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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 WESTERN WATERSHEDS PROJECT )  
12 AND CENTER FOR BIOLOGICAL )  
13 DIVERSITY, )

14 Plaintiffs, )

15 v. )

16 UNITED STATES FOREST SERVICE, )

17 Defendant, )

18 and )

19 ARIZONA CATTLE GROWERS' )  
20 ASSOCIATION, *et al.*, )

21 Defendant-Intervenors. )  
22 )  
23 )

Case No. CV-11-08128-PCT-NVW

**MEMORANDUM IN SUPPORT OF**  
**DEFENDANT-INTERVENORS'**  
**MOTION FOR SUMMARY**  
**JUDGMENT AND IN RESPONSE TO**  
**PLAINTIFF'S MOTION FOR**  
**SUMMARY JUDGMENT**  
**ORAL ARGUMENT REQUESTED**

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## INTRODUCTION

1  
2 On August 15, 2011 Plaintiffs Western Watershed Project and the Center for  
3 Biological Diversity (collectively “WWP”) filed a complaint against the U.S. Forest  
4 Service for its use of the categorical exclusion (“CE”) in Section 339 of the Consolidated  
5 Appropriations Act of 2005 (“2005 Statutory CE”), Pub. L. No. 108-447, § 339, 118 Stat.  
6 2809, 3103, in re-authorizing livestock grazing on National Forest lands. Doc. 1. In its  
7 complaint, WWP purported to challenge seventeen decisions on four National Forests in  
8 Arizona.<sup>1</sup> *Id.* at 3 WWP sought *inter alia*, an order reversing and setting aside the re-  
9 authorizations and some type of undefined injunctive relief.<sup>2</sup> *See* Doc. 1 at 30 (grant such  
10 “temporary, preliminary, and/or permanent injunctive relief as may be *prayed for*  
11 *hereafter* by Plaintiffs”) (emphasis added).

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15 Due to the number and particular challenged decisions in the complaint,  
16 Defendant-Intervenors, Arizona Cattle Growers’ Association, Public Lands Council,  
17 Orme Ranch, Inc., and Bert Teskey, moved to intervene on November 3, 2011. Doc. 13.  
18 This Court granted that motion the next day. Doc. 15.

19  
20 On June 1, 2012, WWP filed a motion for summary judgment and supporting

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21  
22 <sup>1</sup> In reality, there were 15 decisions covering 17 allotments. On May 9, 2012, the Forest  
23 Service lodged with this Court a DVD containing the administrative record for each of  
24 the 15 challenged decisions. Doc. 27. The documents comprising each administrative  
25 record are individually Bates numbered with the initials of the relevant allotment(s) as a  
26 prefix. Thus, for example, the administrative record for the decision involving the V-Bar  
27 Allotment is identified as “VB \_\_\_\_\_”)

28 <sup>2</sup> Injunctive relief is “an extraordinary and drastic remedy” that “is never awarded as of  
right.” *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (internal citations and quotations  
omitted). Because WWP has failed to argue, much less prove, that it is entitled to any  
injunctive relief, it has waived its ability to seek such relief.



1 memorandum. Doc. 30. Without conferring with the parties, without seeking leave to  
2 dismiss, and without any explanation, WWP simply “elected not to proceed with [its]  
3 challenge to” seven of the decisions. Doc. 30 at 1 n.1 As a result, WWP has forever  
4 waived any challenge to those decisions.<sup>3</sup> Moreover, as demonstrated below, the Forest  
5 Service fully complied with all applicable laws and regulations in issuing the remaining  
6 challenged decisions. As a result, this Court should grant summary judgment in favor of  
7 Defendant-Intervenors.<sup>4</sup>  
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13 <sup>3</sup> WWP’s actions are particularly egregious considering that the Forest Service had to  
14 expend taxpayer dollars compiling the administrative record for the decisions that WWP,  
15 for unknown reasons, no longer wishes to challenge. Even worse, Defendant-Intervenor,  
16 Bert Tesky, specifically intervened to defend the Forest Service’s decisions relating to the  
17 Todd and Dugas Allotments because of his substantial financial interest in grazing  
18 livestock on those Allotments. Doc. 13-2 at 14–16. Because WWP dropped its  
19 challenges to those Allotments, Mr. Tesky needlessly expended time and energy on this  
20 case. WWP’s blind, shotgun approach to drafting complaints is highly suspect. *See Fed.*  
21 *R. Civ. P. 11.*

22 <sup>4</sup> WWP attached to its motion and memorandum three declarations in an apparent effort  
23 to establish standing. Many of the statements in those declarations are not even  
24 conceivably related to the standing inquiry; instead, they consist of hearsay, purported  
25 expert testimony, and irrelevant information. *See e.g.*, Doc. 30-2 at 2–4. Accordingly,  
26 this Court should limit its review of the declarations solely to ensure that WWP has  
27 proven standing. *See WWP v. Rosenkrance*, 736 F. Supp. 2d 1276, 1283 (D. Idaho 2010)  
28 (granting WWP’s motion to strike statements in a declaration because they expressed  
opinions not contained in the administrative record). WWP also attached three extra-  
record documents to one of its declarations. Docs. 30-3 through 30-5. It is axiomatic  
that this Court may not consider extra-record documents unless WWP proves that one of  
four limited exceptions applies. *Lands Council v. Powell*, 395 F.3d 1019, 1029 (9th Cir.  
2005); *Animal Defense Council v. Hodel*, 840 F.2d 1432, 1436–38 (9th Cir. 1988),  
*modified*, 867 F.2d 1244 (9th Cir. 1989). Because WWP has not even attempted to meet  
its burden of proof, this Court should strike WWP’s extra-record documents.

## LEGAL BACKGROUND

### I. NATIONAL FOREST MANAGEMENT ACT.

NFMA sets forth “multiple use” and “sustained yield” as the guiding principles for the Forest Service’s National Forest management. 16 U.S.C. §1601(d) (“It is the policy of the Congress that all forested lands in the National Forest System shall be maintained in appropriate forest cover with species of trees, degree of stocking, rate of growth, and conditions of stand designed to secure the maximum benefits of multiple use sustained yield management in accordance with land management plans.”). The Multiple-Use Sustained-Yield Act of 1960 defines these guiding principles for Forest management: “It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” 16 U.S.C. § 528.

As the Supreme Court explained: “‘Multiple use management’ is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, ‘including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.’” *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004) (“SUWA”) (quoting 43 U.S.C. § 1702(c) (alteration in original)). Thus, agencies have substantial discretion in determining how best to implement multiple use principles. *Strickland v. Morton*, 519 F.2d 467, 469 (9th Cir. 1975) (the multiple use principle “breathe[s] discretion at every pore.”); *cf. Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 518 (D.C. Cir. 2010).

1 To fulfill its multiple use mandate, the Forest Service uses a multi-step planning  
2 and decisionmaking process. First, the Forest Service must develop a Forest Plan for  
3 each individual National Forest. 16 U.S.C. § 1604(a). Each Forest Plan must “provide  
4 for multiple use and sustained yield of the products and services obtained therefrom in  
5 accordance with the Multiple-Use Sustained-Yield Act of 1960 [16 U.S.C. §§ 528-531],  
6 and, in particular, include coordination of outdoor recreation, *range*, timber, watershed,  
7 wildlife and fish, and wilderness.” 16 U.S.C. § 1604(e) (emphasis added). Second, “the  
8 Forest Service implements each Forest Plan by approving or disapproving site-specific  
9 actions.” *Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 957 n.1 (9th  
10 Cir. 2005). Of course, “all subsequent agency action[s] . . . must comply with NFMA  
11 and the governing forest plan.” *Ecology Ctr. v. Castaneda*, 574 F.3d 652, 656 (9th Cir.  
12 2009); *Idaho Sporting Cong., Inc. v. Rittenhouse*, 305 F.3d 957, 962 (9th Cir. 2002).

## 16 II. THE NATIONAL ENVIRONMENTAL POLICY ACT.

17 NEPA is simply a procedural statute designed to foster informed decision-making  
18 that does not impose any substantive requirements. *Baltimore Gas and Elec. Co. v.*  
19 *Natural Resources Def. Council, Inc.*, 462 U.S. 87, 97–98 (1983). In short, “NEPA  
20 merely prohibits uninformed—rather than unwise—agency action.” *Robertson v.*  
21 *Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989).

22 Only when an agency proposes a “major Federal action[] significantly affecting  
23 the quality of the human environment,” does NEPA require that the agency prepare an  
24 environmental impact statement (“EIS”). 42 U.S.C. § 4332(2)(C). Thus, all proposed  
25 federal actions do not require a full-blown EIS. In order to determine whether an EIS is  
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1 required, an agency may prepare an Environmental Assessment (“EA”). 40 C.F.R. §§  
2 1501.4(b), 1508.9. An EA is a “concise public document” that “briefly” describes the  
3 proposal, examines alternatives, considers impacts, and provides a list of individuals and  
4 agencies consulted. 40 C.F.R. § 1508.9. If, based upon the EA, the agency concludes  
5 there will not be any significant environmental impact, it may issue a Finding of No  
6 Significant Impact (“FONSI”), obviating the need to prepare an EIS. *See* 40 C.F.R. §§  
7 1501.3, 1501.4(c), (e), 1508.9; *Salmon River Concerned Citizens v. Robertson*, 32 F.3d  
8 1346, 1355–56 (9th Cir. 1994).

11 An agency does not need to prepare an EA or an EIS if the agency determines that  
12 the proposed action falls within an established “categorical exclusion” or “CE.” The  
13 Council on Environmental Quality (“CEQ”) Regulations implementing NEPA authorize  
14 an agency to use a CE for a “category of actions which do not individually or  
15 cumulatively have a significant effect on the human environment and which have been  
16 found to have no such effect in procedures adopted by a Federal agency in  
17 implementation of these regulations.” *West v. Sec’y of Dep’t of Transp.*, 206 F.3d 920,  
18 927 (9th Cir. 2000) (citing 40 C.F.R. § 1508.4). The CEQ regulations encourage  
19 agencies to use CEs where appropriate. 40 C.F.R. § 1500.4(p).

23 To this end, the CEQ regulations require agencies to consider whether a CE is  
24 appropriate. *See* 40 C.F.R. § 1507.3(b)(2)(ii) (stating that agency NEPA procedures  
25 “shall include . . . [s]pecific criteria for and identification of those typical classes of  
26 action . . . [w]hich normally do not require either an [EIS] or an [EA] (categorical  
27 exclusions)”) (citing 40 C.F.R. § 1508.4) (emphasis added). The use of CEs allows  
28

1 agencies to focus their environmental review efforts on major actions that will have  
2 significant effects on the environment, which are the primary focus of NEPA and  
3 properly demand an agency’s attention and budgetary resources. *See* 48 Fed. Reg.  
4 34,263–66 (July 28, 1983); *see also* 40 C.F.R. §§ 1500.4(p), 1508.4 (noting that  
5 establishment and use of CEs can reduce excessive paperwork by eliminating  
6 unnecessary preparation of EAs and EIS). The CEQ has advised that the CE approach  
7 should not be “applied narrowly” and instead encourages agencies to identify CEs using  
8 “broadly defined criteria which characterize types of actions that, based on the agency’s  
9 experience,” normally do not have “significant environmental effects.” 48 Fed. Reg. at  
10 34,265. In short, an agency may use a categorical exclusion so long as there are no  
11 “extraordinary circumstances in which [the] normally excluded action may have a  
12 significant environmental effect.” 40 C.F.R. § 1508.4. Consequently, before relying on a  
13 CE in a particular instance, an agency must first determine whether extraordinary  
14 circumstances exist. *See California v. Norton*, 311 F.3d 1162, 1177 (9th Cir. 2002).

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19 In accordance with these principles, the Forest Service promulgated a regulation  
20 regarding CEs and extraordinary circumstances. 36 C.F.R. § 220.6. The Forest Service  
21 lists seven resource conditions that should be considered in determining whether  
22 extraordinary circumstances exist. 36 C.F.R. 220.6(b). These resource conditions are:

- 23  
24 (i) Federally listed threatened or endangered species or designated critical  
25 habitat, species proposed for Federal listing or proposed critical habitat, or Forest  
26 Service sensitive species;
- 27 (ii) Flood plains, wetlands, or municipal watersheds;
- 28 (iii) Congressionally designated areas, such as wilderness, wilderness study

1 areas, or national recreation areas;

2 (iv) Inventoried roadless area or potential wilderness area;

3 (v) Research natural areas;

4 (vi) American Indians and Alaska Native religious or cultural sites; and

5 (vii) Archaeological sites, or historic properties or areas.

6  
7 36 C.F.R. § 220.6(b).

8  
9 However, “[t]he mere presence of one or more of these resource conditions does  
10 not preclude use of a [CE].” *Id.* Instead, the Forest Service must determine “the  
11 existence of a cause-effect relationship between a proposed action and the potential effect  
12 on these resource conditions, and if such a relationship exists, the degree of the potential  
13 effect of a proposed action on these resource conditions that determines whether  
14 extraordinary circumstances exist.” *Id.*

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16 **III. THE 2005 STATUTORY CATEGORICAL EXCLUSION.**

17  
18 The inability of the Forest Service to timely complete NEPA analysis for grazing  
19 renewals has been a problem Congress has tried to address since 1995. *See Wildearth*  
20 *Guardians v. U.S. Forest Serv.*, 668 F. Supp. 2d 1314, 1322–23 (D.N.M. 2009)  
21 (discussing history). In 1995, Congress passed the Rescission Act of 1995 as a first  
22 attempt to address this problem. Pub. L. 104-19, §§ 501–04, 109 Stat. 194, 212. The  
23 Act directs the Forest Service to “establish and adhere to a schedule for the completion of  
24 [NEPA] analysis and decisions on all allotments within the National Forest System unit  
25 for which NEPA analysis is needed.” *Id.* § 504(a), 109 Stat. at 212. To protect the  
26 ongoing grazing program, any grazing permit that expires prior to completion of its  
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1 NEPA analysis pursuant to the Rescission Act schedule must be reissued “on the same  
2 terms and conditions” as the expired permit pending NEPA compliance. *Id.* § 504(b),  
3 109 Stat. at 212–13.  
4

5 In 2003, Congress strengthened these protections for ongoing livestock grazing  
6 with the 2003 Omnibus Appropriations Act, Pub. L. No. 108-7, § 328, 117 Stat. 11, 276.  
7 The provision provides that term grazing permits issued prior to or during fiscal year  
8 2003 “shall remain in effect until such time as the Secretary of Agriculture completes  
9 processing of the renewed permit in compliance with all applicable laws and  
10 regulations.” Congress renewed this direction in subsequent years, most recently on  
11 March 11, 2009. *See* 2009 Omnibus Appropriations Act, Pub. L. No. 111-8, § 426, 123  
12 Stat. 524, 729 (extending Section 325 of the 2004 Omnibus Appropriations Act, Pub. L.  
13 No. 108-108, § 325, 117 Stat. 1241, 1307 through Fiscal Year 2009).  
14  
15

16 In 2005, Congress enacted Section 339 of the Consolidated Appropriations Act of  
17 2005 (“2005 Statutory CE”), Pub. L. No. 108-447, § 339, 118 Stat. 2809, 3103, which  
18 provides:  
19

20 For fiscal years 2005 through 2007, a decision made by the Secretary of  
21 Agriculture to authorize grazing on an allotment shall be categorically excluded  
22 from documentation in an [EA] or an [EIS] under [NEPA] if: (1) the decision  
23 continues current grazing management of the allotment; (2) monitoring indicates  
24 that current grazing management is meeting, or satisfactorily moving toward,  
25 objectives in the land and resource management plan, *as determined by the*  
26 *Secretary*; and (3) the decision is consistent with agency policy concerning  
27 extraordinary circumstances. The total number of allotments that may be  
28 categorically excluded under this section may not exceed 900.

(Emphasis added). This provision was enacted in order to improve the efficiency of the  
grazing renewal process. Senate Report No. 108–341 at 54 (September 14, 2004). Prior

1 to the passage of the 2005 Statutory CE, the Forest Service estimated that it was unable to  
2 complete half of its work as a result of completing environmental review of grazing  
3 allotments governed by the Rescissions Act. *Id.* As a result, the 2005 Statutory CE  
4 requires the Forest Service “to make the environmental review process more efficient by  
5 reducing the amount of documentation and expense required to conduct reviews for  
6 allotments where the level of complexity of environmental issues is negligible so that the  
7 Agency may devote its limited resources to allotments that require a more sophisticated  
8 analysis.” *Id.*

## 11 ARGUMENT

### 12 **I. STANDARD OF REVIEW.**

13 Generally, “[a]n agency's determination that a particular action falls within one of  
14 its categorical exclusions is reviewed under the arbitrary and capricious standard.”  
15 *Alaska Center For Environment v. U.S. Forest Service*, 189 F.3d 851, 857 (9th Cir.  
16 1999). This highly deferential standard of review is set forth in the Administrative  
17 Procedure Act (“APA”), 5 U.S.C § 551 *et seq.* The APA provides that agency action  
18 may be overturned only if it is “arbitrary, capricious, an abuse of discretion, or otherwise  
19 not in accordance with law; . . . in excess of statutory jurisdiction, authority, or  
20 limitations, or short of statutory right.” 5 U.S.C. §§ 706(2)(A), (C); *Marsh v. Or. Nat.*  
21 *Res. Council*, 490 U.S. 360, 376 (1989). There is a presumption that the BLM has acted  
22 in accordance with the law, and a plaintiff challenging the agency’s action bears the  
23 burden of proof to show otherwise. *San Luis Obispo Mothers for Peace v. U.S. Nuclear*  
24 *Regulatory Comm’n*, 789 F.2d 26, 37 (D.C. Cir. 1986). A reviewing court’s role is to  
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1 determine whether “the decision was based on a consideration of the relevant factors and  
2 whether there has been a clear error of judgment.” *Citizens to Preserve Overton Park,*  
3 *Inc. v. Volpe*, 401 U.S. 402, 415–16 (1971). Once the agency considers the proper factors  
4 and makes a factual determination on whether the impacts are significant or not, that  
5 decision implicates substantial agency expertise and is entitled to deference. *Alaska Ctr.*  
6 *For Env’t*, 189 F.3d at 859. In reviewing an agency’s decision not to perform an EA or  
7 EIS, a court does not weigh conflicting expert opinions or consider whether the agency  
8 employed the best scientific methods. *See Friends of Endangered Species, Inc. v.*  
9 *Jantzen*, 760 F.2d 976, 986 (9th Cir. 1985).

10 Furthermore, when reviewing regulations implementing a statute the agency is  
11 charged with administering, a court must engage in a two-step process:  
12

13 First, always, is the question whether Congress has directly spoken to the precise  
14 question at issue. If the intent of Congress is clear, that is the end of the matter; for  
15 the court, as well as the agency, must give effect to the unambiguously expressed  
16 intent of Congress. If, however, . . . the statute is silent or ambiguous with respect  
17 to the specific issue, the question for the court is whether the agency’s answer is  
18 based on a permissible construction of the statute.

19 *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984).

20 When Congress uses a phrase such as “as determined by the Secretary,” as it did in the  
21 2005 Statutory CE, it delegates to the agency the authority to elucidate the specific  
22 provision of the statute by regulation and must be given controlling weight unless  
23 manifestly contrary to the statute. *See San Bernardino Mountains Cmty. Hosp. Dist. v.*  
24 *Sec’y of Health & Human Services*, 63 F.3d 882, 886-87 (9th Cir. 1995); *Transitional*  
25 *Hospitals Corp. of Louisiana, Inc. v. Shalala*, 222 F.3d 1019, 1026 (D.C. Cir. 2000).  
26  
27  
28

1 Finally, summary judgment is appropriate where there are no genuine dispute as to  
2 any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ.  
3 P. 56. In APA cases, a court may not make findings of facts, but must simply review the  
4 facts in the administrative record. *Friends of the Clearwater v. Dombeck*, 222 F.3d 552,  
5 560 (9th Cir. 2000). Therefore, this case is appropriate for resolution on cross-motions  
6 for summary judgment. *Occidental Eng'g Co. v. I.N.S.*, 753 F.2d 766, 770 (9th Cir.  
7 1985).  
8  
9

## 10 II. V-BAR ALLOTMENT.

11 The V-Bar Allotment renewal complied with the 2005 Statutory CE.<sup>5</sup> Grazing  
12 management on the V-Bar Allotment is holistic. VB000254–259. The amount of cattle  
13 and grazing period is variable on the V-Bar Allotment and change depending on range  
14 conditions. VB000564–65. For example, in 2002, as a result of a drought, the V-Bar  
15 Allotment permittees removed cattle from the range. VB000257. In order to maintain  
16 holistic grazing techniques, the permittee regularly monitors conditions and at least twice  
17 a year have its Strategic Team survey the lands in order to make suggestions and set  
18 objectives for future grazing seasons. VB000202. This holistic approach is an essential  
19 part of grazing management on the V-Bar Allotment and was taken into account during  
20 the Allotment renewal process. *See, e.g.* VB000271 (“The current term grazing permit  
21 for the V-Bar allotment authorizes a variable amount of cow/calve pairs. This is due to  
22 the Holistic Range Management approach applied on the V-Bar allotment”).  
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27 <sup>5</sup> Defendant-Intervenor, Orme Ranch, Inc., is the permittee on the V-Bar Allotment. Doc.  
28 13-2.

1 The 2007 decision memo continues this holistic grazing strategy on the Allotment.  
2 Specifically, it provides that:

3 [O]n the allotment a forage inventory process will be used to determine that  
4 year's available forage. This inventory would give an estimate of how  
5 many animal days of feed exist per acre . . . based on the allotment's  
6 landscape and production goals, objectives that include consideration for  
7 wildlife needs and water cycling opportunities will be established for the  
8 grazing season. Specific numbers of livestock will be determined by  
9 resource conditions and authorized in the Bill for Collection."

10 VB000564. As a result, the V-Bar reauthorization complied with the first requirement of  
11 the 2005 Statutory CE. *See* VB000565 (decision memo providing that "[t]he decision  
12 continues current management.").

13 The V-Bar Allotment renewal also complies with the second requirement of the  
14 2005 Statutory CE that "monitoring indicates that current grazing management is  
15 meeting, or satisfactorily moving toward, objectives in the land and resource  
16 management plan, *as determined by the Secretary.*" Pub. L. No. 108-447, § 339, 118  
17 Stat. 2809, 3103 (emphasis added). Because the provision includes the phrase "as  
18 determined by the Secretary," it is clear that "Congress has explicitly left a gap for the  
19 agency to fill," which the Court must give "controlling weight' unless it is 'manifestly  
20 contrary to the statute.'" *National Medical Enter., Inc. v. Sullivan*, 957 F.2d 664, 667-68  
21 (9th Cir.1992) (quoting *Chevron*, 467 U.S. at 843-44); *San Bernardino Mountains Cmty.*  
22 *Hosp. Dist.*, 63 F.3d at 887. The administrative record shows that the Forest Service  
23 reasonably interpreted the monitoring data to reach its conclusion that current grazing  
24 management on the V-Bar Allotment is meeting, or satisfactorily moving toward,  
25 objectives in the land and resource management plan. VB000565 (citing PRs #19-37  
26  
27  
28

1 [VB00340–540.])<sup>6</sup> (decision memo concluding that “Monitoring data . . . indicates that  
2 there is no need to change management as conditions on the allotment are meeting or  
3 moving toward the Forest Plan desired conditions.”).

4  
5 WWP attempts to refute the Forest Service’s determination by offering up a  
6 different interpretation of the monitoring data. WWP focuses its argument on the  
7 Prescott Forest Plan’s requirements to integrate wildlife habitat management activities  
8 into all resource practices through intensive coordination, support the goals and  
9 objectives of the Arizona Wildlife and Fisheries Comprehensive Plan, protect and  
10 improve the soil resource, restore all lands to satisfactory watershed condition, and  
11 improve all riparian areas and maintain in satisfactory condition. VB000019, 000020.  
12 Also, the Forest Service is directed to “manage livestock grazing to achieve soil and  
13 water protection objectives.” VB000038. WWP’s interpretation of the monitoring data  
14 is unreasonable and its conclusion is based upon an out-of-context reading of the data.  
15 When the monitoring data is read in context, it is clear that current grazing management  
16 is either meeting, or moving satisfactorily toward, objectives in the Forest Plan.  
17  
18  
19

20 WWP argues that 9,778 acres of the 20,736 acres (or 45%) on the V-Bar allotment  
21 is rated as impaired. Doc. 30 at 30. However, WWP fails to point out that zero acres are  
22 in unsatisfactory condition. VB000323. Furthermore, WWP acquired its figures from  
23 the Fisheries and Aquatics Resource Specialist Report, not the Soil and Watersheds  
24 Specialist Report and, therefore, WWP’s reliance on these numbers is badly misplaced  
25  
26

27 \_\_\_\_\_  
28 <sup>6</sup> The decision memo cites to project record numbers. These numbers are noted in the  
index for the V-Bar Allotment Administrative Record.

1 and provides little context for the suggestion that 9,778 acres have impaired soil  
2 condition.

3 The Soil and Watersheds Resource Report provides the needed context.  
4  
5 VB000274-75. This Report provides that “[i]mpaired TES units do not preclude an area  
6 from grazing. They should, however under the adaptive management regime, serve to  
7 alert range managers that these soils are vulnerable to potential future degradation and  
8 need preferential attention.”<sup>7</sup> VB000274. Although six sites have downward trend, the  
9 Report provides that “continuing current adaptive management should involve rest  
10 periods followed by vegetative growth and a subsequent accumulation of litter.”  
11  
12 VB000275. The approved grazing plan provides for a variable grazing season and can  
13 accommodate the need for rest periods. VB000565.  
14

15 WWP also selectively quotes from Soil and Watersheds Resource Report when it  
16 argues that “[o]f the impaired lands, the Range and Watershed Report states that “there is  
17 some evidence that current management is contributing to decreased soil productivity in  
18 [the 9,778 acres of impaired lands].” Doc. 30 at 33. The immediate passage of Soil and  
19 Watersheds Resource Report, however, provides:  
20

21  
22 [S]ufficient recovery will occur with an adaptive management regime of rest  
23 periods or deferment for vegetative recover of Yarbo East, Yarbo West, V-Bar  
24 Southeast, and V-Bar Southwest pastures. *These areas are not in need of*  
25 *proactive restoration measures.* Therefore, *continuing current adaptive*  
26 *management*, reacting to the impaired locations, and implementing relevant [Best  
27 Management Practices (“BMPs”)] (see Appendix 5 on page 19) will result in  
28 positive outcomes with reversal of lost productivity.”

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<sup>7</sup> TES units are Terrestrial Ecosystem Survey units used as an indicator of soil condition.  
VB000273.

1 VB000278 (emphasis added). The Report goes on to explain that the BMPs are  
2 integrated into grazing management. VB000288.

3 The proper functioning condition checklists also prove that monitoring on the V-  
4 Bar allotment indicates that current grazing management is meeting, or satisfactorily  
5 moving toward, objectives in the Forest Plan, as determined by the Secretary.  
6 VB000356-70. These checklists were conducted as a result of concerns expressed by  
7 WWP. VB000260–61 (stating that Dee Hines of the Forest Service met with  
8 representatives from the Center for Biological Diversity and that Hines agreed to walk a  
9 segment of Little Ash Creek based on the groups concerns and photo documentation).  
10 These checklists, surveyed just prior to the decision memo and conducted on Government  
11 Springs, Dry Creek, Sycamore Creek, and Little Ash Creek, indicate an upward trend on  
12 all of the areas surveyed *Id.* This supports the Soil and Watershed Report’s conclusion  
13 that “The overall riparian condition of the V-Bar allotment is satisfactory. The only Non-  
14 functional reaches were in an isolated area and not beyond the scope of improving under  
15 the current adaptive management regime.” VB000278.

16 In a weak attempt to bolster its argument, WWP relies on a comment from the  
17 Arizona Game and Fish Department about the effects of livestock management on  
18 pronghorn habitat in the area. Doc. 30 at 32. However, the Forest Service Wildlife and  
19 Plant Specialist Report demonstrates that the Game and Fish Department’s concerns were  
20 unwarranted. VB000553. With respect to pronghorn, it provides that:

21 [L]ivestock grazing activities in the project area are pertinent to one issue: Range  
22 Conditions-Fawning Habitat . . . Current management is expected to maintain or  
23 improve perennial herbaceous species diversity and canopy cover based on site  
24

1 conditions. This would provide adequate fawning cover habitat across the area.  
2 *Id.* Furthermore, “[g]iven that the majority of the fawning has been documented in the  
3 southern end of Unit 21, the quality or availability of these mesas would not be a critical  
4 factor in the future population trend for this population of pronghorn.” *Id.* (internal  
5 citations omitted).<sup>8</sup>

7 Therefore, it is clear that the Forest Service reasonably concluded that monitoring  
8 on the allotment indicated that current grazing management is meeting, or satisfactorily  
9 moving toward, objectives in the land and resource management plan. The Forest  
10 Service correctly concluded that “there is no need to change management as conditions  
11 on the allotment are meeting or moving toward the Forest Plan desired conditions.”  
12  
13 VB000565.

15 Finally, there were no extraordinary circumstances on the V-Bar Allotment. As  
16 the decision memo noted there were no threatened or endangered species on the  
17 allotment, no municipal watersheds are located on the Allotment, there are no wilderness  
18 areas, no inventoried roadless areas, no research natural areas, and the Forest  
19 Archaeologist determined that there would be no affect to heritage resources. VB000566.

22 As a result, the Forest Service complied with the requirements of the 2005  
23 Statutory CE when it re-authorized grazing on the V-Bar Allotment.

25  
26 <sup>8</sup> WWP groups the pronghorn habitat issue with its other arguments about the second  
27 requirement of the 2005 Statutory CE. Doc. 30 at 32. Because the pronghorn is a  
28 sensitive species, the District Ranger addressed the issue in that context. VB000568.  
Regardless, the District Ranger made a finding that “Potential effects of this decision on  
sensitive species have been analyzed and documented. This decision will have no  
adverse impact on sensitive species.” *Id.* (citing PR# 38 [VB541–562.]).

1 **III. OTHER ALLOTMENTS.**

2 WWP challenges seven other uses of the 2005 Statutory CE. As with the V-Bar  
3 Allotment, WWP's arguments are devoid of merit because they are based on out-of-  
4 context snippets from the administrative record.  
5

6 **A. Angell Allotment.**

7 WWP alleges that the Angell Allotment renewal is inconsistent with the Forest  
8 Service's policy concerning extraordinary circumstances, specifically cultural resources.  
9 WWP argues the Angell allotment is home to 700 archaeological sites, and 96 percent of  
10 the allotment has yet to be surveyed. Doc. 30 at 13. WWP also alleges, the Forest  
11 Service did not find to the "needed degree of certainty" that these resources will not be  
12 impaired by the allotment renewal. *Id.*  
13  
14

15 WWP does not provide the whole context of the cultural resource condition on the  
16 Angell Allotment. First, four percent of the allotment has been "intensively surveyed," in  
17 order to verify the Forest's Land Management Planning Site Density Prediction Model  
18 projection. AN001640-41. Although that model projects a moderate to high site density  
19 (37-59 sites per square mile), the Cultural Resources Clearance Report provides that  
20 "sites tend to cluster around springs and in canyons within the pinyon-juniper vegetation  
21 zone." AN001641.  
22  
23

24 More importantly, granting a categorical exclusion where there are cultural and  
25 archeological resources present is not contrary to the Forest Service's regulation on  
26 extraordinary circumstances. 36 C.F.R. § 220.6(b)(2). As demonstrated above, "[t]he  
27 mere presence of one or more of these resource conditions does not preclude use of a  
28



1 categorical exclusion (CE).” 36 CFR. § 220.6(b)(2). Therefore, the Forest Service only  
2 has to analyze the potential effect of a proposed action on cultural resources, and analyze  
3 the relationship between the two. The Forest Service does not, as WWP suggests, have to  
4 find “with certainty that continued livestock grazing will not have a significant effect  
5 upon these resources.” *See* Doc 30 at 16.

7           The Cultural Resources Clearance Report noted that grazing has been occurring in  
8 the area since European contact, and has been a permitted activity since 1906.

9 AN001643. Thus, livestock grazing is the status quo. *Id.* Despite WWP’s contention,  
10 simply maintaining the status quo does not constitute an extraordinary circumstance. *See*  
11 *Black’s Law Dictionary* 236 (7th ed. 1999) (defining “extraordinary circumstances” as  
12 “A highly unusual set of facts that are not commonly associated with a particular thing or  
13 event”); *Webster’s New Twentieth Century Dictionary Unabridged* (Second Edition  
14 1977) (Defining “extraordinary” as “beyond or out of the common order or method; not  
15 in the usual, customary, or regular course.”)

16  
17  
18  
19           Furthermore, there are specific protections in place to protect significant cultural  
20 resources. AN001643–44. The District Ranger is responsible for notifying the Zone or  
21 Forest Archaeologist before any on-the-ground activity is authorized, to ensure cultural  
22 clearance. AN001643. Finally, the Forest Service will continue to monitor the condition  
23 of known archaeological sites with the help of Arizona Site Stewards and Northern  
24 Arizona University professors. AN001644.

25  
26  
27           As a result, the Forest Service complied with the requirements of the 2005  
28 Statutory CE when it re-authorized grazing on the Angell Allotment.

1           **B. Casner Park/Kelly Seep Allotment.**

2           WWP alleges two deficiencies with the Casner Park/Kelly Seep re-authorization.  
3 First, WWP argues that the authorization is inconsistent with the Forest Service’s policy  
4 concerning extraordinary circumstances with respect to the Mexican Spotted Owl, a  
5 threatened species. Doc. 30 at 17-18. Secondly, WWP alleges that the decision does not  
6 guarantee soil and vegetation monitoring. Doc. 30 at 19-20.  
7

8                           **1. Mexican Spotted Owl.**

9           The re-authorization of grazing, without conducting an EA, on the Casner  
10 Park/Kelly Seep allotment was consistent with the Forest Service regulation regarding  
11 extraordinary circumstances. Although the Mexican Spotted Owl is present on the  
12 allotment, that does not necessarily mean that a categorical exclusion is unwarranted. 36  
13 C.F.R. § 220.6(b)(2).  
14

15           The Biological Assessment (“BA”) determined that grazing re-authorization may  
16 affect, but was not likely to adversely affect the Mexican Spotted Owl. CA001327. A  
17 determination of May Affect, Not Likely to Adversely Affect is considered appropriate  
18 if:  
19

20                           1. In the action area, livestock grazing or livestock management  
21 activities will occur within PACs,<sup>9</sup> but no human disturbance or  
22 construction actions associated with the livestock grazing will occur in  
23 PACs during the breeding season;  
24

25                           2. Livestock grazing and livestock management activities within PACs,  
26 in the action area, will be managed for levels that provide the woody and  
27 herbaceous vegetation necessary for cover for rodent prey species, the

28 <sup>9</sup> A PAC is a Protected Activity Center which are monitored to assess occupancy and reproductive status of threatened species. CA001323.

1 residual biomass that will support prescribed natural and ignited fires that  
2 would reduce the risk of catastrophic wildfire in the Forest, and  
3 regeneration of riparian trees; and

4 3. In owl foraging areas, forage utilization will be maintained at  
5 conservative levels.

6 CA001327. WWP alleges that re-authorization can only achieve the third objective if the  
7 allotment is monitored every year “as the Forest Plan requires.” Doc. 30 at 18. WWP’s  
8 main problem with the decision memo is that monitoring will occur as funding is  
9 available. *Id.*; see CA001387 (“The type and frequency for monitoring the Casner  
10 Park/Kelley Seep Allotment will occur as funding is available”).

11  
12 First, the Forest Plan expressly conditions monitoring on available funding and,  
13 therefore, the decision memo is not inconsistent with the Forest Plan. The Forest Plan  
14 provides:

15  
16 Specific budget proposals are likely to change when the annual allocation of  
17 funding is received at the Forest level. However, the Forest Plan will be used to  
18 establish priorities at whatever budget level is received for the given fiscal year. It  
19 is the intent of the Forest and the Region to adhere to the Forest Plan Standards  
20 and Guidelines and to accomplish the balance of resource outputs over the first ten  
21 year period of the Plan. Accomplishment of the outputs may be rescheduled within  
22 the period depending on available funding and/or other factors.

23 CA000261.

24 Secondly, WWP attempts to argue that the decision memo must guarantee  
25 monitoring because the BA based its analysis on the guarantee of monitoring. Doc. 30 at  
26 18. WWP goes so far as to argue that the biologists who prepared the report “were not  
27 advised that monitoring might not be part of the program.” *Id.* This is simply untrue as  
28 the BA explicitly provides that: “A monitoring plot was established in 2007 to record

1 annual range observations such as; forage production, moisture, frequency, canopy cover,  
2 ground cover, and photo points. *Monitoring of this plot will continue as funding is*  
3 *available.*” CA001322. Furthermore, the BA recognized that “Annual monitoring  
4 intensity is highly variable. Some PACs are rarely monitored, while others are monitored  
5 nearly every year.” CA001323. Finally, if there is not adequate funding, “Monitoring . .  
6 . may be accomplished by either Forest Service personnel when funding is available,  
7 and/or the permittee.” CA001236. Therefore, contrary to WWP’s argument, the  
8 conclusions in the BA were not based on a guarantee of monitoring. As the  
9 administrative record shows, that continued monitoring is conditioned on funding is well  
10 known throughout the Forest Service and was explicitly recognized in the Forest Plan.

11 As a result, the re-authorization complied with the Forest Service’s policy on  
12 extraordinary circumstances. The decision limits the amount of livestock to, at most, 395  
13 head of cattle and requires that cattle be moved from one pasture to another and that each  
14 pasture only be grazed once. CA001386. The decision memo correctly concluded  
15 “Given the current utilization standards the proposed action is unlikely to result in  
16 adverse affects to Mexican Spotted Owls.” CA001389.

## 22 **2. Monitoring on the Allotment.**

23 WWP stretches its weak monitoring argument even further and attempts to argue  
24 that a categorical exclusion is not justified because monitoring is conditioned on adequate  
25 funding. Doc. 30 at 19–20. WWP’s argument is confusing because it does not state  
26 which 2005 Statutory CE requirement the Forest Service allegedly violated. Regardless,  
27 that monitoring is depended on funding does not violate any of the requirements in the  
28

1 2005 Statutory CE.

2 WWP appears to argue that the re-authorization violates the second requirement of  
3 the 2005 Statutory CE by emphasizing the alleged need for monitoring. Doc. 30 at 20.

4 WWP argues that the Range Report, Wildlife Report, and Soil and Water Report all state  
5 that if monitoring shows any downward trend, the trend will be reversed through the  
6 adaptive management techniques in place. Doc 30 at 20. However, there is no evidence  
7 that any report conditioned its analysis on the fact that monitoring on the allotment was  
8 guaranteed. As demonstrated above, conditioning monitoring on available funding is  
9 consistent with the Forest Plan. The Soil and Water Specialist's Report provides that  
10 "[n]o monitoring is required." CA001269. The Range Report provides that "Monitoring  
11 frequency varies by each activity and may be accomplished by either Forest Service  
12 personnel when funding is available, and/or the permittee." CA001236. It is unclear  
13 which document is the "Wildlife Report," but, as shown above, the BA also provided that  
14 monitoring is conditioned on adequate funding. As a result, WWP's argument that the  
15 Forest Service must guarantee consistent monitoring is unavailing.

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20 Regardless, WWP provides no evidence that monitoring indicates that grazing  
21 management is not meeting, or successfully moving towards, objectives in the Forest  
22 Plan. WWP points out that monitoring shows heavy use of the range, but that heavy use  
23 is also a result of elk and grazing and ATV use. CA001249. In fact, the review  
24 concludes that "[u]pland soil conditions are still satisfactory." *Id.* Therefore, the District  
25 Ranger properly concluded that "overall trend for this allotment is static to upward," and  
26 was appropriate for a categorical exclusion. CA001388-89. This conclusion is entitled to  
27  
28

1 deference. *See San Bernardino Mountains Cmty. Hosp. Dist.* 63 F.3d 882 at 886-87;  
2 *Transitional Hospitals Corp. of Louisiana, Inc. v. Shalala*, 222 F.3d at 1026.

3 WWP also appears to argue that the re-authorization violates the third 2005  
4 Statutory CE requirement when it argues that a categorical exclusion is not justified  
5 because the Forest Service has to be certain that the re-authorization “will not have  
6 significant impacts to special resources.” Doc. 30 at 20. As stated above, the applicable  
7 Forest Service regulation lists seven resource conditions that should be considered in  
8 determining whether extraordinary circumstances related to a proposed action warrant  
9 further analysis and documentation in an EA or an EIS. 36 C.F.R. § 220.6(b). None of  
10 these resource conditions were identified in the Soil and Watersheds Report, which was  
11 the basis of WWP’s argument. Because WWP cannot point to a “special resource” that  
12 could possibly be affected by the re-authorization, its argument that the Forest Service  
13 failed to comply with the third 2005 Statutory CE requirement fails.  
14  
15  
16  
17

18 **C. Cosnino Allotment.**

19 WWP argues that lack of guaranteed monitoring on the Cosnino Allotment  
20 constitutes an extraordinary circumstance. Doc. 30 at 21. As demonstrated above, a lack  
21 of guaranteed monitoring is not ipso facto an extraordinary circumstance and is not a  
22 resource condition that should be considered in determining whether extraordinary  
23 circumstances related to a proposed action warrant further analysis. 36 C.F.R. § 220.6.  
24 Moreover, monitoring is required by the Forest Plan only if funding is available. The  
25 Cosnino Allotment decision memo correctly provides that “The type and frequency for  
26 monitoring the Cosnino Allotment will occur as funding is available.” CO001320.  
27  
28

1 As a result, the Forest Service complied with the requirements of the 2005  
2 Statutory CE when it re-authorized grazing on the Angell Allotment.

3 **D. Pine Creek Allotment.**

4 WWP argues that monitoring on the Pine Creek Allotment does not indicate that  
5 grazing management is meeting, or satisfactorily moving towards, Forest Plan goals.  
6 Doc. 30 at 21–25. WWP attempts to argue that the Forest Service supported its decision  
7 by taking information out of context. Doc. 30 at 22. In fact, WWP is the one who takes  
8 the information out of context.  
9

10 WWP argues that 21% of the allotment is in unsatisfactory condition with respect  
11 to soils. Doc. 30 at 22 (citing PI001142). However, the next sentence in the cited  
12 Wildlife Report specifically states that “TES survey data were collected between 1979  
13 and 1986. Range monitoring shows that soil condition has improved on the allotment  
14 since 1984, so today it is expected that the number of acres in satisfactory condition  
15 would be the same or better.” PI001142. WWP misrepresents the data by implying that  
16 those numbers were from a recent survey. Doc. 30 at 22. In fact those numbers were  
17 from two decades ago and that monitoring shows that soil conditions are improving.  
18 PI001142. Thus, the cited Wildlife Report shows that monitoring on that allotment  
19 indicates that current grazing management is satisfactorily moving toward objectives in  
20 the Forest Plan.  
21

22 WWP next presents a table with the bare soil data in an attempt to argue that there  
23 is a downward trend on the allotment. Doc. 30 at 22. However, range conditions on the  
24 allotment are affected by more than just grazing management. The decision memo  
25  
26  
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1 recognized that “[t]rend in range condition are technically down since 1983,” but  
2 explained that it was not the result of livestock grazing. PI001205. Instead, the trend  
3 was technically down:  
4

5 [O]nly because cool season grass species are down and warm season grass  
6 species are up. A reduction in cool season grass species is following trend  
7 found throughout the Forest in grazed and ungrazed areas. The cool season  
8 grass reduction is most likely caused by a decrease in winter moisture and  
9 an increase in warm season grasses. The trend is up for soil condition since  
10 the 1950’s and 1983.

11 *Id.*

12 WWP also misrepresents the findings in the Watersheds Specialist Report when it  
13 argues that the Report “states that implementation of the grazing decision ‘will lead to  
14 continued static trend in soil condition,’ suggesting that whatever gains were made by  
15 1983 will not be recovered.” Doc. 30 at 23 (quoting PI001034–35). When not taken out  
16 of context, the report indicates that the trend is static at worst, and has an overall positive  
17 trend. PI001034. The entire paragraph reads: “Trend monitoring for this allotment  
18 indicates that there has been a static or positive increase in the number of plants in  
19 monitoring sites. With current conditions static trends will continue. Increases in plants  
20 will aid in the improvement of soil condition by providing an increased biomass source,  
21 as well as providing for increased root mass that aids in soil nutrient distribution and  
22 aeration of the soil.” *Id.*  
23  
24

25 WWP argues that vegetation monitoring also indicates that grazing management is  
26 not meeting or satisfactorily moving towards Forest Plan goals. Doc 30 at at 24. Once  
27 again, grazing is not the cause for any deterioration to vegetation on the range. The  
28



1 Range Specialist's Report provides that: "On the allotment, impacts from drought  
2 periods occurring after 1985 and changing precipitation patterns (drier winters and  
3 springs, late monsoons) are believed to be a significant factor in the loss of cool season  
4 grasses and, as a result, a decline in range condition and trend." PI001166. The Report  
5 goes on to explain that there is a loss of cool season grass even on areas of the allotment  
6 that have never been exposed to livestock grazing: "This is supported by Parker Three-  
7 Step Cluster data from the exclosure on the allotment as well as a relic area on the Hat  
8 Allotment that has never been exposed to livestock grazing. Data collected from both  
9 sites shows similar declines in coolseason grasses and a decline in range condition and  
10 trend." PI001166.

11  
12  
13  
14 As a result of these non-grazing conditions, the Range Specialist Report does state  
15 that trend in range condition is down since 1983. PI001160 ("A reduction in cool season  
16 grass species is following trend found throughout the Forest in grazed and ungrazed  
17 areas. The cool season grass reduction is most likely caused by a decrease in winter  
18 moisture and an increase in warm season grasses."). However, it also provides that:  
19 "The trend for Pine Creek Allotment is static or stable for range condition since the  
20 1950's. The trend is up for soil condition since the 1950's." *Id.*

21  
22  
23 Therefore, WWP is incorrect in its conclusion that re-authorizing grazing on the  
24 allotment will cause conditions to deteriorate. Doc. 30 at 25. As shown above, any  
25 deterioration on the allotment cannot be solely attributed to grazing. The Watershed  
26 Specialist Report provides that the effects of re-authorizing grazing would be "[s]hort-  
27 term neutral to slight to positive effect, then slight negative effect on plant diversity.  
28

1 Short-term neutral to slight to positive effect, then slight negative effect on perennial forb  
2 cover. Neutral to slight positive effect on cool season plant diversity and density.  
3 Neutral to slight positive effect on perennial grass cover. No effect to microphytic soil  
4 crusts.” PI001042. Again, the Report emphasizes the effect of the drought, concluding  
5 that “The ongoing winter/spring drought will prevent a large increase in cool season plant  
6 diversity, density, and cover, regardless of grazing management.” *Id.*  
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9 Furthermore, as explained in the Report:

10 Cattle can improve or decrease plant species composition depending on the  
11 timing of grazing. Cattle will graze typically this allotment from June 1 to  
12 October 31, in a three pasture rest rotation grazing system. For instance,  
13 spring and early summer grazing occurs mainly on cool season species.  
14 After the monsoon season, grazing occurs mainly on warm season species.  
15 As the weather cools in the fall, use changes back to cool season species.  
16 Rotating grazing in the three pastures during spring/early summer grazing  
17 will further reduce impacts. Future condition and trend monitoring would  
18 indicate if proper utilization guidelines are being applied, or if this  
19 utilization is not sufficient in maintaining general plant health. The  
20 Proposed Action will continue to give cool season plants (grasses and  
21 forbs) a seasonal deferment two out of three years during the spring/early  
22 summer and fall. This will allow for cool season recovery when consistent  
23 winter and fall moisture returns to the area. Enforcement of conservative  
24 grazing utilization (30-40%) will allow for the maintenance of an adequate  
25 amount of cover and litter to protect soil health and stability. The ongoing  
26 winter/spring drought will prevent a substantial increase in plant diversity,  
27 regardless of grazing management. A series of wet years could lead to a  
28 large increase in plant diversity. Elk grazing could negatively affect plant  
diversity.

PI001041.

25 Finally, WWP brazenly calls for an elimination of grazing on the allotment  
26 because the Watershed Specialist’s Report suggested that eliminating grazing “could”  
27 lead to an increase in vegetation on the allotment. Doc. 30 at 25 (citing PI001042).  
28

1 Whether the elimination of grazing on the allotment would improve vegetation is  
2 irrelevant to the issue of whether a CE was appropriately used on this Allotment. The  
3 2005 Statutory CE does not require that the Forest Service adopt a plan that will please  
4 WWP. It requires that monitoring indicate that current grazing management is meeting,  
5 or satisfactorily moving towards, goals in the Forest Plan. Pub. L. No. 108-447, § 339  
6 Eliminating grazing would violate one of the goals in the Forest Plan, which is to  
7 “[c]ooperate with private range owners and other agencies to develop coordinated range  
8 management systems of livestock grazing where lands of other ownership are  
9 intermingled or adjacent to the National Forest.” PI000145. As demonstrated above, the  
10 Forest Service reasonably interpreted the monitoring data as indicating that current  
11 grazing management is meeting, or satisfactorily moving toward, objectives in the  
12 Kaibab Forest Plan. Pub. L. No. 108-447, § 339.

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16 **E. Seven C-Bar Allotment.**

17 WWP makes a similar argument for the Seven C-Bar allotment, arguing that the  
18 range condition has had a downward trend since 1984. Doc. 30 at 25. Again, WWP’s  
19 arguments are refuted when the analysis is taken in context. As with the Pine Creek  
20 Allotment, rangeland conditions were affected by factors other than grazing. The Range  
21 Specialist Report provides “On the allotment, impacts from drought periods occurring  
22 after 1985 and changing precipitation patterns (drier winters and springs, late monsoons)  
23 are believed to be a significant factor in the loss of cool season grasses and, as a result, a  
24 decline in range condition and trend.” SE00112. The conclusion was supported from  
25 data from areas that had never been exposed to livestock grazing which showed similar  
26  
27  
28

1 declines.<sup>10</sup> *Id.*

2 As a result, the District Ranger correctly concluded:

3 The trend is static or stable for range condition since 1963. Trend in range  
4 condition are technically down since 1984, but only because cool season  
5 grass species are down and warm season grass species are up. A reduction  
6 in cool season grass species is following trend found throughout the Forest  
7 in grazed and ungrazed areas. The cool season grass reduction is most  
8 likely cause by a decrease in winter moisture and an increase in warm  
9 season grasses. The tend is up for soil condition since 1963 and 1984.

SE001154-55. Therefore, the Forest Service appropriately used the 2005 Statutory CE.

10 **F. Twin Tanks Allotment.**

11 WWP's argument against the Twin Tanks authorization is the same as its  
12 arguments for the Pine Creek and Seven C-Bar allotments. Doc. 30 at 26–29. Once  
13 again, downward trend is affected by factors other than grazing. The Range Specialist  
14 Report provides “The trend for Twin Tanks Allotment is generally stable for range  
15 condition and upward for soil condition. A reduction in cool season grass species is  
16 following trend found throughout the Forest in grazed and ungrazed areas. The cool  
17 season grass reduction is most likely caused by a decrease in winter moisture and an  
18 increase in warm season grasses.” TW001153. Once again “impacts from drought  
19 periods occurring after 1985 . . . are believed to be a significant factor in the loss of cool  
20 season grasses and, as a result, a decline in range condition scores.  
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23

24 WWP points to the survey sheets to argue that range conditions are either static or

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25 <sup>10</sup> It is important to note that low range condition scores do not necessarily reflect poor  
26 ecological condition. SE001119. In fact, the Range Specialist Report provides that  
27 “there is not a strong correlation between range condition class and ecological condition;  
28 an area could be in a poor or fair condition simply because the area has a low value for  
livestock grazing.” *Id.*

1 downward. Doc. 30 at 27–28. A closer examination of the survey sheets indicate that  
2 this trend assessment is a short-term assessment. TW001266–1308. Specifically, the  
3 sheets only display “Current Trend.” *Id.* Thus, the trend indicators on the survey sheets  
4 refer to recent conditions on the Allotment. *Id.*; *see, e.g.*, TW001269 (referring to  
5 precipitation levels from the previous year). To determine long-term trend, the recent  
6 condition scores must be compared to past condition scores. TW0011158-58 (Comparing  
7 condition scores from 1960 to the scores from 2007 support the conclusion that  
8 “monitoring indicates an overall state trend in range condition and an upward trend in soil  
9 condition.”). As the reports for the other Allotments point out, the current downward  
10 trend is only a “technical” downward trend which is caused by factors other than grazing.  
11 As demonstrated above, a downward trend on an allotment does not necessarily mean  
12 that grazing management is not moving towards Forest Plan goals. Therefore, the Forest  
13 Service properly used the 2005 Statutory CE when it re-authorized grazing on the Twin  
14 Tanks Allotment.

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19 **G. Chino Valley Allotment.**

20 WWP argues that the decision to reauthorize grazing on the Chino Valley  
21 allotment violated the 2005 Statutory CE because of the soil condition on the allotment.  
22 Doc. 30 at 29–30. WWP focuses its argument on the small area of the allotment which  
23 has impaired soil conditions. The Soils Report classifies the area with impaired soils as a  
24 “small portion of the allotment” and concludes that “soil impairment is not a widespread  
25 condition.” CH000302. Only 1% of the allotment is in unsatisfactory condition.  
26 CH000300. The Report goes on to explain that “these areas are not in need of proactive  
27  
28

1 restoration measures,” and that “continuing current adaptive management, reacting to the  
2 impaired locations, and implementing relevant BMPs will result in positive outcomes  
3 with reversal of lost productivity.” CH000301 (internal citations omitted). Furthermore,  
4 the Report concluded that no sites “were found to be unstable, or display evidence of  
5 widespread excessive erosion.” CH000300.  
6

7           Nevertheless, WWP argues that the current grazing management must change in  
8 order to improve soil productivity. Doc. 30 at 30. The decision memo continues the  
9 same adaptive management techniques and allows for “adjusting duration, timing and  
10 frequency of allotment/pasture use based on monitoring of forage availability, utilization,  
11 and resource conditions . . . Adaptive management allows plant, soil, and watershed  
12 conditions to be maintained or improved while range improvements are implemented  
13 over time.” CH000350. As a result, the Forest Service correctly concluded that “there is  
14 no need to change management as conditions on the allotment are meeting or moving  
15 toward the Forest Plan’s desired conditions.” CH000351. Therefore, the Forest Service  
16 properly used the 2005 Statutory CE when it re-authorized grazing on the Chino Valley  
17 Allotment.  
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## 22 CONCLUSION

23           As the foregoing demonstrates, the Forest Service properly used the 2005  
24 Statutory CE in issuing all eight challenged decisions. Therefore, this Court should grant  
25 summary judgment in favor of Defendant-Intervenors and deny WWP’s motion for  
26 summary judgment.  
27  
28

1 DATED this 29th day of June 2012.

2  
3 Respectfully Submitted,

4  
5 /s/ Steven J. Lechner

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**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that on this 29th day of June 2012, I filed the foregoing document  
3 using the Court's CM/ECF system, which caused all counsel of record to be served  
4 electronically.  
5

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