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10
11 UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13
14 Western Watersheds Project and Grand
Canyon Chapter of the Sierra Club;

15 Plaintiffs,

16 vs.

17 U.S. Bureau of Land Management;

18 Defendant.

) Case No. 2:21-cv-01126-SRB

) **PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
MEMORANDUM IN SUPPORT**

) **ORAL ARGUMENT REQUESTED**

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MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedures 56 and Local Rules 7.2 and 56.1, Plaintiffs Western Watersheds Project and Sierra Club hereby move this Court for summary judgment that Defendant Bureau of Land Management’s (BLM) Environmental Analysis, Finding of No Significant Impact (FONSI) and Sonoran Desert National Monument Resource Management Plan (RMP) Amendment violated the Administrative Procedure Act, 5 U.S.C. § 706; the National Environmental Policy Act (NEPA), 43 U.S.C. § 4332(2)(C); the Monument Proclamation; the Federal Land Policy and Management Act (FLMPA), 43 U.S.C. § 1732(a); the Omnibus Public Lands Management Act (OPLMA), 16 U.S.C. § 7202(a); and the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108. Specifically, Plaintiffs request that the Court adjudge and declare that the BLM has issued an Environmental Analysis and FONSI that are arbitrary and capricious under the Administrative Procedure Act and violate NEPA by:

- (1) Relying on a flawed Land Health Evaluation and Compatibility Analysis for its analysis of livestock grazing management on the Sonoran Desert National Monument;
- (2) Failing to take a hard look at the effects of the proposed livestock grazing decision;
- (3) Failing to complete an Environmental Impact Statement and making an improper Finding of No Significant Impacts.

Furthermore, Plaintiffs request that the Court adjudge and declare that the BLM violated the Monument proclamation, FLMPA, OPLMA and the NHPA by:

- (1) Issuing an RMP Amendment that is inconsistent with the Monument Proclamation;
- (2) Issuing an RMP Amendment that did not comply with the requirements of the NHPA.

Summary judgement is appropriate as these claims involve no genuine dispute of material fact, and Plaintiffs are entitled to judgement as a matter of law.

1 This motion is supported by the accompanying Plaintiffs' Opening Brief in
2 Support of Motion for Summary Judgment; the Declarations of Greta Anderson and
3 Sandra Bahr; the Complaint in this matter; the Administrative Record; and such other
4 material that may be presented to the Court before decision hereon.

5 WHEREFORE, Western Watersheds Project and Sierra Club request that this Court grant
6 this Motion for Summary Judgment.

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INTRODUCTION

1
2 The Sonoran Desert National Monument (SDNM) was established to protect the
3 wide diversity of plants, animals, and birds which use that desert landscape, as well as the
4 abundant cultural and historic sites that exist there. To protect those biological and
5 cultural resources, various activities on those lands are restricted, including livestock
6 grazing. Specifically, grazing can no longer occur in the southern portion of the SDNM,
7 and can continue in the northern portion only if the Bureau of Land Management (BLM)
8 determines that grazing is compatible with protecting the resources identified in the
9 SDNM Proclamation. The Proclamation also directed BLM to complete a management
10 plan for the SDNM that included actions necessary to protect those resources.

11 In 2016, this Court ruled that BLM's initial Resource Management Plan (RMP)
12 for the SDNM was unlawful with respect to its direction on livestock grazing because the
13 analysis underlying that direction was flawed in numerous ways. BLM had conducted a
14 Land Health Evaluation (LHE) to assess the ecological condition of the lands and
15 whether livestock grazing was a causal factor for any degraded conditions. The court
16 determined BLM's LHE was unreasonable due, in part, to use of "desired condition
17 objectives" that were not explained or supported by the record and reliance on a single
18 year of monitoring data to assess grazing impacts. Because BLM relied on this flawed
19 LHE to determine where grazing was compatible with protecting the SDNM resources,
20 the compatibility determination was also unreasonable, which in turn undermined the
21 environmental impact statement for the RMP. The court ordered BLM to re-do the LHE
22 and compatibility determination, and amend the RMP to incorporate the new analyses.

23 In 2020, BLM issued the new analyses and RMP amendment. Instead of fixing
24 the prior problems, BLM's new LHE had even more flaws. The new desired condition
25 objectives were still not supported by the facts in the record or an adequate explanation,
26 and the agency again relied on a single year of data to assess ecological conditions. The
27 reliance on one year of data was even more unreasonable in the 2020 LHE because that
28 data was gathered after multiple years of non-use by livestock—in some areas almost ten

1 years of no grazing. BLM was thus analyzing conditions during a single point in time
2 after little cattle use had occurred for years, and ignored all data that had been collected
3 when grazing was actively occurring. BLM compounded those problems by concluding
4 livestock were not the cause of degraded conditions in areas it assumed were not accessed
5 by cattle—assumptions that were contradicted by other evidence in the record.

6 Even with these significant errors, BLM concluded livestock had caused degraded
7 ecological conditions in many areas of the SDNM. Yet instead of determining grazing
8 was incompatible with protecting biological resources in those areas—as it had for the
9 2012 RMP—BLM asserted that reduced levels of grazing, additional fencing, and new
10 water sources would improve conditions. BLM failed to explain how these measures
11 would succeed when areas were still degraded after multiple years of *no* livestock use,
12 and cattle generally cause greater impacts along fences and around water sources. BLM
13 also dismissed livestock impacts to cultural and historic sites despite not surveying 96%
14 of the SDNM to identify such sites and concerns from Tribes and other experts about
15 livestock impacts to cultural resources. BLM’s conclusion that no lands in the north half
16 of the SDNM should be off-limits to grazing was unreasonable and violated the mandate
17 to prohibit grazing that was not compatible with protecting the SDNM resources.

18 Because of these and other flaws with BLM’s analyses and decision adopting the
19 RMP amendment, those analyses and decision are arbitrary and capricious and violate the
20 National Environmental Policy Act (NEPA), Federal Land Policy and Management Act
21 (FLPMA), Omnibus Public Land Management Act (OPLMA), and National Historic
22 Preservation Act (NHPA). Accordingly, this Court should hold unlawful and set aside the
23 RMP amendment and its underlying analyses on livestock grazing.

24 **FACTUAL BACKGROUND**

25 **I. Sonoran Desert National Monument**

26 The Sonoran Desert National Monument was established by Presidential
27 Proclamation in 2001, and covers more than 486,000 acres in southwest Arizona. AR-
28 0031377-79. As the most biologically diverse of the North American deserts, the SDNM

1 was set aside to protect this desert landscape and the “extraordinary array” of plant
2 communities, animals, and cultural sites found there. AR-0031375-77. The Proclamation
3 discussed the “spectacular diversity of plant and animal species” found on the monument,
4 such as saguaro cactus forests, the palo verde/mixed cacti community, the creosote-
5 bursage community, desert grasslands and ephemeral washes that support mesquite,
6 ironwood, palo verde and desert willow trees as well as a variety of herbaceous plants,
7 more than 200 species of birds, reptiles—including Sonoran desert tortoise, and
8 mammals such as desert bighorn sheep, mule deer, javelina, and mountain lion. AR-
9 0031375-76. The Proclamation also highlighted the significant archaeological and
10 historic sites on the SDNM, including many rock art sites, lithic quarries, scattered
11 artifacts, and remnants of several historic trails. AR-0031376-77. The SDNM contains
12 ancestral villages and artifacts of several current Native American Tribes. AR-0031376.

13 The SDNM was created “for the purpose of protecting the objects identified
14 above,” and thus the Proclamation prohibited or restricted numerous activities such as
15 off-road vehicle use and mining. AR-0031377-79. The Proclamation also restricted
16 livestock grazing: BLM could not renew grazing permits for lands south of Highway 8 at
17 the end of their term, and could allow grazing on lands north of Highway 8 to continue
18 “only to the extent that [BLM] determines that grazing is compatible with the paramount
19 purpose of protecting the objects identified in this proclamation.” AR-0031378. The
20 Proclamation required BLM to prepare a management plan that addressed the actions
21 necessary to protect the objects identified in the Proclamation. *Id.*

22 While most of the lands within the SDNM had been grazed by livestock for many
23 decades, the Sand Tank Mountains area in the southwest corner of the Monument
24 excluded livestock beginning in 1941. AR-0031375. The result is an area within the
25 SDNM with greater ecological health and a rich diversity, density, and distribution of
26 plants. AR-0031375. Remaining lands within the SDNM south of Highway 8 were closed
27 to grazing by 2009 when their permits expired. AR-0004893. Parts of six grazing
28 allotments occur within the SDNM north of Highway 8: Bighorn, Conley, Beloit, Hazen,

1 Lower Vekol, and Arnold. AR-0031519. Grazing on those allotments can take one of
2 three forms: perennial grazing authorizes a certain level of grazing every year;
3 ephemeral grazing authorizes grazing on a seasonal basis when rainfall triggers
4 production of annual plants; and perennial/ephemeral grazing authorizes both types of
5 grazing when rangelands produce perennial forage every year and periodically provide
6 additional annual forbs and grasses. AR-0031315; AR-0031535-36. Five of the six
7 allotments north of Highway 8 have historically been classified as perennial/ephemeral
8 while the Arnold allotment was solely ephemeral. AR-0031536. The amount of use
9 authorized on each allotment is in “animal unit months” or AUMs, where an AUM is the
10 amount of forage needed to sustain a cow for a month. *Id.*; AR-0004693.

11 Shortly after the SDNM designation, The Nature Conservancy and Pacific
12 Biodiversity Institute (PBI) completed studies and reports on the impacts of livestock
13 grazing within the SDNM. AR-0002003; AR-0031380. A 2005 literature review of
14 scientific research by The Nature Conservancy found that studies indicate livestock
15 grazing in the desert can adversely affect soils, biological soil crusts, and plant
16 community composition, structure, and function. AR-0002005. Grazing can impact plant
17 communities by decreasing overall vegetation cover and density, reducing cover and
18 density of palatable woody perennials and grasses, reducing species richness of annual
19 plants, and increasing non-native plants. *Id.* Livestock can also damage soil crusts and
20 adversely affect wildlife, particularly bighorn sheep. *Id.* In arid areas like the Sonoran
21 Desert, where plant and soil productivity are low, it can take decades to restore soil and
22 vegetation communities that have been degraded. *See* AR-0001854; AR-0002058. The
23 Nature Conservancy report concluded that year-long grazing within fenced allotments is
24 not a feasible grazing management strategy on the SDNM. AR-0002005.

25 PBI collected its own data from 2002-2006 to map, characterize, and assess the
26 ecological condition of natural communities on the SDNM and adjacent Sand Tank
27 Mountains. AR-0031380. The results indicated that the lower elevation plant
28 communities had the most evidence of disturbance in the form of low vegetation cover,

1 low native species diversity, high levels of non-native species, and soil erosion and
2 compaction. *Id.* at 0031475-86. These lower elevation communities, particularly the
3 creosote-bursage and desert grassland communities, were the most impacted by livestock
4 grazing, with areas around water sources or other livestock congregation areas having the
5 most severe degradation. *Id.* at 0031475-86, 31494.

6 The lead scientist for the PBI studies reaffirmed these findings in a 2008
7 declaration. AR-0011535-46. He stated that the creosote-bursage and desert grassland
8 communities experienced the most severe vegetation and soil degradation from livestock,
9 with 97% of the creosote-bursage community exhibiting signs of ecological degradation.
10 AR-0011538, 11545-48. Because most of the low elevation areas on the SDNM were
11 within 5-6 kilometers of a water source, “there are few low elevation places on the
12 monument where there are not heavy to moderate impacts to the vegetation communities
13 from livestock grazing.” *Id.* at 0011544. Cattle impacts, as well as live and dead cattle,
14 were also observed in high elevation areas during two field seasons, indicating that cattle
15 will sometimes use these less accessible areas to find forage. *Id.* at 0011544-45.

16 After the PBI studies were completed, BLM wrote a memo in 2007 laying out its
17 rationale for determining that “livestock grazing is not compatible with the paramount
18 purposes of protecting the objects of the monument and therefore the SDNM should be
19 closed to livestock grazing.” AR-0010841. The memo stated that rangeland health
20 standards were not being met—particularly around water sources and other congregation
21 areas; livestock were negatively affecting vegetation and wildlife habitat, especially for
22 desert tortoise; continuing drought was adding to the stress caused by ongoing grazing to
23 plants and wildlife; and neither perennial nor ephemeral grazing would be compatible. *Id.*
24 at 0010841-53. BLM never implemented that determination and instead conducted a
25 whole new evaluation that resulted in the 2012 LHE.

26 **II. 2012 Livestock Grazing Analysis and Court Challenge**

27 Disregarding the PBI studies, BLM collected its own data at “key areas”—
28 monitoring sites that were considered representative of ecological sites and livestock

1 use—to assess if soil and vegetation conditions were meeting Arizona Standards for
2 Rangeland Health.¹ AR-0004917-18, 4923. For this assessment, BLM first determined
3 plant community “desired condition objectives” for various ecological sites,² and then
4 compared its monitoring data to these objectives (i.e., comparing actual conditions to
5 desired conditions). AR-0004913-16, 4927-48; AR-0004855-58. Sites that met desired
6 condition objectives were deemed to be achieving Rangeland Health Standard 3. *Id.* BLM
7 found that 127,550 acres of SDNM lands north of Highway 8—or 50.5% of that area—
8 were not achieving Standard 3. AR-0004878. The majority of areas failing the standard
9 occurred in the creosote-bursage and desert wash communities. AR-0004859-60.

10 Next, BLM determined whether livestock grazing was a significant causal factor
11 in not achieving Rangeland Health Standard 3. AR-0004858-59. For this conclusion,
12 BLM considered livestock use levels from the 2008 season, determined from utilization
13 monitoring³ on the Bighorn and Conley allotments as well as mapping of livestock “use
14 patterns” from visual observations along roads in spring 2009. AR-0004919-20, 4924-25;
15 AR-0005246-47. BLM assumed livestock grazing was a significant causal factor of
16 degraded conditions where grazing use was >40%. AR-0004858-59. Based on this use
17 threshold, BLM concluded in the LHE that livestock grazing was a causal factor for not
18 attaining the plant community standard on just 8,498 acres, located in the Conley,
19 Bighorn, and Lower Vekol allotments. AR-0004930-31, 4939, 4946, 4949. The agency
20 relied on the LHE results for its compatibility determination, concluding that grazing was
21 incompatible with protecting the objects of the SDNM on those 8,498 acres and thus
22 those acres would be unavailable for grazing. AR-0004869; AR-0005275.

24 ¹ Standards for Rangeland Health are statewide standards for BLM lands that are used to
25 assess ecological health of rangelands. For the LHEs, BLM used Standard 1 that pertains
26 to soils and Standard 3 that pertains to plant communities. AR-0004912-13, 4961-65.

27 ² Ecological sites are distinctive kinds of soil and topographic features that result in a
28 characteristic natural plant community. AR-0004896-97. The vegetation objectives for
each ecological site related to plant cover and composition. AR-0004913-16.

³ Utilization monitoring measures the percentage of forage that has been consumed or
destroyed by cattle in the current year. AR-0004919.

1 BLM incorporated the LHE and compatibility determination into the
2 environmental impact statement (EIS) for the RMP. AR-0003494-95. The RMP then
3 closed to grazing those 8,500 acres plus some additional acreage, including the remainder
4 of the Conley Allotment. AR-0003496, 3500; AR-0005332. The 2012 RMP decision thus
5 allowed grazing to continue on 157,170 acres and eliminated it from 95,290 acres of the
6 SDNM north of Highway 8. AR-0005332.

7 Western Watersheds Project and Sierra Club challenged the grazing portion of the
8 2012 RMP, alleging the underlying EIS violated NEPA for relying on a LHE and
9 compatibility determination that were arbitrary and capricious because they ignored data,
10 failed to explain and support their methods, assumptions, and conclusions, failed to
11 assess all effects of grazing on SDNM resources, and failed to respond to opposing
12 scientific viewpoints. *W. Watersheds Project v. BLM*, No. 2:13-cv-1028-PGR, ECF No. 1
13 (filed May 20, 2013) (hereafter *WWP I*). This Court agreed with several of Plaintiffs'
14 claims in a February 2015 ruling. *Id.* ECF No. 55.

15 First, the court held that BLM had not provided an adequate explanation in the
16 record to support how it set the desired condition objectives for plant communities. *Id.* at
17 10-13. BLM had used data from ungrazed areas south of Highway 8 to set objectives, but
18 had adjusted those objectives repeatedly without explaining why or supporting its final
19 numbers. *Id.* Second, the court found BLM failed to explain its exclusion of monitoring
20 data when determining whether sites were meeting the plant community objectives. *Id.* at
21 13-14, 15-17. BLM had excluded from its analysis much of its own monitoring data from
22 before 2009 and almost 85% of the PBI data. The court held BLM failed to explain and
23 support its exclusion of certain data, noting in particular that BLM rejected PBI data
24 because it was from a single year but relied on just a single year of its own data in its
25 analysis. *Id.* Third, the court found flaws with BLM's method for determining if livestock
26 grazing was a causal factor of degraded conditions. *Id.* at 19-22. BLM had not justified
27 relying on a single year of livestock use data to make this determination when it and peer
28 reviewers both asserted that a single year of data is not sufficient to draw conclusions and

1 does not account for long-term effects to vegetation. *Id.* The court concluded the LHE
2 was arbitrary and capricious because “BLM has failed to adequately explain some of its
3 decisions that led to the LHE and compatibility determinations, and failed to address
4 significant concerns raised in peer reviewers’ comments.” *Id.* at 24.

5 The court, however, gave BLM a chance to cure the defects in the LHE by
6 allowing it to file a supplemental report, which it did in May 2015. *Id.* at 24-25; ECF No.
7 59-1. The court held in a March 2016 ruling that the supplemental report did not rectify
8 the problems because it provided inappropriate post hoc rationalizations and/or its
9 explanations were not supported by the record. ECF No. 70. The court noted the record
10 still did not sustain BLM’s explanation for the changes to the desired condition
11 objectives; BLM gave new post hoc rationalizations for its exclusion of certain
12 monitoring data that was inconsistent with the agency’s previous explanation and
13 evidence in the record; and it still did not explain why using only one year of utilization
14 data provided accurate and sound conclusions as to whether livestock grazing was the
15 cause of degraded conditions. *Id.* at 5-25. The court once again held the LHE was
16 arbitrary and capricious and ordered BLM to complete a new LHE and compatibility
17 determination under NEPA and incorporate them into the RMP. *Id.* at 25. The court left
18 the 2012 RMP in place while BLM completed these tasks and thus grazing has proceeded
19 in accordance with the direction in the 2012 RMP. *Id.*; AR-0031514.

20 **III. 2020 Grazing Analyses and RMP Amendment**

21 Grazing declined substantially on the SDNM after 2009. AR-0031555. The lands
22 south of Highway 8 were all closed to grazing by 2009, and far less grazing has occurred
23 on the SDNM north of Highway 8: the Hazen and Bighorn allotments have not been
24 grazed since at least 2009, the Conley allotment was closed to grazing after 2012,⁴ the
25 Arnold allotment has only been grazed twice since 2009, the Lower Vekol allotment had
26

27
28 ⁴ BLM inexplicably authorized grazing on the SDNM portion of the Conley allotment in
2015 and 2016 but realized its mistake in early 2016 and had the cows removed in May.
AR-0007044-7106.

1 just one year of minimal grazing since 2010, and the SDNM portion of the Beloat
2 allotment is used primarily for ephemeral grazing, which has not occurred since 2015.
3 AR-0031536-44; AR-0031321; AR-0009543-44.

4 After the court’s ruling in March 2016, BLM collected additional data on
5 ecological conditions. It returned to the same key areas it monitored in 2009 and 2012-
6 2014, but also established new random plots and used new methods to collect data at
7 those plots. AR-0007247-49; AR-0009003; AR-0031549. The plots occurred in the six
8 allotments at locations both within and outside the SDNM boundary. AR-0009003. At
9 many of these plots, BLM also recorded any signs of livestock use observed on or near
10 the plots, such as manure, trails, or hoof action. *See e.g.* AR-0007194; AR-0007213; AR-
11 0007231; AR-0007236 (Evaluation Sheets for random plots).

12 BLM used the same general approach for its new court-ordered LHE—it
13 developed plant community desired condition objectives, compared data of actual
14 conditions to the objectives, and determined whether livestock were a causal factor for
15 conditions that did not meet objectives. AR-0031546-49, 31557. For the first step, BLM
16 derived plant community objectives from data collected at plots that were north of
17 Highway 8 and more than two miles from livestock water sources. AR-0031547. It
18 assumed that lands more than two miles from waters were not used by cattle and thus
19 were in a “natural condition.” *Id.*; *see also* AR-0007476 (objectives from plots “that have
20 no livestock use probability”). BLM averaged vegetation data from these “natural” plots
21 for each ecological site and then set objectives one standard deviation below the average,
22 meaning the desired conditions were worse than the average conditions. AR-0031547.⁵

23 For the second step, BLM initially planned to use data from both the key area plots
24 and the 124 new random plots to assess conditions but ultimately decided to rely
25 exclusively on the new random plots monitored in 2017 or 2018, which meant it relied on
26

27 ⁵ The bare ground objective was one standard deviation *above* the average which also
28 made the desired condition for bare ground worse than the average condition (i.e. 22%
bare ground is less desirable than 20% bare ground). AR-0031547.

1 a single year of data—collected after years of little or no livestock use—to assess
2 ecological conditions and compare to the objectives. AR-0007468; AR-0007474-76; AR-
3 0008918; AR-0031602-03; AR-0031628-888. BLM claimed it could not exactly
4 replicate prior monitoring at the key areas so could not compare data from multiple years
5 to accurately determine trend. AR-0031602.

6 By comparing the random plot data to the objectives, BLM determined what lands
7 on each allotment—including areas both inside and outside the SDNM boundary—were
8 not meeting the rangeland health standards for soils or plant communities. AR-0031549-
9 50, 31557-79. The creosote-bursage community had far more lands failing standards than
10 the palo verde-mixed cacti community. *Id.* To evaluate whether livestock grazing was a
11 causal factor in failing to achieve these standards, BLM could not use utilization data
12 because the allotments had not been grazed recently. AR-0031551. Instead, it developed
13 a “livestock use probability map” that depicted areas as one of five use classes from high
14 probability (class 1) to no/low probability (class 5). *Id.*; AR-0031621-27. BLM used a
15 GIS program to map these probability classes based on distance to reliable water sources
16 and characteristics of the terrain. AR-0031621-23. This program relied on assumptions
17 that cattle do not move more than two miles from water on flat terrain or more than one
18 mile in rough terrain, fencing is a barrier, and cattle do not use areas that are high
19 elevation, >30% slope, or rocky terrain. AR-0031621-22, 31625. Based on these
20 assumptions, the final probability map depicted 54.6% of the analysis area as probability
21 class 5, which means a “low potential for livestock use.” AR-0031624-25; AR-0031551.

22 BLM stated that livestock grazing was likely a causal factor for failing to achieve
23 rangeland health standards if the plots occurred in probability classes 1 through 4 *and* had
24 signs of livestock use noted during the 2017/2018 monitoring. AR-0031557. For each
25 allotment, the LHE identified which use probability class the failing plots fell within and
26 whether any livestock signs occurred at the plots. AR-0031557-79. Notably, there was a
27 distribution of livestock signs among all the probability classes, including almost half of
28 the plots in probability class 5 (low probability of livestock use) having signs of livestock

1 use and almost half within probability class 1 (high probability of use) having no signs of
2 livestock use. *Id.* Despite little or no livestock use on the allotments for multiple years,
3 BLM found that grazing was still a causal factor for some sites failing standards. *Id.*
4 Instead of recommending these areas be closed, the LHE stated that grazing can continue
5 with management modifications, in part because more than half of the SDNM complex
6 was mapped as livestock use probability class 5 where grazing was unlikely to occur.
7 AR-0031580. The LHE recommended authorizing up to 4,232 AUMs of grazing on the
8 SDNM based on the average use of these allotments from 2007-2018. *Id.*

9 BLM incorporated the information from the LHE into a new compatibility
10 analysis and calculated the areas within the SDNM that were failing standards due to
11 livestock. AR-0031905-11. Again, the creosote-bursage community had the greatest
12 amount of acreage failing standards. *Id.* BLM used Rangeland Health Standards 1 and 3
13 as a proxy to assess protection of all biological objects on the SDNM. AR-0031903-04.
14 BLM concluded grazing has likely impacted biological objects within the Beloit,
15 Bighorn, Conley, and Lower Vekol allotments because they each had areas that were
16 failing standards due to livestock. AR-0031912-15. The compatibility analysis concluded
17 that historic levels of grazing on those four allotments is unlikely to be compatible with
18 protecting the following SDNM objects: diversity of plant and animal species, saguaro
19 cactus forests, vegetation communities, and wildlife. AR-0031916. The compatibility
20 analysis also evaluated impacts to cultural and historic objects. AR-0031918-22. It
21 acknowledged adverse livestock impacts to areas within or near three historic trails on the
22 SDNM but no impacts to other cultural sites. AR-0031918-21.

23 The compatibility analysis concluded that livestock grazing “as previously
24 authorized” was incompatible with protecting biological objects and some cultural
25 objects of the SDNM in areas close to livestock watering/congregation areas, but it did
26 not make those lands unavailable to grazing. AR-0031923. Initially the agency
27 determined it would convert all allotments to ephemeral use, but changed course and
28 decided to keep the allotments available for perennial use—even the Conley allotment.

1 AR-0009007; AR-0009182. The compatibility analysis stated that grazing can remain
2 available on the entire SDNM north of Highway 8 up to 4,232 AUMs by altering grazing
3 management, noting that “grazing deferment” on the Bighorn and Hazen allotments had
4 resulted in achieving rangeland health standards. AR-0031923. That “deferment”
5 consisted of ten years of no livestock use. AR-0031540, 31542.

6 BLM completed an environmental assessment (EA) for the RMP amendment that
7 adopted the LHE and compatibility analysis recommendation to make all allotments
8 available for grazing up to 4,232 AUMs of perennial use. AR-0031313. It claimed that
9 4,232 AUMs was the average perennial use on the SDNM from the period 2007-2018,
10 and was a reduction from the historically authorized 8,703 AUMs on the SDNM. *Id.* The
11 proposed action would re-open the lands that were closed to grazing under the 2012
12 RMP. AR-0031314. The EA also stated that grazing may be adjusted by restricting
13 livestock access to waters through fencing and/or redistributing livestock around
14 additional new water sources in less sensitive areas, but it did not identify where those
15 new water sources might be. AR-0031321. Specific management direction for each
16 allotment would occur later in “implementation-level” decisions. *Id.*

17 The EA contained general discussions about potential impacts of the proposed
18 action to wildlife through removal of forage and hiding cover—including native annual
19 plants—or displacement from habitat, but provided little detail about impacts to particular
20 species. AR-0031328-33. For instance, the EA admitted Sonoran desert tortoise, bighorn
21 sheep, and mule deer occur on the SDNM but failed to provide an analysis of the extent
22 of livestock impacts to these particular species from past or future grazing. *Id.* Instead,
23 BLM simply relied on achievement of Rangeland Health Standards 1 and 3 as a proxy for
24 assessing all impacts to these species. AR-0031531-33, 31549, 31558-78; AR-0031904,
25 31911. The EA also discounted impacts of grazing to Wilderness areas despite past
26 utilization monitoring showing excess use at several plots within Wilderness; and had
27 little analysis of how climate change and increasing drought will combine with effects of
28 grazing to cause greater impacts to vegetation and wildlife in the foreseeable future. AR-

1 0031348-49, 31353, 31357-60; AR-0011448.

2 A “Finding of No Significant Impact” (FONSI) accompanied the EA and
3 concluded BLM did not need to complete a full EIS. AR-0032324. The FONSI stated that
4 impacts of grazing will be mitigated to reduce them to a non-significant level through
5 fencing water sources, redistributing cattle to areas around new water sources that are less
6 sensitive, and reducing AUMs or changing season of use. AR-0032326.

7 BLM also determined its proposed action would have “no adverse effects” to
8 cultural resources for its NHPA consultation. AR-0031053. For this determination, BLM
9 relied on prior cultural resource inventories from other projects that covered only 4% of
10 the analysis area, some of which had identified livestock impacts to cultural sites. AR-
11 0031341, 31343; AR-0031055-63; AR-0032303; AR-0029372. Native American Tribes
12 had expressed concern about grazing impacts to sites and historic trails on the SDNM that
13 are important to their peoples. AR-0026263; 0029375; AR-0031039-40; AR-0031084.

14 On September 29, 2020, BLM issued its Decision Notice selecting the proposed
15 action in the EA as the RMP amendment. AR-0032610. The decision repeatedly cited to
16 the LHE, stating that it provided a more accurate representation of current rangeland
17 resource conditions compared to previous studies. AR-0032614, 32616.

18 **ARGUMENT⁶**

19 **I. STANDARD OF REVIEW**

20 Review of agency decision-making is governed by the judicial review provisions
21 of the Administrative Procedure Act (APA), which requires a Court to hold unlawful an
22 agency decision that was “arbitrary, capricious, an abuse of discretion, or otherwise not in
23 accordance with law.” 5 U.S.C. § 706(2)(A); *Native Ecosystems Council v. U.S. Forest*
24 *Serv.*, 428 F.3d 1233, 1238 (9th Cir. 2005). An agency’s decision is arbitrary and
25 capricious if it did not “articulate a satisfactory explanation for its action including a
26 rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs.*
27

28 ⁶ Plaintiffs submit two declarations to establish standing for their legal claims. *See* Decl. of Greta Anderson; Decl. of Sandra Bahr (attached hereto).

1 *Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (cleaned up).

2 When reviewing an agency's action, a court's inquiry must be "searching and
3 careful." *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 378 (1989). The APA requires
4 that courts "engage in a substantial inquiry, a thorough, probing, in-depth review" of the
5 agency action to ensure the agency has provided adequate and reasonable justifications
6 for its conclusions and decision. *Siskiyou Reg'l Educ. Project v. U.S. Forest Serv.*, 565
7 F.3d 545, 554 (9th Cir. 2009) (cleaned up); *see also Dep't of Com. v. New York*, 139 S.
8 Ct. 2551, 2575-76 (2019) (agencies must offer reasoned explanations for their actions,
9 and record did not support explanation offered). Thus, a court should not uphold an
10 agency's conclusions that are not supported by scientific evidence in the record. *W.*
11 *Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 493 (9th Cir 2011); *Earth Island*
12 *Institute v. Hogarth*, 494 F.3d 757, 763-64, 766 (9th Cir. 2007).

13 **II. BLM VIOLATED NEPA BY RELYING ON FLAWED ANALYSES AND**
14 **NOT TAKING A HARD LOOK AT ALL EFFECTS OF THE ACTION.**

15 Agencies must conduct analyses under NEPA to ensure that they: (1) make
16 informed decisions about the environmental effects of their proposed actions, and (2)
17 make this information available to the public. *Earth Island Inst. v. U.S. Forest Serv.*, 697
18 F.3d 1010, 1012 (9th Cir. 2012). To fulfill these goals, agencies must take a "hard look"
19 at the environmental effects of their actions. *Native Ecosystems Council*, 428 F.3d at
20 1239. "An agency fails to meet its 'hard look' obligation when it relies on incorrect
21 assumptions or data ... or presents information that is so incomplete or misleading that
22 the decisionmaker and the public could not make an informed comparison of
23 alternatives." *Native Ecosystems Council v. Marten*, 883 F.3d 783, 795 (9th Cir. 2018)
24 (cleaned up). An agency's assessment of conditions "must be based on accurate
25 information and defensible reasoning," and the data it "provides to the public to
26 substantiate its analysis and conclusions must ... be accurate." *Or. Nat. Desert Ass'n v.*
27 *Jewell*, 840 F.3d 562, 570 (9th Cir. 2016); *Marten*, 883 F.3d at 795. NEPA regulations
28 confirm BLM's duty to insure environmental information is available to the public before

1 decisions are made, the information is of high quality, and the scientific analysis is
2 accurate. 40 C.F.R. § 1500.1(b). BLM's analyses here did not satisfy this standard.

3 **A. The LHE and Compatibility Analysis Contained Unreasonable and**
4 **Unsubstantiated Assumptions and Conclusions.**

5 Like in *WWP I*, each step of the LHE process was flawed, and the compatibility
6 analysis perpetuated those flaws, rendering both arbitrary and capricious. One of the
7 critical flaws in these analyses was BLM's assumption that livestock do not move more
8 than 2 miles from water sources and therefore have no impacts on soils, vegetation,
9 saguaros, or cultural resources in areas beyond that distance. The record, however, does
10 not support and even contains data contradicting that assumption.

11 BLM relies on this assumption in numerous parts of its analyses. It first relies on it
12 in step one of its LHE to set plant community desired condition objectives. AR-0031547
13 ("Areas without expected livestock use was defined as areas greater than 2 miles of
14 livestock waters."). Areas more than 2 miles from waters were considered to be in their
15 "natural condition" so data from plots in those areas were used to establish the desired
16 condition objectives. *Id.*; AR-0007476 (objectives will be derived from plots "that have
17 no livestock use probability"). This same assumption was used in step three of the LHE
18 to determine if livestock grazing contributed to degraded ecological conditions. BLM's
19 livestock use probability map assumed that "[i]n general, livestock do not travel more
20 than 2 miles from water on flat terrain and no more than 1 mile in rough terrain (Smith et
21 al. 1986)." AR-0031625. Areas more than 2 miles from waters were mapped as
22 probability class 5, which indicated low potential for livestock use. *Id.*; AR-0031551.
23 BLM asserted that livestock were likely to be a causal factor for not achieving rangeland
24 health standards only in areas mapped as probability classes 1-4. AR-0031557. BLM
25 concluded in the LHE that the majority of the analysis area was unlikely to have
26 substantial livestock grazing because it was mapped as probability class 5. AR-0031580.

27 BLM further relied on the assumption that livestock will not travel more than 2
28 miles from water sources in its compatibility analysis and EA. The compatibility analysis

1 repeatedly states that areas more than 2 miles from waters, or within probability class 5,
2 are unlikely to have livestock use and therefore it is unlikely that grazing impacts SDNM
3 biological objects in those areas. AR-0031912-15. The EA likewise relied on the 2-mile
4 threshold for impacts in its discussion of effects to saguaro forests and cultural sites. AR-
5 0031317, 31331, 31332. And in responses to public comments, BLM stated that the
6 presumption that livestock do not travel more than 2 miles from water was explained in
7 Appendix F of the LHE and “applies to all sections of the [EA].” AR-0032303.

8 Given how extensively BLM relied on the assumption that livestock do not move
9 more than 2 miles from water sources, the record must certainly corroborate that
10 assumption—but it does not. The only source BLM cites to support that proposition is
11 Smith et al. (1986). AR-0031625; AR-0031331; AR-0032303.⁷ Yet a look at Smith
12 hardly supports BLM’s assumption. That 1986 book from Hawaii states:

13 Various range management textbooks state that water points should be no
14 farther than 2 miles in flat country and 1 mile in rough. Obviously this is
15 seldom practiced. *I am not sure how these numbers were arrived at, but*
16 *most desert operations I know of have water points at about twice these*
distances or greater.

17 AR-0000780 (emphasis added). The sole source BLM cited does not even know where
18 the 2-mile figure came from and in fact disputes it. *See Great Basin Resource Watch v.*
19 *BLM*, 844 F.3d 1095, 1102-03 (9th Cir. 2016) (unreasonable to rely on single source to
20 support assertion when that source did not have its own supporting reasoning). Moreover,
21 a published study in the record that BLM failed to cite states that most grazing in arid
22 rangelands of Australia occurred within 10 km, *or 6.2 miles*, of water. AR-0001352.

23 Other information in the record also contradicts BLM’s assumption. The “use
24 pattern map” BLM created in 2009 showed areas that livestock had used in 2008. When
25

26 ⁷ The LHE cites two other sources when discussing how plant community objectives were
27 derived but those sources simply support the undisputed notion that cattle impacts are
28 greatest around water sources and decrease with distance; they do not establish that
livestock do not move more than two miles from waters. AR-0031547 (citing Martin and
Severson 1988 at AR-0000781 and Blanco et al. 2009 at AR-0003124).

1 that map is overlaid with the 2020 use probability map, it shows that numerous areas
2 mapped as class 5 in the 2020 map had livestock use in 2008, ranging from slight use all
3 the way to heavy use. AR-0034536. Multiple areas mapped as class 5 in 2020,
4 particularly in the Conley and Bighorn allotments, were shown as having light (21-40%),
5 moderate (41-60%) or even heavy (61-80%) use in 2008. Thus, the 2009 use pattern map
6 undercuts BLM's assumption that virtually no livestock use occurs in class 5 areas.

7 Similarly, BLM's documentation of livestock signs during its 2017/2018
8 monitoring shows that BLM observed signs (manure, trails, hoof action) at many plots in
9 areas mapped as class 5 probability. AR-0034537-38 (maps showing plots with livestock
10 use and class 5 probability); AR-0007194; AR-0007213; AR-0007231; AR-0007236;
11 AR-0007257; AR-0007262; AR-0007310; AR-0008861; AR-0032690; AR-0032785;
12 AR-0032798; AR-0032913; AR-0033054; AR-0033202; AR-0033252; AR-0033345;
13 AR-0033476; AR-0033522; AR-0033563; AR-0033756; AR-0033837; AR-0033883;
14 AR-0034331; AR-0034346; AR-0034391; AR-0034521 (data sheets documenting signs
15 of livestock use at plots in class 5). Even the PBI study undercuts BLM's assumption
16 because it found moderate livestock use up to 4 km, or 2.5 miles, from water sources and
17 impacts detected out to 6 km (3.7 miles), with very few areas of low elevation terrain
18 void of grazing impacts. AR-0011538, 11544; *see also* AR-0031476 (using 6500
19 meters—4 miles—as cut-off of areas showing impacts). BLM's conclusion that livestock
20 do not move more than 2 miles from water sources, and thus have no impacts in areas
21 beyond that distance, is contradicted by the record.

22 A similar issue arises with BLM's assumption that livestock do not use areas that
23 are greater than 30% slope. *See* AR-0031522 (did not evaluate soils in areas inaccessible
24 to livestock, including where >30% slope), 31549 (did not collect ecological data at sites
25 inaccessible to livestock because >30% slope); AR-0031621 (areas >30% slope
26 considered inaccessible in use probability map). BLM cited nothing to support its
27 assumption that livestock do not access areas >30% slope. *Id.* In fact, when BLM created
28 its use pattern map in 2009 it considered areas >60% slope to be inaccessible to cattle.

1 AR-0002911, AR-0005246 (use pattern map using >60% slope as unsuitable for
2 livestock). The 2020 use probability map methods did not explain why BLM changed
3 from >60% slope to >30% slope to identify inaccessible areas. AR-0031621-22. Again,
4 the PBI study found that cattle did access high elevation rocky slopes during two years of
5 the study, causing impacts to vegetation in those areas. AR-0011545.

6 Numerous other flaws occur with the methods used for the LHE. With regard to
7 setting vegetation desired condition objectives, BLM took the average of data from
8 “natural” plots and then set the objective one standard deviation below the average (or
9 above for bare ground). AR-0031547. The standard deviation represents the spread of the
10 data around the mean (average) to identify how much the data varies. *Id.* In other words,
11 some plots will be above the average and some below the average and the standard
12 deviation shows how much the data ranges above and below the average. But BLM just
13 applied the standard deviation in one direction, setting the objective one standard
14 deviation below the average—making the objective easier to meet. *Id.*⁸ Considering that
15 using an average takes into account variability of plots, BLM did not explain why it made
16 all objectives worse than the average conditions.

17 In step two of the LHE, BLM evaluated whether the data it collected in grazed
18 areas met the desired condition objectives, relying exclusively on data it collected at 124
19 new plots in 2017 or 2018. AR-0031546-49; AR-0031628-888. Thus, BLM relied on one
20 year of data to assess grazing impacts. In the prior case, this court held that reliance on
21 one year of utilization data for step three—the “causation step”—was not reasonable.
22 *WWP I*, ECF 55 at 20-22, ECF 70 at 21-24. The court noted that BLM itself had stated
23 that “a single year’s data is not enough to support sound conclusions,” and peer reviewers
24 of the LHE likewise had concerns about using just one year of vegetation and utilization
25

26
27 ⁸ For example, if the average plant cover from multiple plots was 15% and the standard
28 deviation was +/- 2%, most plots would fall within a range of 13%-17% cover. BLM
then used one standard deviation below the average for the objective—13%. So BLM
only needed to find 13% plant cover to meet the objective.

1 data because it did not account for long-term effects to vegetation or varying conditions
2 between years. *Id.*; AR-0031903. The same concerns arise with BLM’s use of just a
3 single year of data to assess ecological conditions—it is one snapshot in time.

4 The problem is compounded here by the fact that livestock had not grazed much of
5 the SDNM for years. Use of data from 2017 or 2018 reflect vegetation conditions
6 occurring after livestock had not grazed the Bighorn and Hazen allotments for almost ten
7 years, had only grazed the Conley allotment for one of the past five years and the Lower
8 Vekol allotment for one of the past seven years, and only ephemeral grazing has occurred
9 on the SDNM portion of the Arnold and Beloat allotments. *See supra* pp. 8-9. Using just
10 one year of data collected after a period of minimal or no livestock use is not going to
11 accurately portray the impacts of much heavier and more consistent use. BLM claimed it
12 could not rely on the previous key area data because it could not exactly replicate those
13 monitoring methods to establish statistically valid trends. AR-0031601-03. While that
14 may be true, BLM did not explain why it was valid to rely exclusively on a single year of
15 data collected after years of little livestock use. *Id.* At a minimum, BLM should have
16 considered in the LHE information collected during times of regular livestock use, such
17 as the PBI study, prior key area monitoring, and even 2017/2018 plots falling outside of
18 the SDNM, to assess conditions and impacts that occurred during regular cattle use even
19 if it could not use that data to directly determine trends. It was unreasonable for BLM to
20 rely on the single year of ecological condition data just as it was unreasonable to rely on
21 one year of utilization data in the prior case.

22 For step three of the LHE, the causation step, BLM depended on an unreliable use
23 probability map. AR-0031557. As discussed above, assumptions used for the map that
24 livestock do not move more than 2 miles from water sources and areas >30% slope are
25 inaccessible are not supported by the record. *Supra* pp. 16-18. In fact, prior livestock use
26 monitoring undermines the 2020 probability map. A visual comparison of the 2009 use
27 pattern map with the 2020 use probability map shows that the maps are not very similar.
28 AR-0031552-53; AR-0034535. Class 5 in the 2020 map (no or low potential for livestock

1 use) would correspond with no use or negligible use in the 2009 map, but when the data
2 from the two maps is overlaid, little of the area shown in 2020 as class 5 was shown as no
3 use or negligible use in 2009. AR-0034536. Instead, many areas mapped as class 5 in
4 2020 were shown as having slight, light, moderate, or even heavy use in 2009, indicating
5 potential for livestock use in all those areas. *Id.* Likewise, many plots monitored in 2017
6 or 2018 that fell within class 5 of the 2020 map had signs of livestock use. AR-0034537-
7 38. Clearly, BLM did not use data of past livestock use to verify the accuracy of the 2020
8 use probability map. BLM's reliance on that inaccurate map undercuts its conclusions
9 about impacts of grazing. *See* AR-0031557-79 (using probability classes from map to
10 determine if grazing caused violations of standards).

11 Finally, BLM's recommendation in the LHE for future grazing on the SDNM was
12 unreasonable. Even with all of the flaws noted above, the LHE still concluded that
13 grazing violated standards in some areas and would need to be adjusted to improve
14 conditions. AR-0031580. The LHE and compatibility analysis recommended allowing up
15 to 4,232 AUMs of perennial use throughout the northern portion of the SDNM. *Id.*; AR-
16 0031923. BLM arrived at this figure by averaging the perennial AUMs for each allotment
17 for the period 2007-2018 and then calculating the portion of AUMs that fell within the
18 SDNM. AR-0031580. To come up with the SDNM portion, it simply looked at the
19 percent of area (in acres) that falls within the SDNM and then multiplied the average
20 perennial AUMs for the total allotment by the percent of area within the SDNM. *Id.*; AR-
21 0009543-44. This calculation is deeply flawed because it did not reflect the actual
22 livestock use that occurred on the SDNM during that period.

23 For example, BLM's calculation included 592 AUMs for the SDNM portion of the
24 Hazen allotment based on AUMs authorized in 2007-2014, AR-0009543-44, but the
25 Hazen has not actually been grazed since 2008 or before. AR-0009212 (stating in 2019
26 that Hazen has not been grazed in more than ten years). BLM listed 811 AUMs for the
27 SDNM portion of the Beloat allotment based on perennial grazing every year 2007-2018,
28 AR-0009543-44, but elsewhere stated that portion of the allotment was used primarily for

1 ephemeral grazing and none had occurred since 2015. AR-0031539; AR-0031321. BLM
2 included 377 AUMs for the Conley allotment in 2013 and 2014 even though the SDNM
3 portion was closed those years. AR-0009544; AR-0031541.⁹ It is unclear how much
4 grazing occurred on the SDNM portion of the Lower Vekol allotment because the only
5 water source in that pasture is non-functional, but BLM included AUMs from 2008-2010
6 and 2013 in its calculation. AR-0009543-44; AR-0031544. In sum, BLM’s “prorated”
7 average AUMs of 4,232 based simply on the percent of allotment area within the SDNM
8 is misleading because it is much greater than the amount of grazing that actually occurred
9 on the SDNM since 2007, and its implementation would result in an *increase* in grazing.

10 As in the prior case, the record here does not support many of the assumptions and
11 conclusions in the LHE and compatibility analysis. Explanations are missing, data
12 undermine or even contradict assertions, and there is a lack of reasonable basis for many
13 conclusions. These flaws must result in this Court once again finding these documents
14 arbitrary, capricious and in violation of NEPA. *WWP I*, ECF 55 at 24, ECF 70 at 24-25;
15 *Jewell*, 840 F.3d at 570; *Marten*, 883 F.3d at 795; *Kraayenbrink*, 632 F.3d at 493.

16 **B. BLM’s Analysis Did Not Take a Hard Look at Effects of Grazing to**
17 **Numerous Resources, in Violation of NEPA.**

18 BLM failed to adequately assess and explain all of the direct and indirect effects of
19 its proposed grazing in the EA, as NEPA requires. 40 C.F.R. § 1508.8; *Ctr. for Biological*
20 *Diversity v. Salazar*, 695 F.3d 893, 916-17 (9th Cir. 2012) (EA must take hard look at all
21 foreseeable direct and indirect impacts); *see also 350 Montana v. Haaland*, 50 F.4th 1254,
22 1265 (9th Cir. 2022) (agencies must undertake a “full and fair” analysis of environmental
23 impacts of their activities, and thus EA must contain a “reasonably thorough discussion
24 of the significant aspects of the probable environmental consequences”) (cleaned up).

25 First, BLM did not explain how its proposed grazing modifications would improve
26 conditions and protect the Monument resources. It adopted the 4,232 AUMs from the
27

28 ⁹ As noted in footnote 5, BLM mistakenly authorized grazing on the SDNM portion of
Conley in 2015 and part of 2016 before ordering the cows be removed.

1 LHE and compatibility analysis, noting it was less than the 8,703 perennial AUMs
2 historically authorized on the SDNM under the 1985 land use plan. AR-0031313. Not
3 only was the 4,232 AUMs an inaccurate representation of the amount of perennial
4 grazing that had occurred on the SDNM in 2007-2018, as discussed above, but BLM
5 never identified the last time 8,703 AUMs of perennial grazing had actually occurred on
6 the SDNM to support the notion that 4,232 AUMs was a significant reduction in use. AR-
7 0031331. Given the reality that conditions were still not meeting land health standards in
8 areas that had not been subjected to perennial grazing for multiple years, BLM never
9 explained how allowing *any* perennial grazing would improve conditions.

10 The other modification in the proposed action was “[e]xclusion of sensitive areas
11 and/or areas failing to achieve Standards in proximity to livestock waters by restricting
12 livestock access to waters (fencing) and/or redistributing livestock around additional
13 (new) livestock water sources in less sensitive areas.” AR-0031321. Numerous problems
14 arise from this mitigation measure. BLM claimed it would restrict access to water sources
15 by building fences yet had rejected a different alternative action largely because it would
16 require building a lot of fencing—primarily around water sources. *Id.*; AR-0031316-17.
17 Moreover, cattle would still need water and BLM did not explain why cows would not
18 simply congregate just outside the fencing, creating the same degraded conditions just a
19 bit farther removed from the waters. AR-0031331.

20 The proposal to build new water sources to redistribute cattle is equally
21 unsupported. It is undisputed that the greatest impacts from grazing occur near water
22 sources. AR-0031329-30; AR-0031899, 31901, 31916 (noting most areas near waters on
23 the SDNM violated standards due to grazing, and continued grazing at those levels is
24 unlikely to be compatible with many monument objects near waters). BLM relied on the
25 distance from water sources to classify most of the SDNM as use probability class 5,
26 “where it is unlikely that substantial livestock grazing has or would occur,” and stated
27 that, “[w]ithout the redevelopment and/or addition of new water sources, grazing is likely
28 to remain compatible with monument objects in these areas.” AR-0031580. But the EA

1 proposed building additional water sources, which would create substantial impacts in
2 new areas. It tried to downplay those impacts by claiming the new waters would be in
3 “less sensitive” areas but offered no information about where new water sources would
4 occur, what makes an area “sensitive,” or why areas around new sources would be “less
5 sensitive” than around existing sources. AR-0031321, 31330-31. BLM did not take a
6 hard look at the fencing and water source modifications and explain why they would
7 successfully reduce impacts of grazing. Punting this assessment to future site-specific
8 analyses (AR-0032302, 32309) does not suffice when BLM relied on these measures to
9 avoid completing an EIS and to ensure the RMP amendment complied with BLM’s duty
10 to protect all biological objects of the SDNM. AR-0031330-33, 31337-38; AR-0032326.

11 BLM’s failure to connect the dots between the facts and its conclusions about the
12 proposed action is particularly egregious with respect to the creosote-bursage plant
13 community. The SDNM Proclamation identified this plant community as one of the
14 objects to be protected. AR-0031614. It occurs on the flatter, low elevation terrain of the
15 monument and covers more than half of the analysis area. AR-0031528; AR-0032318. It
16 is also where the vast majority of livestock grazing occurs given its accessibility and the
17 fact that “[l]ivestock water developments are typically placed in low flat areas.” AR-
18 0031494; AR-0011538; AR-0032309. The PBI study and BLM’s analyses all found
19 higher levels of disturbance and degraded conditions in the creosote-bursage community
20 than in the higher elevation palo verde communities on the SDNM. AR-0031475, 31486;
21 AR-0031901; AR-0011537-39 (all discussing PBI study); AR-0004859-60 (2012 BLM);
22 AR-0031905-06, 31909 (2020 BLM). BLM never explained how allowing grazing to
23 occur throughout the entire northern portion of the SDNM at levels higher than what has
24 occurred over the past five to ten years is compatible with protecting the creosote-bursage
25 community when much of that community is still not achieving rangeland health
26 standards for soils and vegetation and new water sources will degrade conditions in
27 additional areas. Because the EA failed to provide a reasonable explanation supported by
28 the record for why the grazing modifications would improve ecological conditions and

1 protect all biological objects, including the creosote-bursage plant community, the EA
2 and the Decision Notice adopting the EA's proposed action are arbitrary and capricious.
3 *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43; *Dep't of Com.*, 139 S. Ct. at 2575-76.

4 Second, BLM failed to take a hard look at effects of the proposed grazing to other
5 SDNM resources, such as wildlife and wilderness, as well as the combined effects with
6 climate change. For wildlife, the EA described species found on the SDNM and general
7 grazing impacts to wildlife, but had little detail about individual species' habitat needs,
8 where they occur on the SDNM, and how the grazing would specifically impact them.
9 AR-0031328-33. The LHE contained more detail about a few special status species,
10 including Sonoran desert tortoise, but only listed other species occurring on the SDNM.
11 AR-0031531-33. The compatibility analysis assumed impacts to wildlife can be assessed
12 through the lens of rangeland health standards for soils and vegetation and saguaro cactus
13 monitoring. AR-0031904, 31911. None of this information adequately disclosed impacts
14 to individual wildlife species, particularly desert tortoise and desert bighorn sheep.

15 Both species have substantial habitat on the SDNM, and most of the tortoise
16 habitat is classified as important Category I habitat. AR-0031534. Numerous commenters
17 pointed out the importance of annual plants for the tortoise and competition with
18 livestock for ephemeral vegetation. AR-0032301, 32304, 32309. BLM's main response
19 was to claim that there is little overlap in habitat of tortoise with areas grazed by
20 livestock. AR-0031328-29; AR-0032301, 32309; AR-0032588-89. This assertion is not
21 supported by the facts, however, as a comparison of the 2009 use pattern map and the
22 map of tortoise habitat indicates that much of the Category I tortoise habitat on the
23 Conley and Bighorn allotments had some use by livestock in 2009, with significant areas
24 of 21-60% use. AR-0031552; AR-0032319. BLM had previously discussed adverse
25 impacts to tortoises when assessing compatibility of grazing (AR-0010844-45), but for
26 the current analysis BLM did not disclose where tortoises occur on the SDNM even
27 though that information exists, nor did it monitor annual plants to assess grazing impacts
28 to the tortoise's primary food source. *See* AR-0033225 (map of tortoise occurrences from

1 2001 data); AR-0031549 (no monitoring of annual plants); AR-0031330-32 (EA).

2 Similarly, BLM stated that “bighorn sheep are typically found in rugged and steep
3 terrain, which livestock tend to avoid” when responding to comments, but habitat for
4 bighorns is even more extensive than the Category I tortoise habitat on the SDNM. AR-
5 0032309; AR-0031423; AR-0004953. Although bighorns may often use steep, rocky
6 terrain, they also travel across flat valley bottoms to move between areas; and the animals
7 may overlap during drought when they each travel farther to find forage—as seen during
8 the PBI study when cattle were found in high rocky terrain on the SDNM. AR-0010846;
9 AR-0011545. Thus, BLM should have more fully assessed the risk of cattle displacing
10 bighorns and competing with them for forage in the EA. AR-0031330, 31332-33.

11 The SDNM contains two wilderness areas which overlap four grazing allotments.
12 AR-0031348. The EA’s analysis stated that past grazing has caused impacts around water
13 troughs or fencing in or near wilderness, but dispersed grazing in wilderness has a low
14 potential to affect the area’s naturalness. AR-0031349. It concluded that continuing
15 dispersed grazing throughout wilderness areas would have negligible impacts given the
16 size of the areas and lack of water developments. AR-0031349, 31367. The EA did not
17 reveal that utilization monitoring in 2009—the last time the Bighorn allotment was
18 used—showed that plots on the Conley and Bighorn allotments within wilderness all
19 exceeded the 20% utilization standard used for wilderness. AR-0004916, 4924-25. The
20 2009 use pattern map also indicates parts of the North and South Maricopa Mountains
21 Wilderness Areas had more than 20% use. *Compare* AR-0031552 *with* AR-0032313. The
22 EA should have revealed violations of the 20% standard, which do not support the
23 conclusion that continued grazing would have negligible impacts to wilderness.

24 Lastly, BLM’s analysis of how climate change would interact with grazing
25 impacts was cursory and insufficient. The EA just repeated the statement that climate
26 change and drought may alter the composition of vegetation communities, which could
27 make them more susceptible to disturbance and affect wildlife habitat and soils. AR-
28 0031357, 31359, 31360. The compatibility analysis recognized that “[c]limate has a

1 profound influence on Sonoran Desert plant communities” that can “obscur[e] or
2 exacerbate[e] impacts from human activities such as livestock grazing.” AR-0031899;
3 *see also* AR-0010850-51 (discussing impacts of drought on grazing management); AR-
4 0032275 (EA comments about need to address climate change and drought). Yet BLM
5 did not analyze and disclose in the EA how climate change could alter the length and
6 severity of drought, and the extent to which that change could exacerbate impacts of
7 grazing to biological resources on the SDNM. Without such an analysis, the EA did not
8 take a hard look at all potential impacts of the proposed grazing that could happen during
9 the life of the RMP—which could be decades. *See* AR-0000471 (prior plan from 1985).

10 The EA’s cursory and incomplete analysis of the proposed action’s effects to
11 wildlife and wilderness, and combined effects with climate change, did not satisfy the
12 agency’s duty to take a hard look at all direct and indirect effects of the action.

13 **III. BLM VIOLATED NEPA BY FAILING TO COMPLETE AN EIS.**

14 An agency must prepare a full EIS if a proposed action *might* significantly affect
15 environmental quality. *WildEarth Guardians v. Provencio*, 923 F.3d 655, 668-69 (9th
16 Cir. 2019). To prevail on this claim, Plaintiffs need not show that significant effects will
17 in fact occur; they just must raise substantial questions as to whether a project may have a
18 significant effect on the environment. *Id.* at 669. To avoid preparing an EIS, an agency
19 must supply “a convincing statement of reasons” why potential effects are insignificant
20 and issue a “Finding of No Significant Impact” (FONSI). *Bark v. U.S. Forest Serv.*, 958
21 F.3d 865, 868-69 (9th Cir. 2020). Conclusory statements based on vague and uncertain
22 analysis are insufficient to support a FONSI. *Id.* at 872. “The statement of reasons is
23 crucial to determining whether the agency took a ‘hard look’ at the potential
24 environmental impact of a project.” *Ctr. for Biological Diversity v. Nat’l Highway Traffic*
25 *Safety Admin.*, 538 F.3d 1172, 1220 (9th Cir. 2008).

26 Significance of effects depends on the action’s context and intensity, and NEPA
27 regulations set forth a number of criteria to help judge the intensity, or severity, of an
28 action’s effects. 40 C.F.R. § 1508.27(a)-(b). When one of these factors alone raises

1 substantial questions about whether an agency action will have a significant
2 environmental effect, an EIS is warranted. *Bark*, 958 F.3d at 871. An agency can forego
3 completing an EIS by relying on mitigation measures that will avoid significant effects of
4 the action, but only if the agency explains why the measures will “render such impacts so
5 minor as to not warrant an EIS.” *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d
6 722, 734 (9th Cir. 2001), *abrogated in part on other grounds by Monsanto Co. v.*
7 *Geertson Seed Farms*, 561 U.S. 139, 157 (2010). A “perfunctory description” or mere
8 listing of measures “without supporting analytical data” is insufficient to justify a FONSI.
9 *Id.* Where the measures are uncertain to be effective due to a “paucity” of data or
10 explanation supporting them, they cannot supplant the need for an EIS. *Id.* at 734.

11 The FONSI here was not supported by a convincing statement of reasons. First,
12 BLM’s measures for minimizing impacts of grazing consisted of capping the authorized
13 grazing on the SDNM at 4,232 AUMs, adjusting the season of use, and installing fencing
14 around existing water sources and/or building new water sources. AR-0032326. As
15 discussed above, the record does not support BLM’s conclusion that 4,232 AUMs will
16 reduce the level of grazing on the SDNM and thus conditions will improve, nor does the
17 record explain how fencing current water sources and building new water sources will
18 reduce impacts to an insignificant level; and the FONSI offers no further explanations.
19 *Id.*; *supra* pp. 21-23. The EA and FONSI’s “speculative and conclusory statements are
20 insufficient to demonstrate that the mitigation measures would render the environmental
21 impacts so minor as to not warrant an EIS.” *Babbitt*, 241 F.3d at 735.

22 Second, several of the intensity factors from the regulation apply here. Two of the
23 factors are: (1) the “[u]nique characteristics of the geographic area such as proximity to
24 historic or cultural resources, park lands, ... or ecologically critical areas”; and (2) the
25 “degree to which the action may adversely affect ... sites, ... structures, or objects listed
26 in or eligible for listing in the National Register of Historic Places or may cause loss or
27 destruction of significant scientific, cultural, or historical resources.” 40 C.F.R. §
28 1508.27(b)(3), (b)(8). The first of these factors certainly applies given that this area is a

1 national monument due to its “extraordinary array of biological, scientific, and historic
2 resources.” AR-0031375. The Proclamation identified many plant and animal species and
3 cultural and historical sites that exist on the SDNM, and the proposed grazing will have
4 direct impacts on those resources. AR-0031375-77.

5 Similarly, the second factor listed above applies based on adverse effects grazing
6 may have on cultural and historical sites on the SDNM. As explained in more detail in
7 Section V, numerous cultural sites have been documented on the SDNM and many more
8 likely exist. AR-0031340-41; AR-0029369-72. In addition, several historic trails cross
9 the SDNM. AR-0031340-42. Livestock have already adversely affected some of these
10 sites and trails, and the Tohono O’odham Nation expressed concerns about impacts of
11 grazing on cultural resources of their ancestral lands. AR-0031343; AR-0031920-21; AR-
12 0031039-40; AR-0031084. These two intensity factors warrant preparation of an EIS due
13 to potential impacts to highly important ecological, cultural and historic resources.

14 Another intensity factor is the “degree to which the effects on the quality of the
15 human environment are likely to be highly controversial.” 40 C.F.R. § 1508.27(b)(4). “A
16 project is highly controversial if there is a substantial dispute about the size, nature, or
17 effect of the major Federal action rather than the existence of opposition to a use. A
18 substantial dispute exists when evidence casts serious doubt upon the reasonableness of
19 an agency’s conclusions.” *Bark*, 958 F.3d at 870 (cleaned up). The FONSI noted the
20 number of public comments received and that some expressed opposition to grazing but
21 none indicated any substantial dispute in the scientific community over the nature of the
22 effects. AR-0032327. This cursory statement completely ignored the controversy over the
23 methods used for the LHE and compatibility analysis, which judged the extent of
24 livestock effects on soils and vegetation, as well as BLM’s failure to recognize the extent
25 of effects to certain wildlife, such as desert tortoise and bighorn sheep, and cultural sites.
26 Numerous comments pointed out these deficiencies in BLM’s scientific analysis. AR-
27 0009717-27; AR-0010906-17; AR-0029369-78; AR-0032242-94. The evidence here
28 “casts serious doubt upon the reasonableness of [BLM’s] conclusions” regarding

1 livestock impacts to SDNM resources, showing the effects of the proposed grazing are
2 highly controversial. *Bark*, 958 F.3d at 870; *Babbitt*, 241 F.3d at 736-37 (public
3 comments about incomplete analysis and uncertain mitigation cast substantial doubt on
4 adequacy of agency’s methodology and data, creating controversy that required an EIS).

5 Finally, the decision here “threatens a violation of federal ... law ... imposed for
6 the protection of the environment” because it fails to comply with the SDNM
7 Proclamation, FLPMA, OPLMA, and NHPA. 40 C.F.R. § 1508.27(b)(10). The FONSI
8 simply stated the proposed grazing would not threaten to violate any laws imposed for the
9 protection of the environment but this statement is not supported by the record, as
10 explained below. AR-0032330; *infra* Sections IV & V.

11 BLM’s EA and FONSI failed to provide the necessary convincing statement of
12 reasons explaining why the proposed grazing would have no significant effects, relying
13 instead on conclusory assertions that were not supported by the record. Accordingly, the
14 EA and FONSI are arbitrary, capricious and violate NEPA. *Bark*, 958 F.3d 870-73; *Nat’l*
15 *Highway Traffic Safety Admin*, 538 F.3d at 1220-25.

16 17 **IV. BLM’S DECISION VIOLATED THE SDNM PROCLAMATION, 18 FLPMA, AND OPLMA.**

19 The Federal Land Policy and Management Act (FLPMA) governs BLM’s general
20 management of public lands. 43 U.S.C. § 1701 *et seq.* It states that BLM must manage its
21 lands under principles of multiple use and sustained yield “except that where a tract of
22 such public land has been dedicated to specific uses according to any other provision of
23 law it shall be managed in accordance with such law.” 43 U.S.C. § 1732(a). In 2009,
24 Congress passed the Omnibus Public Lands Management Act (OPLMA), which governs
25 management of lands within the National Landscape Conservation System that were
26 specially designated to “conserve, protect, and restore nationally significant landscapes
27 that have outstanding cultural, ecological, and scientific values.” 16 U.S.C. § 7202(a).
28 The System includes national monuments, national conservation areas, national scenic

1 trails or historic trails, wild and scenic rivers, and other areas designated for conservation
2 purposes. *Id.* § 7202(b). BLM must manage these lands “in a manner that protects the
3 values for which the components of the system were designated.” *Id.* § 7202(c). Because
4 the SDNM was designated as a national monument, BLM must manage it in accordance
5 with the Presidential Proclamation that established the SDNM and protect the ecological
6 and cultural values identified in the proclamation. *Id.*; *W. Watersheds Project v. BLM*,
7 629 F. Supp. 2d 951, 968 (D. Ariz. 2009) (holding that requirements of SDNM
8 proclamation related to grazing were legally enforceable under the APA).

9 The RMP amendment is inconsistent with the SDNM proclamation and OPLMA
10 because it does not protect all biological and cultural objects identified in the
11 proclamation. First, BLM’s use of Rangeland Health Standards 1 and 3 as a proxy to
12 assess impacts to almost all biological objects on the monument is not sufficient to show
13 grazing is compatible with protecting all of these objects. *See* AR-0031903-04
14 (compatibility analysis for biological objects). Standards 1 and 3 pertain to soils and
15 perennial vegetation only (AR-0031546-49; AR-0031608-12), which BLM presumed
16 was sufficient to assess forage and cover requirements for all wildlife. AR-0031547. This
17 presumption did not take into account impacts to annual vegetation (i.e., forbs and other
18 herbaceous plants that die each year) or other wildlife needs.

19 For instance, the proclamation itself notes a variety of herbaceous plants are found
20 on the monument, particularly in desert washes, which contributes to dense cover for
21 birds, and annual ephemeral plants are important forage for desert tortoise. AR-0031375-
22 76; AR-0032289; AR-0032428; AR-0032443, 32451, 32454. But BLM did not monitor
23 livestock utilization or ecological condition of annuals. AR-0004916; AR-0031549; AR-
24 0032307. Cattle can also directly disturb and displace wildlife, causing animals to
25 abandon habitat or migration routes, which cannot be assessed via soil and vegetation
26 monitoring. BLM previously recognized this as a threat to bighorn sheep, but did not
27 address this impact to bighorns or any other wildlife in the 2020 analysis. AR-0010846;
28 AR-0031911; AR-0031332-33. BLM’s proxy analysis did not ensure its decision would

1 protect all of the plants and animals identified in the proclamation.

2 Second, BLM's decision that all lands on the SDNM north of Highway 8 should
3 be available for grazing was not supported by the evidence and a rational explanation.
4 Despite the LHE's numerous flaws, BLM still concluded grazing was not compatible
5 with protecting SDNM objects in areas on four allotments, AR-0031916, 31923, but
6 instead of making those areas unavailable to grazing as it did in the 2012 RMP, BLM
7 kept all lands open to grazing and asserted it would make adjustments during later site-
8 specific analyses. AR-0004879; AR-0031923; AR-0032610-11. BLM's rationale for
9 changing course from how it responded to incompatibility in 2012 was that it would
10 require too much infrastructure work such as fencing and removing water troughs and
11 other intensive management to prevent grazing in all incompatible areas. AR-0031317-
12 18. But BLM's new decision relied on similar measures to reduce grazing impacts,
13 undercutting its reason for not following the 2012 process. AR-0031321; AR-0032326.

14 Furthermore, BLM's approach to punt grazing management to future allotment-
15 level decisions will mask impacts to large-scale resources that cross allotment
16 boundaries. The plant communities on the SDNM occur on many allotments, as does
17 habitat for wildlife such as desert tortoise and bighorn sheep, and impacts must be
18 assessed across the range of the plant and animal communities. AR-0031528-30, 31534.
19 For instance, to determine if grazing is compatible with protecting the creosote-bursage
20 plant community, BLM must look at impacts across the SDNM such as how much of the
21 overall creosote-bursage community may be degraded if all of the lands are authorized
22 for perennial grazing. As the PBI study found when grazing occurred across the SDNM,
23 "[t]he influence (stresses) of livestock extends throughout most of the community, as few
24 of the regions we visited within the study area are without some indication of livestock
25 influence." *Id.* at 0031494; *see also* AR-0011538, 11544 (discussing study findings).
26 BLM also has not taken a close look at where past grazing overlapped habitat for tortoise
27 and bighorn sheep to see how much overlap occurred across the range of these species
28 and determine which habitats should be off-limits to grazing. Similarly, delegating

1 analysis of effects to cultural and historic sites to the allotment level does not give a full
2 picture of how significantly grazing affects these resources across the SDNM.

3 BLM admitted land use plans are where the agency determines what lands are
4 available or unavailable for grazing. AR-0032304. The record here shows that grazing all
5 lands on the SDNM north of Highway 8 is not compatible with protecting all biological
6 and cultural objects of the SDNM, and it was unreasonable to side-step that conclusion
7 by deferring decisions to later analyses. Accordingly, the RMP amendment does not
8 comply with the SDNM proclamation, FLPMA or OPLMA.

9 **V. BLM’S DECISION FAILED TO COMPLY WITH THE NHPA.**

10 Section 106 of the National Historic Preservation Act (NHPA) requires federal
11 agencies to take into account the effects of their “undertakings,” including federally
12 permitted livestock grazing, on “historic properties.” 54 U.S.C. § 306108; 36 C.F.R. §§
13 800.1(a), 800.16(y). A “historic property” is any “prehistoric or historic district, site,
14 building, structure, or object included in, or eligible for inclusion in, the National
15 Register of Historic Places” 36 C.F.R. § 800.16(l)(1). To fulfill this requirement, an
16 agency must make a “reasonable and good faith effort” to identify historic and cultural
17 properties that could be affected by the activity, and evaluate the National Register
18 eligibility of all identified sites. *Id.* §§ 800.4(b), 800.4(c).

19 If eligible properties are present, the agency must assess whether the proposed
20 undertaking may cause adverse effects on the properties, and consult with Native
21 American Tribes, the State Historic Preservation Office, and other interested parties as
22 part of this process. *Id.* §§ 800.4(d)(2), 800.5. An adverse effect occurs when an
23 undertaking may directly or indirectly alter “any of the characteristics of a historic
24 property that qualify the property for inclusion in the National Register in a manner that
25 would diminish the integrity of the property’s location, design, setting, materials,
26 workmanship, feeling, or association.” *Id.* § 800.5(a)(1). If the agency makes a “no
27 adverse effect” determination, it must provide notice and documentation of that finding to
28 all consulting parties, who can object to the finding. *Id.* § 800.5(c). The no adverse effect

1 determination must be supported “by sufficient documentation to enable any reviewing
2 parties to understand its basis.” *Id.* § 800.11(a). The Ninth Circuit reviews NHPA claims
3 under the APA arbitrary and capricious standard. *Morongo Band of Mission Indians v.*
4 *FAA*, 161 F.3d 569, 573 (9th Cir. 1998).

5 BLM’s decision violated the NHPA in several respects. First, BLM did not
6 conduct an adequate inventory of “historic properties” on the SDNM that could be
7 affected by grazing. It admitted that prehistoric sites such as artifact scatters, trails,
8 petroglyphs, and rock alignments, as well as historic sites from Euro-American
9 settlement of the West, occur on the SDNM. AR-0031340. For its NHPA assessment,
10 BLM relied on a “Class I”¹⁰ survey that reviewed information from past inventories
11 conducted for other projects in the area—most of which occurred in the 1980s and 1990s.
12 *Id.* at 0031341 (“A thorough review of project records and cultural resources site
13 information has been performed for this action. This review revealed that a total of 92
14 cultural inventory projects were performed ... within the Analysis Area.”); AR-0031051-
15 52 (“A thorough review of project records housed at the BLM Phoenix District Office has
16 been performed for this action.”); AR-0031055-63 (Table of past inventories). These past
17 inventories covered only 4% of the analysis area. AR-0031341; AR-0032303.

18 BLM relied on this existing information rather than conducting new Class II or III
19 inventories even though additional cultural and historic sites surely exist on the north half
20 of the SDNM. *See* AR-0029372 (letter from Archaeology Southwest noting their 2017-
21 2018 survey of just 2,088 acres north of Highway 8 found 40 previously undocumented
22 cultural resource sites and only six previously identified sites); AR-0026263, AR-
23 0031342 (noting that segments of Komatke Trail may occur on northern end of SDNM
24 and BLM would need help from Gila River Indian Community identifying impacts to the
25

26
27 ¹⁰ Class I surveys review existing information, Class II surveys are probabilistic field
28 sample surveys conducted for large areas, and Class III surveys are intensive field
surveys to fully inventory target areas. *Mont. Wilderness Ass'n v. Connell*, 725 F.3d 988,
1005–06 (9th Cir. 2013) (citing BLM Manual 8110).

1 trail); AR-0031039-40 (Tohono O’odham Nation stating these lands contain cultural
2 resource sites that can be damaged by grazing). BLM’s reliance on past surveys that
3 covered only 4% of the analysis area and were mostly produced for non-grazing activities
4 did not constitute “a reasonable and good faith effort” to identify cultural and historic
5 properties that could be affected by livestock grazing. *Mont. Wilderness Ass’n v. Connell*,
6 725 F.3d 988, 1005-08 (9th Cir. 2013) (finding BLM did not make sufficient effort to
7 identify resources where it relied only on Class I survey that reviewed prior inventories
8 covering just 16% of National Monument, some of which were decades-old).

9 Nor does relying on future surveys for site-specific decisions satisfy BLM’s duty.
10 AR-0031051. Like in *Connell*, the land use plan here directs management of a national
11 monument that was designated in part “for the very purpose of protecting and preserving
12 historic objects,” and the plan determined that livestock grazing is available on *all* lands
13 on the SDNM north of Highway 8. *Connell*, 725 F.3d at 1008-09; AR-0032610. While
14 BLM may decide the specific level of grazing or where to build fences or new water
15 developments in future actions, it has already decided that there are no lands where
16 grazing is incompatible with protecting cultural resources and thus must be closed to
17 grazing. BLM made this decision without a reasonable effort to identify “historic
18 properties” that undoubtedly occur in the area and could be damaged by livestock.

19 Second, BLM failed to evaluate the National Register eligibility of all identified
20 sites. 36 C.F.R. § 800.4(c). It admitted that of 74 cultural sites documented in the analysis
21 area, 17 have not been evaluated for eligibility. AR-0031341; AR-0031064-73. Because
22 BLM did not evaluate if these sites are eligible for the National Register, it could exclude
23 them from its effects determination. 36 C.F.R. § 800.4(d). BLM’s incomplete eligibility
24 evaluation combined with insufficient survey data renders its analysis of effects to
25 historic properties arbitrary, capricious and in violation of the NHPA.

26 Finally, BLM’s “no adverse effects” determination was not supported by the
27 record. AR-0031053. BLM improperly dismissed evidence from its own surveys, as well
28 as from Tribes with cultural ties to the SDNM and the public, that livestock would

1 damage cultural sites. 36 C.F.R. § 800.5(a) (requiring BLM to consult with Tribes that
2 have religious and cultural ties to historic properties when assessing effects of an action
3 and to consider any views concerning such effects that have been provided by consulting
4 parties and the public). BLM’s very limited field surveys documented “some level of
5 impact” from livestock to nine cultural sites and several historic trails. AR-0031343; AR-
6 0031920-21. Archaeology Southwest’s comment letter explained the many negative
7 impacts grazing has on cultural sites and that BLM had disregarded many of those
8 impacts. AR-0029375-76. The Gila River Indian Community expressed concern about
9 impacts to the unsurveyed Komatke trail. AR-0026263; AR-0029375. And the Tohono
10 O’odham Nation stated that grazing would damage or destroy fragile pattern cultural
11 resource sites located in the SDNM, which are traditional use lands of the O’odham
12 people that include both prehistoric and historic sites. AR-0031039-40; AR-0031084.
13 BLM did not adequately consider whether grazing would diminish the integrity of
14 cultural sites’ location, setting, materials or feeling by physically damaging or altering the
15 sites, or changing other features within the sites’ setting, before finding that allowing
16 grazing on all lands of the SDNM north of Highway 8 would have “no adverse effect” on
17 cultural resources, in violation of the NHPA. 36 C.F.R. § 800.5(a) (discussing criteria for
18 adverse effect); *Bonnichsen v. United States*, 217 F. Supp. 2d 1116, 1162-64 (D. Or.
19 2002) (agency did not fully and carefully consider negative effects of project); *Okinawa*
20 *Dugong v. Gates*, 543 F. Supp. 2d 1082, 1108-12 (N.D. Cal. 2008) (insufficient
21 information to make determination about effects under analogous provision of NHPA).
22 BLM’s decision-making for the RMP amendment did not satisfy the procedural
23 requirements of the NHPA.
24

25 CONCLUSION

26 For the foregoing reasons, Plaintiffs request the Court grant their motion for
27 summary judgment and vacate and remand the 2020 EA, FONSI, and RMP amendment.
28

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Respectfully submitted,

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