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By Certified Mail

Vicki Christiansen, Interim Chief
U.S. Forest Service
1400 Independence Ave. SW
Washington, DC 20250

Tricia O'Connor, Forest Supervisor
Bridger-Teton National Forest
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Jackson, WY 8300

Dear Chief Christiansen and Supervisor O'Connor:

On behalf of Petitioners Western Watersheds Project, the Sierra Club, Wyoming Wildlife Advocates, and Gallatin Wildlife Association (collectively, "Petitioners"), we are writing with regard to how the Forest Service should address the National Environmental Policy Act ("NEPA") and Administrative Procedure Act ("APA") issues recently remanded to the agency in light of the ruling by the U.S. District Court for the District of Wyoming in *Western Watersheds Project v. Christiansen*, No. 17-cv-202-NDF (D. Wyo. Sept. 14, 2018).

The Issues Remanded to the Forest Service

As explained by the Court, in 2015, the Forest Service issued a Final Supplemental Environmental Impact Statement ("2015 FSEIS") for its decision to amend the 2008 special use permit to reauthorize the continued use of National Forest Service ("NFS") lands for winter elk feeding activities at Alkali Creek Feedground. The Court found that, in amending the 2008 long-term special use permit, the Forest Service failed to comply with the procedural requirements of NEPA, and violated the APA.

Specifically, the Court found that the Forest Service: failed to examine a reasonable range of alternatives when it analyzed only two alternatives in detail—a no action alternative of denying the permit outright, and the preferred alternative of granting the permit—and eliminated several alternatives from detailed consideration, including alternatives what would improve winter range in the Bridger-Teton National Forest ("BTNF") and phase out elk feeding; failed to take a "hard look" at the environmental consequences of artificial feeding, including its impacts on the introduction and spread of Chronic Wasting Disease ("CWD"); and failed to meaningfully

analyze the cumulative impacts of the region's feedgrounds on wildlife resources. The Court also held that because the Forest Service failed to comply with the procedural requirements of NEPA, its action violated the APA. Accordingly, the District Court vacated and remanded the decision to the Forest Service.

The Forest Service's Obligations on Remand

First, as explained by the Court:

[A]rtificial feeding increases the risk of disease transmission, increases the risk that the site will be contaminated with prions for a very long time, and also appears to blindly support WGFD's goal of managing elk movements to prevent commingling with livestock and danger to agricultural land[.]

These concerns are universal to all elk feedgrounds on the BTNF. Therefore, it is Petitioners' view that this decision applies to Alkali Creek Feedground, and to all future requests for renewals of special use permits to operate elk feedgrounds on NFS lands. WGFD has submitted renewal requests for two additional special use permits authorizing the operation of elk feedgrounds at Dell Creek and Forest Park. The Forest Service cannot move forward with those—or any—feedground decisions without ensuring that the decisions comply with the Court's ruling regarding Alkali Creek Feedground.

Second, prior to issuing any special use permit for elk feedgrounds on the BTNF, the Forest Service *must* examine “a shorter-term, reduced impact, and/or phase-out alternative” for elk feedgrounds that “tak[es] steps to transition elk to natural winter range and support historical migration routes.” As the Court recognized, whether WGFD continues its artificial feeding program elsewhere is irrelevant to “the issue . . . [of] WGFD's use of NFS land.” Alternatives that phase out artificial feeding on NFS lands are “reasonable, within the [Forest Service's] jurisdiction, and feasible.” Additionally, the implementation of a phase-out alternative would further the BTNF Land and Resource Management Plan's stated goal to “[h]elp reestablish historic elk migration routes to provide increased viewing and hunting opportunities for outfitters and clients.” In contrast, “[b]ased on the record, feedgrounds seem to undermine this goal.” Accordingly, the Forest Service must give phase-out and reduced impact alternatives serious consideration in all future NEPA analyses concerning elk feedgrounds.

Third, prior to issuing any special use permit for elk feedgrounds on the BTNF, the Forest Service must fully address the deficiencies in its impacts analysis identified by the Court. Specifically, the Forest Service must fully examine “the relationship between a stepped, phase out approach compared to longer-term use of the site as a feedground, and the maintenance and enhancement of long-term productivity,” and “the irreversible and irretrievable commitment of resources.” As the Court observed:

There is *no question* that Alkali Creek Feedground could become a reservoir for CWD infection if it becomes established in elk populations in northwest Wyoming. That potential is increased with the concentration of elk at feedgrounds. If infected animals congregate, the environment will eventually be contaminated. This will

significantly affect vegetation and soils, thus productivity, over a very long term (if not indefinitely) and may result in an irreversible and irretrievable loss of wildlife and habitat.

The potential for such devastating and irreversible impacts demands a serious consideration of alternative approaches. Moreover, the fact that the Commission overseeing WGFD decides whether to feed the elk each winter “does not excuse the [agency] from taking a hard look at the consequences of its action to allow the long-term use of NFS lands at Alkali Creek as a feedground.” Thus, moving forward, it is clear that the Forest Service *must* thoroughly examine the impacts of a reduced-impact or phase-out alternative for its analysis to pass muster under NEPA and the APA. We strongly encourage you to work with Petitioners and leading scientists in developing various reduced-impact and/or phase-out alternatives to ensure that you have buy-in from stakeholders with relevant and extensive expertise on the matter.

Fourth, prior to issuing any special use permit for elk feedgrounds on the BTNF, the Forest Service *must* “consider cumulative impacts from the integrated feedground program considering the best and currently available science that has advanced the understanding of CWD risk, transmission and mitigation since the 2008 analysis.” The analysis of disease impacts in the 2008 Final EIS accompanying the 2008 special use permit is woefully outdated, and does not reflect the current state of the science on the potential impacts of CWD. Therefore, the Forest Service must update its analysis and thoroughly examine the impacts of the entire feedground *program* on the region’s wildlife resources.

Fifth, prior to issuing any special use permit for elk feedgrounds on the BTNF, the Forest Service’s *must* “examine how granting the permit through 2028 or some shorter term would interrelate with, potentially support, or potentially undermine, the objectives” of the Fish and Wildlife Service and National Park Service’s joint 2007 Bison and Elk Management Plan (“2007 BEMP”), which anticipates a step-down approach to phase out artificial feeding on the National Elk Refuge, *regardless of whether an implementation framework has been adopted*. Alkali Creek Feedground, together with the other feedgrounds in the Gros Ventre drainage and on the National Elk Refuge, are “all part of an integrated program which cumulatively impacts the Jackson elk herd.” Therefore, “the Service need not await a specific framework for the implementation of the 2007 BEMP, but may reasonably rely on the good faith representation that the agencies aim to implement the transition sometime during the life of the Alkali Creek Feedground permit.”

In light of the above, and considering the Court’s holding that the Forest Service *must* “consider cumulative impacts from the integrated feedground program considering the best and currently available science that has advanced the understanding of CWD risk, transmission and mitigation since the 2008 analysis,” Petitioners strongly urge the Forest Service to prepare an EIS for *all* feedgrounds on the BTNF. The piecemeal approach of examining individual feedgrounds tends to obscure or minimize the severity of adverse impacts and hinders the Forest Service’s ability to examine alternatives to phase out artificial feeding across the BTNF. In contrast, a comprehensive EIS examining the entire “integrated feedground program” would enable the Forest Service to gain a more complete understanding of the impacts of artificial

feeding on the BTNF and its resources, and efficiently and effectively consider phase-out and reduced impact alternatives to minimize and mitigate those impacts.

Petitioners are willing to meet with Forest Service officials, or to arrange a call, to discuss the implications of the Court's ruling on the Forest Service's future decisions regarding special use permits for artificial feedgrounds, and potential paths forward.

Conclusion

The Court's ruling requires the Forest Service to critically reexamine its decision to authorize the continued operation of Alkali Creek Feedground—indeed, any feedground on NFS land—for as long as this detrimental practice is allowed to continue. The devastating impacts that CWD *will have* on the BTNF and its wildlife resources cannot be brushed aside, and thus we petition the agency to address this issue as it pertains to all BTNF feedgrounds in a timely and efficient manner based on the best available scientific evidence concerning CWD. *See* 5 U.S.C. § 553(e). The Forest Service must end its deference to WGFD's objectives and adopt an elk management strategy that promotes its stewardship responsibilities, as opposed to undermining them.

Sincerely,

/s/ Elizabeth Lewis

Elizabeth Lewis

/s/ William S. Eubanks II

William S. Eubanks II

Counsel for Petitioners