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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**

16 NEIGHBORS OF MOGOLLON RIM,  
17 INC.,

18 Plaintiff,

19 vs.

20 UNITED STATES FOREST SERVICE,

21 Defendant.

No.

**COMPLAINT**

**INTRODUCTION**

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

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

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

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

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

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

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

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

### 13 **JURISDICTION AND VENUE**

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

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

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

1 **THE PARTIES**

2 9. Plaintiff NEIGHBORS OF MOGOLLON RIM, INC. is a non-profit  
3 organization whose mission is to represent and advocate for the interests of concerned  
4 neighbors of the Mogollon Rim who seek to preserve and protect the scenic and natural  
5 beauty, fish and wildlife, ecological, and other natural resource values of the Mogollon  
6 Rim area, particularly its public lands management by the U.S. Forest Service.  
7 Neighbors of Mogollon Rim directors, volunteers, and supporters are property owners  
8 and residents of the Colcord and Ponderosa communities who are dedicated to protecting  
9 and conserving public lands and natural resources in the Mogollon Rim area. Directors,  
10 volunteers, and supporters of Neighbors of Mogollon Rim regularly use and enjoy the  
11 Tonto National Forest, including the Bar X area, for various recreational, aesthetic and  
12 other purposes.

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

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



1 drier ecotypes on the slopes below the Rim. This area is home to much wildlife,  
2 including elk, deer, turkey, mountain lion, bobcat, black bear, fox, goshawk, and golden  
3 eagle. Mexican gray wolf has also been seen here on occasion. The area's beauty and  
4 diverse flora and fauna attract many outdoor enthusiasts from the Phoenix area, other  
5 parts of Arizona, and other states.

6 16. The Bar X contains other special features that provide habitat for a variety  
7 of fish and wildlife, and are popular recreation areas. For instance, Haigler Creek is a  
8 lovely trout stream popular with fishermen, hikers, and campers, and is being considered  
9 for designation as a Wild and Scenic River. The Naegelin Rim is another destination on  
10 the Bar X for hikers, hunters, and photographers. Plaintiff's directors, volunteers, and  
11 supporters use these areas and others on the Bar X to relax and enjoy the natural setting  
12 and the fish and wildlife that inhabit these areas.

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

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

24 19. The Colcord/Turkey Pasture is the most northern portion of the Bar X,  
25 located directly under the Mogollon Rim, with its northern boundary at the very top of  
26 the Rim abutting the Apaches Sitgraves National Forest. The area consists of

1 mountainous terrain and steep slopes dominated by ponderosa pine. The majority of the  
2 Colcord/Turkey Pasture, being primarily forested uplands, has scarce forage for  
3 livestock. While the northern reaches of the Colcord/Turkey Pasture abut the spectacular  
4 Mogollon Rim, the southern portion includes Haigler Creek, and is near the area of the  
5 Pleasant Valley Wars, which, in the 1800s, pitted cattlemen against shepherders for the  
6 limited forage resources that exist in the area. The communities of Ponderosa Springs,  
7 Ponderosa Springs Estates and Colcord Estates are located within the Colcord/Turkey  
8 Pasture.

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

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

16 21. A Range Analysis was conducted on the Bar X from 1975 through 1978 in  
17 order to determine grazing capability. Grazing capability classifications were broken into  
18 three categories: (1) No Capacity—terrain incapable of being grazed by domestic  
19 livestock on a sustained yield basis under reasonable management; (2) Potential  
20 Capacity—terrain presently undergoing accelerated erosion because it does not have  
21 sufficient effective ground cover to protect the soil; and (3) Full Capacity—terrain  
22 presently stable because effective ground cover is holding soil loss to an acceptable level.

23 22. The 1978 Range Analysis found that the four Bar X allotments contained  
24 24,654 acres that were No Capacity, 4,813 acres that were Potential Capacity, and 742

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26 <sup>2</sup> An animal unit month is the amount of forage an "animal unit" will eat in one month's time. A cow/calf pair, an adult bull, or one yearling is usually considered an animal unit.

1 acres that were Full Capacity. Of the Full Capacity acres, 579 were in poor or very poor  
2 range condition with a downward trend, 163 were in fair condition with a downward  
3 trend, and none were in good or excellent condition.

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

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

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

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

- 17 a. The Ponderosa Pine type has been depleted severely by overgrazing;
- 18 b. Chaparral zones are grazed excessively;
- 19 c. Riparian areas are severely denuded by grazing, including Colcord  
20 Canyon, Naegelin Canyon, Cherry Creek, Haigler Creek, and Pine  
21 Creek;
- 22 d. Extreme overuse of grass and browse on the Bar X . . . has severely  
23 damaged wildlife resource;
- 24 e. Of the three primary needs of all wildlife species . . . food and cover  
25 have been the most severely damaged [by overgrazing] . . . which has  
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reduced the capability of the land to support viable populations of wildlife species that one would expect to find;

- f. The fishery along Haigler Creek is damaged because of extreme livestock utilization of riparian vegetation and siltation resulting from upstream erosion. Desirable streamside vegetation that would provide shade, nutrients and habitat for insects is lacking. Desirable insects for trout such as mayflies are quite scarce. Heavy silt deposition in the streambed is detrimental to the spawning requirement of trout. Extreme utilization has resulted in extensive resource damage. Haigler Creek has been severely denuded by grazing;
- g. Excessive grazing by livestock eliminated cool season grass species in the woodland zone;
- h. Current Bar X conditions are a result of the excessive abuse and mismanagement of the grazing resources;
- i. The Bar X has been stocked above estimated capacity as far back as District records go;
- j. A prolonged history of overstocking and unsatisfactory management has depleted the range resource to a very critical point. Nearly all desirable cool season grasses such as bottle brush, squirrel tail, mutton grass, and western wheatgrass have been eliminated from the plant community. The Pine type is severely depleted of all vegetative groundcover;
- k. Watershed conditions are quite deteriorated throughout the woodland zone. . . with many dry denuded riparian areas that were at one time dotted with springs;
- l. The excessive utilization of grass by livestock has resulted in a loss of plant vigor and grass plant die-off. Effective groundcover is currently

1 less than the amount required to protect the soil due to overuse by cattle.  
2 As a result, the upper horizons of the soil have been eroded in many  
3 areas exposing the “B” soil horizon which is high in clay content. As  
4 the clayey “B” horizon of the soil is exposed, the soil begins a turning  
5 action because of the shrink and swell characteristic of the soils. Sheet,  
6 gully, and rill erosion is extensive on the allotment. The lack of  
7 vegetative cover allows a large percentage of precipitation to runoff  
8 rather than percolate into the soil;

- 9 m. Under current management and stocking, effective groundcover has  
10 been reduced sufficiently to allow soil loss in excess of 5 tons per acre.  
11 This erosive condition is quite extensive and is found throughout the  
12 Bar X with few exceptions. Excessive soil loss occurs on 97% of the  
13 land in the Bar X;
- 14 n. Wildlife habitat has been damaged significantly by the removal of  
15 herbaceous plant cover and often by direct livestock/wildlife  
16 competition for food. The decrease in forage production induced by  
17 continuous overgrazing has greatly reduced the required cover for viable  
18 populations of game and nongame species of wildlife;
- 19 o. Extreme overuse of grass and browse on the Bar X . . . has severely  
20 damaged the wildlife resource;
- 21 p. Deer and cattle are in direct competition for browse, this is especially  
22 evident in the Pine type;
- 23 q. “Much of the Pine type is delineated as no capacity because of steep  
24 slopes (40% +) in conjunction with a lack of forage.”
- 25 r. In the “Pine type” . . . “Needle cast is 2 inches deep with herbaceous  
26 forge nearly absent”; and

1           s. The vegetative resource of the Bar X is depleted drastically in terms of  
2           forage production, plant density, desirable species composition and  
3           diversity. Historic overstocking, as well as current overstocking, have  
4           induced plant community retrogression.

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

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

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

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

25          31. In 1981, the Forest Service issued the “Bar X, Haigler Creek and Young  
26          Allotment Management Plan 1981-1985.” This plan noted that the Bar X Ranch was

1 currently comprised of the Bar X Allotment, Oxbow Unit of the Haigler Creek  
2 Allotment, and the Young Allotment, and excluded the Turkey Peak Unit of the Haigler  
3 Creek Allotment and the Colcord Canyon Allotment. The northern boundary was the  
4 bluffs along Haigler Creek, and construction of a fence along the bluff was necessary “to  
5 exclude livestock from the areas closed to grazing.” The acreage of the permitted area  
6 was about 22,600 acres, and the estimated capacity was 710 AUMs, equating to 59 cattle  
7 grazing year-long. The change in use resulted in a permit modification.

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

16         33. An EA conducted in 1985 evidenced improved range conditions on the Bar  
17 X due to the decreased cattle use and intensive management. The Forest Service noted  
18 that the wildlife habitat “has improved greatly . . . Probably the greatest evidence  
19 supporting this statement is the renewed presence of elk below the Naegelin Rim,  
20 historically an elk winter range. . . The abundance of turkey has also increased  
21 throughout the allotment. . . Riparian habitat along Haigler Creek has responded  
22 favorably to improved management.” This assessment estimated the Bar X grazing  
23 capacity as 1300 AUMs and the Forest Service decided to permit grazing of 1200 AUMs  
24 (100 cattle year-long) under the same management system prescribed by the 1979 EA  
25 and 1981-1985 AMP. The Turkey Peak Unit of the Haigler Allotment and the Colcord  
26 Canyon Allotment remained closed to grazing.

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

10           35.     The Forest Plan standards and guidelines that pertain to the Bar X consist  
11 of forest-wide standards and guidelines, as well as those for Management Area 5D—  
12 Mogollon Rim-Sierra Ancha Area. The forest-wide prescriptions include various  
13 restrictions on livestock grazing in riparian areas; providing forage to maximize  
14 management indicator species and emphasis harvest species, such as elk and turkey;  
15 using Range Analyses to document needed adjustments in grazing; and documenting  
16 specific allotment guidelines in allotment management plans.

17           36.     Management Area 5D is to be managed “for a variety of renewable  
18 resource outputs with primary emphasis on intensive, sustained yield timber  
19 management, timber resource protection, creation of wildlife habitat diversity, increased  
20 populations of emphasis harvest species, and recreation opportunity.” Direction for this  
21 particular area is to manage “suitable rangelands” at “Level D,” and improve grazing  
22 management for rangeland in less than satisfactory condition. “Suitable range” is defined  
23 as “[r]ange accessible to livestock or wildlife, and that can be grazed on a sustained yield  
24 basis without damage to other resources.” Managing at “Level D” means “[m]anagement  
25 seeks to optimize production and utilization of forage allocated for livestock use  
26 consistent with maintaining the environment and providing the multiple use of the

1 range.” For suitable rangelands, the Forest Plan calls for the Forest Service to evaluate  
2 “grazing capacity” for allotments through production/utilization surveys. “Grazing  
3 capacity” is the “maximum number of animals that can graze an area without damage to  
4 the vegetation or related resources.”

5 37. Forage production can change over time, altering the capability and  
6 capacity of the area to support livestock. The Forest Service acknowledged winter and  
7 spring moisture are very important in the physiological development of cool season  
8 grasses in the Bar X allotments. The 1979 EA precipitation statistics between 1971 and  
9 1977 show the average annual precipitation was 20.75 inches. In contrast, the average  
10 annual precipitation from 2011 to 2017 for the same area is 13.17 inches, more than 7  
11 inches less than that recorded in the 1970s.<sup>3</sup> Reduction in precipitation reduces forage  
12 production, which in turn reduces the capability of the area to support livestock grazing.

13 38. Based on the Forest Service’s 1979 decision, there were no Bar X cattle  
14 grazed in the Turkey Peak Unit of the Haigler Creek Allotment or the Colcord Canyon  
15 Allotment between 1979 and 2015.

### 16 **III. Management of the Bar X since 2006.**

17 39. The Forest Service manages grazing through three types of decision  
18 documents. Allotment management plans are long-term plans that set objectives and  
19 guidelines for managing the allotment. Term grazing permits authorize permittees to  
20 graze certain allotments, usually for ten years, and establish the maximum number, kind  
21 (cattle, sheep, horse), and class (cow, bull, yearling) of livestock that can graze as well as  
22 the period of use. Annual operating instructions (AOIs) are annual documents issued to  
23 permittees that provide the specific terms and conditions for grazing that particular year,  
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25  
26 <sup>3</sup> 2011-2017 precipitation data for the Pleasant Valley Ranger Station site, Young, Arizona,  
found at <http://usclimatedata.com>.

1 including the number of livestock and season of use authorized, and the pasture rotation  
2 for that particular year.

3 40. Various individuals or entities have had permits to graze the Bar X since  
4 1979. The current permittee is a limited liability company, The Bar X, LLC. The Bar X,  
5 LLC, on information and belief, purchased the Bar X Ranch in or around 2006/2007.  
6 The Forest Service issued Bar X, LLC a ten-year term permit in 2007 to graze 130 head  
7 of cattle year-long on the Bar X, Haigler Creek, and Young Allotments, permit #12083.<sup>4</sup>  
8 The permit stated that the 1981-1985 Allotment Management Plan was incorporated as  
9 part of the permit.

10 41. In 2013, the Forest Service issued a letter stating it was initiating an  
11 allotment analysis for the Bar X, but the agency never issued any further documents  
12 related to that analysis.

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

19 43. The AOIs then listed the use that was authorized on the Bar X for that  
20 particular year. The 2012 AOI listed the number of cattle and period of use authorized to  
21 graze on the Bar X, Haigler Creek, and Young Allotments for that year. It authorized  
22 165-175 cows, 12 bulls, 80 yearlings, and 2 horses to graze all or part of the year, which  
23 totaled 2598 HMs and 3277 AUMs. In 2013, it authorized grazing on the Bar X, Haigler  
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25 <sup>4</sup> Review of records obtained from the Forest Service do not make clear when or why the Forest  
Service increased the permitted use from 100 cattle to 130 cattle.

26 <sup>5</sup> A head month is a month’s use and occupancy of rangeland by one adult cow, bull or yearling.  
Plaintiffs are unsure about the difference in calculating HMs and AUMs.

1 Creek and Young Allotments at levels of 185 cows, 14 bulls, and 80 yearlings for all or  
2 part of the year, which totaled 2551 HMs and 2623 AUMs. In 2014, it authorized  
3 grazing on the “Bar X, LLC allotments” for 225 cows, 15 bulls, and 100 yearlings year-  
4 long, which totaled 4492 HMs and 5471 AUMs. The 2012-2014 AUMs also identified  
5 which pastures would be used each year, and none included the Turkey/Colcord Pasture  
6 in the pasture rotation.

7 44. The 2015 AOI continued to identify the permitted use for the Bar X  
8 allotments under permit # 12083 as 130 cattle year-long, which it claimed equaled 1560  
9 HMs and 1560 AUMs (why this AUM figure is different from the 1582 AUMs identified  
10 in the 2012-2014 AOIs is unknown). The use authorized on the Bar X allotments for  
11 2015 consisted of 235 cows, 19 bulls, and 130 yearlings for all or part of the year, which  
12 totaled 3693 HMs and 4448 AUMs.

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

22 46. Prior to allowing cattle back into the Turkey/Colcord Pasture in 2015, there  
23 had been no “evaluations” of whether the resources in the closed area had recovered or  
24 the current capability of the area to support livestock grazing on a sustained yield basis,  
25 as required by the Forest Service in the 1981-1985 Allotment Management Plan.  
26 Furthermore, no Range Analysis or NEPA analysis was completed prior to this



1 authorization. An email in April 2016 claimed that the Turkey/Colcord Pasture was  
2 grazed in 2015 after many years of non-use in order to spread out livestock use on the  
3 Bar X, and incorrectly stated that this pasture had been included in the stocking capacity  
4 assessment for that group of allotments and had never been removed from the grazing  
5 allotment.

6 47. The Bar X cows degraded the resources in the Turkey/Colcord Pasture and  
7 caused significant problems in the Ponderosa and Colcord communities during those few  
8 months in 2015. On August 1, 2016, Plaintiff's directors sent a letter to Neil Bosworth,  
9 Tonto National Forest Supervisor, informing him of the Forest Service's improper  
10 authorization of grazing in an area that was supposed to be excluded from grazing. The  
11 letter set forth the history of overgrazing on the Bar X, and requested that the cattle be  
12 kept out of the excluded pasture that surrounds the Colcord and Ponderosa communities.  
13 The letter listed a number of concerns and attached over 100 petitions from concerned  
14 residents.

15 48. The Forest Service responded to this letter with a different explanation  
16 from that in the April email, stating that the cattle were allowed into the excluded pasture  
17 in 2015 on a "trial basis" pursuant to Forest Service Handbook Section 2209.13.16.16.  
18 This Handbook section states that a temporary change in number, kind, class of livestock,  
19 grazing management, or season of use from that shown on the term permit may be  
20 approved if determined to be consistent with the Forest Plan and if the changes are  
21 determined to benefit management of the rangeland resource. These changes are for trial  
22 periods not to exceed 1-2 consecutive years, and that within the 1-2 year trial period or  
23 shortly thereafter, a NEPA analysis and decision incorporating those changes must be  
24 completed. Upon completion of the NEPA analysis and decision, the term permit should  
25 be modified or reissued to reflect the changes.

26

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

6           50.     The 2016 AOI showed the permitted use on the Bar X allotments as 130  
7 cattle grazing year-long, totaling 1560 HMs and 2059 AUMs (again, it is unclear why  
8 this AUM figure is different from the AUM figures in the 2012-2015 AOIs). The  
9 authorized use in 2016 was 240 cows, 19 bulls, and 140 yearlings for all or part of the  
10 year, which equaled 3808 HMs and 4566 AUMs. This AOI explained that authorized use  
11 was significantly greater than permitted use because it included three large pastures  
12 (McInturff, Walnut, Naeglin) that were outside the allotment boundary, and thus not  
13 represented in the permitted capacity for the Bar X. The AOI claimed that NEPA was  
14 scheduled in 2017 to assess whether to incorporate these areas into the Bar X allotments.  
15 The Turkey/Colcord Pasture was not authorized for use in 2016.

16           51.     In 2017 the Forest Service renewed the Bar X term permit for another ten  
17 years, again permitting 130 cattle to graze year-long on the Bar X, Haigler Creek, and  
18 Young Allotments. The 2017 permit issued to Bar X, LLC included the following  
19 provisions: (1) Pastures lacking a serviceable fence around the entire pasture may not be  
20 authorized for use; (2) The Tonto Forest Plan is made a part of the permit; (3) the 1981-  
21 1985 Allotment Management Plan is made a part of the permit.

22           52.     The 2017 AOI noted the permitted number and season of use, and  
23 authorized grazing in 2017 for 240 cows and 17 bulls year-long, and 140 yearlings for  
24 half a year. It did not include HMs or AUMs. It noted that the authorized use was  
25 greater than permitted use because the same three large pastures were added to the  
26 rotation again. The AOI stated that this temporary change was anticipated not to exceed

1 a period of 1-2 consecutive years, and that within this 1-2 year trial period or shortly  
2 thereafter, a NEPA analysis and decision must be completed to incorporate these pastures  
3 into the allotments. The Turkey/Colcord Pasture was not authorized for use in 2017.

4 53. The Forest Service issued the 2018 AOI in January. It lists the permitted  
5 use for the Bar X allotments as 130 cows year-long. The authorized use for 2018 is 240  
6 cows and 18 bulls year-long and 120 yearlings for five months. This AOI also did not  
7 include HMs or AUMs. It stated that authorized use is greater than permitted use because  
8 the same three large pastures are included as a “trial increase” to determine capacity  
9 through a stock and monitor process. This information would be included in the  
10 forthcoming NEPA analysis, which is scheduled to begin in 2019. The AOI claimed that  
11 the temporary increase in numbers is anticipated not to exceed 1-2 consecutive years, but  
12 it may be extended until the NEPA is complete. The AOI also authorized grazing on the  
13 Turkey/Colcord Pasture in the amount of 240 cows and 18 bulls from June 15 to October  
14 15. The AOI did not include any justification for using the closed pasture.

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

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

1 **FIRST CLAIM FOR RELIEF**

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

3 56. Plaintiff realleges and incorporates by reference the preceding paragraphs.

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

9 58. FLPMA regulates livestock grazing on all Western federal lands, and  
10 includes provisions related to issuance, cancellation, modification, and renewal of term  
11 grazing permits, as well as allotment management plans. 43 U.S.C. § 1752. The Forest  
12 Service issued its own regulations to further implement the grazing provisions of FLPMA  
13 on National Forest lands. 36 C.F.R. Part 222.

14 59. Forest Service grazing regulations require that “all grazing and livestock  
15 use on National Forest System lands and on other lands under Forest Service control must  
16 be authorized by a grazing or livestock use permit.” 36 C.F.R. § 222.3(a); *see also Id.* §  
17 222.1(a) (Forest Service shall . . . . permit and regulate the grazing use of all kinds and  
18 classes of livestock on all National Forest System lands). Permits may only be issued if  
19 the Chief of the Forest Service determines the land is available for grazing purposes, and  
20 *the capacity exists to graze specified numbers of animals. Id.* § 222.3(c)(1)(i).

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

25 61. The regulations also call for the Forest Service to analyze allotments and  
26 develop allotment management plans. These plans “will then be approved and

1 implemented.” *Id.* § 222.2. An allotment management plan prescribes the manner in and  
2 extent to which livestock operations will be conducted in order to meet multiple-use,  
3 sustained yield, economic, and other needs and objectives as determined for the lands  
4 involved. *Id.* § 222.1(b)(2)(i).

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

7 63. The Forest Service’s 2012-2018 AOIs violate FLPMA and the federal  
8 grazing regulations by:

- 9 a. Authorizing grazing that exceeds the number of livestock, and changes  
10 the class of livestock, from what was permitted under the Bar X term  
11 grazing permit, without modifying the permit;
- 12 b. Authorizing grazing on National Forest System lands that were not  
13 permitted for grazing under the Bar X term grazing permit, without  
14 modifying the permit;
- 15 c. Authorizing grazing in 2015 and 2018 on the Turkey/Colcord Pasture  
16 without determining the current capacity of the area to graze livestock  
17 or how many livestock;
- 18 d. Authorizing grazing that is contrary to the allotment management plan  
19 for the Bar X allotments, and thus is also contrary to the Bar X term  
20 grazing permit;
- 21 e. Authorizing grazing in 2018 on a pasture that is not completely  
22 surrounded by a serviceable fence, which is contrary to the 2017 Bar X  
23 term grazing permit.

24 64. The Forest Service’s reliance on the “trial period” provision of the Forest  
25 Service Handbook (FSH) to justify authorizing grazing outside the parameters of the  
26 permit was unreasonable. The Handbook does not supersede the federal grazing

1 regulations listed above, and in fact states that the number of livestock or AUMs shown  
2 on the face of the permit is the maximum number that can be allowed to graze under the  
3 term grazing permit. FSH § 2209.13.15.12. Any modification to the permit terms,  
4 including number of livestock or allotments to be grazed, must be within the scope and  
5 range of effects considered in a current NEPA analysis and decision for the authorization  
6 of grazing. FSH §§ 2209.13.16, 2209.13.16.12, 2209.13.16.12a, 2209.13.16.14.  
7 Activities identified in AOIs must be within the scope of the AMP and the term grazing  
8 permit. FSH § 2209.13.94.2a.

9         65. The narrow Handbook exception that allows annual changes in grazing for  
10 trial periods under FSH § 2209.13.16.16 does not cover the 2012-2018 AOIs because: (a)  
11 the authorized use above permitted levels occurred for more than 1-2 consecutive years  
12 (at least 2012-2018); (b) the Handbook did not list adding areas outside the permitted  
13 allotments as one of the temporary changes allowed for a trial period; (c) the Forest  
14 Service did not complete NEPA within or shortly after the initial year of increased use  
15 (2012) or the initial year of re-opening the Turkey/Colcord Pasture (2015); (d) the Forest  
16 Service did not document that the change in use was consistent with the Forest Plan and a  
17 benefit to management of the rangeland resource before issuing the decisions; and (e) the  
18 Forest Service has not modified the permit to incorporate the changes in use.

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

### **SECOND CLAIM FOR RELIEF**

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

25         67. Plaintiff realleges and incorporates by reference the preceding paragraphs.

26

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

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

9           70. As described above, the Tonto Forest Plan includes direction related to  
10 livestock grazing and protection of resources on the forest. The Forest Service’s 2012-  
11 2018 AOIs for the Bar X are not consistent with Tonto Forest Plan direction for the  
12 following reasons:

- 13           a. The Forest Service did not determine the current capability or capacity  
14           of the Turkey/Colcord Pasture to support livestock on a sustained yield  
15           basis without damage to other resources;
- 16           b. The Forest Service did not determine whether increased livestock use on  
17           the Bar X or re-opening the Turkey/Colcord Pasture was consistent with  
18           direction to protect riparian areas;
- 19           c. The Forest Service did not determine whether increased livestock use on  
20           the Bar X or re-opening the Turkey/Colcord Pasture was consistent with  
21           direction for maximizing management indicator species and emphasis  
22           harvest species—particularly elk and turkey;
- 23           d. The Forest Service did not conduct a Range Analysis to assess and  
24           document needed changes in grazing;
- 25           e. The Forest Service did not follow the guidelines in the Bar X Allotment  
26           Management Plan;

1 f. The Forest Service did not determine whether increased livestock use on  
2 the Bar X or re-opening the Turkey/Colcord Pasture was consistent with  
3 the requirement to manage this area for creation of wildlife habitat  
4 diversity, increased populations of emphasis harvest species, and  
5 recreation opportunity.

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

9 **THIRD CLAIM FOR RELIEF**

10 **VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT**

11 72. Plaintiff realleges and incorporates by reference the preceding paragraphs.

12 73. This third claim for relief challenges the Forest Service's violations of the  
13 National Environmental Policy Act, 43 U.S.C. § 4321 *et seq.*, and NEPA's implementing  
14 regulations, in increasing the amount and area of livestock use authorized on the Bar X  
15 without first completing the necessary environmental analysis under NEPA. Plaintiff  
16 brings this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

17 74. An agency must prepare an Environmental Impact Statement (EIS) for all  
18 major federal actions significantly affecting "the quality of the human environment." 42  
19 U.S.C. § 4332(2)(C). An agency may first prepare an EA to determine whether there  
20 may be significant effects that demand preparation of an EIS. 40 C.F.R. § 1508.9.

21 75. NEPA requires that federal agencies undertake this thorough and public  
22 analysis of the environmental consequences of proposed federal actions *before* the action  
23 is taken so that the analysis can contribute to the decision-making process and is not used  
24 simply to rationalize or justify a decision already made. 40 C.F.R. §§ 1501.2, 1502.2(g),  
25 1502.5. Before completing NEPA, an agency cannot take any action or make any  
26



1 commitment of resources that would have an adverse environmental impact or prejudice  
2 or limit the choice of reasonable alternatives. *Id.* §§ 1502.2(f), 1506.1(a).

3 76. Modifying permitted grazing use on National Forest System lands is a  
4 major federal action that requires NEPA analysis.

5 77. The Forest Service violated NEPA by re-opening and authorizing livestock  
6 grazing on the Turkey/Colcord Pasture in 2015 and again in 2018 without first  
7 completing an EA or EIS under NEPA to assess the environmental impact of re-opening  
8 that area after thirty-eight years of non-use. It also violated NEPA by authorizing  
9 livestock numbers far greater than that permitted under the term grazing permit without  
10 first assessing the environmental impact of the increased use under NEPA.

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

14 **PRAYER FOR RELIEF**

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

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

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

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

26

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

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

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Respectfully submitted,

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