

# Endangered Species Act/Citizen Suit Action: Earthjustice Alleges U.S. Department of Interior Violations Approving Pinto Valley Mine (Arizona)



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Earthjustice sent a June 11th 60-day Endangered Species Act (“ESA”) citizen suit Notice of Intent to Sue (“NOI”) to the Tonto National Forest (“Forest”).

The NOI alleges that Forest violated Section 7 of the ESA in its approval of a mining plan of operations allowing the Pinto Valley Mine (“PVM”) to expand and continue operating.

The Earthjustice NOI states PVM began operations in 1974. Its mining activities are stated to rely on groundwater withdrawn from the Pinto Creek Watershed via a wellfield. The water is stated to be transported to the rest of the mine site via pipelines crossing public lands on the Forest. The mine is stated to use on average 9,722 gallons per minute.

Earthjustice alleges that water flows and the health of Pinto Creek and its surrounding riparian ecosystem have diminished. Specifically, the NOI alleges that:

. . . The drawdown of surface flows at Pinto Creek has progressively worsened because of the mine’s operations.

The alleged cause is a reduction in “baseflows,” which is described by the NOI as movement of subsurface water into the creek that, combined with precipitation and surface runoff, keeps the stream flowing.

The Forest is stated to have approved a mining plan of operations through a 2021 Record of Decision that allows PVM to expand and continue operating through 2039. Forest prepared a biological assessment (“BA”) in 2020 which found (among other things) that the mine’s expansion and operations were not likely to:

- Adversely affect the western yellow-billed cuckoo.
- Destroy or adversely modify the cuckoo’s critical habitat.
- Adversely affect the southwestern willow flycatcher.

The United States Fish and Wildlife Service (“Service”) is stated to have prepared a biological opinion (“BiOp”) concluding that the PVM was not likely to:

- Jeopardize the western yellow-billed cuckoo.
- Destroy or adversely affect the critical habitat.
- Adversely affect the southwestern willow flycatcher.

Earthjustice argues that the Forest and Service committed three legal errors in reaching the previously referenced conclusions:

- The BA and BiOp unlawfully omitted key portions of the species' habitat from consideration by defining the "action area" to exclude a perennial reach of Pinto Creek that will be dewatered by the mine's groundwater pumping.
- The two agencies relied on vague, speculative, and unenforceable mitigation measures that do not ensure the species' survival and recovery.
- The agencies failed to consider the mine's effects on listed species in combination with the harmful effects of ongoing and increasingly severe climate change.

As a result, the NOI indicates that Earthjustice will initiate an ESA citizen suit action if the referenced concerns are not addressed.

A copy of the NOI can be downloaded [here](#).