



April 27, 2020  
Public Comments Processing  
Attn: FWS-R8-ES-2013-0011  
U.S. Fish & Wildlife Service Headquarters  
MS: JAO 1/N  
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Falls Church, VA  
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Submitted via Federal Rulemaking Portal ([www.regulations.gov](http://www.regulations.gov))

**Re: Comments on Revised Designation of Critical Habitat for the Western Distinct Population Segment of the Yellow-billed Cuckoo, Docket No. FWS-R8-ES-2013-0011.**

We hereby submit comments on behalf of WildEarth Guardians (“Guardians”) and our more than 307,900 members and supporters on the U.S. Fish and Wildlife Service’s (“Service”) *Revised Designation of Critical Habitat for the Western Distinct Population Segment (DPS) of the Yellow-Billed Cuckoo (Coccyzus americanus)* (85 Fed. Reg 39, p. 11458), (hereinafter “2020 Revised Rule”).

The Service proposes to designate 493,665 acres of critical habitat for the yellow-billed cuckoo in Arizona, California, Colorado, Idaho, New Mexico, Texas and Utah (85 Fed. Reg. at 11458). The 2020 Revised Rule reduces the 546,335 acres of critical habitat originally proposed in 2014 Proposed Rule by 30 percent (79 Fed. Reg. at 48548). In addition, the 2020 Revised Rule identifies and considers for exclusion an additional 30 percent of the proposed critical habitat (145,710 acres). The identified critical habitat omitted from the original rule (164,248 acres) and the exclusions from revised rule (145,710 acres) make up over half (309,958 acres) the original designation of critical habitat for the yellow-billed cuckoo.

We believe that the 2020 Revised Rule fails to designate adequate critical habitat for the yellow-billed cuckoo to ensure the survival and recovery of the species. We strongly encourage the Service to reconsider its conservation strategy and reassess its designation to include the units proposed in 2014 and ensure that additional considered exclusions proposed in the 2020 Revised Rule are carefully analyzed and that a full opportunity for public comment is provided.

WildEarth Guardians ([www.wildearthguardians.org](http://www.wildearthguardians.org)) is a regional non-profit organization whose mission is to protect and restore the wildlife, wild places, wild rivers, and health of the American West. Guardians has offices in Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, and Washington. For over 30 years, Guardians has worked to safeguard and restore dynamic flows in western rivers, advocated for western water policy reform, ensured protection of imperiled fish and wildlife, and fought to undam and restore healthy and sustainable aquatic and riparian ecosystems for future generations. Guardians has devoted significant resources and has a longstanding organizational interest in preserving river and riparian habitats of the yellow-billed cuckoo throughout the West. Rio Grande Waterkeeper is a program within Guardians that works specifically to safeguard river health and clean water in the Rio Grande basin, which is part of the core area of recovery for the cuckoo. In 2014, Guardians and allies submitted extensive comments to the 2014 Proposed Rule to designate critical habitat for the yellow-billed cuckoo (“Guardians’ 2014 Comments”) and we incorporate those comments herein by this reference. A link to those comments and attachments on regulations.gov can be found [here](#).

## **I. REQUEST FOR EXTENSION OF PUBLIC COMMENT PERIOD**

We appreciate your effort to finalize the proposed critical habitat designation for the yellow-billed cuckoo that is long overdue. However, during the unprecedented public health crisis and National Emergency caused by COVID-19, many stakeholders are experiencing total or partial shutdowns and are understandably concerned with the health of their neighbors and communities as their first priority. Therefore, we respectfully request an extension of the comment period until after the National Emergency is declared over. We also reserve the right to supplement these comments with additional information and for others to submit comments and additions up to and until the rule is finalized.

## **II. NO JUSTIFICATION EXISTS FOR ACREAGE AND UNITS REMOVED FROM THE 2014 PROPOSED RULE**

The 2020 Revised Rule (85 Fed. Reg. 11458) eliminates 164,248 acres of critical habitat (30 percent) of the 546,335 acres originally proposed in the 2014 Proposed Rule (79 Fed. Reg. at 48548). In the revised proposed critical habitat rule, the Service states:

[o]n August 15, 2014, we proposed approximately 546,335 ac (221,094 ha) in 80 units for the western yellow-billed cuckoo (79 FR 48548). We are now proposing approximately 493,665 ac (199,779 ha) in 72 units as critical habitat in Arizona, California, Colorado, Idaho, New Mexico, Texas, and Utah. Approximately 164,248 ac (66,484 ha) of areas previously proposed as critical habitat are no longer being proposed as critical habitat (30 percent reduction of previous proposal). Based on new information and our conservation strategy, we are also proposing new areas totaling approximately 26,061 ac (10,547 ha) (5 percent). The remainder 467,604 ac (189,233 ha) are areas we previously proposed in 2014 (85 Fed. Reg. 39, p. 11,477)

While the Service goes on to describe the added revised proposed critical habitat units, why they are essential, and identify the exclusions it is considering, the Service fails to describe the units or

acreage that were **removed** from the 2014 critical habitat proposal. Further, the Service does not offer any justification for the removal of such units.

Examination of Table 1 (85 Fed. Reg. 39, p. 11,477), in comparison to the same table in the original proposed critical habitat rule (79 Fed. Reg. 158, p. 48,557) does not clear up the question; it appears that numerous units have undergone name changes, are numbered differently from one proposal to the other, or are otherwise hard to identify. The Service does not clearly indicate what units proposed in 2014 correspond to units proposed in the 2020 Revised Rule, nor does the Service clearly indicate what units are new. This disregard for the reader makes it incredibly difficult to provide robust comments on the 2020 Revised Rule.

Our analysis indicates that the following Critical Habitat Units included in the 2014 Proposed Rule were eliminated from the 2020 Revised Rule. This was done without any explanation and despite the case made by the Service in its 2014 Proposed Rule for including this acreage as part of the designated critical habitat for the yellow-billed cuckoo. At a minimum, the Service must provide an explanation, context, and justification for the exclusion of these units.

<b>Critical Habitat Unit</b>	<b>State Code</b>	<b>Name of Unit</b>	<b>Acres</b>	<b>Reason for Including in 2014 Proposed Critical Habitat</b>
#1	CA-1	Eel River	4,909	The site represents the northwestern limit of the known current breeding range of the species (79 Fed. Reg. at 48560)
#3	CA-3	Sutter Bypass	1,090	The site has recently been one of the most regularly occupied sites in the Sacramento Valley and provides a movement corridor between larger habitat patches. (79 Fed. Reg. at 48560)
#5	CA-5	Owens River	1,598	This site provides nesting habitat for multiple pairs of western yellow-billed cuckoos. The site also provides a movement corridor to habitat farther north. (79 Fed. Reg. at 48560)
#6	CA-6	Prado Flood Control Basin	4,406	The site provides a movement corridor between larger habitat patches. . . . The site is important to the conservation of the species because it is the largest remaining block of riparian habitat in this region into which a recovering population can expand and the only remaining site in southwestern California where the species has recently nested. (79 Fed. Reg. at 48561)
#11	AZ-3	Lake Mead	6,734	This site consistently has breeding western yellow-billed cuckoos. The site also provides a movement corridor to breeding sites to the north. (79 Fed. Reg. at 48561)

#12	AZ-4	Lower Gila River	12,047	Several sites in this unit have consistently had breeding western yellow-billed cuckoos. The site provides stopover locations for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48562)
#13	AZ-5	Upper Santa Maria River	1,636	The site has been occupied consistently by western yellow-billed cuckoos during the breeding season. The site also provides a migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48562)
#15	AZ-7	Gila and Salt Rivers	17,585	This site has consistently been used by nesting western yellow-billed cuckoos. The site also provides migrant stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48562)
#29	AZ-21	Picacho Reservoir	2,789	This unit is consistently occupied by western yellow-billed cuckoos. The site also provides migratory stopover habitat. (79 Fed. Reg. at 48564)
#30	AZ-22	Peritas Wash	894	This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor between larger habitat patches. (79 Fed. Reg. at 48564)
#42	AZ-34	Lower Verde River	1,079	Numerous western yellow-billed cuckoos have consistently used this site during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48563)
#43	AZ-35	Gila River 3	2,194	This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor for migrating western yellow-billed cuckoos. (79 Fed. Reg. at 48565)
#54	CO-1	Yampa River	6,938	This site has regularly been occupied by western yellow-billed cuckoos during the breeding season. This high-elevation site is near the current northern limit of the current breeding range of the species. (79 Fed. Reg. at 48567)
#57	CO-4	Uncompahgre River	4,506	This site has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides a movement corridor and migratory

				stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48567)
#58	CO-5	Gunnison River	937	This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48567)
#59	CO-6	Rio Grande 3	9,765	This high-elevation unit has been consistently occupied by western yellow-billed cuckoos. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48567)
#60	CO-7	Conejos River	8,986	This high-elevation unit has been consistently occupied by western yellow-billed cuckoos. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48567)
#62	UT-2	Pigeon Water Creek and Lake Fork River	3,041	This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48568)
#63	UT-3	Colorado River 4	579	This unit has been occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48568)
#64	UT-4	Dolores River	401	This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48568)
#66	UT-6	San Juan River 2	2,198	This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48568)
#67	UT-7	San Juan River 3	9,692	This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western

				yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48658)
#68	UT-8	Virgin River 2	1,390	This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48659)
#71	ID-3	Big Wood River	1,129	This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The unit is at the northern limit of the species' current breeding range. (79 Fed. Reg. at 48659)
#73	NV-1	Upper Muddy River	1,472	This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48569)
#74	NV-3	Lower Muddy River	437	This unit has been consistently occupied by western yellow-billed cuckoos during the breeding season. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48569)
#75	NV-4	Carson River	4,348	This unit has consistently been occupied by western yellow-billed cuckoos during the breeding season. (79 Fed. Reg. at 48569)
#76	NV/AZ-1	Virgin River 1	11,266	This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The unit is at the northern limit of the species' current breeding range. (79 Fed. Reg. at 48570)
#77	WY-1	Green River 3	7,471	This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The unit is at the northern limit of the species' current breeding range. (79 Fed. Reg. at 48570)
#78	WY/UT-1	Henry's Fork of Green River	9,306	This high-elevation unit has been consistently occupied by western yellow-billed cuckoos. The site also provides migratory stopover habitat for western yellow-billed cuckoos moving farther north. (79 Fed. Reg. at 48570)
#79	TX-1	Arroyo Caballo, Rio Grande	1,261	This unit is consistently occupied by western yellow-billed cuckoos during the breeding season. The site provides migratory stopover habitat for western

				yellow-billed cuckoos breeding farther north. (79 Fed. Reg. at 48570)
<b>TOTAL</b>			<b>142,084</b>	

Of particular concern are the exclusions of large areas (thousands of acres) of proposed critical habitat in states where the yellow-billed cuckoo is found in lower numbers. Guardians' 2014 comments detail many reasons why these units are important for the recovery of the species particularly in states where populations of cuckoos remain low or are declining, such as Colorado, Nevada, Wyoming, and Texas. See Guardians' 2014 Comments.

For example, in Colorado, the Service designated 37,460 acres of critical habitat in 2014, but only left 6,328 acres in the revised designation in 2020 (17 percent of the habitat originally designated remains. Without any explanation, justification, or reasoning, the Service eliminated 6,938 acres (20 miles) of the Yampa River; 4,506 acres (37 miles) of the Uncompahgre River, 937 acres (6 miles) of the Gunnison River; 9,765 acres (45 miles) of the Rio Grande; and 8,986 acres (62 miles) of the Conejos River. 79 Fed. Reg. at 48567. These sites are "consistently occupied by western yellow-billed cuckoos during the breeding season," "provide a movement corridor and migratory stopover habitat for western yellow-billed cuckoo moving farther north," and also provide a "high-elevation site [that] is near the current northern limit of the current breeding range of the species." 79 Fed. Reg. at 48567. The elimination of this habitat further restricts the range of the western yellow-billed cuckoo, which does not increase resiliency or redundancy within the species, but rather leaves certain populations of cuckoo unprotected and those breeding birds further imperiled. The same exclusions of certain regions of the yellow-billed cuckoo's range is occurring in Utah, Nevada, and Wyoming. This wholesale change in strategy by the Service at least requires a detailed explanation and rational.

We respectfully request that the Service confirm which units and acres were removed from the rule and provide justification as to why they were removed. We reserve the right to supplement these comments based on that information when and if it is provided.

### **III. COMMENTS ON THE REVISED PROPOSED CRITICAL HABITAT UNITS AND EXCLUSIONS**

Guardians provided extensive comments on each of the 80 critical habitat units and their respective proposed exclusions in the 2014 Proposed Rule (79 Fed. Reg. 158). See Guardians' 2014 Comments, pages 12-41. Although the Service has changed the number and reorganized the critical habitat units in its 2020 Revised Rule, the units that the Service proposes to designate and the parts of those it proposes to exclude in 2020 are similar if not exactly the same as those proposed in 2014. Therefore, the comments we submitted in 2014 are still very relevant and thus are incorporated herein by this reference.

#### **1. Unit 1: CA/AZ-1 Colorado River 1; Imperial, Riverside, and San Bernardino Counties, California, and Yuma and La Paz Counties, Arizona (2014 Critical Habitat Unit #7)**

We support the designation of critical habitat in this unit. The Service proposes 82,138 acres of revised critical habitat in Unit #1, which includes 150 miles of the Colorado River in Arizona and California (85 Fed. Reg. at 11480). This revised unit appears to correspond to Unit #7 proposed by

the Service in 2014, which contained 78,961 acres of critical habitat (79 Fed. Reg. at 48557).

As it did in 2014, the Service is considering excluding 55,061 acres of the proposed critical habitat designation (82,138 acres), which is 67 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference.

**2. Unit 2: CA/AZ-2 Colorado River 2; San Bernardino County, California and Mohave County, Arizona** (2014 Critical Habitat Unit #8)

We support the designation of critical habitat in this unit. The Service proposes 23,589 acres of revised critical habitat in Unit #2, which includes 23 miles of the Colorado River in Arizona and California (85 Fed. Reg. at 11480). This revised unit appears to correspond to Unit #8 proposed by the Service in 2014, which contained 23,452 acres of critical habitat (79 Fed. Reg. at 48557).

As it did in 2014, the Service is considering excluding 20,025 acres of the proposed critical habitat designation (23,589 acres), which is 85 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference.

**3. Unit 3: AZ-1 Bill Williams; Mohave and La Paz Counties, Arizona** (2014 Critical Habitat Unit #9)

We support the designation of critical habitat in this unit. The Service proposes 3,389 acres of revised critical habitat in Unit #3, which includes 11 miles of the Bill Williams River, a tributary of the Colorado River in Arizona (85 Fed. Reg. at 11480). This revised unit appears to correspond to Unit #9 proposed by the Service in 2014, which contained essentially the same number of acres of critical habitat (79 Fed. Reg. at 48557).

As it did in 2014, the Service is considering excluding 2,640 acres of the proposed critical habitat designation (3,389 acres), which is 78 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference.

**4. Unit 4: AZ-2 Alamo Lake; Mohave and La Paz Counties, Arizona** (2014 Critical Habitat Unit #10)

We support the designation of critical habitat in this unit. The Service proposes 2,794 acres of revised critical habitat in Unit #4, which includes 6 miles of the Santa Maria River and 3 miles of the Big Sandy River in Arizona (85 Fed. Reg. at 11481). This revised unit appears to correspond to Unit



#10 proposed by the Service in 2014, which contained essentially the same number of acres of critical habitat (79 Fed. Reg. at 48557).

As it did in 2014, the Service is considering excluding 1,840 acres of the proposed critical habitat designation (2,793 acres<sup>1</sup>), which is 66 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference.

**5. Unit 5: AZ-3 Hassayampa River; Maricopa County, Arizona** (2014 Critical Habitat Unit #14)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 19.

**6. Unit 6: AZ-4, Agua Fria River; Yavapai County, Arizona** (2014 Critical Habitat Unit #16)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 20.

**7. Unit 7: AZ-5, Upper Verde River; Yavapai County, Arizona** (2014 Critical Habitat Unit #17)

We support the designation of critical habitat in this unit. The Service proposes 6,047 acres of revised critical habitat in Unit #7 (85 Fed. Reg. at 11481). This revised unit appears to correspond to Unit #17 proposed by the Service in 2014, which contained 4,531 acres of critical habitat (79 Fed. Reg. at 48558, Table 1).

The Service is considering excluding 491 acres of the proposed critical habitat designation (6,047 acres), which is 8 percent (85 Fed. Reg. at 11502, Table 3). The Service's exclusion is premised on management plans by the tribes related to the Southwestern willow flycatcher. As discussed in more details in Guardians' 2014 Comments, relying on management strategies to protect the flycatcher may not be advantageous to the cuckoo, especially in the event that the flycatcher is delisted prior to the cuckoo. Further, relying on such management plans to exclude areas from critical habitat designation may not be appropriate unless a full analysis of the plan to be sure that the exclusion outweighs the benefits of inclusion. For example, before determining to exclude the area from cuckoo critical habitat, it must be determined whether the management plan will remain in effect even after the flycatcher is delisted. If it would not remain in effect, then this area should be designated as critical habitat for the cuckoo regardless of the protections in place for the flycatcher.

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<sup>1</sup> There is a discrepancy between the number of acres in Table 1 (85 Fed. Reg at 11477) and the number of acres identified in Table 3 (85 Fed. Reg. at 11502).

**8. Unit 8: AZ-6 Oak Creek; Yavapai and Coconino Counties, Arizona** (2014 Critical Habitat Unit #18)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 20.

**9. Unit 9: AZ-7 Beaver Creek; Yavapai County, Arizona** (2014 Critical Habitat Unit #19)

We support the designation of critical habitat in this unit. The Service proposes 2,082 acres of revised critical habitat in Unit #9, which includes 23 miles of Beaver Creek in Arizona (85 Fed. Reg. at 11482). This revised unit appears to correspond to Unit #19 proposed by the Service in 2014, which contained the same number of acres of critical habitat (79 Fed. Reg. at 48557).

As it did in 2014, the Service is considering excluding 1 acre of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 20.

**10. Unit 10: AZ-8 Lower Verde River and West Clear Creek; Yavapai County, Arizona** (2014 Critical Habitat Unit #20)

We support the designation of critical habitat in this unit. The Service proposes 2,178 acres of revised critical habitat in Unit #10 in Arizona (85 Fed. Reg. at 11482). This revised unit appears to correspond to Unit #20 proposed by the Service in 2014, which contained essentially the same number of acres of critical habitat (79 Fed. Reg. at 48557).

As it did in 2014, the Service is considering excluding 42 acres of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 21.

**11. Unit 11: AZ-9A and AZ-9B Horseshoe Dam; Gila, Maricopa, and Yavapai Counties, Arizona** (2014 Critical Habitat Unit #21)

We support the designation of critical habitat in this unit. The Service proposes 3,974 acres of revised critical habitat in Unit #11, including 33 miles of the Verde River in Arizona (85 Fed. Reg. at 11482). This revised unit appears to correspond to Unit #21 proposed by the Service in 2014, which contained 626 acres of critical habitat (79 Fed. Reg. at 48557).

As it did in 2014, the Service is considering excluding 626 acres of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 21.

**12. Unit 12: AZ-10 Tonto Creek; Gila County, Arizona** *(2014 Critical Habitat Unit #22)*

We support the designation of critical habitat in this unit. The Service proposes 3,669 acres of revised critical habitat in Unit #12, including 6 miles of Tonto Creek in Arizona (85 Fed. Reg. at 11483). This revised unit appears to correspond to Unit #22 proposed by the Service in 2014, which contained essentially the same number of acres of critical habitat (79 Fed. Reg. at 48557).

As it did in 2014, the Service is considering excluding 3,155 acres of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 22.

**13. Unit 13: AZ-11 Pinal Creek; Gila County, Arizona** *(2014 Critical Habitat Unit #23)*

We support the designation of critical habitat in this unit. The Service proposes 419 acres of revised critical habitat in Unit #13, including 3 miles of Pinal Creek in Arizona (85 Fed. Reg. at 11483). This revised unit appears to correspond to Unit #23 proposed by the Service in 2014, which contained the same number of acres of critical habitat (79 Fed. Reg. at 48557).

The Service is considering excluding 390 acres of the proposed critical habitat designation (390 acres), which is 93 percent (85 Fed. Reg. at 11502, Table 3). The Service's rationale for this exclusion is "the conservation action being implemented" by Freeport-McMoRan Inc. and the "flycatcher management plan for the proposed segment of Pinal Creek." As discussed in more detail in Guardians' 2014 Comments, relying on conservation actions and management strategies to protect the flycatcher may not be advantageous to the cuckoo, especially in the event that the flycatcher is delisted prior to the cuckoo. Further, relying on such management plans to exclude areas from critical habitat designation may not be appropriate unless a full analysis of the plan to be sure that the exclusion outweighs the benefits of inclusion. For example, before determining to exclude the area from cuckoo critical habitat, it must be determined whether the management plan will remain in effect even after the flycatcher is delisted. If it would not remain in effect, then this area should be designated as critical habitat for the cuckoo regardless of the protections in place for the flycatcher.

**14. Unit 14: AZ-12 Bonita Creek; Graham County, Arizona** *(2014 Critical Habitat Unit #24)*

We support the designation of critical habitat in this unit. In 2014, we explained in our comments

why this critical habitat unit was important and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 22.

**15. Unit 15: AZ-13 San Francisco River; Greenlee County, Arizona** (2014 Critical Habitat Unit #25)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 22.

**16. Unit 16: AZ-14 Upper San Pedro River; Cochise County, Arizona** (2014 Critical Habitat Unit #26)

We support the designation of critical habitat in this unit. The Service proposes 31,060 acres of revised critical habitat in Unit #16, including 84 miles of the Upper San Pedro River in Arizona (85 Fed. Reg. at 11484). This revised unit appears to correspond to Unit #26 proposed by the Service in 2014, which contained the 21,786 acres of critical habitat (79 Fed. Reg. at 48557). "This unit has one of the largest remaining breeding groups of the western yellow-billed cuckoo and contains a large number of breeding pairs" (85 Fed. Reg. at 11484). In 2014, we explained in our comments why this critical habitat unit was important and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 23.

The Service is considering excluding 89 acres of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). The rationale for the exclusion is based upon the Pima County Multi-Species Conservation Plan. In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic (specifically based on the multi-species agreement), and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 29.

**17. Unit 17: AZ-15 Lower San Pedro and Gila Rivers; Pima, Pinal and Gila Counties, Arizona** (2014 Critical Habitat Unit #28)

We support the designation of critical habitat in this unit. The Service proposes 23,400 acres of revised critical habitat in Unit #17, including 59 miles of the Lower San Pedro River in Arizona (85 Fed. Reg. at 11484). This revised unit appears to correspond to Unit #28 proposed by the Service in 2014, which contained the same number of acres of critical habitat (79 Fed. Reg. at 48557).

As it did in 2014, the Service is considering excluding 1,757 acres of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised

designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 23-24.

**18. Unit 18: AZ-16 Sonoita Creek; Santa Cruz County, Arizona** (2014 Critical Habitat Unit #32)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 25.

**19. Unit 19: AZ-17, Upper Cienega Creek; Pima County, Arizona** (2014 Critical Habitat Unit #33)

We support the designation of critical habitat in this unit. The Service proposes 5,204 acres of revised critical habitat in Unit #19, including 11 miles of Cienega Creek in Arizona (85 Fed. Reg. at 11484). This revised unit appears to correspond to Unit #33 proposed by the Service in 2014, which contained the same number of acres of critical habitat (79 Fed. Reg. at 48557).

The Service is considering excluding 264 acres of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). The rationale for the exclusion is based upon the Pima County Multi-Species Conservation Plan. In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic (specifically based on the multi-species agreement), and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 29.

**20. Unit 20: AZ-18 Santa Cruz River; Santa Cruz County, Arizona** (2014 Critical Habitat Unit #34)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 26.

**21. Unit 21: AZ-19 Black Draw; Cochise County, Arizona** (2014 Critical Habitat Unit #35)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 26.

**22. Unit 22: AZ-20, Gila River 1; Graham County, Arizona** (2014 Critical Habitat Unit #36)

We support the designation of critical habitat in this unit. The Service proposes 20,724 acres of revised critical habitat in Unit #22, including 27 miles of the Gila River in Arizona (85 Fed. Reg. at

11485). This revised unit appears to correspond to Unit #36 proposed by the Service in 2014, which contained essentially the same number of acres of critical habitat (79 Fed. Reg. at 48557).

The Service is considering excluding 10,183 acres of the proposed critical habitat designation, nearly half of the entire designation (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 26.

**23. Unit 23: AZ-21 Salt River; Gila County, Arizona** (2014 Critical Habitat Unit #37)

We support the designation of critical habitat in this unit. The Service proposes 2,590 acres of revised critical habitat in Unit #23, including 5 miles of the Salt River in Arizona (85 Fed. Reg. at 11485). This revised unit appears to correspond to Unit #37 proposed by the Service in 2014, which contained the same number of acres of critical habitat (79 Fed. Reg. at 48557).

The Service is considering excluding 2,469 acres of the proposed critical habitat designation, nearly half of the entire designation (2,590 acres), which is 95 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 26-27.

**24. Unit 24: AZ-22 Lower Cienega Creek, Pima County, Arizona** (2014 Critical Habitat Unit #38)

We support the designation of critical habitat in this unit. The Service proposes 2,360 acres of revised critical habitat in Unit #24, including 11 miles of the Cienega Creek in Arizona (85 Fed. Reg. at 11485). This revised unit appears to correspond to Unit #38 proposed by the Service in 2014, which contained the same number of acres of critical habitat (79 Fed. Reg. at 48557).

The Service is considering excluding all 2,360 acres of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 27.

**25. Unit 25: AZ-23 Blue River, Greenlee County, Arizona** (2014 Critical Habitat Unit #39)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 27.

**26. Unit 26: AZ-24 Pinto Creek South, Gila and Pinal Counties, Arizona** (2014 Critical Habitat Unit #40)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 27.

**27. Unit 27: AZ-25 Aravaipa Creek; Pinal and Graham Counties, Arizona** (2014 Critical Habitat Unit #41)

We support the designation of critical habitat in this unit. The Service proposes 3,329 acres of revised critical habitat in Unit #27, including 25 miles of Aravaipa Creek in Arizona (85 Fed. Reg. at 11486). This revised unit appears to correspond to Unit #41 proposed by the Service in 2014, which contained 1,209 acres of critical habitat (79 Fed. Reg. at 48557).

The Service is considering excluding 392 acres of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why and where it should be expanded, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 27-28; also see explanation 2014 Unit 36, Guardians' 2014 Comments at 26.

**28. Unit 28: AZ-26, Gila River 2; Graham and Greenlee Counties, Arizona**

We support the designation of critical habitat in this unit. The Service proposes 8,588 acres of critical habitat in Unit #28, including 4.5 miles of the Gila River in Arizona (85 Fed. Reg. at 11486). We believe it is particularly important to designate this unit because it "is considered to have been occupied at the time of listing and is used by western yellow-billed cuckoo during the breeding season," and "provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoo." 85 Fed. Reg. at 11486.

The Service is considering excluding 1,434 acres of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). The rationale for exclusion is the existence of a management plan for the Southwestern willow flycatcher. 85 Fed. Reg. at 11506. As we explained in Guardians' 2014 Comments, relying on management plans to protect the flycatcher may not be advantageous to the cuckoo, especially in the event that the flycatcher is delisted prior to the cuckoo. Further, relying on such management plans to exclude areas from critical habitat designation may not be appropriate unless a full analysis of the plan to be sure that the exclusion outweighs the benefits of inclusion. For example, before determining to exclude the area from cuckoo critical habitat, it must be determined whether the management plan will remain in effect even after the flycatcher is delisted. If it would not remain in effect, then this area should be designated as critical habitat for the cuckoo regardless of the protections in place for the flycatcher. See Guardians' 2014 Comments at 26.

**29. Unit 29: AZ-27 Pinto Creek North; Gila County, Arizona** (2014 Critical Habitat Unit #44)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 29.

**30. Unit 30: AZ-28 Mineral Creek; Pinal and Gila Counties, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because it "is considered to have been occupied at the time of listing and is used by western yellow-billed cuckoo during the breeding season," and "provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoo." 85 Fed. Reg. at 11487. "Data suggests that there were as many as six breeding pairs along this segment of Mineral Creek." 85 Fed. Reg. at 11487.

**31. Unit 31: AZ-29 Big Sandy River; Mohave County, Arizona**

We support the designation of critical habitat in this unit. The Service proposes 20,179 acres of critical habitat, including 58 miles of the Big Sandy River in Arizona (85 Fed. Reg. at 11487). We believe it is particularly important to designate this unit because it "is considered to have been occupied at the time of listing and is used by western yellow-billed cuckoo during the breeding season," and "provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoo." 85 Fed. Reg. at 11487.

The Service is considering excluding 721 acres of the proposed critical habitat designation (85 Fed. Reg. at 11502, Table 3). The rationale for exclusion is the existence of a management plan for the Southwestern willow flycatcher. 85 Fed. Reg. at 11506-11507. As we explained in Guardians' 2014 Comments, relying on management plans to protect the flycatcher may not be advantageous to the cuckoo, especially in the event that the flycatcher is delisted prior to the cuckoo. Further, relying on such management plans to exclude areas from critical habitat designation may not be appropriate unless a full analysis of the plan to be sure that the exclusion outweighs the benefits of inclusion. For example, before determining to exclude the area from cuckoo critical habitat, it must be determined whether the management plan will remain in effect even after the flycatcher is delisted. If it would not remain in effect, then this area should be designated as critical habitat for the cuckoo regardless of the protections in place for the flycatcher. See Guardians' 2014 Comments at 26.

**32. Unit 32: NM-1 San Francisco River; Catron County, New Mexico** (2014 Critical Habitat Unit #47)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 30.



**33. Unit 33: NM-2 Gila River; Grant County, New Mexico** *(2014 Critical Habitat Unit #48)*

We support the designation of critical habitat in this unit. The Service proposes 4,177 acres of revised critical habitat in Unit #33, which includes 24 miles of the Gila River in New Mexico (85 Fed. Reg. at 11488). This revised unit appears to correspond to Unit #48 proposed by the Service in 2014, which contained essentially the same number of acres of critical habitat (79 Fed. Reg. at 48558, Table 1).

The Service is considering excluding 3,002 acres of the proposed critical habitat designation (4,177 acres), which is 72 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. See Guardians Comments at page 30.

**34. Unit 34: NM-3A and NM-3B Mimbres River; Grant County, New Mexico** *(2014 Critical Habitat Unit #49)*

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 31.

**35. Unit 35: NM-4 Upper Rio Grande 1; Rio Arriba County, New Mexico** *(2014 Critical Habitat Unit #50)*

We support the designation of critical habitat in this unit. The Service proposes 1,830 acres of revised critical habitat in Unit #35, which includes 10 miles of the Rio Grande in New Mexico (85 Fed. Reg. at 11488). This revised unit appears to correspond to Unit #50 proposed by the Service in 2014, which contained the same number of acres of critical habitat (79 Fed. Reg. at 48558, Table 1).

The Service is considering excluding 1,313 acres of the proposed critical habitat designation (1,830 acres), which is 72 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. See Guardians Comments at page 31.

**36. Unit 36: NM-5 Upper Rio Grande 2; Santa Fe and Rio Arriba Counties, New Mexico** *(2014 Critical Habitat Unit #51)*

We support the designation of critical habitat in this unit. The Service proposes 1,173 acres of revised critical habitat in Unit #36, which includes 6 miles of the Rio Grande in New Mexico (85 Fed. Reg. at 11488). This revised unit appears to correspond to Unit #51 proposed by the Service in 2014, which contained the same number of acres of critical habitat (79 Fed. Reg. at 48558, Table 1).

The Service is considering excluding all 1,173 acres of the proposed critical habitat designation, which is 100 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. See Guardians Comments at pages 31-32.

**37. Unit 37: NM-6A and NM-6B Middle Rio Grande; Sierra, Socorro, Valencia, Bernalillo, and Sandoval Counties, New Mexico** (2014 Critical Habitat Unit #52)

We support the designation of critical habitat in these units. The Service proposes a total of 68,581 acres—7,238 acres (NM-6A) and 61,343 acres (NM-6B)—of revised critical habitat in Unit #37, which includes roughly 175 miles of the Rio Grande in the middle Rio Grande in New Mexico (85 Fed. Reg. at 11488; 11502, Table 3). This revised unit appears to correspond to Unit #52 proposed by the Service in 2014, which contained 61,959 of acres of critical habitat (79 Fed. Reg. at 48558, Table 1).

We believe it is particularly important to designate this unit because it “is consistently occupied by a large number of breeding western yellow-billed cuckoos and currently is the largest breeding group of the western yellow-billed cuckoo.” 85 Fed. Reg. at 11488. We appreciate the inclusion of “occupied habitat within Elephant Butte Reservoir from RM 54 to RM 38” as well as “occupied areas within Bosque del Apache National Wildlife Refuge extending west of the active floodplain.” 85 Fed. Reg. at 11488-11489.

As it did in 2014, the Service is considering excluding 17,096 acres of the proposed critical habitat designation (68,581 acres), which is 25 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. See Guardians Comments at pages 31-32.

**38. Unit 38: NM-7, Upper Gila River; Hidalgo and Grant Counties, New Mexico** (2014 Critical Habitat Unit #53)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 32.

**39. Unit 39: NM-8A Caballo Delta North and NM-8B Caballo Delta South; Sierra County, New Mexico**

We support the designation of critical habitat in this unit. The Service proposes a total of 345 acres—190 acres (NM-8A) and 155 acres (NM8-B)—of critical habitat in Unit #39, which is within the delta of Caballo Reservoir on the Rio Grande in New Mexico (85 Fed. Reg. at 11489). This is new unit of critical habitat. We believe it is particularly important to designate these units because

surveys found “an estimated occupancy of 14 breeding pairs,” and also because “the areas provide a movement corridor and migratory stop-over habitat for western yellow-billed cuckoos.” 85 Fed. Reg. at 11489. Importantly, the Service also found that “this unit is essential to the conservation of the species . . . because of the lack of habitat in the surrounding area.”

The Service is considering excluding all of the proposed critical habitat designation (345 acres), which is 100 percent (85 Fed. Reg. at 11502, Table 3; 11511). The rationale for the proposed exclusion is “based on Reclamation’s Southwestern Willow Flycatcher Management Plan.” Guardians addressed this justification in our 2014 comments and incorporate that discussion herein by this reference. Guardians Comment No. 4, p. 9-11 and 26. Further, this is key habitat in this arid region (*see* Moore & Ahlers 2017).

#### **40. Unit 40: NM-9 Animas; Sierra County, New Mexico**

We support the designation of critical habitat in this unit. The Service proposes a total of 608 acres of critical habitat in Unit #40, which includes 6 miles of Las Animas Creek in New Mexico (85 Fed. Reg. at 11489). This is new unit of critical habitat. We believe it is particularly important to designate this unit because the it “has been known to be historically occupied,” and also because “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoos.” 85 Fed. Reg. at 11489.

The Service is considering excluding all of the proposed critical habitat designation (608 acres) because it is located in The Ladder Ranch (85 Fed. Reg. at 11502, Table 3; 11511-11512). The rationale for the proposed exclusion is that “The Ladder Ranch is conducting conservation actions for the western yellow-billed cuckoo and its habitat on their lands and is in the process of finalizing a conservation strategy for the species.” Guardians addressed this justification in our 2014 comments and incorporate that discussion herein by this reference. Guardians Comment No. 4, p. 9-11.

#### **41. Unit 41: NM-10 Selden Canyon and Radium Springs; Doña Ana County, New Mexico**

We support the designation of critical habitat in this unit. The Service proposes a total of 237 acres of critical habitat in Unit #41, which includes 12.5 miles of river in Doña Ana County, New Mexico (85 Fed. Reg. at 11489). This is new unit of critical habitat. We believe it is particularly important to designate this unit because the it has “an estimated occupancy of four breeding pairs” and “[t]his unit is part of the core area” for western yellow-billed cuckoos.” 85 Fed. Reg. at 11489.

The Service is considering excluding all of the proposed critical habitat designation (237 acres) (85 Fed. Reg. at 11502, Table 3; 11512). The rationale for the proposed exclusion is based on Reclamation’s Southwestern Willow Flycatcher Management Plan initiated in 2012 (85 Fed. Reg. at 11512). Guardians addressed this justification in our 2014 comments and incorporate that discussion herein by this reference. Guardians Comment No. 4, p. 9-11. Further, this is key habitat in this arid region (*see* Moore & Ahlers 2017).

**42. Unit 42: AZ-30 Arivaca Wash and San Luis Wash; Pima County, Arizona** (2014 Critical Habitat Unit #31)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 24-25

**43. Unit 43: AZ-31 Florida Wash; Pima and Santa Cruz Counties, Arizona** (2014 Critical Habitat Unit #45)

We support the designation of critical habitat in this unit. The Service proposes a total of 747 acres of critical habitat, which includes 6 miles of Florida Wash and tributaries in Arizona (85 Fed. Reg. at 11490). This revised unit appears to correspond to Unit #45 proposed by the Service in 2014, which contained 188 acres of critical habitat (79 Fed. Reg. at 48558, Table 1).

The Service is considering excluding 279 acres of the proposed critical habitat designation (747 acres), which is 37 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 29.

**44. Unit 44: AZ-32 California Gulch; Santa Cruz County, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because it "is considered to have been occupied at the time of listing" and "there have been multiple reports of western yellow-billed cuckoo using this drainage during the breeding period between July-September 2001-2015;" "therefore, we consider this a breeding area for the species." 85 Fed. Reg. at 11490.

**45. Unit 45: AZ-33 Sycamore Canyon; Santa Cruz County, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because "there have been multiple sightings of western yellow-billed cuckoo using this drainage in the months of July-September in almost every year during the period 2000-2015;" "therefore, we consider this a breeding area for the species." 85 Fed. Reg. at 11490. Further, "the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoo." 85 Fed. Reg. at 11490.

**46. Unit 46: AZ-34 Madera Canyon; Pima and Santa Cruz Counties, Arizona**

We support the designation of critical habitat in this unit. The Service proposes a total of 1,732 acres of critical habitat, which includes 7 miles of Madera Canyon in in Arizona (85 Fed. Reg. at 11491). This appears to be a new unit. We believe it is particularly important to designate this unit because it

“includes many western yellow-billed cuckoo detections by birders throughout this reach between 1998 and 2014,” and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoo.” 85 Fed. Reg. at 11491.

The Service is considering excluding 416 acres of the proposed critical habitat designation. 85 Fed. Reg. at 11502, Table 3). The rationale for the exclusion is based upon the Pima County Multi-Species Conservation Plan. In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic (specifically based on the multi-species agreement), and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 29.

#### **47. Unit 47: AZ-35 Montosa Canyon; Santa Cruz County, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because “many western yellow-billed cuckoos have been detected by birders for at least the last 4 years,” and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoo.” 85 Fed. Reg. at 11491.

#### **48. Unit 48: AZ-36 Patagonia Mountains, Santa Cruz County, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because “western yellow-billed cuckoos were detected in eight locations during 2012 surveys in riparian vegetation,” and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoo.” 85 Fed. Reg. at 11491-11492.

#### **49. Unit 49: AZ-37 Canelo Hills, Santa Cruz County**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because survey data “confirms occupancy at the time of listing,” and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoo.” 85 Fed. Reg. at 11492.

#### **50. Unit 50: AZ-38 Arivaca Lake, Pima and Santa Cruz Counties, Arizona**

We support the designation of critical habitat in this unit. The Service proposes a total of 1,365 acres of critical habitat, which includes 9 miles of stream near Arivaca Lake in in Arizona (85 Fed. Reg. at 11492). This appears to be a new unit. We believe it is particularly important to designate this unit because it includes “occupied territories with repeated detections,” and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoo.” 85 Fed. Reg. at 11491.

The Service is considering excluding 380 acres of the proposed critical habitat designation. 85 Fed. Reg. at 11502, Table 3). The rationale for the exclusion is based upon the Pima County Multi-Species Conservation Plan. In 2014, we explained in our comments why this critical habitat unit was

important, why the exclusions are problematic (specifically based on the multi-species agreement), and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 29.

**51. Unit 51: AZ-39 Peppersauce Canyon, Pinal County, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because surveys detected western yellow-billed cuckoos in 2015, the site was used by cuckoos "based on occupancy in nearby areas and habitat conditions," and "the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoo." 85 Fed. Reg. at 11493.

**52. Unit 52: AZ-40 Pena Blanca Canyon, Santa Cruz County, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because "western yellow-billed cuckoos were detected on all four surveys in 2015, including a western yellow-billed cuckoo on a nest" and "other western yellow-billed cuckoos have been documented in other years at this site as well." 85 Fed. Reg. at 11493.

**53. Unit 53: AZ-41 Box Canyon, Pima County, Arizona (*New*)**

We support the designation of critical habitat in this unit. The Service proposes a total of 536 acres of critical habitat, which includes 7 miles of stream within Box Canyon in Arizona (85 Fed. Reg. at 11493). This appears to be a new unit. We believe it is particularly important to designate this unit because it includes "two western yellow-billed cuckoo territories on three surveys in 2015," and "other observations of western yellow-billed cuckoo in Box Canyon have been reported by birders during the breeding season in more than one year." 85 Fed. Reg. at 11493.

The Service is considering excluding 221 acres of the proposed critical habitat designation. 85 Fed. Reg. at 11502, Table 3). The rationale for the exclusion is based upon the Pima County Multi-Species Conservation Plan. In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic (specifically based on the multi-species agreement), and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 29.

**54. Unit 54: AZ-42 Rock Corral Canyon, Santa Cruz County, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because "two occupied territories, including one breeding pair, were detected during the 2015 surveys," and "detections during the breeding season have also been documented by other observers in 2015 and 2011." 85 Fed. Reg. at 11494.

**55. Unit 55: AZ-43 Lyle Canyon, Santa Cruz and Cochise Counties, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because “two western yellow-billed cuckoo territories, including a pair, were detected on three surveys in July and August 2015,” and the site “was used by western yellow-billed cuckoo based on occupancy in nearby areas and habitat conditions.” 85 Fed. Reg. at 11494.

**56. Unit 56: AZ-44 Parker Canyon Lake, Santa Cruz and Cochise Counties, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because “western yellow-billed cuckoos were detected on three western yellow-billed cuckoo surveys in July and August 2015, in Collins Canyon, including a pair,” and “site was used by the western yellow-billed cuckoo based on occupancy in nearby areas and habitat conditions.” 85 Fed. Reg. at 11494-11495.

**57. Unit 57: AZ-45 Barrel Canyon, Pima County, Arizona**

We support the designation of critical habitat in this unit. The Service proposes a total of 920 acres of critical habitat, which includes 5 miles of stream within Barrel Canyon in Arizona (85 Fed. Reg. at 11495). This appears to be a new unit. We believe it is particularly important to designate this unit because it includes “western yellow-billed cuckoos were documented during protocol surveys in the summers of 2013, 2014, and 2015 in this unit,” and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoos.” 85 Fed. Reg. at 11495.

The Service is considering excluding 170 acres of the proposed critical habitat designation. 85 Fed. Reg. at 11502, Table 3). The rationale for the exclusion is based upon the Pima County Multi-Species Conservation Plan. In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic (specifically based on the multi-species agreement), and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 29.

**58. Unit 58: AZ-46 Gardner Canyon; Pima and Santa Cruz Counties, Arizona**

We support the designation of critical habitat in this unit. The Service proposes a total of 5,081 acres of critical habitat, which includes 14 miles of stream within Gardner Canyon in Arizona (85 Fed. Reg. at 11495). This appears to be a new unit. We believe it is particularly important to designate this unit because it “is considered to have been occupied at the time of listing,” recent detections in 2002, 2012, 2014, 2015 and 2016, and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoos.” 85 Fed. Reg. at 11495.

The Service is considering excluding 438 acres of the proposed critical habitat designation. 85 Fed. Reg. at 11502, Table 3). The rationale for the exclusion is based upon the Pima County Multi-Species Conservation Plan. In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic (specifically based on the multi-species agreement), and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 29.

**59. Unit 59: AZ-47 Brown Canyon; Pima County, Arizona**

We support the designation of critical habitat in this unit. The Service proposes a total of 1,113 acres of critical habitat, which includes 8 miles of stream within Brown Canyon in Arizona (85 Fed. Reg. at 11496). This appears to be a new unit. We believe it is particularly important to designate this unit because it “is considered to have been occupied at the time of listing,” and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoos.” 85 Fed. Reg. at 11496.

The Service is considering excluding 259 acres of the proposed critical habitat designation. 85 Fed. Reg. at 11502, Table 3). The rationale for the exclusion is based upon the Pima County Multi-Species Conservation Plan. In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic (specifically based on the multi-species agreement), and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 29.

**60. Unit 60: AZ-48 Sycamore Canyon, Patagonia Mountains; Santa Cruz County, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because it “is considered to have been occupied at the time of listing,” “numerous yellow-billed cuckoos have been incidentally detected within this mountain range in multiple years,” and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoos.” 85 Fed. Reg. at 11496.

**61. Unit 61: AZ-49 Washington Gulch; Santa Cruz County, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because it “is considered to have been occupied at the time of listing,” and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoos.” 85 Fed. Reg. at 11496.

**62. Unit 62: AZ-50 Paymaster Spring and Mowrey Wash; Santa Cruz County, Arizona**

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because it “is considered to have been occupied at the time of listing,” and “the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoos.” 85 Fed. Reg. at 11496-11497.

**63. Unit 63: CA-1 Sacramento River; Colusa, Glenn, Butte, and Tehama Counties, California** (2014 Critical Habitat Unit #2)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate



those comments herein by this reference. Guardians' 2014 Comments at 13.

**64. Unit 64: CA-2 South Fork Kern River Valley; Kern County, California** (2014 Critical Habitat Unit #4)

We support the designation of critical habitat in this unit. The Service proposes a total of 2,640 acres of revised critical habitat in Unit #64, which includes 13 miles of the South Fork Kern River in California (85 Fed. Reg. at 11497; 11502, Table 3). This revised unit appears to correspond to Unit #4 proposed by the Service in 2014, which contained 2,862 acres proposed in the original rule (79 Fed. Reg. at 48558, Table 1).

The Service is considering excluding 167 acres of the proposed critical habitat designation (2,640 acres), which is 6 percent (85 Fed. Reg. at 11502, Table 3). In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. See Guardians Comments at page 13-14.

**65. Unit 65: ID-1 Snake River 1; Bannock and Bingham Counties, Idaho** (2014 Critical Habitat Unit #69)

We support the designation of critical habitat in this unit. The Service proposes a total of 9,655 acres of revised critical habitat in Unit #69, which includes 22 miles of the Snake River in Colorado (85 Fed. Reg. at 11498; 11502, Table 3). This revised unit appears to correspond to Unit #69 proposed by the Service in 2014, which contained the same number of acres proposed in the revised rule (79 Fed. Reg. at 48558, Table 1).

The Service is considering excluding 3,219 acres of the proposed critical habitat designation (9,655 acres), which is 35 percent (85 Fed. Reg. at 11502, Table 3). The Service's rationale is that it has "met with staff from the Shoshone-Bannock Tribes and discussed their existing and proposed conservation actions and management plans." In 2014, we explained in our comments why this critical habitat unit was important, why the exclusions are problematic, and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. See Guardians Comments at page 37-38.

**66. Unit 66: ID-2 Snake River 2; Bonneville, Madison, and Jefferson Counties, Idaho** (2014 Critical Habitat Unit #70)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 38.

**67. Unit 67: ID-3 Henry's Fork and Teton Rivers; Madison and Fremont Counties, Idaho** (2014 Critical Habitat Unit #72)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 38-39.

**68. Unit 68: CO-1 Colorado River; Mesa County, Colorado** *(2014 Critical Habitat Unit #55)*

We support the designation of critical habitat in this unit. The Service proposes a total of 4,002 acres of revised critical habitat in Unit #68, which includes roughly 25 miles of the Colorado River in Colorado (85 Fed. Reg. at 11498; 11502, Table 3). This revised unit appears to correspond to Unit #55 proposed by the Service in 2014, which contained the same number of acres proposed in the revised rule (79 Fed. Reg. at 48558, Table 1).

The Service is considering excluding 417 acres of the proposed critical habitat designation (4,002 acres), which is 10 percent (85 Fed. Reg. at 11502, Table 3). While the Service does not articulate a specific rationale for this exclusion, it appears that the 417 acres considered for exclusion is in state ownership.

**69. Unit 69: CO-2 North Fork Gunnison River; Delta County, Colorado** *(2014 Critical Habitat Unit #56)*

We support the designation of critical habitat in this unit. We believe it is particularly important to designate this unit because it "is considered to have been occupied at the time of listing and is used by the western yellow-billed cuckoo during the breeding season," and "the site also provides a movement corridor and migratory stop-over habitat for western yellow-billed cuckoos." 85 Fed. Reg. at 114968.

**70. Unit 70: UT-1 Green River 1; Uintah and Duchesne Counties, Utah** *(2014 Critical Habitat Unit #61)*

We support the designation of critical habitat in this unit. The Service proposes a total of 28,381 acres of revised critical habitat in Unit #70, which includes roughly 52 miles of the Green River and Duchesne Rivers in Utah (85 Fed. Reg. at 11498; 11502, Table 3). This revised unit appears to correspond to Unit #61 proposed by the Service in 2014, which contained 17,256 acres of critical habitat (79 Fed. Reg. at 48558, Table 1).

The Service is considering excluding 6,848 acres of the proposed critical habitat designation (28,381 acres), which is 24 percent (85 Fed. Reg. at 11502, Table 3). The Service also states in the narrative about exclusions, that it "is considering potential exclusion of 14,611 acres of Ute Tribal lands from this unit (85 Fed. Reg. at 11512). This would be half of the total designated critical habitat in this unit. In 2014, we explained in our comments why this type of exclusion is problematic and what other analysis is necessary before excluding this habitat. The same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. See Guardians Comments at page 31.

**71. Unit 71: UT-2 Green River 2; Emery and Grand Counties, Utah** (2014 Critical Habitat Unit #65)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 36.

**72. Unit 72: TX-1 Terlingua Creek and Rio Grande; Brewster County, Texas** (2014 Critical Habitat Unit #80)

We support the designation of critical habitat in this unit. In 2014, we explained in our comments why this critical habitat unit was important, why we believe this critical habitat should be expanded, and same reasoning and analysis are applicable to the revised designation and we hereby incorporate those comments herein by this reference. Guardians' 2014 Comments at 40-41.

**IV. INFORMATION SPECIFICALLY REQUESTED BY U.S. FISH AND WILDLIFE SERVICE**

A. The exclusion of state managed lands and conservation easements from designated critical habitat is inappropriate

The Service specifically asks for comments on whether state managed lands and lands with conservation easements should be excluded from designated critical habitat (85 Fed. Reg. at 11459). We strongly believe that the wholesale elimination of state managed lands or lands with conservation easements is inappropriate. Table 1 of revised critical habitat includes 48,615 acres of state lands in units located in California, Arizona, New Mexico, Idaho, Colorado and Utah (85 Fed. Reg. at 11477-11478). The outright exclusion of state managed lands would eliminate much of the land necessary for the survival and recovery of the species. Further, the Service has a responsibility to analyze and determine whether the benefits of the exclusion outweighs the benefits of inclusion for each of the areas proposed. This analysis has not been conducted.

B. The exclusion of areas along the United States/Mexico border from designated critical habitat is inappropriate

The Service specifically asks for comments on whether areas of critical habitat along the United States/Mexico border in California, Arizona, New Mexico, and Texas should be excluded for national security and border security missions (85 Fed. Reg. at 11459). We strongly believe that the wholesale elimination of areas along the United States/Mexico border is inappropriate. The U.S. Customs and Border Protection agency and other governmental agencies are not above the law. For the past 50 years, Congress has made clear that a safe and healthy environment is a priority as is evidenced by the many environmental laws that have been enacted in that time—the Endangered Species Act, Clean Air Act, Clean Water Act, National Environmental Policy Act, etc. While the current administration may have found a way to waive environmental, cultural and public health laws to attempt to construct a reckless wall along the U.S./Mexico border, that does not mean that preemptively no environmental or species protections should exist in that region. The Service still

needs to analyze and determine whether the benefits of the exclusion along the borderlands outweighs the benefits of inclusion for each of the areas proposed. This analysis has not been conducted.

C. The exclusion of lands that are part of federal water resource projects from designated critical habitat is inappropriate

The Service should not exclude lands that are part of Federal Water Resource Projects (e.g. flood control basins, reservoirs, and channels authorized by Congress) (85 Fed. Reg. at 11459). Guardians submitted comments on the evaluation of a petition to delist the western population of yellow-billed cuckoo on June 26, 2019. We hereby incorporate those comments by reference and reproduce the relevant portions here for your convenience. A link to those comments and attachments on regulations.gov is [here](#).

Further, if federal water resource projects were excluded from designated critical habitat, there would be very little habitat left in the West to aid in the survival and recovery of the species. It is these exact federal water resource projects that have imperiled the yellow-billed cuckoo and threaten our river ecosystems.

**Elephant Butte Reservoir (Rio Grande Project):** As an example of an important population in a reservoir, we include the following case study of the Rio Grande population in Elephant Butte, which is one of the units considered for exclusion (Unit 37). One of the most successful populations of yellow-billed cuckoos in the United States exists in the middle Rio Grande Basin from Cochiti Dam (just south of Santa Fe, NM) to Elephant Butte Reservoir (near Truth or Consequences, NM). The middle Rio Grande population of yellow-billed cuckoos “is consistently occupied by a large number of breeding cuckoos and currently is the largest breeding group north of Mexico.” (BOR 2016, p. 37). Further, a 2013 study found that “the exposed pool of the Elephant Butte Reservoir constituted 86 percent of all cuckoo detections and 86 percent of all territories found within the San Marcial Reach” at the southern end of the middle Rio Grande (BOR 2016, p. 37). Two of the remaining strongholds of cuckoo habitat on the Rio Grande occur in reservoirs, namely the Caballo and Elephant Butte reservoir deltas. “These vegetated patches within the full pool footprint of both reservoirs are dynamic due to both natural succession and to changes brought about by fluctuating reservoir levels” (BOR 2016, p. 30).

“There is a small and apparently expanding population in the Lower Rio Grande, with the largest breeding population in the Caballo Reservoir delta” (White et al. 2018, p. 38). The Caballo Reservoir habitat is unlikely to be inundated, as “Caballo Reservoir pool levels would be relatively stable under all alternatives [for water management proposed in the Biological Opinion]. The vegetation in and around this reservoir is relatively constant: it is dense near the water’s edge and gradually reduces in density away from the water line” (BOR 2016, p. 74). Other cuckoo habitat in the Lower Rio Grande is scarce. “[H]abitat mapping conducted in 2016 located a total of 208.6 ha of suitable cuckoo habitat. This averages out to less than 1 hectare of habitat per kilometer for the entire length of the Lower Rio Grande. The majority of this habitat is located within the upstream half of the Lower Rio Grande, while the lower 100 km of river is entirely devoid of suitable cuckoo habitat” (Moore & Ahlers 2017, p. 8).

The “San Marcial Reach [just above Elephant Butte Reservoir] supports the largest population with 53 percent of the detections and 54 percent of the territories, nearly all were found within the exposed pool of Elephant Butte Reservoir” (Ahlers et al. 2016, p. 16). “The cuckoo population within [Elephant Butte Reservoir] is largely concentrated in a section of the historic reservoir pool at a very low elevation and within only 11.5 miles of Elephant Butte Dam. A dynamic hydrological system is critical in [Elephant Butte Reservoir] over the long term in order to increase or maintain plant health and foliage cover, promote natural regeneration, and scour and deposit nutrients in the soil” (Murphy 2016, p. 31).

Mimicking the natural flow regime is critical to maintaining cuckoo habitat:

Should [Elephant Butte Reservoir] water levels stay at the current low elevation, and suitable or moderately suitable habitat would be occupied at an elevation of 4325 feet or higher, habitat would be expected to overmature and lose suitability over time at the northern end of [Elephant Butte Reservoir]. A fluctuation of the water surface elevation within the reservoir would mimic the dynamic habitat condition where habitat is created and destroyed over time creating the successional age classes cuckoos depend on. Though there would be short-term losses [from high-water events] in the form of harassment, displacement, habitat loss, and in some cases nest loss, over the long term, the fluctuations in the reservoir pool would be positive for the large cuckoo population and habitat located in this area. (Murphy 2016, p. 38)

Too much inundation could destroy cuckoo habitat. “If Elephant Butte Reservoir was to rise more than 70 ft in elevation from its current seasonal lows, adverse effects to [cuckoo] habitat could be expected” (Ahlers et al. 2016, p. 54). Models indicate that under current management conditions, three inundation events will likely take place by 2050 (Murphy 2016, pp. 36-37). Those events will temporarily displace cuckoos and southwestern willow flycatchers, which share the habitat. In regards to flycatchers, “in order to manage breeding habitat over time, it is necessary to have additional suitable habitat available to which flycatchers, displaced by such habitat loss or change, can readily move into and breed. If a short-term loss of habitat were to never occur, habitat would simply overmature and no longer have the structure and foliage cover to accommodate nesting activity” (Murphy, 2016, p. 19, *internal citations omitted*). The same likely applies to the cuckoo.

Another important reservoir considered for exclusion is the Caballo Reservoir. “Surveys in the last four years have documented a small and apparently expanding population of cuckoos within the Lower Rio Grande. The most abundant suitable habitat and the largest breeding population of cuckoos are within the Caballo Reservoir delta” (White et al. 2017). It is inappropriate to exclude this important habitat.

Since federal water resource projects have caused river ecosystems to decline and species to hover near extinction, the least the Service can do is recognize that these reservoirs and water projects (if operated in the interest of the species) may actually contribute to the recovery of the species and not just add to the problem. We strongly believe it would be a disaster to exclude federal water resource projects from designated critical habitat for riparian and aquatic species.

D. The likely impacts of climate change on the western yellow-billed cuckoo

The Service requests “[i]nformation on the projected and reasonably likely impacts of climate change on the western yellow-billed cuckoo and revised proposed critical habitat” (85 Fed. Reg. at 11459).

Cuckoos were among the species most vulnerable to potential population declines under future climate projections (Glick et al. 2011, p. 101). “The Western yellow-billed cuckoo does not appear to have physiological adaptations for dealing with additional temperature increases, increased storms, and drought” (Friggens et al. 2014, p. 3). Climate change predictions for the southwestern U.S., which include increasing air and water temperatures, longer and more severe drought, and reduced snowpack, are likely to exacerbate water shortages that lead to declines in riparian habitat. These changes will worsen the issues faced by many southwestern species including the yellow-billed cuckoo. Climate changes will increase habitat fragmentation and reduce breeding habitat patch size. Due to predicted variations in temperature, precipitation, and distance to water, yellow-billed cuckoos are estimated to lose 65–98% of their suitable habitat by 2090 (*see* Friggens & Finch 2015; *see also* Friggens et al. 2014).

Native riparian vegetation, including cottonwood and willow species, is in decline due to flow modification. “Modification of peak flows was associated with decreased cottonwood and willow cover at several streams. Decreases in peak discharge have limited the extent of recruitment of cottonwoods and Goodding's willow below dams at the Rio Grande, the Green River, and the Colorado River. Dams and diversions have also lowered the water table in areas away from the active channel, thereby causing mortality of established trees” (Smith & Finch 2016, p. 127, *internal citations omitted*). “Following decreasing reproduction and increasing mortality of native trees, drought-tolerant species such as saltcedar (*Tamarisk spp.*) and Russian olive (*Elaeagnus angustifolia*) may be released from competition, increasing their invasive capacity” (Smith & Finch 2016, p. 128, *internal citations omitted*).

This situation is likely to be exacerbated by climate change. Rivers and streams of the American Southwest have been heavily altered by human activity, resulting in significant changes to disturbance regimes. Hydrological models incorporating greenhouse gas emission scenarios project that these changes will be exacerbated by climate change. Climate model output supports the contention that Middle Rio Grande cottonwood forests are in decline and will be largely replaced by other woody species by the end of this century. Nonnative woody species such as Russian olive and saltcedar will likely increase in abundance as cottonwood declines. Replacement of cottonwood by Russian olive and saltcedar will change the structure of the Middle Rio Grande riparian forest by increasing the density of low-stature vegetation and decreasing canopy height. Riparian-nesting birds will be affected as a result (*see* Smith & Finch 2017).

Because of the absence or near absence of nesting by Yellow-billed Cuckoos in monotypic stands of tamarisk and other nonnative vegetation, the available literature suggests that conversion of native or mixed (native and non-native) riparian woodlands to nearly monotypic stands of tamarisk and other non-native vegetation, coupled with the inability of native vegetation to regenerate under altered hydrological conditions, is a significant threat to the western Yellow-billed Cuckoo now and in the future. Non-native vegetation occurs across most of the range; its establishment can be caused by altered hydrology or other disturbances,

which are widespread throughout the range. Non-native vegetation is expected to increasingly modify and decrease habitat for the western Yellow-billed Cuckoo within a majority of its range in the United States and northern Mexico. (Haltermann et al. 2016, p. 9, *internal citations omitted*)

## V. CONCLUSION

Healthy rivers are vital arteries of life that ensure clean drinking water, recreational opportunities, nourished landscapes, and thriving populations of fish and wildlife. However, the health of western rivers is failing and native aquatic and riparian species are disappearing. The decline of the yellow-billed cuckoo is just one of the stark warning signs that a century of unsustainable water management and extensive concrete infrastructure is fundamentally changing river ecosystems. In order to restore river and riverside habitat for the yellow-billed cuckoo and other imperiled fish and wildlife species, critical habitat needs to be designated throughout the historical range of the yellow-billed cuckoo regardless of its size in order to protect those last remaining refugia that could help recover the species. This is especially important given the threat of climate change and the possible shifting migratory needs of species in the future.

Thank you for considering our comments regarding the yellow-billed cuckoo revised proposed critical habitat rule. We understand that due to the COVID-19 pandemic, this is a difficult time for everyone, and in that spirit, we ask you to extend the comment period or allow for comments to be accepted up to and until the revised rule is finalized in order to allow affected stakeholders to weigh in on these important issues.

Sincerely,



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