



August 22, 2020

Travis Moseley, Forest Supervisor
Lincoln National Forest
3463 las Palomas Road
Alamogordo, NM 88310
travis.moseley@usda.gov
objections-southwestern-lincoln@usda.gov

Dear Supervisor Moseley,

**RE: OBJECTION TO SACRAMENTO GRAZING ALLOTMENT NMMJM
HABITAT IMPROVEMENT PROJECTS**

The Lincoln National Forest has failed to provide for and to select a logical preferred alternative that terminates the Sacramento Allotment grazing permit. For this reason, Center for Biological Diversity, on behalf of our more than 1.7 million members and online activists, objects to the Lincoln National Forests decision to proceed with unnecessary, inadequate and illogical habitat "improvement" projects on the Sacramento Allotment.

On August 15, 2020, we sent to you, as Forest Supervisor, as well as to Chief Vicki Christiansen, Acting Regional Forester Sandra Watts, Acting Deputy Regional Forester Elaine Kohrman, and District Ranger Randall Chavez, the following information,

"From documents obtained via FOIA, for the years 2016, 2017, 2018, and 2019 (four years), there were 136 documented NMMJM CH enclosure violations by the Agua Chiquita Allotment permittee and there were 123 documented NMMJM CH enclosure violations by the Sacramento Allotment permittee.

Instead of suspending or canceling these two permits, for the years 2014, 2015, 2016, 2017, 2018 and 2019 (six years), the Forest Service has spent at least \$11,242,835 to support the operation of these two allotments in the upper elevation meadows and streams of the Sacramento Mountains on the Lincoln National Forest in southern New Mexico."¹

¹ Email, from the Center to Biological Diversity, to Lincoln National Forest Travis Moseley, USFS Chief Vicki Christiansen, Southwestern Region Acting Regional Forester Sandra Watts, Southwestern Region Acting Deputy Regional Forester Elaine Kohrman, and Sacramento Ranger District District Ranger Randall Chavez, RE: SUMMARY OF CH ENCLOSURE VIOLATIONS and TOTAL FS MONEY SPENT TO SUPPORT TWO Lincoln NF Sacramento RD PERMITTEES; August 15, 2020.

Review of documents² obtained via the Freedom of Information Act reveal that from 2014 -2019, the Forest Service has spent at least \$11,242,835 to support and facilitate grazing on the Sacramento and Agua Chiquita Allotments, of which \$1,980,347 has been spent solely on the Sacramento Allotment. It is not possible to isolate further any more money spent solely on the Sacramento Allotment owing to the lack of specific Forest Service record keeping regarding money spent individually on the two allotments. The \$11,242,835 to support and facilitate grazing on the Sacramento and Agua Chiquita Allotments, and the \$1,980,347 spent solely on the Sacramento Allotment are conservative numbers as the Forest Service records do not include other funding from entities such as the New Mexico State Department of Game and Fish's Habitat Stamp Program.

Review of documents³ obtained via the Freedom of Information Act reveal that from 2016 -2019, the Forest Service has spent at least \$8,416,035 to support and facilitate grazing on

2 Freedom of Information Act request to Lincoln National Forest Supervisor Travis Moseley; from the Center for Biological Diversity; for 1. From January 1, 2012 to date, March 30, 2020, the total amount of funds that the Lincoln National Forest, either solely and/or via money from Region 3 Region and/or from Headquarters, has spent on riparian enclosure fencing on the Agua Chiquita Allotment. This total should include but not be limited to money for surveying, site preparation, labor, materials, inspection and maintenance costs, 2. From January 1, 2012 to date, March 30, 2020, the total amount of money that the Lincoln National Forest, either solely and/or via money from Region 3 Region and/or from Headquarters, has spent on riparian enclosure fencing on the Sacramento Allotment. This total should include but not be limited to money for surveying, site preparation, labor, materials, inspection and maintenance costs, 3. From January 1, 2012, to date, March 30, 2020, the total worth amount of donated materials and donated funds that the Lincoln National Forest has used to provide for enclosure fencing along riparian areas on the Agua Chiquita grazing allotment. This worth amount should include but not be limited to materials from Yates Petroleum and/or funds from the New Mexico Game and Fish Habitat Stamp Program, and 4. From January 1, 2012, to date, March 30, 2020, the total worth amount of donated materials and donated funds that the Lincoln National Forest has used to provide for enclosure fencing along riparian areas on the Sacramento grazing allotment. This worth amount should include but not be limited to materials from Yates Petroleum and/or funds from the New Mexico Game and Fish Habitat Stamp Program.; March 30, 2020.; Freedom of Information Act response Freedom of Information Act response for Tracking Number 2020-FS-R3-03246-F, from USFS Southwestern Region Acting Regional Forester Elaine Kohrman, to Center for Biological Diversity Co-Founder Dr. Robin Silver, May 20, 2020.; Freedom of Information Act request to Lincoln National Forest Supervisor Travis Moseley; from the Center for Biological Diversity; for 1. From January 1, 2012 to date, April 3, 2020, the total amount of funds that the Lincoln National Forest, either solely and/or via money from Region 3 Region and/or from Headquarters, has spent on corrals and/or trick tanks on the Agua Chiquita Allotment. This total should include but not be limited to money for surveying, site preparation, labor, materials, inspection and maintenance costs, 2. From January 1, 2012 to date, April 3, 2020, the total amount of money that the Lincoln National Forest, either solely and/or via money from Region 3 Region and/or from Headquarters, has spent on corrals and/or trick tanks on the Sacramento Allotment. This total should include but not be limited to money for surveying, site preparation, labor, materials, inspection and maintenance costs, 3. From January 1, 2012, to date, April 3, 2020, the total worth amount of donated materials and donated funds that the Lincoln National Forest has used to provide for corrals and/or trick tanks on the Agua Chiquita grazing allotment. This worth amount should include but not be limited to materials from Yates Petroleum and/or funds from the New Mexico Game and Fish Habitat Stamp Program, and 4. From January 1, 2012, to date, April 3, 2020, the total worth amount of donated materials and donated funds that the Lincoln National Forest has used to provide for corrals and/or trick tanks on the Sacramento grazing allotment. This worth amount should include but not be limited to materials from Yates Petroleum and/or funds from the New Mexico Game and Fish Habitat Stamp Program.; April 3, 2020.; Freedom of Information Act response for Tracking Number 2020-FS-R3-03310-F, from USFS Southwestern Region Acting Regional Forester Sandra Watts, to Center for Biological Diversity Co-Founder Dr. Robin Silver, June 3, 2020.

3 Freedom of Information Act request to Lincoln National Forest Supervisor Travis Moseley; from the Center for Biological Diversity; for 1. From January 1, 2012 to date, March 30, 2020, the total amount of funds that the Lincoln National Forest, either solely and/or via money from Region 3 Region and/or from Headquarters, has spent on riparian enclosure fencing on the Agua Chiquita Allotment. This total should include but not be limited to money for surveying, site preparation, labor, materials, inspection and maintenance costs, 2. From January 1, 2012 to date, March 30, 2020, the total amount of money that the Lincoln National Forest, either solely and/or via money from Region 3 Region and/or from Headquarters, has spent on riparian enclosure fencing on the Sacramento Allotment. This total should include but not be limited to money for surveying, site preparation, labor, materials, inspection and maintenance costs, 3. From January 1, 2012, to date, March 30, 2020, the total worth amount of donated materials and donated funds that the Lincoln National Forest has used to provide for enclosure fencing along riparian areas on the Agua Chiquita grazing allotment. This worth amount should include but not be limited to materials from Yates Petroleum and/or funds from the New Mexico Game and Fish Habitat Stamp Program, and 4. From January 1, 2012, to date, March 30, 2020, the total worth amount of donated materials and donated funds that the Lincoln National Forest has used to

the Sacramento and Agua Chiquita Allotments, of which \$1,980,347 has been spent solely on the Sacramento Allotment. It is not possible to isolate further any more money spent solely on the Sacramento Allotment owing to the lack of specific Forest Service record keeping regarding money spent on the two allotments. The \$8,416,035 to support and facilitate grazing on the Sacramento and Agua Chiquita Allotments, and the \$1,980,347, from 2016 – 2019, spent solely on the Sacramento Allotment are conservative numbers as the Forest Service records do not include other funding from entities such as the New Mexico State Department of Game and Fish's Habitat Stamp Program.

In response, to the Forest Service having spent at least \$8,416,035 to facilitate and support the destructive grazing operations on the Sacramento and Agua Chiquita Allotments, \$1,947,047 of which has been spent solely on the Sacramento Allotment, from 2016-2019, the Agua Chiquita permittee has responded with 136 documented enclosure violations from 2016-2019, and the Sacramento Allotment permittee has responded with 123 documented enclosure violations from 2016-2019.

This information regarding the Forest Service's spending of such huge amounts of money to subsidize two permittees who pay the Forest Service back with unimaginable numbers of violations of their contractual permit rules qualifies as "new information arising after designated opportunities."⁴ Based purely on the commonsense principle not to spend any more good money after bad, the most logical preferred alternative to improve the condition of the Sacramento Allotment is to cancel the permit. This logic obviously pertains to the Agua Chiquita Allotment as well.

Our September 13, 2019, Sixty-Day Notice of Endangered Species Act Violations, Lincoln National Forest⁵ also qualifies as "new information arising after designated

provide for enclosure fencing along riparian areas on the Sacramento grazing allotment. This worth amount should include but not be limited to materials from Yates Petroleum and/or funds from the New Mexico Game and Fish Habitat Stamp Program.; March 30, 2020.; Freedom of Information Act response Freedom of Information Act response for Tracking Number 2020-FS-R3-03246-F, from USFS Southwestern Region Acting Regional Forester Elaine Kohrman, to Center for Biological Diversity Co-Founder Dr. Robin Silver, May 20, 2020.; Freedom of Information Act request to Lincoln National Forest Supervisor Travis Moseley; from the Center for Biological Diversity; for 1. From January 1, 2012 to date, April 3, 2020, the total amount of funds that the Lincoln National Forest, either solely and/or via money from Region 3 Region and/or from Headquarters, has spent on corrals and/or trick tanks on the Agua Chiquita Allotment. This total should include but not be limited to money for surveying, site preparation, labor, materials, inspection and maintenance costs, 2. From January 1, 2012 to date, April 3, 2020, the total amount of money that the Lincoln National Forest, either solely and/or via money from Region 3 Region and/or from Headquarters, has spent on corrals and/or trick tanks on the Sacramento Allotment. This total should include but not be limited to money for surveying, site preparation, labor, materials, inspection and maintenance costs, 3. From January 1, 2012, to date, April 3, 2020, the total worth amount of donated materials and donated funds that the Lincoln National Forest has used to provide for corrals and/or trick tanks on the Agua Chiquita grazing allotment. This worth amount should include but not be limited to materials from Yates Petroleum and/or funds from the New Mexico Game and Fish Habitat Stamp Program, and 4. From January 1, 2012, to date, April 3, 2020, the total worth amount of donated materials and donated funds that the Lincoln National Forest has used to provide for corrals and/or trick tanks on the Sacramento grazing allotment. This worth amount should include but not be limited to materials from Yates Petroleum and/or funds from the New Mexico Game and Fish Habitat Stamp Program.; April 3, 2020.; Freedom of Information Act response for Tracking Number 2020-FS-R3-03310-F, from USFS Southwestern Region Acting Regional Forester Sandra Watts, to Center for Biological Diversity Co-Founder Dr. Robin Silver, June 3, 2020.

⁴ Notice of Opportunity to Object New Mexico Meadow Jumping Mouse Habitat Improvement

Projects on the Sacramento Grazing Allotment Sacramento Ranger District, Lincoln National

Forest Otero County, New Mexico; Sacramento Ranger District of the Lincoln National Forest, Alamogordo Daily News, July 7, 2020.

⁵ Correspondence, from the Center for Biological Diversity, to Secretary of the Interior David Bernhardt, U.S. Fish and Wildlife Service ("USFWS") Principal Deputy Director Exercising Authority of the Director Margaret Everson, USFWS Regional Director Amy Lueders, U.S. Forest Service ("USFS") Acting Chief Vicki Christiansen, Southwest Region Regional Forester Cal

opportunities."⁶ Our Notice further supports our Objection to the fact that the Lincoln National Forest has failed to present, evaluate and select the commonsense preferred alternative to terminate the Sacramento Allotment grazing permit.

Specific to the Sacramento Allotment on our Objection, please note the following images and descriptions included in our September 13, 2019, Notice of Intent:

"The current Forest Service website (accessed September 1, 2019) for jumping mouse, <https://www.fs.usda.gov/detail/r3/home/?cid=stelprd3809040>,⁷ also describes and includes a representative healthy habitat image for NMMJM,

"The jumping mouse has very specific habitat requirements. It requires perennial or seasonally perennial water and saturated soils that produce tall (24+ inch) herbaceous riparian plants, and intact adjacent uplands (see image below).

Below: This image of critical habitat on the Santa Fe National Forest displays the tall herbaceous riparian vegetation and adjacent intact upland habitat that is essential to the species."



Joyner, and Lincoln National Forest Supervisor Travis Moseley; RE: Sixty-Day Notice of Endangered Species Act Violations, Lincoln National Forest, September 13, 2019.

⁶ Notice of Opportunity to Object New Mexico Meadow Jumping Mouse Habitat Improvement

Projects on the Sacramento Grazing Allotment Sacramento Ranger District, Lincoln National

Forest Otero County, New Mexico; Sacramento Ranger District of the Lincoln National Forest, Alamogordo Daily News, July 7, 2020.

⁷ USDA Forest Service website, NM Meadow Jumping Mouse: Home Page, <https://www.fs.usda.gov/detail/r3/home/?cid=stelprd3809040>; accessed, September 1, 2019.

Here's a bull inside the electric fence enclosure below Mauldin Springs:



© Robin Silver

Pervasive chronic and heavy grazing is also apparent within the Upper Rio Penasco riparian areas:



© Robin Silver



© Robin Silver



© Robin Silver

Further downstream, many cows are found within the Upper Rio Peñasco riparian area:



© Robin Silver

On December 4, 2019, Southwestern Region Regional Forester Calvin N. Joyner, "[o]n behalf of the Lincoln National Forest (Forest), the Regional Forester, Southwestern Region, and Chief of the Forest Service," responded,⁸ most importantly, by saying,

1. "the USFS has determined that re-initiation of § 7(a)(2) consultation is needed for the Sacramento and Aqua Chiquita Allotments and intends to make that request of FWS in FY 2020.";
2. "...the USFS believes incidental take may be exceeded for the jumping mouse under Take Scenario 1 (up to 20% herbaceous utilization averaged for any given exclosure after documented unauthorized use) based on preliminary data collected to date. Consultation would need to be reinitiated if the level of incidental take exceeds that issued in the 2018 Biological Opinion.";
3. The determinations made by the FWS in the Sacramento Allotment biological opinion were based on Forest Service compliance with the outlined terms and conditions and conservation measures. Since the Forest Service has not fully complied with these requirements, then the agency's actions have been subsequently modified in a manner that may affect critical habitat not considered in this opinion.";

⁸ Correspondence, from Regional Forester Calvin N. Joyner, to Center for Biological Diversity Co-Founder and Board Member Dr. Robin Silver, RE: "[R]esponse to your Notice of Intent to Sue (NOI) for violations of the Endangered Species Act regarding the impacts of unauthorized and authorized domestic livestock grazing within Designated Critical Habitat of the New Mexico meadow jumping mouse (NMMJM)"; December 4, 2019.

4. "The determinations made by the FWS in the Sacramento Allotment biological opinion were based on Forest Service compliance with the outlined terms and conditions and conservation measures. Since the Forest Service has not fully complied with these requirements, the authorized grazing action may be viewed as being subsequently modified in a manner not previously considered in the 2018 Biological Opinion. Again, the USFS intends to reinitiate consultation for the Sacramento Allotment."; and
5. "In summary, the USFS has determined that re-initiation of § 7(a)(2) consultation is needed for the Sacramento and Aqua Chiquita Allotments. We intend to make that request of FWS in FY 2020. With livestock currently removed from the pastures in which critical habitat is located for the winter season, it is our intent to initiate that process prior to the next summer grazing season beginning in late April, 2020."

Regional Forester Joyner's December 4, 2019, correspondence qualifies as "new information arising after designated opportunities."⁹

The Center provided written comments during the "designated opportunity for public comment,"¹⁰ questioning the Lincoln National Forest's failure to provide for a grazing termination alternative. Specifically, on July 19, 2018, in comments regarding the June 2018, Draft Environmental Analysis,¹¹ the Center questioned why the Lincoln National Forest was continuing the Sacramento Allotment permit when "ranchers [such as the Sacramento Allotment permittee] are destroying the public lands and your own data show it [and when] on page 34 of the Draft EA you cite the decrease in riparian vegetation over the last few decades. Why do these privileged few get to do this?"

The Draft EA on page 34 states,

"In 2015, Open Range Consulting (ORC) was contracted by the US Forest Service to use advanced reconnaissance and remote sensing techniques to generate quantitative map information and trends analysis on vegetation structure and composition within riparian extents for the NMMJM and its Proposed Critical Habitat. The final outputs include mapping of riparian vegetation structure, a trends assessment based on archive imagery representing past conditions, and an accuracy assessment of products. The change in percent of bare ground, upland vegetation, riparian vegetation, and sedge cover for the CH riparian areas for the Sacramento Allotment was compared using the classifications made from 1m imagery for 1992, 2009, and 2014. The Sacramento Allotment generally showed a decrease of riparian vegetation ([Open Range 2015](#))."¹²

⁹ Notice of Opportunity to Object New Mexico Meadow Jumping Mouse Habitat Improvement

Projects on the Sacramento Grazing Allotment Sacramento Ranger District, Lincoln National

Forest Otero County, New Mexico; Sacramento Ranger District of the Lincoln National Forest, Alamogordo Daily News, July 7, 2020.

¹⁰ Ibid.

¹¹ New Mexico Meadow Jumping Mouse Habitat Improvement Projects on the Sacramento Grazing Allotment Draft Environmental Assessment, USDA Forest Service Lincoln National Forest Sacramento Ranger District, June 2018.

¹² The draft EA cites "Open Range 2015" which is fully listed in the "Literature Cited" section, Open Range Consulting Open Range Consulting. 2015. Meadow Jumping Mouse Proposed Critical Habitat: Earth Sense Technology-Riparian Project (AG-8371-S-15-0036). Prepared for the USFS Southwest Regional Office, Albuquerque, New Mexico.; however, this document is not available in the Lincoln National Forest's website for the project (<https://www.fs.usda.gov/project/?project=51153>).

In our July 19, 2018, comments, the Center questions the Lincoln National Forest's subsidizing the operation of a destructive private business that is not viable without causing the local extinction of an endangered species by observing the inadequacy of the proposed "improvements." Our July 19, 2018, comments incorporated by reference our earlier comments "on the Agua Chiquita habitat project" stating, "[t]he amount of the meadows that you have proposed for grazing restrictions is insufficient based in the stated habitat needs that we cited in that letter ... We don't believe that just 100 acres will do the job."

Our incorporated comments say,

*"The Scoping Letter states that "fencing would exclude the riparian area along with **small portions of upland habitat**" (emphasis added). "Individual jumping mice need intact upland areas that are up gradient and beyond the floodplain of rivers and streams and adjacent to riparian wetland areas because this is where they build nests or use burrows to give birth to young in the summer and to hibernate over the winter.""¹³*

Just like the reference in our incorporated Agua Chiquita Allotment Scoping Letter regarding the inadequacy of the proposed "improvements," the Sacramento Allotment Final Environmental Assessment¹⁴ includes the exact same language, that "fencing would exclude the riparian area along with small portions of upland habitat" on page 7.

The Center's incorporated September 10, 2017, comments highlight the inadequacy of the amount of protected acreage by quoting from the 2016, Designation of Critical Habitat, which says,

- "1) The areas occupied by the mouse since 2005 do not contain enough suitable, connected habitat to support resilient populations of jumping mouse;*
- 2) the currently unoccupied segments within individual stream reaches or waterways need to be of sufficient size to allow for the expansion of populations and provide connectivity (active season movements and dispersal) between multiple populations as they become established;*
- 3) additional areas need habitat protection to allow restoration of the necessary herbaceous vegetation for possible future reintroductions, and;*
- 4) multiple local populations along streams are important to maintaining genetic diversity within the populations and for providing sources for recolonization if local populations are extirpated."¹⁵*

The Sacramento Allotment Final Environmental Analysis selected alternative fails to provide for adequate habitat protection consistent with the Designation of Critical Habitat's description of the amount of habitat required to provide for recovery in the Sacramento Mountains. The Sacramento Allotment Final Environmental Analysis admits that "[w]ithout

¹³ USDI Fish and Wildlife Service. 2014. Recovery Outline: New Mexico Meadow Jumping Mouse. N.M. Ecological Services Field Office, Albuquerque, New Mexico: p. 5.

¹⁴ Final Environmental Assessment for the New Mexico Meadow Jumping Mouse Habitat Improvement Projects on the Sacramento Grazing Allotment, USDA Forest Service Lincoln National Forest Sacramento Ranger District, July 2020.

¹⁵ USDI Fish and Wildlife Service. 2016, Final Rule. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse. Docket No. FWS-R2-ES-2013-0014: p. 134.

fencing, the utilization level in the NMMJM habitat would need to be kept at a light level (cattle can graze approximately 20 percent of available forage) or the livestock would need to be removed from the entire pasture. That level would likely be exceeded prior to the end of the grazing season forcing the permittee to remove cattle from the pasture early, which would not be favorable to the grazing permit holder."¹⁶ The Sacramento Allotment Final Analysis selected alternative represents a compromise which only primarily beneficial to the permittee. It is meaningless for NMMJM recovery. NMMJM represents the health and vigor of the riparian meadows of the Sacramento Mountains which have been abused for years by excessive grazing on the Sacramento Allotment. **Please note that the inadequacy of the amount of habitat protected by the selected alternative and fact that the selected alternative's compromise inadequately protects NMMJM are also Objection points.**

In the Center's July 19, 2018, comments on the Sacramento Allotment "improvements" we question the logic of continuing grazing on the Sacramento Allotment, the financial viability of the Sacramento Allotment and the protective adequacy of the proposed "improvements." In the Center's July 19, 2018, comments, we state, "...a mere 100 acres out of 111,484 are proposed for enclosure fencing. If a rancher can't manage this extremely trivial amount of allocation for protected critical habitat, then he should probably quit ranching and experience what it's like for the rest of society who aren't subsidized by a system catering to takers like him...[a]n island of tall grass in a sea of destroyed and grazed-to-stubble meadow will not allow the mouse to recover. ... [w]hy do these privileged few get to do this?"

The Sacramento Allotment draft Environmental Analysis failed to provide for an evaluation of an alternative that examines the fiscal logic of supporting continued Sacramento Allotment grazing and cessation of Sacramento Allotment grazing. The final Environmental Analysis selected alternative failed to correct this deficit and similarly fails to present, evaluate, and choose a logical grazing termination alternative.

NMMJM represents the health of the upper elevation riparian meadows of the Sacramento Mountains.¹⁷ NMMJM is endangered and is at extreme risk of disappearing from the Sacramento Mountains owing in good part to the "excessive grazing."¹⁸

The Center's September 13, 2019, Notice of Intent to Sue documents that NMMJM continues to be endangered in good part owing to "excessive grazing."

The New Mexico Meadow Jumping Mouse ("NMMJM") was listed as endangered on June 10, 2014.¹⁹ Critical Habitat for NMMJM was designated on March 16, 2016.²⁰

¹⁶ New Mexico Meadow Jumping Mouse Habitat Improvement Projects on the Sacramento Grazing Allotment Environmental Assessment, USDA Forest Service Lincoln National Forest Sacramento Ranger District, July 2020.; page 1.

¹⁷ Determination of Endangered Status for the New Mexico Meadow Jumping Mouse Throughout Its Range, Final Rule, U.S. Fish and Wildlife Service, 79 FR 33119, June 10, 2014.; Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse, Fish and Wildlife Service, Final Rule, 81 FR 14264, March 16, 2016.; Species Status Assessment Report for the New Mexico meadow jumping (Zapus hudsonius luteus) Prepared by the U.S. Fish and Wildlife Service, Albuquerque, New Mexico, January 30, 2020.

¹⁸ Determination of Endangered Status for the New Mexico Meadow Jumping Mouse Throughout Its Range, Final Rule, U.S. Fish and Wildlife Service, 79 FR 33119, June 10, 2014.; page 33124.

¹⁹ Determination of Endangered Status for the New Mexico Meadow Jumping Mouse Throughout Its Range, Final Rule, U.S. Fish and Wildlife Service, 79 FR 33119, June 10, 2014.

²⁰ Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse, Fish and Wildlife Service, Final Rule, 81 FR 14264, March 16, 2016.

The Final Rule for listing NMMJM as endangered defines "excessive grazing" and documents the role that "excessive grazing" has played in this unique creature's demise, including the definition that "[e]xcessive ungulate grazing in this context occurs when there is inadequate amount of tall dense herbaceous riparian vegetation to support the New Mexico meadow jumping mouse... Indications of excessive grazing are: trampling of streambanks, loss of riparian cover, soil compaction, modification of riparian plant communities, lowering water tables, and the resulting changes to New Mexico meadow jumping mouse microhabitat. Excessive grazing in riparian areas can result in changes to the hydrology and soils, leading to downcutting or headcutting, which can further degrade New Mexico meadow jumping mouse habitat."²¹ 33124

In addition, the Final Rule for listing NMMJM as endangered also notes,

"livestock grazing continues to be documented within many of the fenced enclosures surrounding the recently documented New Mexico meadow jumping mouse populations."²²

"Cattle and sometimes elk, have contributed substantially to alterations of riparian ecosystems throughout the range of the New Mexico meadow jumping mouse. However, there is a strong tendency for livestock to congregate in riparian habitat, whereas elk may range farther from water sources and riparian areas than cattle (USFS 2006, pp. 76–77)."²³

"...unauthorized livestock grazing continues to be documented within 15 of 29 existing New Mexico meadow jumping mouse populations..."²⁴

"Many of the threats faced by the subspecies would not have historically been significant, but past reductions in population size and fragmentation (mainly due to habitat loss from grazing) causing isolation of populations makes the current threats particularly severe."²⁵

The Final Rule designating Critical Habitat for NMMJM²⁶ says that,

"...most livestock grazing is likely to be incompatible with the persistence of jumping mouse populations because of the subspecies' sensitivity to habitat disturbance (Frey 2006b, p. 57). Although livestock grazing can be managed in many different ways, the best available scientific and commercial data indicate that the jumping mouse does not persist in areas when its habitat is subjected to heavy grazing pressure (Morrison 1985, p. 31; Frey 2005a, entire; 2005b, p. 2; 2011, entire). Livestock grazing can cause a rapid loss of herbaceous cover and eliminate dense riparian herbaceous vegetation that is suitable jumping mouse habitat in less than 60 days (Frey 2005a, p. 60; 2007b, pp. 16–17; 2011, p. 43, Figure 16), and possibly even

²¹ Determination of Endangered Status for the New Mexico Meadow Jumping Mouse Throughout Its Range, Final Rule, U.S. Fish and Wildlife Service, 79 FR 33119, June 10, 2014; page 33124.

²² Id., page 33128.

²³ Id., page 33129.

²⁴ Id., page 33130.

²⁵ Id., page 33135.

²⁶ Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse, Fish and Wildlife Service, Final Rule, 81 FR 14264, March 16, 2016.

as short as 7 days (Morrison 1989, p. 20). Widespread and intensive livestock grazing, leading to a reduction of tall dense riparian herbaceous vegetation, has been detrimental for the jumping mouse because the quality and quantity of occupied habitats containing suitable habitat have been reduced or eliminated (Frey 2003, pp. 10–14; 2005a, pp. 15–40; 2006d, pp. 10–33; 2011, entire; 2012a, pp. 42, 46, 52; Service 2012c, pp. 1, 6–8, Figure 13). In addition, livestock and elk grazing within jumping mouse habitat affects individual mice by reducing the availability of food resources (Morrison 1987, p. 25; Morrison 1990, p. 141; Frey 2005a, p. 59; 2011, p. 70). Current grazing practices in many areas have resulted in the removal of dense riparian herbaceous vegetation that historically provided jumping mouse habitat and caused the loss of historical populations. There is a strong tendency for livestock to congregate in riparian habitat (Forest Service 2006, pp. 76–77). Frey and Malaney (2009, p. 38) suggests that maintenance of suitable riparian habitat and long-term viability of jumping mouse populations might only be possible through creation of refugial areas by complete exclusion of livestock from the riparian zone."²⁷

"Management activities that could ameliorate these threats include, but are not limited to: (1) Maintaining occupied jumping mouse sites with active management to continue the protection of these areas from livestock grazing; (2) restoring, enhancing, and managing additional habitat through fencing of riparian areas, especially the Santa Fe, Lincoln, and Apache-Sitgreaves National Forests (this will facilitate restoration of the required vegetative components and support the expansion of populations of the jumping mouse into areas that were historically occupied by the species, but where natural expansion is currently unlikely because no suitable habitat remains)..."²⁸

"Subunit 4B—Upper Penasco: Subunit 4B consists of 136 ha (335 ac) along 6.4 km (4.0 mi) of the Rio Penasco on private lands and areas owned by the Forest Service. This subunit begins at the junction of Forest Service Road 164 and New Mexico Highway 6563 and follows the Rio Penasco drainage downstream to about 2.4 km (1.5 mi) below Bluff Spring at the boundary of private and Forest Service lands. Although much of the habitat was historically occupied with individuals detected as recently as 1988 (Morrison 1989, pp. 7–10, Frey 2005a, pp. 30–31), no New Mexico meadow jumping mice were captured during surveys in 2005 (Frey 2005a, pp. 19–20, 32–34). The entire subunit is considered unoccupied at the time of listing. This subunit contains perennial flowing water with saturated soils and has a high potential of being restored to suitable habitat. It would augment the current size and connectivity of suitable habitat to increase the distribution of the jumping mouse in the Sacramento Mountains and provide population redundancy and resiliency. **All of the areas within Subunit 4B are considered essential to the conservation of the jumping mouse** (as described under the heading *Unit Descriptions*, above)."²⁹

"Subunit 4D—Wills Canyon: Subunit 4D consists of 111 ha (275 ac) along 5.5 km (3.4 mi) of streams on private lands and areas owned by the Forest Service. This subunit begins at upper Mauldin Spring, the head of the Wills Canyon, and follows the

²⁷ Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse, Fish and Wildlife Service, Final Rule, 81 FR 14264, March 16, 2016; page 14275.

²⁸ Id., pages 14294–5.

²⁹ Id., page 14302.

drainage downstream along Forest Service Road 169 to the boundary of Forest Service and private lands in the vicinity of Bear Spring. Based upon the capture of jumping mice in 2012 and 2013 (Forest Service 2012a, entire; 2012h, pp. 2–5; 2013a, entire; Service 2012d, pp. 2, 8), approximately 0.8 ha (1.9 ac) within Subunit 4D are considered occupied at the time of listing. The occupied area is located on Forest Service lands in New Mexico within the grazing exclosures at Mauldin Spring in Wills Canyon (Forest Service 2012a, entire; 2012h, pp. 2–5; 2013a, entire; Service 2012d, pp. 2, 8). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. **The remaining unoccupied areas within Subunit 4D are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse** (as described under the heading *Unit Descriptions*, above).

Subunit 4E—Agua Chiquita Canyon: Subunit 4E consists of 161 ha (398 ac) along 7.7 km (4.8 mi) of Agua Chiquita Creek on areas owned by the Forest Service. This subunit begins about 0.8 km (0.5 mi) upstream of the livestock exclosure around Barrel and Sand Springs along Agua Chiquita Creek and follows the canyon downstream along Forest Service Road 64 to Crisp, a Forest Service riparian pasture. Based upon multiple captures of jumping mice since 2005 (Frey 2005a, p. 34; Forest Service 2010, entire; Service 2012d, pp. 1–2), approximately 4.9 ha (12.0 ac) within Subunit 4E are considered occupied at the time of listing. The occupied areas are located on Forest Service lands in New Mexico within two of four fenced livestock exclosures, which includes the exclosure surrounding Sand and Barrel Springs and the most downstream section of the second in the series of four exclosures (Frey 2005a, p. 34; Forest Service 2010, entire; Service 2012d, pp. 1–2). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, recreation, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied areas are centered around the two capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features of critical habitat are found. **The remaining unoccupied areas within Subunit 4E are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the jumping mouse** (as described under the heading *Unit Descriptions*, above)."³⁰

³⁰ Id., page 14302.

On August 7-8, 2020, I again personally visited the Sacramento Allotment to observe and document non-compliance with contractual permit requirements. The following descriptions and images represent new information qualifies as "new information arising after designated opportunities"³¹ with respect to the Center's Objection.



© Robin Silver

Photo taken on August 8, 2020, of jumping mouse critical habitat on the northern side of the lower Mauldin Springs enclosure. The area of critical habitat outside of the enclosure shows significant utilization, and appears to exceed the 2018 Sacramento Allotment Biological Opinion's Incidental Take Statement's "take" threshold of 35 percent forage utilization within unfenced critical habitat.

³¹ Notice of Opportunity to Object New Mexico Meadow Jumping Mouse Habitat Improvement Projects on the Sacramento Grazing Allotment Sacramento Ranger District, Lincoln National Forest Otero County, New Mexico; Sacramento Ranger District of the Lincoln National Forest, Alamogordo Daily News, July 7, 2020.



© Robin Silver

Photo taken on August 8, 2020, of NMMJM Critical Habitat on the southern side of the lower Mauldin Springs exclosure. The area of critical habitat outside of the exclosure shows significant utilization, and appears to exceed the 2018 Sacramento Allotment Biological Opinion's Incidental Take Statement's "take" threshold of 35 percent forage utilization within unfenced critical habitat.



© Robin Silver

Photo taken on August 7, 2020 of NMMJM Critical Habitat along Wills Canyon in the Sacramento Allotment. The electric fence is an ineffective barrier, as evidenced by the cows present within the enclosure. The area within the electric fenced enclosure shows significant utilization, and appears to exceed the 2018 Sacramento Allotment Biological Opinion's Incidental Take Statement's "take" threshold of 20 percent forage utilization within any given enclosure. Herbaceous vegetation appears "mowed," and is far shorter than the 24 inches required to support NMMJM populations. Habitat recovery is obviously being adversely impacted.



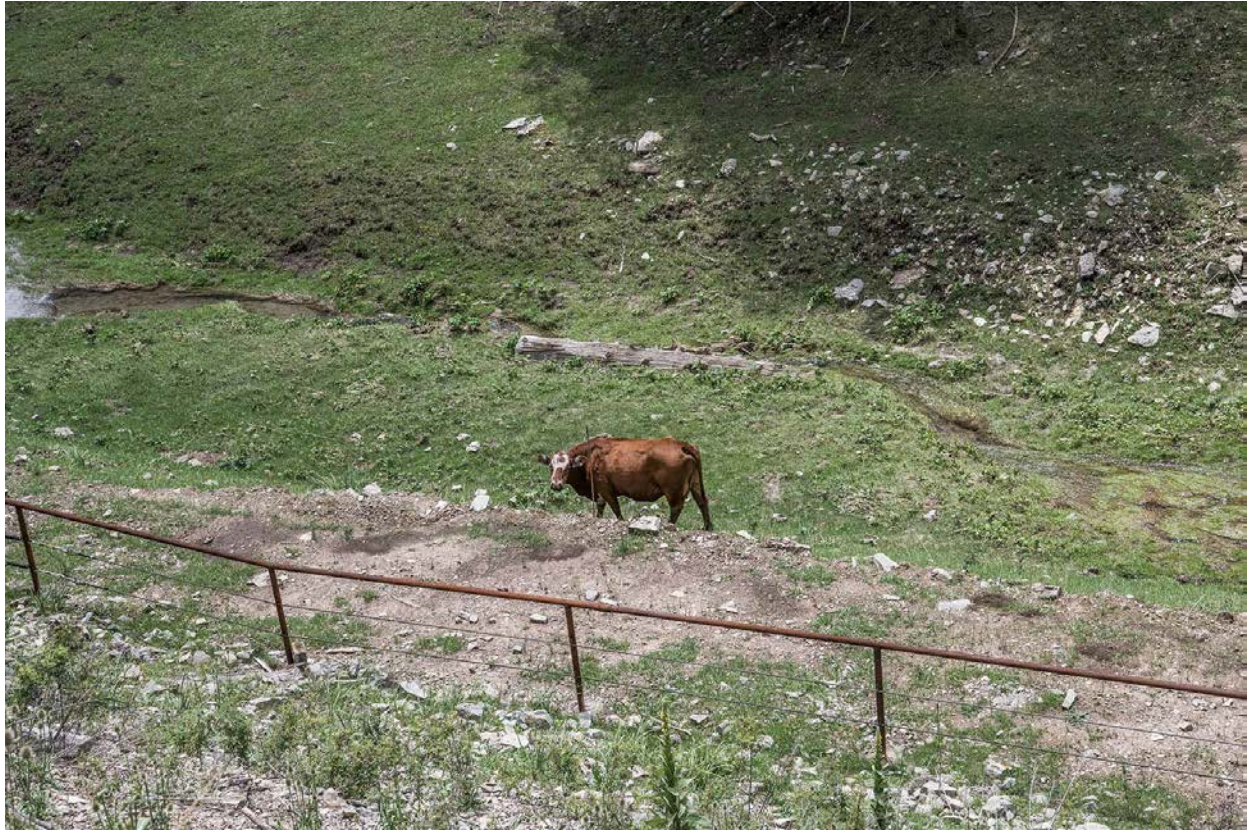
© Robin Silver

Photo taken on August 8, 2020 of jumping mouse critical habitat along Wills Canyon in the Sacramento Allotment. The electric fence is an ineffective barrier, as evidenced by the cows present within the enclosure. The area within the electric fenced enclosure shows significant utilization, and appears to exceed the 2018 Sacramento Allotment Biological Opinion's Incidental Take Statement's "take" threshold of 20 percent forage utilization within any given enclosure. Herbaceous vegetation appears "mowed," and is far shorter than the 24 inches required to support NMMJM populations. Habitat recovery is obviously being adversely impacted.



© Robin Silver

Photo taken on August 7, 2020 of NMMJM Critical Habitat along the Rio Peñasco in the Sacramento Allotment. The pipe metal fence is obviously an ineffective barrier, as evidenced by the cattle present within the enclosure. The area within the fenced enclosure shows significant utilization, and appears to exceed the 2018 Sacramento Allotment Biological Opinion's Incidental Take Statement's "take" threshold of 20 percent forage utilization within any given enclosure. Herbaceous vegetation appears "mowed," and is far shorter than the 24 inches required to support NMMJM populations. Habitat recovery is obviously being adversely impacted.



© Robin Silver

Photo taken on August 7, 2020 of NMMJM Critical Habitat along the Rio Peñasco in the Sacramento Allotment. The pipe metal fence is obviously an ineffective barrier, as evidenced by the cattle present within the enclosure. The area within the fenced enclosure shows significant utilization, and appears to exceed the 2018 Sacramento Allotment Biological Opinion's Incidental Take Statement's "take" threshold of 20 percent forage utilization within any given enclosure. Herbaceous vegetation appears "mowed," and is far shorter than the 24 inches required to support NMMJM populations. Habitat recovery is obviously being adversely impacted.



© Robin Silver

Photo taken on August 7, 2020 of NMMJM Critical Habitat along the Rio Peñasco in the Sacramento Allotment. The area which is within the jumping mouse's critical habitat shows significant utilization, and appears to exceed the 2018 Sacramento Allotment Biological Opinion's Incidental Take Statement's "take" threshold of 35 percent forage utilization within unfenced critical habitat. Herbaceous vegetation appears "mowed," and is far shorter than the 24 inches required to support NMMJM populations. Habitat recovery is obviously being adversely impacted.

These images and observations further highlight the Lincoln National Forest's failure to present, evaluate and select the commonsense preferred alternative to terminate the Sacramento Allotment grazing permit. The facts and data presented in this Objection render farcical the final Environmental Analysis' expression that the "purpose of this proposal is to strategically protect and improve NMMJM critical habitat areas ... within the Sacramento allotment by: constructing permanent exclosures...thereby reducing impacts such as grazing..."; that the "purpose of this proposal is to continue to allow for livestock grazing"³² and that "(n)o issues that would require the development of additional action alternatives that meet the project's purpose and need were identified."³³ This "purpose" is particularly farcical given the fact that the Forest Service has spent at least \$11,242,835 to support and facilitate grazing on the Sacramento and Agua Chiquita

³² Final Environmental Assessment for the New Mexico Meadow Jumping Mouse Habitat Improvement Projects on the Sacramento Grazing Allotment, USDA Forest Service Lincoln National Forest Sacramento Ranger District, July 2020.; page 5.

³³ Ibid.

Allotments, of which \$1,980,347 has been spent solely on the Sacramento Allotment, to suffer 136 documented exclosure violations from 2016-2019 by the Agua Chiquita permittee and to suffer 123 documented exclosure violations from 2016-2019 by the Sacramento Allotment permittee. Obviously, even though we are newly discovering and publicly presenting these facts, the Regional and Lincoln National Forest officials involved in conceiving, preparing and promoting this project have undoubtedly not only known of these facts, but counted on them to remain unknown to the public. All that the Lincoln National Forest needs to do to "protect and improve NMMJM critical habitat areas"³⁴ is to terminate the Sacramento Allotment grazing permit.

The facts and science presented here are antithetical to the Lincoln National Forest's incomprehensible, fanatical devotion to the promotion and support of grazing on the Sacramento Allotment. Fencing, no matter the type, whether it be electric, barbed wire, or metal rod, is no match for a permittee who has established himself as so tenaciously and aggressively uncooperative. The most logical action here would be to terminate the Sacramento Allotment grazing permit, to allow the riparian meadows to recover, and to focus on repairing the area's widespread erosion caused by years of abusive overgrazing and unprofessional Forest Service management. A massive riparian restoration program is now necessary. No new structural livestock "improvements" are necessary to accomplish the goal to "protect and improve NMMJM critical habitat areas."³⁵

We look forward to helping the Lincoln National Forest remedy the final Environmental Assessment's failure to present, evaluate, and select a preferred grazing termination alternative for the Sacramento Allotment that is logical, that is consistent with science and that is appropriately responsive to the Sacramento Allotment permittee's consistently abusive and uncooperative behavior.

CONTACT INFORMATION

If you have further questions, please contact Robin Silver, M.D., Center for Biological Diversity, P.O. Box 1178, Flagstaff, AZ 86002, by mail; by phone: (602) 799-3275, or by Email: rsilver@biologicaldiversity.org.

Sincerely,



Robin Silver, M.D.
Co-Founder and Board Member
Center for Biological Diversity

³⁴ Ibid.

³⁵ Ibid.