



July 20, 2018

VIA E-MAIL [comments-southwestern-lincoln-sacramento@fs.fed.us](mailto:comments-southwestern-lincoln-sacramento@fs.fed.us)

Elizabeth A. Humphrey  
District Ranger  
U.S. Forest Service  
P.O. Box 288 (4 Lost Lodge Road)  
Cloudcroft, New Mexico 88317

Re: Comments on Draft Environmental Assessment for the New Mexico Meadow Jumping Mouse Habitat Improvement Projects on Sacramento Grazing Allotment

Dear Ms. Humphrey:

On behalf of my client, Sacramento Grazing Association ("SGA"), please accept these comments regarding the draft Environmental Assessment ("EA") for the New Mexico Meadow Jumping Mouse ("NMMJM") Habitat Improvement Projects on the Sacramento Grazing Allotment. SGA is encouraged by the draft EA's analysis, but remains steadfast in its objection that these ongoing efforts remain an unwarranted incursion upon its property rights. By making these comments, SGA neither expressly nor implicitly concedes any right to property it possess.

**1. Evidence Demonstrates Permanent Fencing is Ineffective.**

The draft EA basis its alternatives analysis upon the assumption that the proposed fencing will completely exclude elk. This supposition ignores demonstrable evidence that pipe fencing ineffectively excludes native ungulates like elk in the Allotment area. For example, elk consistently damage the existing Mauldin Springs fencing. This damage allows livestock to enter the enclosure. The draft EA ignores this history and, in spite of it, considers only impacts resulting from complete exclusion of the elk.

Past fencing efforts presage SGA bearing a substantially greater burden going forward if more pipe fencing is installed. Without new information, the draft EA cannot accurately analyze whether new pipe fencing will yield different results than the existing fencing. As it will not accomplish its goal of excluding livestock and native ungulates, any marginal benefit from the proposed permanent fencing in either the Rio Peñasco or Mauldin Springs enclosure will be substantially outweighed by their substantial burdens.

**2. Rio Peñasco is Not Suitable as Habitat for NMMJM.**

The draft EA provides no evidence supporting why Rio Peñasco requires any fencing, let alone permanent fencing. Fencing intends to protect the "proposed occupied habitat" from impacts caused by livestock grazing. (Draft EA 5.) "Occupied habitat is defined as geographic areas that were occupied by the species at the time of listing that contain physical and biological features essential to the conservation of the species." (Draft EA 5.) When the NMMJM was listed in 2014 as an endangered species, the NMMJM had not been detected in the Rio Peñasco Canyon for nearly three decades. There is simply no evidence that the Rio Peñasco enclosure is "occupied

habitat." Indeed, the draft EA concedes as much: "Currently the only location where NMMJM can be confirmed is in the upper stretch of Wills Canyon in an existing enclosure." (Draft EA 37.)

Similarly, there is no evidence that Rio Peñasco bears an ecological connection to any "occupied habitat." The proposed actions intend to "improve dispersal capabilities" (Draft EA 37), but there is no evidence that improving habitat in Wills Canyon will allow for dispersion from Wills Canyon to Rio Peñasco Canyon. There are several miles between Rio Peñasco and the nearest "occupied habitat," a span that lacks suitable habitat to allow for successful NMMJM migration. The draft EA fails to not only acknowledge the great distance between the Wills and Rio Peñasco Canyons, but also fails to address whether these two habitats are ecologically connected. Without an adequate ecological connection, NMMJM cannot migrate and propagate in Rio Peñasco. The draft EA's lack of analysis tends to demonstrate that the Sacramento Grazing Allotment lacks "dispersal capabilities."

Thus, the draft EA perpetuates the erroneous assumption that Rio Peñasco is NMMJM "occupied habitat." This assumption is false. All fencing in the Rio Peñasco area is unnecessary and is mere pretext for the meritless goal of excluding livestock. Needlessly excluding livestock in this manner will catastrophically interfere with SGA's ability to process its cattle at existing holding pens. SGA therefore requests the draft EA revise its analysis to conform with the fact that Rio Peñasco is not an "occupied habitat."

### **3. The Draft EA Offers Neither Analysis nor Evidence Regarding Reasonably Foreseeable Impacts Such as Increased Risk of Wildfire.**

The draft EA provides sparse analysis regarding the mitigation of reasonably foreseeable impacts such as increased risk of wildfire. The draft EA acknowledges that "vegetation height and vigor recovers quickly when livestock are excluded." (Draft EA 54.) Vegetation and understory acts as fuel for wildfire. Grazing is an effective mechanism for managing such fuel that minimizes the risk of ignition of wildfire while also reducing the rate of spread and intensity of wildfire. Therefore, by allowing unrestrained vegetative growth, the proposed activities will substantially increase the risk of wildfire.

The draft EA does not analyze these risks. The draft EA instead dismisses this risk as being analyzed by the South Sacramento Restoration Project. (Draft EA 98 [Response to Comment 32].) Without analysis of these reasonably foreseeable impacts, the draft EA remains inadequate.

### **4. The Draft EA Improperly Disregards the Significant Effects Caused by Elk.**

The draft EA acknowledges it should assess how the native elk population may affect critical habitats and, conversely, how the proposed activities will affect the elk population. (Draft EA 9.) Yet, the draft EA abdicates its duty to investigate by disregarding and failing to analyze how the proposed actions will affect the elk, and vice versa.

The draft EA's basis for disregarding anticipated impacts that elk will have on the environment is that "the entire proposed area to be fenced constitutes...less than 1% of elk habitat acres on the district." (Draft EA 54.) This conclusion is reductive because it ignores the qualitative importance the areas have in attracting elk. History bears this out as elk frequently forage and disregard the temporary fences of enclosures in the Wills and Rio Peñasco Canyons.

Elk have a significant impact on both the purportedly "occupied habitat" and the proposed activities. Without any meaningful analysis of elk-related impacts on the NMMJM, the draft EA is inadequate.

**5. Additional Livestock Handling Facilities Should Be Built Before Any Other Activity Takes Place.**

The draft EA analyzes impacts relating to constructing additional livestock handling facilities. (Draft EA 8.) The draft EA provides little analysis, however, regarding how the facilities' construction will have on cattle. SGA can only keep cattle in these handling facilities for brief periods of time. Additional facilities are necessary before commencing any proposed activity, particularly given the anticipated impacts the proposed activities will have on SGA's herd. Therefore, SGA requests that the livestock handling facilities be constructed before starting any proposed activity. This will in part mitigate some of the significant impacts the proposed activities will have on SGA's herd.

**6. The Draft EA Fails to Adequately Analyze All Reasonable Alternatives.**

The draft EA looks at only two alternatives: (1) make no changes to current management or (2) adopt the changes contemplated. (Draft EA 30.) The EA must rigorously explore and objectively evaluate all reasonable alternatives to a proposed activity. 40 C.F.R. § 1502.14(a). While the draft EA considers the alternative of taking no action, it fails to consider the alternative of removing fencing in the Rio Peñasco exclosure. The draft EA implies that the Rio Peñasco Canyon is not actually "occupied habitat" because it finds there is no population of NMMJM found there. Based upon this information, the draft EA should consider removing the Rio Peñasco fencing as a reasonable alternative. Further, the EA should consider smaller areas to protect the species, especially in Wills Canyon and eliminate Penasco.

**7. The Proposed Permanent Fencing Interferes with and Takes SGA's Water Rights.**

SGA owns water rights under New Mexico law in the reaches of Wills Canyon and Rio Peñasco. The installation of permanent fences along the many miles of these water courses will effect a further taking of SGA's water rights. There is no evidence indicating that there is any reasonable alternative source of water to permit the development of additional water supply. Under the case of *SGA, et al. v. United States*, U.S. Court of Federal Claims Case No. 04-786L, SGA is entitled to just compensation for any water rights that are taken to protect endangered species. SGA makes a demand for payment for any water rights lost as a result of this fencing.

The EA fails to analyze all reasonable alternatives and fails to analyze significant impacts the proposal will have on the elk population, on cattle operations and on property rights that will be affected. Therefore, a full environmental impact statement must be prepared.

Regards,



Michael J. Van Zandt