

BY ELECTRONIC MAIL

October 3, 2019

Mr. Rickey Turner
Trial Attorney
Environment & Natural Resources Division
U.S. Department of Justice
Rickey.Turner@usdoj.gov

Re: WildEarth Guardians v. USFWS and USFS,
Civil No. 13-151-RCC (Arizona)

Dear Rickey:

I am writing this letter to you because of your clients' continuing refusal to confer with WildEarth Guardians regarding the scope of the Court's injunctive order in this case. As a preliminary matter, it is beyond dispute that a district court has broad discretionary authority to fashion appropriate injunctive relief. *Melendres v. Arpaio*, 784 F.3d 1254, 1265 (9th Cir. 2015) (holding that "the district court has broad discretion in fashioning a remedy"). The injunctive order issued in this case was fashioned to address your clients' decades-long recalcitrance in assuming their ESA obligations. While broad, the sweep of the injunctive order was certainly within the discretion of the Court in this matter.

Notwithstanding the above, WildEarth Guardians believes that there are some aspects of the USFS timber management program that should be permitted to proceed in light of their negligible adverse impact on the Mexican spotted owl. A case in point is personal firewood cutting and gathering. As you know, it is (and always has been) WildEarth Guardians' position that personal firewood cutting and gathering will not irreparably harm the owl. Had the Forest Service deigned to communicate with us about the issue, any and all public anxiety regarding the matter could have been easily avoided through a quick and timely stipulation presented to the Court. Instead, the Forest Service elected to whip up public anxiety and concern through a "doomsday" public relations strategy intended to obfuscate the agency's responsibility for the current situation.

I am hopeful that future communication short-circuits – and your clients’ accompanying PR sideshow – do not reoccur as we move forward in this case. Towards that end, WildEarth Guardians urges your clients to reconsider their refusal to meet with us, and urges your clients to participate in a good faith mediation of any issues or concerns raised by Judge Collins’ Order. We are confident that, working together in good faith, we can resolve most (if not all) of the management uncertainties now confronting the Forest Service in a manner that brings your clients into compliance with the ESA’s requirements with the minimum amount of disruption to national forest management.

WildEarth Guardians acknowledges that – besides personal firewood cutting and gathering – there are other minimally intrusive activities which need not be enjoined in light of their very negligible impact on Mexican spotted owls. These activities include – but are likely not limited to – trail maintenance, medicinal plant gathering, tribal ceremonial activities, and Christmas tree cutting. WildEarth Guardians assumes that your clients have the same view of these activities, and is willing to seek the Court’s immediate approval of a stipulation that those activities should be excepted from the injunction. We urge you to meet with us at the promptest possible time so that we can work together to define that universe of activities that should be allowed to proceed while the injunction remains in place.

During that meeting – which we hope will occur very soon – we’d also like to focus on ongoing pre-commercial thinning projects. We are aware of the fact that there are a number of ongoing projects where the prescription is cutting and removal of both live and dead trees <10"dbh in pinon-juniper woodland. We would very much like to have an expedited discussion with you as to these projects, as it is our sense that it would be possible to seek the Court’s permission to move many (or most) of these pre-commercial thinning projects out from under the injunction. Of course, getting information from the Forest Service regarding the location of these projects relative to the location of Mexican spotted owls and habitat is important to us, and I’m sure you agree that that information is relevant to the determination of what activities should be allowed to proceed.

With respect to the Forest Service’s ongoing “restoration” projects¹ and WUI projects, there are presumably some component parts of these projects that can be implemented without any chance of harm to the owl and/or its habitat. WildEarth Guardians would welcome an opportunity to review the ongoing restoration and WUI projects with your clients in an effort to determine the extent to which any units of those projects might be appropriate for release from

¹ I put the word “restoration” in quotes because, as you know, the Fish and Wildlife Service admits very clearly that there is no information supporting the Forest Service’s hypotheses that these projects are (1) necessary for Mexican spotted owl conservation or (2) beneficial for Mexican spotted owl conservation.

Mr. Rickey Turner
October 3, 2019
Page 3 of 3

the injunction.

In closing, we believe that communication and a good faith exchange of information regarding the Forest Service's ongoing projects would certainly narrow any dispute between us as to the appropriate scope of the injunction, and might preclude the need for further litigation on this matter altogether. At the very least, communications between our clients as to the program components which should be excepted from the injunction will allow us to narrow the contested items – all in our respective clients' interests, the public's interest, the owl's interest, and the Court's interest in judicial efficiency and economy.

When can we meet?

Sincerely,

/s/ Steven Sugarman
Steven Sugarman