



# Public Employees for Environmental Responsibility

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## **RE: Review and Rescission of the Forest Service Grazing Permit for Bill McIrvin and the Diamond M Ranch**

### **Introduction**

This complaint requests that the U.S. Forest Service (“USFS” or “Service”), responsible for the management of Colville National Forest, review and/or rescind the grazing permit of Diamond M Ranch, located in Laurier, Washington and owned by Bill McIrvin, for continued failure to practice adequate animal husbandry techniques to protect endangered species on federal land. This behavior is in violation of USFS policies and regulations. Diamond M Ranch’s failure to abide by cooperative agreements with the Washington Department of Fish and Wildlife (“WDFW”), concerning livestock/predator interactions, have single-handedly resulted in the lethal control and eradication of nearly 15% of gray wolves (*Canis lupus*) within Washington state and have accounted for two-thirds of all state-sponsored lethal control events since the return of gray wolves to the state in 2008.

This permittee’s ongoing needless and potentially deliberate creation of conflict with wildlife threatens to violate USFS policies governing sensitive species, viable wildlife populations, and cumulative adverse effects on native wildlife. For these reasons, Public Employees for Environmental Responsibility (“PEER”) requests USFS to review permittee operations of Diamond M Ranch and develop conditions that would avoid violations of USFS policies and regulations and state and federal laws. Furthermore, if the permittee is unwilling to cooperate with USFS personnel on adherence to agency rules, then we urge the USFS to restrict or rescind the grazing permits of Diamond M Ranch for its Lambert and CC Mountain allotments. In addition, PEER requests that USFS list the gray wolf (*Canis lupus*) as a sensitive species and adjust accordingly protections afforded to the wolf under the Service’s Forest Management Plan for Colville National Forest.

## **Diamond M Ranch Wildlife Conflict**

### **1. Wedge Pack**

Bill McIrvin runs the largest cattle ranch in Washington, Diamond M Ranch, and grazes his cattle on a large portion of federal lands within the Colville National Forest. In the summer of 2012, Mr. McIrvin requested WFDW assistance in the eradication of the Wedge Pack of gray wolves, a species listed as endangered under state law. This resulted in the slaughter of 7 wolves by marksmen from helicopters, at a time when wolf populations within the state numbered only 52<sup>1</sup> - thus constituting roughly 13% of all wolves statewide. This eradication was ordered despite conflicting opinions given to WDFW by a variety of experts as to whether the initial livestock injuries and deaths of Mr. McIrvin's livestock were even attributable to wolves. During the months these events took place, Mr. McIrvin had refused to cooperate in implementing adequate nonlethal conflict-prevention measures, as required by Washington's Wolf Conservation and Management Plan. Furthermore, in public statements to the media, Mr. McIrvin made abundantly clear his disdain for wolves, government agencies, and conservation efforts; with many people having heard him state that "the only good wolf is a dead wolf."

Following this event, Washington State University ("WSU") began engagement with the Washington Wolf Advisory Group on outreach and research efforts to reduce confrontations between wolves and livestock. This initiative achieved great success statewide with non-lethal deterrent measures through a combination of range-riding, avoidance of known den sites, use of fencing, use of guard dogs, and radio-collaring of livestock. Additionally, the WDFW offered financial recompense to ranchers who were cooperating signatories of the WDFW Cooperative Damage Agreement and had lost livestock due to wolf depredation. Mr. McIrvin and Diamond M Ranch had refused to cooperate with WSU or WDFW, they refused to enter into a Cooperative Damage Agreement, and they failed to employ the vast majority of predator avoidance measures recommended by WDFW.

### **2. Profanity Peak Pack**

In the summer of 2016, Mr. McIrvin chose to release his 227 head of cattle onto a 30,000+ acre tract of Forest Service land near Kettle Falls and Profanity Peak pursuant to his FS grazing permit. Ranch personnel had entered the FS land near Profanity Peak, within the Lambert allotment, and installed salt block attractants within 200 yards of an established wolf den site; a site that had been occupied the year before and was well known by county commissioners, WDFW, and area ranchers. During this summer, Mr. McIrvin had continued to eschew recommended protocols for avoiding livestock/wolf confrontations, and by placing the salt blocks, indeed sought to attract his cattle directly to this wolf den site. As expected, attacks on livestock began shortly thereafter resulting in the deaths of 12 of McIrvin's cattle. However,

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<sup>1</sup> <http://www.cascwild.org/wp-content/uploads/2014/06/WA-Lethal-Control-Rule-Petition-Final.pdf>

Mr. McIrvin refused offers of financial compensation by the State for his lost cattle, and instead demanded that WDFW eradicate the entirety of the wolf den at Profanity Peak.

In the late summer and early autumn of 2016, against the protestations of wildlife ecologists and researchers in large carnivore biology, WDFW began the hunting and eradication of the Profanity Peak wolf pack. This was achieved through the use of marksmen hovering overhead in helicopters and resulted in the slaughter of all adult members of this pack and the likely starvation of all pups. This operation cost Washington taxpayers around \$135,000 and will likely do little to curb livestock/wolf confrontations in the future, as numerous studies have demonstrated that lethal control is largely ineffective at reducing state or local levels of depredation.<sup>2</sup>

Since the eradication of the Wedge pack, WDFW and WSU researchers have sought to have Mr. McIrvin join the state-sponsored Cooperative Damage Agreement, which has worked remarkably well at avoiding depredation events and has gained the support and acceptance of the majority of area ranchers. Despite its efficacy and recompense measures, Mr. McIrvin and the Diamond M Ranch have continually refused to become a signatory of the State's Cooperative Damage Agreement. They have also failed to cooperate with WDFW or to follow the recommendations of conservation biologists for best management practices.

### **Resulting Adverse Effects on Colville NF wolves**

Research from across the nation has shown that lethal control is not an effective or efficient means of ensuring long-term state or local level depredation reductions.<sup>3</sup> However, lethal control is currently being employed with a near annual regularity on federal lands in eastern Washington. The majority of wolves killed by state efforts were suspected of preying upon livestock grazing on FS land; principally the livestock of a single FS permittee, Mr. McIrvin, who has willfully disregarded best management practices for avoiding livestock/predator interactions while operating on those public lands. Based upon preliminary data from Washington State University's Large Carnivore Conservation Laboratory, Mr. McIrvin's cattle depredation rates were roughly 15 times higher than the state wide average. Due to the Mr. McIrvin's lack of cooperation with state conservation efforts, his continued disregard of best management practices, and prompt requests for lethal control, WDFW has eradicated 14 wolves – or around 15% of the state's gray wolf population – at the behest of one USFS grazing permittee. These eradications which targeted all adult pack members have also contributed to the likely starvation of all the packs' pups as well.

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<sup>2</sup> Wielgus RB, Peebles KA (2014) *Effects of Wolf Mortality on Livestock Depredations*. PLoS ONE 9(12): e113505. <https://doi.org/10.1371/journal.pone.0113505> ; Chapron G., Treves A., 2016, "Blood does not buy goodwill: allowing culling increases poaching of large carnivore," *Proc. R. Soc. B.* 283: 20152939. Available at: [http://faculty.nelson.wisc.edu/treves/pubs/Chapron\\_Treves.pdf](http://faculty.nelson.wisc.edu/treves/pubs/Chapron_Treves.pdf).

<sup>3</sup> *Id.*

## USFS Policies Contravened

### 1. Gray Wolves Warrant FS Protection as a Sensitive Species

While the gray wolf is delisted under the federal Endangered Species Act within the Northern Rocky Mountain region, which includes eastern Washington, the species is still listed as endangered under Washington state law. *See* WAC 232.12.014; RCW 77.15.120. As a state listed species, the gray wolf requires protection by the Forest Service and designation as a “sensitive species” within its eastern Washington range. The Forest Service Manual states at Section 2670.5.19 that “Sensitive Species” are “[t]hose plant and animal species identified by a Regional Forester for which population viability is a concern, as evidenced by: (a) Significant current or predicted downward trends in population numbers or density (b) Significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution.” Furthermore, under Section 2672.11, Regional Foresters “shall identify sensitive species occurring in the region based upon ... *state lists of endangered*, threatened, rare, endemic, unique, or vanishing *species, especially those listed as threatened under State law.*” The Forest Service Manual states at Section 2672.1 that “[s]ensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing. *There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole.* It is essential to establish population viability objectives when making decisions that would *significantly reduce sensitive species numbers.*” (emphasis added)

As of the end of 2016, the gray wolf population numbered approximately 115 wolves, belonging to 20 separate packs, in the State of Washington (human population: 7,288,000; cattle population: 1,150,000).<sup>4</sup> Due to its miniscule and fragile population, it is a criminal offense under state law for private citizens to kill a wolf; however, the State allows WDFW to exterminate wolf dens that have preyed upon area livestock. Since the removal of federal protections to this species under the Endangered Species Act, WDFW has killed around 15 wolves, also likely leading to the starvation of numerous orphaned pups, at the behest of livestock ranchers, constituting roughly 15% of the state’s wolf population. In comparison, loss of 20% the wolf population due to human-caused mortality within Wisconsin was sufficient grounds for a federal judge to rule that such wanton slaughter of wolves justified a continued federal endangered listing, as they were obviously failing to be protected under state law and regulation.<sup>5</sup>

It is promising that the draft Land Management Plan for Colville National Forest now lists the gray wolf as a sensitive species;<sup>6</sup> however the applicability of this plan is still six months away and not until after the 2017 grazing season. Furthermore, it is evident that WDFW’s lethal control program is serving as little more than a regulatory work-around for a private rancher to utilize state resources for the slaughter of endangered species within grazing areas that they wish

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<sup>4</sup> <http://www.cattlerange.com/cattle-graphs/all-cattle-numbers.html>

<sup>5</sup> *Humane Society v. Jewell*, 76 F. Supp. 3d 69 (D.D.C. 2014)

<sup>6</sup> [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd490078.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd490078.pdf)

to use. The gray wolf, without a doubt, fits the USFS's definition of a sensitive species within Washington and is absolutely deserving of protection under the Agency's regulations; protections that cannot wait until November 2017.

## **2. Continued Viability Requirements**

Even apart from the need for a sensitive species designation, the Service is required to ensure that it protects endangered species within the issuance of its permits and the realization of its forest usage plans; however the Service has failed to abide by its own rules in its permitting of grazing lands. In regulations promulgated as required by the National Forest Management Act, 16 U.S.C. § 1600 et seq., USFS management planning requires that "wildlife habitat *shall be managed to maintain viable populations of existing native and desired non-native vertebrate species* in the planning area." 36 C.F.R. 219.19 (emphasis added). Federal courts have further held that the Forest Service *must use common sense* and apply its fish and wildlife expertise in implementing these requirements. *Seattle Audubon Society v. Mosely*, 798 F. Supp. 1484 (W.D. Wash. 1992).

It is evident that the continued leasing of Forest Service land for grazing, within habitat of the state-listed endangered gray wolf, can, and in this case does, cause very real and devastating impacts on the continued viability of the gray wolf in eastern Washington. The failure of a Forest Service grazing permittee to cooperate with WDFW or to employ adequate animal husbandry practices has directly resulted in the slaughter of two wolf packs; or roughly 15% of the state's wolf population. Allowing this situation to continue constitutes a flagrant disregard of the USFS's duty to use common sense application of agency expertise in classifying sensitive species, to maintain policies that preserve the continued viability of sensitive species and other native species on USFS land, and to ensure no impacts occur without an analysis of adverse effects.

## **3. Cumulative Adverse Effects on Native Wildlife**

USFS regulations require that the Service "[p]rovide habitat management direction to ensure maintenance of viable populations [of sensitive species] generally well-distributed throughout their range." FSM 2620.3.2. This language has significant application here, as the eradication of both the Wedge Peak and the Profanity Peak packs by WDFW at the behest of the USFS permittee has removed wolf populations from a large stretch of their habitat within northeastern Washington. Furthermore, the Huckleberry pack south of Profanity Peak was eradicated as well during 2014. Continued failure by the USFS to address this continued abuse of lethal control on USFS lands in northeastern Washington threatens the viability of well-distributed populations; forcing wolves away from large swaths of national forest lands and spacing wolf packs further apart.

Additionally, the Service must also "[e]valuate the cumulative effects of proposed management activities on habitat capability for management indicators." FSM 2620.3.3. This provision shows that failure to review and/or rescind the permitted grazing allotments for Diamond M Ranch would be in violation of this USFS provision. When reviewing the uses of USFS land, the Service must assess what impact such activities have on the sensitive and

endangered species within the vicinity as well as wildlife populations generally. “Cumulative effects,” as provided in the regulation, must include continual effects of opening lands to grazing and inadequate permittee husbandry practices. By allowing Diamond M Ranch, the largest ranch in the state, to continue grazing operations without effective oversight or wildlife conflict prevention protocols, there is a demonstrable effect on the continued viability of the endangered gray wolf within Colville National Forest.

#### **4. Violation of 2016 Permit Requirements**

Following the 2016 depredation events by the Profanity Peak pack, WDFW and WSU staff visited the site of the depredations and the area surrounding the wolf densite. Cameras were installed by WSU large carnivore biologists that tracked the behavior of the wolf pack and Mr. McIrvin’s cattle within the area. These cameras were installed along a roadside with clear footage of the road. Researchers found that Mr. McIrvin had installed a salt-block attractant within roughly 25 feet of the road. Bill McIrvin’s 2016 USFS grazing permit contained an express restriction banning the installation of salt-block attractants near roadways or trails. Mr. McIrvin blatantly violated the provisions of his grazing permit during 2016 near Profanity Peak; resulting in grazing habits that led to the ultimate eradication of a significant portion of Washington State’s endangered gray wolf population. As per the terms of the grazing permit, a direct violation of these terms is sufficient grounds for revocation of the permit.

#### **USFS Management Options**

The Service possesses the legal authority to revoke grazing permits and close USFS lands as a means of protecting the population and habitats of endangered species<sup>7</sup>; in this instance, the USFS must review or revoke the grazing permit of Diamond M Ranch to ensure the continued viability of the endangered gray wolf in eastern Washington. Regional Foresters are tasked with the responsibility to “coordinate the overall Regional Threatened, Endangered, and Sensitive Species Program to ensure compliance with law and policy.” FSM 2670.44.1. While the USFS has been working with the Bureau of Land Management through the Interagency Special Status/Sensitive Species Program, the conservation strategy released by the Program is outdated (2006) and fails to consider conservation issues of the gray wolf, which has re-colonized its former range in eastern Washington since the drafting of this strategy.<sup>8</sup> As the Service is required to “[a]void or minimize impacts to species whose viability has been identified as a concern,”<sup>9</sup> a new review of its conservation strategies is necessary that includes the sensitive status of the gray wolf within the region. Furthermore, regional foresters must establish programs to determine which sensitive species are present within FS land and ensure that management objectives for the conservation of sensitive species are included in regional and forest planning. FSM 2670.44. It appears that the FS has failed to adhere to these requirements since the re-emergence of the gray wolf within the Colville National Forest; for this reason, it is imperative that the Service commence review of management practices to protect the gray wolf.

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<sup>7</sup> FSM 2670.44.15; *see also* 36 CFR 261.70

<sup>8</sup> <https://www.fs.fed.us/r6/sfpnw/issssp/planning-documents/assessments.shtml>

<sup>9</sup> FSM 2670.32.3

Additionally, the regional forester is bestowed the authority to “[a]pprove closures of National Forest System lands as necessary to protect habitats or populations of threatened, endangered, proposed, or sensitive species.” FSM 2670.44.15; see also 36 CFR 261.70. Furthermore, grazing permits issued by the FS may be cancelled, in whole or part, for failure to comply with any terms and conditions specified within the permit or for violation of federal or state laws and/or regulations. In this instance, the operators of the Diamond M Ranch have likely violated RCW 77.15.120’s prohibition of the unlawful taking of endangered wildlife. This state law provides that a person is guilty of unlawful taking of endangered wildlife when a person maliciously harasses an animal designated as endangered without a permit issued by the State. Diamond M Ranch did this when it attracted and thus intentionally grazed its cattle in the direct vicinity of a known wolf den.

### **Need for USFS Action**

The long-term use of lethal control management tactics severely threatens the continued existence of the gray wolves present on Forest Service land. For comparison, during a period where Wisconsin saw diminished federal oversight of the lethal control of wolves, their populations dropped by 20% in just 2 years.<sup>10</sup> Then a federal court stepped in, ruling that the wolf was indeed federally endangered in that range and that Wisconsin had failed to take proper conservation measures.<sup>11</sup> Allowing grazing on Forest Service lands in a manner that will contribute to the loss of gray wolves could contribute to a similar scenario in Washington State. This possibility is heightened by the fact that the Wolf Advisory Group has amended its lethal control policies to significantly reduce the threshold losses necessary for a rancher to request the slaughter of wolf packs; from 4 confirmed livestock depredations down to 3 suspected livestock depredations.<sup>12</sup> The Wisconsin experience demonstrates that lax lethal control policies on the state level open the door for severe impacts on the continued viability of wolf populations, and encourages illegal private taking of species<sup>13</sup>, something that will likely occur in Washington State if preventative measures are not taken.

As the WDFW has further reduced the necessary requirements to implement lethal control in recent months and demonstrated its willingness to employ such measures against the advice of wildlife biologists, it is evident that the continued grazing of livestock near known densites is likely to lead to lethal control and is a grave threat to the continued viability of the gray wolf. The exercise of the Service’s permit revocation and land closure authority is necessary to ensure the continued viability of the gray wolf, as Forest Service lands constitute a major component of the gray wolf’s range within Washington.<sup>14</sup>

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<sup>10</sup> <http://dnr.wi.gov/topic/Wildlifehabitat/wolf/documents/Wolfreport2016.pdf>

<sup>11</sup> *Humane Society of U.S. v. Jewell*, 76 F. Supp. 3d 69 (D.D.C. 2014).

<sup>12</sup> <http://www.capitalpress.com/Washington/20170331/washington-wolf-group-charts-quicker-path-to-lethal-control>

<sup>13</sup> Chapron G., Treves A., 2016, “Blood does not buy goodwill: allowing culling increases poaching of large carnivore,” *Proc. R. Soc. B.* 283: 20152939. Available at:

[http://faculty.nelson.wisc.edu/treves/pubs/Chapron\\_Treves.pdf](http://faculty.nelson.wisc.edu/treves/pubs/Chapron_Treves.pdf)

<sup>14</sup> [http://wdfw.wa.gov/conservation/gray\\_wolf/graphics/pack\\_map\\_032017.jpg](http://wdfw.wa.gov/conservation/gray_wolf/graphics/pack_map_032017.jpg)

## Conclusion

For the preceding reasons, Public Employees for Environmental Responsibility requests that the U.S. Forest Service list the gray wolf (*Canis lupus*) as a sensitive species and adjust accordingly protections afforded to the wolf under the Service's Forest Management Plan for Colville National Forest. Furthermore, it is requested that the Forest Service review and/or revoke the grazing permits of the Diamond M Ranch, owned by Mr. Bill McIrvin, and close those lands from future livestock grazing to preserve the habitat of the gray wolf. These actions are necessary to avert growing conflicts between USFS policies and prudent wildlife management.

Thank you for your prompt attention to this matter.

Sincerely,



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