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Via E-mail and Postal Mail: [appeals-southwestern-gila@fs.fed.us](mailto:appeals-southwestern-gila@fs.fed.us)  
RE: Appeal from SU Allotment Categorical Exclusion Decision Memo

Dated: October 9, 2006

#### **DECISION AT ISSUE**

On August 23, 2006, Rogers M. Steed, District Ranger for the Reserve Ranger District of the Gila National Forest, issued a Decision Memo to continue current grazing management on the SU allotment. In so doing, Mr. Steed categorically excluded this decision from environmental review as required by the National Environmental Policy Act (NEPA), 42 U.S.C §§ 4321 *et seq.*

#### **NOTICE OF APPEAL**

Notice is hereby given that this document constitutes the official appeal of the aforementioned agency decision by Forest Guardians and the Rewilding Institute.

Forest Guardians is a non-profit public interest organization dedicated to preserving the wildlands and wildlife of the American Southwest. Forest Guardians has a long history of interest and involvement in Forest Service activities with respect to grazing, riparian areas, water quality, and wildlife. The staff and 1,650 members of Forest Guardians use and enjoy the public lands, waters, and natural resources within the Gila National Forest for recreational, scientific, spiritual, educational, aesthetic, and other purposes. Forest Guardians and its members also participate in information gathering and dissemination, education and public outreach, commenting upon agency actions, and other activities relating to the Forest Service's management and administration of the public lands in New Mexico and Arizona.

The Rewilding Institute is a non-profit, conservation think tank dedicated to science-informed protection and restoration of biological diversity at landscape and continental scales in North America. A primary focus of the Rewilding Institute is the restoration and conservation of ecologically effective populations of top predators.

Forest Guardians submitted scoping comments on the proposed reauthorization of livestock grazing on the SU allotment under the current management scheme on August 4, 2005. Those comments are herein incorporated by reference. Because 36 C.F.R. § 215.13(a) has been judicially stricken as invalid,<sup>1</sup> the Rewilding Institute is similarly free to appeal this decision, even without a previous submission of substantive comments.

Forest Guardians and the Rewilding Institute are in compliance with the notice, comment, and appeal procedures for National Forest System projects and activities, as set forth in 36 C.F.R. Part 215. This appeal has been timely submitted within 45 days of the date of decision.

### **RIGHT TO APPEAL**

The decision memo states that “[t]his decision is not subject to administrative appeal under 36 C.F.R. § 215.” The United States Forest Service (USFS) promulgated 36 C.F.R. Part 215 pursuant to the Forest Service Decision Making and Appeals Reform Act (ARA), 16 U.S.C. § 1612. Specifically, 36 C.F.R. § 215.12(f) exempts from the general right to appeal projects for which NEPA does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Because the decision memo concludes that, under Section 339 of the 2005 Consolidated Appropriations Act (P.L. 108-447), NEPA does not require the preparation of an EA or an EIS for the continued authorization of grazing on the SU allotment, the USFS has precluded this decision from the general right to appeal. This preclusion is patently illegal.

On July 2, 2005, the United States District Court for the Eastern District of California unequivocally held that the USFS cannot withhold categorically excluded actions from its notice, comment, and appeal process.<sup>2</sup> Quite simply, this court held that all USFS decisions that are categorically excluded from NEPA review are nonetheless appealable. In so holding, the court struck down 36 C.F.R. § 215.12(f) as “manifestly contrary” to the ARA.<sup>3</sup> The court later clarified that this holding applies in every district of the country, and to all USFS decisions dated after July 7, 2005.<sup>4</sup> The Ninth Circuit Court of Appeals has since affirmed this decision.<sup>5</sup>

The USFS has NO LEGAL AUTHORITY for now excluding its decision to reauthorize grazing on the SU allotment from administrative appeal. Relying on an agency

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<sup>1</sup> *Wilderness Society v. Rey*, 9:03-cv-00119-DWM (March 29, 2006).

<sup>2</sup> *Earth Island Institute v. Pengilly*, 376 F.Supp.2d 994 (E.D. Cal. 2005).

<sup>3</sup> *Id.*, at 1005.

<sup>4</sup> *Earth Island Institute v. Ruthenbeck*, 2005 WL 3284289.

<sup>5</sup> *Earth Island Institute v. Ruthenbeck*, 459 F.3d 954 (9<sup>th</sup> Cir.2006).

regulation that has been judicially stricken is illegal and grounds for contempt. The USFS must now accept and appropriately respond to this administrative appeal. The grounds for appeal and request for relief are set forth below.

## **GROUNDINGS FOR APPEAL**

The USFS's action in categorically excluding from NEPA review its decision to continue current grazing management on the SU allotment is arbitrary and capricious, and therefore violative of the Administrative Procedures Act (APA), at 5 U.S.C. § 706(2)(A).

P.L. 108-447 sets forth a three-pronged test for when the USFS may categorically exclude its grazing management decisions from NEPA review. A grazing management decision may be categorically excluded if: 1) the decision continues current grazing management; 2) monitoring indicates that current grazing management is meeting, or satisfactorily moving toward, objectives in the applicable Forest Plan; AND 3) there are no extraordinary circumstances potentially having effects, which may significantly affect the environment. Because prongs two and three of P.L. 108-447 are not met in this instance, the decision to reauthorize grazing on the SU allotment must now be the subject of complete NEPA review.

### *A. Monitoring Fails to Indicate that Current Grazing Management is Meeting or Satisfactorily Moving Toward Objectives in the Gila National Forest Plan*

The Gila National Forest Plan (GNFP) is rife with directives to protect and enhance water quality, riparian areas, wildlife habitat, native vegetation, and soil condition- each of which is negatively impacted by livestock grazing. The GNFP calls for livestock grazing only within the confines of land capacity, and only to the extent that benefits are commensurate with costs and land productivity is not impaired.

Generally, continued cattle grazing on the Gila National Forest inherently conflicts with key goals and objectives of the GNFP. The continuation of current management on the SU allotment presents no exception. Specifically, by continuing current management, the USFS fails to comply with the parameters set forth in the GNFP for resource protection and range suitability. Thus, this decision cannot be categorically excluded from NEPA review.

#### 1. Water Quality and Riparian Areas

Riparian and stream ecosystems represent only 0.5 to 1% of the surface area of arid lands in the eleven western United States,<sup>6</sup> yet support an estimated 60 to 70% of Western bird

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<sup>6</sup> U.S. General Accounting Office. 1988. *Public rangelands: some riparian areas restored by widespread improvement will be slow*. GAO/RCED-88-105; see also Belsky, A.J., A. Matzke, and S. Uselman. 1999. *Survey of livestock influences on stream and riparian ecosystems in the Western United States*. *Journal of Soil and Water Conservation* 54: 419-431.

species<sup>7</sup> and as many as 80% of wildlife species in Arizona and New Mexico.<sup>8</sup> Despite the immense ecological importance of these areas, grazing by livestock has damaged 80% of the streams and riparian ecosystems in arid regions of the western United States.<sup>9</sup> As recently as 1990, the U.S. Environmental Protection Agency reported that “extensive field observations suggest that riparian areas throughout much of the West are in their worst conditions in history.”<sup>10</sup> In addition, a joint Bureau of Land Management (BLM) and USFS report concluded that “riparian areas have continued to decline since grazing reforms in the 1930’s.”<sup>11</sup>

The result of cattle grazing in and around riparian areas is nothing short of ecological collapse. A recent survey of scientific literature reported on the effects of livestock grazing on Western streams and riparian zones.<sup>12</sup> Cattle have a negative effect on water quality and seasonal quantity, stream channel morphology, hydrology, riparian zone soils, instream and stream bank vegetation, and aquatic and riparian wildlife.<sup>13</sup> Strikingly, this comprehensive survey of peer-reviewed, experimental and comparative studies found no positive environmental impacts due to cattle grazing.<sup>14</sup>

Cattle not only destroy wildlife habitat through the degradation of water quality; they also impair human water supplies. Agriculture is the major source of water quality impairment in this country. Siltation, introduction of excessive “nutrient” materials, bacteria, proliferation of oxygen-depleting substances, and pesticides rank as the top causes of water quality decline in rivers, and agriculture- including livestock production- is linked to all of them.<sup>15</sup>

The GNFPP states that the USFS must “restore lands in unsatisfactory watershed condition,” and “improve all riparian areas to satisfactory or better condition.”<sup>16</sup> Specifically, the USFS is to “manage riparian areas to protect the productivity and diversity of riparian-dependent resources by requiring actions within or affecting riparian areas to protect and where applicable, improve dependent resources.”<sup>17</sup> In furtherance of this goal, the USFS is to “emphasize protection of soil, water, vegetation, and wildlife and fish resources prior to implementing projects,” and “give preferential consideration to

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<sup>7</sup> Omart, R.D. 1996. *Historical and present impacts of livestock grazing on fish and wildlife resources in western riparian habitats*. Pp. 245-279. In: P.R. Krausman (ed.), *Rangeland wildlife*. Society for Range Management: Denver, CO; *see also* Belsky et al. (1999).

<sup>8</sup> Chaney, E., W. Elmore, and W.S. Platts. 1990. *Livestock grazing on Western riparian areas*. Northwest Resource Information Center, Inc.: Eagle, ID; *see also* Belsky et al. (1999).

<sup>9</sup> U.S. Department of Interior. 1994. *Rangeland reform '94, draft environmental impact statement*. Bureau of Land Management: Washington D.C.; *see also* Belsky et al. (1999).

<sup>10</sup> Chaney et al. (1990).

<sup>11</sup> U.S. Department of Interior (1994).

<sup>12</sup> Belsky et al. (1999).

<sup>13</sup> *See id.*

<sup>14</sup> *See id.*

<sup>15</sup> U.S. Environmental Protection Agency, *The Quality of Our Nation's Water: 1996- Executive Summary of the National Water Quality Inventory: Report to Congress*, EPA841-S-97-001 (Washington, D.C.: USEPA, Office of Water, 1998).

<sup>16</sup> *Id.*, at 12.

<sup>17</sup> *Id.*, at 30.

resources dependent on riparian areas over other resources.”<sup>18</sup> Moreover, other resource uses and activities may occur only “to the extent that they support or do not adversely affect riparian-dependent resources.”<sup>19</sup> “Grazing in riparian zones will be managed to provide for the maintenance and improvement of riparian areas.”<sup>20</sup>

Reauthorizing cattle grazing on the SU allotment under the rubric of current management will continue to degrade water quality and impair riparian areas in direct conflict with the goals and objectives of the GNFP. There are 10 riparian acres on the SU allotment, which consist of riparian vegetation and three springs/seeps. The Decision Memo, however, offers no explicit mitigating measures to protect these riparian areas from the negative impacts of cattle grazing. Page one of the four-page Decision Memo states that supplement sites will be located “1/4 mile or more from waters and key areas except where prior written permission has been obtained from the District Ranger.” This malleable measure is wholly inadequate to protect riparian areas as mandated by the GNFP. Indeed, the supplement location measure was not even designed to protect the riparian areas- it was designed to “encourage even use of forage across the pastures.”<sup>21</sup>

## 2. Wildlife Habitat, Protected Species, Native Vegetation, and Soils

The detrimental effects of cattle grazing on wildlife and federally listed threatened and endangered (T&E) species are numerous and far reaching. Nearly one-quarter of all of the imperiled species listed under the ESA are imperiled by livestock grazing; in the southwest, grazing is a leading cause of species endangerment.<sup>22</sup> Large numbers of permitted livestock on lands completely unsuitable for such grazing pressure causes ecosystem disruption and imbalance. Grazing depletes food sources necessary for sustaining wildlife by denuding the landscape of vegetation. Native plants are integral components of the ecosystem, and they not only provide direct nutritional value for herbivorous species, but this serves to nourish the prey base for carnivorous ones. As native vegetation is grazed to oblivion, exotic weeds invade, threatening grass and shrub ecosystems and disturbing the soil surface.

Livestock grazing depletes native vegetation communities and wildlife habitat through destruction of a basic ecological component: biological soil crusts. Biological (cryptobiotic, cryptogamic) soil crusts are important elements of arid and semi-arid ecosystems. These crusts contribute to increased organic matter, increased minerals, increased soil stability, reduced water run-off, enhanced germination and seedling establishment of native plants, decreased germination of some alien plant species, and increased survivorship of native vascular species.<sup>23</sup> Biological soil crusts provide little

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, at 32.

<sup>21</sup> Decision Memo, at 1.

<sup>22</sup> Flather, C. T., L. A. Joyce, and C. A. Bloomgarden. 1994. Species endangerment patterns in the United States. Pp. 42. USDA Forest Service, Ft Collins.

<sup>23</sup> Belnap, J. 1994b. Potential role of cryptobiotic soil crusts in semiarid rangelands. Pp. 179–185 in S. B. Monsen and S. G. Kitchen (compilers), Proceedings — Ecology and Management of Annual Rangelands. General Technical Report INT-GTR-313. USDA Forest Service Intermountain Research Station, Ogden,

fuel to carry fire and may act as refugia, slowing fire, decreasing its intensity, and contributing to the mosaic pattern of vegetation.<sup>24</sup>

Livestock negatively impact biological crusts through trampling and compaction, especially during dry seasons.<sup>25</sup> Both cover and biomass of the biological soil crust has been found to be reduced on areas grazed by domestic livestock and exposed soil to increase. Significant correlations can exist between biological soil crust cover and the composition of vascular plant communities, so that damage can result in an altered vascular flora.<sup>26</sup> Grazing can reduce nitrogen fixation by as much as 95%.<sup>27</sup>

Both aquatic and terrestrial species are harmed by cattle grazing. Degradation of soils and decreases in vegetation caused by livestock grazing has consequential effects in riparian areas by increasing run-off and sediment loads, thereby decreasing water quality and habitat for aquatic species. Fencing and other so-called range “improvements” fragment habitat, creating edge effects and isolating populations. Barbed wire fencing causes significant mortality in raptor and other bird species populations.<sup>28</sup>

The GNFP acknowledges that “opportunities exist to maintain or improve wildlife habitats,” and thus directs the USFS to “maintain or improve fish and wildlife habitats” throughout the forest.<sup>29</sup> Specifically, the USFS is directed to “manage for a diverse, well-distributed pattern of habitats for wildlife populations and fish species in cooperation with states and other agencies, maintain and/or improve habitat for threatened or endangered species and work toward eventual recovery and delisting of species through recovery plans, and integrate wildlife habitat management activities into all resource practices through intensive coordination.”<sup>30</sup> The GNFP directs the USFS to “protect and improve the soil resource,”<sup>31</sup> and “provide for the management of sensitive soils in all surface disturbing activities to minimize or control erosion.”<sup>32</sup> The USFS is to “manage for indigenous species” by refusing to allow the introduction or invasion of “exotic species capable of reproducing in native habitats.”<sup>33</sup>

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UT.; Belnap, J. and J. S. Gardner. 1993. Soil microstructure in soils of the Colorado Plateau: the role of the cyanobacterium *Microcoleus vaginatus*. *Great Basin Naturalist* 53: 40–47; Belnap, J. R. Rosentreter, S. Leonard, J. H. Kaltenecker, J. Williams, and D. Eldridge. 2001. Biological soil crusts: ecology and management. Technical Reference 1730-2. U.S.D.A. BLM National Science and Technology Center Information and Communications Group, P.O. Box 25047, Denver, CO 80225-0047

<sup>24</sup> Belnap et al. 2001.

<sup>25</sup> Anderson, D.C., K.T. Harper, S.R. Rushforth. 1983. Recovery of cryptogamic soil crusts from grazing on Utah winter ranges. *Journal of Range Management* 35(3): 355-359; Belnap and Gardner 1993; Beymer and Klopatek 1992; Belnap et al. 2001.

<sup>26</sup> Beymer and Klopatek 1992.

<sup>27</sup> Belnap et al. 2001.

<sup>28</sup> Anderson, H. L. 1977. Barbed wire impales another great horned owl. *Raptor Research* 11:71-72; Avery, M. L., P. F. Springer, and N. S. Dailey. 1978. Avian mortality at man-made structures: An annotated bibliography. U.S. Fish and Wildlife Service; Fitzner, R. E. 1975. Owl mortality on fences and utility lines. *Journal of Raptor Research* 9:55-57.

<sup>29</sup> GNFP, at 5.

<sup>30</sup> *Id.*, at 12.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*, at 36.

<sup>33</sup> *Id.*, at 27.

Although myriad wildlife, including T&E species, inhabit the area in and around the SU allotment, current management provides inadequate protection from the negative impacts of cattle grazing. Granted, the Decision Memo states that “all future range fence reconstruction would follow Region 3 guidelines for wildlife accessible fencing.”<sup>34</sup> However, real protection for wildlife can only come through a reduction in stocking rates and the elimination of fencing. The Decision Memo further fails to describe how continued management on the SU allotment will protect native vegetation, control invasive species, curb soil erosion, or save biological soil crusts- all mitigating actions called for in the GNFP.

### 3. Overall Range Suitability

The GNFP identifies goals for “future desired condition” of the range. Significantly, the Plan specifies that forage should be provided to the public only “to the extent benefits are commensurate with costs without impairing land productivity...”<sup>35</sup> Therefore, if the benefits of continued livestock grazing on the SU allotment are not commensurate with the financial and ecological costs borne by the greater public, the allotment’s range cannot be suitable for grazing as defined by the GNFP.

Livestock grazing on arid public lands of the American Southwest brings only a slight benefit to individual permittees, while delivering a heavy burden to the public at large. Surely, the only “benefit” of continued grazing on the SU allotment is that of a financial subsidy to its one permittee. All the while, the Government Accountability Office (GAO) has reported that the federal government spends at least \$144 million each year managing private livestock grazing on federal public lands, but collects only \$21 million in grazing fees. This equates to an annual net loss of at least \$123 million.<sup>36</sup> Considering the additional direct and indirect costs not included in the GAO report, economists have estimated that the federal public lands grazing on BLM and USFS lands may cost as much as \$500 million to \$1 billion annually.<sup>37</sup>

The benefits that would flow from the elimination of cattle, however, are numerous. Besides its inherent value, livestock-free and fence-free wildlife habitat enhances opportunities for ecological services and recreational uses. There is rising demand for outdoor recreation on our public lands. As a recently released report emphatically illustrates, the economic contribution of recreationists to the national economy is staggering in the United States today.<sup>38</sup>

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<sup>34</sup> Decision Memo, at 1.

<sup>35</sup> GNFP, at 11.

<sup>36</sup> GAO. 2005. Livestock grazing: federal expenditures and receipts vary, depending on the agency and the purpose of the fee charged. GAO-05-869. Government Accountability Office. Washington, D.C.

<sup>37</sup> Moscovitz, K. and C. Romaniello. 2002. *Assessing the full cost of the federal grazing program*. Center for Biological Diversity. Tuscon, AZ. The estimated cost of the federal grazing program at \$500 million is consistent with estimates developed by other experts.

<sup>38</sup> Joanne Kelly, *US Impact of Outdoor Recreation: \$730 Billion*, Scripps Howard News Service, Sept. 18, 2006 (all information cited in the following two paragraphs was obtained from this article).

From birdwatchers to mountain bikers, outdoor enthusiasts bring in almost \$300 billion in annual retail sales, and contribute more than twice that to the United States economy. Outdoor recreationists spend \$46 billion a year on the gear they need to recreate in the American woods, rivers, and slopes. They spend five times that much- \$243 billion- on the food, lodging, entertainment, and transportation they require along the way. In all, active outdoor recreation pumps \$730 billion annually into the United States economy.

The recreation industry supports about 6.5 million jobs, and associated annual tax revenues add up to \$88 billion a year. Wildlife viewing is currently the most common outdoor activity, with birding alone attracting 66 million people last year. Biking is the second most favored outdoor activity. In fact, 60 million people took part in cycling last year, while those taking to the trails for running, hiking, rock climbing or backpacking totaled 56 million.

Unless and until the USFS can show how the benefits of livestock grazing under the current management scheme on the SU allotment are commensurate with the cost, it cannot avoid NEPA review. This type of cost/benefit analysis is required by the GNFP, and should realistically explore the public demand for other uses of this land.

*B. There are Extraordinary Circumstances, which may Significantly Affect the Environment*

The Forest Service Handbook (FSH) details those resource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action warrant further analysis and documentation in an EA or an EIS.<sup>39</sup> Among those criteria is the presence of federally listed T&E species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or USFS sensitive species. Because the SU allotment sits wholly within the Blue Range Wolf Recovery Area (BRWRA)- land set aside by the federal government for the purpose of recovering the endangered Mexican gray wolf- extraordinary circumstances, which may significantly affect the environment, are present on the allotment and preclude categorical exclusion in this case.

1. Mexican Gray Wolf Recovery Efforts within the BRWRA Constitute Extraordinary Circumstances

The Mexican gray wolf (*Canis lupus baileyi*) is an apex carnivore now being actively recovered on the Gila landscape. Unlike other endangered species, the Mexican gray wolf has the potential, and is ultimately expected, to occupy nearly all of the Gila National Forest. Whenever the USFS issues or reissues a term grazing permit on the Gila, it must consider the effects of livestock grazing on wolf recovery efforts.

As with all species listed as threatened or endangered under the ESA, the USFS has a mandate to “carry out programs for the conservation of endangered species....”<sup>40</sup> The

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<sup>39</sup> FSH 1909.15 Chapter 30.3.2.

<sup>40</sup> ESA § 7(a)(1).

USFS is a signatory to the 2003 Memorandum of Understanding (2003 MOU)<sup>41</sup> and a full member of the Mexican Wolf Adaptive Management Oversight Committee (AMOC), which makes decisions regarding the Mexican gray wolf reintroduction project underway in the BRWRA. The stated purpose of the 2003 MOU, which establishes the AMOC, is “to establish a framework for adaptively managing the Mexican wolf reintroduction project in and around the BRWRA to contribute toward recovery, including downlisting and delisting.” The BRWRA includes the entire Gila National Forest and, by inclusion, the entire SU allotment.

Mexican gray wolves are free to establish territories and dens on the SU allotment, but simply have not yet done so. Wolves previously released in Arizona can be translocated to any location in the Gila National Forest; and, thus, the SU allotment could be selected as a release site in the future. Decisions now made that would reduce the potential for livestock-wolf conflicts and increase populations of deer and elk would enhance the value of this allotment and the BRWRA for Mexican gray wolf recovery.

On December 31, 2005, the AMOC issued the Mexican Wolf Blue Range Reintroduction Project 5-Year Review- a comprehensive assessment of the progress of the reintroduction project from 1998-2003. The review documents an unsustainable mean annual “failure rate” of 64%, meaning that without continued releases of wolves the population would continue to decline. The failure rate is comprised of wolves that die, wolves that are removed for dispersing outside the BRWRA boundary, and wolves removed to resolve conflicts between livestock and wolves. To date, all continuing conflicts between livestock and wolves have been ultimately resolved by removing wolves, and a significant component of the removal rate (26%) is of wolves that prey on livestock.

Annual reports issued by the U.S. Fish and Wildlife Service (FWS) and the AMOC for the years 2004 and 2005 document a decline in the BRWRA Mexican gray wolf population for both years.<sup>42</sup> The estimated population at the end of 2005 was 42 compared to the estimated population of 55 wolves at the end of 2003. It is important to note that these numbers are not exact, and possibly slightly inflated. Accordingly, the annual reports noted that the 2005 end population number was perhaps as low as 35 individuals.

Wolves continue to be removed when conflicts arise with livestock, further reducing the BRWRA wolf population. The implementation of better livestock management or animal husbandry could reduce livestock-wolf conflicts and increase the survival and tenure of reintroduced wolves and their offspring on the BRWRA. Both results would effectively

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<sup>41</sup> This MOU was signed by *Arizona Game and Fish Department, New Mexico Game and Fish Department, U.S.D.A. Animal and Plant Health Inspection Service/Wildlife Services, U.S.D.A Forest Service, U.S. Fish and Wildlife Service, White Mountain Apache Tribe, Arizona Counties of Graham, Greenlee, and Navajo, New Mexico Counties of Catron and Sierra, and the New Mexico Department of Agriculture* on October 31, 2003.

<sup>42</sup> USFWS. 2005. Mexican wolf recovery program: January 1 - December 31, 2004. Progress Report #7. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. See also USFWS. 2006. Mexican wolf recovery program: January 1-December 31, 2005. Progress Report #8. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

contribute to the conservation and recovery of the Mexican gray wolf *as required by* the ESA and the 2003 MOU. In order to comply with these mandates, the USFS must first analyze the impacts of continued grazing on the recovering Mexican gray wolf population in the BRWRA. Such analysis is outside the scope of categorical exclusion, but instead requires NEPA review.

## 2. Categorical Exclusion is Inappropriate

The USFS must fully consider how the continued management of the SU grazing allotment will impact the Mexican gray wolf recovery efforts on the Gila National Forest in the form of exhaustive NEPA review. The decision whether to reauthorize grazing on the SU allotment should be evaluated in light of the allotment's value to wolf reintroduction in a livestock-free state. If a term permit is reissued, how grazing will be reauthorized should be evaluated in terms of proactively reducing potential wolf-livestock conflicts.

NEPA assessments required by the Rescissions Act of 1995 (Public Law 104-19) provide an opportunity to systematically re-evaluate policy decisions on an allotment-by-allotment basis in light of the effects of such decisions on the BRWRA Mexican gray wolf reintroduction project and the recovery requirements of the ESA. We have identified five measures that would serve individually and collectively to conserve and recover the endangered Mexican gray wolf in the BRWRA: (1) reduce or eliminate livestock; (2) increase native prey, especially elk and deer; (3) remove, or render unpalatable, livestock carcasses; (4) eliminate open-range calving by livestock; (5) adjust the seasonality of grazing. We elaborate on each of these measures below, and suggest that a similar analysis should be offered as part of your NEPA analysis.

*Reduce or eliminate livestock.* Wolves course through large home ranges in search of prey. The more livestock that are present within the BRWRA and the more ubiquitously they are distributed, the greater is the probability of wolves encountering and eventually preying on livestock. Under current rules and procedures, this results in the take and removal of wolves. The success of gray wolf recovery in the northern Rocky Mountains is attributed in large part to the existence of large livestock-free core areas where wolves need not be managed or controlled for interactions with livestock.<sup>43</sup>

*Increase native prey.* The primary native prey of Mexican gray wolves in the BRWRA are elk and deer, especially elk. Presently, wolves have a nearly equal opportunity of encountering native prey and domestic livestock in the BRWRA. Logical reasoning suggests that by increasing elk and deer, conflicts between livestock and wolves would be reduced and the removal of wolves would decline. This would increase the survival and persistence of wolves in the BRWRA contributing to their conservation and recovery. Livestock grazing is a permitted privilege within the BRWRA “where consistent with other multiple use goals and objectives.” The elimination of grazing privileges within the

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<sup>43</sup> Bangs E.E., S.H. Fritts, J.A. Fontaine, D.W. Smith, K.M. Murphy, C.M. Mack, and C.C. Niemeyer. 1998. *Status of gray wolf restoration in Montana, Idaho, and Wyoming*. Wildlife Society Bulletin 26:785-798.

BRWRA would not significantly affect the livestock industry as a whole.<sup>44</sup> However, the success of the BRWRA Mexican gray wolf reintroduction project is entirely dependent on Mexican gray wolves thriving and persisting within the BRWRA. We believe that these facts elevate the priority of Mexican gray wolf recovery above that of livestock production within the BRWRA, and that this priority should be reflected in the decision by the USFS on the SU allotment and other allotments within the BRWRA. Thus, the allocation of forage should be at least 50/50, and for reasons stated above we recommend that more forage be allocated to wildlife than domestic livestock within the BRWRA.

*Remove or render unpalatable livestock carcasses.* The Mexican Wolf Recovery: Three-Year Program Review and Assessment concluded that scavenging on dead livestock “may predispose wolves to eventually prey on livestock”;<sup>45</sup> and the Five-Year Review documented that 11% of wolves that depredated livestock were known to have previously scavenged dead livestock prior to their first documented depredation incident.<sup>46</sup> Authors of the Three-Year Review recommended that livestock operators on public lands within the BRWRA be required to “take some responsibility for carcass management/disposal to reduce the likelihood that wolves become habituated to feeding on livestock.” The USFS’s AMOC representative claims that the agency lacks authority to require permittees to remove or render unpalatable (as by applying lime) dead livestock on their allotment. We believe otherwise, and recommend that such a requirement be included in all allotment management plans within the BRWRA. Such a provision will reduce livestock-wolf conflicts and, thus, contribute to the conservation and recovery of the Mexican gray wolf.

*Eliminate open-range calving by livestock.* Wolves prey disproportionately on young prey, including livestock. Dispersed open-range calving of untended cows invites depredation by wolves, which leads to wolves being removed from the BRWRA, and contributes to the failure of wolf recovery efforts. We have recently learned of some confined calving operations in the Apache National Forest that reportedly resulted in increased calf survival. If grazing is allowed, confined calving should be a condition of the SU allotment management plan and of all other allotment management plans in the Gila National Forest.

*Adjust the seasonality of grazing.* Mexican gray wolf project personnel report that fewer livestock depredation incidents occur on seasonally grazed allotments, especially those stocked with livestock during summer after the elk have given birth to their calves. Young wolves learn to identify prey from their parents and older pack members and from a “search image” for the prey they are taught to hunt. From an energetics perspective, wolves that stick to known prey items would be expected to fare better than wolves that experiment with potential prey with which they lack experience, unless known prey becomes scarce. If livestock are on the range less than half of the year, wolves would

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<sup>44</sup> Donahue, D.L. 1999. *The Western Range Revisited*. University of Oklahoma Press, Norman.

<sup>45</sup> Paquet, P.C., J.A. Vucetich, M.K. Phillips, and L.M. Vucetich. 2001. *Mexican wolf recovery: Three-year program review and assessment*. US Fish and Wildlife Service, Albuquerque, New Mexico.

<sup>46</sup> Mexican Wolf Adaptive Management Oversight Committee. 2005. *Mexican wolf Blue Range Reintroduction Project 5-year review*. US Fish and Wildlife Service, Albuquerque, New Mexico.

presumably have a reduced incentive to switch from known prey (i.e., elk and deer) to domestic livestock.

While we were able to easily develop and articulate the above five measures to help conserve and recover the endangered Mexican gray wolf in the face of cattle grazing on the allotment, your categorical exclusion ignores the extraordinary circumstances posed by the Mexican gray wolf recovery effort currently being made throughout the Gila National Forest. Because the appropriate level of livestock grazing on the SU allotment turns, in part, on the magnitude and resolution of potential wolf-livestock conflicts, the USFS must initiate environmental review of the proposed action to explore the wolf issue and invite public comment.

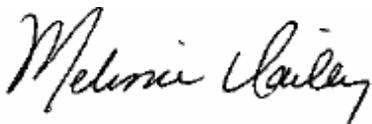
### REQUEST FOR RELIEF

Appellants request that the categorical exclusion of the decision to continue current management on the SU grazing allotment be immediately abandoned, and that proper environmental review be commenced pursuant to NEPA.

### CONCLUSION

The use of a categorical exclusion in this instance is wholly inappropriate because the current management on the allotment is not meeting or moving towards the goals and objectives of the GNFP, and because Mexican gray wolf recovery efforts within the BRWRA constitute extraordinary circumstances, which may significantly affect the environment. The USFS's conclusion that it may categorically exclude its decision to continue current management on the SU grazing allotment is void as illegal. This appeal is properly submitted, and requests that the USFS immediately begins thorough environmental review of this decision, which meets the mandates of NEPA.

Respectfully submitted,



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