

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

SOUTHWEST CENTER FOR
BIOLOGICAL DIVERSITY, et al.,

Plaintiffs,

v.

U.S. FOREST SERVICE, et. al.,

Defendants.

CV-97-666-TUC-JMR

FOREST GUARDIANS,

Plaintiff,

v.

U. S. FOREST SERVICE, et. al.

Defendants.

Civil No. 97-2562 PHX-SMM

ARIZONA CATTLE GROWERS'
ASSOCIATION,

and

NEW MEXICO CATTLE GROWERS'
ASSOCIATION,

Intervenors.

CV- 97-2562 PHX-SMM
CV-97-666-TUC-JMR

STIPULATION

Plaintiffs Forest Guardians and the Southwest Center for Biological Diversity, et al., and defendant United States Forest Service agree to the following terms in settlement of the Plaintiffs' Motion for Preliminary Injunction.

1. On the allotments listed in Forest Service Table A, the Forest Service represents that livestock have been excluded from at least 99% of occupied, suitable but unoccupied, and potential habitat of the species identified in Forest Guardians' Motion for Preliminary Injunction and that the Forest Service is not currently allowing the excluded habitat to be grazed. The Forest Service further represents that the excluded habitat will be monitored at least once every two weeks for maintenance of fences and to determine whether any livestock are present. The Forest Service will monitor the excluded habitat in the San Francisco River riparian corridor in the Luna and Pleasant Valley allotments weekly to determine whether any livestock are present. If livestock are present the Forest Service will immediately and aggressively initiate the process for removal. Forest officers will make every reasonable effort to remedy situations of livestock encroachment into excluded areas at the time of discovery. In the event the situation cannot be remedied at the time of discovery, forest officers will make every effort to verbally notify owners (within 24 hours) to remove livestock. Owners of livestock to be removed will be given a specific time frame in which to remove their livestock (normally between 5-10 days). Verbal notification will be followed by a certified letter to the owner.

In the event livestock are not removed as requested, one of two courses of action will aggressively be pursued by the forest officer.

(a) If the owner of the livestock is a national forest permit holder, action will be taken under the provisions of 36 CFR 222.4(a), and procedures outlined in FSM 2231.62 for suspension or cancellation of grazing permits. The permit holder will be sent

a certified letter within two (2) days notifying him of the violation and allowing him 5-10 days to show cause why his permit should not be suspended or canceled, and notifying him again to remove cattle from the area in question. If livestock are not removed, and the permit holder does not provide sufficient evidence why action against his permit should not be taken, suspension or cancellation action will be taken by the forest officer within five days of the time frame given to show cause.

(b) If the owner of the livestock is not a national forest permit holder, one of two or combination of two courses of action could be taken:

1) The owner will be cited under 36 CFR 261.7(a), (b), or (c). At the time of citation, the owner will be given another specified time frame to remove livestock (normally 5-10 days). If livestock are not removed, the forest officer will initiate impoundment action as specified in 2 below or the government will file a complaint in trespass against the owner, normally within a 3 week period.

2) Initiate the impoundment of livestock per the provision of 36 CFR 262.10. According to these regulations, when the owner of the livestock is known, such livestock may be impounded by the Forest Service five days after written notice of intent to impound and such notice is mailed by certified or registered mail or personally delivered to the owner. In any event, the Forest Service would normally initiate impoundment action within a 10 day period if this process is initiated.

When livestock ownership is not known, such livestock can be impounded any time 15 days after the date a notice of intent to impound livestock is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. In any event, the Forest Service would normally initiate impoundment action within a 20 day period if this process is initiated.

2. On the allotments listed in Forest Service Table B, the Forest Service represents

that livestock will be excluded from at least 99% of occupied, suitable but unoccupied, and potential habitat of the species in Forest Guardians' Motion for Preliminary Injunction prior to August 15, 1998, according to the schedule set forth in Forest Service Table B. The Forest Service further represents that once exclusion is accomplished, the Forest Service will not allow these areas to be grazed and the excluded habitat will be monitored at least once every two weeks for maintenance of fences and to determine whether any livestock are present. If livestock are present, the process for removal, outlined above, will begin immediately.

3. The Forest Service will fence the perennial portion of Dry Blue Creek on the Luna allotment (approximately 50 yards) by August 15, 1998.

4. Within ten (10) days of the date of this Agreement, a U. S. Forest Service journey-level fish biologist and/or a U.S. Forest Service fisheries scientist will evaluate the suitability of East Eagle Creek for loach minnow habitat and for the presence of the species. One or two biologists designated by the plaintiffs will accompany the U.S. Forest Service to provide technical input for this determination. The permittee also will be allowed to accompany the U.S. Forest Service, or send a designated representative to accompany the U.S. Forest Service, to provide input for this determination. If the U.S. Forest Service determines that suitable loach minnow habitat exists in East Eagle drainage, the permittee will be requested to voluntarily remove livestock from the allotment until NEPA on the permit and consultation with the U.S. Fish and Wildlife is completed. If the permittee does not voluntarily comply with this request, he will be directed to remove the livestock from the allotment. The removal will be directed through modification of the Annual Operating Plan.

5. The Forest Service will continue with the cowbird trapping on the allotments identified on Forest Service Table C. On the allotments on Table C, where cowbird trapping is not scheduled for this season, the Forest Service will conduct monitoring to determine where trapping is needed. Trapping will be initiated if appropriate. It is

understood that trapping and monitoring occur both on and off national forest system lands and are conducted by various cooperating entities.

6. Whenever the Forest Service receives a report from the parties of the presence of livestock in excluded habitat, the Forest Service agrees to verify the presence or absence of livestock no later than the next working day and, if present, to initiate the livestock removal process outlined above. To the extent practicable, any report of livestock in excluded habitat should provide the name of the reporter, the date and time of the discovery, the location of the livestock, and the number of livestock present in the excluded habitat.

7. On April 14, 1998, Forest Guardians and Southwest Center for Biological Diversity will provide the Forest Service with a list of allotments where livestock have been observed in excluded habitat within the last seven (7) days. With respect to those allotments, the Forest Service agrees to initiate the livestock removal process outlined above upon verification that livestock are in the excluded habitat. To the extent practicable, any report of livestock in excluded habitat should provide the name of the reporter, the date and time of the discovery, the location of the livestock, and the number of livestock present in the excluded habitat.

8. Upon request by Forest Guardians or Southwest Center for Biological Diversity, the Forest Service will provide all data or other documents in its possession generated as a result of its bi-weekly inspection of excluded habitat (referenced above), its cowbird trapping program (referenced in Table C), and its willow flycatcher monitoring program (referenced in paragraph 5).

9. With respect to the Dillman Creek, Trout Creek, Spur Lake and Underwood Lake allotments, the Forest Service will conduct a field review by June 1, 1998 to determine whether suitable or potential flycatcher habitat occurs on these allotments. A representative of Forest Guardians and Southwest Center for Biological Diversity will be

invited to accompany the Forest Service on these field reviews. The permittees also will be invited to accompany the U.S. Forest Service, or send a designated representative to accompany the U.S. Forest Service, to provide input for this determination.

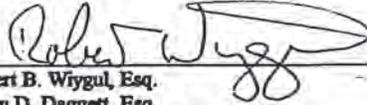
10. With regard to the Luna allotment the Forest Service will conduct a field review to determine whether suitable or potential habitat southwest willowflycatcher or loach minnow habitat occurs on the San Francisco River and Stone Creek as it flows through the allotment. A representative of Forest Guardians and Southwest Center for Biological Diversity will be invited to accompany the Forest Service on these field reviews. The permittees also will be invited to accompany the U.S. Forest Service, or send a designated representative to accompany the U.S. Forest Service, to provide input for this determination.

11. By May 15, 1998, the Forest Service will provide to Plaintiffs a map or maps indicating the location of the existing and planned areas of exclusions.

12. Forest Guardians and the Southwest Center for Biological Diversity agree that they will not seek preliminary injunctive relief with respect to the allotments identified in Forest Guardians' Motion so long as the Forest Service complies with the terms of this stipulation for the duration of the ongoing grazing consultation.

13. The parties agree that the terms of this stipulation are enforceable. This agreement does not constitute an admission by any of the parties of any claim or defense in the lawsuit or of any issue involved in the ongoing consultation.

Dated this 16th day of April, 1998.



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Attorney for Federal Defendants

Forest Service Table A. Allotments with at least 99% of the habitat excluded.

Forest	Allotment
APACHE-SITGREAVES	Green
	Black River
	Bobcat-Johnson
	Dark Canyon
	Double Circles
	East Eagle
	Fish Hook
	Hickey
	Lower Campbell Blue
	Mud Springs
	Pigeon
	Pleasant Valley
	Raspberry
	Steeple Mesa
	Tule springs
	Turkey Creek
	Wildbunch
CARSON	
	Miranda
	Olla-Ranchos
	Rio Pueblo
CIBOLA	
	Brennan
GILA	
	Alexander
	Alma
	Apache Canyon
	Cedar Breaks
	Corner Mountain
	Deep Canyon
	Devils Park
	Dry Creek
	Eagle Peak
	East Apache
	Govina
	Harden Cienega
	Jordan Mesa
	Kelly
	Little Rough
	Lower Plaza
	Luna
	Mangas Valley
	Pleasanton/Lightning Mesa

Forest Service Table A. Con't.

Forest	Allotment
GILA	
	Potholes
	Sapillo
	West Apache
	Whiterocks
PRESCOTT	
	Antelope Hills
	China Dam
	Copper Canyon
	Jerome
	Perkinsville
	Sand Flat

Forest Service Table B. Allotments with at least 99% of the habitat planned for exclusion.

Forest	Allotment Name	Planned Ex. Date
Apache/Sitgreaves		
	Cow Flat	5/1/98
	Red Hill	6/1/98
Gila		
	Black Bob	4/15/98
	Devils Park	8/15/98
	Frisco Plaza	8/1/98
	Gila River	4/15/98
	Harve Gulch/R.Park	5/15/98
	McCarty	8/15/98
	Taylor Creek	5/15/98

Forest Service Table
Wildlands Listed on Permits Table 2

	Approved GSE Sites Within 1 mile of Grazing During the Breeding Season	Approved for Cowbird Trapping
APACHE-SITGREAVES		
ALPINE	YES	YES
BEEHIVE	YES	YES
BURRO CREEK	YES	YES
COYOTE-WHITMER	YES	YES
CROSS BAR	YES	YES
ELC	YES	YES
ESCUJILLA	YES	YES
GREER	YES	YES
L. CAMPBELL BLUE	YES	YES
NUTRIOSO SUMMER	YES	YES
POOL CORRAL	YES	YES
RUDD KNOLL	YES	YES
SHEEP SPRINGS	YES	YES
STONE CREEK	YES	YES
TENNEY	YES	YES
TURKEY CREEK	YES	YES
U.CAMPBELL BLUE	YES	YES
VOIGT	YES	YES
WILLIAMS VALLEY	YES	YES
CARSON NF		
CAPULIN	N	NA
MIRANDA	YES	YES
OLLA-RANCHOS	No Grazing Permitted	YES
RIO PUEBLO	YES	YES
TCLP	YES	N
CIBOLA NF		
AGUA FRIA	N	NA
BLUEWATER	N	NA
BRENNAN	N	NA
COTTONWOOD/TUCES	N	NA
DAN VALLEY/DENT	N	NA
MT SEDGEWICK	N	NA
RAMAH	N	NA
STINKING SPRINGS	N	NA
WINGATE	N	NA
GILA NF		
LUNA	YES	YES
ROUGH CANYON	YES	RESEARCH
SPAR CANYON	YES	RESEARCH
PRESCOTT NF		
ANTELOPE HILLS	YES	N
BALD HILL	YES	YES
CIENEGA	YES	YES
COPPER CANYON	YES	YES
JEROME	N	NA
VERDE	YES	YES
YOUNG	YES	YES
SANTA FE NF		
EROSION	N	NA

WHEREAS, plaintiffs Southwest Center for Biological Diversity, Southwest Trout and Sky Island Watch (collectively "Southwest Center") filed this action on October 23, 1997, alleging that the Forest Service (USFS) was in violation of Sections 7 and 9 of the Endangered Species Act, 16 U.S.C. § 1531 et seq. (ESA) by failing to enter into consultation with the United States Fish and Wildlife Service (FWS) on the effects of livestock grazing within certain allotments on species listed as threatened and endangered under the ESA and their habitat;

WHEREAS, on February 9, 1998, the USFS and the FWS entered into a Grazing Consultation Agreement (GCA) establishing a process for consulting under Section 7 of the ESA on the effects to listed species of grazing on the allotments named in this litigation;

WHEREAS, pursuant to the terms of the GCA, the USFS and the FWS have committed to completing the above-referenced consultation by July 15, 1998, on those allotments where ongoing grazing is determined to have an effect on listed species;

WHEREAS, on April 7, 1998, Southwest Center moved for a preliminary injunction pending completion of consultation to enjoin grazing on the allotments named in the Southwest Center complaint;

WHEREAS, on April 16, 1998, Southwest Center and the federal

defendants reached a stipulation regarding a number of the allotments named in the Southwest Center complaint;

WHEREAS, with regard to the remaining allotments, the Southwest Center and the federal defendants believe the Southwest Center's motion for a preliminary injunction can be settled without further litigation, the parties hereby agree as follows:

1. With regard to the Bullard Peak, Canyon del Buey, Centerfire, Citizen, East Sand Flat, Pueblo allotments, the Forest Service has determined that ongoing grazing is having no effect on the species at issue and that therefore consultation is not necessary; with regard to the Dagger allotment, consultation has already been completed and a biological opinion has been issued. Therefore, injunctive relief pending completion of consultation is neither necessary nor appropriate. However, plaintiffs reserve the right to challenge the substance of the above determinations in a subsequent action.

2. With regard to the Redstone allotment, there are currently no known permitted livestock on this allotment. Although there are feral cattle of unknown origin that currently exist on the allotment, they are difficult to gather and must be identified prior to disposition. The Forest Service has suspended the permit for this allotment, has issued a notice of impoundment for trespass livestock, and intends during June 1998

to contract for removal of those livestock within sixty days.

3. With regard to the Limestone, Picnic and Watson Mountain allotments, there are no livestock currently present on the allotments, nor are livestock scheduled to come onto these allotments until after consultation is complete. An injunction prohibiting grazing pending completion of consultation on the allotments is neither necessary nor appropriate. However, if consultation has not been completed when livestock come onto the allotments Southwest Center reserves the right to seek injunctive relief on these allotments.

4. On the allotments listed in Forest Service Table A, the Forest Service represents that livestock have been excluded from at least 99% of occupied, suitable but unoccupied, and potential habitat of the species identified and that livestock are currently excluded from the habitat in these allotments. The Forest Service further represents that the excluded habitat will be monitored at least once every two weeks for maintenance of fences and to determine whether any livestock are present. If livestock are present, the Forest Service will immediately and aggressively initiate the process for removal. Forest officers will make every reasonable effort to remedy situations of livestock encroachment into excluded areas at the time of discovery. In the event the situation cannot be remedied at the

time of discovery, forest officers will make every effort to verbally notify owners (within 24 hours) to remove livestock. Owners of livestock to be removed will be given a specific time frame in which to remove their livestock (normally between 5-10 days). Verbal notification will be followed by a certified letter to the owner if necessary.

In the event livestock are not removed as requested, one of three courses of action will aggressively be pursued by the forest officer.

(A) If the owner of the livestock is a national forest permit holder, action will be taken under the provisions of 36 C.F.R. 222.4(a), and procedures outlined in FSM 2231.62 for suspension or cancellation of grazing permits. The permit holder will be sent a certified letter within two (2) days notifying the permit holder of the violation and allowing him 5-10 days to show cause why the permit should not be suspended or canceled, and notifying him again to remove cattle from the area in question. If livestock are not removed, and the permit holder does not provide sufficient evidence why action against the permit should not be taken, suspension or cancellation action will be taken by the forest officer within five days after the time frame given to show cause.

(B) If the owner of the livestock is not a national forest

permit holder, one of two or combination of two courses of action could be taken:

1) The owner will be cited under 36 C.F.R. 261.7(a), (b) or (c). At the time of citation, the owner will be given another specified time frame to remove livestock (normally 5-10 days). If livestock are not removed, the forest officer will initiate impoundment action as specified in 2 below or the government will file a complaint in trespass against the owner, normally within a 3 week period.

2) Initiate the impoundment of livestock per the provision of 36 C.F.R. 262.10. According to these regulations, when the owner of the livestock is known, such livestock may be impounded by the Forest Service five days after written notice of intent to impound and such notice is mailed by certified or registered mail or personally delivered to the owner. In any event, the Forest Service would normally initiate impoundment action within a 10 day period if this process is initiated.

(C) When livestock ownership is not known, such livestock can be impounded any time 15 days after the date a notice of intent to impound livestock is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. In any event, the Forest Service would normally initiate impoundment action within a 20 day period if

the process is initiated.

5. Whenever the Forest Service receives a report from Southwest Center of the presence of livestock in excluded habitat, the Forest Service agrees to verify the presence of livestock no later than the next working day, and if livestock are present, to initiate the livestock removal process outlined above. To the extent practicable, any report of livestock in excluded habitat should provide the name of the reporter, the date and time of the discovery, the location of the livestock, and the number of livestock present in the excluded habitat.

6. Upon request by Southwest Center, the Forest Service will provide all data or other documents in its possession generated as a result of its bi-weekly inspection of excluded habitat (referenced above).

7. By July 6, 1998, the Forest Service will provide to Southwest Center a map or maps indicating the location of the existing areas of exclusions.

8. Southwest Center agrees that it will not seek preliminary injunctive relief with respect to the allotments identified in Southwest Center's motion so long as the Forest Service complies with the terms of the stipulation for the duration of the ongoing consultation.

9. Southwest Center and the federal defendants agree that

the terms of this stipulation are enforceable. The Forest Service represents that it intends to make every effort to comply with its terms in good faith. If, however, through unforeseen circumstances, events should change after the agreement is executed, the Forest Service will notify the Southwest Center as soon as reasonably possible of the change and the reason therefore. The parties agree to attempt to work reasonably toward a mutually acceptable solution. If the parties are unable to agree, Southwest Center reserves the right to renew its motion for preliminary injunctive relief with regard to the allotment(s) in question. This agreement does not constitute an admission by any of the parties of any claim or defense in the lawsuit or of any issue involved in the ongoing consultation.

Dated this 16th day of June, 1998.


 Jay TUTCOTON
 Attorney for Plaintiffs

Date: 6-17-98


 CHRISTIANA P. PERRY
 Attorney for Federal
 Defendants

Date: 6-16-98

TABLE A
 (Allotments with 99% of the Habitat Excluded From Grazing)

FOREST	ALLOTMENT	SPECIES
Apache-Sitgreaves	Bush Creek Foote Creek	Loach Minnow, SWWF Apache Trout, SWWF, Loach Minnow
Coconino	Bar T Bar Beaver Creek Buckhorn Fossil Creek Hackberry/Pivot Sedona Thirteen Mile Rock Buck Springs	Spinedace Spikedace, SWWF, Razorback Sucker Spikedace, SWWF, Razorback Sucker Spikedace, SWWF, Razorback Sucker Spinedace, SWWF, Razorback Sucker Spikedace, SWWF, Razorback Sucker Spikedace, SWWF, Razorback Sucker Spinedace
Coronado	Bear Valley Montana	Sonora Chub Sonora Chub
Prescott	Squaw Peak	Gila Topminnow, Razorback Sucker
Tonto	Chrysofile Haystack Butte Hicks/Pikes Peak Red Creek Sears Club/Chalk Mtn Sedow	Razorback Sucker Razorback Sucker Razorback Sucker Razorback Sucker, SWWF Razorback Sucker, SWWF Razorback Sucker