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6
7 IN THE UNITED STATES DISTRICT COURT

8 FOR THE DISTRICT OF ARIZONA

9
10 Western Watersheds Project, a non-profit

11 organization,

12 Plaintiffs,

13
14 vs.

15
16 Scott Cooke, Field Manager of the Safford Field

17 Office of the Bureau of Land Management; and

18 Bureau of Land Management,

19
20 Federal Defendants.

No.

COMPLAINT

21
22
23
24 **INTRODUCTION**

25
26 1. The Badger Den allotment is unique among the many allotments in the Safford Field
27 Office of the Bureau of Land Management in that it has not had authorized livestock grazing in
28 almost 30 years. The allotment has been the focus of aquatic habitat restoration efforts by the

1 Bureau of Land Management and the planned repatriation of native fish, including the Gila
2 topminnow (*Poeciliopsis occidentalis*), roundtail chub (*Gila intermedia*), and desert pupfish
3 (*Cyprinodon macularius*), to the 423-acre Sands Draw livestock enclosure. The entire allotment
4 provides potential habitat for a variety of native wildlife species such as the Sonoran green toad
5 (*Bufo retiformis*), the Western burrowing owl (*Athene cunicularia hypugaea*), javelina (*Tayassu*
6 *tajacu*), desert ornate box turtle (*Terrapene ornata*), banner-tailed kangaroo rat (*Dipodomys*
7 *spectabilis*), and native plants including bush muhly (*Muhlenbergia porteri*), black grama
8 (*Bouteloua eriopoda*), and wolfberry (*Lycium pallidum*), among many others. Its 47,000 acres
9 represent a rare and unique opportunity for restoring Arizona's grasslands to their former
10 ecological health. Soil erosion has been a significant concern since at least the 1930s throughout
11 the San Simon Valley, in which this allotment is located.

14 2. Western Watersheds Project ("Plaintiff" or "WWP") brings this lawsuit against the
15 above named Federal-Defendants (the Bureau of Land Management ("BLM") or "Defendant") to
16 challenge the June 19, 2018 decision by the BLM's Field Manager of the Safford Field Office, Mr.
17 Scott Cooke, to authorize the transfer of a non-existent livestock grazing permit for the Badger
18 Den grazing allotment using a Categorical Exclusion ("CX") and issue a livestock grazing permit
19 before notifying the public in violation of the National Environmental Policy Act ("NEPA"), the
20 Administrative Procedures Act ("APA"), 5 U.S.C. § 706, and the Federal Land Policy
21 Management Act ("FLPMA"), and BLM regulations.

24 3. This case also challenges the BLM Field Manager's decision to authorize the repair of
25 range improvements including fences and a well as part of the above-mentioned livestock grazing
26 authorization and to facilitate the unlawfully-authorized livestock grazing on the Badger Den
27 allotment.

JURISDICTION AND VENUE

1
2 4. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises
3 under the laws of the United States, including NEPA, the APA, and the Equal Access to Justice
4 Act (“EAJA”), 28 U.S.C. § 2412 *et seq.* Plaintiffs thus seek judicial review of final administrative
5 actions of the BLM Field Manager. *See* 5 U.S.C. § 704 (actions reviewable). An actual, justiciable
6 controversy exists between the parties, and the requested relief is therefore proper under 28 U.S.C.
7 §§ 2201-02, and 5 U.S.C. § 701-06.

8
9 5. Venue is proper in the United States District Court for the District of Arizona pursuant
10 to 28 U.S.C. § 1391(e)(1) because the statutory violations alleged herein all occurred within the
11 state of Arizona, defendants Bureau of Land management reside in this district, and the public
12 lands and resources and agency records in question are located in this district, and Plaintiffs have
13 members, staff, and an office located in this district.

14
15 6. The federal government has waived sovereign immunity in this action pursuant to 5
16 U.S.C. § 702.

17
18 7. Plaintiff has Article III standing to bring this action because it is directly injured by the
19 procedural and substantive violations of federal laws alleged herein, which are redressable by this
20 Court.

21 8. Plaintiff is directly injured by the BLM’s failure to regulate livestock grazing in a manner
22 that will protect the resources on the Badger Den allotment and will comply with the NEPA.

23 9. Plaintiff is directly injured by the BLM’s failure to properly engage the public in the
24 NEPA process according to applicable laws and regulations.

25
26 10. Plaintiff is directly injured by the BLM Field Manager’s unlawful decisions that (1) the
27 grazing permit existed, (2) could be transferred, and (3) that doing so will have no significant
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1 impact on the environment or impair the resources found on the Badger Den allotment.

2 11. Plaintiff's injuries would be redressed if this Court (1) reversed and vacated the BLM's
3 decision to use a Categorical Exclusion to transfer a non-existent livestock grazing permit and
4 authorize livestock use of the Badger Den allotment, (2) declared the use of a Categorical
5 Exclusion to transfer a non-existent livestock grazing permit to be unlawful, and (3) ordered the
6 BLM to complete a legally adequate NEPA analysis and complete a legally adequate NEPA
7 process before issuing any permit for livestock grazing. Unless judicial relief is granted, Plaintiff
8 will continue to suffer irreparable harm to their interests from unlawful livestock grazing on the
9 Badger Den allotment.
10

11 **PARTIES**

12
13 12. Plaintiff WESTERN WATERSHEDS PROJECT (WWP) is a non-profit corporation
14 dedicated to protecting and conserving the public lands and natural resources in Arizona and the
15 West. Since its inception, WWP has advocated to curb ecological abuses of public lands from
16 domestic livestock grazing throughout the West, including in Arizona. WWP undertakes a wide
17 range of activities including education, advocacy, scientific study, and litigation in order to protect
18 and restore natural ecosystems, often through reducing the effects of harmful livestock use, and to
19 communicate to the public and policy-makers about the values of native biodiversity and
20 associated landscapes in Arizona. WWP has over 9,500 members and supporters. WWP and many
21 of its members and supporters have long-standing interests in preserving and conserving native
22 ecosystems, including native plants and animals and other natural resources, in the area of public
23 land managed by the Safford Field Office in Arizona. WWP brings this action on behalf of itself,
24 its members, and its supporters.
25
26

27 13. WWP's members use and enjoy public lands in and throughout Arizona, including the
28

1 area managed by the Safford Field Office, for a variety of purposes, including scientific study,
2 recreation, wildlife viewing, and aesthetic appreciation. Ms. Greta Anderson, an employee and
3 member of WWP, has visited the Badger Den grazing allotment. Ms. Anderson did visit the area
4 in November 2019 and intends to return to this area and will do so within the next year. While
5 there, Ms. Anderson engages in many activities, including, but not limited to, birdwatching, plant
6 observation, scientific study, enjoyment of solitude, and enjoyment of the natural and untrammled
7 qualities of this area. WWP brings this action on its own behalf and on behalf of its members.
8

9 14. The unlawful decisions by the BLM and the BLM Field Manager threaten irreparable
10 harm to native plants and animals including the Western burrowing owl, peregrine falcon, the
11 lesser long-nosed bat, savannah sparrow, and native plants, all of which Plaintiff values and enjoys,
12 further harming Plaintiff's interests.
13

14 15. The unlawful decisions by the BLM and Manager Cooke also threaten irreparable harm
15 to a wildlife restoration project, biological soil crusts, and riparian and water resources, all of which
16 Plaintiff values and enjoys, further harming Plaintiff's interests.
17

18 16. WWP and its members' recreational, scientific, inspirational, educational, aesthetic,
19 and other interests have been directly and irreparably harmed, and continue to be affected and
20 harmed, by BLM's use of a Categorical Exclusion to transfer a non-existent permit for livestock
21 grazing on the Badger Den allotment. These are actual, concrete injuries to WWP and its members
22 that would be redressed by the relief sought herein.
23

24 17. Defendant SCOTT COOKE is sued in his official capacity as the BLM Field Manager
25 for the Safford Field Office of the BLM's Gila District Office in Arizona. In exercising his
26 authority as BLM Field Manager, Mr. Cooke is the federal official with responsibility for
27 authorizing livestock grazing in the Safford Field Office.
28

1 18. Defendant BUREAU OF LAND MANAGEMENT (BLM) is an agency of the United
2 States within the Department of the Interior charged with managing livestock grazing on the
3 Badger Den allotment according to federal statutes and regulations. BLM oversees livestock
4 grazing as well as the protection of natural resources.

5
6 **STATEMENT OF FACTS**

7 **A. FACTUAL BACKGROUND**

8 ***1. The BLM Canceled the Badger Den Allotment Grazing Permit in 1991***

9 19. The Badger Den allotment is located approximately seven miles north of Bowie,
10 Arizona and is comprised of 11 pastures covering approximately 47,000 acres of BLM
11 administered lands, in addition to 1,300 acres of private lands.

12
13 20. The Klump family has a long history of conflict with the BLM. Mr. Wallace Klump,
14 Mr. Levi Klump's father, lost his grazing privileges on the Badger Den allotment in 1991 after
15 repeated and willful instances of trespass use of BLM lands for livestock grazing, in violation of
16 BLM regulations. In 1991, the BLM canceled the former permittee's livestock grazing permit
17 using the provisions at 43 C.F.R 4170.1-1(b). The details of the cancelation are relevant to this
18 case because, at the time, the permittee was Mr. Wallace Klump and the permit was canceled
19 because he repeatedly allowed his cattle to graze in protected areas expressly prohibited by the
20 grazing permit. Mr. Wallace Klump repeatedly appealed BLM decisions to revoke his grazing
21 permit, arguing, among other things that the Taylor Grazing Act was unconstitutional and the
22 BLM land upon which Mr. Wallace Klump's livestock grazed actually belonged to him as his
23 personal real estate because his ancestors had grazed livestock in the area since 1880. *See Klump*
24 *v. United States*, No. Civ. 93-302 TUC RMB (D. Ariz. Apr. 25, 1994), *aff'd*, 43 F.3d 1479 (9th
25 Cir. 1994).
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27
28

1 21. Since 1991, the Badger Den allotment has been classified as in “non-use” for
2 livestock grazing and no authorized livestock grazing has occurred until the present action.

3 **2. The BLM Initiated a Restoration Project on the Unused Allotment in 2010.**

4 22. In 2010, nineteen years after livestock had officially been removed from the Badger
5 Den allotment, the BLM requested formal consultation with the U.S. Fish and Wildlife Service
6 regarding plans to restore a 423-acre riparian area on the allotment known as the Sands Draw
7 Exclosure, originally constructed in the 1980s. The BLM’s proposal included removal of
8 invasive species of plants, pond maintenance, and the reintroduction of three species of fish
9 listed as endangered under the Endangered Species Act (16 U.S.C. § 1521 *et seq.*): the Gila chub,
10 Gila topminnow, and desert pupfish.
11

12 23. The responding US Fish and Wildlife Service’s 2011 Biological Opinion clearly
13 stated the “[g]razing privileges on this allotment were canceled by the Safford Field Office for
14 failure of permittee to follow grazing regulations.” The 2011 Biological Opinion also stated that
15 there was “no grazing on the allotment” but acknowledged that grazing privileges may be
16 reinstated or transferred at a later date. *Id.*
17

18 24. According to the 2011 Biological Opinion, and as part of the Sands Draw Exclosure
19 restoration project, no livestock use within the exclosure would be permitted, though trespass
20 livestock was acknowledged as possible.
21

22 25. According to the 2011 Biological Opinion trespass livestock “could trample and ingest
23 fish eggs and larvae, or injure or kill eggs or larvae by stepping on them[,]” “[I]ivestock grazing
24 and trampling can affect fish by altering the shape and form of the aquatic habitat, riparian soils
25 and vegetation composition, density, and structure[,] and “alter water quality, quantity, and flow
26 patterns...”
27
28

1 26. The 2011 Biological Opinion noted that [w]etlands can be affected by grazing in the
2 watershed.

3 27. Effects of cattle grazing on watersheds include alterations of vegetation communities,
4 increased soil erosion and runoff, decreased infiltration rates, damage to cryptobiotic crusts, and
5 increased soil compaction.
6

7 28. The degradation of watersheds can cause downcutting, loss of perennial flow, loss of
8 riparian vegetation, increased sedimentation, and higher peak flows.

9 ***3. The BLM Began a NEPA Process to Permit Grazing on the Badger Den Allotment***
10 ***in 2010.***

11 29. WWP first became aware of the BLM's plan to authorize livestock grazing on the
12 Badger Den allotment in 2010, when BLM provided a notice to WWP of its intent to prepare an
13 Environmental Assessment (EA) to authorize livestock grazing on the Badger Den Allotment (and
14 21 other allotments). In response, WWP asked the BLM to complete an Environmental Analysis
15 for each of the allotments because of issues related to drought, decline of wildlife species, invasive
16 species infestations, and the changing socio-economic conditions in the Safford area.
17

18 30. Despite a specific request to be kept on the list of interested public for this allotment,
19 BLM did not communicate again with WWP regarding the Badger Den allotment until April 2019.
20

21 31. However, and without notice to WWP, on May 13, 2013, the BLM prepared a "NEPA
22 Supplement for Biological Assessment and ESA Compliance" which indicated "the holder of the
23 base waters on the Badger Den allotment has applied for livestock use." According to this
24 document, the BLM was "considering his request and an allotment transfer into his name."
25

26 32. The Biological Assessment does not identify the holder of the base waters nor the
27 applicant referenced in the NEPA supplement.
28

1 33. BLM staff had been made aware of this application earlier in the same month, and their
2 input on the action was solicited on May 15, 2013.

3 34. In response, the BLM Natural Resource Specialist indicated their concern about the
4 Badger Den allotment due to past issues and the current condition of the San Simon watershed.
5 The Natural Resource Specialist's concerns included loss of topsoil, ongoing and active erosion,
6 and a need to determine what uses were compatible prior to authorizing livestock use as well as
7 the need to complete an upland health assessment and forage assessments before issuing a permit.

8 35. In a May 23, 2014 memo from BLM Fisheries Biologist to the Range Management
9 Specialist, the 2013 grazing application was discussed in some detail, including ongoing trespass
10 livestock through February 2009. The memo also discussed the erosion in the area of the allotment
11 and recommends a Land Health Assessment be completed, including an analysis of carrying
12 capacity, which "is critical as Badger Den allotment has areas with active erosion and large
13 denuded areas that need to be deferred from grazing if land health standards are to be met." The
14 memo noted that in 2001 the BLM determined the San Simon watershed (where the Badger Den
15 allotment is located) was one of the top ten watersheds in need of restoration and also expressed
16 concern about the "need to consider the impacts of drought on stocking level as drought affects
17 forage production and vegetative communities, whether they are grazed or not."
18

19 36. Non-native, invasive plant species have invaded the San Simon watershed, including
20 throughout the Badger Den allotment.
21

22 37. Past livestock grazing has contributed to the extent of non-native, invasive plant species
23 in the San Simon watershed, including the Badger Den allotment.
24

25 38. On July 30, 2015, Mr. Levi Klump called the BLM about the "status of the Badger Den
26 permit" and requested that the Field Office managers schedule time to "talk about the CX
27
28

1 [Categorical Exclusion] option.”

2 39. Categorical Exclusions are categories of actions that agencies have determined do not
3 individually or collectively have significant effect on the environment and when agencies make
4 decisions based on a categorical exclusion they rely upon much less documentation than when
5 proceeding using and EA or EIS.
6

7 40. On October 6, 2015, the BLM Assistant Field Manager identified the Badger Den
8 allotment as a “priority” for the Field Manager and indicates the BLM plans to prepare an EA for
9 the allotment, and that a decision was made by “leadership” that it would be a good idea to “re-
10 scope” the Badger Den allotment.
11

12 41. In October 2016, the BLM was still planning to prepare an EA for the Badger Den
13 allotment, and planning a field trip to visit the Badger Den allotment with a variety of BLM staff
14 and resource specialists.
15

16 42. In November 2016, BLM staff communicated their concerns about the extent of bare
17 ground and active erosion on the Badger Den allotment, referencing memos shared with BLM staff
18 in 2013 that documented these same concerns as well as the need to complete upland health
19 assessments, forage assessments, and to identify any resource issues and management
20 prescriptions that would “work towards meeting any standards that the allotment may not be
21 meeting.”
22

23 43. BLM staff recommended that, prior to the field visit, the BLM ensure the proposed
24 monitoring sites are representative of the allotment, that a plan for addressing missing key species
25 at some of the sites was developed, and that the extensive areas of bare ground on the allotment be
26 acknowledged in the report and a plan developed for improving these areas.
27

28 44. By August 2017, the BLM had classified the Badger Den Allotment as an allotment in

1 the “Improve” category and identified the permittee as “Klump.”

2 45. Allotments in the “improve” category may have serious resource conflicts, or their
3 resource production is below its potential under present management. These allotments have
4 potential to improve, or have conflicts, that can be resolved through changes in grazing
5 management or investments in range improvement projects.
6

7 46. On November 16, 2017, a BLM Rangeland Management Specialist created a NEPA
8 number for the Badger Den Allotment. This Range Management Specialist was then told by the
9 BLM Assistant Field Manager that “[i]n hindsight it would have been better to wait” to create the
10 NEPA number until after the NEPA meeting for that allotment but “[n]ow that there is a NEPA
11 number I need you to work with RJ Tuesday and come up with a memo to the file on why we are
12 moving forward with a transfer as well as all our agreements in his [sic] we are proceeding
13 forward.” The Range Management Specialist then stated that he could just delete the NEPA
14 number.
15

16 47. On November 21, 2017, BLM law enforcement notified BLM range staff and the Field
17 Managers that “[p]er this mornings [sic] NEPA meeting, we (LE) are available to assist in the
18 monitoring of the introduction of cattle and range improvement repairs on the Badger Den
19 allotment.”
20

21 48. On November 28, 2017, the BLM Planning & Environmental Specialist emailed the
22 BLM Field Manager and the Assistant Field Manager indicating the Badger Den Permit Renewal
23 EA (2014-0022-EA) had been withdrawn from ePlanning, with the following note: “This project
24 has been withdrawn. The grazing permit renewal process for this allotment will occur at a time to
25 be determined.”
26

27 49. Notes from an April 10, 2018, BLM Safford Field Office NEPA Bimonthly Meeting
28

1 document the BLM’s discussion regarding the possible use of a Categorical Exclusion to transfer
2 the canceled and now non-existent grazing permit that was held prior to 1991 by Mr. Wallace
3 Klump to Mr. Levi Klump. In these notes, BLM notes “[t]here are still scenarios where the
4 agreements could fall apart and/or face legal challenges[,]” and “[t]his remains a priority for
5 District staff[,]” and “[t]here is a concern at the District level over legal challenges.”
6

7 50. Nonetheless, on June 4, 2018, the BLM Project Lead signed a Categorical Exclusion
8 NEPA Compliance Record authorizing the use of the Categorical Exclusion to transfer the non-
9 existent permit.

10 51. On June 19, 2018, the BLM Field Manager signed the NEPA Compliance Record
11 Decision authorizing the use of the Categorical Exclusion to transfer the non-existent permit.
12

13 52. On June 22, 2018, the BLM Field Manager issued a grazing permit to Mr. Levi Klump
14 for the Badger Den Allotment, authorizing 1,776 Animal Unit Months from June 11, 2018 through
15 February 23, 2028 with the same terms and conditions as the canceled grazing permit that was held
16 by his father 27 years prior.
17

18 ***4. The BLM began discussing additional infrastructure needs for the allotment in 2018***

19 53. On July 3, 2018, BLM and Mr. Levi Klump on July 3, 2018 discussed range
20 improvements and the need to get the Arizona Game and Fish Department involved to help with
21 costs on the Badger Den allotment.
22

23 54. An August 28, 2018, BLM Compliance Inspection form indicated no livestock were
24 authorized on the allotment as yet, none were observed, and pre-monitoring and fence inspections
25 were completed with the permittee.

26 55. On November 28, 2018, a BLM Range Management Specialist sent an email indicating
27 that he was *in the process of writing up the grazing agreement* for the Badger Den allotment but
28

1 had concerns that the stipulations found in the old grazing permit from the 1980s did not reference
2 the Sands Draw maintenance as the permittee's responsibility.

3 56. As noted above, the grazing permit was already transferred on June 4, 2018, and the
4 grazing authorization with terms and conditions was already signed on June 22, 2018.

5 ***5. BLM Finally Notified the Public About the Badger Den Allotment Grazing Permit***
6 ***Changes in 2019***

7 57. On April 16, 2019, ten months after the permit was signed, WWP received a
8 "Consultation, Coordination and Cooperation" ("CCC") letter (dated April 12, 2019) and proposed
9 livestock grazing agreement asking for input on proposed range improvements for this allotment
10 and notifying the public that a Land Health Evaluation would be conducted once adequate
11 monitoring had been collected and that a permit renewal process would, at some point, be
12 conducted "through the appropriate level of National Environmental Policy Act (NEPA) analysis
13 in order to evaluate the possibility of reactivating the suspended Animal Unit Months.
14

15 58. The proposed agreement attached to the CCC letter allowed the permittee to disregard
16 certain "Other Terms and Conditions" from the prior permit that was canceled in 1991.

17 59. This letter included information indicating the permit had been transferred to Mr. Levi
18 Klump, but did not indicate when.
19

20 60. Prior to receipt of this CCC letter and request for input, WWP believed the grazing
21 permit had been canceled, it no longer existed, and that the BLM would *initiate* a NEPA process
22 to develop an Environmental Assessment prior to considering authorizing any livestock grazing
23 on the Badger Den allotment. WWP's belief that NEPA would be conducted for this allotment
24 was based on the 2010 notification from BLM to WWP that NEPA would occur.
25

26 61. WWP submitted timely comments to BLM in response to the CCC letter asking for the
27 current status of the Badger Den permit and expressing WWP's confusion and concern regarding
28

1 the apparent plans to transfer a non-existent livestock grazing permit. WWP also asked that BLM
2 provide Land Health Evaluations, stocking rate analysis, monitoring data, an explanation as to
3 which range improvements were in disrepair, information as to whether livestock were currently
4 authorized on the allotment, and an explanation as to why livestock had apparently been authorized
5 to graze on the allotment without a NEPA process after nearly 30 years without any BLM-
6 authorized livestock use.
7

8 62. On April 25, 2019, the Badger Den Allotment Preference Transfer project page was
9 “updated” (or perhaps created, it is unclear) to include the Categorical Exclusion decision
10 document transferring the Badger Den grazing permit preference to Mr. Levi Klump, signed by
11 the BLM Project Lead on June 4, 2018, and by the BLM Field Manager on June 19, 2018. This
12 document has a “release date” of April 25, 2019.
13

14 63. On May 3, 2019, the BLM discussed the impacts of WWP’s CCC comment letter via
15 email:

16 Just got off the phone with Levi Klump and he wanted to to [sic] know when he
17 could come and get materials to start fixing fence. I mentioned to him that we
18 received comments from WWP and that I needed to talk with both of you before
19 making any final decision and having him sign the agreement. After reading and
20 re-reading the comments from WWP most of the letter is questions for the BLM
21 and don't really affect the content of the agreement just maybe some clarification.
22 Just wanted to give you a heads up that Levi is wanting to push forward with
23 maintenance but that the WWP comments might hold that up a little while longer.

24 Note again, that the agreement which is the subject of the May 3, 2019 email discussion
25 was signed in 2018.

26 ***6. WWP Sought Additional Information Regarding the Badger Den Allotment***

27 64. On May 16, 2019, WWP submitted a Freedom of Information Act (FOIA) request to
28 the BLM Safford Field Office asking for all records pertaining to grazing on the Badger Den

1 Allotment, including phone logs, rangeland health evaluations, letters, environmental analyses,
2 emails, meeting notes, written reports, memos, conference notes, records of trespass and
3 noncompliance, photographs, monitoring reports, field data and observations from January 1, 2010
4 through 2019.

5 65. On July 22, 2019, WWP received a partial response to the May 16, 2019, FOIA request.

6 66. On August 12, 2019, WWP received a second partial response to the May 16, 2019,
7 FOIA request.

8 67. On August 23, 2019, WWP carefully reviewed the two partial FOIA responses from
9 BLM. WWP's review of these records revealed trespass livestock were an ongoing problem on
10 the Badger Den allotment and specifically that Mr. Matt Klump had trespass livestock on the
11 Badger Den allotment on November 16, 2018.

12 68. Mr. Matt Klump and Mr. Levi Klump are related, and WWP believes they are brothers.

13 69. WWP's review of the two partial FOIA responses did not reveal any new Land Health
14 Evaluations, carrying capacity determinations, stocking level analysis, or drought analysis.

15 70. WWP's review of the two partial FOIA responses did not reveal any notices to
16 interested publics prior to the April 2019 CCC letter.

17 71. As of the filing of this complaint, WWP is still awaiting the final response to WWP's
18 May 16, 2019 FOIA request.

19 ***7. BLM's Recent Response to WWP's CCC Letter***

20 72. On October 10, 2019, WWP finally received a response to its April 29, 2019 CCC
21 comment letter: a one-page letter (5 short paragraphs, dated October 4, 2019) acknowledging
22 receipt of WWP's letter, stating the BLM "has CCC'd with interested public concerning the
23 Badger Den Allotment and the corresponding grazing agreement[,]" claiming that specifics
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1 regarding the transfer paperwork and other pertinent information regarding the Badger Den
2 Allotment was supplied through a FOIA process, and, in closing, that BLM appreciates WWP's
3 concerns regarding the management of public land.

4 73. BLM's response also included a copy of a Grazing Agreement for the Badger Den
5 Allotment (No. 51100) dated and signed September 11, 2019, authorizing Mr. Levi Klump to graze
6 1,769 Animal Unit Months (150 cattle and 2 horses) on the Badger Den Allotment, year-round.

7 74. The terms and conditions of the September 11, 2019 grazing authorization and
8 agreement differ from the terms and conditions for the prior, canceled grazing authorization issued
9 to Mr. Wallace Klump in the late 1980s.

10 75. The 2019 agreement temporarily suspends 873 Animal Unit Months "to facilitate the
11 maintenance of existing range improvements."

12 76. The 2019 agreement allows livestock grazing on the western side of the allotment in
13 the Starve Out, Timber Draw, HX, Charcoal, Bowie Plot, Headquarters, and San Simon pastures
14 and identifies this as "Phase 1 Grazing."

15 77. The 2019 agreement "allows the permittee to disregard certain Terms and Conditions
16 that require the use of eartags furnished by BLM.

17 78. The 2019 agreement states the grazing preference was transferred to Mr. Levi Klump
18 through a Categorical Exclusion #DOI-BLM-AZ-G010-2018-0009-CX under Section 402(c)(2)
19 of FLMMPA and is not protestable.

20 ***8. BLM Draft Standards Determination Identifies Resource Concerns on the Allotment***

21 79. An undated¹ draft *Standards Determination for the Badger Den Allotment* states that
22 primary plant species such as bush muhly and black grama are significantly reduced at all three
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27
28 ¹ This document appears to be from 2013, but it is unclear from the document itself.

1 ecological communities and that these desirable/preferred species by livestock and wildlife are
2 decreaseers within the range site as a result of herbivory and do not generally occur at the
3 established monitoring sites.

4 80. A BLM comment to the Draft Standards Determination expresses concern that BLM
5 “will make the day for our helper groups” when they read the statement that the primary plant
6 species preferred by both wildlife and livestock are significantly reduced by herbivory but the
7 allotment is still meeting the standard.

8
9 81. The implication of the statement “will make the day for our helper groups” is that the
10 BLM is presenting information that the allotment is no meeting grazing standards and at the same
11 time claiming the allotment is meeting grazing standards, which is a determination conservation
12 groups will challenge.

13
14 82. A BLM comment to the Draft Standards Determination expresses concern about the
15 statement that the composition and structure of the vegetation provides well distributed habitat for
16 wildlife at BD-1, including sensitive species, when only two species are identified in the species
17 composition table.

18
19 83. A BLM comment to the Draft Standards Determination expresses concern over a shift
20 in Desired Plant Community composition that is “totally missing” key species such as black grama
21 and bush muhly and that a determination that the allotment is meeting the grazing standards
22 without these species “is open to questioning and challenge.”

23
24 ***9. BLM Decision Documents are Outdated***

25 84. The BLM decision documents referenced in the 2019 Grazing Agreement and
26 Categorical Exclusion decision are outdated.

27 85. The Gila-San Simon Grazing Environmental Impact Statement was signed in 1978.
28

1 86. The Eastern Arizona Grazing Environmental Impact Statement was signed in 1986.

2 87. The Safford District Resource Management Plan, which guides land management
3 throughout the district, was signed in 1992.

4 88. The Arizona Standards for Rangeland Health and Guidelines for Grazing
5 Administration, which outlines the protocols for Land Health Evaluations, were developed in
6 1997.
7

8 **B. LEGAL FRAMEWORK**

9 ***1. Taylor Grazing Act***

10 89. The Taylor Grazing Act of 1934 grants the Secretary of the Interior authority to divide
11 the public range-lands into grazing districts, to specify the amount of grazing permitted in each
12 district, and to issue leases or permits “to graze livestock.” 43 U.S.C. § 315, 48 Stat. 1269. In
13 issuing permits under the Taylor Grazing Act, Congress directed the Secretary to first issue permits
14 to “those within or near a [grazing] district who are landowners engaged in the livestock business,
15 bona fide occupants or settlers, or owners of water or water rights.” 43 U.S.C. § 315b. “Such
16 permits shall be for a period of not more than ten years, subject to the preference right of the
17 permittees to renewal in the discretion of the Secretary of the Interior.” *Id.* “[B]ut the creation of a
18 grazing district or the issuance of a permit . . . *shall not create any right, title, interest, or estate in*
19 *or to the lands.*” *Id.* (emphasis added).
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22

23 ***2. National Environmental Policy Act***

24 90. NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. §
25 1500.1(a). The NEPA process ensures that an agency carefully considers information concerning
26 significant environmental impacts, and that the public may scrutinize the information and
27 participate in the decision-making process. The process aims to “foster excellent action” by
28

1 helping public officials understand environmental consequences and take actions that “protect,
2 restore, and enhance the environment.” 40 C.F.R. § 1500.1(c).

3 91. NEPA requires agencies to study the environmental impacts of proposed actions and
4 the reasonable alternatives that would avoid or minimize such impacts or enhance the quality of
5 the human environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.
6

7 92. An agency must prepare a detailed Environmental Impact Statement (EIS) for “all
8 major federal actions significantly affecting the quality of the human environment,” but may
9 prepare an Environmental Assessment (EA) to determine whether the environmental impact of a
10 proposed action is significant enough to warrant an EIS. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§
11 1508.9, 1508.11.
12

13 93. Where appropriate, an agency may decide to use a Categorical Exclusion (“CX”) for a
14 “category of actions which do not individually or cumulatively have a significant effect on the
15 human environment and which have been found to have no such effect in procedures adopted by
16 a Federal agency in implementation of these regulations.” 40 C.F.R. § 1508.4. Procedures for
17 invoking categorical exclusions must provide for “extraordinary circumstances in which a
18 normally excluded action may have a significant environmental effect.” *Id.* Renewal of an expired
19 term grazing permit generally requires the preparation of a full NEPA analysis. However, in 2014,
20 Congress narrowly amended FLPMA to provide that grazing permits may be renewed under a
21 Categorical Exclusion if:
22

23 (1) the issued permit “continues the current grazing management of the allotment”;

24 and
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26 (2) the Secretary has assessed and evaluated the grazing allotment and has
27 determined, based on that evaluation, that it is meeting land health standards or is not
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1 meeting land health standards due to factors other than existing livestock grazing. 43
2 U.S.C. § 1752(h).

3 94. Even if these two requirements are met, BLM may not rely on a Categorical Exclusion
4 if extraordinary circumstances exist. The Secretary's regulations implementing FLPMA and
5 NEPA (43 C.F.R. § 46.215; 43 C.F.R. § 46.205(c)) provide that extraordinary circumstances
6 precluding the use of a Categorical Exclusion exist where the action may:
7

8 (a) Have significant impacts on public health or safety.

9 (b) Have significant impacts on such natural resources and unique geographic
10 characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness
11 areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water
12 aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national
13 monuments; migratory birds; and other ecologically significant or critical areas.
14

15 ...

16 (l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-
17 native invasive species known to occur in the area or actions that may promote the
18 introduction, growth, or expansion of the range of such species (Federal Noxious Weed
19 Control Act and EO 13112).
20

21 95. NEPA requires federal agencies to consider the environmental impacts of their actions,
22 disclose those impacts to the public, *and then* explain how their actions will address those impacts.

23 *Baltimore Gas & Elec. Co. v. Natural Res. Defense Council*, 462 U.S. 87, 103 S.Ct. 2246, 76
24 L.Ed.2d 437 (1983). NEPA prescribes a process, not the end result of agency action. *Robertson v.*

25 *Methow Valley Citizens Council*, 490 U.S. 332, 350, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989).

26 While a federal agency is entitled to a presumption of regularity in arriving at its decision, the
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28

1 court is not simply a "rubber stamp" for agency action and will set aside agency action if it is in
2 contravention of the agency's own rules or congressional mandate. *See Glisson v. U.S. Forest*
3 *Service*, 876 F.Supp. 1016, 1023-24 (S.D.Ill.1993).

4 96. NEPA requires agencies to encourage and facilitate public involvement and make
5 diligent efforts to involve the public prior to decision-making. 40 C.F.R. § 1505.(a) In all cases,
6 the agency must provide notice by mail to those who have requested it on an individual action. 40
7 C.F.R. § 1506.6(b)(1).

9 **3. Federal Land Policy Management Act**

10 97. Enacted in 1976, FLPMA governs BLM's management of the public lands. 43 U.S.C.
11 § 1701 *et seq.* In FLPMA, Congress directed that public lands: be managed in a manner that will
12 protect the quality of the scientific, scenic, historical, ecological, environmental, air and
13 atmospheric, water resource and archeological values; that, where appropriate, will preserve and
14 protect certain public lands in their natural condition; that will provide food and habitat for fish
15 and wildlife and domestic animals; and that will provide for outdoor recreation and human
16 occupancy and use. 43 U.S.C. § 1701(a)(8).

17 98. In enacting FLPMA, Congress found that "the national interest will be best realized if
18 the public lands and their resources . . . and their present and future use is projected through a land
19 use planning process," and it adopted FLPMA in part to establish "goals and objectives . . . as
20 guidelines for public land use planning . . ." 43 U.S.C. § 1701(a)(2), (7). Congress has directed
21 that the Secretary of the Interior "shall manage the public lands under principles of multiple use
22 and sustained yield, in accordance with the land use plans developed by him under section 1712"
23 and "shall . . . regulate . . . the use, occupancy, and development of the public lands."

24 99. Pursuant to this direction, Department of Interior issued regulations to implement the
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1 Taylor Grazing Act and FLPMA and amended those regulations in 1995 (the “Grazing
2 Regulations”)² *Pub. Lands Council v. Babbitt*, 529 U.S. 728 at 739 (2000). The Grazing
3 Regulations implement the mandate of the Taylor Grazing Act and FLPMA by providing for a
4 “grazing preference,” which is defined to mean “a superior priority position against others for the
5 purpose of receiving a grazing permit or lease. This priority is attached to the base property owned
6 or controlled by a *permittee* or lessee.” 43 C.F.R. § 4100.0-5 (emphasis added). “Base property”
7 is defined to include “land that has the capability to produce crops or forage that can be used to
8 support authorized livestock.” *Id.* Thus, the “preference” articulated in the Grazing Regulations,
9 allows a permittee (meaning, one who already has a permit) who owns or controls base property,
10 to stand first in line against others for renewal of its permit.
11

12
13 100. Once a grazing permit expires after BLM decides not to renew it under the regulation
14 governing renewals at 43 C.F.R. § 4110.1(b)(1), preference is lost. BLM is not required to
15 separately cancel a permittee’s grazing preference under the regulation governing penalties. 43
16 C.F.R. § 4170.1-1. As a result, when a grazing permit is canceled or expires, the associated grazing
17 preference and permitted use are automatically and simultaneously extinguished.
18

19 101. As directed by the Taylor Grazing Act and FLPMA, the “preference” for renewal of
20 a ten-year grazing permit is given to an existing permittee, who owns or controls base property.
21 Preference for renewal is linked to *both* the grazing permit and the base property. 43 C.F.R. §
22 4100.0-5 (defining “grazing preference” as a “priority attached to base property owned or
23 controlled by a *permittee*”) (emphasis added). In other words, preference must be attached to base
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27 ² BLM amended its 1995 grazing regulations in 2005, then again in 2006, but the Court
28 enjoined the 2006 regulations from taking effect. *W. Watersheds Project v. Kraayenbrink*, 538 F.
Supp. 2d 1302 (D. Idaho 2008), *aff’d in relevant part, vacated in part, and remanded*, 632 F.3d
472 (9th Cir. 2011). All citations to the grazing regulations are to the regulations in effect prior to
the 2006 amendments, specifically those regulations promulgated in 1995 and amended in 2005.

1 property controlled by a permittee—someone who has a grazing permit. And the grazing permit is
2 linked to base property in the same way. 43 C.F.R. § 4110.1(a) (“to qualify for grazing use on
3 public lands an applicant must own or control land or water base property”).

4 102. Transfers of grazing preferences require 1) that the grazing preference and permit to
5 be transferred exist; 2) the transferee meets all the qualifications and requirements of 43 C.F.R.
6 41110.1, 4110.2-1 and 41110.2-2; 3) the transferee accepts the terms and conditions of the
7 terminating (note: not previously canceled) grazing permit or lease; 4) the application for the
8 grazing permit or lease shall be filed at the same time as the transfer application. Failure of the
9 transferee *or the transferor* to comply with the regulations of this section may result in rejection
10 of the transfer or cancelation of the grazing preference. 43 C.F.R §4110.2-3.

11 103. 43 C.F.R. §4130.3-3 details the BLM’s responsibilities when making modifications
12 of permits or leases and requires, to the extent practical, *during* the preparation of reports that
13 evaluate monitoring and other data that the authorized officer uses as a basis for making decisions
14 to increase or decrease grazing use, or otherwise to change the terms and conditions of a permit or
15 lease, the authorized officer will provide the interested public with an opportunity to review and
16 offer input. 43 C.F.R. §4130.3-3.

17 ***4. Administrative Procedure Act***

18 104. Violations of NEPA and FLPMA are reviewed under the Administrative Procedure
19 Act (APA), 5 U.S.C. §§ 701–06. *Ctr. for Biol. Diversity v. U.S. Dep’t of Interior*, 623 F.3d 633,
20 641 (9th Cir. 2009). To survive scrutiny under this standard, “the agency must examine the relevant
21 data and articulate a satisfactory explanation for its action including a rational connection between
22 the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut.*
23 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation omitted). An action is “arbitrary and
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1 capricious if the agency has relied on factors which Congress has not intended it to consider,
2 entirely failed to consider an important aspect of the problem, [or] offered an explanation for its
3 decision that runs counter to the evidence before the agency.” *Id.*

4 105. “Unexplained inconsistency” between agency actions also is “a reason for holding an
5 interpretation to be an arbitrary and capricious change.” *Nat’l Cable & Telecoms. Ass’n v. Brand*
6 *X Internet Servs.*, 545 U.S. 967, 981 (2005). An agency may change course from a previous
7 position, but it must provide a reasoned explanation for doing so, and its action must be
8 “permissible under the statute.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).
9 Through the APA, Congress imposes “the duty of agencies to find and formulate policies that can
10 be justified by neutral principles and a reasoned explanation.” *Id.* at 536–37 (Kennedy, J.,
11 concurring in part and concurring in the judgment). The APA therefore requires courts to compel
12 agency action unlawfully withheld and to set aside agency actions that are arbitrary, capricious, an
13 abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. §§ 706(1), (2)(A).

14 **CLAIMS for RELIEF**

15 **FIRST CLAIM FOR RELIEF**

16 **(The transfer of the non-existing grazing permit is a violation of FLPMA, the Department**
17 **of Interior Regulations, and the APA)**

18 106. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

19 107. BLM Field Manager Cooke’s decision to transfer the Badger Den grazing permit
20 violates FLPMA, the Department of the Interior grazing regulations, and APA.

21 108. When a grazing permit is canceled, the associated grazing preference and permitted
22 use are automatically and simultaneously extinguished. 43 C.F.R. § 4170.1-1. A grazing
23 preference may be transferred only if the transferee (here, Mr. Levi Klump) accepts the terms and
24 conditions of the terminating grazing permit. 43 C.F.R. § 4110.2-3(a)(3).
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1 109. The Badger Den grazing permit was canceled in 1991 and therefore no permit existed
2 after that date.

3 110. The terms of the permit now held by Mr. Levi Klump differ from the permit
4 extinguished in 1991.

5 111. For these reasons, the BLM Field Manager's decision was arbitrary and capricious,
6 an abuse of discretion, violated FLPMA, the Department of the Interior regulations, and the APA,
7 and caused or threatens serious prejudice or injury to Plaintiffs' rights and interests. This claim is
8 brought under the judicial review provisions of the APA, 5 U.S.C. §§ 701–706.

9 **SECOND CLAIM FOR RELIEF**

10 **(Use of a Categorical Exclusion is a violation of NEPA, FLMPA, the Department of the**
11 **Interior Regulations, and the APA)**

12 112. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

13 113. The BLM Field Manager violated NEPA, FLPMA, the Department of Interior
14 regulations and the APA by its determination that the reissuance of the permit met the requirements
15 for using a Categorical Exclusion and did not require further NEPA analysis when the FLPMA
16 provision allowing for use of a Categorical Exclusion did not apply and extraordinary
17 circumstances existed.

18 114. BLM's NEPA regulations provide that extraordinary circumstances may exist
19 when a proposed action risks "significant impacts on . . . ecologically significant or critical
20 areas," or when an action may "[c]ontribute to the introduction, continued existence, or
21 spread of noxious weeds or non-native invasive species." 43 C.F.R. § 46.215(b), (l). "When
22 extraordinary circumstances are present, the agency must prepare environmental
23 documentation despite the fact that the activity in question falls within a categorical
24 exclusion." *Cal. v. Norton*, 311 F.3d 1162, 1170 (9th Cir. 2002). The presence of
25 wilderness or unique geographic or ecologically significant areas, such as potential habitat
26 for ESA-listed fish species, is an extraordinary circumstance that precludes application of
27 a Categorical Exclusion. *See, e.g., W. Watersheds Proj. v. U.S. Forest Serv.*, No. C 08-
28 1460 PJH, 2012 WL 1094356, at *15 (N.D. Cal. Mar. 30, 2012) (existence of wilderness

1 precluded Categorical Exclusion). Existence of important species habitat may also warrant
2 in-depth analysis under NEPA. *See, e.g., Native Ecosystems Council & All. For the Wild*
3 *Rockies ex rel. Davey*, 866 F. Supp. 2d 1209, 1228 (D. Idaho 2012); *Wilderness Soc’y v.*
4 *U.S. Forest Serv.*, 850 F. Supp. 2d 1144, 1160-61 (D. Idaho 2012); *Ocean Mammal Inst.*
5 *v. Gates*, 546 F. Supp. 2d 960, 979 (D. Haw. 2008).

6 115. The San Simon Valley is well-known to be highly eroded.

7 116. The BLM has failed to analyze or disclose the presence of invasive species throughout
8 the allotment.

9 117. The BLM’s decision to cancel the permit became operative in 1991 when the Office
10 of Hearings and Appeals denied Mr. Wallace Klump’s appeal and request for a stay. *See, e.g.,*
11 *Farrell-Cooper Mining Co. v. U.S. Dep’t of the Interior*, 864 F.3d 1105, 1108 (10th Cir. 2017); 43
12 C.F.R. § 4.472(e).

13 118. BLM was aware that WWP was an interested public in management of the Badger
14 Den allotments and wanted to be kept informed of any changes in the permitted use of livestock
15 on the allotment. In 2010 WWP notified the BLM that the conditions on the allotment likely
16 required the preparation of an Environmental Assessment prior to authorizing livestock use on the
17 allotment.

18 119. Interested public means an individual, group or organization that has submitted a
19 written request to the authorized officer to be provided an opportunity to be involved in the
20 decision-making process for the management of livestock grazing on specific grazing allotments
21 or has submitted written comments to the authorized officer regarding the management of livestock
22 grazing on a specific allotment.

23 120. The BLM is required to notify any interested public when the resources found on
24 public when continued grazing poses an imminent likelihood of significant resource damage.

25 121. The BLM is required to consult, cooperate, and coordinate with the interested public
26 prior to issuance or renewal of grazing permits and leases.

27 122. The record shows that, as of November 2017, the BLM had initiated an Environmental
28 Assessment to decide whether to authorize grazing on the Badger Den allotment, and between

1 2015 and 2018, BLM resource specialists repeatedly identified significant resource concerns on
2 the Badger Den allotment to the BLM Field Manager.

3 123. In April 2018, the BLM abruptly decided to use a Categorical Exclusion instead to
4 transfer the Badger Den grazing permit while at the same time acknowledging the decision was
5 likely to face legal challenges.

6 124. The BLM used the Categorical Exclusion found in the BLM NEPA Handbook H-
7 1790-1 Appendix 4, Part D(1) Rangeland Management, Approval of transfers of grazing
8 preference.

9 125. On June 19, 2018, the BLM Field Manager authorized transfer of the non-existent
10 Badger Den grazing permit to Mr. Levi Klump and authorized the use of livestock and range
11 improvements on the allotment. The BLM did not provide timely notice of this to the public.

12 126. The terms of the permit now held by Mr. Levi Klump differ from the permit
13 extinguished in 1991.

14 127. In 2018, when the new grazing permit issued, the Badger Den grazing
15 allotment had been vacant and with no permit for nearly 30 years. Current grazing
16 management, at the time that the BLM decided to renew the permit and reissued it, was
17 “no grazing” and the allotment was vacant.

18 128. During the period of time the Bader Den allotment did not have authorized
19 livestock use, the BLM initiated the Sands Draw habitat restoration project, the HX Dam
20 Repair project, and there are several historical projects including two livestock exclosures
21 used for long-term trend monitoring, the Timber Draw seeding, Ryan seeding, and Ryan
22 Detention Dam and exclosure.

23 129. Thus, the Categorical Exclusion did not apply and BLM needed to prepare a
24 full EA or EIS to comply with NEPA and FLPMA. The BLM Field Manager erred by
25 determining that it could renew the non-existent Klump grazing permit under a Categorical
26 Exclusion because the new permit did not in fact “continue[] the current grazing
27 management of the allotment.” 43 U.S.C. § 1752(h).

28 130. The use of a Categorical Exclusion to transfer the Badger Den grazing

1 preference was arbitrary, capricious, and contrary to NEPA because the following
2 extraordinary circumstances warranted further analysis in an EA or EIS, because the
3 grazing may have:

- 4 a. Significant impacts on unique geographic characteristics and ecologically sensitive
5 areas—specifically, the Sands Draw Exclosure restoration project; and
6
7 b. Likely contributions to the introduction, continued existence, or spread of noxious
8 weeds or non-native invasive species through livestock grazing.

9 131. The BLM Field Manager violated NEPA by failing to prepare or consider adequate
10 environmental analysis prior to issuing his decision to authorize the grazing permit, by failing to
11 provide interested parties an opportunity for input until after the permit had been transferred and
12 livestock grazing and infrastructure maintenance had been authorized on the allotment.

13
14 132. Consequently, Defendants’ transfer of the Badger Den grazing preference without an
15 EA or EIS was arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA,
16 FLPMA, and Department of the Interior regulations, which caused or threatens serious prejudice
17 and injury to Plaintiffs’ rights and interests. This claim is brought under the judicial review
18 provisions of the APA, 5 U.S.C. §§ 701–706.

19
20 **REQUEST FOR RELIEF**

21 133. Plaintiffs respectfully request this Court:

- 22
23 A. Declare the Manager’s decision to transfer the Badger Den grazing preference is unlawful
24 and a violation of the BLM’s Grazing Regulations, FLPMA, NEPA, and the APA as
25 alleged above;
26
27 B. Declare the Manager’s transfer of the preference, and determinations that the Badger Den
28 permit existed and met the requirements for using a Categorical Exclusion and conformed

1 with the relevant land use plans, were unlawful and a violation of FLPMA, NEPA and the
2 APA;

3 C. Issue an order vacating the Manager's decision to transfer the permit;

4 D. Order the Manager and BLM to complete an environmental analysis or impact statement
5 in compliance with NEPA;

6 E. Award Plaintiffs their reasonable costs, litigation expenses, and attorneys' fees
7 associated with this litigation as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412
8 et seq., and all other applicable authorities; and
9

10 F. Issue other further relief as Plaintiffs may request or the Court deems just
11 and proper.
12

13 Respectfully submitted, this 4th day of December, 2019.
14

15 /s Cynthia C. Tuell
16 **Cynthia C. Tuell (AZBar # 025301)**
17 Western Watersheds Project
18 Attorney for Plaintiffs
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