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14 Counsel for Petitioners

15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF WYOMING

17 WESTERN WATERSHEDS PROJECT,)
18 a non-profit organization,)

19 Petitioner,)

20 vs.)

21 JACQUELINE A. BUCHANAN, in her official)
22 capacity as acting Forest Supervisor for the)
23 Bridger-Teton National Forest; HARV)
24 FORSGREN, in his official capacity as Regional)
25 Forester, U.S. Forest Service, Region 4;)
26 UNITED STATES FOREST SERVICE, an agency)
27 of the United States Department of Agriculture,)

28 Respondents.)

Civil No. _____

PETITION FOR
REVIEW OF AGENCY
ACTION

1 been, and continues to be, injured by the Forest Service's actions. A favorable
2 decision from this Court will redress these injuries.

3
4 **PETITIONER**

5 9. Petitioner, Western Watersheds Project is a regional, membership, non-
6 profit organization dedicated to protecting and conserving the public lands and
7 natural resources of watersheds in the American West, with its headquarters at the
8 Greenfire Preserve in Custer County, Idaho. Western Watersheds Project is
9 supported by more than 1,400 members located throughout the United States and
10 has staff located in Wyoming, Idaho, Utah, Arizona, Montana, and California.

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12
13 **RESPONDENTS**

14 10. Respondent, JACQUELINE A. BUCHANAN is named in her official
15 capacity as Forest Supervisor of the Bridger-Teton National Forest. As Forester
16 Supervisor, Ms. Buchanan is the federal official with responsibility for all Forest
17 Service officials' actions challenged in this complaint

18 11. Respondent, HARV FORSGREN is named in his official capacity as
19 Regional Forester for Region Four (Inter-mountain) of the Forest Service. As
20 Regional Forester, Mr. Forsgren is the federal official with responsibility for all
21 Forest Service officials' actions in the Bridger-Teton National Forest challenged
22 in this complaint.

23 12. Respondent, UNITED STATES FOREST SERVICE is an agency
24 within the U.S. Department of Agriculture that is responsible for applying and
25 implementing the federal laws and regulations challenged in this complaint.
26
27

1 AGENCY ACTIONS TO BE REVIEWED

2 The Forest Service's September 4, 2007, decision to authorize the Slate Creek
3 corrals in the Path of the Pronghorn.

4 13. On August 31, 2007, the Forest Service notified the Regional Office
5 that it was considering authorizing the new owners of the Upper Grove Ventre
6 livestock grazing allotment to build "temporary" corrals in the Path of the
7 Pronghorn, near Slate Creek and the Gros Ventre river (T42N-R113W-Section 9).

8 14. In an August 31, 2007, e-mail, the Forest Service explained that the
9 new corrals would handle 550 cow/calf pairs for on and off loading from
10 approximately 12 to 14 semi-trucks. The Forest Service also explained that it
11 would consider making the new corrals a "permanent structure" and, if so, would
12 exempt the decision from an environmental analysis, i.e., an EA or environmental
13 impact statement (EIS), under NEPA by issuing a Categorical Exclusion (CE).
14

15 15. On September 4, 2007, the Forest Service issued a decision to
16 categorically exclude from NEPA its decision to authorize the building of the
17 corrals in the Path of the Pronghorn. The 2007 decision modified the grazing
18 allotment's 2007 annual operating instruction (AOI). The Forest Service's AOI
19 modification states: "A temporary facility will be authorized through this
20 modification at the corral site. This will include posts set in the ground."
21

22 16. The new authorized facility includes a 1.25-acre corral system. The
23 new corrals were built in an abandoned gravel pit adjacent to Slate Creek and near
24 the confluence of Slate Creek and the Gros Ventre River, approximately 2.5 miles
25 from the allotment boundary. Cows are trailed to the allotment at the beginning
26 and end of the grazing season. The Slate Creek corrals are used to unload cattle
27 from trucks and hold them at the beginning of the grazing season and to hold and
28

1 load cattle onto trucks at the end of the season.

2 The Forest Service’s April 15, 2008, scoping notice.

3 17. On April 15, 2008, the Forest Service issued a public notice and request
4 for public comment on “proposed” range improvements for the Upper Grove
5 Ventre grazing allotment. The purpose of the notice was to allow for, and review
6 input from, agency specialists, members of the public, and other agencies “prior to
7 making a decision” on various range improvements for the allotment.
8

9 18. The Forest Service’s request described three proposed range
10 improvements: (1) a permanent 1.25 acre corral (that was already built pursuant to
11 the 2007 decision) and 12 acre holding pasture near the confluence of Slate Creek
12 and the Gros Ventre River, approximately 2.5 miles from the allotment; (2) a new
13 5,880 foot fence and cattle guard referred to as the “Lake Creek fence”; and (3)
14 reconstructing .97 miles of fence and building an additional 2.11 miles of fence
15 known as the Soda Ridge Boundary fence on the northeast side of the allotment.
16

17 The Forest Service’s June 9, 2010, decision.

18 19. On June 9, 2010, the Forest Service issued a Decision Memo and CE
19 approving some of the proposed range improvements for the allotment that were
20 included in the April 15, 2008 scoping notice.

21 20. In the Decision Memo, the Forest Service “decided to authorize the
22 continued operation of the Slate Creek corrals” including “a 1.25 acre corral
23 system and an adjacent 3 acre holding pasture. This facility would be left in place
24 year-round.” The Forest Service also stated that the corrals are “incorporated in
25 the term grazing permit” for the allotment and that its decision was categorically
26 excluded from documentation in an EA or EIS.
27

1 the direct, indirect, and cumulative impacts to various resources.

2 27. The Forest Service authorized the building of the Slate Creek corrals in
3 the Path of the Pronghorn on September 4, 2007, pursuant to a CE.

4 28. In authorizing the building of the Slate Creek corrals, the Forest Service
5 never analyzed whether any “extraordinary circumstances” existed.

6 29. Authorizing the building of the Slate Creek corrals does not fall within
7 a specific category of actions for which a CE can be issued.

8 30. The Forest Service determined the building of the Slate Creek corrals
9 qualified for a CE pursuant to 36 C.F.R. § 220.6 (d)(8): Approval, modification, or
10 continuation of minor, short term (one year or less) special uses of National Forest
11 System lands. The building of the Slate Creek corrals in the Path of the Pronghorn
12 is not a “minor” or short term use of the Bridger-Teton National Forest.

13 31. The Forest Service’s 2007 decision to authorize the building of the
14 Slate Creek corrals pursuant to a CE violates NEPA and is “arbitrary, capricious,
15 an abuse of discretion, or otherwise not in accordance with law” and/or constitutes
16 “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706
17 (2)(A), (1).
18

19
20 **COUNT II**
21 **NEPA VIOLATION**
22 **(June 9, 2010, decision)**

23 32. Petitioner realleges the previous paragraphs.

24 33. Pursuant to NEPA, the Forest Service may only issue a CE if: (1) there
25 are no “extraordinary circumstances” related to the proposed action; and (2) the
26 proposed action falls within a specific category of actions.

27 34. On June 9, 2010, the Forest Service issued a Decision Memo and CE
28

1 authorizing the Slate Creek corrals on a permanent basis and the building of an
2 adjacent 3-acre holding pasture next to the Slate Creek corrals that will be left in
3 place year-round.

4 35. In authorizing the Slate Creek corrals on a permanent basis and the
5 building of a 3-acre holding pasture in the Path of the Pronghorn, the Forest
6 Service never analyzed whether any “extraordinary circumstances” existed.

7
8 36. The Forest Service’s decision to authorize the Slate Creek corrals on a
9 permanent basis and the building of a 3-acre holding pasture does not fall within a
10 specific category of actions for which a CE can be issued. The Forest Service
11 determined the decision qualified for a CE pursuant to 36 C.F.R. § 220.6 (e)(3):
12 Approval, modification, or continuation of minor special uses of National Forest
13 System lands that require less than five contiguous acres of land.

14 37. Authorizing the Slate Creek corrals on a permanent basis and the
15 building of a holding pasture in the Path of the Pronghorn does not qualify for a
16 CE pursuant to 36 C.F.R. § 220.6 (e)(3). The range facilities are not “minor
17 special uses” as that term is defined and understood in the regulations and, in the
18 aggregate require the use of more than five contiguous acres of land (corral,
19 holding pasture, and necessary trailing to and from the allotment).

20
21 38. The Forest Service’s 2010 decision to authorize the Slate Creek corrals
22 on a permanent basis and the building of a 3-acre holding pasture pursuant to a CE
23 violates NEPA and is “arbitrary, capricious, an abuse of discretion, or otherwise
24 not in accordance with law” and/or constitutes “agency action unlawfully withheld
25 or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), (1).

COUNT III
NEPA VIOLATION

(avoiding EA or EIS by breaking project down into small component parts)

39. Petitioner realleges the previous paragraphs.

40. Pursuant to NEPA, the Forest Service must prepare an EIS for major federal action significantly affecting the quality of the human environment. The Forest Service may prepare an EA for non-significant federal actions or to determine if a proposed action will have “significant” impact on the environment.

41. Pursuant to NEPA, the Forest Service cannot avoid “significant” impacts and the need to prepare an EIS by “termining an action temporary or by breaking it down into small component parts.” 40 C.F.R. § 1508.27 (b)(7).

42. The Forest Service avoided “significant” impacts by termining its authorization of the Slate Creek corrals temporary.

43. The Forest Service avoided “significant” impacts by breaking its proposed range facilities for the allotment into small component parts.

44. On April 15, 2008, the Forest Service sent out a notice and request for public comments on proposed range improvements for the allotment that included: (1) a 1.25 acre corral site and 12 acre holding pasture; (2) the Lake Creek Fence; and (3) the Soda Ridge Boundary fence.

45. The Forest Service received public comments from conservation groups, the Department, Teton County, and the Superintendent of Grand Teton National Park raising concerns about the location of the three range facilities in the Path of the Pronghorn and requesting more environmental analysis.

46. In response to comments received and concerns raised by the Forest Service’s wildlife biologist, the Forest Service chose to break the proposed range

1 improvements down into small component parts. The Forest Service chose to
2 authorize the Slate Creek corrals and a 3-acre holding pasture now, pursuant to a
3 CE, and defer the decision on the Lake Creek fence and Soda Ridge Boundary
4 fence to future NEPA on the allotment management plan.

5 47. The Forest Service’s decision to avoid “significant” impacts by terming
6 an action temporary and/or by breaking it down into small component parts
7 violates NEPA and is “arbitrary, capricious, an abuse of discretion, or otherwise
8 not in accordance with law” and/or constitutes “agency action unlawfully withheld
9 or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), (1).

11
12 COUNT IV
13 NEPA VIOLATION
14 (EIS required)

15 48. Petitioner realleges the previous paragraphs.

16 49. Pursuant to NEPA, the Forest Service must prepare an EIS for major
17 federal actions significantly affecting the quality of the human environment.
18 “Significantly” as used in NEPA requires considerations of both context and
19 intensity. 40 C.F.R. § 1508.27.

20 50. The Forest Service’s decision to authorize the building and permanent
21 operation of the Slate Creek corrals and a 3-acre holding pasture in the Path of the
22 Pronghorn is a major federal action that may “significantly” effect the quality of
23 the human environment requiring an EIS as defined by 40 C.F.R. § 1508.27.

24 51. The Forest Service’s decision not to prepare an EIS before authorizing
25 the Slate Creek corrals and 3-acre holding pasture in the Path of the Pronghorn
26 violates NEPA and is “arbitrary, capricious, an abuse of discretion, or otherwise
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1 and/or remedy any environmental harm caused by the corrals and holding pasture
2 while this civil action is pending;

3 D. Grant Petitioner its costs and expenses of litigation, including
4 reasonable attorneys' fees pursuant to the Equal Access to Justice Act (EAJA), 28
5 U.S.C § 2412;

6 E. Issue such other declaratory and/or injunctive relief as Plaintiff may
7 subsequently request;

8 F. Grant such other relief as this Court deems just and proper.

9 Respectfully submitted this 10th day of November, 2011.

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