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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

<p>COTTONWOOD ENVIRONMENTAL LAW CENTER; GALLATIN WILDLIFE ASSOCIATION; YELLOWSTONE BUFFALO FOUNDATION</p> <p>Plaintiffs,</p> <p>v.</p> <p>U.S. SHEEP EXPERIMENT STATION; AGRICULTURAL RESEARCH SERVICE.</p> <p>Defendants.</p>	<p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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1. This case seeks to enjoin the U.S. Sheep Experiment Station from grazing domestic sheep in the Centennial Mountains of southwest Montana until it has prepared a supplemental Environmental Impact Statement.

2. The U.S. Sheep Experiment Station issued a Final Environmental Impact Statement on July 28, 2017, indicating its preferred alternative to graze domestic sheep across more than 16,000 acres of the Centennial Mountains.

3. The area is located in the heart of an important grizzly bear corridor that connects Yellowstone to large Wilderness areas in Idaho.

4. In 2010, the U.S. Fish and Wildlife Service asked the U.S. Sheep Experiment Station to find an alternative place to graze the sheep. The U.S. Sheep Experiment Station refused.

5. In 2012, the Interagency Grizzly Bear Committee, which is comprised of several federal, tribal, and state agencies, also requested that the U.S. Sheep Experiment Station find an alternative place to graze the sheep. The U.S. Sheep Experiment Station again refused.

6. Several months later, the U.S. Fish and Wildlife Service recovered the collar from grizzly bear #726.

7. The collar had been cut off and placed in a stream under a rock.

8. The bear's last live location was in the same area as the grazing sheep.

9. The U.S. Fish and Wildlife Service recovered an empty rifle cartridge from the shepherders' camp.

10. The 2017 Final Environmental Impact Statement states that "herders have not encountered grizzly bears on these lands." 2017 Final Environmental Impact Statement at 50.

11. Grizzly bears have chased shepherders on U.S. Sheep Experiment Station land in the Centennial allotments.

JURISDICTION AND VENUE

12. Jurisdiction is proper in this Court under 28 U.S.C.S. §§ 1331 (Federal Question) and 1346, because this action involves agencies of the United States as Defendants, and arises under the laws of the United States, the Administrative Procedure Act ("APA"), 5 U.S.C.S. §§ 500 *et seq.*, and the National Environmental Policy Act, 42 U.S.C.S. §§ 4321 *et seq.*

13. An actual, justiciable controversy exists between Plaintiffs and Defendants. The requested relief is proper under 28 U.S.C.S. §§ 2201-2202 and 5 U.S.C.S. §§ 705-706.

14. Venue is proper in this Court pursuant to 28 U.S.C.S. § 1391(e) because a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district and because Plaintiffs are located in the district.

15. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C.S. § 702.

PARTIES

16. Plaintiff Cottonwood Environmental Law Center (“Cottonwood”) is a non-profit conservation organization based in southwest Montana that is dedicated to the protection of forests, water, and wildlife in the West, including the lands at issue here. Cottonwood has hundreds of members across Montana and Idaho.

17. Plaintiff Gallatin Wildlife Association (“GWA”) is a Montana-based conservation organization that promotes the restoration, maintenance, and perpetuation of native fish and wildlife, and their habitat.

18. Plaintiff Yellowstone Buffalo Foundation is a Montana-based conservation organization dedicated to reestablishing the American bison to its natural habitat.

19. Plaintiffs use and enjoy, on a continuing and ongoing basis, the lands of southwest Montana, including the Continental Divide Trail on U.S. Sheep Experiment Station land.

20. Plaintiffs use these lands for hiking, mountain biking, photographing landscapes and wildlife, and other vocational, scientific, and recreational activities.

21. Plaintiffs derive aesthetic, recreational, inspirational, educational, and other benefits from their activities in these areas on a regular and continuing basis and intend to do so frequently in the future, including during the summer of 2018.

22. The above-described aesthetic, recreational, inspirational, educational, and other interests of the Plaintiffs have been, are being, and will continue to be adversely and irreparably injured if Defendants continue to graze sheep without first completing an adequate Environmental Impact Statement. These are actual, concrete injuries to Plaintiffs, caused by Defendants' failure to comply with the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA"). The above-named injuries would be redressed by the relief requested in this Complaint.

23. Defendant U.S. Sheep Experiment Station ("Sheep Station") is located in the upper Snake River plain in the foothills of the Centennial Mountains, approximately six miles north of Dubois, Idaho. The Sheep Station manages approximately 16,600 acres of land in the Centennial mountains at issue in this case.

24. Defendant Agricultural Research Service ("ARS") is the U.S. Department of Agriculture's chief scientific in-house research agency. The ARS owns, operates, and oversees the Sheep Station and its activities.

FACTUAL BACKGROUND

The Greater Yellowstone Ecosystem

25. The region from Yellowstone National Park to the Yukon is widely recognized as a vital stronghold for the world's remaining wildlands and biodiversity, and the Greater Yellowstone Ecosystem is a significant component of this region.

26. The Greater Yellowstone Ecosystem encompasses millions of acres across eastern Idaho, southwest Montana, and northwest Wyoming, including two national parks, seven national forests, a dozen wilderness areas, and the headwaters of several of the United States best known rivers. Over seventy-five percent of the Greater Yellowstone Ecosystem consists of federal, public lands.

27. The Greater Yellowstone Ecosystem is one of the few remaining places in the United States where nearly all the species of plants and animals that were present prior to the arrival of Europeans to North America still survive. The Greater Yellowstone Ecosystem contains the greatest concentration of large mammals in the lower forty-eight states, and is one of the few temperate ecosystems where ecological processes such as predator-prey interactions are still in place. Elk, bison, bighorn sheep, lynx, wolves, wolverines, and grizzly bears are all found in this Ecosystem.

The Grizzly Bear

28. Once over 50,000 strong in the lower forty-eight states, the grizzly bear is now a threatened species that roams less than 2% of its historic range. Before European settlement of the American West, grizzly bears (*Ursus arctos horribilis*) roamed the West from the Great Plains to the California coast, and south to Texas and Mexico, occupying almost every conceivable habitat. With westward expansion, grizzlies were “shot, poisoned, and trapped wherever they were found.” 90-Day Finding, 72 Fed. Reg. 14866, 14868 (Mar. 29, 2007).

29. Grizzlies were reduced to less than 1,000 bears by 1975. In a historical blink of an eye, from the 1800s to the early 1900s, humans reduced the range of the grizzly bear to less than two percent of its former range south of Canada, limiting the bear to a few isolated populations in mountainous regions, wilderness areas, and national parks in Montana, Idaho, Wyoming, and Washington.

30. Today, approximately 600 to 700 bears remain in the Greater Yellowstone.

31. Yellowstone grizzlies face significant threats to their survival and recovery, such as climate change, which impacts their key food sources. As whitebark pine trees continue to die, grizzly bears have expanded their search for food and increased the amount of meat they consume.

32. The Centennial Mountains of eastern Idaho and southwest Montana serve as an important east-west corridor for the grizzly bear, which needs the mountain

range to travel between Yellowstone National Park and large wilderness areas in Idaho.

33. The Bitterroot ecosystem is currently unoccupied by grizzly bears.

34. The Centennial Mountains are an important corridor that will allow the bears to reoccupy the Bitterroot ecosystem.

The U.S. Sheep Experiment Station

35. The Sheep Station has its headquarters in the upper Snake River plain at the foothills of the Centennial Mountains, where it maintains a 27,930 acre ranch, including residential and office buildings, research facilities, and lands used for grazing.

36. The Sheep Station manages approximately 16,600 acres in the Centennial Mountains of Montana, which it uses for summer grazing and rangeland research. These lands make up two separate allotments—the East and West Summer allotments.

37. The Sheep Station also manages two additional ranch properties – the 2,600 acre Humphrey Ranch near Monida, Montana, and the 1,200 acre Henninger Ranch near Kilgore, Idaho.

38. In addition, the Sheep Station grazes sheep on several properties managed by other federal agencies: the Mudlake Feedlot (Department of Energy); and the

Meyers Creek, East Beaver Creek, Snakey Canyon, and Kelly Canyon allotments (Forest Service).

39. In total, the Sheep Station utilizes over 50,000 acres of federal land for grazing. These lands are geographically diverse and they provide habitat for a variety of animals, including predators and sagebrush obligates.

40. The Meyers Creek allotment is located in the Centennial Mountains on the Caribou-Targhee National Forest, within the Primary Conservation Area for grizzly bears. It is, in fact, the only remaining allotment within the Primary Conservation Area where the U.S. Forest Service continues to authorize livestock trailing.

41. The Summer East, West and Meyers Creek allotments are home to black and grizzly bears, wolves, coyotes, foxes, moose, elk, deer and other wildlife.

42. Wolf packs have historically used the Centennial allotments, and two entire packs of wolves have been eliminated because of conflicts with the Sheep Station.

43. In 2012, two black bears were shot and killed on the Summer West allotment because they were eating sheep.

44. The Idaho Department of Fish and Game has mapped occupied bighorn sheep habitat less than ten miles from the Summer West allotment.

Impacts of Grazing

45. Grazing over one thousand sheep in the middle of the Centennial Mountains—habitat occupied by bears, wolves, and possibly lynx—creates a black hole for carnivores.

46. Grizzly bears have depredated sheep on allotments grazed by the Sheep Station in the past and similar conflicts are expected to occur in the future.

47. 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.

48. Grizzly bears that become habituated to feeding on sheep at the Sheep Station and then later move to adjacent private livestock allotments are expected to be killed.

49. Likewise, grazing in occupied wolf habitat leads to “predator control activities,” including hazing, lethal removal of individual animals, and lethal removal of entire packs. In 2008, two entire wolf packs were killed in response to predations on livestock, including sheep on the Sheep Station allotments.

50. Every year, the Sheep Station’s herders encounter black bears, which results in hazing and control actions. In 2012, two black bears were killed.

51. In the past, however, as many as eleven black bears have been killed in a single year.

PROCEDURAL BACKGROUND

The 2007 Settlement

52. In 2007, conservation groups filed a complaint in U.S. District Court for the District of Idaho against the Sheep Station, the U.S. Department of Agriculture, the ARS, and the U.S. Forest Service.

53. The 2007 suit alleged that the Sheep Station had never prepared an Environmental Assessment (“EA”) or Environmental Impact Statement (“EIS”) pursuant to NEPA to assess the environmental impacts of the grazing and associated activities on grizzly bears, lynx, wolves, bighorn sheep, or other components of the environment affected by sheep grazing.

54. The parties reached a settlement agreement under which the ARS agreed to “prepare an EA or EIS, pursuant to NEPA, regarding the grazing of sheep and related activities on U.S. Sheep Experiment Station lands.”

55. The 2008 settlement agreement provided, “The associated Decision Notice or Record of Decision shall be completed and signed on or before November 28, 2008.”

56. The ARS further agreed to consult with the U.S. Fish and Wildlife Service (“FWS”) pursuant to Section 7 of the Endangered Species Act to determine

whether activities associated with the Sheep Station would jeopardize the continued existence of threatened or endangered species such as grizzly bears.

57. Pursuant to the settlement agreement from the 2007 litigation, the ARS prepared a Biological Assessment and concluded that the impacts of its sheep-grazing program “may affect, and are likely to adversely affect the Yellowstone Distinct Population of grizzly bear.” The agency then entered into formal consultation with the FWS on August 19, 2011.

The 2010 Decision Notice

58. The Sheep Station issued an interim decision in November 2008 that was meant to govern grazing activities until the agency completed a more-long term EA on the impacts of sheep grazing in March 2010.

59. Before the ARS completed the long-term EA, this Court issued an order enjoining and vacating the delisting of the Greater Yellowstone Area grizzly bear population. *Greater Yellowstone Coal. v. Servheen*, 672 F. Supp. 2d 1105 (D. Mont. 2009) *aff'd in part and rev'd in part* 665 F. 3d 1015 (9th Cir. 2011).

60. In response, the ARS prepared a Supplemental Information Report to determine whether the new information or changed circumstances required the preparation of a Supplemental EA.

61. The Supplemental Information Report concluded that the continuation of grazing on the Summer West allotment would not result in a significant impact to grizzly bears requiring the preparation of a supplemental EA.

62. Based on the Supplemental Information Report, the ARS issued a Decision Notice on March 21, 2010, that authorized grazing in the Summer West allotment to continue “until completion of the EIS, which is expected by March 2012.”

63. The Decision Notice stopped grazing in the Summer East and Meyers Creek allotments until the EIS was completed.

The 2013 Settlement

64. The FWS issued a Biological Opinion (“BiOp”) on Sheep Station grazing and associated projects on November 8, 2011. The BiOp found that the adverse effects of sheep grazing were not likely to jeopardize the grizzly bear.

65. The 2011 BiOp excluded adjacent grazing allotments from the BiOp’s action area and failed to provide an explanation for the methodology used to define the action area.

66. The 2011 BiOp also omitted the impacts of private grazing from the environmental baseline, the effects of the action, and the cumulative impacts analysis. The 2011 BiOp was thus legally deficient.

67. On May 17, 2013, Cottonwood, Western Watersheds Project, GWA, and other conservation organizations filed a complaint in the U.S. District of Idaho challenging the above deficiencies of the 2011 BiOp.

68. The parties reached a settlement agreement under which the FWS agreed to issue a new BiOp on the Sheep Station’s grazing and associated projects on or before June 1, 2014.

69. The Defendants in the 2013 suit further agreed, “Prior to July 1, 2014, neither the Station nor any subdivision of the Department of Agriculture will permit sheep to graze on the Station’s Summer East, Summer West, or Meyers Creek Pastures.”

70. The Court entered the settlement on February 1, 2014. *Cottonwood Environmental Law Center v. U.S. Fish & Wildlife Serv.*, 13-cv-235-BLW, Docket No. 31 at 5 (Feb. 1, 2014).

The 2016 Settlement

71. On June 23, 2014, Cottonwood, GWA, Western Watersheds Project, and WildEarth Guardians filed a suit challenging the Sheep Station BiOp and failure to complete NEPA analysis.

72. On March 14, 2016, the parties entered into a settlement agreement after the Defendants indicated they would not graze domestic sheep in the Centennial Mountains until an EIS was completed.

73. The Court entered the settlement on March 16, 2016. *Cottonwood Environmental Law Center v. U.S. Sheep Experiment Station*, No. 9:14-cv-00192-DLC (Mont. March 16, 2016).

74. The agency completed the EIS on July 28, 2017.

STATUTORY BACKGROUND AND VIOLATIONS

The National Environmental Policy Act

75. NEPA requires all federal agencies to undertake a thorough and public analysis of the environmental consequences of proposed federal actions, including a detailed EIS for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C).

76. “Congress’s determination in enacting NEPA was that the public interest requires careful consideration of environmental impacts *before* major projects may go forward.” *S. Fork Band Council of W. Shoshone v. U.S. Dept. of Interior*, 588 F.3d 718, 728 (9th Cir. 2009) (emphasis added).

77. NEPA imposes on federal agencies a continuing duty to supplement existing EA’s and EIS’s in response to “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

78. An agency “must be alert to new information that may alter the results of its original environmental analysis, and continue to take a hard look at the environmental effects of its planned action, even after a proposal has received initial approval.” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000) (internal citation omitted).

79. “An action to compel an agency to prepare [supplemental NEPA documents]...is not a challenge to a final agency decision, but rather an action

arising under 5 U.S.C. § 706(1), to compel agency action unlawfully withheld or unreasonably delayed.” *Id.* at 560 (internal citation omitted).

CLAIM FOR RELIEF

Failure to Prepare and Supplement EIS

80. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

81. This First Cause of Action challenges the Defendants’ failure to supplement the 2017 FEIS.

82. New information shows grizzly bears have chased sheepherders.

83. The agencies’ failure to supplement the 2017 FEIS violates NEPA, 42 U.S.C. §§ 4321 et seq., and NEPA’s implementing regulations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1.) Adjudge and declare that Defendants have violated NEPA and the Administrative Procedure Act by failing to supplement the 2017 FEIS for the U.S. Sheep Experiment Station.

2.) Order Defendants to promptly comply with the requirements of NEPA and the APA by promptly issuing a supplemental EIS.

3.) Enjoin Defendants from grazing in the Centennial Mountains until they have complied with NEPA and the APA.

4.) Award Plaintiffs their reasonable attorney fees, costs, and litigation expenses, under the Equal Access to Justice Act, and/or any other applicable provision of law.

5.) Grant such further and additional relief as the Court deems just and proper in order to remedy the violations of law alleged herein and to protect the interests of the Plaintiffs, the public, and the environment.

Dated: October 25, 2017

Respectfully submitted,

/s/ John Meyer
JOHN MEYER

Attorney for Plaintiffs