

Ecosystem Management Coordination

Happy Friday!

Court Decisions

Nothing to Report

Litigation Update

Nothing to Report

New Cases

Grazing & Wildlife | Region 3

Center for Biological Diversity and Maricopa Audubon Society v. U.S. Forest Service and U.S. Fish and Wildlife Service (20-08243, D. Ariz.) **Region 3**—On September 17, 2020, the plaintiffs filed a complaint in the District Court of Arizona against the Forest Service and the U.S. Fish and Wildlife Service (FWS), that alleges livestock grazing on 18 allotments, including the issuance of term grazing permits, allotment management plans, allotment annual operating instructions, and the Forest Service failure to act to prevent unlawful livestock grazing on additional 4 allotments on the Prescott, Coconino, and Tonto National Forests that has impacted 14 threatened and endangered species dependent on aquatic and riparian habitat, including the yellow-billed cuckoo, Gila chub, Southwestern willow flycatcher, narrow-headed and northern Mexican garter snakes, and Chiricahua leopard frog within the Verde River watershed, in violation of Section 7 of the Endangered Species Act (ESA), and Administrative Procedures Act (APA).

The plaintiff specifically claims the Forest Service:

1. Failed to reinitiate and complete ESA Section 7 consultation to ensure ongoing livestock grazing does not jeopardize listed species or destroy or adversely modify critical habitat. By failing to take effective actions to exclude livestock from the allotments, the Forest Service is in ongoing violation of ESA section 7 requirement that federal agencies ensure their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat.

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2. Failed to exclude cattle from riparian areas occupied by listed threatened or endangered species, and/or containing designated critical habitat for such species, within 18 permitted allotments pending the completion of reinitiated consultation, in violation of ESA.
3. Failed to develop and implement a program to conserve listed species impacted by the Forest Service's grazing program an unauthorized grazing, in violation of the ESA requirements. The Forest Service's actions to remove unauthorized cattle from streamside and riparian areas on both the 18 permitted and 4 vacant allotments that are purportedly excluded from livestock have been, at best, ineffectual and temporary in nature. Fencing intended to exclude cattle is frequently absent, in disrepair, or otherwise ineffective. The Forest Service has not conducted required monitoring to ensure that cattle are in fact excluded from streamside and riparian areas and has not implemented adequate enforcement actions to compel corrective action.

Background

On March 16, 2020, the Center for Biological Diversity (CBD) send a 60-day NOI to sue the Forest Service and FWS. The NOI claims the Forest Service to re-initiate Endangered Species Act (ESA) ESA Section 7 consultation due to failed exclusion fencing on permitted grazing allotments, which is jeopardizing the Verde River for survival and recovery.

The allotments at issue are the Windmill West, Beaver Creek, Apache Maid, Walker Basin, Hackberry/Pivot Rock, Ike's Backbone, and Fossil Creek on the Coconino NF; the Muldoon, West Ear/Del Rio, China Dam, Sand Flat, Perkinsville, Horseshoe, Antelope Hills, and Brown Springs allotments on the Prescott NF; and the Skeleton Ridge, Deadman Mesa, Cedar Bench, Bull Springs, and Red Creek allotments on the Tonto NF.

Based on new information, from CBD's report, they claim violation of ESA by the Forest Service for not following requirements (Terms and Conditions/Mitigation Measures) in the U.S. Fish and Wildlife Service's (FWS) biological opinions for 20 grazing allotments in the Coconino, Prescott, and Tonto NFs. CBD further claims the Forests Service's inaction has violated the FWS's BOs on protecting the resource from the harms of unchecked grazing in the watershed. The NOI also, includes claims that new listings and proposed designated critical habitat have occurred, since the biological opinions were issued, thus requiring re-consultation between the Forest Service and the FWS concerning grazing impacts on newly listed species, and proposed designated critical habitat.

The NOI indicates that in 1998 the CBD reached a legal agreement with the Forest Service in which the Agency agreed to prohibit domestic livestock grazing from hundreds of miles of southwestern streamside habitats, including the Verde River watershed, while it conducted a long-overdue consultation with FWS on the impacts of grazing on threatened and endangered species. The consultation confirmed that grazing in arid southwestern landscapes destroys riparian habitat.

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The CBD states their report, based on months of field surveys, confirms that hundreds of cows, some of them feral, are destroying crucial habitat for 14 threatened or endangered species. These include imperiled fish, birds and snakes that rely on what should be healthy, lush riparian areas for their survival along the Verde River and its tributary streams: The East Verde River, Fossil Creek, Red Creek, Wet Beaver Creek and Sycamore Creek.

Notice of Intent

Nothing to Report

Other Cases

Nothing to Report

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