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Title: Chair

Comments: Re: High Uintas Wilderness Domestic Sheep Analysis Draft Environmental Impact Statement

Dear Supervisor Schramm:

The Wyoming Coalition of Local Governments ("CLG" or "Coalition") appreciates the opportunity to provide comments to the High Uintas Wilderness Domestic Sheep Analysis Draft Environmental Impact Statement ("DEIS"). The Coalition believes there are several significant issues that need to be corrected. The Coalition supports the preferred alternative but believes the analysis must be strengthened in order to create a durable and defensible decision.

## I. STATEMENT OF INTEREST

The Coalition is a voluntary association of local governments organized under the laws of the State of Wyoming to educate, guide, and develop public land policy in the affected counties. Wyo. Stat. [sect][sect]11-16-103, 11-16-122, 18-5-201. Coalition members include Lincoln County, Sweetwater County, Uinta County, Sublette County, Lincoln Conservation District, Sweetwater County Conservation District, Uinta County Conservation District, Sublette County Conservation District, and the Little Snake River Conservation District. The Coalition serves many purposes for its members, including the protection of vested rights of individuals and industries dependent on utilizing and conserving existing resources and public lands, the promotion and support of fish and wildlife habitat improvement, the support and funding of scientific studies addressing federal land use plans and projects, and providing comments on behalf of members for the educational benefit of those proposing federal land use plans and land use projects.

Both county and conservation district members of the Coalition are local governments with jurisdiction and special expertise as set out in the CEQ regulations in a variety of different contexts. The county and conservation district members of the Coalition enjoy the authority to protect the public health and welfare of Wyoming citizens and to promote the management and protection of federal land natural resources. Wyo. Stat. [sect][sect]18-5-102; Wyo. Stat. [sect][sect]11-16-122. Given

this statutory charge and wealth of experience in federal land matters, the Coalition members have participated as cooperating agencies on most Wyoming projects and land use plans and have coordinated efforts with BLM, U.S. Forest Service, and other federal, state, and local entities.

The Coalition submitted scoping comments on June 23, 2014 and then again in April 2016 in response to the December 1, 2015 notice of scoping. 80 Fed. Reg. 75045 (Dec. 1, 2015). The Coalition supported continuation of livestock grazing and opposed management actions that would introduce big horn sheep and lead to the removal of domestic sheep.

## II. NO ACTION DOES NOT NECESSARILY MEAN "NO GRAZING"

According to Council on Environmental Quality ("CEQ") rules, there are "two distinct interpretations of 'no action' that must be considered, depending on the nature of the proposal being evaluated." See 46 Fed. Reg. 18026-01, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (1981). In the first, "'no action' is 'no change' from current management direction or level of management intensity." *Id.* (Emphasis added). In the

second, "the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward." *Id.*

The ANF has opted to use the second interpretation of "No Action" in the DEIS, even though connected land use plan (ANF and WCNF) direction that continues livestock grazing. See DEIS at

22. The Coalition strongly disagrees with assuming that cancelling livestock grazing on the forest is the appropriate "no action." As the DEIS provides, livestock grazing has occurred on the forest for at least 100 years. DEIS at 54. As the Coalition stated in its scoping letter, the current land use plans authorize continued livestock grazing. There is no support whatsoever to adopt a "no action" alternative that means "no grazing" on a landscape that has been grazed since before the Forest Service existed and by law has been recognized as suitable and available for domestic grazing.

Moreover, assuming that "No Action" necessarily means "No Grazing" distorts the analysis and the range of alternatives. If the Forest Service had, instead, adopted a "No Action" alternative that merely continues existing management under the CEQ guidance, then the DEIS would disclose how current management has affected the environment and the impacts or lack of impacts on BHS. If the Forest Service wants to include a "no grazing" alternative, it would be the removal of all domestic sheep, a proposed action that would require congressional action and a plan amendment. The preferred alternative could then incorporate elements of Uinta County, Wyoming plans and

recommendations by increasing intensity of grazing to improve habitat and reduce the risk of wildfire through move sheep or longer seasons of use.

### III. NO ACTION ALTERNATIVE IS INCONSISTENT WITH ANF LAND USE PLAN

Livestock grazing decisions must conform to the decisions made in the LRMP currently in effect. 16 U.S.C. [sect]1604(i). The ANF Land and Resource Management Plan ("LRMP") classifies the affected land as suitable and available for livestock grazing. ANF LRMP at 4-9, 4-26 - 4-27. Therefore, the permittees enjoy a priority right to renewal when livestock grazing conforms to the LRMP and the permittee is in compliance with the terms and conditions of the permit pursuant to Section 402 of the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. [sect]1752( c); 36 C.F.R. [sect] 222.3(c)(1)(ii).

The No Action alternative (e.g. no grazing after two years) is not a viable alternative considering the ANF and Wasatch LRMPs classify these lands as suitable and available for livestock grazing. ANF LRMP at 4-9, 4-26 - 4-27; WCNF LRMP at Appendix VI-1, 3-4. The plans reflect Congress' direction in the National Forest Management Act ("NFMA") and the Utah Wilderness Act, [sect]16 U.S.C. 1133(d)(4), that grazing continue.

Moreover, the DEIS demonstrates that "[b]ased upon approximately 1,200 different study sites located throughout the project area, the plant communities grazed by livestock are in satisfactory condition (USDA, 2017; USDA, 2017-04-28; Cameron, 2017-04-28; Huber, 2016)." DEIS at 50. The DEIS, therefore, did not anticipate any effects to BHS habitat. See DEIS at 157. Thus, the No Action alternative, is inappropriate and does not match resource conditions.

### IV. PROBABILITY OF DISEASE TRANSMISSION OMITTED

In 2016, the Ninth Circuit found that the USFS Risk of Contact ("ROC") Model for

determining the impacts on Big Horn Sheep ("BHS") was not arbitrary and capricious, in part, because the USFS used a range of probabilities of disease transmission to estimate the possible transmission. To account for that difficulty, the Forest Service ran the disease model using a range of probabilities of contact resulting in disease transmission - 5%, 10%, 25%, 50%, 75%, and 100%. Idaho Wool Growers Ass'n v. Vilsack, 816 F.3d 1095, 1101 (9th Cir. 2016). This approach allowed the "Forest Service to assess the effects of various management alternatives on bighorn sheep subpopulations despite its inability to estimate accurately the degree of risk of disease-conveying contact." Id.

Assuming that domestic sheep carry and transmit disease to BHS - which the Coalition has disputed in its 2014 and 2016 comments incorporated here by reference - the DEIS omits using probabilities of disease transmission which prevents the Coalition or any commenter from evaluating to what extent the Forest Service has considered (and disclosed) the transmission rate upon which

the decision was based. See DEIS at 145-160. To create a defensible document, the Forest Service should use a range of probabilities to determine disease transmission to ensure that Forest Service has considered, and disclosed, this issue to the public.

## V. RISK OF CONTACT EXAGGERATED

### A. Foray Distances Not Based on Ashley BHS

According to the BHS April 2019 Assessment ("BHS Assessment"):

Data analyzed on the Hells Canyon BHS population in Idaho found that 14.1% of rams, and 1.5% of ewes left CHHR's (forayed) during the summer months (O'brien et. al. 2014, Carpenter et. al. 2014, USDA FS 2015). It was also found that 50% of foraging rams traveled at least 8.1 km and 10% traveled 21.7 km beyond CHHR boundaries (O'brien et. al. 2014, Carpenter et. al. 2014, USDA FS 2015).

BHS Assessment at 22. The Coalition notes that the USFS "has more than 146,000 observations/VHF/GPS locations of Uintas BHS from 1986 to 2019." Id. at 23. However, the ANF has used foray data from Hells Canyon Idaho to estimate the likelihood that BHS will foray into domestic sheep allotments on the Ashley.

The USFS must explain its assumptions and its decision to omit directly relevant data. WildEarth Guardians v. United States Bureau of Land Mgmt., 870 F.3d 1222, 1235 (10th Cir. 2017). The "blanket assertion" that all sheep - regardless of habitat, barriers, predation, and other issues - will foray the same distance lacks any basis in fact. Id. Rather, the USFS must "sharply defin[e] the issues and provid[e] a clear basis for choice among options." Citizens' Comm. to Save Our Canyons

v. Krueger, 513 F.3d 1169, 1179 (10th Cir. 2008). In other words, the USFS must explain why, in the face of significant data regarding Ashley BHS, the USFS opted to use data from Hells Canyon sheep in a different state. BHS Assessment at 22.

### B. Private Land Assumptions Exaggerate Risk of Contact

According to the DEIS,

Boundaries and timeframes for domestic sheep use on private lands were difficult to obtain, therefore it was assumed that each one mile section of private land with known domestic sheep use

was equivalent to a domestic sheep allotment and was occupied by domestic sheep year round (USDA FS 2019). Thus, a year round timeframe and year round CHHR was used in modelling [sic] ROC to private lands with domestic sheep use (USDA FS 2019).

DEIS at 145 (emphasis added). The USFS "assumes" that for the entire year, domestic sheep are on private land. Id. As a result, in modeling the risk, the USFS assumes the highest possible domestic sheep presence on private lands.

This is not a reasonable assumption. Most private lands used in the operation of domestic sheep are not currently used year round but instead compliment Forest Service and BLM permitted lands depending on the needs of the operation and timing of the grazing on public lands. Private lands generally involve smaller parcels than Forest Service and BLM parcels, and, moreover, each operation uses each private parcel differently. Private lands may be fenced, sheep may be penned, shipped, and isolated from potential BHS contact. For example, at the very least, private land may not be used during the summer (May 1 to October 31), BHS Assessment at 23, and yet the DEIS uses those months to calculate the ROC on private lands.

Nor has the USFS made any attempt to work with local conservation districts and landowners to determine what months domestic sheep may be on the private lands. The Coalition encouraged the USFS to work with local governments and the permittees in 2016 and it appears that the USFS blatantly ignored that request.

#### C. New Literature Emphasizes Impact of Mountain Lions Predation on Big Game

The DEIS states that "[t]he UDWR has identified mountain lion predation as a threat to the Uintas BHS herds and actively manages predation within this BHS unit through a harvest objective strategy" including a liberal quota of lion harvest. DEIS at 165. The DEIS does not quantify, nor estimate, the number of BHS killed by lions.

Studies published in 2017 show that mountain lion predation on BHS is substantial. See E. Rominger, The Gordian knot of mountain lion predation and bighorn sheep, J. Of Wild. Mgmt. (Nov. 2017). That study concludes that there is an increased presence of mountain lions in habitats where they were historically absent or rare because of the expansion of mule deer and mule deer now inhabit BHS core ranges during various times of the year. Id. Moreover, lion populations are not influenced by declines in BHS populations because lions can rely on mule deer, elk, and other prey species. Thus, BHS continually face predation from an apex predator that does not have a natural check on the overall population.

#### VI. PROXY METHODOLOGY FOR DETERMINING IMPACTS ON WATER QUALITY PROBLEMATIC

Throughout the hydrology section, the DEIS uses various indicators as proxies to estimate the impacts that renewal of the domestic sheep permits will have on water quality and wetlands. See

e.g. DEIS at 99. For example, the DEIS states that "[s]tream bank trampling is used as a proxy for water quality because bank trampling can result in soil erosion and sediments can carry nutrients with them to streams." DEIS at 99; see also id. at 100 ("For water quality, the amount of stream

banks trampled by livestock is used as an indicator of the amount of sediment that could enter a stream due to soil erosion in the trampled area."). The DEIS continues that the "[n]umber of livestock stream crossings was also chosen as a proxy for water quality by providing an indication of the number of places where livestock concentrate when they cross streams where there may be

sedimentation, and thus direct input of nutrients and bacteria to a stream." Id. The DEIS "compar[es] . . . the amount of trampled stream banks along the sheep driveways . . . between alternatives and to the total length of streams in the project area" to estimate the magnitude of impacts on water quality. Id. at 100.

These proxy methods are apparently used because only "one round of bacteria samples were collected along the North Slope Road on East Fork Bear River, East Fork Blacks Fork, Middle Beaver Creek, East Fork Beaver Creek, Thompson Creek, and Burnt Fork Creek in allotments on the north slope of the Uinta Mountains but not within the High Uintas domestic sheep allotments (Holt and Bechthold 2009)." Id. at 96. Utah Division of Water Quality has not listed "any streams in the High Uintas domestic sheep project area for exceedances of water quality standards for nutrients (nitrogen and phosphorus)." Id.

The proxy method is extremely problematic. First, the State entity with jurisdiction, DWR, has not listed any streams as exceeding standards in the project area. Second, rather than using the data developed by the DWR to determine that there were no exceedances, the Forest Service uses various "proxies" to compare the alternatives. Instead of using actual hard data, the Forest Service uses aerial imagery to estimate the sediment in the streams. See DEIS at 99 ("No direct water quality data has been collected within the allotments from the impacts of sheep, and bank trampling and livestock stream crossings along the Sheep Driveway are used as a proxy for impacts from sheep to water quality."). The DEIS does not disclose what metric the Forest Service used to determine how much sediment or other The proxy method is unreliable and could incorrectly inflate water quality impacts. The Forest Service must develop DWR's data and explain the conclusions DWR found in the FEIS rather than speculating from indicators that were gathered using aerial imagery. See DEIS at 100.

#### VII. UDWR BIGHORN MANAGEMENT PLAN NOT FULLY CONSIDERED IN DEIS

Throughout the DEIS, the Forest Service incorporates the Utah Bighorn Sheep Statewide Management Plan ("BHS Plan") will be followed. See DEIS at 139. According to the BHS Plan, UDWR may "[r]educe bighorn numbers in specific areas of concentration through trapping and transplanting programs to help reduce risk of pathogen transmission." BHS Plan at 16. The DEIS, however, does not discuss the possibility of reducing numbers of BHS to decrease risk of contact. The FEIS should be revised to ensure that the risk of contact takes into account actions by UDWR to reduce density of BHS in areas where transmission of disease is most probable. Of course, this also requires the Forest Service to develop disease transmission probabilities as discussed supra.

The Coalition also suggests that BHS habitat improvement projects may be used to pull BHS away from active allotments. The BHS Plan directly supports such an action, see BHS Plan at 17-18, and yet the DEIS does not discuss this possibility as a method of reducing risk of contact. The Forest Service must seriously consider material comments as the Coalition's suggestion may decrease the level of impacts anticipated.

#### VIII. CONCLUSION

The Coalition supports the Project and the Preferred Alternative, but the above comments, as well as those submitted independently by Lincoln County and Lincoln Conservation District, must be addressed to ensure that the benefits and the negative impacts are properly analyzed and the Forest Service reaches a defensible and durable decision.

/s/ Kent Connelly

Kent Connelly, Chairman

Coalition of Local Governments