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REC'D 7-23-2000 HCSC

UNITED STATES
HOUSE OF REPRESENTATIVESSTEVAN PEARCE
Second District, New Mexico

July 11, 2018

Elizabeth Humphrey
 Sacramento District Ranger
 United States Forest Service
 #4 Lost Lodge Rd
 Cloudcroft, NM 88317

Dear Elizabeth,

I write to you in response to the draft environmental assessment (EA) for the New Mexico Meadow Jumping Mouse (NMMJM) Habitat Improvement Projects on the Sacramento Grazing Allotment in Otero County, New Mexico.

Part of the proposed action in the EA is “to replace temporary enclosure fencing that was completed for the 2016, 2017, and 2018 grazing seasons with permanent enclosure fencing with modifications.” This action is not acceptable as it will further restrict the allotments owner’s access to their water right. As you are aware, On November 3, 2017, Chief Judge Braden of the U.S. Court of Federal Claims ruled in favor of the Sacramento Grazing Association (SGA), asserting that the USFS had improperly taken water rights that belong to SGA under New Mexico law and that compensation must be paid for this taking. Below is part of the opinion reached by Chief Judge Braden and attached is the opinion in its entirety.

Today, the court reaffirms a prior ruling that SGA’s Fifth Amendment Takings Clause claims are not barred by the statute of limitations. In addition, the court has determined that SGA established, at trial, a property interest, recognized by New Mexico law, to make beneficial use of stock water sources in the Sacramento Allotment of the Lincoln National Forest. The court also has determined that SGA established the right to make beneficial use of stock water sources in the Sacramento Allotment that was abrogated by actions undertaken by the United States Forest Service (“USFS”), in violation of the Takings Clause of the Fifth Amendment to the United States Constitution.

Despite this ruling, the United States Forest Service (USFS) continues to restrict access to this water right and is now proposing to install permanent fencing. I request that the USFS remove all electric fencing blocking access to water on the SGA’s allotment immediately.

While I do not believe fencing in the current location is appropriate, I do believe that elk fencing is necessary to keep elk out of the critical habitat. I request that the proposed action be altered to insert elk fencing around the entire Rio Penasco Trap, Horse Trap, and the critical habitat in

Wills Canyon. Non-native elk in the area are significantly impacting critical habitat for the NMMJM as they are not deterred by the current electric fencing. Nothing has been done to prevent intrusion to this point, while the SGA has been subject to severe economic hardship due to the critical habitat. Providing this elk fencing around the entire Rio Penasco Trap, Horse Trap, and the critical habitat in Wills Canyon will not only preserve critical habitat for the NMMJM year-round, but will also increase the amount of forage available for the SGA.

Lastly, it is essential that the SGA be provided access to their range rights across the entire allotment to ensure the viability of their operation.

I believe that these actions will ensure that the critical habitat for the NMMJM is adequately protected and the viability of SGA's operation is preserved. I stand ready to work with the USFS and the SGA to find a long-term solution to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Steve Pearce". The signature is fluid and cursive, with "Steve" on the top line and "Pearce" on the bottom line.

Steve Pearce
Member of Congress

Cc: Vicki Christiansen, Interim Chief, United States Forest Service
Sonny Perdue, Secretary, United States Department of Agriculture