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PRESERVING OPPORTUNITIES FOR GRAZING ON FEDERAL LAND

HEARING

BEFORE THE

SUBCOMMITTEE ON
THE INTERIOR, ENERGY, AND ENVIRONMENT

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

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PRESERVING OPPORTUNITIES FOR GRAZING ON FEDERAL LAND

Tuesday, July 24, 2018

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE INTERIOR, ENERGY, AND ENVIRONMENT,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:43 p.m., in Room 2247, Rayburn House Office Building, Hon. Greg Gianforte [chairman of the subcommittee] presiding.

Present: Representatives Gianforte, Palmer, Comer, and Plaskett.

Mr. GIANFORTE. The Subcommittee on the Interior, Energy, and Environment will come to order. Without objection, the chair is authorized to declare a recess at any time.

I would like to thank everyone for being here and especially thank you for your patience in us having to run off and do some other business. But we are here, and I appreciate your travels. I will begin with my opening statement.

Good afternoon. This Subcommittee on Interior, Energy, and Environment is meeting today to examine difficulties ranchers with Federal grazing permits face, as well as to discuss recommendations to improve cooperation between permittees and our Federal land management agencies.

Access to public lands is critical for many people, including hikers, hunters, and fishermen. Today, though, we're here to specifically discuss livestock grazing on Federal land. As the Western Governors' Association says, ranchers are, quote, "an important contributor to the customs, cultures, and rural economies of the West," end quote.

The Public Lands Council estimates that grazing on Federal land contributes at least $1.5 billion to the economy and supports thousands of jobs. In fiscal year 2017, livestock producers held almost 18,000 grazing permits on BLM land and nearly 6,000 active permits on Forest Service land. These operators rely on access to public lands to produce food, wool, and even clothing, as my friend John Helle will be able to discuss later in his testimony. Those are a few of the obvious benefits of responsible utilization of Federal land.

Both the BLM and Forest Service are charged with managing Federal land for multiple use and sustained yield. Ranching, a business that necessitates careful stewardship of natural resources, complements a number of those uses. Ranchers partner with the

State's wildlife agencies, sportsman's organizations, and conservation groups to facilitate multiple use. Identifying opportunities to promote cooperation on Federal land will be an important part of our discussion today.

To add additional perspective on this issue, without objection, I will enter a statement from Gray Thornton, President and CEO of the Wild Sheep Foundation, into the hearing record.

Mr. GIANFORTE. I would like to thank Mr. Thornton for being here today in the audience and the Wild Sheep Foundation for their contribution to our conversation today.

Unfortunately, one of the greatest challenges to grazing is special-interest litigation and the abuse of some of our core Federal environmental protection statutes. While Congress enacted these laws with good intentions, groups that are determined to drive ranchers off the Federal land have transformed them into tools to push certain uses over others. This is not what Congress intended, and it certainly does not support the agencies' multiple-use missions.

Seeking workable solutions and finding common ground becomes that much more difficult when some special interests fundamentally oppose grazing and routinely turn to litigation instead of collaboration. Not only does the constant threat of litigation distract the BLM and Forest Service from their important missions and drain Federal resources, but it results in land-management decisions driven by fear and apprehension of the next wave of lawsuits. This is no way to manage our range lands.

I know our witnesses today will help further the conversation about preserving opportunities for grazing while ensuring adequate protection of our range land and, above all, true multiple-use management.

Part of the solution is to ensure our Federal grazing permit programs are fair, provide for meaningful permittee participation, and minimize uncertainty and delays. Producers struggle to defend their operations from seemingly endless attacks by well-funded activist organizations who enjoy incentives to litigate under current law.

If the BLM and Forest Service continue to operate at the mercy of special-interest litigation and ranchers continue to face unnecessary livestock reductions, many ranchers may decide that they can no longer afford to graze on Federal land and will be forced to walk away from their business. This would have devastating consequences for local economies and our ranching families who hope to pass their way of life on to the next generation.

The bottom line is that we need range land management that utilize sound science, provides for flexibility, and incorporates permittee input. Livestock producers whose livelihoods depend on understanding the local ecosystem develop specialized knowledge through years and sometimes decades of on-the-ground experience, and cutting them out of the land management process wastes unique expertise and jeopardizes range land health. BLM and Forest Service policies should encourage employees to develop productive working relationships with the producers rather than default to restricting access or trying to shield themselves from litigation.

Thank you again to our witnesses for joining us today. I look forward to the hearing and your testimony on such an important topic.

Mr. GIANFORTE. I now recognize the ranking member of the subcommittee, Ms. Plaskett, for her opening statement.

Ms. PLASKETT. Thank you very much, Mr. Chairman, and thank you, all of the witnesses and others who are here, for this hearing this afternoon.

The Federal Government owns approximately 640 million acres of land in the United States. Most of that land is located in the Western States, but not all of it. In my own district, we have the beautifully preserved Virgin Islands National Park, which testifies to the important role the Federal Government can play in managing lands for the enjoyment of all people of this great country.

Today, we will hear from local ranchers, as well as local producers, who benefit from permits to graze livestock on Federal lands. I am aware and sensitive to the generational land rights of those individuals and the need for the Federal Government to balance the interests of grazing with the rights of individuals to be able to go on to lands which they have had deeded to them for many years. I understand this.

This is something that we are fighting and is a conflict in the Virgin Islands as well with those individuals who feel that the Federal lands are coming to encroach and become Big Brother on the land that they have used for many generations for their own livelihood. Those viewpoints are important, but there are also viewpoints that I am glad that this committee is going to hear from today as well.

We will also hear the viewpoint of the Nez Perce Tribe, whose members are throughout the Western United States in central Idaho, parts of Washington, Oregon, and Montana. Chairman Wheeler, who is here, has stated in his written testimony that the bighorn sheep are culturally critical to that Tribe's existence. The Tribe has hunted the bighorn sheep to craft culturally significant items like bighorn bows and have used this wild sheep for food and for clothing. They are so significant to the Tribe that the Tribe's cultural right to hunt and use the sheep is protected by treaty.

The bighorn sheep and the Nez Perce Tribe's critical relationship with this important species and is an example of how Federal Government agencies must balance commercial interests with cultural and environmental interests and treaty obligations when they manage Federal lands. This subcommittee has to balance the needs of many interests and must show the same concern for cultural and environmental interests and treaty obligations as we have for the commercial interests.

I hope that our goal with this hearing regarding grazing on Western lands is the same, to support and advance the appropriate and sustainable use of Federal lands. I echo the chairman's sentiment that we must bring good science, good economics, sensitivity to cultural needs, as well as historic importance of the lands. As Chairman Wheeler has stated, and I quote, "The Nez Perce Tribe considers recovery of the bighorn sheep population to huntable, healthy, and sustainable levels within our homeland and throughout their suitable historic habitat to be a top resource management

priority. Our collective actions have the power to help or hinder this recovery."

Indeed, I understand this and share that sentiment for all of our testifiers today. A focus on commercial interests to the exclusion of cultural and environmental equities and treaty obligations and vice versa will hinder the recovery not only of bighorn sheep but the way of life for those that live in the West. I urge this subcommittee to consider Chairman Wheeler's testimony by the ways that the Federal Government can protect the environment and tribal culture as we examine different opportunities for grazing on public land.

And I agree that we must collectively and be collaborative in that effort. While an attorney, I don't prefer litigation and hope that we can resolve our differences in a way that is amicable to the interests of all.

Thank you very much, Mr. Chairman.

Mr. GIANFORTE. Okay. And thank you.

I am pleased to introduce our witnesses at this time. Mr. John Helle, owner/partner of Helle Livestock; Mr. Scott Horngren, staff attorney and adjunct professor at Western Resources Legal Center; Chairman Shannon Wheeler, Chairman of the Nez Perce Tribe; and Mr. Dave Eliason, president of the Public Lands Council.

Welcome to all of you. I know you traveled to be here, and we appreciate your testimony, look forward to your testimony today.

Pursuant to the committee rules, all witnesses will be sworn in before you testify. If you would, please stand and raise your right hand.

[Witnesses sworn.]

Mr. GIANFORTE. Let the record reflect that the witnesses answered in the affirmative. Please, you may now be seated.

In order to allow time for our discussion today, we are going to ask that you each limit your comments to five minutes. There is a set of lights and things that will keep you on time there. As a reminder, that clock will tick down. It turns yellow when you have 30 seconds left and red when your time is up, and then we will move to our time of questioning. Also remember the microphones do not work automatically; you have to turn them on before you speak.

So with that, we will start with Mr. Helle. You have five minutes.

WITNESS STATEMENTS

STATEMENT OF JOHN HELLE

Mr. HELLE. Chairman Gianforte, Ranking Member Plaskett, and members of the subcommittee, thank you for the opportunity to visit with you today. I am John Helle, a third-generation sheep and wool producer from Dillon, Montana. I am here today to represent the Nation's 88,000 sheep producers and those that spend some time on Federal grazing lands.

Over the years, we have expanded and diversified our ranching operation, preserving open space and adding economic value to our nation. Through the brand Duckworth, we have taken Helle wool from sheep to shelf all in the United States. We're proud to be able

to convert a renewable resource into food and fiber while stewarding the land we run on.

Since I was a kid, we've lost over 100,000 sheep in southwest Montana because of the effects of misguided policy enforcement. In fact, Dillon was at one point the world's largest shipping point for wool. Livestock grazing promotes new growth and enhances habitat for wildlife species like sage grouse. Our private land serves as the commensurate base for our Federal grazing permits, thus benefiting the public with a quasi-conservation easement on that well-stewarded land.

However, family ranching faces a number of challenges that threaten the future of range land management West-wide. We have personally witnessed abuse of Federal law as our Forest Service allotments were targeted for legal action. Preceding the introduction of bighorn sheep into southwest Montana, our State wildlife agency and local interest, including us landowners, came together outlining a workable plan forward. Our ranch, along with others ——

Mr. GIANFORTE. Excuse me, Mr. Helle, if you could just straighten your microphone, we will get a better recording ——

Mr. HELLE. Okay.

Mr. GIANFORTE.—and we can all hear you. Thank you.

Mr. HELLE. Sorry. Our ranch, along with others, entered into an MOU detailing the obligation to preserve domestic grazing and support wildlife populations. Under State statute, the Department assured ranchers such as myself that the introduction of this species into areas where domestic livestock were present would not result in any harm to our ranching operation. This promise has proven to be false.

In the end, our reward for working cooperatively with these agencies to introduce a bighorn sheep herd was three years of costly litigation. The consequence of losing here could be the loss of permits we've grazed for generations.

Earlier this month, my attorney had to appear before a three-judge panel in the Ninth Circuit over an appeal on the fourth denial from the district court of an injunction on my grazing permit. This case arose from the same fact pattern earlier referenced on bighorn sheep habitat under the Forest Management Plan. Laws like EAJA encourage the propagation of litigation and excess legal filings. Thankfully, the Ninth Circuit denied their attempt, but my legal fees continue to accrue.

Using this flawed logic and claims that only domestic sheep carry specified—specific pathogens, groups have pushed for effective separation between domestic sheep and bighorn sheep. This separation formed the basis for grazing policies like BLM's 1730 and species viability claims under the National Forest Management Act. These recommendations were developed without input from the domestic sheep industry or the U.S. Department of Agriculture Ag Research Service.

Thanks to USDA research, we now know the pathogen blamed for these deaths in wildlife is found not only in domestic sheep but other wildlife species as well and are endemic in bighorn herds across our State. The presence of these pathogens is not indicative of overall bighorn herds' health, yet this continues to be the basis

for closing active sheep allotments across the West and reducing sheep AUMs.

Using these tactics to threat—and threats of litigation based on flaws Forest Service and BLM policy, artificial environmental groups offer Federal sheep allotment holders so-called buy-out agreements and then tout acceptance as a voluntary action. Citing threats of litigation and loss of livelihood to compel a sale is not voluntary; it's extortive. Due to these practices, it is impossible to accurately assess the number of AUMs our industry has lost.

However, together with our ranching neighbors and conservation groups, we've formed an alliance to find shared values and common goals. Stewardship on the ranches in our area have demonstrated that we hold the key to successfully achieving the goals of the conservation community by protecting open space and wildlife corridors. Range science and land management is not about setting and adhering to strict standards. These tactics are ineffective unless we start thinking on a landscape scale.

Unfortunately, land stewardship is not driving management. Rather, decisions are based on the fear of litigation. Methods that promote stewardship are the key to preservation of sustainable Federal lands management, and wildlife management is a State, not a Federal issue. These decisions must be made at the local level with input from local stakeholders, and NEPA must be streamlined to serve its originally intended purpose without spurring litigation.

Thank you, and I look forward to your questions.

[Prepared statement of Mr. Helle follows:]

Testimony on behalf of

The American Sheep Industry Association and The Montana Wool Growers

With regards to

"Preserving Opportunities for Grazing on Federal Land"

Submitted to the

United States House of Representatives

House Committee on Oversight and Government Reform,

Subcommittee on Interior, Energy and Environment

Greg Gianforte, Chairman

Submitted by

John Helle

July 24, 2018

Washington, DC

Chairman Gianforte, Ranking Member Plaskett and Members of the Subcommittee, thank you for the opportunity to visit with you today. I am John Helle, a third-generation sheep and wool producer from Dillon, Montana, a member of the Montana Wool Growers Association, the American Sheep Industry Association and past board member of the Public Lands Council. I am here today to represent the nation's 88,000 sheep producers and those that spend some time grazing on Federal Lands. My family first came to Montana over a century ago and currently raise sheep in the same area that the first sheep were brought to Montana in 1869. Now, with my parents, brother and my wife and children, our family not only raises sheep, but also high-quality wool. In early 2012, we cofounded a clothing company called Duckworth, the world's only source-verified, single origin, Merino wool apparel company. Through hard work, Duckworth has taken Helle wool from being sold as a raw commodity to a 100 percent USA source, manufactured and distributed product that is sold world-wide. In fact, our company was featured on Good Morning America this past Christmas season. We're proud of the products we are able to produce and proud to turn grass forage into meat and clothing, while caring for the natural resources on our private ground and Federal permits.

As I mentioned earlier, our private property in Western Montana, outside Dillon has been in the family for three generations. And my family is the fourth generation to run sheep on this land. Over the years, we have expanded and diversified our ranching operation, preserving open space and adding economic growth to the local economy.

As part of our livestock operation, we run four bands of sheep on United States Forest Service allotments within the Beverhead-Deerlodge National Forest. In the past, the Forest on which we run used to carry several dozen bands of sheep, but now because of the effects of misguided policy enforcement, only 6 bands of sheep in total graze those lands.

Our private land serves as the commensurate base for our federal grazing permits. Our ranch works by utilizing both private and Federal lands grazing. Without both components, our ranch is not viable. Our relationship with the National Forest is a mutually beneficial one. When we graze on Federal Lands, we provide much needed fire suppression, control noxious weeds and generate revenue for both the Forest Service and the local economy. What is more, our commensurate private property base provides winter grazing for all forms of wildlife from deer to moose, wolves and antelope by protecting tens of thousands of acres of well stewarded open space.

I hold an animal science degree from the Montana State University Animal and Range Science Program, my father has a master's degree in range science and worked for years for the Forest Service, and my youngest son will graduate with a range science degree. As such, I understand the complex relationship between domestic livestock grazing, wildlife, forage and watersheds.

Our sheep are attended by a herder while grazing the landscape, which reduces fuel load and promotes new growth and enhances the habitat for species like sage grouse, in addition to other birds, wildlife and insects. As noted, this is a beneficial relationship and mirrors the environment under which the western landscape evolved. However, we face a number of challenges that threaten the future of rangeland management west-wide.

One of the greatest of these challenges is coming from environmental groups who are seeking to impose single use concepts on federal lands that are mandated, by federal law, to be managed for multiple use – including for livestock grazing. These groups are weaponizing statutes like the National Environmental Policy Act (NEPA) and bypassing the collaborative forest planning process by filing federal lawsuits every time there is a forest or wildlife management decision with which they do not agree. And, they are doing so to the detriment of landowner-wildlife management relations.

We have personally witnessed this abuse of federal law and the federal court system as our ranch and Forest Service allotments were targeted for legal action following the introduction of bighorn sheep into the Gravely Mountain range of Southwest Montana in 2003. When our state wildlife management agency, the Montana Department of Fish, Wildlife and Parks determined that they would seek to introduce bighorn sheep, the department assured ranchers, such as myself, that the introduction of this species into areas where domestic livestock were present would not result in any harm to our ranching operations. This promise that no harm would come to our ranch has proven, with time, to be false.

In order to effectuate the introduction of a new bighorn sheep herd into the Gravely Mountain Range, our ranch, along with others, entered into a Memorandum of Understanding detailing the obligation to preserve domestic grazing and support wildlife populations with Montana FWP, BLM, USFS and local sheep producers. The goal of entering into the cooperative agreement was to protect both the newly introduced wild sheep herd and our existing agriculture operations. While the terms of the MOU have worked exactly as intended, i.e. to allow all parties to manage the newly introduced bighorn herd, the MOU has been used as the basis for federal court litigation filed by radical environmental groups seeking to drive domestic grazing off the range.

To state this another way, our reward for working cooperatively with our state fish and game agency to introduce a bighorn sheep herd into the Gravely Mountain Range was to be subject to what is now going on three years of costly federal litigation. And, if we are to ultimately lose the litigation, we are subject to losing our ability to graze the lands we have grazed for multiple generations. I cannot imagine this scenario is what Congress envisioned when it passed the National Environmental Policy Act.

Our story is not unique. Throughout the west, domestic sheep grazing has been the target of these self-styled conservation groups. These groups all operate under the pretext that they are preventing harm to wildlife or the physical environment and do so without the support of sound-science.

Initially, it was advanced, as a matter of settled science, that domestic sheep were passing pasteurella (Bibersteinia trehalosi and then Mannheimia haemolytica) pathogens to bighorn sheep causing die-offs, then the blame was placed on Mycoplasma ovipneumonia (*movi).* The concept being that only domestic sheep carried these pathogens and that any contact between domestic sheep and bighorn sheep would cause a die off. Using this flawed and post hoc logic, groups pushed for "effective" and complete separation between domestic sheep and bighorn sheep. This separation has been advocated by the Wild Sheep Working Group of the Western Association of Fish and Wildlife Agencies in their Recommendations for Domestic Sheep and Goat Management. It also forms the basis for grazing policies like BLM Policy 1730 and species viability claims under the National Forest Management Act. These recommendations were developed without input from the domestic sheep industry or USDA Agricultural Research Service's Animal Disease Research Unit. And these policies persist despite scientific evidence that they are not effective at preserving bighorn health. A narrow, single pathogen approach to this complex subject led to poor management decisions, the loss of many livelihoods and threatens the loss of our operation.

Thanks to research being conducted by the USDA/ARS Animal Disease Research Unit, we now know that the pathogen blamed for these deaths in wildlife is found not only in domestic sheep, but other wildlife species such as deer, bison, caribou and likely other species not yet identified. We also know, thanks to research done at Montana State University that the *movi* pathogen is resident or endemic in bighorn herds across our state. We have seen through research that the presence of these pathogens is not indicative of an overall bighorn herd's health. Yet, this continues to be the basis for closing active sheep allotments across the west and reducing sheep AUMs. Moreover, it is flawed legal precedent based off these assertions that form the jurisprudence on this issue and lead to the loss or threatened loss of grazing allotments across the west.

In 2010, the U.S. Forest Service (USFS) prohibited 13,000 sheep from grazing on their historic grazing allotments within the Payette National Forest in Idaho, driving one ranch out of business entirely and drastically reducing the operations of three others. Not only are Payette decision impacts spreading to other national forests with bighorn sheep populations, the Bureau of Land Management is considering grazing restrictions on federal lands under its administration, creating a west-wide issue that threatens a substantial part of the domestic sheep and wool industry. Forest Service officials continue to make decisions on the future use of "high risk" allotments grazed by domestic sheep, even though only 3 percent of federal sheep allotments

overlap with occupied bighorn habitat. While it is impossible to accurately predict the total impact of this approach, at a minimum 400,000 domestic sheep, and the families who raise and care for them, may be affected. The impacts are serious, affecting not only sheep operators and their employees, but meat packing plants, woolen mills, and even the military, which purchases twenty percent of the nation's wool production to help equip America's service men and women.

Using these tactics and threats of litigation based on flawed Forest Service and BLM policy, self-serving artificial environmental groups offer Federal sheep allotment holders so called buyout agreements and then tout acceptance as a voluntary action. Citing threats of litigation and loss of livelihood to compel a sale is not voluntary, it's extortive. As an industry, we have a seen a number of these offers come from outside groups before or very shortly after the allotment holder has been contacted by the land management agency. It is very clear that the relationship between these falsely termed environmental groups and certain regional land management agencies is anything but arm's length. Due to these practices, it is impossible to accurately assess the number of AUMs our industry has lost, but we know the number is significant, as is the impact to the local community and tax base as ranchers are driven off their permits and overall sheep numbers in the west decline.

Together, with area producers we have strived to be a good steward and cooperate with other interests. With our ranching neighbors, we started the Ruby Valley Strategic Alliance to educate ourselves on the issues we are facing and protect Federal Lands ranching. Through that alliance and others, we have always had an open-door policy for any conservation group, or individuals, who are genuinely looking for science-based solutions to enhance the range. We are not against wildlife, bighorn sheep, sage grouse or other species, as most if not all of us are active hunters. But, we are tired of being the brunt of these issues when agenda driven research leads the way. We understand and believe that science is critical and science-based solutions to managing Federal Lands is the key to success with landowners, permittees, and true conservation minded groups. This outlook has provided a beneficial relationship for understanding shared values and resolving potential conflicts in our valley. Unfortunately, this is not the tact for many groups that have found they can effectively use the legal system and the Equal Access to Justice Act (EAJA) as a mechanism to not only force their policy priorities but pad their pockets with taxpayer dollars in doing so.

Abuse of EAJA in the area of environmental law is rampant and anything but transparent. While I have to pay for legal representation on each of these challenges to our ranch, plaintiff groups suing the Forest Service and BLM are paid hundreds of thousands of dollars, not only when they win, but when they settle with the Federal Government. Again, these are taxpayer dollars being used to target public lands grazing and to undermine the multiple-use mandate of the National Forest Management Act, as well as the Taylor Grazing Act.

Earlier this month, my attorney had to appear before a three-judge panel in the 9th Circuit Court over an appeal on the denial of an injunction on my grazing permit in the Beaverhead-Deerlodge National Forest. This case arose from the same fact pattern earlier refenced on bighorn sheep habitat under the Forest Management Plan. The plaintiff in this case was again weaponizing NEPA in an effort to end multiple use on Federal Lands. While we believe the hearing went well, these federal policies foster uncertainty in the Courts and with the land management agencies. Laws like EAJA do not encourage an end to frivolous litigation, they encourage the propagation of litigation and excess legal filings in hopes of being deemed a prevailing party under the Act.

A perfect example of this is that the plaintiffs in that legal case have filed four injunction requests to prohibit us from using our summer pasture – and all of those requests have been denied. Yet, there is nothing in the law that prohibits them from seeking a fifth injunction. Quite the contrary, the structure of the EAJA actually encourages them to keep filing legal pleadings in order to run up the cost of their case. Conversely, when we protect our agriculture operations by defending against these suits, there is no such payday when we prevail, only the threat of another lawsuit as these groups forum shop.

Domestic sheep grazing on Federal Lands presents tremendous opportunities for the west. Sheep are targeted and efficient grazers. Lamb and wool prices are strong and demand for both is on the increase. Outdoor products like we produce at Duckworth are in high demand. Barriers to entry for the next generation are low and the economic potential to raise a family raising sheep is very real. However, for that to exist, we need sound policies coming out of Washington, D.C. We need certainty that our agreement with the federal government will be upheld. Unfortunately, that is not where we are today and the trend is not looking positive.

As ranchers we understand how to manage domestic livestock, we know how to manage the range for optimal outcome and we foster an environment that provides habitat for wildlife of all kinds. Yet, too often detrimental decisions are made at a regional, or worse national level, that impact rangeland health. On our ranch, we aim to use prescribed burns to increase rangeland health. Fires are a natural part of the western range. Fire controls forest encroachment, which we know enhances the habitat for prairie nesting birds like sage grouse which will not nest where ravens and other predatory birds frequent. Fire controls sage brush, freeing up water resources for mountain lakes and streams, enhancing habitat for fish and wildlife. And prescribed burning reduces fuel loads, supporting new grass growth and limiting catastrophic wildfire. Using fire as a prescription for range health, our aim is to burn five percent of our range each year, to get on a natural 20 to 25-year cycle. Due to weather and other factors, that will never be completely achievable, but that is our range management goal. The Beaverhead-Deerlodge National Forest

contains 3.5 million acres and the district we run sheep on is 750,000 acres. To accomplish the same management goals we have for our private ground, they would have to treat hundreds of thousands of acres per year, at least tens of thousands of acres. Under the current management strategies there is no way they can do that, which is why catastrophic wildfires will continue to occur. These are the types of decisions and lack of management that reduce rangeland health and diminish carrying capacity for wildlife and domestic livestock and are a clear indication of why more cooperation is needed at the state and local level in rangeland management decisions.

Range science and land management is not about setting and adhering to strict standards. These tactics are ineffective and will continue to be so unless and until we start thinking about rangeland ecology on a landscape scale. The range is dynamic, based on short and long-term weather patterns. The Forest Service could learn a lot by looking at the practices of the people who have been on these ranges for three, four or five generations. Those folks are the land stewardship experts. In my 35 years managing our operation, I have seen at least six rangers come and go and countless decisions made in deference to environmental activists with an agenda driven mentality. The unfortunate fact is that land stewardship is not driving decisions, it is management based on fear of litigation and that is not management at all. Livestock grazing is an effective tool and a prescription for range management. We understand these lands and make decisions looking back on generations of active participation in management.

To conclude, nearly half of the sheep raised in the United States spend some time on Federal Lands. These producers contribute to the economic success of rural America. They maintain access to open space, provide for wildlife and turn forage into food and fiber. With support for multiple use on Federal Lands, there is opportunity to continue to foster a productive environment for livestock production, wildlife habitat, and recreation. Science-based solutions, aimed at actual rangeland health and cooperation, is the only path forward for the health of our Federal Lands and the preservation of the opportunities that legacy presents. True conservation minded groups and local ranching communities understand the greater consequences of not supporting public lands grazing and its protection of open space, local economies, and the people and wildlife that depend on those shared values.

I would ask that you consider the following as take-aways from my testimony.

1. There has to be reform of the Equal Access to Justice Act to allow agriculture producers, such as myself, who successfully defend against cases brought under the act to be awarded our attorneys' fees and costs should we prevail in the case;
2. There has to be reform of the National Environmental Policy Act so that the act is not used as a surrogate for allowing federal management of state wildlife and state wildlife

agencies. Wildlife management is a reserved right under the 10th Amendment to the United States Constitution and should remain so;

3. More grazing of federal lands should be encouraged, because, as I testified to, domestic sheep grazing provides the stewardship that protects and enhances ecosystems, is beneficial for the physical environment, for wildlife, local economic stability through agriculture production; and
4. Above all, federal laws and the federal court system should not be used as the basis for interfering with collaborative, site-specific management projects. The recent spate of federal litigation against the forest service over domestic sheep grazing using memorandums of understanding, such as the one we signed, is a signal to livestock producers, such as myself, not to work cooperatively with any state wildlife management agency for fear that such cooperation will ultimately result in the loss of long-standing grazing practices. This scenario is not good for agriculture, wildlife, or wildlife advocates.

I appreciate your consideration of this critical topic for the west.

Sincerely,

John Helle

Mr. GIANFORTE. Okay. Thank you, Mr. Helle.

At this time I would like to recognize Mr. Horngren for your statement.

STATEMENT OF SCOTT HORNGREN

Mr. HORNGREN. Good afternoon, Mr. Chairman and Ranking Member Plaskett and members of the committee. I'm Scott Horngren, an attorney with the Western Resources Legal Center that provides real-world experience for students interested in supporting resources uses such as livestock grazing. We provide this practical education at Lewis & Clark Law School in Oregon where I'm an adjunct professor. However, my testimony today doesn't represent the position of the law school.

I will discuss ways agencies can improve the cooperative working relationship with grazing permittees by streamlining the cumbersome agency procedures for renewal of grazing permits and eliminating the annual vulnerability of the grazing program to serial litigation.

But first, I'll start with a great example of cooperative working relationships between grazing permittees and Federal agencies on the Nation's only sheep experiment station. Unfortunately, litigation disrupts that cooperative relationship and halts needed research to improve the health of sheep, both bighorn and domestic, and the health of range land.

One important experiment station project involves how different variables affect transmission of pneumonia between domestic and bighorn sheep. The Western Watersheds Project, whose goal is to halt all public lands grazing, filed numerous lawsuits to halt sheep grazing in areas long used for research since 1924. In the most recent lawsuit, the Forest Service argued that, based on a prior settlement with Western Watersheds, grazing could continue and the research should be completed.

But the court disagreed and enjoined grazing and completion of the five-year research project, which was in its final year. The American Sheep Industry's Association moved to intervene, given the wide application and benefit of the research to sheep producers. The court deferred ruling on the motion to intervene until after settlement discussions between Western Watersheds and the Forest Service.

Last month, the Forest Service settled the case. It agreed to stop domestic sheep grazing on the allotments until further analysis under the National Environmental Policy Act, or NEPA, but it didn't include any commitment or deadline to conduct the analysis, and it agreed to pay $80,000 in attorney's fees to the plaintiffs.

So Western Watersheds halted the very research designed to promote multiple use and inform how range conditions and other factors can influence disease transmission among the domestic and bighorn sheep. But there's no commitment by the Forest Service to complete the NEPA analysis.

Another concern is that the process to renew 10-year grazing permits for ongoing grazing should be straightforward and meaningfully and timely involve the permittees like Mr. Helle. Most grazing allotments have been sustainably grazed by ranching families for half a century or longer. Congress should enact legislation that al-

lows the Forest Service and BLM to renew grazing permits if the range land is in satisfactory condition using a more timely and less expensive categorical exclusion under NEPA rather than a lengthy and expensive EIS.

Consultation between agencies about the effect of grazing on species listed under the Endangered Species Act is also disrupting grazing and undermines the cooperative relationship between agencies and permittees. Often, the permittee is only given a few days before the grazing season begins to review the draft biological opinion, which has been delayed for half a year or longer. Agencies should be directed to stop forcing permittees into the Hobson's choice between whether to delay turnout to meaningfully review this opinion or instead accept the opinion's overly restrictive conditions in order to turn the livestock out for the season. And then after the ESA consultation is done, the lawsuits come, bringing further delay.

Finally, once a 10-year permit is renewed, the grazing's yearly grazing instructions that merely confirm the level of livestock use for particular pastures based on the annual variation in the forage and range conditions are also subject to litigation and should not be. The Ninth Circuit held that these annual operating instructions or AOIs are the new—are a new final agency action subject to litigation.

A dissenting judge in that case argued that, quote, "In pragmatic terms, if every AOI for every permit in every allotment every year is open to litigation, it is a little difficult to see how the grazing program can continue. If the purpose of the program is to feed animals, they need to eat now rather than at the end of some lengthy court process. Environmentalists should not have multiple bites at the litigation apple. Congress or the agency should clarify that these final agency actions do not include the annual instructions in the AOIs."

Thank you.

[Prepared statement of Mr. Horngren follows:]

Testimony of Scott W. Horngren

before the

House Committee on Oversight and Government Reform

Subcommittee on the Interior, Energy, and Environment

"Preserving Opportunities for Grazing on Federal Land"

July 24, 2018

Good morning Chairman Gianforte, Ranking Member Plaskett, and members of the Committee. I am Scott Horngren, an attorney with the Western Resources Legal Center (WRLC) and an adjunct professor at Lewis & Clark Law School in Portland, Oregon. WRLC is a nonprofit organization that provides clinical education at Lewis & Clark Law School for those students that are interested in supporting resource uses such as livestock grazing, timber harvest, mining, and oil and gas exploration and production. My testimony does not represent the position of Lewis & Clark Law School. Rather, my remarks are based on my 30 years of experience as a litigator in federal cases involving grazing and other natural resource issues. I have extensive experience in defending environmentalists' lawsuits seeking to stop grazing and forest management under the National Environmental Policy Act, Endangered Species Act, and Clean Water Act.

My testimony today will focus on ways federal agencies can build better cooperative working relationships with grazing permittees to avoid disruptions in responsible grazing and support healthy rangeland. In particular, I will focus on how litigation by environmental groups disrupts that cooperative relationship and halts needed research. I will also cover streamlining the cumbersome procedures for renewal of grazing permits, eliminating the annual vulnerability of the grazing program to litigation, and affirming that the primary use of land in a BLM grazing district established under the Taylor Grazing Act should be for grazing as the primary use rather than as sage grouse or bighorn sheep reserves.

Litigation Has Threatened the Advancement of Knowledge by Halting Agency Research About the Interaction Between Domestic and Bighorn Sheep.

A great example of the cooperative working relationship between grazing permittees and federal agencies, is the nation's only Sheep Experiment Station operated by the USDA Agricultural Research Service in Idaho. The U. S. Sheep Experiment Station conducts a wide range of research including cooperative research with stockgrowers' associations and universities. The research is vital to the nation's sheep industry and the American Sheep Industry Association has cooperatively funded research projects at the Experiment Station. The Experiment Station produces reliable scientific data and information to improve the health of sheep, the quality of wool grown, and the health of rangeland.

One important Experiment Station research project involves assessing a variety of conditions related to the seasonal and lifetime infection and transmission of pneumonia in domestic and bighorn sheep. In its final year, the research project relied on sheep grazing in the Forest Service's Snakey and Kelly grazing allotments which have been used by the Experiment Station for sheep research since 1924. These two grazing allotments serve as winter rangeland that is representative of rangeland used by sheep permittees and provides environmental variables that allow the Experiment Station's research to be given practical application by sheep producers.

The Western Watersheds Project, whose goal is to halt all public lands grazing, filed a lawsuit in 2010 to stop sheep grazing on the allotments. In response to the lawsuit, in 2013 the Forest Service agreed to settle the case and to prepare a new environmental assessment (EA) under the National Environmental Policy Act for grazing on the allotments. The settlement provided that grazing could continue under the terms and conditions of the existing grazing permits while the EA was being prepared. The Forest Service was working on the EA when Western Watersheds Project filed its most recent lawsuit in October 2017 before the winter grazing season.

The Forest Service argued that based on the prior settlement that grazing could continue and the research could be completed. However, the court disagreed and enjoined grazing and completion of the research which was in the final year of the 5-year research project. The American Sheep Industry Association moved to intervene in the case but the court deferred ruling on the motion until after settlement discussions between Western Watershed Project and the Forest Service. Last month, the Forest Service settled the case, and agreed not to allow domestic sheep grazing on the allotments until further analysis under the National Environmental Policy Act (NEPA). The settlement agreement included Forest Service payment of $80,000 in attorneys fees to Western Watershed Project. However, the Forest Service in the settlement agreement did not include any commitment or deadline to complete further NEPA analysis. So Western Watersheds Project stopped the very research designed to promote multiple use and inform how range conditions and other factors can influence sheep disease among domestic and bighorn sheep, and there is no commitment by the Forest Service to complete the NEPA analysis.

Renewal of a 10-Year Permit for Ongoing Grazing Should Be a Straightforward Process That Meaningfully and Timely Involves the Permittee.

The Forest Service and Bureau of Land Management (BLM) have a huge task to complete NEPA analysis for over 6,500 grazing allotments on western public lands. Congress has long recognized this problem and, most recently in the 2015 Defense Authorization Act, H.R. 3979, reaffirmed that the agencies can prioritize completion of the NEPA analysis among the allotments. It also has provided that grazing can continue under the existing permit terms and conditions until the NEPA analysis for an allotment is complete.

Preparation of environmental impact statements and environmental assessments is a time-consuming and expensive process for renewal of 10-year grazing permits. Congress should enact legislation that allows the Forest Service and BLM to comply with NEPA for renewal of grazing permits through a more timely and less expensive categorical exclusion. Many of the allotments involved have been successfully grazed by ranching families for half a century or more. The categorical exclusion would be used only on those allotments where the rangeland is in satisfactory condition and where there is no more than a 10% increase in permitted use. In recent years Congress has endorsed the use of categorical exclusions under NEPA for new forest health and fuel reduction projects on forest lands under the Healthy Forest Restoration Act and other laws. There is no reason why the categorical exclusion tool could not be used to reauthorize longstanding, responsible grazing.

Consultation between agencies about the effect of grazing on species listed under the Endangered Species Act (ESA) is also disrupting grazing and undermines the cooperative relationship between the Forest Service, BLM, and the permittees. The Forest Service and BLM feel that their hands are tied and they must accept any restrictions on grazing demanded by the Fish and Wildlife Service or the National Marine Fisheries Service as part of the consultation. The ESA consultation is a drawn-out process with limited or no opportunity for the permittee to participate. Often, the permittee, who is entitled to review a draft biological opinion, is only given a few days to review the opinion which has been in preparation for half a year or longer. The ESA consultation often is not completed until just before the grazing season begins, forcing the permittee to accept unworkable and overly-restrictive conditions imposed in the consultation to turn out their livestock for the season. Agencies should be directed to stop forcing permittees into this Hobson's choice between whether to delay turn out or accept unworkable operation conditions in a biological opinion.

Once a 10-Year Permit Is Renewed, the Annual Grazing Instructions Issued by an Agency Should Not Be Considered an "Action" Subject to Litigation.

After a 10-year permit is approved, it can be challenged by environmental groups and that should be the end of the litigation. But if the 10-year permit survives the litigation challenge, then grazing can be disrupted year after year for the life of the permit by more environmentalist lawsuits. That is because an agency's two or three page "annual operating instructions" (AOIs) that implement the permit are considered a new "final agency action" that is subject to litigation. The AOI merely confirms for the allotment the level of livestock use, utilization standards, and particular pastures to be grazed based on annual variation in range conditions and weather. The AOIs are consistent with the approved 10-year permit.

The Ninth Circuit held that these annual instructions are a new final agency action under the Administrative Procedure Act, and under the law anything interpreted as final agency action is subject to litigation. Oregon Nat. Desert Ass'n v. U.S. Forest Serv., 465 F.3d 977 (9th Cir. 2006).

A well-reasoned dissent argued that:

> "the AOIs are merely a way of conducting the grazing program that was already authorized and decided upon when the permits were issued. The AOIs reflect nothing more sophisticated or final than the 'continuing (and thus constantly changing) operations' of the Forest Service in reviewing the conditions of the land and its resources, and assuring that the mandated grazing programs go forward without undue disruption of the resource itself.
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> * * *
>
> In pragmatic terms, if every AOI for every permit in every allotment every year is to be open to litigation by ONDA, and others, it is a little difficult to see how the grazing program can continue, if the purpose of the program is to feed animals. They need to eat *now* rather than at the end of some lengthy court process." Id. at 991-992 (original emphasis).

Environmentalists should not have multiple bites at the litigation apple. Congress should clarify that the annual operating instructions that are consistent with the approved 10-year permit are not new final "actions" and that the final agency action subject to challenge is the 10-year grazing permit. By analogy, the annual operating plan for a long-term timber sale contract that schedules which units to harvest and what roads to build in a given year is not considered a final agency action. Rather, the NEPA analysis for approval of the timber sale is the final action subject to litigation. The same should be true for a grazing permit.

If There Is a Significant Reduction in Permitted Use for Renewal of a 10-Year Permit, Then the Permittee Should Be Allowed to Challenge the Reduction Before It Is Implemented.

Agency decisions to significantly reduce or eliminate the amount of permitted grazing in renewing a 10-year a grazing permit should be automatically stayed if the permittee challenges the reduction or elimination. This will ensure that the permittee is allowed an opportunity for a hearing required by the Administrative Procedure Act for a person to dispute the imposition of a sanction involving a permit. Currently, under the BLM procedures there is no automatic stay of a decision to reduce or eliminate grazing in a 10-year permit renewal decision.

Language in prior Appropriations Acts acknowledged the hardship that an agency decision to reduce or eliminate of permitted grazing imposed on family-owned ranches. For example, language provided that "[u]pon appeal any proposed reduction [in grazing] in excess of 10 per centum shall be suspended pending final action on the appeal, which shall be completed within 2 years after the appeal is filed." Pub. L. 96-126 Title I, § 100 Nov. 27, 1979, 93 Stat. 956 (see also Pub. L 102-381, Title I, Oct. 5, 1992, 106 Stat. 1378). Congress should include similar language in an authorizing bill.

Agencies Should Not Eliminate Areas Designated for Livestock Grazing in Resource Management Plans to be used as Sage Grouse or Bighorn Sheep Reserves.

The Taylor Grazing Act (TGA), 43 U.S.C. §§ 315-315r (2000), provides for and protects rangeland for grazing purposes. The TGA authorizes the Secretary of the Interior "to establish grazing districts . . . which in his opinion are chiefly valuable for grazing and raising forage crops." *Id.* § 315. Furthermore, "So far as consistent with the purposes and provisions of this subchapter, grazing privileges recognized and acknowledged shall be adequately safeguarded." *Id.* § 315. The TGA accomplishes this by mandating that the Secretary "shall make provision for the protection, administration, regulation and improvement of such grazing districts." *Id.* § 315a. The Federal Land Policy and Management Act calls of managing public lands administered by the BLM for multiple-use and the Forest Service also must manage national forests for multiple-use under the Multiple-Use Sustained-Yield Act. The BLM should not be allowed to significantly reduce and eliminate livestock grazing to manage grazing districts for sage grouse rather than livestock grazing or to always favor introduced bighorn sheep over domestic sheep, and the agencies need to carefully consider the multiple-use implication of giving priority to a single species.

Mr. GIANFORTE. Okay. Thank you, Mr. Horngren.

At this time I will recognize Chairman Wheeler for your comments.

STATEMENT OF SHANNON WHEELER

Mr. WHEELER. Thank you, Mr. Chairman and subcommittee members.

[Speaking native language.]

Mr. WHEELER. My name is Shannon Wheeler. I'm with the Nez Perce Tribe. My people, the Nimiipuu or the Nez Perce, have lived in what is now central Idaho and parts of Washington, Oregon, and Montana for thousands of years. Thousands of us live there today. We continue to exercise our sovereign treaty-reserved rights to fish, hunt, gather, and pasture our livestock across our broad aboriginal territory, which today primarily consists of our Federal public lands. These lands are critically important to the Nez Perce people as it defines our culture, traditions of thousands of years and is memorialized in countless ways, including our treaty of 1855 with the United States Government, and that's 12 Stat. 957 of the—with the United States. And the current names of the Nez Perce-Clearwater and Wallowa-Whitman National Forest are a part of that to memorialize that.

The manner in which these lands are managed in vital—are vital to the Nez Perce culture. Public land grazing is a complex and controversial topic. Our tribal members continue to exercise their treaty-reserved rights to pasture livestock on public lands within the Nez Perce homeland, which at one time was around 17 million acres that was our usual and accustomed areas, and we ceded over 13 million acres of reservation.

We recognize that livestock grazing, when administered responsibly, can be an appropriate and sustainable use of lands, for us, such activity can be an important expression of our history, our wealth, and our culture.

We also understand that in some areas and in some circumstances livestock's grazing is not appropriate. We have witnessed, as many members of the committee have, cases which livestock grazing has been conducted irresponsibly or in areas where the presence of livestock compromises other uses. These areas often provide critical habitat for our treat-reserved resources. Therefore, rights of the Tribe like the Nez Perce, livestock grazing, when authorized or conducted inappropriately, can compromise the exercise of our treaty rights that are—were reserved for us.

One prime example of this is the Rocky Mountain bighorn sheep and the conflicts associated with domestic sheep grazing. As in many areas across the United States, the Nez Perce homeland once supported vast herds of bighorn sheep throughout a network of canyonlands and subalpine ridges. These animals were materially and culturally critical to the Nez Perce, as was stated before, for bows and for the under armor of the day was their hide that we used, was flexible and strong and we—being agile with that in that time—at that time of—that period.

So to think about that, that resource itself, the animal itself that cannot speak for itself but—it does speak for itself but sometimes we don't listen. The animal, when he starts disappearing and he's

not able to tell you what's going on with him but we recognize that his—the depletion of the herds are—we're here to speak for that animal today, and that's why I'm here.

As—and today, these canyonlands and ridges remain in relatively healthy conditions and suitable for bighorn sheep, yet bighorn sheep have been greatly depleted across the vast portions of our homeland. Pneumonia caused by pathogens introduced by the region by domestic sheep has been identified by most scientists as the primary factor contributing to the significant decline and, in many cases, extirpation of numerous native bighorn sheep populations in the American West.

At the time of European settlement in the West, the bighorn sheep populations numbered in the tens of thousands. Within our homeland, these animals now exist in small isolated populations. Pneumonia continues to be the culprit that suppresses these remnant populations. Unfortunately, this situation is common across much of the Western U.S., and transmissions of the pneumonia-causing pathogens from domestic to bighorn sheep remains the primary concerns of bighorn sheep managers. The bottom line is bighorn sheep cannot share the range with domestic sheep.

The Nez Perce Tribe considers recovery of the bighorn sheep populations to huntable, healthy, and sustainable levels within our homeland and throughout their suitable historic habit—habitat to be a top resource management priority through recent science-based research.

A tool has been developed known as a risk-of-contact model. This tool, embraced by the U.S. Forest Service, provides land managers with a science-based foundation of evaluating grazing proposals and alternatives. The Nez Perce Tribe recommends that this committee encourage Federal agencies to continue using the risk-of-contact model for evaluating domestic sheep grazing activities within our homeland.

And some of this is all written testimony even though I'm not able to complete this. I would like to say this last and least. Proposals to transfer these public lands to State and private entities threaten access to and exercise of treaty-reserved rights that are resources on which they depend. The Nez Perce Tribe has been and remains categorically opposed to all such proposals. It is my hope that the perspective of the original inhabitants of these lands and the rights of resources reserved by the treaty with the United States are appropriately considered and prioritized. Under article VI, clause 3 of the Constitution, the supremacy law where treaties are the supreme law of the land and 12 Stat. 957, the treaty with the Nez Perce are a piece of that.

So I thank you all for you time.

[Prepared statement of Mr. Wheeler follows:]

Testimony of Mr. Shannon Wheeler
Chairman, Nez Perce Tribal Executive Committee
July 24, 2018

U.S. House Oversight & Government Reform - Subcommittee on Interior, Energy, and Environment

Thank you, Mr. Chairman, for the opportunity to travel and speak with you and this committee. My name is Shannon Wheeler. I am the Chairman of the Nez Perce Tribal Executive Committee and an enrolled member of the Nez Perce Tribe.

My people, the *Nimiipuu* or Nez Perce, have lived in what is now central Idaho and parts of Washington, Oregon, and Montana for millennia. Thousands of us live there today. We work in local hospitals, in neighborhood stores, in regional universities, and in Tribal government. One of us recently coached our boys' basketball team to their second consecutive Idaho state championship title. And we continue to exercise our sovereign, treaty-reserved rights to fish, hunt, gather, and pasture our livestock across our broad aboriginal territory.

Public lands are important to all Americans, but perhaps no more so than to my family and to Nez Perce Tribal members. The lands are sacred to our people. Most of our fishing, our hunting, and our gathering occurs on public lands. Many of our most sacred sites are now located on public lands. Our language, our traditions, our practices, and our beliefs are all inextricably linked to public lands. This relationship has been understood by the Nez Perce for hundreds of generations and memorialized in countless ways, from the language of our 1855 Treaty with the United States to the current names of the Nez Perce-Clearwater and Wallowa-Whitman National Forests. The manner in which these lands are managed is existentially critical to the continued vitality of Nez Perce culture.

Public land grazing is a complex and controversial topic. Tribal members continue to exercise their treaty-reserved right to pasture livestock on public lands within the Nez Perce homeland. We recognize that livestock grazing, when administered responsibly, can be an appropriate and sustainable use of lands practiced by all Americans. For us, such activities can be an important expression of our history, our wealth, and culture.

We also understand that in some areas, and in some circumstances, livestock grazing is not appropriate. We have witnessed, as many members of this committee have, cases in which livestock grazing has been conducted irresponsibly or in areas where the presence of livestock compromises other uses and experiences. Many of you may think of popular tourist destinations, scenic areas, our National Parks, or blue-ribbon trout streams as examples of such areas. But within broad aboriginal homelands such as that of the Nez Perce, areas where livestock may be inappropriate can include traditional hunting grounds, seasonal camps, the headwaters of fish-bearing streams, and sacred sites invisible to the general public. These areas often provide critical habitat for our treaty-reserved resources and therefore rights of tribes like the Nez Perce. Livestock grazing, when authorized or conducted inappropriately, can compromise

the exercise of our treaty-reserved rights. I would like to speak to you today about one prime example of this: Rocky Mountain bighorn sheep and the conflicts associated with domestic sheep grazing.

As in many areas across the western U.S., the Nez Perce homeland once supported vast herds of bighorn sheep throughout a vast network of canyonlands and subalpine ridges. These animals are materially and culturally critical to the Nez Perce, including food, clothing, and the famous Nez Perce bighorn bows made from reformed ram horns. Today, bighorn sheep are a treaty-reserved resource.

Today, these canyonlands and ridges remain in relatively healthy condition. Yet bighorn sheep have been greatly depleted across vast portions of our homeland. Pneumonia, caused by pathogens introduced to the region by domestic sheep, has been identified by most scientists as the primary factor contributing to the significant decline, and in many cases, extirpation of numerous native bighorn sheep populations in the American West. Within our homeland, these populations have been reduced to a fraction of their historic levels. Pneumonia continues to suppress these remnant populations. Just this spring coughing bighorn lambs and struggling nursery groups were witnessed in most local herds. Unfortunately, this situation is common across much of the western U.S. Transmission of pneumonia-causing pathogens from domestic to bighorn sheep remains the primary concern for bighorn sheep managers. Physical and spatial separation of domestic sheep from bighorn sheep habitat remains the primary tool available to wildlife managers to conserve and recover these populations.

The Nez Perce Tribe considers recovery of bighorn sheep populations to huntable, healthy and sustainable levels within our homeland, and throughout their suitable historic habitat to be a top resource management priority. Our collective actions have the power to help or hinder this recovery. To help federal land managers improve their stewardship of this culturally-important species, the Nez Perce Tribe, in partnership with federal land management agencies and the state of Idaho, conducted a detailed research study of the movements and demographics of the last remaining native population in Idaho. That information has helped inform federal decision-making efforts and led to the development of a powerful tool for analyzing risks associated with domestic sheep grazing in proximity to remnant herds of bighorn sheep. Known as the Risk of Contact model, this tool, embraced by the U.S. Forest Service provides land managers with science-based, empirical foundation for evaluating grazing proposals and alternatives. The Nez Perce Tribe recommends that this committee encourage federal agencies to continue using this Risk of Contact model for evaluating domestic sheep grazing activities within our homeland and beyond.

I would like to briefly address four additional opportunities on this front. As bighorn sheep populations have declined significantly due to pneumonia, federal permitting of domestic sheep grazing in and adjacent to bighorn sheep habitat remains a constant threat. The Nez Perce Tribe therefore recommends that this committee encourage federal agencies to focus efforts in evaluating domestic sheep grazing impacts on both existing bighorn sheep populations as well as suitable historic habitat necessary for bighorn sheep recovery.

The Nez Perce Tribe has also invested considerable resources in reviewing and monitoring domestic sheep grazing activities on public lands within our aboriginal homeland. The results have been troubling. We

have documented and informed the U.S. Forest Service of instances of trespass grazing, stray domestic sheep, inaccurate herd counts, and other violations of Annual Operating Instructions, Allotment Management Plans, and Forest Plan standards and guidelines within a single season on a single National Forest. In our experience, Annual Operating Instructions are routinely underdeveloped or simply ignored, Allotment Management Plans are outdated and rarely consulted, and Forest Plan standards and guideline violations are inadequately enforced.

Simply put, regulatory compliance on our public lands needs a lot of improvement. These regulatory tools, while perceived by some as onerous, burdensome, or unnecessary, in fact provide vital protections for a wide variety of treaty-reserved rights and resources, including our right to hunt bighorn sheep. The Nez Perce Tribe recommends that this committee encourage federal agencies to develop and enforce rigorous Annual Operating Instructions and Forest Plans, including strong Forest Plan standards protective of resources reserved under treaty to the Nez Perce and other tribes. We further recommend that this committee facilitate funding for federal agency efforts to update all domestic sheep Allotment Management Plans, some of which date back to the 1960s.

In an effort to support livestock producers displaced from federal grazing allotments due to resource concerns, including proximity to bighorn sheep, several proposals have emerged that would facilitate the renewed use of previously-vacant allotments nearby. It is essential that such actions be thoroughly evaluated under the National Environmental Policy Act and through government-to-government consultation with adversely affected tribes. In perhaps all cases, those vacant allotments have their own management challenges, stewardship goals, and treaty-protected resources which could be harmed by an unvetted permit approval.

And last but not least, proposals to transfer these public lands to state or private entities threaten access to, and exercise of, treaty-reserved rights and the resources on which they depend. As I noted previously, these lands are sacred and irreplaceably critical to our cultural life-ways. The Nez Perce Tribe has been, and remains categorically opposed to all such proposals.

I would like to conclude my remarks by acknowledging the wide variety of perspectives on public lands grazing you are likely to hear. It is my hope that the perspective of the original inhabitants of these lands, and the rights and resources reserved to us through treaty with the United States, are appropriately considered and prioritized. Healthy landscapes and bighorn herds are loved by all Americans. Thank you all again for your time and attention today.

Mr. GIANFORTE. Yes, Mr.—Chairman Wheeler, your entire testimony will be read into the record, so we'll have that up there ——

Mr. WHEELER. Okay. Okay.

Mr. GIANFORTE.—so thank you for your comments.

Mr. Eliason?

STATEMENT OF DAVE ELIASON

Mr. ELIASON. Thank you, Chairman Gianforte—oh, excuse me.

Chairman Gianforte, thank you, and Ranking Member Plaskett and members of the subcommittee, thank you. It's a pleasure to be here.

My name is Dave Eliason. I'm a fourth-generation rancher from Tremonton, Utah. Currently, I serve as president of the National Public Lands. My testimony today is on behalf of 22,000 cattle and sheep producers throughout the West who rely on Federal grazing permits.

Like many Western ranch families, mine goes back generations on the same land in Box Elder County, Utah. Since 1889, we've stewarded both our private ground and Federal land mixed in with it as if it were our own. Not only does our family rely on these—the health of these lands, so does our entire community. Staying in business for over 130 years has meant considerable change to our family operation. That means changing our herd to keep up with the times, acquiring new forage and water in dry years and—or implementing value-added programs to market our animals.

Unfortunately, Federal land management policy has often failed to adapt with us. No matter the issue, whether it's sage grouse, feral horses, or bighorn sheep, commonsense decisions are all too often set aside. This is out of the proven fear that radical environmental groups will sue to stop easy—even basic conservation practice from moving forward.

My family has been the target of at least two of these lawsuits. Once filed, the agencies hit the brakes and rush to appease the litigants. It's a sad, predictable pattern, and I wish I could say our story was unique, but it's not. It's the same story everywhere I travel as the president of Public Lands.

Another favorite weapon of these litigants is the Endangered Species Act. In fact, of the 145 active petitions for listing, 46 percent come from three groups: Center for Biological Diversity, Defenders of Wildlife, and WildEarth Guardians. Ironically, these same groups will likely sue to impede recovery, leading to the ESA's poor success rate of only 2 percent.

Fortunately, solutions are being discussed as we speak. Senator Barrasso has introduced legislation based on bipartisan Western Governors' Association ESA policy resolution. PLC strongly supports this. With many solutions held hostage in a legal black hole, wildfire and frequent predictable—this is a predictable outcome of this pattern. The National Interagency Fire Centers estimates fuel treatment costs of the agency as at least $150 an acre. Ranchers perform that service at no cost to the taxpayers and everybody wins, ranchers, wildlife, sportsmen, and even the resource. Instead of embracing this tool, the agencies often reduce AUMs, eliminate grazing, and—just to appease the litigants.

A prime example of this is the recent Martin fire in Nevada which consumed nearly a half a million acres. Ninety-nine percent of that greater sage grouse habitat and 82 percent was priority habitat. That's the best of the best. Unfortunately, due to the priority habitat management area designation and despite clear science that says grazing is compatible and necessary to conserve sage grouse, the area has not been grazed for at least two years. The resulting fuel load of over 2 tons per acre led to the devastating fire that could have easily been avoided.

Responsible management of those resources, rather than the fear litigation, should have helped lessen the impact of this fire and many more like it. Streamlining NEPA and enhancing the use of category exclusion is essential to fixing this broken system, so is modernizing the ESA. Enhancing local input and leveraging boots-on-the-ground knowledge will dramatically improve outcomes for the species and shift the focus away from listing back to recovery where it belongs.

No matter the law, we must eliminate unnecessary opportunities for litigation by giving agency personnel the tools they need to use common sense and work with the critical—with our critical—with the critical partners.

In closing, Mr. Chairman, ranchers stand ready to address the most pressing challenges facing our public lands. From conservation of the greater sage grouse to preventing and fighting wildfires, ranchers want to be the partners on the ground. Further, Federal land managers in the West need ranchers to manage—help manage property, so why not let us help you preserving our public lands for generations to come?

Thank you, and I look forward to your questions.

[Prepared statement of Mr. Eliason follows:]



National Cattlemen's Beef Association



Testimony of David Eliason
President
Public Lands Council

On behalf of
The Public Lands Council and National Cattlemen's Beef Association

Submitted to
U.S. House of Representatives Committee on Oversight and Government Reform, Subcommittee on Interior, Energy, and Environment

July 24, 2018

Chairman Gianforte, Ranking Member Plaskett, and Members of the Subcommittee, thank you for inviting me to appear before you today. My name is Dave Eliason, and I am a 4th generation rancher from Tremonton, Utah. Currently, I serve as President of the National Public Lands Council (PLC), and my testimony here today is on behalf of the 22,000 cattle and sheep producers throughout the western United States operating with federal grazing permits. Previously, I have served my community and my industry as president of the Utah Cattlemen's Association, a member of the Utah BLM State Advisory Board, chair of the Utah State Farm Service Agency, and as a member of the Governor's Agriculture Advisory Board for the State of Utah. All told, I have spent the better part of 30 years actively engaged in the business of western federal lands policy and its effect on the livestock grazing industry, as well as a lifetime spent on my family's ranch experiencing those effects first hand.

My family settled in Box Elder County in 1889 and has ranched there for four generations. I'm proud that the 5th and 6th generations of my family are now taking the reins and guiding our ranch into the future. To this day we have nearly all of the original ranch and have added substantially in the past 130 years. Over the generations we have expanded and diversified to keep up with the times. That has meant transitioning our herd genetics to reflect current tastes, or acquiring new deeded and permit ground to ensure we have forage and water in dry years, or implementing value added programs like natural beef and source verification to market our animals. Regardless of where our operation takes us, our management is always focused on the land and the needs of the resource that provides our family with so much benefit. Unfortunately, federal land management policy has often failed to adapt along with us.

I have watched the current federal management situation devolve from the early days of open range to the allotment-based permit system we have today. For families like mine, the Taylor Grazing Act of 1934 was defining legislation. Formalizing our preference grazing rights helped to define the current western "ranch unit" consisting of deeded "commensurate" or "base" property and attached federal grazing permits that make year-round livestock care possible in the arid west. We don't own our permit ground,

but we're awfully protective of it. We gladly share it with the other multiple uses, but often ranchers are the ones left to care for the resource after the day-hikers and hunters leave. We know this ground like the backs of our hands and we treat it as our own – and it ultimately benefits all who come to enjoy it.

Like many rural communities throughout the West, ours depends on ranching to stay viable. The supplies for our operation are purchased locally, and the gas stations, grocers, feed stores, farm equipment dealers, automobile dealers, healthcare providers, and community services all depend on our business year-round to stay open. Ranchers also serve on local county and school boards, lead their local churches, and contribute a large percentage of the property taxes that fund local government operations – a constant issue in areas with a reduced tax base due to heavy federal land ownership. Yes, recreation in the form of hikers, hunters, and fisherman all contribute to our economic success, but it's ranching that keeps our local economy moving all year.

Ranchers also form the backbone of local services in our communities. City and county governments, wildland fire response entities like Rural Fire Protection Associations (RFPAs) and other local firefighting entities, search and rescue efforts, and other local services are almost always led by local ranchers. Out of necessity, yes, but also out of care for the communities our fathers and grandfathers built.

In my travels around the West as an officer of the PLC, I get a bird's eye view of how federal land management policy is playing out on the ground, as do my fellow officers and our staff. In some instances, we hear glowing reports of working partnership with local BLM or Forest Service offices. These successful situations typically involve trust built up over years. Despite the political climate of the time, seasoned agency personnel in these successful areas understand the needs of a managed range and look for flexibility to achieve results alongside ranchers.

While we celebrate these partnerships where they occur, unfortunately the story we hear far more often is one of inflexibility and fear. Current statute and policy can be an anchor around the neck of a well-intended range conservationist or district manager. Similarly, in the hands of a federal employee with poor intentions, these policies can quickly become weapons. The pressure to over-utilize the National Environmental Policy Act (NEPA) often grinds progress to a halt and takes commonsense management options totally off the table. Whether maintaining fence lines to protect riparian areas, preserving water sources for wildlife and livestock alike, or utilizing targeted grazing techniques to reduce fuel loads and curb the threat of wildfire, fear of litigation from insufficient NEPA can have catastrophic consequences for western communities.

The scope of impact from this type of management is extensive. No matter the issue, litigation has become an unavoidable obstacle for ranchers seeking to put conservation benefits on the ground. Be it the filing of frivolous lawsuits or simply the threat of legal action, public lands ranchers are inhibited in their ability to implement the necessary adaptive management practices to address the changing conditions on the ground.

This is playing out in real time across the West as I sit before you today. In the weeks leading up to this hearing, the Martin Fire in Nevada raged out of control, consuming 435,000 acres. 433,000 acres of that was greater sage grouse habitat, with 357,165 acres falling in to the Priority Habitat Management Area, or the "best of the best" habitat available. Unfortunately, and due to that very PHMA designation, the range that's been lost in that fire had not been grazed in several seasons. The resulting built up fuel load

of two tons per acre led to the devastation that followed. The science is clear on this issue, responsible grazing is not only compatible with sage grouse habitat, it's beneficial. This is particularly true when it comes to reducing the threat of wildfire. Responsible management of those resources, rather than fear of litigation, could have helped lessen the impact of the Martin Fire and countless others like it.

Unfortunately, this devastation is only the beginning of the story for ranchers impacted by fire on federal lands. The loss of that forage means thousands of animals – both wildlife and domestic livestock – will be displaced just when they would usually be grazing those areas.

To make matters worse, neighboring ranchers that weren't burned out are looking at low utilization rates and excess forage on their own allotments due to similar restrictions. Under the current rules, they must remove their livestock in accordance with the terms of their grazing permit, even if utilization rates are as low as five percent. In a private land environment, these neighbors could work together to ensure that fuel loads were managed and burned out neighbors had a place to graze their animals. In the modern, litigious world of federal land grazing, this forage most often will go unused due to fear of lawsuits from radical environmental litigants until it inevitably burns as well.

The National Interagency Fire Center (NIFC) estimates that non-grazing fuels treatments cost the agencies at least $150 per acre. Ranchers perform that service at no out-of-pocket cost to the taxpayer – in fact, the rancher pays for the privilege.

Instead of embracing this tactical and financially advantageous tool, agency staff's default response has been to reduce AUMs, eliminate grazing, and attempt to placate outside litigators. This trend is increasingly prevalent as it relates to vacant grazing allotments. Because of the overuse of NEPA and subsequent backlog of projects requiring it, many allotments are being unfairly categorized as "not meeting rangeland health standards".

Despite a large volume of misinformation on this front from anti-multiple use groups like Public Employees for Environmental Responsibility (PEER), the reality is that most of the issues in these cited areas are either the result of insufficient information, feral horse damage, fire, or other non-livestock related impacts. Once the threat of lawsuits and pressure have been applied, science goes out the window, fear takes control of decision-making, and the resource becomes stagnant with excess fuel loads due to non-use. Unavoidably, the next step is catastrophic wildfire and a loss for all.

These vacant allotments represent a tremendous lost opportunity. Their use could be a great asset to communities whose range has suffered from wildfire or in case of species conflict such as Mr. Helle will testify to today. Currently, the Forest Service and BLM place a low priority on analyzing and utilizing these allotments, when, in reality, they could solve a large number of internal management issues by making this work and priority, making this forage available to ranchers in need, and reducing risks in the process.

Beyond fire, this type of fear-based management also has consequences for species conservation and the efficacy of laws like the Endangered Species Act. As an example, in 2012 the Obama Administration determined that the Gray Wolf population in the Great Lakes and Wyoming had far-exceeded recover goals and was ready for delisting. Despite following the process, doing to homework, and going through the full delisting process, FWS was immediately litigated on their final rule. That litigation ultimately

resulted in the rule being overturned and wolves being returned to the list. That's not science, it's a hijacking.

Further examples are rampant across all sectors of the Endangered Species Act (ESA). While well-intended when first passed over forty years ago, the ESA has evolved into the favorite weapon of these habitual litigants. A quick inspection of the current listing petition backlog shows a substantial overlap between the most prolific listing petition filers and the most prolific litigators. Unsurprisingly, The Center for Biological Diversity, Defenders of Wildlife, and WildEarth Guardians are petitioners on 80 of the 145 active petitions for listing – that's 46 percent. This litigation-driven focus on listings has derailed true species conservation efforts and rendered the current ESA largely dysfunctional. In an effort to improve ESA's impact on ranchers, NCBA and PLC have been actively involved in the Western Governors Association's (WGA) ESA Initiative. For over three years, we participated in WGAs roundtables with other conservation, recreation, and industry groups. The resulting resolution, which passed on a bipartisan basis, is widely regarded as the gold-standard for ESA modernization. We are pleased that this bipartisan resolution has been crafted into legislation by Sen. John Barrasso in the Endangered Species Act of 2018, and we urge swift passage of this legislation.

In closing, Mr. Chairman, America's cattle and sheep producers have, for generations, been the most engaged federal partner in managing our public lands. Public land ranching is truly the oldest and best example of a successful public private partnership. The public gets 24/7 care and management of nearly 250 million acres of federal land and ranchers get the forage and space they need to make ranching possible in the arid American West. The health of the land isn't a talking point for ranchers, our livelihood depends on it. If we don't keep our natural resources in top condition, we'll be out of business. What we seek in a federal partner is the statutory and regulatory flexibility to manage for the conditions on the ground, not the courtroom. In our experience, judges make terrible land managers. If we are allowed greater flexibility to carry out that mission, taxpayers, federal land managers, and ranching communities across the West will thrive for years to come. Put simply: if we take care of the land, the land will take care of us. Thank you for this opportunity to testify.

Mr. GIANFORTE. Thank you, sir. And thank you to the panel for your testimony.

We will now move to our questions, and I will recognize myself for five minutes to start.

I want to start with this question of compatibility of grazing and multiple use. Can they coexist? Mr. Helle and Mr. Eliason, is that correct? We have discussed, you know, BLM and Forest Service both have as their missions the statement directive for multiple use and sustained yield. Can you describe how grazing is conducive to multiple use on Federal land? And really try and answer the question, can it coexist with other uses? Mr. Helle first.

Mr. HELLE. Thank you, Mr. Gianforte. Multiple use has been demonstrated on our forest for generations. We've got excellent hunting opportunities. There's recreation opportunities. And by working with conservation groups and—like the Montana chapter of Wild Sheep Foundation, we were able to sit down and work out ways that now the Gravelly Range has a huntable population of bighorn sheep and our domestic sheep on there, but it took, you know, grassroots work at the local level and—to build trust within these organizations to have that, you know, come through.

And then when we sign an MOU and that's a contractual agreement with Fish, Wildlife, and Parks, us, and the Forest Service, the land management agencies, to have that not adhered to or that trust not there ——

Mr. GIANFORTE. So having grazing on Federal land does not preclude other uses, including wild sheep populations?

Mr. HELLE. Correct.

Mr. GIANFORTE. Okay. Mr. Eliason?

Mr. ELIASON. Yes, we're a great believer in multiple use. I mean, we promote—distribute water. We help maintain the resources as much as we can. The—it's been proven many times that sheep, cattle, and wildlife mix and they're a good combination. The worst thing we want is just to try to manage things for a single species. The best we can do is multiple use so the whole country can enjoy these lands.

Mr. GIANFORTE. Yes. Mr. Helle, just to go back to that for—I am really curious about how you have resolved potential conflicts and how have you facilitated these discussions to achieve what you have done in the Gravellys?

Mr. HELLE. Well, we've formed a strategic alliance in the Ruby Valley to get together interests from conservation groups like the Greater Yellowstone Coalition, Wildlife Conservation Society, Nature Conservancy, and us landowners and permittee holders have come together to find where we have shared values. And we've found that we have very similar goals in the end to preserve that open space and that—you know, our commensurate-based property, the land that we use when we're not on the forest, is actually a huge public benefit that the public is receiving by having us have Federal grazing leases. So they've realized that that's the key and that's the network that holds these open spaces and wildlife corridors and all that we enjoy about southwest Montana.

I'm speaking more because of—you know, but I'm sure that's true, you know, across the country. You know, there's 130 million acres of private lands that are tied to Federal grazing land permit-

holders, so in combining that with the 250 million acres of land that we graze on the Federal leases, that's 400,000 acres of land protected by family ranchers who are very good stewards of the land.

Mr. GIANFORTE. So in your experience, various groups, conservation, ag producers can work together and resolve issues at a local level?

Mr. HELLE. Definitely. We find that we have a lot of shared values and a lot of similar goals.

Mr. GIANFORTE. Okay. Mr. Horngren, you discussed in your testimony some of the ways which Federal grazing programs are vulnerable to litigation. Does bad-faith special-interest litigation pose a threat to multiple use?

Mr. HORNGREN. Absolutely, Mr. Chairman, and as an example, one of the plaintiffs in the sheep station case, which is designed to get information on this conflict or perceived conflict between domestic and bighorn sheep, Western Watersheds Project over the years has filed 170 lawsuits over ranching and other multiple-use activities on the Federal lands.

Mr. GIANFORTE. Okay. Thank you. I am going to recognize the ranking member for her questions, and we will probably do a couple of rounds here.

Ms. PLASKETT. Okay. Good afternoon. I wanted to ask a question. In our discussion today, we talked about the Federal—really central to all of this is the Federal Government's role in managing Federal lands. Currently, the Bureau of Land Management and the Forest Service play an important role in overseeing grazing. Mr. Helle and Mr. Eliason, do you believe that there should be more or less Federal regulation and oversight of commercial grazing on Federal lands? Who wants to go first?

Mr. HELLE. Thank you, Ms. Plaskett. Federal oversight, you know, is important as those are public lands, but local input on local decisions would help manage those lands more appropriately. We are the experts that live on those lands and have those grazing permits, and sometimes it seems like they try and make decisions without our input. But, you know, I think that, you know, grazing lands are a dynamic system and they're very localized and they're different for each region, so offering regulation that is a blanket approach across many States and many different ecosystems may not be appropriate for more site-specific decisions that need to be made on the ground with the experts that the ranching community and the land managers have.

Ms. PLASKETT. Mr. Eliason?

Mr. ELIASON. Yes, in a simple word, I don't think we need any more rules and regulations. But generally speaking, the ranchers and the Forest Service and BLM get along good. Sometimes there are conflicts by these litigations, throws kind of a monkey wrench into things. But it's important that we do follow the rules and regulations. We're a law-abiding people. We've been in generations on these ranches. We, too—we understand that if we take care of the land, the land will take care of us. We—important rules and regulations are necessary in our society, but sometimes we can be overregulated.

And I agree with Mr. Helle on the fact that we need local input. It's hard to manage things, say, in Washington State, back in Montana or Utah. So local input is very, very important that I think that people understand the local needs. Thank you.

Ms. PLASKETT. Okay. Mr.—Chairman Wheeler, the same question to you. Do you believe that there should be more or less Federal regulations and oversight of commercial grazing on Federal lands?

Mr. WHEELER. Thank you for the question. I definitely believe that the Federal Government has a trust responsibility to the treaty of 1855 with the Nez Perce. The question that you ask for local input, I would know that we are on that landscape, so our input definitely is valuable to that decision-making process that ——

Ms. PLASKETT. Do you believe that the Tribe should be involved in any changes to Federal regulations and policy related to this?

Mr. WHEELER. The—I think the ruling on it would be that the—was reserved for us and the resources that were on that landscape is—our biggest concern is that that is our ruling. Our ruling is already in place and our decision has been made for us over 140 years ago that these animals, this habitat, the fish, that was all reserved in the treaty of 1855, and our people haven't changed that much from that time. And so our input is that responsibility of the Federal Government to hold that in trust for us, and I believe that our—I guess that what you're asking then for this piece would be that our input is here; it's now, and that's what we're here to do.

Ms. PLASKETT. And do you think that the Federal Government has managed that properly, the interests of the Tribe along with the interests of other commercial interests which may appear to be at odds with one another?

Mr. WHEELER. You know, I think that we've had a working relationship with the Forest Service, the USDA that, you know, now, they're starting to hear a little more of our concerns of how grazing is affecting the landscape out there. For example, if I may give an example, for one of our canvas areas where we dig roots out there, we don't only graze out there or hunt but we gather out there. And the livestock is going out into that, and there's no quarantine time for these animals before they get out to the range land or out to the Forest Service land that, you know, maybe at one time they were driven like a cattle drive, but now they're shipped out there. So wherever they were grazing, they're still packing those seeds of noxious weeds out to our—out to these lands where we gather. And I think that that aspect of it needs to be observed from a tribal standpoint of how that's reflecting on our resources that are out there.

Ms. PLASKETT. Okay. Thank you.

Mr. GIANFORTE. Okay. So Federal grazing permittees are required to have an adjoining base property, and many ranchers operate on a combination of deeded land and then Federal land that has a grazing allotment on it. The value of the base property is in part depending on grazing access to the adjoining Federal land. Therefore, when the Bureau of Land Management or the Forest Service reduces AUMs on the grazing allotment, they're also reducing the value of the deeded land.

Mr. Eliason, in your written testimony you describe the current ranch unit, as you refer to it, with deeded base property and attached Federal grazing permits. Could you please elaborate on how the private base property and the Federal grazing allotments are related and just how the system works?

Mr. ELIASON. Sure, I'd be glad to. Generally, most of the ranchers have base property. Usually, they spend—the animals will spend their winters on private property, and then in the summertime they'll go up onto the Federal forest and BLM grounds, so it's really quite a combination. If you were to reduce, say, the grazing on the Forest Service, that means that they can't carry. They have no place to go for those cattle. Most of these ranchers are appraised by the number of animals that they can carry year round, so if you cut the one side, you know, then it reduces the value of the ranch.

And as you know may know very well that ranchers pay a lot of property tax for the counties, and many rural and—rural counties, that's the tax base. And a lot of counties like in Utah, 98 percent of the land is Federal, so they haven't got a big tax base, so it's very important these AUMs remain viable.

Mr. GIANFORTE. So when a ranch that may have been on a deeded property for three or four or six generations, when the AUMs on the adjoining Federal land are diminished in some way, it actually reduces the property value of the underlying deeded land, is that correct?

Mr. ELIASON. Absolutely.

Mr. GIANFORTE. Yes. Just to a follow-on, so just to be really clear, if the AUMs on the Federal lease are diminished, have you seen that in practice, and what is the effect on the underlying deeded ——

Mr. ELIASON. Well, generally, the effect is, well, then you got to use some of your private property to carry it, so you've got to have a lot less carrying capacity. So your value is less, your income is less, and sometimes if it cuts too much, the ranch is no longer viable.

Mr. GIANFORTE. Okay. Mr. Helle, how long has your family ranched sheep in the area where you currently do so?

Mr. HELLE. My family immigrated from Austria into the—right after the turn of the century and started into livestock grazing before there was even a forest.

Mr. GIANFORTE. The turn of the last century?

Mr. HELLE. Yes. And ——

Mr. GIANFORTE. So ——

Mr. HELLE.—you know, over 100 years.

Mr. GIANFORTE. Okay. And if you were no longer able to graze your sheep on the Federal land—on the neighboring Federal allotments, how would that affect the value of your ranch and your operation?

Mr. HELLE. Well, that's an interesting thing because I live in southwest Montana, and the—you know, the agricultural value of our operation would be greatly reduced. It would become to the point where my family could not make a viable living on the operation with it were it not for our Federal grazing permits. So that would put an undue, you know, risk of our private lands becoming necessarily, you know, open to the market for subdivision or trophy

ranches or some of these other things that are not necessarily conducive to what we value in southwest Montana as far as protecting that open space and those wildlife corridors and all that we enjoy about that.

So, you know, I'd like to say that it kind of goes both directions. The Federal grazing leases, yes, they give us the agricultural opportunity to make our ranches more valuable and keep us in agriculture, so that's a public benefit that the public receives by, you know, almost a semi-conservation easement of those private lands that are intermingled within the public lands.

Mr. GIANFORTE. And as I understand it, because the regulations require adjacent base property, these grazing allotments typically transfer with the deed of the home ranch. Is that ——

Mr. HELLE. Yes, correct. You have to—you know, there's some laws and regulations around the transfer, but you can either sell the base property or the livestock in certain instances that are connected to that permit.

Mr. GIANFORTE. And the—ultimately, the price that someone might pay for that home place is in part affected by what grazing allotments are available, and diminishing the AUMs on the Federal land diminishes the value of the home place.

Mr. HELLE. Correct.

Mr. GIANFORTE. Yes, okay.

Mr. HELLE. On an agricultural basis.

Mr. GIANFORTE. Yes. Thank you very much. And I'll recognize the ranking member for her questions.

Ms. PLASKETT. Thank you. Mr. Wheeler, you were talking about the effect that the comingling has on the bighorn sheep. Can you give us some more examples of how commercial sheep grazing on Federal lands have affected the population?

Mr. WHEELER. Thank you for the question. You know, looking at the sheep themselves or the bighorn sheep, you know, the outdoor industry, you know, if you talk numbers there, $850-billion-a-year economic driver, and that supports over 7.5 million jobs in this country, but, you know, the—when they start—these boundaries start coming into this habitat, this suitable habitat, that—for the bighorn sheep, and when they comingle, then the reduction of the herds in, say, the Hells Canyon area has been reduced and, you know, we have jet boat excursions. And every one of those—I couldn't say maybe the majority of those trips that go up the Hells Canyon up the Snake River all have bighorn sheep on their advertisements. I don't believe they have domestic sheep, but they do have the bighorn sheep going up there, and those are being reduced.

And just the importance of the bighorn sheep as far as the petroglyphs that are thousands and thousands of years old, our past tribal members have depicted bighorn sheep on there, and, you know, the book Yellow Wolf: His Own Story, he talks about the bighorn sheep and being able to hunt those.

And, you know, I just think that, you know, when these boundaries are set, you know, we're not against grazing, you know, on Federal lands, but we are against when they're affecting the habitat of wildlife that is reserved by us and our resource and ——

Ms. PLASKETT. Do you know if there are other indigenous cultures who are similarly affected as yours, maybe not with bighorn sheep but with others in Federal grazing or Federal land areas?

Mr. WHEELER. Yes, there's our sister tribes, the Umatilla Tribe, the Yakama Nation, the Warm Springs Tribe, the Upper Snake River Tribes. There's the Shoshone-Paiutes, Shoshone-Bannocks, the CSKT Tribe all within this area are near us that all have had bighorn sheep populations depleted.

Ms. PLASKETT. And do you know of depletion of other things other than bighorn sheep and—or do you know of or any of you gentlemen who are testifying know of instances where the cultural viability and cultural issues such as—or livelihood of tribes have been successfully worked out with commercial grazing or with other domestic grazing activity?

Mr. WHEELER. I can say to one of those is the bison that are—have that issue. The moose in our area now have declined. You know, there's probably numerous reasons, but for the—specifically to the bighorn sheep is the domestic sheep and the pneumonia and the pathogens that are carried by them when they intermingle. So the boundaries, I believe, are the important issue with being able to come to a—some type of agreement to—you know, like I had mentioned, we're not against grazing but we are against that affecting the suitable habitat of the bighorn sheep.

Ms. PLASKETT. So your concern is with the increasing grazing area or grazing that goes outside of the treaty agreement?

Mr. WHEELER. Yes.

Ms. PLASKETT. And could you explain to the subcommittee how treaty rights could be affected by increasing grazing in Federal lands?

Mr. WHEELER. Yes, thank you for the question again. So if you look back at the reserve rights of a treaty, with us is 12 Stat. 957, and in that treaty what the United States there was rights reserved to hunt, to fish, to gather in all usual and accustomed areas. And that was part of our sustenance that we could gather our foods, and we could also—it was also tied to our sacred economic security that we had as far as the value of what this resource meant to us as far as trade, trade to other tribes and trade throughout the region. A lot of the different materials that were traded were secured in that treaty as well, so then the treaty, which is—which was in 1855 then was ratified in 1858 or 1859, and then the U.S. Constitution, which is article VI, clause 3, which is the—I mentioned the supremacy law that treaties are the supreme law of the land that—those rights were reserved in that, and if those depletion of those herds and those depletion of those resources are affected, then our treaty is affected by the depletion of those resources.

Ms. PLASKETT. Thank you. Thank you very much. I yield back.

Mr. GIANFORTE. Okay. Thank you. Mr. Helle, your operation has been involved in a number of lawsuits. Do you feel that the fear of future litigation is something that hangs over you and other ranchers in your area?

Mr. HELLE. Well, definitely. I worry that other people might be, you know, looking at the sheep industry as—and we need people to come into the sheep industry, but the risk of these lawsuits

hanging over our industry is definitely changing people's perspective on the ability to increase and expand our industry. The lamb industry in America, we import over half of what the domestic consumption is. Wool is critical for our military, and we import a lot of wool, too. And we're seeing, you know, really good prices for wool right now. The lamb market is good, so the opportunities in the sheep industry are great from an economic perspective.

But from, you know, the litigation side of things and, you know, a lot of the Western domestic sheep production has—you know, has been dependent on some public lands grazing, so we're putting at risk a—you know, an infrastructure and everything else that would hold that industry together to, you know, draw that in. So ——

Mr. GIANFORTE. So ——

Mr. HELLE.—I mean, economically, it looks good, but litigation-wise, that ——

Mr. GIANFORTE. So not knowing when the litigation is coming or from which direction really adds uncertainty to your ability to plan your business?

Mr. HELLE. Definitely.

Mr. GIANFORTE. Yes.

Mr. HELLE. You know, I think that our Federal agencies—land management agencies make a lot of decisions based on the fear of a litigant coming in ——

Mr. GIANFORTE. Okay.

Mr. HELLE.—rather than on sound management.

Mr. GIANFORTE. Mr. Eliason, have you heard from other ranchers around the country who are concerned about their allotments or permits facing litigation?

Mr. ELIASON. Oh, sure. And I've experienced it, too. And a lot of times these radical environment groups that file these lawsuits really intimidate the local forest and BLM because it brings on so much more work and fear there. In 1982 we had a big fire in our—one of our allotments. They would come in and reseeded it, and so it carried a lot more. So the BLM gave us what they call temporary non-renewables. They wouldn't give us anything permanent, but they gave us—but we had fire on these every year. So for 25 years we went on being able to use these temporary non-renewables.

Western Watershed Project, one of these radical environmentalist groups, sent a letter to the BLM saying that it was going to sue the BLM if they continued to let us run on this temporary non-renewables. We immediately got a cancelation of our temporary non-renewables. We had to stop it right then. We eventually went to court and we was able to get those back, but that's a lot of time. A lot of times the BLM and Service will do things so they don't upset the cart.

Mr. GIANFORTE. So you had a longer-term grazing allotment agreement, and it went to this temporary ——

Mr. ELIASON. Non-renewable.

Mr. GIANFORTE.—non-renewable ——

Mr. ELIASON. Yes.

Mr. GIANFORTE.—which basically means it's ——

Mr. ELIASON. You had to renew them every year.

Mr. GIANFORTE. It seems like it's a hand-to-mouth experience ——

Mr. ELIASON. Yes.

Mr. GIANFORTE.—where you have very little certainty about the future.

Mr. ELIASON. Exactly.

Mr. GIANFORTE. And it makes it hard to—being a business guy, it makes it hard to plan, doesn't it?

Mr. ELIASON. Exactly.

Mr. GIANFORTE. Yes. Mr. Horngren, you proposed legislation clarifying that, quote, "annual operating instructions," end quote, should not be considered final agency actions. Under the current system that allows legal challenges to annual operating instructions, is there potential for agencies to have to litigate similar issues repeatedly?

Mr. HORNGREN. Yes, there is, Mr. Chairman. And that litigation can occur on the same forest or spread out among forests throughout the West. For example, right now, the Western Resources Legal Center is helping defend, as codefendants, lawsuits against the Forest Service on the Fremont-Winema Forest in Oregon. We had two of those lawsuits, which recently were completed in the last year on the Stanislaus National Forest in California and on BLM lands in Arizona. Some of those same issues are brought up again and again.

Mr. GIANFORTE. And how would the changes you propose regarding annual operating instructions benefit both permittees and Federal agencies?

Mr. HORNGREN. It would make the Federal agency job a lot easier and less expensive, and it's not trying to do an end run around litigation or shut anybody off from litigation. It's just acknowledging that the big decisions are made in the permit for the 10-year period. You get your shot there. Often, you can win; maybe you lose. But once that opportunity is done, implementation of that decision on a year-to-year basis shouldn't continually be subject to litigation.

Mr. GIANFORTE. So that would allow all participants to have their voice?

Mr. HORNGREN. Yes.

Mr. GIANFORTE. It gets sorted out in a collaborative way but then gives the ranchers certainty for 10 years before the individual decisions can be challenged?

Mr. HORNGREN. That's right.

Mr. GIANFORTE. Okay. Thank you. One last question if I could, Mr. Horngren. Do you believe that the current grazing permit administration process grants ranchers adequate level of certainty for their operation and allows long-term planning?

Mr. HORNGREN. No. It's difficult, particularly with the Endangered Species Act and the way that's set up now about the consultation that I mentioned. And the permit process is very uncertain because you don't know what another agency, Fish and Wildlife Service or National Marine Fisheries Service, is going to shove down the throat of the Forest Service or BLM in the name of protecting the fish and wildlife.

Mr. GIANFORTE. Okay. Thank you.

Does the ranking member have additional questions?

Ms. PLASKETT. No.

Mr. GIANFORTE. Okay. I would like to touch on a couple—I'll recognize myself for one more round of questions, and then we'll wrap up our discussion today.

A report by the Congressional Research Service based on data from the Bureau of Land Management and Forest Service states that in the fiscal year 2016 out of the 12 million animal unit months that could have been authorized for use on BLM land, only about 8,700,000 were actually used. In the same year on Forest Service land, only 6,800,000 head months were used out of 8,200,000 that were available that could have been authorized. Mr. Eliason, do you believe accounts for the nonuse of millions of animal unit months—what do you believe accounts for these nonuse of the animal unit months?

Mr. ELIASON. Well, there are several reasons. There are a lot of—especially certain areas, there's a lot of what we call vacant allotments, and sometimes they want to transfer them to sheep from cattle, to sheep to cattle, or vice versa or they want to make some changes. Right now, the real problem is getting the NEPA done on those in order to get the—these allotment back into use. Sometimes, some of these allotments, you know, this is a hard record—the country—that you don't want to. But generally, what's been really causing a problem lately is being able to get the NEPA done on it. These vacant allotments, one of the big challenges is that's on the bottom list they're getting the NEPA. And as we know, there's a huge backlog getting NEPA done. And so with the vacant allotments, they're probably not going to get done. I know a lot of those allotments are just waiting for the NEPA to get done so they can get them back into use.

Mr. GIANFORTE. So streamlining the NEPA process ——

Mr. ELIASON. That's right.

Mr. GIANFORTE.—would be a benefit? Okay. Could you explain the concept of voluntary nonuse for those who may not be familiar with the term?

Mr. ELIASON. Yeah, voluntary nonuse is just—you know, whether it's—you know, maybe it's a really dry year or, you know, financially hard times come up on it, and so sometimes you have to take temporary non-renewables.

Mr. GIANFORTE. But that's to be ——

Mr. ELIASON. Or not—but ——

Mr. GIANFORTE. To be a good steward of the land?

Mr. ELIASON. Yes. You know, a lot of times it's for the benefit of the ground, and so we don't graze it. And at other times, you know, like I say, sometimes it's financial reasons. Usually, on the Forest Service they allow you three years. BLM sometimes you can go on for a long time. But generally speaking, a lot of times it's—they're not being used because of the health of the resource.

Mr. GIANFORTE. Yes. Mr. Helle, are you aware of any ranchers who have had animal unit months reduced or been threatened with a reduction or have you experienced it yourself?

Mr. HELLE. Thank you, Mr. Gianforte, for that question because recently, a—an episode occurred up in our Upper Ruby where there was some maintenance done on a project that required some road building in that. So it was—it happened that the—it was in a roadless area, and when that—Forest found about it, the ranger—

I guess it was authorized by the recreation person and maybe the range conservationist, but when the forest ranger got word from a bystander or somebody that saw it, then things were just—kind of fell out of place at that point. And then I think they threatened to, you know, not let the cattle go into that, and if they would go into that area, that they would threaten them with a reduction in their AUMs when all that was thought to have been prearranged and worked out.

And it was just a lack of communication I think that had that, but that's what happens when you don't involve the permittees and when you're making decisions and stuff. So it was unfortunate ——

Mr. GIANFORTE. Okay.

Mr. HELLE.—that they were threatened with reductions.

Mr. GIANFORTE. For Mr. Helle and Mr. Eliason, have you ever seen situations where voluntary nonuse has not been voluntary?

Mr. ELIASON. Yes, a good example of that is the national monuments. When these places are made into national monuments, the rules and regulations become so severe and so hard that it's just not worth it. So a lot of times, that's—that caused the vacant allotment. But a lot of times it's because of the welfare of the range.

Mr. GIANFORTE. Okay. Mr. Helle?

Mr. HELLE. It's hard to say because I've seen a lot of sheep ranchers just go out of business, so I don't know what the underlying things were or if there was some offer or something. But I know in Beaverhead County there was, you know, lots of sheep run on forest land, and there's very few of them now.

Mr. GIANFORTE. Okay. Well, I want to thank the witnesses for your testimony today. The hearing record will remain open for two weeks for any member to submit a written opening statement or questions for the record.

If there's no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 3:49 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

STATEMENT OF GRAY N. THORNTON,
President and CEO, Wild Sheep Foundation
Before the House Committee on Oversight, Subcommittee on Interior, Energy, and the Environment will
July 24, 2018

The Wild Sheep Foundation enhances wild sheep populations, promotes scientific wildlife management, and educates the public and youth on sustainable use and the conservation benefits of hunting while promoting the interests of the hunter.

This mission brings us in direct working relationships with grazing permittees on Forest Service and Bureau of Land Management lands. America's Federal public lands are the mainstay of our conservation mission and are a defining aspect of American heritage. Federal public lands in the lower 48 United States provide irreplaceable habitat upon which more than 90% of wild sheep depend.

We support the multiple-use mandate of Federal public lands and welcome grazing permittees as our neighbors both on the public land estate and in the western communities we share as home.

There is, however, a serious problem. We work directly with sheep-grazing permittees to prevent the spread of fatal pneumonia that wild sheep contract from bacteria carried by domestic sheep. It is difficult work, but vital to sustaining the dual legacy of wildlife and grazing on Federal lands. This disease is the greatest obstacle to wild sheep restoration, as we have found from 40 years of restoring wild sheep by capture-and-move field-work to expand wild sheep herds. As these bacteria are now widespread in both wild and domestic sheep, the problem is one of managing the risk of disease. That risk is multiplied when wild and domestic sheep mix. Therefore, when contact is observed, the standard operating procedure of state wildlife agencies is to kill the wild sheep involved to prevent them carrying the bacteria back into their own herds.

Our strategy for resolving this problem is firstly to support strict adherence to multiple use principles. There is room for both wild and domestic sheep on the Federal lands, just not in the same places. We negotiate alternative grazing arrangements, retirements, and conversions of sheep operations to cattle with willing partners. Significant amounts of the $115 million we have invested towards wild sheep conservation have gone into private payments to woolgrowers.

We also fund research on the disease and willing-party buy-outs and retirements of grazing allotments to separate wild and domestic sheep. WSF endowed the Rocky Crate/Wild Sheep Foundation Endowed Chair for Wild Sheep Disease Research at Washington State University.

We also contribute nearly 40% of ALL wild sheep license and tag revenue to state wildlife agencies for their wild sheep programs.

There are several policy approaches that we are pursuing that would help solve this problem.

For the last 3 years, the Appropriations committees have issued budget direction to the Forest Service and BLM that resulted from productive negotiations between WSF and the American Sheep Industry Association. This language directs the agencies to engage with us, the woolgrower community, and state and other federal agencies in finding solutions. This budget direction has not yet resulted in the necessary regular program of work inside the agencies but some steps toward that have been taken. We recommend the Oversight Committee's attention to the development of such a program.

Various ideas have been advanced for streamlining the permitting process so that alternative allotments may be found and quickly occupied. We support the intent of these ideas when they are part of a program for solving disease-risk situations. Once disease-risk areas have been identified along with lower-risk areas, we are fully in favor of the fastest, most certain and reliable way of moving permittees to alternative allotments.

WSF is a member of the National Horse & Burro Rangeland Management Coalition and recommends the committee's attention to the continuing struggle to reduce the number of wild horses and burros on Federal lands. We are proud to be working on this area of common cause with grazing permittees and other multiple-use partners.

Access to Federal lands is another area of policy where WSF strongly supports improvements. Adequate, well-managed access is necessary for users of Federal lands such as hunters and ranchers, as well as for land and wildlife managers, and also to enable wildlife enthusiasts and other visitors to use federal lands and stimulate growth in local economies while promoting sense of ownership and conservation ethic.

In closing, the Federal public lands are the scene for many American traditions. The motto of the Forest Service – "lands of many uses" – should apply broadly across all agencies. The Wild Sheep Foundation will engage with the committee to make this a reality in whatever way we can.

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