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Attorneys for Plaintiffs

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

NEW MEXICO CATTLE GROWERS')
ASSOCIATION, a New Mexico Nonprofit)
Corporation, NEW MEXICO FEDERAL)
LANDS COUNCIL, SPUR LAKE)
CATTLE COMPANY, DOUBLE SPRING)
RANCH, LLC)

Plaintiffs,)

v.)

Docket No. 22-cv-00086

TOM VILSACK, in his official capacity)
as Secretary of the United States)
Department of Agriculture,)
RANDY MOORE, in his official capacity)
as Chief of the U.S. Forest Service,)
MICHIKO MARTIN, in his official capacity)
as Southwestern Regional Forester,)
ROB LEVER, in his official capacity as)
acting Forest Supervisor, Gila National)
Forest, HARRY PROVENCIO, in his official)
capacity as District Ranger for the)
Wilderness Ranger District, Gila National)
Forest, KEVIN SHEA, in his official)
capacity as Administrator of the Animal)
and Plant Health Inspection Service,)
KEITH WEHNEW, in his official capacity)
as Western Regional Director, Animal)
and Plant Health Inspection Service,)

Defendants.)

**COMPLAINT/PETITION FOR AGENCY REVIEW FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1. This is an action for a temporary restraining order, declaratory judgment and injunctive relief filed by the New Mexico Cattle Growers Association, New Mexico Federal Lands Council, Spur Lake Cattle Company and the Double Springs Ranch LLC against the U.S. Department of Agriculture Forest Service (USFS) and Animal and Plant Health Inspection Service (APHIS) (or collectively federal agencies) for violating statutory law.
2. On or about February 4, 2022, the USFS announced that it was going to authorize APHIS to use a helicopter aerial gun and slaughter livestock on the Arizona and New Mexico border in the Gila National Forest, Gila Wilderness starting February 8 to 10, 2022. *See* Exhibits 1, 2 and 3.
3. Once slaughtered, the federal agencies propose to leave the carcasses in place to rot (see Exhibit 4) and likely attract predators such as the Mexican wolf to the locations of the dead cattle. The agencies estimate that there are approximately 200 head of livestock that would be killed. *Id.*
4. Although the federal agencies claim to be complying with all state and Federal laws, the New Mexico Livestock Board, the state agency who administers the state statutes related to unbranded or stray livestock is publicly opposed to the “gunning down” of livestock. *See* Exhibit 13.
5. This is at least the second attempt by the USFS and APHIS to authorize the aerial slaughter of livestock. The original plan proposed in March 2021, to kill these livestock was met with significant resistance by the Plaintiffs, environmental groups, and the New Mexico Livestock Board, and thus was halted. *See* Exhibit 3.

6. This decision substantively violates the USFS regulations and New Mexico state brand and estray laws.
7. In addition, prior to aerially gunning down livestock, the agencies are required to comply with the National Environmental Policy Act (NEPA) and complete an adequate analysis pursuant to the Wilderness Act. While a Categorical Exclusion under NEPA and a “Minimum Requirements Decision Guide” related to the Wilderness Act were completed, neither document analyzes an important aspect of leaving approximately 200 cattle carcasses in place after being shot which will attract endangered Mexican wolves to the area. *See* Exhibits 5 and 7, respectively.
8. In fact, while the Minimum Requirements Decision Guide prepared for this operation included numerous actions which would have the tangential benefit of ensuring that privately owned livestock would not be caught in the cross hairs of the cattle slaughter such as the use of trail cameras and additional helicopter flyovers, the agencies have not complied with ANY of the additional requirements described in the document. *See* Exhibit 7, p. 14.
9. In contrast, the USDA requires area ranchers to pick up and dispose of dead livestock carcasses to prevent attracting wolves. *See* Exhibit 6 ¶ 13.
10. On March 20, 2019, a group of 37 environmental organizations requested that the U.S. Fish and Wildlife Service (FWS) “please require that livestock owners remove or render inedible the carcasses of their domestic animals that die of non-wolf causes before they attract wolves to scavenge and then persist in proximity to vulnerable cattle.” *See* Exhibit 8.

11. The slaughter of 200 to 250 head of livestock has not been analyzed for its “effect” on the endangered Mexican wolf pursuant to section 7 of the Endangered Species Act (ESA) specifically related to leaving 200 head of livestock carcasses as a food source for Mexican wolves, particularly in an area where significant wolf depredation is already occurring. *See* Exhibits 10 ¶ 12, Exhibit 9 ¶ 13.

JURISDICTION AND VENUE

12. Plaintiffs have suffered a legal wrong and are adversely affected or aggrieved by the Defendants’ final agency actions and inactions and are entitled to seek review pursuant to 5 U.S.C. §§ 702 and 704.

13. The Defendants’ final agency actions and inactions are also reviewable in accordance with *Olenhouse v. Commodity Credit Corporation*, 42 F.3d 1560 (1994).

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(2) because the Plaintiffs represent ranchers in New Mexico and the proposed cattle slaughter is to occur within the State of New Mexico.

15. This case is ripe for judicial review. Upon information and belief, Defendants are set to start slaughtering livestock from a helicopter on February 10, 2022. *See* Exhibit 11.

PARTIES

16. Plaintiff New Mexico Cattle Growers Association (NMCGA) is a membership association formed in 1914. The primary mission of the NMCGA is to advance and protect the cattle industry of New Mexico, work towards solutions of cattle industry problems, promote the well-being of the industry, provide an official and united voice on issues of importance to the cattle producers and cattle feeders, and to create and maintain

an economic climate to obtain optimum return on their investments within the free enterprise system. *See* Exhibit 9.

17. The New Mexico Federal Lands Council (NMFLC) was founded in the mid-1970s and operates as a nonprofit organization to lobby for the interests of ranchers who utilize federal and state grazing lands. The NMFLC provides information, programs, and advocacy services.
18. Plaintiff Spur Lake Cattle Company is owned by Nelson D. Shirley of Springerville, Az. Spur Lake Cattle Company owns several ranches along the Arizona and New Mexico border, including on the Gila National Forest. One of these ranches borders the Gila Wilderness where the Defendants propose to gun-down the cattle for over 15 miles. *See* Exhibit 6 ¶¶ 3, 4.
19. Plaintiff Double Spring Ranch LLC is located in Catron County, New Mexico. The Double Spring Ranch has Forest Service grazing allotments in the Wilderness Ranger District, including three within the Gila Wilderness. *See* Exhibit 10 ¶ 7.
20. Defendant Tom Vilsack is the Secretary of the U.S. Department of Agriculture. In that capacity, he oversees the U.S. Forest Service and the U.S. Animal and Plant Health Inspection Service. As such, he is responsible for compliance with all federal laws and regulations. Defendant Vilsack is sued in his official capacity.
21. Defendant Michiko Martin is the USFS Regional Forester for the Southwest Region. The Southwest Region oversees the activities on the Gila National Forest, including in the Wilderness District. As such, he is responsible for compliance with all federal laws and regulations. Defendant Martin is sued in his official capacity.

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