

Data Submitted (UTC 11): 6/21/2024 4:49:47 AM

First name: Chris

Last name: Higley

Organization:

Title:

Comments: The Flaming Gorge Recreation Area Management Plan should have addressed public safety concerns with livestock on the Highway that were recognized in the 1986 Ashley National Forest Land Management Plan (Appendix A) and that continue to exist today. The 1986 plan recognized the public safety concerns with livestock on the highways and recommending fencing along roads and highways. The same public safety issues (livestock on public highways) exist today. Thousands of visitors drive the scenic highway 191 and 44 and the Forest Service continues to ignore public safety concerns with livestock on the Highways.

Even though the proposal to fence the highways was not carried forward (as stated in a subscript in the EA), the Forest Service should consider other feasible ways to reduce vehicle and livestock collisions to ensure public safety on the highways within the NRA. The Forest Service can consider modifying livestock grazing allotment boundaries to exclude the roadways from the allotments without having to build miles of fence. Another option would be to close the allotment or allotments near the highway and allow the livestock permit holders to graze cattle on other available allotments away from the paved highway.

Section 101(a) of the NEPA statute establishes the responsibility of the Federal government to reduce "risk to health or safety." The Forest Service has not adequately addressed the inherent risk to safety when Forest Service grazing permits authorize cattle to graze on or near a busy paved highway within a National Recreation Area. The emphasis of the Flaming Gorge Recreation area is to provide for safe public outdoor recreation. When the Forest Service authorizes cattle grazing along a busy highway within the recreation area, the Forest Service should alleviate that safety issue with any legal means at the Forest Service's disposal.

Under Forest Service policies and regulations, the Forest Service has full discretion to determine where cattle can and cannot graze on Forest Service lands. The Forest Service can modify livestock grazing permits to ensure that cattle are not allowed to graze on or near the paved highway. Because the Forest Service has absolute control over whether or not cattle are allowed to graze on or near the highway, any vehicular accidents involving livestock are the absolute liability of the Forest Service. Now that these statements and this recognition of liability has been clearly proposed during this comment period, if the Forest Service ignores these stated safety concerns, the Forest Service can be liable for litigation by individuals who collide with livestock within the Flaming Gorge NRA. If the Forest Service ignores this safety issue, any and all vehicle damage, personal injury, and wrongful death claims will be the responsibility of the Forest Service because the Forest Service was made aware of this inherent safety issue and did not remedy the situation even though it was within the power of the Forest Service to do so.

Based on Utah State Highway information gained through a Utah Government Records Access and Management Act (GRAMA) request, there were over 150 vehicle/large animal strikes on Highway 44 and 191 within Daggett County in 2022 and at least 20 of those were livestock.

Please be aware that the concept of "open range" does not apply to Forest Service lands because the Forest Service has absolute legal control over the location and timing of grazing on Forest Service lands. Livestock owners cannot legally allow cattle to graze wherever they want on Forest Service lands by citing "open range" doctrine. Livestock owners can only graze cattle within their designated allotment areas and the Forest Service has full and unilateral control over the design and placement of allotment boundaries.

I strongly recommend that you consider the decision to modify livestock grazing allotment boundaries within the NRA to eliminate vehicular crashes caused by livestock.

I recommend that you add the following public safety language to the management plan to protect the public within the NRA:

"To ensure public safety, Livestock grazing permits will prohibit livestock grazing within 100 feet of Highway 44 or Highway 191." This can be accomplished by changing livestock allotment boundaries as needed to ensure livestock do not or cannot graze in the protective exclusion zone.

I also recommend more robust language on public safety in general. Please also consider adding the following language to the Flaming Gorge Plan.

"Proposed projects, programs, and permits will address and promote the safety of the public."

"The Flaming Gorge Recreation area will provide safe recreation activities and opportunities."

"Permits, activities, and programs will not be authorized if they could create public safety hazards."