

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILDEARTH GUARDIANS,)	Civil No. _____
)	
Plaintiff,)	
)	
vs.)	COMPLAINT FOR
)	DECLARATORY AND
)	INJUNCTIVE RELIEF
UNITED STATES FOREST SERVICE;)	
THOMAS TIDWELL, Chief, U.S. Forest Service;)	
MARIA GARCIA, Forest Supervisor, Santa Fe)	
National Forest,)	
)	
Defendants.)	
_____)	

INTRODUCTION

1. In this action for declaratory and injunctive relief, Guardians challenges the failure of the Defendants, the United States Forest Service; Thomas Tidwell, Chief of the U.S. Forest Service; and Maria Garcia, Forest Supervisor (collectively the “Forest Service”), to comply with Defendants’ mandatory duty under the Endangered Species Act (“ESA”) to ensure, in consultation with the U.S. Fish and Wildlife Service (“FWS”), that its actions related to grazing in the Santa Fe National Forest (“SFNF”) are not likely to jeopardize the continued existence of the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*), an endangered species.

2. The FWS listed the New Mexico meadow jumping mouse as an endangered species, effective on July 10, 2014. *See* 79 Fed. Reg. 33,119 (June 10, 2014). Citing threats of high magnitude, ongoing and future habitat loss, and isolated populations, the FWS determined that this subspecies of jumping mouse is currently at an elevated risk of extinction.

3. The New Mexico meadow jumping mouse has been extirpated from the vast majority of its range due to the destruction and degradation of its streamside habitat. In all historical locations surveyed since 2000, New Mexico meadow jumping mouse populations have undergone large declines and in most cases may have completely disappeared. In fact, approximately 70 of the fewer than 100 populations that were found from the late 1980's to the present have likely been extirpated, with only 29 populations located rangewide since 2005.

4. Grazing of livestock is a primary driver of this decline. The New Mexico meadow jumping mouse requires pristine streamside and wet meadow habitat where particular vegetation grows to at least 24 inches in height for its food and sheltering needs. Cattle grazing makes this growth impossible and has been identified by FWS as one of the primary causes of this mouse's habitat destruction. Without this habitat, the New Mexico meadow jumping mouse cannot breed and prepare for its 8-9 month hibernation, the longest known for any mammal.

5. The Cebolla San Antonio and San Diego grazing allotments in the SFNF contain 2 of the mere 29 known populations of this rare jumping mouse. Yet the Forest Service has failed to consult with the FWS, as required by Section 7(a)(2) of the ESA, as to the effects of its actions authorizing and implementing grazing in these allotments, including issuing grazing permits, authorization of allotment management plans ("AMPs"), issuing associated annual operating instructions ("AOIs"), and use of its authority to set forth guidelines and conditions on grazing in these allotments to protect listed species, such as the New Mexico meadow jumping mouse (collectively the "Grazing Authorizations").

6. Because the Forest Service's actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments are likely to adversely affect the New Mexico meadow jumping mouse, the Forest Service's failure to initiate and to conclude a Section 7(a)(2) consultation with the FWS violates the ESA. As a result of the Forest Service's failure to comply with the ESA's mandatory consultation procedures, it is also unable to ensure that its actions are not likely to jeopardize the continued existence of the New Mexico meadow jumping mouse, in violation of Section 7(a)(2)'s substantive requirements.

7. To redress these violations, Guardians seeks to compel the Forest Service to comply with (1) the agency's procedural duty to initiate and to complete an ESA Section 7(a)(2) consultation with the FWS as to the effects of its Grazing Authorizations on the New Mexico meadow jumping mouse; (2) the agency's substantive duty to ensure that its Grazing Authorizations do not jeopardize the New Mexico meadow jumping mouse, pursuant to 16 U.S.C. § 1536(a)(2); and (3) the agency's duty to avoid any irreversible and irretrievable commitments of resources until consultation is complete, pursuant to 16 U.S.C. § 1536(d).

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(g)(1) (ESA citizen suit provision), 5 U.S.C. §§ 701-706 (Administrative Procedure Act), and 28 U.S.C. § 1331 (federal question jurisdiction). The relief requested is authorized by 28 U.S.C. § 2201 (declaratory judgment) and 28 U.S.C. § 2202 (injunctive relief).

9. Venue is proper in this judicial district pursuant to 16 U.S.C. § 1540(g)(3)(A) (ESA citizen suit provision) and pursuant to 28 U.S.C. § 1391(e) because this is an action against an agency of the United States, because the cause of action arises in New Mexico, and because Plaintiff Guardians is a non-profit organization incorporated in the State of New Mexico.

10. As required by the ESA, by certified letter mailed on July 11, 2014, Guardians provided the Forest Service with sixty days' notice of its intent to commence a citizen suit in connection with the ESA violations alleged in this complaint. 16 U.S.C. § 1540(g).

11. The Forest Service's violations are ongoing. There exists now between the parties an actual and justiciable controversy.

PARTIES

12. Plaintiff WILDEARTH GUARDIANS is a 501(c)(3) non-profit, public interest conservation organization with its primary office in Santa Fe, New Mexico. Guardians' primary goals include protection and restoration of endangered species and riparian and other sensitive ecosystems in the southwestern United States that have been impaired as a result of public and private actions and projects, including grazing.

13. Guardians has more than 44,000 members and activists, many of whom recreate in areas affected by the ESA violations described herein. These members, including Guardians' staff, use and enjoy, and intend to continue using and enjoying, the SFNF for recreational, aesthetic, and scientific activities. These activities include hiking and looking for wildlife, including the New Mexico meadow jumping mouse, in and around the Cebolla San Antonio and San Diego grazing allotments. These activities

would be more successful and more enjoyable to Guardians' members if there were more New Mexico meadow jumping mice to observe and if the species' habitat was protected from the destructive impacts of grazing.

14. Guardians and its members have a substantial interest in this matter and are adversely affected and aggrieved by the Forest Service's failure to comply with the ESA, since this failure adversely affects the New Mexico meadow jumping mouse and its habitat, impairing its survival and recovery, and thereby diminishing the interests of Guardians' members in appreciating, viewing, and looking for the species in the wild. The relief requested in this Complaint will redress Guardians' members' injuries.

15. Defendant THE UNITED STATES FOREST SERVICE is a federal agency housed in the United States Department of Agriculture that is charged with managing activities in the SFNF. The Forest Service, like all other federal agencies, is required to comply with the ESA in the administration of its duties.

16. Defendant THOMAS TIDWELL is Chief of the United State Forest Service and, in that capacity, has management responsibility for the agency's actions. Mr. Tidwell is sued in his official capacity.

17. Defendant MARIA GARCIA is the Forest Supervisor for the SFNF and, in that capacity, has management responsibility for the agency's actions and consultation with the Service with respect to the SFNF. Ms. Garcia is sued in her official capacity.

18. Guardians and the Defendants are "persons" within the meaning of 16 U.S.C. § 1540(g)(1) and 5 U.S.C. § 702.

LEGAL BACKGROUND

19. The purpose of the ESA is “to provide a program for the conservation [of] endangered species and threatened species” and “to provide a means whereby the ecosystems upon which [such] species depend may be conserved.” 16 U.S.C. § 1531(b). To this end, the ESA directs all federal agencies to work to conserve endangered and threatened species and to use their authorities to further the purposes of the ESA. *See id.* § 1536(a).

20. The ESA requires the Secretary of the Interior to “list” species that are “threatened” or “endangered” and to designate their “critical habitat.” *See* 16 U.S.C. § 1533.

21. The ESA requires all federal agencies to utilize their authorities to carry out programs for the conservation of threatened and endangered species. 16 U.S.C. § 1536(a)(1).

22. Section 7(a)(2) of the ESA requires each federal agency (the action agency), in consultation with the FWS¹ to ensure “that any action authorized, funded, or carried out” by the agency “is not likely to jeopardize the continued existence of” listed species or result in the destruction or adverse modification of critical habitat of such species. 16 U.S.C. § 1536(a)(2).

¹ The ESA delegates responsibility for Section 7 consultation with action agencies to two cabinet-level Secretaries, Interior and Commerce. 16 U.S.C. § 1532(15); 16 U.S.C. § 1536(a). The Secretary of the Interior has sub-delegated authority to FWS, *see* 50 C.F.R. § 402.01, who has primary responsibility for terrestrial species, such as the New Mexico meadow jumping mouse.

23. The action agency must “review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat.” 50 C.F.R. § 402.14(a).

24. “Action” is broadly defined to mean “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies” and includes “actions directly or indirectly causing modifications to the land, water, or air.” 50 C.F.R. § 402.02.

25. If any listed species may be present in the action area, the action agency must prepare a Biological Assessment (“BA”). *See* 16 U.S.C. § 1536(c)(1). The BA must “evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.” 50 C.F.R. § 402.12(a)

26. If the action agency determines that its action may affect, but is not likely to adversely affect, a proposed or listed species or its proposed or designated critical habitat, it may engage in “informal consultation” with FWS. *See* 50 C.F.R. § 402.13(a); 50 C.F.R. § 402.14(b)(1). If, as a result of informal consultation, FWS issues a written “concurrence” to the action agency that its proposed action is not likely to adversely affect a listed species or its critical habitat, the consultation process ends. *See* 50 C.F.R. § 402.13(a); 50 C.F.R. § 402.14(b)(1). However, if either agency believes that adverse effects are possible, the agencies must engage in formal consultation.

27. If the action agency determines that its proposed action “may affect” any listed species, the agency must engage in “formal consultation” with the FWS. 50 C.F.R.

§ 402.14; *see also* 51 Fed. Reg. 19,926, 19,949 (June 3, 1986) (explaining that “may affect” broadly includes “[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character”). The action agency must provide FWS with a written request to initiate consultation, which must include a description of the action to be considered; a description of the specific area that may be affected by the action; a description of any listed species or critical habitat that may be affected by the action; a description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects; and any relevant reports or other relevant available information. *See* 50 C.F.R. § 402.14

28. After formal consultation, the FWS issues a Biological Opinion (“BO”) to explain whether the agency action is likely to “jeopardize” any species’ existence. 16 U.S.C. § 1536(a)(2). The BO must include a summary of the information on which it is based and must adequately detail and assess how the proposed action affects listed species. 50 C.F.R. § 402.14(h). The BO must also include an evaluation of the “cumulative effects on the listed species . . .” 50 C.F.R. § 402.14(g)(3).

29. If the action is likely to cause jeopardy, then the biological opinion shall specify reasonable and prudent alternatives that avoid jeopardy. *See* 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(3). If the FWS concludes that the action or the RPAs will not cause jeopardy, it will issue an incidental take statement (“ITS”) that specifies “the impact, i.e., the amount or extent, of . . . incidental taking” that may occur. *See* 50 C.F.R. § 402.14(i)(1).

30. However, an agency’s consultation duties do not end with the issuance of a BO. The action agency must request re-initiation of formal consultation in certain

situations “where discretionary Federal involvement or control over the action has been retained or is authorized by law,” including when “a new species is listed or critical habitat designated that may be affected by the identified action.” *See* 50 C.F.R. § 402.16(d).

31. Once consultation is initiated or re-initiated, Section 7(d) of the ESA prohibits the agency or any permittee from “mak[ing] any irreversible or irretrievable commitment of resources” toward a project that would “foreclos[e] the formulation or implementation of any reasonable and prudent alternative measures . . .” 16 U.S.C. § 1536(d). The 7(d) prohibition “is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied.” 50 C.F.R. § 402.09.

32. Pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. §§ 1701-1784), the Forest Service may allow livestock grazing on specified allotments within our national forests. The Forest Service authorizes and manages grazing on specified allotments by (1) issuing grazing permits pursuant to 43 U.S.C. § 1752(a) and 36 C.F.R. § 222; (2) issuing AMPs pursuant to 43 U.S.C. § 1752(d) and 36 C.F.R. § 222.1(b); and (3) issuing AOIs.

33. The ESA authorizes citizen suits “to enjoin any person, including” any governmental agency, “who is alleged to be in violation of any provision of” the ESA or its implementing regulations. *See* 16 U.S.C. § 1540(g).

FACTUAL ALLEGATIONS

34. The New Mexico meadow jumping mouse is a unique species of jumping mouse that lives only along the banks of southwestern streams. It is semi-aquatic, and its

large back feet may assist it with swimming as well as jumping. It can make leaps of up to three feet, ten times the length of its body.

35. The New Mexico meadow jumping mouse is pictured here:



Photo Credit: Jennifer K. Frey

36. The mouse's historic range extended from the San Juan Mountains in southwestern Colorado into the Rio Grande Valley in New Mexico and the White Mountains in Arizona. However, since 2005, researchers have documented only 29 remaining populations (2 in Colorado, 15 in New Mexico, and 12 in Arizona) spread across 8 geographic regions.

37. The New Mexico meadow jumping mouse has a low reproduction rate, living just three years and having one small litter of seven or fewer young annually.

38. The New Mexico meadow jumping mouse has the longest known hibernation period of any mammal. The species hibernates for 8 to 9 months out of the year, leaving it with just 3 to 4 months during the summer within which to breed, birth

and raise its young, and store sufficient fat reserves to survive. This short active period means that, if resources are not available in a single season, mouse populations will be greatly stressed, be less likely to reproduce, and be less likely to survive during hibernation.

39. The New Mexico meadow jumping mouse requires very specialized habitat to support its food and nest-building needs. It requires dense streamside vegetation averaging at least 24 inches in height with no woody tissue. This suitable habitat is found only when wetland vegetation achieves full growth potential associated with perennial flowing water. The species also needs intact areas adjacent to these wetlands for the nests and burrows where they birth young and hibernate through the winter. This suitable habitat must exist over a substantial area for the species to form resilient populations, which cannot occur when its habitat is destroyed and fragmented by grazing.

40. Cattle grazing destroys the New Mexico meadow jumping mouse's habitat and dooms the species where it is present. Even with low numbers of cows, grazing cattle on the mouse's habitat results in "trampling of streambanks, loss of riparian cover, soil compaction, modification of riparian plant communities, lowering water tables, and . . . changes to New Mexico meadow jumping mouse microhabitat." 79 Fed. Reg. at 33,124. A mouse in grazed habitat generally cannot collect enough food during its short active period to make it through the winter. During surveys in 2005 and 2006, every population of New Mexico meadow jumping mouse was found in areas inaccessible to livestock.

41. Since the New Mexico meadow jumping mouse moves only very small distances, relatively small areas of unsuitable habitat, such as an area where a grazing allotment crosses a stream, can isolate populations. This makes it difficult for the species to expand its range past such blockades and also to re-colonize areas where it has already been eliminated in the past. As a result of this limited movement potential and ongoing habitat destruction, FWS determined that all known remaining populations of New Mexico meadow jumping mouse have patches of suitable habitat that are too small and isolated to support resilient populations.

42. In listing the New Mexico meadow jumping mouse as an endangered species, FWS stated that “ongoing grazing . . . will continue to put all of the remaining locations [where the mouse occurs] at considerable risk of extirpation in the near-term (between now and the next 10 years) and increasing over the long term.” 79 Fed. Reg. at 33,122.

43. In its listing decision, FWS stated that, “[i]f a Federal agency implements, authorizes, or funds . . . livestock grazing activities that may affect the New Mexico meadow jumping mouse, then they must enter into consultation with [FWS].” 79 Fed. Reg. at 33,124.

44. Two (2) of the 15 known populations of New Mexico meadow jumping mouse in New Mexico occur within grazing allotments in the SFNF – the Cebolla San Antonio allotment and the San Diego allotment. *See* Consideration of Economic Impacts: Screening Analysis of the Likely Economic Impacts of Critical Habitat

Designation for the New Mexico Meadow Jumping Mouse at 8.² The Forest Service has issued grazing permits that authorize grazing of livestock on both of these allotments.

45. The Forest Service implements and authorizes grazing activities on the Cebolla San Antonio and San Diego allotments through its “Grazing Authorizations,” which include issuance of grazing permits, AMPs, and AOIs. The Grazing Authorizations guide and constrain ranchers’ occupancy and use of these allotments for livestock purposes in the SFNF. Specifically, the Grazing Authorizations constitute the Forest Service’s determination of issues, such as when cattle can be grazed in each allotment in the SFNF, how many cattle can be grazed there, where grazing can occur on each allotment, when livestock must be rotated, what improvements must be maintained or developed, what mitigation measures will be required, when grazing must end, and when these Grazing Authorizations can be amended.

46. These Grazing Authorizations constitute a “program, practice, project, or activity” requiring consultation and/or re-initiation of consultation. *See Forest Guardians v. Forsgren*, 478 F.3d 1149, 1157 (10th Cir. 2007) (citation omitted).

47. The Forest Service issues yearly AOIs that re-authorize grazing in these allotments and contain management directives on how many cattle can be grazed, restrictions on grazing, etc. These AOIs also include provisions allowing the Forest Service to alter the stipulated grazing requirements under certain scenarios, including due to a change in law, such as the listing of a species, or due to changes recognized through ongoing monitoring.

² Available at: <http://www.regulations.gov>, Docket No. FWS-R2-ES-2013-0014.

48. Through these Grazing Authorizations and the Land and Resource Management Plan (“Forest Plan”), the Forest Service retains discretionary involvement and/or control over grazing on the SFNF to take action for the benefit of listed species, such as the New Mexico meadow jumping mouse. The Forest Service may place restrictions on grazing, prohibit grazing on these allotments in upcoming grazing seasons, and require protective measures such as fencing on these allotments.

49. Grazing is a cause of historic, current, and future New Mexico meadow jumping mouse habitat loss at all locations where the species has been located in the SFNF. *See* Species Status Assessment Report for the New Mexico Meadow Jumping Mouse (*Zapus hudsonius luteus*) at 85.³

50. The Forest Service’s actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments, including its Grazing Authorizations, “may affect” the New Mexico meadow jumping mouse. *See* 16 U.S.C. § 1536(a)(2). There are 2 known populations within these allotments and the mouse may be present in other areas.

51. Because fencing does not exist or is inadequate, cattle grazing in areas where the New Mexico meadow jumping mouse is not known to be present within the Cebolla San Antonio and San Diego allotments may also affect the species. Cattle from these areas can stray into areas where the New Mexico meadow jumping mouse is present and, upon arrival, can quickly destroy the species’ small pockets of suitable habitat.

³ Available at:
<http://www.regulations.gov/contentStreamer?objectId=09000064817358a8&disposition=attachment&contentType=pdf>

52. In a scoping letter addressing a proposed New Mexico meadow jumping mouse habitat improvement project on the lower Rio Cebolla, one of the areas of occupied habitat in the SFNF, the Forest Service acknowledged that “[t]he vegetation in [this] area does not meet the specialized habitat requirements [for the New Mexico meadow jumping mouse]. Because [this] area is not fenced, permitted livestock grazing occurs.” *See* Scoping Letter for Lower Rio Cebolla Occupied Habitat Improvement Project at 1.⁴

53. The Forest Service’s actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments, including its Grazing Authorizations, constitute affirmative and/or ongoing agency “action” triggering its mandatory procedural and substantive duties under Section 7(a)(2) of the ESA. *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.02.

54. The FWS must therefore take immediate action to initiate consultation with the FWS regarding the effects of its actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments on the New Mexico meadow jumping mouse to ensure that such actions are not likely to jeopardize the species. *See* 16 U.S.C. § 1536(a)(2).

55. Because these actions may result in adverse effects to the New Mexico meadow jumping mouse, the Forest Service must engage in formal consultation with FWS. *See* 50 C.F.R. § 402.14.

⁴ Available at: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3809343.pdf

56. In the alternative, the Forest Service has previously engaged in formal consultation with FWS regarding the effects of actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments on listed species.

57. If the Forest Service has previously consulted with FWS on the effects of any its actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments on listed species, the Forest Service must re-initiate formal consultation with FWS on those actions with respect to the New Mexico meadow jumping mouse. *See* 50 C.F.R. § 402.16(d).

58. On July 18, 2014, the SFNF sent a letter to the FWS requesting “voluntary” re-initiation of consultation on its Forest Plan, pursuant to Section 7(a)(2) of the ESA. The SFNF stated that it was reviewing other activities, including livestock grazing, but it did not request initiation or re-initiation of consultation on its actions relating to implementation and authorization of grazing on any allotments in the SFNF.

59. To date, the Forest Service has failed to initiate or re-initiate consultation with FWS on the effects of its actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments on the New Mexico meadow jumping mouse, in violation of the ESA’s procedural consultation requirements. *See* 16 U.S.C. § 1536(a)(2).

60. The Forest Service has also violated, and continues to violate, its substantive duty under Section 7(a)(2) of the ESA, by failing to ensure that its actions do not jeopardize the continued existence of the New Mexico meadow jumping mouse.

61. The Forest Service’s actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments before the completion of Section 7(a)(2)

consultation also constitute an irreversible or irretrievable commitment of resources, in violation of Section 7(d) of the ESA. *See* 16 U.S.C. § 1536(d).

62. Because grazing destroys the specialized habitat necessary for the New Mexico meadow jumping mouse's survival and recovery, it may result in the extirpation of additional populations, long-term damage to suitable habitat, destruction of potential alternative habitat within the project area thus limiting the formulation of reasonable and prudent alternatives, and other impacts. As a result of these impacts, the allowance of any grazing in these occupied allotments is likely to result in irreversible or irretrievable commitments of resources.

63. Therefore, the Forest Service must suspend grazing activities within the Cebolla San Antonio and the San Diego allotments until it has completed consultation on the effects of grazing on the New Mexico meadow jumping mouse with the FWS. *See* 16 U.S.C. § 1536(d).

CLAIMS FOR RELIEF

First Claim for Relief

Violation of 16 U.S.C. § 1536(a)(2) (substantive duties)

64. Guardians incorporates all preceding paragraphs by reference.

65. The Forest Service has failed to ensure that its actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments, including its Grazing Authorizations, do not jeopardize the survival or recovery of the New Mexico meadow jumping mouse, in violation of the ESA and its implementing regulations. *See* 16 U.S.C. § 1536(a)(2).

Second Claim for Relief

Violation of 16 U.S.C. §1536(a)(2) (procedural duties)

66. Guardians incorporates all preceding paragraphs by reference.

67. The Forest Service's actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments, including its Grazing Authorizations, are likely to adversely affect the New Mexico meadow jumping mouse.

68. The Forest Service has and/or retains sufficient discretionary involvement and control over its actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments to act for the benefit of the New Mexico meadow jumping mouse.

69. The Forest Service has violated and continues to violate the ESA and its implementing regulations, by failing to initiate and to conclude a Section 7(a)(2) consultation with the FWS as to the effects of these actions on the New Mexico meadow jumping mouse. *See* 16 U.S.C. § 1536(a)(2).

70. For those actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments, for which the Forest Service has previously engaged in formal consultation with FWS, the Forest Service has violated and continues to violate the ESA and its implementing regulations, by failing to re-initiate and to conclude a Section 7(a)(2) consultation with the FWS as to the effects of these actions on the New Mexico meadow jumping mouse. *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.16(d).

Third Claim for Relief

Violation of 16 U.S.C. §1536(d)

71. Guardians incorporates all preceding paragraphs by reference.

72. Once consultation is initiated or re-initiated, Section 7(d) of the ESA

prohibits the agency or any permittee from “mak[ing] any irreversible or irretrievable commitment of resources” toward a project that would “foreclos[e] the formulation or implementation of any reasonable and prudent alternative measures . . .” 16 U.S.C. § 1536(d). The 7(d) prohibition “is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied.” 50 C.F.R. § 402.09.

73. The Forest Service’s actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments, including the Grazing Authorizations, before the completion of Section 7(a)(2) consultation constitute an irreversible or irretrievable commitment of resources, in violation of the ESA. *See* 16 U.S.C. § 1536(d).

Relief Requested

WHEREFORE, Guardians respectfully requests the following relief:

A. Declare that the Forest Service’s actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments, including the Grazing Authorizations, without ensuring that its actions do not jeopardize the continued existence of the New Mexico meadow jumping mouse constitute a violation of the Forest Service’s Section 7(a)(2) substantive duties under the ESA;

B. Declare that the Forest Service’s failure to initiate and/or re-initiate consultation with FWS on the adverse effects of its actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments, including the Grazing Authorizations, on the New Mexico meadow jumping mouse constitute a violation of the Forest Service’s Section 7(a)(2) procedural duties under the ESA;

C. Order the Forest Service to immediately initiate and/or re-initiate and to timely complete a Section 7(a)(2) consultation with the FWS as to the impacts of its

actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments, including the Grazing authorizations, on the New Mexico meadow jumping mouse;

D. Enjoin the Forest Service from any actions authorizing and implementing grazing in the Cebolla San Antonio and San Diego allotments unless and until it completes consultation with FWS as to the impacts of those actions on the New Mexico meadow jumping mouse and has implemented all necessary and appropriate measure to ensure that its actions do not jeopardize the survival or recovery of the New Mexico meadow jumping mouse;

E. Award Guardians its reasonable costs in this action, including attorney's fees, pursuant to the Endangered Species Act, 16 U.S.C. § 1540(g), and Equal Access to Justice Act, 28 U.S.C. § 2412; and

F. Order such other relief as this Court determines is just and proper.

Respectfully submitted on this 1st day of October, 2014.

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