



File Code: 2200

Date: October 8, 2008

Erik B. Ryberg
Attorney at Law
Western Watersheds Project
445 West Simpson Street
Tucson, AZ 85701

Dear Mr. Ryberg:

I am in receipt of your September 3, 2008 Notice of Intent to sue for violations of the *Endangered Species Act*. Your stated intent is *"to file suit for the Forest Service's failure to complete consultation with the Fish and Wildlife Service...prior to grazing livestock along the Salt River on the Tonto National Forest in and surrounding the Hicks-Pikes Peak grazing allotment."*

You further allege that *"the Forest Service has been permitting livestock grazing annually in a fashion that may affect and is indeed likely to affect the southwestern willow flycatcher in and around its critical habitat...and is permitting adverse modification of that critical habitat."*

Additionally, you contend that consultation is required and must be completed before any further grazing is allowed.

Grazing has not been authorized between 2005 and 2007 in any pastures of the Hicks-Pikes Peak Allotment that contain designated critical Southwestern willow flycatcher habitat in order to stay in compliance with *Section 7* consultation concurrence issued in August of 2005. The two pastures that adjoin the Salt River, the Ortega and Upper Schute Springs pastures, have not had grazing authorized since 2002. The Forest Service has not allowed cattle to be placed in those pastures. If cattle have been observed in those two pastures, there has been a break in a fence or a gate has been left open. When the Globe District Ranger has been informed of cattle in a wrong pasture, he has directed the permittees to gather those cattle and return them to an authorized pasture and maintain the fences.

In order to ensure this continues, the District Ranger has again emphasized this matter with the permittees. This is to make certain the permittees are aware of the need to locate and remove any permitted livestock reported in areas designated as critical habitat for the Southwestern willow flycatcher. Furthermore, the permittees have been reminded of the need for continual inspections and maintenance of fences, routine gate checks, and verification that cattle remain only within areas of the allotment designated for livestock use.

The 2008 *Annual Operating Instructions* (AOI) for the Hicks-Pikes Peak Allotment did not clearly preclude livestock from grazing in the Ortega and Lower Shute springs Pastures, an apparent oversight. However, permitted cattle have not been placed into these pastures. A revised AOI was sent to the permittee in June to make it clear that cattle are not authorized in



these two pastures.

With livestock specifically being excluded from these pastures, current grazing activities are being conducted consistent with the 2005 *Section 7* consultation with the U.S. Fish and Wildlife service.

The Hicks-Pikes Peak Allotment is scheduled to be analyzed and a grazing strategy decision made in 2009. The designated critical habitat will be a key part of this analysis. *Section 7* consultation will be completed before the decision is implemented. If you have further questions, please contact Don Luhrsen of my staff at (602) 225-5222.

Sincerely,


GENE BLANKENBAKER
Forest Supervisor

cc: Patrick L Jackson