



November 1, 2016

Patricia O'Connor, Supervisor
Bridger-Teton National Forest
Box 1888
Jackson, WY 83001

Re: Dell Creek and Forest Park elk feedgrounds on the Bridger-Teton National Forest

Dear Supervisor O'Connor:

We understand the Bridger-Teton National Forest may soon be issuing Special Use Permits to continue elk feeding at the Dell Creek, Forest Park, and/or other feedgrounds. Please consider these comments, submitted on behalf of the Sierra Club Wyoming Chapter and Western Watersheds Project, and place them in the project file for these permits. Please also place the referenced attachments in their entirety in the project file.

The Sierra Club is a national non-profit conservation organization founded in 1892 with more than 3,000 members and supporters in Wyoming and 2.4 million members and supporters nationwide. Its mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

Western Watersheds is a non-profit conservation organization founded in 1993 with the mission of protecting and restoring western watersheds and wildlife through education, public policy initiatives, and litigation. Headquartered in Hailey, Idaho, Western Watersheds Project has 2,000 members and field offices in Idaho, Montana, Oregon, Wyoming, Arizona and California.

We have several concerns about permitting and operating elk feedgrounds on the Bridger-Teton National Forest (BTNF). Some of our concerns are whether some elk feedgrounds have undergone lawful analysis under the National Environmental Policy Act (NEPA), and

whether the BTNF has followed its own regulatory requirements in permitting elk feedgrounds. Other concerns deal with follow up actions committed to by the BTNF in the Alkali Creek elk feedground December 2015 Final Record of Decision.

We understand that old Special Use Permits (SUP) issued by the Bridger-Teton National Forest allowing the Wyoming Game and Fish Department to undertake operations at Dell Creek elk feedground and Forest Park elk feedground have expired or will expire on December 31, 2016.

The Special-Use Permit for Dell Creek Elk Feedground from the U.S. Department of Agriculture Forest Service dated 08/02/96 (BTNF 1996) lists the "Expir. Date" as 12/31/16 at the top of the first page. However, on page 2 of the Permit it states that "This permit will expire at midnight on 12/31/2015."

The Amendment for Special Use Authorization dated 9/6/13, and the U.S. Department of Agriculture Forest Service Special Use Permit for Forest Park elk feedground dated June 15, 1998 (BTNF 1998) shows on the first page of the Special Use Permit that the "Term Date" is "Dec. 31, 2016."

Thus both SUPs will either expire on December 31, 2016 or the Dell Creek SUP already expired last December 31, 2015, and the Forest Park SUP will expire at the end of this year. Among other requests listed at the end of this letter, we request that the BTNF explain to us what is the correct date of expiration for the Dell Creek Elk Feedground Special-Use Permit. And, if the SUP for Dell Creek Elk Feedground has already expired, the BTNF needs to explain if elk feeding activities occurred after the expiration of the Permit, and what plans there are, if any, for continuing elk feeding at the Dell Creek site in the future. As your agency has acknowledged, under 36 CFR 251.50, an authorization is required for this use of National Forest System lands. We are concerned that the BTNF may have violated their own regulations in allowing elk feeding to continue without the necessary permit in place.

The BTNF must comply with the National Environmental Policy Act (NEPA)

If the Bridger-Teton National Forest intends to allow the Wyoming Game and Fish Department to conduct winter feeding of hay to elk at either or both the Forest Park and Dell Creek sites beyond the expiration dates of the existing (or recently expired) permits, the BTNF must comply with the NEPA and conduct a thorough environmental analyses of the proposed actions. We remind you that in prior litigation on these feedgrounds, the Tenth Circuit Court of Appeals noted that while the Forest Service did not need to conduct *supplemental* analysis on the Forest Park and Dell Creek feedgrounds, the Forest Service's *approval and issuance of feedground permits* were a major federal action under NEPA. *GYC v. Tidwell*, 572 F.3d 1115 (10th Cir. 2009).

Thus, an EIS is necessary at this permit issuance stage to identify significant problems, develop adequate alternatives, describe mitigations and achieve solutions in an appropriate timeframe for longstanding problems.

The BTNF may not merely issue one-year permits to continue elk feedgrounds with no or minimal NEPA because the BTNF is required by NEPA to take a "hard look" at the disease impacts of authorizing elk feedgrounds and conducting elk feedground operations on USFS lands.

The BTNF has never conducted an environmental analysis under NEPA for Dell Creek elk feedground; whereas the circa 1980 EA for Forest Park is some 36 years old and could not have

considered the serious disease implications of elk feeding with the advance of Chronic Wasting Disease (CWD) across Wyoming in these intervening years.

An agency may avoid an EIS only if the action will have no significant impact. 40 C.F.R. § 1508.9(a), 1508.13. The NEPA regulations list ten factors that help determine whether an agency action “may” cause significant impacts and therefore require an EIS. 40 C.F.R. § 1508.27(b). The factors include: effects that are “highly uncertain or involve unique or unknown risks” or “likely to be highly controversial,” *id.* § 1508.27(b)(5), (4); “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, [] wetlands, [] or ecologically critical areas,” *id.* § 1508.27(b)(3); “[t]he degree to which the action . . . may cause loss or destruction of significant scientific, cultural, or historic resources,” *id.* § 1508.27(b) (8); and the presence of cumulative impacts, *id.* § 1508.27(b)(7). The presence of even just “one of these factors may be sufficient to require preparation of an EIS in appropriate circumstances.” *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 865 (9th Cir. 2005).

Numerous factors are triggered here, as explained in more detail below and in the attached scientific articles. The inherent and unavoidable concentration of elk during artificial winter feeding increases the risk of CWD and is a significant effect on the environment; winter feeding of elk also increases the prevalence of brucellosis and other diseases in the herd. This makes winter elk feeding highly controversial and with effects that have unique risks to the entire Greater Yellowstone ecosystem’s elk population. The Greater Yellowstone ecosystem is certainly an ecologically critical area; and the action may cause the loss or destruction of its significant wildlife resources. The disease spread furthered by these feedgrounds will cause significant cumulative impacts to ripple across the ecosystem, such as on all species that rely upon elk as a food source. These risks are not speculative, but real and imminent, in light of the fact that a mule deer infected with CWD was **found only 18 miles from the Forest Park feedground in 2016**. Because elk feedgrounds have a significant effect on the environment, the BTNF may not avoid the hard look required by NEPA by invoking a “categorical exclusion” and issuing a Decision Memo. In addition, the BTNF may not avoid or escape their NEPA obligations by failing to address their own permitting requirements.

Changed conditions and newer scientific findings

The BTNF should be aware of the changed conditions and newer scientific findings during the years since Forest Park and Dell Creek were last permitted in 1998 and 1996 respectively. See in particular BTNF employee Tyler Johnson’s June 2014 Chronic Wasting Disease Literature Review Technical Report, Appendix 7 to the Final Supplement to the Environmental Impact Statement Long Term Special Use Authorization for the Wyoming Game and Fish Commission to Use National Forest System Land for their Winter Elk Management Activities at Alkali Creek Feedground, 2015.

Some of the many important findings described in that June 2014 review by Johnson include:

“Owing to highly efficient direct transmission of CWD among cervids the number,

duration, and frequency with which infectious individuals encounter susceptible ones is likely to drive early density dependent transmission of CWD.” p.5

“Cross et al. 2013 demonstrated that in areas where elk are artificially congregated at feedgrounds per capita rates of contact and duration of contact were more than twice as high as groups not receiving supplemental feed.” p.6

“(E)lk feedgrounds attract elk from large catchments and congregate elk that might not otherwise contact each other, thereby increasing the chance that an infected elk from a distant locale would be the one to introduce the disease to a new herd area.” p.6

“Studies on naturally occurring populations of elk have shown that mortality from chronic wasting disease *by itself* can exceed natural rates of mortality and reduce the overall survival of free roaming cow elk below 85% (Monello et al. 2014 emphasis in original).” p.7

“(S)tudies on free-ranging and farmed elk and deer are clear in showing that population level impacts are to be expected from the introduction and spread of CWD in elk on the Bridger-Teton National forest and nearby areas.” p.7

“Free-ranging elk herds in Wyoming (Cross et al. 2013, Williams et al. 2014) and Canada (Vander Wal et al. 2013, 2014) have herd densities ranging from .21 to 1.2 elk/km2 Elk density at the average state feedground in Wyoming is 1976.6 elk/km2, based on the reported average of 600 elk on 75 acres.” p.8

The current BTNF Supervisor, Patricia O’Connor, has also recently acknowledged that elk feedgrounds should cease on USFS lands.

“The continued westward expansion of chronic wasting disease detected during the 2015 hunting season punctuates the need for exploring opportunities for change. In making this decision, I am recommending that the WGFC/WGFD transition away from the need for supplemental feeding for elk. Use at Alkali Creek feedground is not intended to be permitted in perpetuity. My staff will prepare a report annually that identifies changing conditions and recommends any needed adjustment in feedground management.” (O’Connor 2015:5 in Final Record of Decision for the Alkali Creek elk feedground SEIS)

“I clearly understand and acknowledge that the Commission’s action of feeding results in artificially high concentrations of elk during winter and early spring which increases disease transmission (Johnson, 2014; Appendix 7; and Appendix 3 in the 2015 Final SEIS).” (Id.:6)

“When chronic wasting disease becomes established on the Bridger-Teton National Forest, there is a moderate to strong likelihood that the population limiting effects of chronic wasting disease to elk, mule deer, and moose may be hastened by supplemental feeding.” (Id.:6)

“The 2008 special use permit issued to the Commission for use of National Forest System land for elk management activities at Dog Creek, Fall Creek, Fish Creek, Muddy Creek and Upper Green River Feedgrounds will be amended to add authorization for use at Alkali Creek Feedground. However, this amendment will not occur until the WGFD Chronic Wasting Disease Management Plan update is completed and a review by the Forest Supervisor finds that the plan adequately addresses risks and management options for feedgrounds on National Forest System lands. If the plan is not completed prior to initiation of feeding for the winter of 2015-2016, a one year temporary permit will be issued.” (O’Connor 2015:4 in Final Record of Decision for the Alkali Creek elk feedground SEIS) Additionally, the Final ROD for Alkali Creek feedground requires the WGFD to, “Annually report chronic wasting disease mitigation actions that have been taken with regards to feedground management on National Forest System lands in western Wyoming.” (Id.)

“(C)hronic wasting disease mitigations will require an even greater collaborative interagency effort to manage.” (Id.:7)

In addition, one or both of these elk feedgrounds are also located in known Canada lynx habitat (USFWS 2014, BTNF 2016a), grizzly bear occupied and Demographic Monitoring Area (WGFD 2016), wolverine dispersal corridors (BTNF 2016b), and known gray wolf habitat (USFWS, et al. 2015). Canada lynx, grizzly bears and gray wolves are protected under the Endangered Species Act, and the wolverine is being considered for ESA protection by the US Fish and Wildlife Service. Since the promulgation of elk feedgrounds by the BTNF affects the health of prey species such as deer, moose and elk, elk feedgrounds have the potential to adversely affect all of these protected carnivores. This needs to be evaluated in an EIS. Due to these impacts on ESA-listed species, the Forest Service also needs to consult under the ESA on any permit renewal, even a temporary one.

CWD exists in western Wyoming in the elk feedgrounds region

It is indisputable that CWD is now in western Wyoming in the region where the WGFD and the US Fish and Wildlife Service feed some 22,000 densely concentrated elk at 23 locations each winter. A moose tested positive for CWD in Star Valley in 2008 (Moose Hunt Area 23). Three doe mule deer tested positive for CWD in Green River, Wyoming, in late 2012 (Deer Hunt Area 132). A dead doe mule deer positive for CWD was discovered in Star Valley early summer of 2016 (Deer Hunt Area 145). A buck mule deer harvested by a hunter near Dubois, Wyoming, tested positive for CWD (Deer Hunt Area 128). All these CWD endemic areas are either west of the Continental Divide in Wyoming, or adjacent to the Continental Divide; all are near- or are connected via cervid migrations to- elk feedgrounds.

Forest Park elk feedground in the Greys River drainage is only **13 miles** from where the CWD-infected moose was found in 2008, and only **18 miles** from where the CWD-infected mule deer was found in 2016. It is actually located within a CWD endemic area as determined by the Wyoming Game and Fish Department. Dell Creek elk feedground near Bondurant, Wyoming, is along the migratory path of mule deer from the lower Green River Basin; CWD was found in mule deer in the town of Green River in 2012. Dell Creek feedground is bracketed by CWD endemic areas 31 miles to the northeast (Deer Hunt Area 128), and 26 miles to the southwest (Deer Hunt Area 145), respectively. Elk, deer and moose are known to share habitats throughout this

region; it is virtually assured that elk, deer and moose move from CWD endemic areas to currently non-endemic areas every year. The risk is significant that elk that attend both Forest Park and Dell Creek will be or already are exposed to CWD.

Given the proximity of the disease, the catastrophic risk of intraspecific and cross-species infection to herds of elk, deer and moose from CWD, the persistence of the infectious prions in soil and plants, and the known harmful effects of concentrating hundreds and thousands of elk for months each winter in the face of this infectious and fatal disease, the BTNF must consider and thoroughly analyze alternatives to elk feedgrounds. Merely “monitoring” elk feedgrounds for symptomatic elk or other cervids is not sufficient and does virtually nothing to mitigate the risk to elk, nor does removing symptomatic elk or other cervids. In addition to the expeditious and complete phase out of elk feedgrounds, the BTNF must require appropriate disposal of the carcasses of CWD-infected elk or other cervids discovered and/or removed by the WGFD or anyone. Additionally, the BTNF must not allow hay harvested from CWD endemic areas to come onto BTNF lands. The BTNF may not permit elk feedgrounds without conducting a thorough Environmental Impact Statement.

Conclusion

We request from the Bridger-Teton National Forest:

1. A letter explaining the discrepancy among the dates in the Dell Creek SUP, and what is the correct date of expiration of the Special Use Permit for Dell Creek elk feedground. If Dell Creek elk feedground SUP expired at the end of 2015, and no one-year permit was issued and elk feedground operations were conducted regardless, we request an explanation of what elk feedground operations if any were conducted thus far in 2016 absent the SUP.
2. A detailed description of the efforts the BTNF has undertaken to assure that hay potentially containing infectious CWD prions harvested from CWD endemic areas is not transported to and placed on elk feedgrounds on BTNF lands to supply elk with feed during the winter.
3. A detailed description of the methods of disposal of portions or entire carcasses of CWD infected wildlife found by agency personnel on USFS lands in Wyoming.
4. A detailed description of the collaborative discussions and actions undertaken by both the WGFD and the BTNF to implement the April 2016 WGFD CWD Management Plan.

We look forward to your response to these requests in writing within twenty working days from the receipt of this letter. Note: In addition to this letter, we intend to submit a Freedom of Information Act request for copies of relevant existing documents held by the Bridger-Teton National Forest.

Sincerely,

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Sierra Club Wyoming Chapter

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Attachments: Note, these documents are believed to be in the possession of the Bridger-Teton National Forest in Jackson, Wyoming. Therefore, in the interest of conserving paper and costs, we will submit only the first pages of the documents or specific maps as indicated by the list below. We also provide the URL for the documents. In the emailed version of this letter, we will submit some documents attached to the email, or we will submit the link to where the document is already archived on the BTNF website or elsewhere.

1. Bridger-Teton National Forest. 1996. Special Use Permit Issue Date 08/02/96 for Dell Creek Elk Feedground.
2. Bridger-Teton National Forest. 1998. Special Use Permit Issue Date June 15, 1998 for Forest Park Feedground.
3. Bridger-Teton National Forest. 2016a. Oil and Gas Leasing in Portions of the Wyoming Range in the Bridger Teton National Forest DSEIS. Jackson, WY. Figure A-9a. Northern Rockies lynx planning area occupied lynx habitat and lynx core habitat map. P. 12 Appendix A. Jackson, WY. At: <http://www.fs.usda.gov/project/?project=48737>
4. Bridger-Teton National Forest. 2016b. Oil and Gas Leasing in Portions of the Wyoming Range in the Bridger Teton National Forest DSEIS. Jackson, WY. Figure A-21. Wolverine dispersal corridors. Map, p. 25 Appendix A. Jackson, WY. At: <http://www.fs.usda.gov/project/?project=48737>
5. Johnson, Tyler. June 2014 Chronic Wasting Disease Literature Review Technical Report, Appendix 7 to the Final Supplement to the Environmental Impact Statement Long Term Special Use Authorization for the Wyoming Game and Fish Commission to Use National Forest System Land for their Winter Elk Management Activities at Alkali Creek Feedground, 2015. Entire Appendix 7 at: <http://www.fs.usda.gov/project/?project=39126>
6. O'Connor, Patricia M.. December 2015. Final Record of Decision Long Term Special Use Authorization for the Wyoming Game and Fish Commission to Use National Forest System

land for their Winter Elk Management Activities at Alkali Creek Feedground. Final Record of Decision at: <http://www.fs.usda.gov/project/?project=39126>

7. US Fish and Wildlife Service. 2014. Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Contiguous United States Distinct

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Population Segment of the Canada lynx and Revised Distinct Population Segment Boundary. FR Doc. 2014-21013 Filed 09/11/2014 publication date 09/12/2014. Map p. 54846. At: https://www.fws.gov/policy/frsystem/title.cfm?title=Endangered%20and%20Threatened%20Wildlife%20and%20Plants&doc_type=final&date=14

8. US Fish and Wildlife Service, National Park Service, Wyoming Game and Fish Department, Wind River Indian Reservation, and USDA Wildlife Services. 2015. Wyoming Wolf Recovery 2015 Annual Report. Map p. WY-3. At: [https://www.fws.gov/mountainprairie/es/species/mammals/wolf/2016/WY_Annual_Report-2015%20Final%20\(1\).pdf](https://www.fws.gov/mountainprairie/es/species/mammals/wolf/2016/WY_Annual_Report-2015%20Final%20(1).pdf)

9. Wyoming Game and Fish Department. 2016. Wyoming Grizzly Bear Management Plan. Figure 1. Boundary Mapping (Map of grizzly bear Primary Conservation Area, Demographic Monitoring Area, 2014 Grizzly Bear Distribution, etc.) P. vi. Cheyenne, WY. At: <https://wgfd.wyo.gov/WGFD/media/content/PDF/Wildlife/Large%20Carnivore/GBMgmt-Plan-Approved-5-11-2016.pdf>

