critical
12 habitat. 16 U.S.C. § 1536(a)(2).

13 88. Plaintiffs and their members are injured by the Forest Service's and FWS's
14 violations of ESA Section 7(a)(2) and failure to reinitiate and complete consultation.

15 89. The Forest Service's and FWS's violations of ESA Section 7(a)(2) are
16 subject to judicial review under the ESA citizen suit provision, 16 U.S.C. § 1540(g)(1),
17 and/or the APA, 5 U.S.C. §§ 701-706.

18 90. Plaintiffs provided sixty days' notice of intent to file suit pursuant to the
19 ESA's citizen suit provision, 16 U.S.C. § 1540(g), by letters to the Forest Service and FWS
20 dated April 29, 2026. Defendants have not acted to remedy their continuing ESA violations
21 by the date of this complaint's filing.

22 **REQUEST FOR RELIEF**

23 Wherefore, Plaintiffs respectfully request that the Court:

24 1. Declare that the Forest Service and FWS are violating ESA Section 7(a)(2)
25 and 50 C.F.R. § 402.16 by failing to reinitiate and complete consultation on the six Upper
26 Verde Allotments in the Prescott National Forest (the China Dam, Horseshoe, Muldoon,
27 Perkinsville, Sand Flat, and West Bear/Del Rio allotments) in order to ensure that livestock
28 grazing on those allotments does not jeopardize the continued existence of ESA-listed

1 species, including the western yellow-billed cuckoo, the narrow-headed gartersnake, and
2 the spikedace, or result in the destruction or adverse modification of their designated
3 critical habitat;

4 2. Set aside all active Forest Service grazing authorizations for the six Upper
5 Verde Allotments;

6 3. Remand the affected Forest Service grazing authorizations to Defendants
7 with instructions to immediately reinstate consultation to address the impacts of the
8 proposed grazing on the western yellow-billed cuckoo, the narrow-headed gartersnake, and
9 the spikedace, and these species' critical habitat;

10 4. Enjoin the Forest Service from authorizing livestock grazing within the six
11 Upper Verde Allotments until the agencies complete lawful ESA consultation, including
12 from making "any irreversible or irretrievable commitment of resources with respect to"
13 that action in violation of 16 U.S.C. § 1536(d), until consultation has been reinstated and
14 completed;

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

18 6. Grant Plaintiffs such additional relief as the Court may deem just and proper.

19
20 Respectfully submitted October 6, 2026,

21 

22 Graham Rex (AZ Bar No. 041061)
23 Center for Biological Diversity
24 P.O. Box 710
25 Tucson, AZ 85702-0710
26 (928) 519-3318
27 grex@biologicaldiversity.org
28

1 Edward B. Zukoski (CO Bar No. 26352)
2 Center for Biological Diversity
3 1536 Wynkoop Street, Suite 421
4 Denver, CO 80202
5 (303) 641-3149
6 tzukoski@biologicaldiversity.org
7 *Pro Hac Vice Application Pending*
8
9 *Attorneys for Plaintiffs*
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28