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4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF ARIZONA
7

8 WESTERN WATERSHEDS PROJECT, *et*
9 *al.*

Plaintiff,

10 v.

11 U.S. FOREST SERVICE,

Defendants,

12 and
13

14 ARIZONA CATTLEGROWERS, *et al,*

15 Defendant-Intervenors.
16
17

CV-11--08128-PCT-NVW

**PLAINTIFF'S MOTION AND
MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT**

Oral Argument Requested

18 In accordance with Rule 56 of the Federal Rules of Civil Procedure and based upon
19 the below Memorandum of Points and Authorities, Plaintiffs respectfully move this Court for
20 summary judgment to set aside the Forest Service decisions in the Angell, Casner
21 Park/Kelly, and Cosnino decisions on the Coconino National Forest; the Pine Creek, Seven
22 C-Bar, and Twin tanks decisions on the Kaibab National Forest; and the Chino Valley and
23 V-Bar decisions on the Prescott National Forest.¹ This Court has jurisdiction over this
24 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

25 _____
26 ¹The Plaintiffs have elected not to proceed with their challenge to six other decisions identified in their
complaint: the Black Bill Summit, Slate Mountain and Wild Bill, Polecat, Dugas, Rice Peak, Yolo North and
Todd decisions.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

This case is about commercial livestock grazing leases on three National Forests in Arizona. Ranchers in the state lease public forestland for a small fee set by Congress (this year it is \$1.35 per cow, per month²). Until 2005, the Forest Service could only issue permits for this grazing after completing an environmental assessment or environmental impact statement under the National Environmental Policy Act. These environmental reviews required the Forest Service to consider all the environmental effects of commercial livestock grazing in the arid and at times fragile environments in Arizona, to submit their findings for public review, comment, and administrative appeal, and to consider alternatives to their actions that might improve environmental conditions.

However, in 2005, Congress passed an Appropriations Rider that permitted the Forest Service to release grazing permits with a considerably less thorough review, under what is called a “categorical exclusion.” A categorical exclusion is a much abbreviated evaluation compared to an environmental assessment. Under the 2005 Rider, the Forest Service could renew ten-year grazing permits without preparing an environmental assessment (or its larger counterpart, an environmental impact statement) so long as (1) the Forest Service did not change its management of the relevant grazing allotment, (2) monitoring of the allotment showed that ecological conditions were meeting or satisfactorily moving toward requirements in the applicable Forest Land and Resource Management Plan, and (3) there were no extraordinary circumstances present that called for a more thorough analysis.

This case challenges eight Forest Service administrative decisions on eight grazing allotments across three National Forests in Arizona for failing to meet at least one of the Rider's three requirements. Livestock grazing can be extremely detrimental to the streams,

²“BLM and Forest Service Announce 2012 Grazing Fee,” *available at* http://www.blm.gov/wo/st/en/info/newsroom/2012/january/NR_01_31_2012.html (last visited May 31, 2012).

1 streamside areas, soil productivity, archaeological sites, wildlife habitat, and rangeland
2 vegetation in Arizona's arid desert environment, and must be done with care. In the grazing
3 allotments challenged here, quick, abbreviated review has overlooked downward trends in
4 range or soil condition, damaged waterways and their rich vegetative zones (referred to as
5 “riparian” areas), and risks to important archaeological finds from livestock grazing. Had
6 the Forest Service undertaken the step of preparing an environmental assessment for these
7 projects, the errors would not have occurred because there would have been an opportunity
8 for public review, and the Service would have been required to examine more carefully the
9 effects livestock grazing is having on these eight grazing allotments.

10 Because the evidence in these grazing allotment decisions does not show that the
11 Forest Service has met the three necessary criteria set forth in the Appropriations Rider, the
12 decisions are arbitrary and capricious and must be set aside until an environmental
13 assessment or environmental impact statement is prepared for them.

14 **II. Legal Background: The National Environmental Policy Act, the 2005** 15 **Appropriations Rider, and the Forest Plans**

16 **A. The National Environmental Policy Act and Livestock Grazing** 17 **on public lands**

18 The National Environmental Policy Act, or “NEPA,” requires any proposed federal
19 action that may have a significant effect on the environment to undergo an environmental
20 review. 42 U.S.C. § 4332 (C). In cases where the agency determines that no significant
21 effect will occur, the federal agency may prepare an environmental assessment, which it
22 supplements with a “Finding of No Significant Impact.” 40 C.F.R. § 1508.9, 1508.13. On
23 the other hand, if the agency determines there may be significant environmental impacts
24 from its actions, a larger, “full-blown” environmental impact statement is required.
25
26

1 However, some federal actions are so insignificant and minor as to fall into
2 “categories” of actions that have previously been determined not to have a significant effect
3 on the environment—these are termed “Categorical Exclusions.” 40 C.F.R. § 1508.4.
4 (“Categorical Exclusion means a category of actions which do not . . . have a significant
5 effect on the human environment and which have been found to have no such effect by [the
6 relevant Federal agency].”)

7 When an agency decides to proceed via a categorical exclusion, a substantially
8 expedited review is permitted, and the normal requirements for, among other things, public
9 notice and comment, administrative appeal, consideration of alternatives, and discussion of
10 mitigation options are relaxed or removed because no documentation in an environmental
11 assessment or environmental impact statement is required. *Id.* There is no provision, for
12 example, for administrative appeal. *See e.g.* Angell Allotment Decision Memo at 7,
13 AN001688 (“This decision is not subject to administrative review (appeal) under 36 CFR
14 215.”) However, the Forest Service may not use a categorical exclusion unless the deciding
15 official is “certain” that there will not be significant effects on the environment. 36 C.F.R. §
16 220.6(c) (“If the responsible official determines, based on scoping, that it is uncertain
17 whether the proposed action may have a significant effect on the environment, prepare an
18 EA.”)

19 Each agency publishes categories of activities that may be completed under a
20 categorical exclusion's expedited review; if an action isn't in one of the categories, it may not
21 proceed under a categorical exclusion. 40 C.F.R. § 1508.4. In the case of the Forest Service,
22 these actions include (for example) replacing the poles of a power line, closing a road to
23 protect bighorn sheep during lambing season, and mowing the lawn at a District Office. 36
24 C.F.R. § 220.6.³

25 ³The current regulations slightly post-date some of the decisions at issue here, but the previous regulations
26 are not materially different. *See* 57 Fed. Reg. 43180 (Sept. 18, 1992) (previous regulations applicable before
July of 2008).

1 Because re-issuing permits to commercial livestock grazers is not one of the
2 categories, normally the Forest Service must prepare at least an environmental assessment
3 before issuing or renewing a grazing permit. *See* Forest Service Handbook 2209.13, Ch. 90,
4 § 92.3 (calling for a “site specific analysis of environmental effects” to be completed before
5 grazing can be authorized).

6 However, in 2005 Congress responded to a large backlog of expiring ten-year grazing
7 permits by exempting some grazing allotments from analysis in an environmental assessment
8 if “the level of complexity of environmental issues was negligible.” FY 2005 Consolidated
9 Appropriations Act, Pub. L. No. 108-447 § 339; 108 S. Rpt. 341, 108th Cong., 2d. Sess.
10 2004 (“The Committee believes that a more prudent course is to make the environmental
11 review process more efficient by reducing the amount of documentation and expense
12 required to conduct reviews for allotments where the level of complexity of environmental
13 issues is negligible so that the Agency may devote its limited resources to allotments that
14 require a more sophisticated analysis.”)

15 **B. How the 2005 Appropriations Rider Modified Traditional Environmental**
16 **Review of Livestock Grazing Allotments**

17 The Fiscal Year 2005 Appropriations Act, or “Rider,” eliminated the burden of
18 completing an environmental assessment for grazing permit renewals on up to 900 grazing
19 allotments nationwide so long as “(1) the decision continues current grazing management of
20 the allotment; (2) monitoring indicates that current grazing management is meeting, or
21 satisfactorily moving toward, objectives in the land and resource management plan, as
22 determined by the Secretary; and (3) the decision is consistent with agency policy
23 concerning extraordinary circumstances.” FY 2005 Consolidated Appropriations Act, Pub.
24 L. No. 108-447 § 339.

25 In 2008, Congress extended the rider for that fiscal year. FY 2008 Consolidated
26 Appropriations Act, Pub. L. No. 110-161 § 421.

1 The Forest Service used the 2005 Rider and its 2008 extension to categorically
2 exclude the eight decisions challenged here, all of which were authorized with categorical
3 exclusions, and not with the normal environmental assessment or environmental impact
4 statement that had previously been required when reauthorizing livestock grazing permits.
5

6 **C. Legal Requirements of the Land Management Resource Plans**

7 The Rider's second requirement is that monitoring must indicate "that current grazing
8 management is meeting, or satisfactorily moving toward, objectives in the land and resource
9 management plan." Each National Forest has a Land and Resource Management Plan
10 (usually termed an "LRMP" or "Forest Plan") as required by the National Forest
11 Management Act. 16 U.S.C. § 1600. The plans are tailored to each National Forest, and are
12 unique. The plans contain standards and objectives for forest and rangeland management.
13 16 U.S.C. § 1604(g). Forest Service projects, including grazing permit renewals, must meet
14 the standards in the LRMPs in order to comply with the statute. 16 U.S.C. § 1604 (i).
15 ("Resource plans and permits, contracts, and other instruments for the use and occupancy of
16 National Forest System lands shall be consistent with the land management plans.")

17 **D. The Effect of Extraordinary Circumstances**

18 An action may not be categorically excluded from documentation in an environmental
19 assessment or environmental impact statement if there are extraordinary circumstances. 40
20 C.F.R. § 1508.4. To determine whether extraordinary circumstances exist, the Forest
21 Service first must determine whether certain resources are present in the area. 36 C.F.R. §
22 220.6(b). These include critical habitat for federally listed threatened or endangered species,
23 wetlands, municipal watersheds, and archaeological sites. *Id.* If these resources are present,
24 the Forest Service must then assess "the degree of potential effect of the proposed action on
25 these resource conditions" to determine if extraordinary circumstances exist. 36 C.F.R. §
26 220.6(a)(2). If the proposed action "may" have a significant effect on one of these special

1 resources, the Forest Service may not issue a categorical exclusion and must proceed with an
2 environmental assessment or environmental impact statement. *California ex rel. Lockyer v.*
3 *USDA*, 459 F. Supp. 2d 874, 902-03 (N.D. Cal. 2006) (quoting 40 C.F.R. § 1508.4). The
4 resource conditions thus function as a “red flag” and, if they are present, the agency “must
5 adequately explain its decision” if it wishes to forgo preparing an environmental assessment
6 or environmental impact statement. *Id.* at 903. Conclusory statements that there will not be
7 effects are not enough; there must be “specific, reasoned conclusions” as to why a
8 categorical exclusion is appropriate. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1028-1029
9 (9th Cir. 2007).

11 **III. Factual Background: The Eight Challenged Grazing Allotments**⁴

13 **A. The Coconino National Forest: Angell, Casner Park/Kelly Seep, and Cosnino Allotments**

14 Three grazing allotment decisions are challenged on the Coconino National Forest:
15 the Angell, Casner Park/Kelly Seep, and Cosnino Allotments.

16 1. The Angell Allotment: Important archaeological resources are present.

17 The Angell grazing allotment covers about 52,000 acres on the Coconino National
18 Forest. Plaintiff's Separate Statement of Facts (“SOF”) at 2. On July 25, 2006, District
19 Ranger Gene Waldrip signed the Decision Memo that authorizes 3,135 Animal Unit Months
20 of grazing. SOF at 1.

21 The Angell Allotment is home to a large number of important cultural sites, including
22 a pit house from the eleventh or twelfth century A.D. that still has an intact roof, a cliff
23

24 ⁴Plaintiffs have filed a Separate Statement of Facts to accompany their motion and brief. Because of the
25 extensive amount of relevant factual information, and because providing it here and then restating it in the
26 Argument section below would be an unnecessary burden to the reader, Plaintiffs have departed from their
normal practice and only briefly summarize each decision here, but refer the Court to their separate statement
for more detail.

1 dwelling, and multi-story pueblos. SOF at 4. The allotment encompasses 39 sites that are
2 listed on the National Historic Register, including Winona Village, which is a National
3 Historic Landmark. SOF at 15. Although only 4 percent of the allotment has been surveyed
4 for cultural resource sites, 698 sites in the Angell Allotment have been identified that are
5 deemed eligible for listing on the National Register of Historic Places. SOF at 3, 17. The
6 Cultural Resources Report does not identify protection measures for any of these sites, did
7 not reveal any new surveys of the area, and considered livestock grazing to be a “baseline”
8 condition that did not warrant an analysis of effects to archaeological resources.
9

10 2. The Casner Park/Kelly Seep Allotment: Monitoring shows vegetation productivity
11 has declined.

12 The Casner Park/Kelly Seep Allotment covers about 28,000 acres on the Coconino
13 National Forest. SOF at 21. On September 26, 2008, District Ranger Michael Elson signed
14 the Decision Memo that authorizes 1,391 Animal Unit Months of grazing. SOF at 22.

15 The Casner Park/Kelly Seep Allotment encompasses a 3,193 acre Mexican spotted
16 owl “Protected Activity Center.” SOF at 24. The Mexican spotted owl is listed as a
17 “threatened” species under the Endangered Species Act, and the Forest Service has identified
18 management standards designed to protect the owl. SOF at 25. These specifically include
19 monitoring of key forage areas and forage utilization. SOF at 26. The Forest Service's
20 determination that the action will not adversely affect Mexican spotted owl habitat rests on
21 an assumption that “forage utilization will be maintained at conservative levels” and that the
22 Forest Service will meet these requirements through both annual and long-term monitoring.
23 SOF at 28, 37.

24 However, according to the Decision Memo, monitoring on the allotment will occur
25 only “as funding is available.” SOF at 30.
26

1 The Decision does not contain any “fallback” provision should funding not
2 materialize for monitoring, and does not state that grazing will cease or be altered in any way
3 should monitoring not occur. SOF at 31.

4 Similarly, the “Soil and Water Specialist's Report” states that monitoring will occur,
5 including monitoring to ensure that “a minimum of 10 centimeter residual stubble height [is
6 left] to improve riparian conditions.” SOF at 38, 39.

7 However, immediately following these requirements, the same report concedes under
8 the heading “Monitoring Requirements” that “No monitoring is required” for the action.
9 SOF at 40.

10 3. The Cosnino Allotment: Monitoring is not required.

11 The Cosnino Allotment covers about 10,900 acres (about 1,400 of those acres are
12 private or State lands) on the Coconino National Forest. SOF at 47. On September 26,
13 2008, District Ranger Michael Elson signed the Decision Memo that authorizes 169 head of
14 cattle from June 1 through October 31, or 805 Animal Unit Months. SOF at 48.

15 Like the Casner Park/Kelly Allotment, the Cosnino Allotment conditions monitoring
16 of permittee compliance, allotment inspections, range readiness, forage production,
17 utilization, and long-term trend monitoring on future funding. It does not contain any
18 fallback requirements should the monitoring funding not materialize.

19 Also as in the Casner Park/Kelly Allotment, the Range Specialist's Report emphasizes
20 the importance of monitoring, lists the kind of monitoring that will occur, and specifies that
21 this monitoring will guide the Forest Service's “Adaptive Management” grazing scheme.
22 However, the final decision does not require monitoring in order for grazing to continue.
23 SOF at 50.

24
25 **B. The Kaibab National Forest: Pine Creek, Seven C-Bar, and Twin Tanks Allotments**
26

1 Three grazing allotment decisions are challenged on the Kaibab National Forest: the
2 Pine Creek, Seven C-Bar, and Twin Tanks Allotments.

3
4 1. The Pine Creek Allotment: Monitoring shows soil and vegetation productivity
have declined.

5 The Pine Creek Allotment covers about 8,374 acres on the Kaibab National Forest.
6 SOF at 52. The Pine Creek decision was signed on September 26, 2008 by District Ranger
7 Martie Schramm. SOF at 53. The decision authorized 250 head for five months, which is
8 866 Animal Unit Months. SOF at 54.

9 About 21 percent of the allotment's soils are in unsatisfactory condition. SOF at 57.
10 Unsatisfactory soils are those that show “a permanent loss in site productivity.” SOF at 58.
11 Monitoring of bare soil and plant litter in the allotment show a consistent downward trend in
12 the ten years prior to the decision. Monitoring also shows that the vegetation condition is
13 “poor” in all monitored sites in 2007, all of which have declined since 1967. SOF at 71, 74..

14
15 2. The Seven C-Bar Allotment: Monitoring shows vegetation productivity has
declined.

16 The Seven C-Bar Allotment covers about 177 acres on the Kaibab National Forest.
17 SOF at 80. The decision was signed on September 26, 2008 by District Ranger Martie
18 Schramm. SOF at 81. The decision authorized 57 Animal Unit Months, or 20 head for four
19 months each year. SOF at 81.

20 One vegetation monitoring transect was established on the allotment in 1963, and
21 trend has been downward at this transect since 1969—considerably downward since 1984,
22 the last time it was read prior to this analysis. SOF at 84, 87.

23
24 3. The Twin Tanks Allotment: Monitoring shows vegetation and soil productivity has
declined.

25 The Twin Tanks Allotment covers about 11,940 acres on the Kaibab National Forest.
26 SOF at 89. The Twin Tanks decision was signed on September 26, 2008 by District Ranger

1 Martie Schramm. SOF at 90. The decision authorized 1037 Animal Unit Months of sheep
2 grazing. SOF at 91.

3 In 2007, eleven sites were monitored. Seven sites were in “Poor” vegetative
4 condition and four were in “Fair” condition. No sites had upward trend for vegetation. No
5 sites were rated at “Good” or better condition, and nearly half were in downward trend. SOF
6 at 95, 97.

7 As for soil monitoring, just over half showed a downward trend. SOF at 97, 102.

8
9 **C. The Prescott National Forest: Chino Valley and V-Bar Allotments**

10 1. The Chino Valley Allotment: Monitoring is not required.

11 The Chino Valley Allotment covers about 3,382 acres on the Prescott National Forest.
12 SOF at 104. On September 28, 2007, District Ranger Linda Jackson signed the Decision
13 Memo that authorizes 336 “Head Months” of grazing, which is the equivalent of 48 cow/calf
14 pairs for seven months of the year. SOF at 105.

15 Forty-six percent of the allotment has “impaired” soils. SOF at 108.

16 The Soils Report states that “current management is contributing to decreased soil
17 productivity.” SOF at 112. It concludes that “sufficient recovery will occur with an
18 adaptive management regime of rest periods or deferment for vegetative recovery.” SOF at
19 113.

20 However, the Decision Memo authorizes continued management with no requirement
21 for changes and the record does not explain how the current management will cease
22 contributing to decreased soil productivity without such changes. SOF at 115.

23 2. The V-Bar Allotment: Soil productivity is declining on nearly half the allotment
24 and changes in management are called for.

25 The V-Bar Allotment covers about 20,736 acres on the Prescott National Forest.
26 SOF at 117. The decision was signed on September 28, 2007 by District Ranger Dee Hines.

1 SOF at 118. The Decision Memo does not reveal how many AUMs or head of cattle are
2 authorized, only that grazing will occur yearlong.

3 Forty-five percent of the allotment is impaired. SOF at SOF at 122. On these
4 impaired lands, six of the fourteen monitoring sites showed a downward trend, one an
5 upward trend, and five had no apparent trend. SOF at 129..

6 Of twelve monitored sites on the non-impaired lands, seven showed bare ground
7 levels of 40 percent or higher. Four of the twelve sites had a downward trend and the
8 remaining eight did not show a trend either way. SOF at 136.

9 On the impaired lands, “current management is contributing to decreased soil
10 productivity.” SOF at 149. Because of this, the Specialist calls for “changes in management,
11 namely rest periods for the contributing uplands.” SOF at 150. However, the Decision does
12 not call for any changes in management. SOF at 156.

13 14 **Standard of Review**

15 Summary judgment is appropriate if there is no genuine dispute of material fact and
16 the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; *Anderson v.*
17 *Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Review of agency decision-making is
18 governed by the judicial review provision of the Administrative Procedure Act, which
19 requires a court to hold unlawful and set aside action that was “arbitrary, capricious, an
20 abuse of discretion, or not otherwise in accordance with law.” 5 U.S.C. § 706(2)(A), (D). A
21 decision is arbitrary and capricious if the agency has “relied on factors which Congress has
22 not intended it to consider, entirely failed to consider an important aspect of the problem,
23 offered an explanation for its decision that runs counter to the evidence before the agency, or
24 is so implausible that it could not be ascribed to a difference in view or the product of agency
25 expertise.” *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Col.*, 463 U.S. 29, 43
26 (1983).

1 An agency's determination that a particular activity falls within a categorical
2 exclusion is subject to the “arbitrary or capricious” standard of review. *Sierra Club v.*
3 *Bosworth*, 510 F.3d 1016, 1022 (9th Cir. 2007). To determine whether a categorical
4 exclusion is arbitrary or capricious, “a court must consider whether the decision was based
5 on a consideration of the relevant factors and whether there has been a clear error of
6 judgment.” *Alaska Ctr. for the Env't v. U.S. Forest Serv.*, 189 F.3d 851, 859 (9th Cir. 1999).
7 When an agency decides to proceed by using a categorical exclusion, it must adequately
8 explain its decision. *Id.*; *Alaska Ctr.*, 189 F.3d at 859; *see also Sierra Club*, 510 F.3d at 1023
9 (agency must articulate a rational connection between the facts found and the conclusion
10 reached). A court need not defer to an agency's conclusions that are not supported by the
11 record or that run counter to the evidence before it. *Western Watersheds Project v.*
12 *Kraayenbrink*, 632 F.3d 472, 493 (9th Cir. 2011).

13 Argument

14 A. The Coconino National Forest: Angell, Casner Park/Kelly Seep, and Cosnino 15 Allotments

16
17 1. The Angell Decision violated the Rider's extraordinary circumstance provisions
18 because extremely unique and valuable cultural resources are present on the
19 allotment, but only four percent of the allotment has been surveyed for cultural
20 resources and effects were not analyzed.

21 Although 96 percent of the Angell allotment has not yet been surveyed for cultural
22 resources, it is home to over 700 archaeological sites, including a pit house with an intact
23 roof, a cliff dwelling, and pueblo villages. SOF at 4. Because of the presence of these
24 highly unique cultural resources and because no finding was given to show the needed
25 degree of certainty that livestock will not impair these resources, a categorical exclusion was
26 not warranted for the project.

1 The Coconino Forest Plan directs that “[p]roject undertakings are inventoried for
2 cultural resources.” SOF at 5. If complete surveys of the area are deemed unnecessary, a
3 representative sample is to be determined in consultation with the State Historic Preservation
4 Officer: “When less than 100 percent survey is deemed appropriate, the specific sample
5 fraction surveyed is determined in consultation with the State Historic Preservation Officer
6 and is generally greater than 10 percent. Factors determining when sampling is appropriate
7 include projects with dispersed or minimal impacts, low expected archaeological site density,
8 ground cover, and types of archaeological sites present in the area.” SOF at 7.

9 An action may be categorically excluded “only if there are no extraordinary
10 circumstances.” 36 C.F.R. § 220.6(a). If certain resource conditions exist in a project area,
11 they must “be considered in determining whether extraordinary circumstances related to the
12 proposed action warrant further analysis and documentation in an EA.” *Id. at (b)*. These
13 resource conditions include “(vi) American Indians and Alaska Native religious or cultural
14 sites; and (vii) Archaeological sites, or historic properties or areas.” *Id.* The regulations
15 require that a federal official be “certain” that the project will not impair the resource areas:
16 “If the responsible official determines, based on scoping, that it is uncertain whether the
17 proposed action may have a significant effect on the environment, prepare an EA.” *Id. at (c)*.

18 But the Decision Memo does not mention any cultural resources. It only states that
19 “13 Native American tribes have been consulted on this project and none of them have
20 expressed concern to date. An archaeological survey and clearance report was completed for
21 this project and no effects to archaeological resources or sites are anticipated.” SOF at 8. It
22 does not say whether tribal officials were alerted to the high density of sites or whether they
23 were told of the significance of the sites have been found there.⁵

24 A document styled “An Archaeological Survey and Cultural Resources Clearance
25 Report for the Angell Allotment” discusses the cultural resources that have thus far been
26

⁵Plaintiffs have been unable to find any evidence of this consultation with tribal officials in the record.

1 discovered on the allotment. It states that surveys done thus far show a “moderate to high
2 site density (37-59 sites per square mile) in most of the project area.”⁶ SOF at 10. According
3 to the Report, “Site types include artifact scatters, agricultural features, field houses,
4 farmsteads (ranging from single room to small multiple room sites), villages (including pit
5 house and pueblo settlements . . .) [and] community centers.” SOF at 11. The report
6 characterizes the area as containing “a system of settlements” that span from as early as
7 8,000 BC to around A.D. 700 - A.D. 1300. SOF at 12. The area includes a pit house with
8 an intact roof and a Cliff Dwelling, both dating from 1150-1300. SOF at . It also includes
9 Kiva sites, a ball court, several two-story ruins, a 34-room pueblo, several 10-room pueblos,
10 a 3-room fort, at least one pot bust, and pit houses, field houses, sherd scatters, artifact
11 scatters, and pit house villages far too numerous to list here. SOF at 14.

12 The Allotment also encompasses 39 sites that are listed on the National Historic
13 Register, including Winona Village, which is a National Historic Landmark. AN 001643.
14 The Winona Village Complex is a northern Sinagua pithouse village that dates from 1066-
15 1150 A.D. 62 Fed. Reg. 192 at 51901 (Oct. 3, 1997). SOF at 15.

16 As astonishing as these finds are, only four percent of the allotment has been surveyed
17 to date for cultural resource sites. SOF at 3. Even so, 698 sites have already been identified
18 that are deemed eligible for listing on the National Register of Historic Places. SOF at 17.

19 The report acknowledges that livestock grazing affects these resources but states that
20 because livestock grazing and the impacts associated with it are the “status quo,” continued
21 livestock grazing “will result in no effect.” SOF at 18. It appears that the author of this
22 report regarded the environmental baseline to include livestock grazing, and concluded that
23 since this project is not doing anything *in addition to* livestock grazing, there would be no
24 change to the status quo:

25 _____
26 ⁶This conclusion is perplexing. If 777 sites were discovered in 2,327 acres, the math works out to 214 sites per square mile. (2,327 acres = 3.63 square miles; 777/3.63 = 214 sites per square mile.)

1 Due to the fact that wild ungulates have ranged free, potentially in substantial
2 numbers, throughout time, effects to cultural resources have occurred as a result of
3 this situation and are considered *status quo*, or the existing situation. Management of
4 livestock under this management plan will result in no effect, as it continues the
5 *status quo*.

6 SOF at 19.

7 This is not the proper analysis. The proper analysis requires the Forest Service to
8 conclude with certainty that continued livestock grazing will not have a significant effect
9 upon these resources; because “effects to cultural resources have occurred” from wild
10 animals at some time is not the same as showing that more effects will not occur when
11 livestock are also added into the mix.⁷ SOF at 18. Indeed, if the Forest Service knows that
12 effects have occurred from some kind of ungulate, it is likely that these effects will continue
13 to occur from future ungulates such as cows unless some kind of protections are put in place.

14 But the Report does not give any details about how protection will occur. It simply
15 states that the sites “will be monitored on a frequent basis” by volunteers, university
16 professors, and Forest Service archaeologists. SOF at 20. Moreover, the Report is silent as
17 to the 96 percent of this allotment that has never been surveyed—a violation of the Forest
18 Plan requirement that areas undergo cultural resource surveys.

19 The Winona Village Complex and the 698 other important archaeological sites on the
20 allotment, including the 700 year old pit house with an intact roof, multi-story dwellings and
21 numerous pueblos, structures, and scatters, is an extraordinary circumstance that warrants
22 evaluation in an environmental assessment. The existing analysis improperly considers the
23 current levels of effects, which it acknowledges exist, as the status quo which may be
24 maintained without further discussion or analysis, and does not provide the needed
25 discussion to show certainty that the action will not have a significant effect on this stunning
26 assembly of cultural resources from the land's very distant human past.

⁷The report does not address the nature of the effects, but does note the existence of at least one “pot bust” discovered in the area, and it seems likely that livestock could damage resources such as pots and other archaeological artifacts in these ancient villages simply by trampling on them.

1
2 2. The Casner Park/Kelly Seep decision violated the Rider's extraordinary
3 circumstance provision because of potential effects to the Mexican spotted owl, a
4 threatened species, and because monitoring that was thought to be assured by the
5 specialists who designed the project is not in fact guaranteed by the decision.

6 Despite a Forest Plan requirement that inspections of allotments occur annually,
7 monitoring in the Casner Park/Kelly Seep decision is not required; rather, it will occur “as
8 funding is available.” Unlike most of the other allotments challenged in this action, no
9 monitoring is guaranteed by this decision, and no “fallback” provision is included should it
10 not occur. This failure to include enforceable monitoring standards (or a fallback program
11 that would reduce livestock impacts to a degree that monitoring would not be necessary)
12 renders the decision inapplicable for a categorical exclusion because the agency cannot be
13 certain that extraordinary circumstances will not occur.

14 *a. Strict vegetation requirements designed to protect the Mexican spotted owl's habitat are*
15 *not guaranteed under the decision.*

16 The Casner Park/Kelly Seep Allotment encompasses a 3,193 acre Mexican spotted
17 owl “Protected Activity Center,” and Mexican spotted owls are present on the allotment.
18 SOF at 24. The Mexican spotted owl is listed as a “threatened” species under the
19 Endangered Species Act, and the Forest Service has identified management standards
20 designed to protect the owl from the effects of livestock grazing (livestock grazing can
21 remove vegetation needed by the owl's prey species). SOF at 25, “Record of Decision for
22 Amendment of Forest Plans of Arizona and New Mexico,” U.S.D.A. Forest Service, 1996.⁸
23 The Coconino Forest is directed, for example, to maintain forage use by grazing ungulates
24 “at or above a condition which assures recovery” of the owl, and to establish areas where
25 forage use is monitored, and to monitor key species. SOF at 26.

26 ⁸Plaintiffs cannot find this document in the administrative record, but has been incorporated into each Forest Plan in the record ; it is available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_021447.pdf. It amended each Arizona Forest Plan to contain new objectives for protection of the threatened Mexican spotted owl.

1 The Coconino Forest Plan also calls for “annual allotment inspections to Regional
2 standards.” SOF at 27.

3 According to the Decision Memo prepared for the Casner Park/Kelly Seep Allotment,
4 the owl will be protected because “forage utilization will be maintained at conservative
5 levels (30-40%)” and grazing “will be managed for levels that provide the woody and
6 herbaceous vegetation necessary for cover for rodent prey species, and maintain the residual
7 biomass.” SOF at 28. Because of these management requirements, the Decision Memo
8 states that “[t]here are no extraordinary circumstances potentially having effects that may
9 significantly affect the environment.” SOF at 29.

10 But monitoring of forage production, utilization, and all other features of the plan will
11 be conducted only “as funding is available.” SOF at 30.

12 The Decision does not contain any “fallback” provision should funding not
13 materialize for proper inspections of forage utilization, permittee compliance, or other
14 management features, and does not state that grazing will cease or be altered in any way
15 should this monitoring not occur. SOF at 31.

16 Worse, it seems that the biologists who prepared the project were not advised that
17 monitoring might not be part of the program. For example, the Biological Assessment states
18 that “[i]f monitoring indicates that desired conditions are not being achieved, management
19 will be modified.” SOF at 32. It also states that “the Proposed Action includes monitoring,”
20 and lists that monitoring as including permittee compliance, allotment inspections, range
21 readiness, forage production, and rangeland utilization. SOF at 33. However, this
22 monitoring is by no means assured.

23 The Biological Assessment's ultimate conclusion that the action will not adversely
24 affect Mexican spotted owl habitat rests on an assumption that “forage utilization will be
25 maintained at conservative levels.”SOF at 34. But this utilization can only be maintained at
26 these levels if it is monitored every year, as the Forest Plan requires.

1 The Biological Assessment also concludes that grazing activities will “contribute to
2 good to excellent range and ecological conditions” so long as guidelines are met, which
3 include the need to “monitor plant composition, density and vigor as well as livestock and
4 wildlife use in key grazing areas,” and “[i]mplement and enforce grazing utilization
5 standards.” SOF at 35. The Assessment states that the Forest Service will meet these
6 requirements through both annual and long-term monitoring. SOF at 36. Only after calling
7 for this monitoring does the Biological Assessment conclude that the grazing “may affect”
8 but is “not likely to adversely affect the Mexican spotted owl and its critical habitat.” SOF at
9 37.

10 Because monitoring is not guaranteed, a categorical exclusion is not warranted. The
11 Forest Service cannot meet the “certainty” standard without an enforceable plan to monitor
12 conditions on the allotment.

13 *b. The decision does not guarantee soil and vegetation monitoring that its specialists felt to*
14 *be necessary to assure there would not be negative effects from continued grazing.*

15 Similarly, the “Soil and Water Specialist's Report” prepared for the action states that
16 Best Management Practices will protect water and watershed resources. Those Best
17 Management Practices state that “[t]he District Range Staff will monitor permittee
18 compliance,” “[c]ompliance with the terms and conditions of the livestock grazing permit
19 will be strictly enforced including . . . monitoring agreements” and “[k]ey grazing areas will
20 be monitored to determine when cattle should be moved to prevent overuse.” SOF at 38.
21 This includes leaving “a minimum of 10 centimeter residual stubble height . . . to improve
22 riparian conditions” and a proposal to fence riparian sites should woody riparian vegetation
23 utilization exceed 20 percent. SOF at 39.

24 However, immediately following these requirements, the same report concedes under
25 the heading “Monitoring Requirements” that “No monitoring is required” for the action.
26 SOF at 40.

1 Unfortunately, it appears that consistent monitoring is truly needed on this allotment.
2 A “Field Review” prepared for the Casner/Kelly Allotment states that “evidence of grazing
3 was heavy” on the pasture visited, “with little seed heads left on much of the pasture. SOF at
4 41. “Utilization in this pasture appeared to be 61-80%. SOF at 42. This is probably a
5 function of large elk herds, as well as running near full numbers and not moving [livestock]
6 quickly enough out of the pasture.” SOF at 42.

7 In another pasture, “[u]tilization on the Ward Camp meadow was again in the 61-80%
8 range, with evidence of abundant elk use.” SOF at 43. Further, “[f]ield review of the
9 meadows in the allotment confirms that most all are impaired,” with the cause identified as
10 “a combination of cattle and elk grazing, and ATV/vehicle use.” SOF at 44.

11 The Range Report, like the Wildlife and Soil and Water Reports, also states that if
12 monitoring shows any downward trend, the trend will be reversed through changes in
13 management. It states that “[m]onitoring would occur” and emphasizes that “[l]ong-term
14 condition and trend monitoring is the primary standard for monitoring of this cattle grazing
15 management system;” it also states that range readiness and utilization monitoring would
16 occur yearly, concluding that “if monitoring shows utilization rates exceed the utilization
17 guideline in a given year, the grazing schedule and/or cattle numbers would be adjust the
18 following year so the utilization guidelines are not exceeded again.” SOF at 45, 46.

19 In sum, the various specialist's reports all emphasize the importance of monitoring to
20 the success of this project, and the Forest Plan requires annual inspections of allotments, but
21 the Decision Memo that authorizes the project states that monitoring will depend on funding,
22 with no alternative program identified should the monitoring not occur.

23 For this reason, the project cannot fulfill its Forest Plan requirements and cannot be
24 justified by a categorical exclusion, which requires a decision-maker to be “certain” that the
25 project will not have significant impacts to special resources.
26

1 3. The Cosnino Decision violated the Rider's extraordinary circumstance provision
2 because it authorizes continued grazing without assuring that monitoring will ever
3 occur.

4 Similar to the Casner Park/Kelly Allotment, the Cosnino Allotment conditions
5 monitoring of permittee compliance, allotment inspections, range readiness, forage
6 production, utilization, and long-term trend monitoring on future funding. SOF at 49. It
7 does not contain any fallback requirements should the monitoring funding not materialize.

8 Also as in the Casner Park/Kelly Allotment, the Range Specialist's Report states that
9 monitoring will occur and emphasizes its importance, listing the kind of monitoring that will
10 occur and specifying that this monitoring will guide the Forest Service's "Adaptive
11 Management" grazing scheme. SOF at 50. However, the final decision does not require
12 monitoring in order for grazing to continue. SOF at 51.

13 **B. The Kaibab National Forest: Pine Creek, Seven C-Bar, and Twin Tanks Allotments**

14 1. The Pine Creek Decision violated the Rider because monitoring of both soil and
15 vegetation both show downward trends, away from Kaibab LRMP objectives.

16 The Pine Creek Decision violates the Rider because monitoring shows that under
17 current grazing management, both soil and vegetation are in downward trend. Vegetation at
18 all monitored sites rated as "poor" and all sites had declined since monitoring began in 1967.

19 *a. Soil monitoring shows a consistent downward trend since last measured in 1996, a*
20 *departure from Kaibab LRMP objectives.*

21 The Kaibab Forest Plan directs the Forest to "Maintain soil productivity and
22 watershed condition," to "Rehabilitate non-productive lands on a planned basis to eliminate
23 unsatisfactory watershed condition by 2020," and to "Manage the ground surface layer to
24 maintain satisfactory soil conditions *i.e.* to minimize soil compaction; and to maintain
25 hydrologic and nutrient cycles." SOF at 55.
26

1 Of the 8,374 acres on the allotment, 21 percent (1,791 acres) are in unsatisfactory
 2 condition. PI001142. The Watershed Specialist's Report defines unsatisfactory soils as
 3 those that have "a current rate of erosion that is greater than the tolerance threshold. The
 4 tolerance threshold is **the point at which there is a permanent loss in site productivity.**"
 5 (emphasis added). SOF at 57.

6 With respect to this substantial portion of the grazing allotment that is experiencing a
 7 permanent loss in site productivity, the Specialist's Report states that "trend in soil condition
 8 is up." SOF at 59. However, this conclusion appears to rest upon the fact that the percentage
 9 of bare ground on the allotment has gone down since 1983. ("Trend in range condition is
 10 down since 1983, while trend in soil condition is up. The percentage of bare ground has
 11 gone up since the 1950's in the clusters, but down since 1983.") SOF at 60.

12 However, the monitoring data do not show an upward trend in bare soil unless
 13 reference dates are carefully selected to mask downturns. A table appended to the Range
 14 Specialist's Report shows bare soil monitoring results from five different monitoring sites.
 15 Not all sites were read every year. The relevant bare soil data (in percentages) from that
 16 monitoring are reproduced below:

17

Monitoring Cluster	1952	1957	1967	1977	1983	1996	2007
C1	37	25	23	39	38	34	40
C2		25	17	NR	44	14	19
C3		NR	37	NR	70	22	53
C4		36	19	NR	46	7	17
C5		NR	24	49	42	17	24

18
19
20
21
22
23 SOF at 63.

24 The chart does show, as the Decision Memo states, that bare soil percentages on the
 25 allotment are down since 1983. But bare soil is *up* in every site since 1996. Indeed,
 26 scrutinizing the chart, there is really only one pattern that is consistent, which is that in the

1 ten years prior to the decision in 2007, bare soil has increased. It has increased at every
2 single monitoring point since the last time it was calculated, and in two of the five sites it has
3 more than doubled.

4 Similarly, the same table shows that plant litter has decreased at every single
5 monitoring point since 1996. SOF at 64. (Plant litter is desirable because it protects the
6 soil.⁹) This reflects a consistent downward trend in the ten years prior to the decision that the
7 narratives supplied in the record do not acknowledge because, without discussion, they
8 elected to overlook the 1996 data. But when including, rather than overlooking, the data
9 from the past ten years, monitoring of soil productivity does not show an upward trend at all.

10 The Watershed Specialist's Report states that implementation of the grazing decision
11 “will lead to continued static trend in soil condition,” suggesting that whatever gains were
12 made by 1983 will not be recovered. SOF at 65. On the other hand, the Report
13 acknowledges that if the allotment were not grazed, soil condition would improve with a
14 “slight positive effect . . . on bare ground.” SOF at 66. It also states that, without grazing,
15 “[t]he net cumulative effect on soils of all human activities and natural events will be
16 positive.” SOF at 67.

17 Twenty-one percent of the Pine Creek allotment shows soil conditions that exhibit a
18 “permanent loss in soil productivity,” and bare soil has increased, in some cases
19 dramatically, in the ten years prior to the decision. SOF at 57, 58. Litter has decreased.
20 SOF at 64. Because monitoring does not show that this project is moving toward or meeting
21 Forest Plan objectives to maintain and rehabilitate soil productivity, a categorical exclusion
22 was not warranted for the project.

23
24
25 _____
26 ⁹ “Litter consists of dead, unattached organic material on the soil surface that is effective in protecting
the soil surface from raindrop splash, sheet and rill erosion and is at least 1/2 inch thick.” Forest Service
Handbook 2509.18 2.05 Appendix A, Glossary

1 *b. Vegetation monitoring shows vegetation condition to be “Poor” in all monitored*
2 *sites in 2007; all have declined in the past 40 years and three out of five monitored sites*
3 *have declined since they were last measured in 1996.*

4 The Kaibab Forest Plan directs the Forest Service to correct “less than satisfactory
5 range conditions” by implementing proper range management, and notes that a “downward
6 trend in range condition indicates a problem allotment.” SOF at 56.

7 Here, range condition is considered “poor” and has fallen consistently since the late
8 1960's, but no change in management is contemplated. SOF at 72,

9 The Decision Memo prepared for the Pine Creek Allotment states that “[f]ive
10 monitoring transects were established on the Pine Creek Allotment in 1952 and 1957. . . . All
11 monitoring sites have either remained static or had an upward trend since being established.”
12 SOF at 70, 71. This statement is theoretically true if by “since being established” is meant
13 that the trends in the intervening 65 years since 1952 are to be ignored. Vegetation values
14 have improved, at least slightly, since that time (notably, all were rated “poor” then, and all
15 are rated “poor” today). SOF at 74.

16 However, the data and the reports prepared for the decision tell a significantly more
17 complicated story. Vegetation at all five monitored sites received “poor” ratings in 2007.
18 SOF at 72. Three of the five sites have declined since 1996 and all sites but one have
19 declined since 1983. SOF at 72, 73. In fact, the steepest declines date from 1967, the last
20 time each transect from C1 through C5 was read. In 1967, all sites were in either “Fair” or
21 “Good” condition, but by 2007 every site rated “Poor” again, just as it had over fifty years
22 ago. SOF at 74. The gains realized in the late 1960's have long since been lost.

23 The Range Specialist's Report for the Pine Creek Allotment agrees that “trend in
24 range condition is down since 1983.” SOF at 75.

25 The Watershed Report gives more substance to the numbers: it states that “today there
26 is less cover of a cool season bunchgrass, less cover of a warm season bunchgrass, and there
is lower plant diversity. . . . The allotment has less plant diversity compared to the TES.”

1 SOF at 76. (“TES” is the Terrestrial Ecosystem Survey, performed from 1976-1986.
2 PI00137.) The report finds that if the allotment were rested from further grazing, plant
3 diversity will improve, and less productive soils on the allotment “will have more shade and
4 litter from the increased plant canopy. Soil fertility will increase and the microclimate will
5 be moderated.” SOF at 77. It states that removal of livestock grazing “could lead to an
6 increase in the ability of all plants to compete, grow, and set seed. Newly emerged seedlings
7 will not be trampled, so they will have a higher rate of survival.” SOF at 78. However,
8 under the proposed plan to continue grazing, there would be a “[n]eutral to slight negative
9 effect to plant species diversity, perennial forb cover, perennial grass and cold season plant
10 diversity and density.” SOF at 79.

11 Thus, the action selected by the Forest Service will contribute to the continued decline
12 in plant diversity, soil productivity, and plant density, assuring its maintenance in the “poor”
13 category. Because monitoring does not show that the action is meeting Forest Plan
14 objectives to correct less than satisfactory range conditions.

15
16 2. The Seven C-Bar Decision violated the Rider because range condition has declined
17 from “Fair” to “Very Poor” since 1984, away from Kaibab LRMP objectives.

18 The Seven C-Bar decision violated the Rider because monitoring shows that range
19 condition has declined from “Fair” to “Very Poor” since 1984 but no changes in
20 management have been called for to correct the problem.

21 The Kaibab Forest Plan directs the Forest to correct “less than satisfactory” range
22 conditions.” SOF at 56. It states that rangeland in downward trend signifies “a problem
23 allotment.” SOF at 56. The Decision Memo for the project says that “One monitoring
24 transect was established on the Seven C Bar Allotment in 1963. This site has either
25 remained static or had an upward trend since being established.” SOF at 85.
26

1 But in fact trend has been downward at this transect (in the one location at which it
 2 was measured prior to 2007) since 1969, and considerably downward since 1984, the last
 3 time it was read prior to this analysis. SOF at 82, 86. The results of the monitoring are
 4 displayed below:

<u>Year</u>	<u>Rating</u>	<u>Condition</u>	
1963	14	Very Poor	
1969	27	Poor	
1984	44	Fair	
2007	17	Very Poor	SOF at 87.

10 This rangeland, rated “Very Poor,” would seemingly qualify as “less than
 11 satisfactory,” and it has fallen two full categories from Fair to Poor to now Very Poor since
 12 last read in 1984. According to the Range Specialist's Report, “[t]he results of the 2007
 13 monitoring indicate an overall static trend in range condition,” but monitoring does not show
 14 range condition to be static: on the contrary, it is demonstrably downward. SOF at 88. In
 15 fact, it has fallen two categories to the lowest rank of “Very Poor” and has a rating less than
 16 half what it did since the previous reading.

17 Contrary to what the Specialist's Report and the Decision Memo conclude, the
 18 monitoring does not suggest that the allotment is meeting or moving toward Forest Plan
 19 standards, as the Rider requires. Rather, it suggests this is a “problem allotment” that calls
 20 for changes in management, and for which the range problems need to be corrected.
 21 Consequently, the allotment did not warrant evaluation in a categorical exclusion.

22
 23 3. The Twin Tanks Decision violated the Rider because range condition has declined
 24 and is not meeting Kaibab LRMP objectives.
 25
 26

1 The Twin Tanks Decision violated the Rider because both range and soil condition in
 2 a substantial part of this allotment are in downward trend, and not meeting Kaibab Forest
 3 Plan objectives.

4
 5 *a. Vegetation monitoring shows vegetation condition to be “Fair” or “Poor” on all*
 6 *monitored sites, nearly half of which were in downward trend and none of which were in*
 7 *upward trend.*

8 One monitoring site was established on the allotment, in 1960, but was read only that
 9 year. SOF at 92. Eleven more were established and read in 2007. SOF at 93. According to
 10 the Decision Memo, “all monitoring sites have either a static or upward trend.” SOF at 94.

11 At the time of the 2007 monitoring, seven of the eleven monitored sites were in
 12 “Poor” vegetative condition and four were in “Fair” condition. SOF at 95. Although the
 13 Range Specialist's Report does not disclose the actual trends found during the monitoring,
 14 and although the Decision Memo erroneously characterizes all sites as having a “static or
 15 upward trend,” the survey sheets in the administrative record display the trend at each site
 16 and they do not record any upward trends. SOF at 94. On the contrary, five sites are in
 17 downward trend and the remaining six are static. Vegetation trends from the survey sheets
 18 are reproduced below:

<u>Transect</u>	<u>Condition Score</u>	<u>Condition Class</u>	<u>Trend</u>
19 P1	39	Poor	Static
20 P2	27	Poor	Static
21 P2-8	44	Fair	Downward
22 P2-9	35	Poor	Downward
23 P3	34	Poor	Static
24 P3-10	41	Fair	Static
25 P4	43	Fair	Downward
26 P4-11	45	Fair	Downward

1	P5	35	Poor	Static
2	P6	35	Poor	Downward
3	P7	38	Poor	Static

4 SOF at 97.

5 The survey sheets show that a majority of this rangeland is in poor condition, and
6 nearly half of it is getting worse. All but one of the fair sites are trending toward poor, and
7 even two of the sites in poor condition show downward trend.

8 In sum, because no sites are in upward vegetation trend and over half of the
9 monitoring transects indicated poor condition rangeland, this allotment is not suitable for
10 evaluation in a categorical exclusion. Monitoring is not showing that the allotment is
11 satisfactorily meeting or moving toward Forest Plan objectives.

12 *b. Soil monitoring shows over half the sites to be in either “Fair” or “Poor”*
13 *condition and in downward trend.*

14 Soil monitoring shows essentially the same trends as vegetation monitoring on this
15 allotment.

16 Of the 11,938 acres on the Twin Tanks Allotment, 1,442 are in unsatisfactory
17 condition, indicating a permanent loss in soil productivity. SOF at 98.

18 The Range Specialist's Report displays the soil condition scores, but again does not
19 display their trend, even though trend was monitored and recorded on the survey sheets.
20 SOF at 99, 100. The Range Specialist's Report characterizes the allotment monitoring to
21 show an “upward trend in soil condition,” but the survey sheets do not support this. SOF at
22 101, 102. The survey sheets show six sites—P1, P2-8, P2-9, P3-10, P4-11, and P6—to have
23 downward trend. SOF at 102. Significantly, all of the downward trending sites are already
24 in either Fair or Poor condition. SOF at 103.

1 In sum, six of the eleven sites, a majority, are in fair or poor condition, and all are in
2 downward trend. Monitoring thus does not show that this rangeland is meeting or moving
3 toward satisfactory condition, and categorical exclusion was not warranted.
4

5 **C. The Prescott National Forest: Chino Valley and V-Bar Allotments**

6 Three grazing allotment decisions are challenged on the Prescott National Forest: the
7 Chino Valley, V-Bar, and Yolo North Allotments.
8

9 1. The Chino Valley decision violated the Rider's monitoring and extraordinary
10 circumstance provisions because nearly half the allotment is in "Impaired" soil
11 condition and monitoring shows that current management is contributing to decreased
12 soil productivity, a departure from the Prescott LRMP.

13 The Prescott National Forest Forest Plan calls for land managers to "[p]rotect and
14 improve the soil resource" and to "[r]estore all lands to satisfactory watershed condition."
15 SOF at 106. Livestock grazing is to be managed "to achieve soil and water protection
16 objectives." SOF at 107.

17 Forty-six percent of the allotment (1,553 acres) is classified as having "impaired"
18 soils. SOF at 108. Of these impaired lands, 1,059 were field verified. SOF at 109. The
19 impaired sites had "low litter amounts, undesirable vegetative composition, and evidence of
20 erosion."SOF at 110. On the field-verified area three sites were found to be "impaired": one
21 was in upward trend, one in downward trend, and one had no apparent trend. SOF at 111.

22 The Soils Report states that "[f]ield review shows that there is evidence that current
23 management is contributing to decreased soil productivity" in the field verified acres. SOF at
24 112. It concludes that recovery could occur with rest periods or deferment from grazing on
25 these acres. SOF at 113. The Report calls for allotment managers to "take these impaired
26 areas into account and adapt their management" in order to move the areas toward forest
standards. SOF at 114.

1 However, the Decision Memo authorizes continued management with no requirement
2 for changes and the record does not explain how the current management will cease
3 contributing to decreased soil productivity without such changes. SOF at 115. In fact, it
4 declares that “[s]oil inspections indicate that there is **no need** to change management as
5 conditions on the allotment are meeting or moving toward the Forest Plan desired
6 conditions.” (Emphasis added). SOF at 116. In light of the findings of the Soil Specialist's
7 Report, this statement does not appear to be wholly true.

8 Because a substantial part of the allotment is not in satisfactory condition and the
9 specialist who reviewed the area called for management changes in order to meet Forest Plan
10 Standards, this allotment does not meet the Rider's requirements and a categorical exclusion
11 is not justified.

12 2. The V-Bar Decision violated the Rider's monitoring provisions because monitoring
13 shows soil not to be meeting or moving toward Prescott LRMP objectives and to be
14 impairing riparian areas as well as soil productivity on the allotment.

15 The Prescott Forest Plan directs the Forest to “integrate wildlife habitat management
16 activities into all resource practices through intensive coordination,” “support the goals and
17 objectives of the Arizona Wildlife and Fisheries Comprehensive Plan,” “protect and improve
18 the soil resource,” “restore all lands to satisfactory watershed condition,” and “improve all
19 riparian areas and maintain in satisfactory condition.” SOF at 120. With respect to
20 rangeland administration specifically, the Forest is directed to “manage livestock grazing to
21 achieve soil and water protection objectives.”SOF at 121.

22 Of the 20,736 acres on the V-Bar Allotment, 9,778 acres, or 45 percent of the entire
23 allotment, are rated as “Impaired.” SOF at 122.

24 Nearly all of the 9,778 acres of impaired lands (9000 acres) were field verified across
25 14 sampling sites. SOF at 124. Nine of the sample sites showed low litter amounts and
26 undesirable vegetation. SOF at 125. Litter protects the soil, holds in moisture, aids in

1 nutrient recycling, and protects from erosion. SOF at 126. Six of these sites also were rated
2 as either “Impaired” or “Unsatisfactory” owing to rills, gullies, and pedestaling—all
3 “excessive erosion indicators.” SOF at 127. Pedestaling occurs “when fine materials begin
4 to erode away and coarse fragments remain, suspended on pedestals.” SOF at 128.

5 Six of the fourteen sites had a downward trend, one had an upward trend, and seven
6 had no apparent trend. SOF at 129. According to the Range and Watershed Specialist's
7 Report, “[t]hese trends are based on observations of very little litter and evidence of erosion
8 above tolerance levels occurring.” SOF at 130. The Field Review Team also noticed
9 “several side channels with gully formation and signs of widespread erosion.” SOF at 131.
10 The Soils and Watersheds Report contains a table that identifies bare ground levels at the
11 sites visited. 132. Only three of the fourteen monitoring sites had bare ground levels lower
12 than 30 percent. SOF at 133. The remaining eleven sites showed bare ground levels as high
13 as 70 percent, and eight of the sites were at 50 percent or more. SOF at 134.

14 In sum, the impaired soil monitoring shows that in large part these soils are not
15 meeting objectives, not improving, and in many cases getting worse. There is almost no
16 evidence of improvement other than one site out of fourteen that is improving, versus seven
17 that are not improving and six more that are getting worse.

18 The Field Team also verified about 11,000 acres of soils characterized as
19 “Satisfactory.” SOF at 135. They examined twelve sites. SOF at 136. Importantly, even
20 these twelve sites on the “Satisfactory” lands also showed bare ground significantly higher
21 than the target levels. Of the twelve monitored sites, seven showed bare ground levels of 40
22 percent or higher. SOF at 136. Four of the twelve sites had a downward trend and the
23 remaining eight did not show a trend either way. 137. Thus, even in the satisfactory sites,
24 there is no sign of improvement where soils are not meeting the Forest Plan or project
25 objectives.
26

1 Bare ground was also a concern of the Arizona Game and Fish Department, whose
2 Region VI Supervisor wrote to the Forest Service to express the Department's "concerns with
3 current drought, livestock management, recurring degradation of grassland and wildlife
4 habitat characteristics under current management" of the allotment. 138. The Department
5 was particularly concerned about the area's importance for pronghorn, which the Department
6 characterized as "historically of high value." 139. The V-Bar allotment is "an important
7 fawning area for pronghorn" but "pronghorn survey counts in the area are not what they used
8 to be." SOF at 140. The Department noted that the Forest Service "understates the need to
9 improve grassland habitat quality" in the area, and that impaired range productivity and
10 wildlife habitat were "exacerbated by livestock grazing." SOF at 141. The Department
11 recommended the Forest Service prepare an environmental assessment for the allotment in
12 order to address these issues. SOF at 142. It also stated that the Forest Service
13 documentation "understates the need to improve grassland habitat quality and wildlife
14 population trends." SOF at 143.

15 The Department also alerted the Forest Service that "pronghorn survey data suggests
16 that current management is not meeting the goals and objectives for pronghorn management
17 as stated in the Arizona Wildlife and Fisheries Comprehensive Plan and the Prescott Forest
18 Plan." SOF at 143.

19 Riparian areas on the allotment were also evaluated by the Forest Service. Of the 7.4
20 miles of stream assessed, 2.73 miles were found to be in "Proper Functioning Condition,"
21 2.01 miles were found to be "Functioning at Risk" (although with upward trend), and 2.66
22 miles were classified as "Non-Functional." SOF at 144. A "Non-Functional" stream
23 segment is one where the riparian ecosystem is "clearly . . . not providing adequate
24 vegetation, landform, or woody debris to dissipate energies associated with flow events."
25
26

1 SOF at 145. A stream segment that is “Functional-at-Risk” is one which is “susceptible to
2 degradation” because of “an existing soils, water, or vegetation attribute.” SOF at 146.

3 The “Non-Functional” streams on the V-Bar Allotment “have little sinuosity and the
4 plants present do not show evidence of creating stability in the stream channel bottoms. . . .
5 [T]he streams show evidence of degradation (downcutting).” SOF at 147. The cause of this,
6 according to the Forest Service specialists, is exactly what the Department of Fish and Game
7 noted and complained of in its letter degraded vegetation on the uplands: “Impaired upland
8 conditions are creating increased runoff with the result being increased peak flows in the
9 riparian zone. These riparian zones are not capable of handling the increased flows and
10 overall deterioration has been the result.” SOF at 148. In other words, the bare ground
11 noted in the 9,000 acres of impaired lands and elsewhere is causing excessive surface flows
12 during rain events, with water flowing more quickly off the ground and off the allotment,
13 and damaging the natural streamcourses.

14 Of the impaired lands, the Range and Watershed Report states that “there is some
15 evidence that current management is contributing to decreased soil productivity in [the 9,778
16 acres of impaired lands].” SOF at 149. Because of this, the Specialist Report states that the
17 non-functional stream segments “*will improve with changes in management, namely rest*
18 *periods for the contributing uplands.*” (Emphasis added.) SOF at 150.

19 Notably, these riparian areas are used by livestock. For example, according to the
20 Fisheries Specialist's Report, a two-mile reach of Little Ash Creek occurs on the V-Bar
21 Allotment, and “is used by livestock in a short duration/high intensity grazing system.” SOF
22 at 151. A similar 0.5 mile stretch of Dry Creek on the allotment is also grazed in this
23 fashion. SOF at 152. Government Springs is also grazed with the V-Bar Allotment.
24 Grazing along Little Ash Creek, Government Springs, and Dry Creek causes “short term
25 impacts to streambanks, riparian vegetation, and water quality because of trampling, grazing,
26

1 and animal waste.” SOF at 153. However the Specialist's Report acknowledges that “if
2 grazing were ceased along these riparian areas, there would be “increased riparian vegetation
3 to filter watershed runoff and capture sediments.” SOF at 154. This would lead to “long-
4 term” enhancement of the existing condition at the sites. SOF at 155.

5 This allotment is very clearly not meeting its Forest Plan objectives to protect soils,
6 watersheds, and riparian areas—the Forest Service's own specialists call for changes in
7 management and note the need for more rest, as well as the widespread issues of bare soil.
8 The Arizona Department of Game and Fish openly accused the Forest Service of violating its
9 Forest Plan and overlooking the bare soil issues on the allotment, at the expense of Arizona's
10 pronghorn herd. However, none of this material made it into the Decision Memo, which
11 called for no changes in management and stated that “[m]onitoring of . . . resource
12 conditions have been used to determine that management is being properly implemented and
13 that actions have been effective at achieving or moving toward desired conditions as
14 described in the Prescott National Forest Land and Resource Management Plan.” SOF at
15 156. Because the documents prepared for the decision do not support this statement, and
16 because the project monitoring does not show the project to be moving toward or meeting
17 Forest Plan objectives, the categorical exclusion was improper, and an environmental
18 assessment is required.

19 **Conclusion**

20 The Forest Service has not demonstrated that it has met the requirements of the 2005
21 Rider for the eight categorical exclusions challenged here. Instead of carefully selecting
22 allotments that have negligible environmental concerns, the Forest Service used the Rider in
23 these instances to authorize grazing in conditions that warranted a more careful assessment;
24 because of this, the Forest Service was compelled to ignore or mischaracterize important
25 monitoring data and overlook important resource concerns.
26

