

Great Old Broads for Wilderness
Litigation Screening Form
Original date: 1/14/19

Brief summary of the issue including whether the request is for a demand letter/notice of intent to sue, lawsuit, proposed settlement, fees and cost motions, litigation appeal, IBLA appeal or whether any of these have already taken place.

This request is for both the notice of intent to sue and for filing lawsuit. Later this week, a Notice of Intent to Sue For Violations of the Endangered Species Act Regarding the Impacts of Livestock Grazing on the Antelope Allotment to Oregon Spotted Frog. Specifically, the Forest Service is relying on a Biological Opinion that is legally flawed, in part because the Forest Service provided inadequate information about the scope of the authorized grazing and its impacts on the frog and its critical habitat to the U.S. Fish and Wildlife Service ("FWS").

What are the goals of the action?

To keep the spotted frog and fens on the Antelope allotment safe from cows.

What are the bases for potential litigation success, i.e., what law(s) or regulation(s) are being violated?

Violations of the ESA

What outcome is being sought via the litigation?

Protect spotted frog and fens critical habitat.

An earlier case challenged the 2015 Biological opinion and 2015-2016 annual grazing authorizations. The agencies issued a new biological opinion, EIS, and 10-year grazing permit in 2018 that implements a new grazing scheme. This case challenges those new decisions, which still don't protect the frog and fens (and actually open up way more frog and fen habitat to grazing). (See https://www.biologicaldiversity.org/news/press_releases/2017/oregon-spotted-frog-01-25-2017.php)

What is the affected geographic area?

Antelope Allotment on the Fremont-Winema National Forest in Oregon. The Chemult Pasture of the Antelope Allotment (68,000 acres) contains about seven miles of Jack Creek, much of which is inhabited by the Jack Creek population of Oregon spotted frog. The North Sheep Pasture of the allotment is 19,000 acres.

What are the affected environmental values or public processes?

Livestock grazing has been harming the Jack Creek spotted frog population and its habitat for years. Cattle pollute the stream with their waste, trample the streambanks and create flattened stream channels with no hiding cover or overwinter habitat for frogs, and remove streamside vegetation that provides cover from predators and insects for spotted frogs to eat. They also wade in the stream, trampling or disturbing young and adult frogs. Finally, they contribute to lower water levels by drinking water from intermittent pools when Jack Creek

begins to dry up, creating incised stream channels that lower water tables, and trampling and drying out adjacent seeps and springs that would otherwise contribute water to streamflow. As water levels drop, frog mortality increases because Oregon spotted frogs cannot survive outside of water for long or travel far overland to find other water sources. In addition, low water levels in the stream result in shallow pools freezing in winter, killing any frogs that remained in those pools. As water levels continue to drop during summer and early fall, frogs are confined to fewer and fewer pools, which are also where cattle congregate to drink and loaf, causing even more displacement of frogs and degradation of the little remaining habitat that exists in late summer and fall. Increased prevalence and intensity of drought resulting from climate change is increasing the harm from low water conditions. All of these impacts have been observed in Jack Creek within the Chemult and North Sheep pastures.

To mitigate these impacts, the Forest Service has consistently relied upon measures, particularly fencing and water troughs, to attempt to keep cows out of Jack Creek but these measures have proved ineffective. Over the past ten years, cattle have repeatedly breached fences and grazed within riparian exclosures and other unauthorized areas along Jack Creek, often causing harm to spotted frog habitat. Past notices of noncompliance and requirements for fence and water trough maintenance, herding, cattle removal, and other actions have not solved or prevented these problems from recurring. This unauthorized use along Jack Creek has degraded critical habitat and increased the harm to the species. Over the past several years, detected numbers of egg masses, adults, and juveniles within Jack Creek have remained at critically low numbers.

What are the deadlines for GOBW to make a decision? Is the deadline soft or hard?

We need an answer by Feb 16, to be included in the Letter of Intent.

What Broadband or Broads are making this request?

Bitterbrush Broads, Central Oregon

What is their relationship to the issue? Have Broads been involved with this issue or land before? How will GOBW add value to this action?

Joanne Richter, Rynda Clark, Terry Simpkins, Jayne Goodwin (all Broads) have submitted comments to FS in the past on behalf of the Broads. Broads add value because we are local to the issue.

Other groups involved and who are their legal representatives?

Legal representation for all groups is Lauren Rule. Elizabeth Potter, Attorneys for Plaintiffs at Advocates for the West.

Concerned Friends of the Winema Oregon Wild
Chuck Wells Doug Heiken
820 North Eldorado P.O. Box 11648
Klamath Falls, OR 97601 Eugene, OR 97440

Klamath-Siskiyou Wildlands Center Center for Biological Diversity
George Sexton Noah Greenwald
P.O. Box 102 P.O. Box 11374
Ashland, OR 97520 Portland, OR 97211

Western Watersheds Project
Eric Molvar
P.O. Box 1770
Hailey, ID 83333

Oregon Wild
Doug Heiken

Center for Biological Diversity
Noah Greenwald

What is Broads relationship to any other groups involved in this issue?

We have worked with other partners on other issues, and have toured the Antelope Allotment with parties

What role are those groups taking in this litigation?

Expert witnesses are two Broads retired from Forest Service. Jayne Goodwin, Terry Simpson

In what venue will this be litigated?

federal

Financial costs and risks?

No financial cost or risk. The only costs we might seek from the clients is for a second expert, but the larger clients and Advocates could cover those costs.

How will decisions be made during the litigation?

Consensus of plaintiffs