



April 25, 2014

CERTIFIED MAIL— RETURN RECEIPT REQUESTED

Dr. Chavonda Jacobs-Young, Administrator
Agricultural Research Service
1400 Independence Avenue, S.W.
Washington, DC 20250

Andrew C. Hammond, Area Director
ARS, Pacific West Area
800 Buchanan Street
Albany CA 94710

Re: Request for Action on the U.S. Sheep Experiment Station and Notice of Intent to Sue.

Dear Dr. Jacobs-Young and Mr. Hammond,

This letter is submitted on behalf of Cottonwood Environmental Law Center, Western Watersheds Project, WildEarth Guardians, Gallatin Wildlife Association, and Yellowstone Buffalo Foundation. We are all nonprofit conservation groups committed to the protection of wildlife and wild places in the American West, each with our own areas of focus and priorities, all concerned about the environmental impacts of the U.S. Sheep Experiment Station's ("Sheep Station") grazing program.

We hereby request that the Sheep Station commit to a schedule that will ensure completion of the Final Environmental Impact Statement ("FEIS") for the "U.S. Sheep Experiment Station Grazing and Associated Activities Project" by no later than October 1, 2014. We further request that the Sheep Station refrain from grazing sheep on the Summer West and the Snakey-Kelly allotments until after the Sheep Station has issued a new decision for its grazing operations supported by the forthcoming FEIS. If you deny or ignore our requests, one or more of the signatory organizations intends to sue you in U.S. District Court for your violations of the National Environmental Policy Act, 42 U.S.C. § 4332 *et seq.* ("NEPA") and the Administrative Procedure Act, 5 U.S.C. § 706 ("APA").

As you should be aware, NEPA requires all federal agencies to undertake a thorough and public analysis of the environmental consequences of proposed federal actions, including a detailed Environmental Impact Statement for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). The APA requires the federal



courts to compel agency action “unreasonably delayed.” 5 U.S.C. § 706(1). We are sending you this letter because ARS’s unreasonable delay in complying with its NEPA duties has contributed to an array of environmental impacts, including take of threatened grizzly bears and endangerment of bighorn sheep. Continued sheep grazing by the U.S. Sheep Experiment Station will result in further irreparable harm to grizzly bears, bighorn sheep, and the environment.

We, the signatories to this letter, would like to work with you to correct the Sheep Station’s legal violations and to ensure that this year’s grazing operations do not cause further irreparable harm. More specifically, we would like to assist you in developing a new schedule for the completion of the FEIS. Unless the Sheep Station can both agree to such a schedule and close the remaining Centennial Mountain and Snakey allotments to grazing until an EIS is complete, we intend to sue and seek injunctive relief to remedy past and present legal violations. If we are successful, we will also seek litigation expenses including attorneys’ fees and costs. *Forest Conservation Council v. Rosboro Lumber Co.*, 50 F.3d 781, 784, 787-88 (9th Cir. 1995).

I. COMPLETION OF THE FEIS HAS BEEN UNREASONABLY DELAYED.

We ask ARS to prepare and commit itself to meeting a new schedule for the completion of the Sheep Station FEIS. Given the delay that the public and these lands have already endured, the FEIS should be completed by no later than October 1, 2014.

The “twin aims” of NEPA are to ensure that federal agencies “consider every significant aspect of the environmental impact of a proposed action” and “inform the public that it has indeed considered environmental concerns in its decisionmaking process.” *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983). Consistent with these goals, agencies should collect necessary data and complete NEPA analysis *before* taking action. *Northern Plains Res. Council v. , Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1083 (9th Cir. 2011); *Northern Cheyenne Tribe v. Norton*, 503 F.3d 836 (9th Cir. 2007).

The Sheep Station was established in 1915. Although NEPA became law in 1969, ARS did not attempt to conduct NEPA analysis for the Sheep Station’s activities until 2008, when it issued an Environmental Assessment (“EA”) and an “interim” decision meant to govern grazing activities until March 2010. *See* Interim U.S. Sheep Experiment Station Grazing and Associated Activities Project Decision Notice, Finding of No Significant Impact, and Environmental Assessment (November 2008).



ARS subsequently determined that the Sheep Station's grazing program was a "major federal action significantly affecting the quality of the human environment" that must be examined in an EIS, rather than an EA. Decision Notice for U.S. Sheep Experiment Station Grazing and Associated Activities Project 2009 at 3 (March 2010). ARS predicted that the Draft EIS would be completed in the summer of 2011 and the FEIS released by March of 2012. *Id.*

Consistent with ARS's prediction, the Draft EIS was released for comment in July 2011. Draft Environmental Impact Statement: U.S. Sheep Experiment Station Grazing and Associated Activities Project 2010 (July 2011). However, ARS has neither issued the FEIS, nor provided the public with any notice about how protracted the delay is likely to be. It has now been over four years since the Sheep Station notified the public of its intent to prepare an EIS and two years since the agency's estimated completion date for the EIS. During this time, the Sheep Station has completed a substantial amount of the work necessary to complete the EIS, including ESA consultation about the impacts of the Sheep Station's grazing activities on the threatened grizzly bear.

Given the severity of the ongoing environmental impacts associated with the Sheep Station's grazing activities, this delay is unreasonable. The extent to which an agency may delay an action is governed by a rule of reason. An agency action must be taken "within 'a reasonable time encompassing months, occasionally a year or two, but not several years or a decade.'" *MCI Telecomm. Corp. v. F.C.C.*, 627 F.2d 322, 340 (D.C. Cir. 1980)).

II. THE EIS MUST BE PREPARED CONCURRENTLY WITH SECTION 7 CONSULTATION.

The above named organizations believe that the EIS should be prepared concurrently with the new biological opinion that is due on June 1, 2014. The ESA regulations "acknowledge that the agencies are expected to concurrently comply with both Section 7 of the ESA and NEPA." *See San Luis & Delta Water Authority v. Jewell*, 2014 WL 975130 at *50 (9th Cir. 2014) (citation omitted). The Sheep Station can "withhold publication long enough to comply with any NEPA requirement for preparation of an environmental impact statement." *Id.* (citation omitted). "[T]here are no cases stating that an agency need not comply with NEPA because of its obligations under Section 7 of the ESA." *Jewell*, 2014 WL 975130 at * 53. To the extent the Sheep Station believes the recent settlement agreement (*Cottonwood Envtl. Law Center v. U.S. Fish and Wildlife Serv.*, 4:13-cv-235-BLW) precludes it from completing the necessary NEPA analysis, the plaintiffs/organizations are willing to work with the Sheep Station to enlarge the time frame for completing the biological opinion. The Settlement Agreement contemplates such modifications. *See id.* ¶ 3 & 4.



“Congress specifically contemplated that an agency could comply with NEPA while discharging its duties under Section 7 of the ESA.” *Jewell*, 2014 WL 975130 at *51 citing 16 U.S.C. §1536(c)(1). “There is no ‘irreconcilable and fundamental conflict’ between NEPA and Section 7 of the ESA. Although the [Endangered Species Act] sets out a timetable for the consultation process, it is flexible enough to accommodate the preparation of an EIS.” *Id.* citing 16 U.S.C. § 1536(b)(1)(A) (“Neither timing nor secrecy concerns bar the ability to comply with NEPA.”)

In short, the Sheep Station must complete the delayed EIS. The failure to do so results in irreparable harm to several species and the conservation, aesthetic and recreational interests of the above-named organizations.

III. THE WEST SUMMER RANGE SHOULD BE CLOSED TO GRAZING UNTIL COMPLETION OF THE EIS.

We further request ARS to close the West Summer range to grazing until the completion of the FEIS and the issuance of a new decision for the Sheep Station’s grazing activities.

Closure of the West Summer range is necessary to prevent further conflicts with and harm to threatened grizzly bears. Grizzly bears have depredated sheep on the West Summer range on multiple occasions and similar conflicts are expected to occur in the future. 2011 Biological Opinion (“BiOP”) at 15. The immediate consequence of such predations may include hazing or lethal “removal” of the bear.

The U.S. Fish and Wildlife Service has acknowledged in an email to the Sheep Station:

[W]e believe that take is occurring due to the presence of sheep in grizzly bear habitat (resulting in habituation and alteration of normal feeding behavior)...

Email From FWS to Sheep Station (March 17, 2010). Bears that have preyed on sheep immediately switch from natural foods to domestic sheep, thereby disrupting their natural movements and increasing the probability of human-bear conflict and hazing by Sheep Station employees. Grizzly bears that become habituated to feeding on sheep at the Sheep Station could then move to adjacent private livestock allotments, increasing conflicts, hazing, and potential lethal removal. Thus, even if a bear that has preyed on sheep is not killed by sheep station employees, contact with the sheep changes the bear’s normal feeding behavior, harming the bear and resulting in unlawful “take.”

Even if grizzly impacts were not an issue, the Sheep Station would still be well-advised to close the West Summer range to grazing this summer in order to provide these lands with much needed rest. Prior to 2010, the Sheep Station recognized the need to rest each of the East and West Summer ranges every other year and set these ranges on a two-year rotation. When the Sheep Station decided



to close the East Summer Range in 2010, it shifted all of the sheep from the East Summer range to the West Summer range, rather than reducing stocking rates. The West Summer range has consequently been grazed every year for the last four years without rest, at a stocking rate greater than the historical average.

This reallocation of livestock is a major federal action that has not been subjected to adequate NEPA analysis, and as such is in violation of federal law. Neither the 2008 EA nor the 2010 SIR contemplated such prolonged, hard use and such an intensification in both stocking rate and time of use has detrimental impacts on the health and sustainability of the range.

IV. THE SNAKEY-KELLY ALLOTMENTS SHOULD BE CLOSED TO GRAZING UNTIL COMPLETION OF THE EIS.

In addition, we urge ARS to cease grazing the U.S. Forest Service Snakey-Kelly allotments until completion of the FEIS. The continued presence of domestic sheep in bighorn habitat is a major federal action that has not been subjected to adequate NEPA analysis, and as such is in violation of federal law.

Grazing domestic sheep on the Snakey-Kelly allotments puts nearby herds of bighorn sheep at risk. Recent modeling prepared by the Payette National Forest confirms that the Snakey-Kelly allotments overlap with occupied bighorn sheep habitat. The proximity of the bighorn herds to the Snakey-Kelly allotments makes contact between domestic sheep and the wild bighorns likely.

Such contact could be fatal, not only for any individual bighorns that might actually encounter a domestic sheep, but for their entire herd. A recent study has shown that domestic sheep can transmit deadly *Mannheimia haemolytica* to bighorn sheep and that it results in pneumonia and death of bighorn sheep. See Lawrence et al, 2010¹. Furthermore, there is overwhelming scientific consensus that there is great risk associated with contact between domestic sheep and bighorn sheep. See Western Association of Fish and Wildlife Agencies, Recommendations for Domestic Sheep and Goat Management in Wild Sheep Habitat 4-5 (listing scientific literature that documents the risks associated with contact between bighorn sheep and domestic sheep); *Western Watersheds Project v. U.S. Forest Serv.*, 07-151-E-BLW, 2007 WL 3407679 at *4 (D. Idaho 2007)(acknowledging, “the wide-spread agreement among experts that sheep might transmit a deadly disease to bighorns”). Because bighorn sheep are very social, transmission of bacteria to a single bighorn sheep is likely to lead to the infection of the entire herd.

¹ <http://jwildlifedis.org/doi/abs/10.7589/0090-3558-46.3.706>



We therefore request that ARS close the Snakey-Kelly allotments to grazing this year in order to remove the risk of irreparable harm to bighorn sheep.

V. STOCKING RATES SHOULD BE ADJUSTED TO PREVENT DEGRADATION OF RANGELAND RESOURCES UNTIL COMPLETION OF THE EIS.

Finally, we request that the Sheep Station reduce the total number of sheep it grazes until the release of the FEIS so that the properties the Sheep Station continues to graze maintain pre-2010 stocking rates.

As explained above, the Sheep Station's failure to reduce overall stocking rates after it closed the East Summer range has adversely impacted the condition of the West Summer range. Likewise, if the Sheep Station grants our request to close the West Summer range and the Snakey-Kelly allotments, shifting sheep from these allotments to other Sheep Station properties would have detrimental impacts on rangeland health and is a major federal action that must be authorized by appropriate NEPA analysis. Degrading rangeland health would negatively impact the wildlife - including the imperiled greater sage-grouse² and pygmy rabbit - that rely on the Sheep Station's other properties. The Sheep Station's Headquarters Property is particularly important habitat for these two sensitive species.

CONCLUSION

This letter gives ARS notice of the grounds upon which the signatories intend to file suit. We would prefer, however, to work with ARS and the Sheep Station to remedy the Sheep Station's NEPA violations and to minimize further impacts to the environment from the Sheep Station's activities. If you wish to pursue such discussions in the absence of litigation, please contact John Meyer at the phone number provided below.

² The sage-grouse is warranted for listing under the Endangered Species Act and FWS has committed to issue a final decision on whether to list the bird by the end of 2015.



COTTONWOOD

ENVIRONMENTAL LAW CENTER

Sincerely,

/s/ John Meyer

John Meyer, Executive Director
Cottonwood Environmental Law Center

/s/ Travis Bruner

Travis Bruner, Executive Director
Western Watersheds Project

/s/ Bryan Bird

Bryan Bird, Wild Places Program Director
WildEarth Guardians

/s/ Glenn Hockett

Glenn Hockett, President
Gallatin Wildlife Association

/s/ Joe Gutkoski

Joe Gutkoski, President
Yellowstone Buffalo Foundation

cc: Tom Vilsack, Secretary
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