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14 **IN THE UNITED STATES DISTRICT COURT**

15 **FOR THE DISTRICT OF ARIZONA**

16 NEIGHBORS OF THE MOGOLLON  
17 RIM, INC.,

18 Plaintiff,

19 vs.

20 UNITED STATES FOREST SERVICE,

21 Defendant.

No.

**COMPLAINT**

**INTRODUCTION**

22 1. Plaintiff Neighbors of The Mogollon Rim challenges Defendant U.S. Forest  
23 Service’s annual authorizations of grazing for the Tonto National Forest Bar X allotments  
24 (“Bar X”) that unlawfully reintroduce cattle into a closed area, and allow far more cattle  
25 to graze the allotment area than what is authorized by the term grazing permit. The  
26 Forest Service closed a portion of the Bar X more than thirty-eight years ago, and

1 significantly reduced grazing on the remainder of the area, after extensive studies showed  
2 the allotments were highly overgrazed and incapable of supporting such a large number  
3 of cattle on a sustained yield basis. It is now reversing course without conducting the  
4 legally required environmental analyses.

5       2. The closed “pasture”<sup>1</sup> is located in the ponderosa pine forest directly under  
6 the spectacular Mogollon Rim and surrounds the communities of Colcord Estates,  
7 Ponderosa Springs and Ponderosa Springs Estates (“Colcord and Ponderosa  
8 communities”). In 1979, following years of study that showed a history of overgrazing  
9 which devastated the natural resources and wildlife populations, the Tonto National  
10 Forest Supervisor excluded grazing in the subject pasture. The Forest Service could not  
11 permit grazing in this area unless it determined in future evaluations that the area had  
12 recovered and is capable of supporting livestock grazing on a sustained yield basis. Since  
13 that time, in the absence of cattle, native vegetation and wildlife have thrived, allowing  
14 the residents of the near-by communities and others to enjoy the healthier plant and  
15 wildlife populations on the surrounding National Forest lands.

16       3. After thirty-five years of non-use, the Forest Service re-opened this area to  
17 livestock grazing in 2015 without conducting any environmental analysis or making the  
18 required determination that the area has recovered and is capable of supporting the level  
19 of grazing being authorized. Despite complaints about damage the cattle caused to  
20 resources in 2015, the agency is again authorizing use of this closed pasture in 2018, still  
21 with no environmental analysis or capability determination.

22       4. The 1979 decision also significantly reduced the level of grazing on the  
23 remainder of the Bar X to just 59 cattle. The agency increased that level later, but not  
24 nearly to the pre-1979 level. Permits dating back to at least 1998 allow for 130 cows to

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25 <sup>1</sup> As discussed below, the Forest Service currently refers to this area as a pasture, but it actually  
26 consists of the entire Colcord Canyon Allotment and the Turkey Peak Unit of the Haigler Creek  
Allotment.

1 graze year-long on the Bar X. Yet the Forest Service has been issuing annual  
2 authorizations since at least 2012 that allow far more grazing on the Bar X than what is  
3 allowed under the permit.

4 5. The annual authorizations issued in 2012-2018 directly conflict with the  
5 underlying grazing permit, allotment management plan, and the Tonto Forest Plan. They  
6 also were issued without the environmental analysis necessary to re-open the closed  
7 pasture and increase the number of cattle on the remainder of the Bar X. For these  
8 reasons, the 2012-2018 annual authorizations are arbitrary, capricious, and contrary to the  
9 Federal Land Policy and Management Act, the National Forest Management Act, the  
10 National Environmental Policy Act, and their implementing regulations. Accordingly,  
11 they must be set aside under the Administrative Procedure Act and the Court should grant  
12 relief to remedy the harm caused by these violations of law.

### 13 **JURISDICTION AND VENUE**

14 6. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this  
15 action arises under the laws of the United States, including the Federal Land Policy and  
16 Management Act (FLPMA), 43 U.S.C. § 1701 *et seq.*, National Forest Management Act  
17 (NFMA), 16 U.S.C. § 1600 *et seq.*, National Environmental Policy Act (NEPA), 42  
18 U.S.C. § 4321 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et*  
19 *seq.* An actual, justiciable controversy exists between the parties, and the requested relief  
20 is therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

21 7. Venue is proper in this Court under 28 U.S.C. § 1391 because all or a  
22 substantial part of the events or omissions giving rise to the claims herein occurred within  
23 this judicial district, Plaintiff resides in this district, and the public lands and resources at  
24 issue are located in this district.

25 8. The federal government waived sovereign immunity in this action pursuant  
26 to 5 U.S.C. § 702.

**THE PARTIES**

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2 9. Plaintiff NEIGHBORS OF THE MOGOLLON RIM, INC. is a non-profit  
3 organization whose mission is to represent and advocate for the interests of concerned  
4 neighbors of the Mogollon Rim who seek to preserve and protect the scenic and natural  
5 beauty, fish and wildlife, ecological, and other natural resource values of the Mogollon  
6 Rim area, particularly its public lands management by the U.S. Forest Service.

7 Neighbors of The Mogollon Rim directors, volunteers, and supporters are property  
8 owners and residents of the Colcord and Ponderosa communities who are dedicated to  
9 protecting and conserving public lands and natural resources in the Mogollon Rim area.  
10 Directors, volunteers, and supporters of Neighbors of The Mogollon Rim regularly use  
11 and enjoy the Tonto National Forest, including the Bar X area, for various recreational,  
12 aesthetic and other purposes.

13 10. For instance, they routinely hike, hunt and fish the forested areas under the  
14 Mogollon Rim, including hunting for deer, elk, and turkey in the forest and fishing for  
15 trout in Haigler Creek. They enjoy picnicking and photography and derive spiritual  
16 fulfillment from their experiences on the Tonto National Forest under the Mogollon Rim.

17 11. Neighbors of The Mogollon Rim directors, volunteers, and supporters are  
18 gravely concerned about damage to the wildlife populations, riparian areas, native  
19 vegetation, and soils caused by re-introduction of cattle in the excluded pasture  
20 surrounding their communities as well as overgrazing on the remainder of the allotment.  
21 In the past, heavy cattle grazing severely damaged resources on the Bar X, including by  
22 reducing numbers of elk, deer, and turkey, damaging riparian areas and fish habitat along  
23 Haigler Creek and other creeks, reducing native vegetation, and causing soil erosion.  
24 Damage to resources from current and future livestock use and the very presence of cattle  
25 on the Bar X impairs Plaintiff and its directors', volunteers', and supporters' enjoyment  
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1 of the Tonto National Forest when they recreate, hunt, fish, take photographs, and enjoy  
2 the aesthetic beauty of nature.

3 12. Plaintiff's directors', volunteers', and supporters' interests in using and  
4 enjoying the Tonto National Forest, particularly the area surrounding their communities  
5 that had been closed to grazing for more than thirty-five years before cattle were  
6 reintroduced in 2015, are being directly harmed by Defendant's action. Plaintiff's  
7 directors', volunteers' and supporters' above-described interests have been, are being,  
8 and unless the relief prayed for is granted, will continue to be adversely affected and  
9 irreparably injured by Defendant's violations of law.

10 13. Defendant U.S. FOREST SERVICE is an agency or instrumentality of the  
11 United States, and is charged with managing the public lands and resources of the Tonto  
12 National Forest in accordance and compliance with federal laws and regulations

### 13 **STATEMENT OF FACTS**

#### 14 **I. Bar X Locale and Resources**

15 14. The Tonto National Forest is located northeast of Phoenix. As one of the  
16 closest National Forests to that major metropolitan area, it provides extensive  
17 opportunities for recreation and respite from urban life. One of the primary purposes for  
18 establishing the forest was watershed protection, and thus protecting soil and water  
19 resources is a high priority. The Bar X allotments (including the area that was closed for  
20 more than thirty-five years) cover more than 30,000 acres, and occur on the northeast part  
21 of the forest, near the Mogollon Rim.

22 15. The Mogollon Rim is a 200-mile long escarpment in central Arizona that  
23 forms the southern edge of the Colorado Plateau. The Rim is characterized by tall cliffs  
24 cut by dramatic canyons, and elevations change from 4,000-5,000 feet south of the Rim  
25 to more than 8,000 feet on top. Extensive ponderosa pine forests are found on the slopes  
26 of the Rim and on the plateau north of it. Because of the rapid change in elevation, the

1 Mogollon Rim contains a large diversity of flora and fauna, with species from Rocky  
2 Mountain ecotypes living on the top of the plateau, and species native to lower elevation,  
3 drier ecotypes on the slopes below the Rim. This area is home to much wildlife,  
4 including elk, deer, turkey, mountain lion, bobcat, black bear, fox, goshawk, and golden  
5 eagle. The area's beauty and diverse flora and fauna attract many outdoor enthusiasts  
6 from the Phoenix area, other parts of Arizona, and other states.

7 16. The Bar X contains other special features that provide habitat for a variety  
8 of fish and wildlife and are popular recreation areas. For instance, Haigler Creek is a  
9 lovely trout stream popular with fishermen, hikers, and campers, and is being considered  
10 for designation as a Wild and Scenic River. The Naegelin Rim is another destination on  
11 the Bar X for hikers, hunters, and photographers. Imperiled species listed as threatened  
12 or endangered under the Endangered Species Act have been observed on the Bar X, such  
13 as Mexican spotted owls, narrow-headed gartersnakes, and occasionally Mexican gray  
14 wolves. Plaintiff's directors, volunteers, and supporters use these National Forest lands  
15 to relax and enjoy the natural setting and the fish and wildlife that inhabit these areas.

16 17. The topography of the Bar X consists of a mixture of rolling, gently  
17 undulating hills and areas of steep, rugged slopes and rock outcroppings. The lower  
18 elevations in the southern portion provide most of the grazing capacity for livestock.  
19 Elevation ranges from 4600 feet in the southern portion to 7600 feet along the Mogollon  
20 Rim.

21 18. The Bar X actually consists of four separate allotments managed together:  
22 Bar X, Haigler Creek, Young, and Colcord Canyon Allotments. The area that was closed  
23 in 1979 contains the Turkey Peak Unit of the Haigler Creek Allotment and the entire  
24 Colcord Canyon Allotment. The Forest Service has referred to this area as "Colcord  
25 Canyon," "Turkey Pasture," "Colcord Pasture," or "Turkey Peak Pasture." Plaintiff will  
26 refer to it as the Colcord/Turkey Pasture.

1           19.    The Colcord/Turkey Pasture is the most northern portion of the Bar X,  
2 located directly under the Mogollon Rim, with its northern boundary at the very top of  
3 the Rim abutting the Apaches Sitgreaves National Forest. The area consists of  
4 mountainous terrain and steep slopes dominated by ponderosa pine. The majority of the  
5 Colcord/Turkey Pasture, being primarily forested uplands, has scarce forage for  
6 livestock. While the northern reaches of the Colcord/Turkey Pasture abut the spectacular  
7 Mogollon Rim, the southern portion includes Haigler Creek, and is near the area of the  
8 Pleasant Valley Wars, which, in the 1800s, pitted cattlemen against shepherders for the  
9 limited forage resources that exist in the area. The communities of Ponderosa Springs,  
10 Ponderosa Springs Estates and Colcord Estates are located within the Colcord/Turkey  
11 Pasture.

## 12           **II.    Prior Overgrazing of the Bar X Allotment.**

13           20.    Overgrazing on the Bar X was a concern in the 1970's. At the time, the four  
14 allotments, Bar X, Haigler Creek, Young, and Colcord Canyon, consisted of 30,208  
15 National Forest acres, run under one unit referred to collectively as the Bar X. The four  
16 Bar X allotments combined were permitted to graze 468 cattle year-long and 207  
17 yearlings for ten months, which equaled 7686 "animal unit months (AUMs)."<sup>2</sup> Of this  
18 total, the Colcord Allotment was permitted for 35 cows year-long and no yearlings.

19           21.    A Range Analysis was conducted on the Bar X from 1975 through 1978 to  
20 determine grazing capability. Grazing capability classifications were broken into three  
21 categories: (1) No Capacity—terrain incapable of being grazed by domestic livestock on  
22 a sustained yield basis under reasonable management; (2) Potential Capacity—terrain  
23 presently undergoing accelerated erosion because it does not have sufficient effective  
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26 <sup>2</sup> An animal unit month is the amount of forage an "animal unit" will eat in one month's time. A cow/calf pair, an adult bull, or one yearling is usually considered an animal unit.

1 ground cover to protect the soil; and (3) Full Capacity—terrain presently stable because  
2 effective ground cover is holding soil loss to an acceptable level.

3 22. The 1978 Range Analysis found that the four Bar X allotments contained  
4 24,654 acres that were No Capacity, 4,813 acres that were Potential Capacity, and 742  
5 acres that were Full Capacity. Of the Full Capacity acres, 579 were in poor or very poor  
6 range condition with a downward trend, 163 were in fair condition with a downward  
7 trend, and none were in good or excellent condition.

8 23. Areas were determined to be No Capacity because they were not capable of  
9 producing enough vegetation naturally, had soils with accelerated erosion, were covered  
10 by dense brushfields, or had steep slopes. Much of the pine ecotype on the Bar X was  
11 delineated as No Capacity because of steep slopes in conjunction with a lack of forage.

12 24. Following the Range Analysis, an Environmental Assessment (EA) under  
13 NEPA was completed in July of 1979. The EA found “severe overgrazing and poor  
14 management have depleted not only the range resource, but wildlife habitat, soils and  
15 watershed quality.” The EA referenced the “thorough on the ground investigation”  
16 concerning conditions on the Bar X completed for the 1978 Range Analysis.

17 25. The EA found, “[t]he past history of overuse of grass and browse on the  
18 Bar X has severely damaged habitat for wildlife resource.”

19 26. Other findings by the Forest Service contained in the 1978 Range Analysis  
20 and 1979 EA were (quoted or paraphrased):

- 21 a. The Ponderosa Pine type has been depleted severely by overgrazing;
- 22 b. Chaparral zones are grazed excessively;
- 23 c. Riparian areas are severely denuded by grazing, including Colcord  
24 Canyon, Naegelin Canyon, Cherry Creek, Haigler Creek, and Pine  
25 Creek;
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- d. Extreme overuse of grass and browse on the Bar X . . . has severely damaged wildlife resource;
- e. Of the three primary needs of all wildlife species . . . food and cover have been the most severely damaged [by overgrazing] . . . which has reduced the capability of the land to support viable populations of wildlife species that one would expect to find;
- f. The fishery along Haigler Creek is damaged because of extreme livestock utilization of riparian vegetation and siltation resulting from upstream erosion. Desirable streamside vegetation that would provide shade, nutrients and habitat for insects is lacking. Desirable insects for trout such as mayflies are quite scarce. Heavy silt deposition in the streambed is detrimental to the spawning requirement of trout. Extreme utilization has resulted in extensive resource damage. Haigler Creek has been severely denuded by grazing;
- g. Excessive grazing by livestock eliminated cool season grass species in the woodland zone;
- h. Current Bar X conditions are a result of the excessive abuse and mismanagement of the grazing resources;
- i. The Bar X has been stocked above estimated capacity as far back as District records go;
- j. A prolonged history of overstocking and unsatisfactory management has depleted the range resource to a very critical point. Nearly all desirable cool season grasses such as bottle brush, squirrel tail, mutton grass, and western wheatgrass have been eliminated from the plant community. The Pine type is severely depleted of all vegetative groundcover;

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- k. Watershed conditions are quite deteriorated throughout the woodland zone. . . with many dry denuded riparian areas that were at one time dotted with springs;
- l. The excessive utilization of grass by livestock has resulted in a loss of plant vigor and grass plant die-off. Effective groundcover is currently less than the amount required to protect the soil due to overuse by cattle. As a result, the upper horizons of the soil have been eroded in many areas exposing the “B” soil horizon which is high in clay content. As the clayey “B” horizon of the soil is exposed, the soil begins a turning action because of the shrink and swell characteristic of the soils. Sheet, gully, and rill erosion is extensive on the allotment. The lack of vegetative cover allows a large percentage of precipitation to runoff rather than percolate into the soil;
- m. Under current management and stocking, effective groundcover has been reduced sufficiently to allow soil loss in excess of 5 tons per acre. This erosive condition is quite extensive and is found throughout the Bar X with few exceptions. Excessive soil loss occurs on 97% of the land in the Bar X;
- n. Wildlife habitat has been damaged significantly by the removal of herbaceous plant cover and often by direct livestock/wildlife competition for food. The decrease in forage production induced by continuous overgrazing has greatly reduced the required cover for viable populations of game and nongame species of wildlife;
- o. Extreme overuse of grass and browse on the Bar X . . . has severely damaged the wildlife resource;

- 1 p. Deer and cattle are in direct competition for browse, this is especially  
2 evident in the Pine type;
- 3 q. “Much of the Pine type is delineated as no capacity because of steep  
4 slopes (40% +) in conjunction with a lack of forage.”
- 5 r. In the “Pine type” . . . “Needle cast is 2 inches deep with herbaceous  
6 forge nearly absent”; and
- 7 s. The vegetative resource of the Bar X is depleted drastically in terms of  
8 forage production, plant density, desirable species composition and  
9 diversity. Historic overstocking, as well as current overstocking, have  
10 induced plant community retrogression.

11 27. The Forest Service set long-term goals for the Bar X of reversing the  
12 downward trend of the range condition, improving and enhancing wildlife habitat,  
13 improving aquatic habitat along perennial streams, improving deteriorated watershed  
14 conditions, and improving soil condition by controlling soil erosion.

15 28. The 1979 EA considered closing the Bar X, Haigler Creek, Young and  
16 Colcord Canyon Allotments entirely to domestic livestock grazing as one management  
17 alternative. Other alternatives put the Bar X under an intensive grazing management  
18 system while sharply reducing the number of cattle. The Forest Service noted: “[t]he  
19 continuation of present management and overgrazing will over a short period of time  
20 irreversibly and irretrievably destroy the range resource due to excessive plant and soil  
21 loss.”

22 29. The preferred alternative in the EA divided the Bar X into three grazing  
23 units, each of which consisted of two to four pastures, and use of the units would be  
24 rotated across years. Notably, these three units excluded the Turkey Peak Unit within the  
25 Haigler Creek Allotment and the entire Colcord Canyon Allotment. Under this  
26 alternative, 59 cattle would be permitted to graze year-long, for a total of 710 AUMs.

1           30. In its 1979 decision notice, the Forest Service selected the preferred  
2 alternative from the EA, reducing the number of cattle permitted to graze from an  
3 “unsupportable” high of 468 adult cattle and 207 yearlings to 59 cattle and closing the  
4 Turkey Peak Unit of the Haigler Creek Allotment and the Colcord Canyon Allotment.

5           31. In 1981, the Forest Service issued the “Bar X, Haigler Creek and Young  
6 Allotment Management Plan 1981-1985.” This plan noted that the Bar X Ranch was  
7 currently comprised of the Bar X Allotment, Oxbow Unit of the Haigler Creek  
8 Allotment, and the Young Allotment, and excluded the Turkey Peak Unit of the Haigler  
9 Creek Allotment and the Colcord Canyon Allotment. The northern boundary was the  
10 bluffs along Haigler Creek, and construction of a fence along the bluff was necessary “to  
11 exclude livestock from the areas closed to grazing.” The acreage of the permitted area  
12 was about 22,600 acres, and the estimated capacity was 710 AUMs, equating to 59 cattle  
13 grazing year-long. The change in use resulted in a permit modification.

14           32. An “Addendum” included within the 1981-1985 Allotment Management  
15 Plan confirmed the 1979 decision by the Forest Service to exclude the Turkey Peak Unit  
16 and Colcord Canyon Allotment from grazing due to a “lack of grazing capability and  
17 severe conflicts between grazing and other resources.” It stated however, “should future  
18 evaluations determine that the Colcord Allotment and Turkey Peak Unit of the Haigler  
19 Creek Allotment have recovered and are capable of supporting domestic livestock on a  
20 sustained yield basis, you or your successors will be given priority for use of the available  
21 capacity.”

22           33. An EA conducted in 1985 evidenced improved range conditions on the Bar  
23 X due to the decreased cattle use and intensive management. The Forest Service noted  
24 that the wildlife habitat “has improved greatly . . . Probably the greatest evidence  
25 supporting this statement is the renewed presence of elk below the Naegelin Rim,  
26 historically an elk winter range. . . The abundance of turkey has also increased

1 throughout the allotment. . . . Riparian habitat along Haigler Creek has responded  
2 favorably to improved management.” This assessment estimated the Bar X grazing  
3 capacity as 1300 AUMs and the Forest Service decided to permit grazing of 1200 AUMs  
4 (100 cattle year-long) under the same management system prescribed by the 1979 EA  
5 and 1981-1985 AMP. The Turkey Peak Unit of the Haigler Allotment and the Colcord  
6 Canyon Allotment remained closed to grazing.

7 34. Also, in 1985, the Forest Service completed the Tonto National Forest Plan,  
8 which has been amended a few times but is still the governing Forest Plan. The Plan  
9 contains goals, objectives, standards and guidelines that provide management direction  
10 for various resources and uses of the forest. This includes direction related to protection  
11 of fish and wildlife habitat, vegetation, riparian areas, and soils, as well as direction  
12 related to management of livestock grazing and other forest uses. For range  
13 management, the Plan states that “[l]evels of estimated permitted use and grazing  
14 capacities are based on current estimated land capabilities to produce forage for domestic  
15 livestock on a sustained yield basis.”

16 35. The Forest Plan standards and guidelines that pertain to the Bar X consist  
17 of forest-wide standards and guidelines, as well as those for Management Area 5D—  
18 Mogollon Rim-Sierra Ancha Area. The forest-wide prescriptions include various  
19 restrictions on livestock grazing in riparian areas; providing forage to maximize  
20 Threatened and Endangered species, management indicator species and emphasis harvest  
21 species; managing livestock grazing to maintain Mexican spotted owl prey availability,  
22 promote owl habitat, and restore riparian ecosystems; using Range Analyses to document  
23 needed adjustments in grazing; and documenting specific allotment guidelines in  
24 allotment management plans.

25 36. Management Area 5D is to be managed “for a variety of renewable  
26 resource outputs with primary emphasis on intensive, sustained yield timber

1 management, timber resource protection, creation of wildlife habitat diversity, increased  
2 populations of emphasis harvest species, and recreation opportunity.” Direction for this  
3 particular area is to manage “suitable rangelands” at “Level D,” and improve grazing  
4 management for rangeland in less than satisfactory condition. “Suitable range” is defined  
5 as “[r]ange accessible to livestock or wildlife, and that can be grazed on a sustained yield  
6 basis without damage to other resources.” Managing at “Level D” means “[m]anagement  
7 seeks to optimize production and utilization of forage allocated for livestock use  
8 consistent with maintaining the environment and providing the multiple use of the  
9 range.” For suitable rangelands, the Forest Plan calls for the Forest Service to evaluate  
10 “grazing capacity” for allotments through production/utilization surveys. “Grazing  
11 capacity” is the “maximum number of animals that can graze an area without damage to  
12 the vegetation or related resources.”

13 37. Forage production can change over time, altering the capability and  
14 capacity of the area to support livestock. The Forest Service acknowledged winter and  
15 spring moisture are very important in the physiological development of cool season  
16 grasses in the Bar X allotments. The 1979 EA precipitation statistics between 1971 and  
17 1977 show the average annual precipitation was 20.75 inches. In contrast, the average  
18 annual precipitation from 2011 to 2017 for the same area is 13.17 inches, more than 7  
19 inches less than that recorded in the 1970s.<sup>3</sup> Reduction in precipitation reduces forage  
20 production, which in turn reduces the capability of the area to support livestock grazing.

21 38. In addition to the impacts of overgrazing discussed above, cattle grazing on  
22 the Bar X can damage habitat for Mexican spotted owls and narrow-headed gartersnakes.  
23 By grazing native ground vegetation, cattle degrade habitat of small mammal  
24 populations, thereby reducing the prey base of spotted owls. Cattle damage to riparian  
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26 <sup>3</sup> 2011-2017 precipitation data for the Pleasant Valley Ranger Station site, Young, Arizona,  
found at <http://usclimatedata.com>.

1 areas, such as Haigler Creek, degrades habitat for the narrow-headed gartersnake, which  
2 is highly water-dependent.

3 39. Based on the Forest Service's 1979 decision, there were no Bar X cattle  
4 grazed in the Turkey Peak Unit of the Haigler Creek Allotment or the Colcord Canyon  
5 Allotment between 1979 and 2015.

6 **III. Management of the Bar X since 2006.**

7 40. The Forest Service manages grazing through three types of decision  
8 documents. Allotment management plans are long-term plans that set objectives and  
9 guidelines for managing the allotment. Term grazing permits authorize permittees to  
10 graze certain allotments, usually for ten years, and establish the maximum number, kind  
11 (cattle, sheep, horse), and class (cow, bull, yearling) of livestock that can graze as well as  
12 the period of use. Annual operating instructions (AOIs) are annual documents issued to  
13 permittees that provide the specific terms and conditions for grazing that particular year,  
14 including the number of livestock and season of use authorized, and the pasture rotation  
15 for that particular year.

16 41. Various individuals or entities have had permits to graze the Bar X since  
17 1979. The current permittee is a limited liability company, The Bar X, LLC. The Bar X,  
18 LLC, on information and belief, purchased the Bar X Ranch in or around 2006/2007.  
19 The Forest Service issued Bar X, LLC a ten-year term permit in 2007 to graze 130 head  
20 of cattle year-long on the Bar X, Haigler Creek, and Young Allotments, permit #12083.<sup>4</sup>  
21 The permit stated that the 1981-1985 Allotment Management Plan—which identified the  
22 Turkey/Colcord Pasture as closed—was incorporated as part of the permit.

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26 <sup>4</sup> Review of records obtained from the Forest Service do not make clear when or why the Forest  
Service increased the permitted use from 100 cattle to 130 cattle.

1           42. In 2013, the Forest Service issued a letter stating it was initiating an  
2 allotment analysis for the Bar X, but the agency never issued any further documents  
3 related to that analysis.

4           43. The 2012, 2013, and 2014 AOIs for the Bar X identified the number of  
5 livestock and season of use permitted for the Bar X, Haigler Creek, Colcord Canyon, and  
6 Young Allotments under permit #12083 as 130 cattle year-long, which equaled 1560  
7 Head Months (HMs) and 1582 AUMs.<sup>5</sup> The 2012 and 2013 AOIs stated that the  
8 “Colcord Canyon allotment was to remain ungrazed until a NEPA analysis was  
9 completed for that allotment.” The 2014 AOI excluded that statement.

10           44. The AOIs then listed the use that was authorized on the Bar X for that  
11 particular year. The 2012 AOI listed the number of cattle and period of use authorized to  
12 graze on the Bar X, Haigler Creek, and Young Allotments for that year. It authorized  
13 165-175 cows, 12 bulls, 80 yearlings, and 2 horses to graze all or part of the year, which  
14 totaled 2598 HMs and 3277 AUMs. In 2013, it authorized grazing on the Bar X, Haigler  
15 Creek and Young Allotments at levels of 185 cows, 14 bulls, and 80 yearlings for all or  
16 part of the year, which totaled 2551 HMs and 2623 AUMs. In 2014, it authorized  
17 grazing on the “Bar X, LLC allotments” for 225 cows, 15 bulls, and 100 yearlings year-  
18 long, which totaled 4492 HMs and 5471 AUMs. The 2012-2014 AUMs also identified  
19 which pastures would be used each year, and none included the Turkey/Colcord Pasture  
20 in the pasture rotation.

21           45. The 2015 AOI continued to identify the permitted use for the Bar X  
22 allotments under permit # 12083 as 130 cattle year-long, which it claimed equaled 1560  
23 HMs and 1560 AUMs (why this AUM figure is different from the 1582 AUMs identified  
24 in the 2012-2014 AOIs is unknown). The use authorized on the Bar X allotments for  
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26 <sup>5</sup> A head month is a month’s use and occupancy of rangeland by one adult cow, bull or yearling.  
Plaintiffs are unsure about the difference in calculating HMs and AUMs.



1 2015 consisted of 235 cows, 19 bulls, and 130 yearlings for all or part of the year, which  
2 totaled 3693 HMs and 4448 AUMs.

3 46. This AOI included a statement that “[a]uthorized use in excess of the  
4 permitted numbers was based on the addition of the use of pastures outside of the existing  
5 allotment boundaries, on the Heber-Reno Sheep Driveway, as well as extensive  
6 improvements to the ranch infrastructure over the last several years. This increase is  
7 being conducted under a stock and monitor approach and utilization guidelines are  
8 monitored regularly in order to document the effectiveness of this management  
9 alternative.” In addition, for the first time since 1979, the Forest Service authorized  
10 grazing in the excluded Turkey/Colcord Pasture at the level of 230 cows and 19 bulls  
11 from July 19 to September 30.

12 47. Prior to allowing cattle back into the Turkey/Colcord Pasture in 2015, there  
13 had been no “evaluations” of whether the resources in the closed area had recovered or  
14 the current capability of the area to support livestock grazing on a sustained yield basis,  
15 as required by the Forest Service in the 1981-1985 Allotment Management Plan.  
16 Furthermore, no Range Analysis or NEPA analysis was completed prior to this  
17 authorization. An email in April 2016 claimed that the Turkey/Colcord Pasture was  
18 grazed in 2015 after many years of non-use in order to spread out livestock use on the  
19 Bar X, and incorrectly stated that this pasture had been included in the stocking capacity  
20 assessment for that group of allotments and had never been removed from the grazing  
21 allotment.

22 48. The Bar X cows degraded the resources in the Turkey/Colcord Pasture and  
23 caused significant problems in the Ponderosa and Colcord communities during those few  
24 months in 2015. On August 1, 2016, Plaintiff’s directors sent a letter to Neil Bosworth,  
25 Tonto National Forest Supervisor, informing him of the Forest Service’s improper  
26 authorization of grazing in an area that was supposed to be excluded from grazing. The

1 letter set forth the history of overgrazing on the Bar X, and requested that the cattle be  
2 kept out of the excluded pasture that surrounds the Colcord and Ponderosa communities.  
3 The letter listed a number of concerns and attached over 100 petitions from concerned  
4 residents.

5 49. The Forest Service responded to this letter with a different explanation  
6 from that in the April email, stating that the cattle were allowed into the excluded pasture  
7 in 2015 on a “trial basis” pursuant to Forest Service Handbook Section 2209.13.16.16.  
8 This Handbook section states that a temporary change in number, kind, class of livestock,  
9 grazing management, or season of use from that shown on the term permit may be  
10 approved if determined to be consistent with the Forest Plan and if the changes are  
11 determined to benefit management of the rangeland resource. These changes are for trial  
12 periods not to exceed 1-2 consecutive years, and that within the 1-2 year trial period or  
13 shortly thereafter, a NEPA analysis and decision incorporating those changes must be  
14 completed. Upon completion of the NEPA analysis and decision, the term permit should  
15 be modified or reissued to reflect the changes.

16 50. Yet a Freedom of Information Act request shows that there were no Forest  
17 Service documents prior to the 2015 AOI that mentioned grazing the closed pasture on a  
18 “trial basis” under Section 2209.13.16.16, and the AOI itself did not discuss it. Nor was  
19 there any written determination that such grazing was consistent with the Forest Plan and  
20 would benefit management of the rangeland resource.

21 51. The 2016 AOI showed the permitted use on the Bar X allotments as 130  
22 cattle grazing year-long, totaling 1560 HMs and 2059 AUMs (again, it is unclear why  
23 this AUM figure is different from the AUM figures in the 2012-2015 AOIs). The  
24 authorized use in 2016 was 240 cows, 19 bulls, and 140 yearlings for all or part of the  
25 year, which equaled 3808 HMs and 4566 AUMs. This AOI explained that authorized use  
26 was significantly greater than permitted use because it included three large pastures

1 (McInturff, Walnut, Naegelin) that were outside the allotment boundary, and thus not  
2 represented in the permitted capacity for the Bar X. The AOI claimed that NEPA was  
3 scheduled in 2017 to assess whether to incorporate these areas into the Bar X allotments.  
4 The Turkey/Colcord Pasture was not authorized for use in 2016.

5 52. In 2017 the Forest Service renewed the Bar X term permit for another ten  
6 years, again permitting 130 cattle to graze year-long on the Bar X, Haigler Creek, and  
7 Young Allotments. The 2017 permit issued to Bar X, LLC included the following  
8 provisions: (1) Pastures lacking a serviceable fence around the entire pasture may not be  
9 authorized for use; (2) The Tonto Forest Plan is made a part of the permit; (3) the 1981-  
10 1985 Allotment Management Plan is made a part of the permit.

11 53. The 2017 AOI noted the permitted number and season of use, and  
12 authorized grazing in 2017 for 240 cows and 17 bulls year-long, and 140 yearlings for  
13 half a year. It did not include HMs or AUMs. It noted that the authorized use was  
14 greater than permitted use because the same three large pastures were added to the  
15 rotation again. The AOI stated that this temporary change was anticipated not to exceed  
16 a period of 1-2 consecutive years, and that within this 1-2 year trial period or shortly  
17 thereafter, a NEPA analysis and decision must be completed to incorporate these pastures  
18 into the allotments. The Turkey/Colcord Pasture was not authorized for use in 2017.

19 54. The Forest Service issued the 2018 AOI in January. It lists the permitted  
20 use for the Bar X allotments as 130 cows year-long. The authorized use for 2018 is 240  
21 cows and 18 bulls year-long and 120 yearlings for five months. This AOI also did not  
22 include HMs or AUMs. It stated that authorized use is greater than permitted use because  
23 the same three large pastures are included as a "trial increase" to determine capacity  
24 through a stock and monitor process. This information would be included in the  
25 forthcoming NEPA analysis, which is scheduled to begin in 2019. The AOI claimed that  
26 the temporary increase in numbers is anticipated not to exceed 1-2 consecutive years, but

1 it may be extended until the NEPA is complete. The AOI also authorized grazing on the  
2 Turkey/Colcord Pasture in the amount of 240 cows and 18 bulls from June 15 to October  
3 15. The AOI did not include any justification for using the closed pasture.

4 55. The Forest Service still has not completed any analysis under NEPA  
5 assessing the environmental impacts of grazing on the previously closed Turkey/Colcord  
6 Pasture; has not completed any evaluation to determine whether the resources on that  
7 pasture have recovered or the capability of the pasture to support livestock grazing on a  
8 sustained yield basis, as required by the 1981-1985 Allotment Management Plan; has not  
9 assessed whether grazing this pasture is consistent with direction in the Tonto Forest  
10 Plan; has not modified the permit to add the Turkey/Colcord Pasture; and serviceable  
11 fences do not exist around the entire perimeter of the Turkey/Colcord Pasture.

12 56. In addition, the Forest Service has been authorizing use for Bar X, LLC  
13 well above its permitted use every year since at least 2012 without any NEPA analysis,  
14 permit modification, or written determination as to whether it is consistent with the Tonto  
15 Forest Plan and is a benefit to management of the rangeland resource.

16 **FIRST CLAIM FOR RELIEF**

17 **VIOLATION OF FEDERAL LAND POLICY AND MANAGEMENT ACT**

18 57. Plaintiff realleges and incorporates by reference the preceding paragraphs.

19 58. This first claim for relief challenges the Forest Service's violations of the  
20 Federal Land Policy And Management Act (FLPMA) and its implementing regulations  
21 by authorizing livestock grazing on the Bar X in 2012-2018 that failed to comply with  
22 requirements for regulating grazing on National Forest lands. Plaintiff brings this claim  
23 pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

24 59. FLPMA regulates livestock grazing on all Western federal lands, and  
25 includes provisions related to issuance, cancellation, modification, and renewal of term  
26 grazing permits, as well as allotment management plans. 43 U.S.C. § 1752. The Forest

1 Service issued its own regulations to further implement the grazing provisions of FLPMA  
2 on National Forest lands. 36 C.F.R. Part 222.

3 60. Forest Service grazing regulations require that “all grazing and livestock  
4 use on National Forest System lands and on other lands under Forest Service control must  
5 be authorized by a grazing or livestock use permit.” 36 C.F.R. § 222.3(a); *see also Id.* §  
6 222.1(a) (Forest Service shall . . . permit and regulate the grazing use of all kinds and  
7 classes of livestock on all National Forest System lands). Permits may only be issued if  
8 the Chief of the Forest Service determines the land is available for grazing purposes, and  
9 *the capacity exists to graze specified numbers of animals. Id.* § 222.3(c)(1)(i).

10 61. The Forest Service is authorized to modify a grazing or livestock use permit  
11 to change the seasons of use, numbers, kind, and class of livestock allowed or *the*  
12 *allotment to be used under the permit*, because of resource condition, or permittee  
13 request. *Id.* § 222.4(a)(8).

14 62. The regulations also call for the Forest Service to analyze allotments and  
15 develop allotment management plans. These plans “will then be approved and  
16 implemented.” *Id.* § 222.2. An allotment management plan prescribes the manner in and  
17 extent to which livestock operations will be conducted in order to meet multiple-use,  
18 sustained yield, economic, and other needs and objectives as determined for the lands  
19 involved. *Id.* § 222.1(b)(2)(i).

20 63. Forest Service AOIs are final agency actions subject to judicial review  
21 under the APA, 5 U.S.C. § 706(a)(2).

22 64. The Forest Service’s 2012-2018 AOIs violate FLPMA and the federal  
23 grazing regulations by:

- 24 a. Authorizing grazing that exceeds the number of livestock, and changes  
25 the class of livestock, from what was permitted under the Bar X term  
26 grazing permit, without modifying the permit;

- 1 b. Authorizing grazing on National Forest System lands that were not
- 2 permitted for grazing under the Bar X term grazing permit, without
- 3 modifying the permit;
- 4 c. Authorizing grazing in 2015 and 2018 on the Turkey/Colcord Pasture
- 5 without determining the current capacity of the area to graze livestock
- 6 or how many livestock;
- 7 d. Authorizing grazing that is contrary to the allotment management plan
- 8 for the Bar X allotments, and thus is also contrary to the Bar X term
- 9 grazing permit;
- 10 e. Authorizing grazing in 2018 on a pasture that is not completely
- 11 surrounded by a serviceable fence, which is contrary to the 2017 Bar X
- 12 term grazing permit.

13 65. The Forest Service's reliance on the "trial period" provision of the Forest  
14 Service Handbook (FSH) to justify authorizing grazing outside the parameters of the  
15 permit was unreasonable. The Handbook does not supersede the federal grazing  
16 regulations listed above, and in fact states that the number of livestock or AUMs shown  
17 on the face of the permit is the maximum number that can be allowed to graze under the  
18 term grazing permit. FSH § 2209.13.15.12. Any modification to the permit terms,  
19 including number of livestock or allotments to be grazed, must be within the scope and  
20 range of effects considered in a current NEPA analysis and decision for the authorization  
21 of grazing. FSH §§ 2209.13.16, 2209.13.16.12, 2209.13.16.12a, 2209.13.16.14.  
22 Activities identified in AOIs must be within the scope of the AMP and the term grazing  
23 permit. FSH § 2209.13.94.2a.

24 66. The narrow Handbook exception that allows annual changes in grazing for  
25 trial periods under FSH § 2209.13.16.16 does not cover the 2012-2018 AOIs because: (a)  
26 the authorized use above permitted levels occurred for more than 1-2 consecutive years

1 (at least 2012-2018); (b) the Handbook did not list adding areas outside the permitted  
2 allotments as one of the temporary changes allowed for a trial period; (c) the Forest  
3 Service did not complete NEPA within or shortly after the initial year of increased use  
4 (2012) or the initial year of re-opening the Turkey/Colcord Pasture (2015); (d) the Forest  
5 Service did not document that the change in use was consistent with the Forest Plan and a  
6 benefit to management of the rangeland resource before issuing the decisions; and (e) the  
7 Forest Service has not modified the permit to incorporate the changes in use.

8 67. For these reasons, the 2012-2018 AOIs for the Bar X are arbitrary,  
9 capricious, an abuse of discretion, and not in accordance with FLPMA and its  
10 implementing regulations, and therefore are unlawful and must be set aside pursuant to  
11 the APA, 5 U.S.C. § 706(2)(A).

## 12 **SECOND CLAIM FOR RELIEF**

### 13 **VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT**

14 68. Plaintiff realleges and incorporates by reference the preceding paragraphs.

15 69. This second claim for relief challenges the Forest Service's violations of  
16 the National Forest Management Act, 16 U.S.C. § 1600 *et seq.*, and NFMA's  
17 implementing regulations, by authorizing livestock grazing on the Bar X in 2012-2018  
18 that is inconsistent with the Tonto National Forest Plan. Plaintiff brings this claim  
19 pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

20 70. Under NFMA, the Forest Service must act consistently with direction in the  
21 applicable land management plan when authorizing any project or activity, including  
22 issuing AOIs to authorize grazing. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15.

23 71. As described above, the Tonto Forest Plan includes direction related to  
24 livestock grazing and protection of resources on the forest. The Forest Service's 2012-  
25 2018 AOIs for the Bar X are not consistent with Tonto Forest Plan direction for the  
26 following reasons:

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- a. The Forest Service did not determine the current capability or capacity of the Turkey/Colcord Pasture to support livestock on a sustained yield basis without damage to other resources;
- b. The Forest Service did not determine whether increased livestock use on the Bar X or re-opening the Turkey/Colcord Pasture was consistent with direction to protect and restore riparian areas;
- c. The Forest Service did not determine whether increased livestock use on the Bar X or re-opening the Turkey/Colcord Pasture was consistent with direction for maximizing Threatened and Endangered species, management indicator species and emphasis harvest species—particularly Mexican spotted owl, narrow-headed gartersnake, elk and turkey;
- d. The Forest Service did not determine whether increased livestock use on the Bar X or re-opening the Turkey/Colcord pasture was consistent with direction to maintain Mexican spotted owl prey availability and promote development of owl habitat.
- e. The Forest Service did not conduct a Range Analysis to assess and document needed changes in grazing;
- f. The Forest Service did not follow the guidelines in the Bar X Allotment Management Plan;
- g. The Forest Service did not determine whether increased livestock use on the Bar X or re-opening the Turkey/Colcord Pasture was consistent with the requirement to manage this area for creation of wildlife habitat diversity, increased populations of emphasis harvest species, and recreation opportunity.





1 completing an EA or EIS under NEPA to assess the environmental impact of re-opening  
2 that area after thirty-eight years of non-use. It also violated NEPA by authorizing  
3 livestock numbers far greater than that permitted under the term grazing permit without  
4 first assessing the environmental impact of the increased use under NEPA.

5 79. Accordingly, the 2012-2018 AOIs for the Bar X are arbitrary, capricious,  
6 an abuse of discretion, and not in accordance with NEPA, and therefore are unlawful and  
7 must be set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

8 **PRAYER FOR RELIEF**

9 A. Adjudge and declare that the Forest Service's 2012-2018 AOIs for the Bar  
10 X violated and will violate FLPMA, NFMA, and/or NEPA, and their implementing  
11 regulations, and thus were arbitrary, capricious, an abuse of discretion, and/or contrary to  
12 law under the judicial review standards of the APA, 5 U.S.C. § 706(2);

13 B. Vacate and set aside the 2018 AOI for the Bar X;

14 C. Order the Forest Service to comply with the requirements of FLPMA,  
15 NFMA, and NEPA, and their implementing regulations, before issuing further grazing  
16 authorizations for the Bar X;

17 D. Order such other declaratory relief, and temporary, preliminary, or  
18 permanent injunctive relief as may be prayed for hereafter by Plaintiff to remedy  
19 Defendant's violations of law;

20 E. Award Plaintiff its reasonable attorney fees, costs, and litigation expenses  
21 under the Equal Access to Justice Act, and/or any other applicable provision of law; and

22 F. Grant such further and additional relief as the Court deems just and proper  
23 in order to remedy the violations of law alleged herein and to protect the interests of  
24 Plaintiff, the public, and the lands at issue.

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Respectfully submitted,

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