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and WESTERN WATERSHEDS PROJECT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

RESOURCE RENEWAL INSTITUTE, CENTER FOR BIOLOGICAL DIVERSITY, and WESTERN WATERSHEDS PROJECT,

Plaintiffs,

v.

NATIONAL PARK SERVICE, a federal agency, and CICELY MULDOON, in her official capacity as Superintendent of Point Reyes National Seashore,

Defendants.

Case No. 4:16-cv-00688-SBA (KAW)

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

Date: October 12, 2016
Time: 1:00 pm
Dept: TBA
Judge: Hon. Saundra Brown Armstrong

Date Filed: February 10, 2016

Trial Date: None set

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NOTICE OF MOTION AND REQUESTED RELIEF

PLEASE TAKE NOTICE that on October 12, 2016, at 1 p.m., or as soon thereafter as counsel may be heard, in the above-entitled Court located at 1301 Clay Street, Oakland, California, Plaintiffs Resource Renewal Institute, *et al.*, will bring this Motion for hearing.

Plaintiffs respectfully move the Court pursuant to Federal Rule of Civil Procedure 65 to preliminarily enjoin Defendants National Park Service, *et al*. ("Park Service" or "NPS") from: (a) devoting further public resources to pursuing an elective Ranch Management Plan ("RMP") with a predetermined objective to grant up to 20-year commercial dairy and cattle ranching leases (including permits or other authorizations), or (b) otherwise issuing long-term leases/ permits/authorizations of more than one year's duration for ranching in the Point Reyes National Seashore ("PRNS" or "Seashore"), until Plaintiffs' Claim One may be fully adjudicated.[1]

INTRODUCTION

This Motion seeks limited, preliminary injunctive relief to forestall the irreparable harm caused to Plaintiffs, their members, and generations to come, by Defendants' efforts to evade their duty under the National Park Service Act ("NPS Act"), 54 U.S.C. § 100502, to manage the Seashore in accordance with the Congressionally mandated, natural resources conservation objectives of the Point Reyes Act, 16 U.S.C. § 459c *et seq.*, and the National Park Service Organic Act, 16 U.S.C. § 1 (recodified at 54 U.S.C. § 100101(a)). Defendants have intentionally delayed issuing a new or revised General management Plan ("GMP") and supporting Environmental Impact Statement ("EIS") that gives due consideration to non-ranching or reduced ranching alternatives, while instead pursuing the RMP to cement existing or expanded cattle ranching on the public lands of the Seashore for another 20 years. The requested relief is very limited. Plaintiffs merely seek to preserve the status quo until this Court can decide, on a complete record, whether to grant summary judgment and permanent injunctive relief. Unless enjoined, Defendants intend to "short circuit" these proceedings by completing the RMP and issuing long-term commercial ranching leases; this would compromise any future GMP/EIS process and effectively deny Plaintiffs' any chance at meaningful relief. Plaintiffs request preliminary

[1] Plaintiffs' counsel conferred with Defendants' counsel, who indicated Defendants would oppose the Motion. *See* Declaration of Jeffrey R. Chanin ("Chanin Decl."), ¶ 2.

injunctive relief in view of their strong likelihood of success on the merits, the irreparable harm at stake, the balance of the equities, and the public's interest in sound stewardship of a national treasure for future generations. *See Winter v. Natural Res. Defense Council*, 555 U.S. 7, 20 (2008).

Plaintiffs are likely to succeed on the merits because, notwithstanding Defendants' statutory obligation to issue a new or revised GMP for the Seashore "in a timely manner," they have not done so since 1980—36 years ago. Before the turn of the century Defendants determined that the 1980 GMP was outdated, and that a new GMP/EIS was necessary to inform and engage the public in evaluating alternative uses of the National Seashore's resources in light of substantially changed conditions at the Seashore. These included greatly increased visitation, climate change, expired or expiring ranching leases, the successful reintroduction of endemic, but previously extirpated Tule elk, and many new threatened and endangered species. Accordingly, between 2000 and 2008, the Park Service spent over $350,000 conducting public scoping and numerous studies that led to the preparation of a new, but unreleased 568-page Draft GMP/EIS ("Unreleased Draft GMP/EIS"). Defendants reaffirmed in that draft that a new GMP/EIS was needed to comply with Congress' directive to "to keep GMPs current," and to address "*why* (law and policy) [the Seashore] was established and *what* (desired conditions/standards) resource conditions and visitor experiences should exist or be maintained there," and "*how* (using prioritization/ adaptive management strategies) those conditions should be achieved." Chanin Decl. Ex. 1 (Unreleased Draft GMP/EIS) at AR 10533 (emphasis in original). Significantly, *none* of the alternative management concepts discussed in the Unreleased Draft GMP/EIS contemplated the issuance of long-term leases or permits for ranching activities at the Seashore, while one alternative proposed to reduce ranching by up to 48% in order to prevent the loss of natural resources and to restore habitat and native species caused by cattle ranching. *See id.* at AR 10580-601, 10875.

But then the Park Service went silent and the Unreleased Draft GMP/EIS was cast into limbo, where it remained until Plaintiffs obtained it on August 5, 2016, as part of the partial administrative record produced by Defendants in this case. To date, the agency has never explained its failure to act. The partial record Defendants produced shows the Unreleased Draft GMP/EIS was ready to be printed for public release by at least April 2010, if not sooner, but Defendants' blanket assertions of the "deliberative process privilege" continue to shroud in secrecy why the Park Service abandoned the

process on the eve of the Unreleased Draft GMP/EIS's public release.

What is known is that, in a 2012 Memorandum directing NPS not to renew an oyster farming lease at the Seashore, former Interior Secretary Salazar—a cattle rancher himself—unilaterally and out of the blue instructed the Park Service "to pursue extending permits to 20-year terms for the dairy and cattle ranches within [the] pastoral zone." *Id.*, Ex. 3, at 3, 6-7. Secretary Salazar's surprise directive was not supported by any environmental analysis, nor informed by public notice and comment, as the law requires. Nevertheless, in April 2014, NPS announced it was commencing a ranch planning process for the express purpose of implementing Secretary Salazar's directive, *i.e.*, "to establish a comprehensive framework for the management of existing ranch lands administered by the Point Reyes National Seashore under agricultural lease/special use permits, with terms up to 20 years."[2] Indeed, Defendants have repeatedly announced they will authorize another 20 years of commercial cattle ranching at the National Seashore through the RMP process. *See, e.g., id.*, Ex. 6 at 6 ("The purpose of this plan is to establish a comprehensive framework for management of existing ranch lands administrated by the [PRNS] under agricultural lease/special use permits (lease/permits), with terms of up to 20 years."). As an NPS spokesperson defiantly proclaimed after this case was filed: "Ranching is here to stay at Point Reyes National Seashore." *See id.*, Ex. 7, at 2.

The Park Service's *ad hoc* management of the Seashore without an updated GMP/EIS has denied Plaintiffs the benefits of appropriately managed public lands. By avoiding the due consideration of the National Seashore's purposes, the environmental analysis of alternative uses of its natural resources, and the public review and input that the GMP/EIS process requires, Defendants have jeopardized the future of the Seashore and harmed Plaintiffs' members' aesthetic, recreational, and professional interests. Defendants' decision to spend scarce public resources on the elective RMP process has further delayed issuance of a new GMP/EIS, impairing Plaintiffs' right to information and the opportunity to participate in a meaningful planning process that does not presuppose continued cattle ranching for decades to come. If unrestrained, Defendants intend to render these injuries permanent by issuing new leases/permits of up to 20 years without undertaking the appropriate

[2] Defendants have been issuing annual ranching authorizations to continue ranching on an interim basis until the RMP is completed. Chanin Decl. ¶¶ 5-6 and Exs. 4-5.

planning and analysis that is legally required. Such an alteration of the status quo, and the reliance on those lease/permits that the ranchers will undoubtedly claim, surely will predispose any subsequent general management planning process in favor of continued ranching. *See, e.g., Friends of Yosemite Valley v. Kempthorne,* 464 F. Supp. 2d 993, 1002-04 (E.D. Cal. 2006) (noting that "any [further] progress" on specific development projects "will at least to some extent predetermine" Defendants' planning analysis, and "in turn could easily prejudice Defendants' decision making" with respect to a broader resource management plan).

Defendants' present course subverts the GMP/EIS process that Congress mandated to decide the future direction of all of our National Parks, and elevates the interests of a few private, commercial ranchers above those of Plaintiffs, the public, and the natural resources of the National Seashore itself. Plaintiffs therefore move this Court for a preliminary injunction to prevent Defendants from continuing the RMP or issuing long-term leases or other permits authorizing cattle ranching, until the Court decides whether Defendants must first complete a new GMP/EIS.

I. LEGAL AND FACTUAL BACKGROUND

A. NPS has a Duty to Prepare a Revised, General Management Plan/EIS for the Seashore in a Timely Manner.

In order to fulfill its primary directive that all land within the National Park system remain "unimpaired for the enjoyment of future generations," Congress in 1978 required the Park Service to manage all National Park system units, including the Seashore, through GMPs that are "prepared and revised *in a timely manner*." *See* 54 U.S.C. §§ 100101(a), 100502 (emphasis added). Among other things, GMPs "shall include":

> (1) measures for the preservation of the area's resources;
> (2) indications of types and general intensities of development (including visitor circulation and transportation patterns, systems, and modes) associated with public enjoyment and use of the area, including general locations, timing of implementation, and anticipated costs; and
> (3) identification of and implementation commitments for visitor carrying capacities for all areas of the System unit[.]

54 U.S.C. §100502. A GMP "is a broad umbrella document that sets the long-term goals for the park based on the foundation statement," and "(1) clearly defines the desired natural and cultural resource conditions to be achieved and maintained over time; (2) clearly defines the necessary conditions for visitors to understand, enjoy, and appreciate the park's significant resources, and (3) identifies the kinds

and levels of management activities, visitor use, and development that are appropriate for maintaining the desired conditions; and (4) identifies indicators and standards for maintaining the desired conditions." Chanin Decl. Ex. 8 (NPS 2006 Management Policies § 2.2) ("NPS Policies"). A Program Management or Implementation Plan, which like Defendant's Ranch Plan assumes that a particular project is appropriate, must "follow" or "implement" the long-term goals set forth in the GMP, not precede or substitute for a GMP. *Id.*

NPS's Policies explain that the frequency with which a new or revised GMP is needed should depend on whether conditions have "changed significantly" since issuance of the last GMP:

> [G]eneral management plans will be reviewed and amended or revised, or a new plan prepared, to keep them current. *GMP reviews may be needed every 10 to 15 years, but may be needed sooner if conditions change significantly*. If conditions remain substantially unchanged, a longer period between reviews would be acceptable.
>
> *An approved management plan may be amended or revised, rather than a new plan prepared, if conditions and management prescriptions governing most of the area covered by the plan remain essentially unchanged* from those present when the plan was originally approved. Amendments or revisions to a [GMP] will be accompanied by a supplemental [EIS] or other suitable NEPA analysis and public involvement.

Id. at § 2.3.1.12 (emphasis added).

The Park Service's policies acknowledge that a GMP is the principal tool for evaluating and resolving alternative competing uses for the Seashore's resources, and that the analysis of such alternatives should generally be accompanied by an EIS. *See Id.* at §§ 2.3.1.7, 2.3.1.12; *see also Or. Natural Desert Ass'n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1099 (9th Cir. 2008) ("the land use planning process implicates . . . NEPA, which requires the preparation of an environmental impact statement ("EIS") for such actions."). For example, chapters 3 and 4 of the Unreleased Draft GMP/EIS comprise several hundreds of pages of detailed analysis of the environmental impacts of each of the four proposed alternative management strategies. *See* Chanin Decl. Ex. 1, at AR 10524-27 (Table of Contents), and AR 10609-53 (Summary). In contrast, the ranching-specific RMP will only be supported by an Environmental Assessment ("EA") that will provide no analysis of the impacts of alternative uses. *See* Declaration of James Coda ("Coda Decl."), ¶ 19.

In addition to NEPA's requirements, NPS's discretion to determine whether to allow a particular use (such as ranching) is limited by certain statutory standards, including the "overarching concern" for "resource protection" of the Organic Act. *See Bicycle Trails Council of Marin v. Babbitt*,

82 F.3d 1445, 1453 (9th Cir. 1996); *see also Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202, 1247 (E.D. Cal. 1999) ("The Organic Act would serve as a basis for a cause of action were NPS to allow use of a national park in a way that was not in the interests of either conservation or public enjoyment or in a way that was clearly against the interests of future generations.").[3] Further, under the Point Reyes Act, discretionary uses such as ranching must be "consistent with, based upon, and supportive of the *maximum protection, restoration, and preservation of the natural environment* within the [Seashore]." 16 U.S.C. § 459c-6(a). Of course, NPS must make these assessments as to whether or not a particular activity will impair the Seashore's values or resources *prior to* authorizing the activity. *See Sierra Club v. Mainella*, 459 F. Supp. 2d 76, 103 (D.D.C. 2006).

B. Point Reyes National Seashore Exists to Preserve its Natural Resources and the Wildlife therein for the Enjoyment of Future Generations.

The Seashore is a national treasure that provides exceptional environmental values and recreational opportunities for millions of visitors annually from the United States and around the globe. In 1962, Congress established PRNS as a unit within the National Park system "to save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped…." *See* Point Reyes Act, 16 U.S.C. § 459c. In 1976, Congress amended the Act to underscore its intention that the Seashore be managed to protect the natural environment:

> … property acquired by the Secretary under [this Act] shall be administered by the Secretary, *without impairment of its natural values*, in a manner which provides for such recreational, educational, historic preservation, interpretation, and scientific research opportunities as are consistent with, based upon, and supportive of the *maximum protection, restoration, and preservation of the natural environment within the area*….

Id. at § 459c-6(a) (emphases added).[4] The Park Service unsuccessfully opposed this amendment, claiming it "would be generally inconsistent with grazing and commercial oyster farming activities that are presently found at Point Reyes." *See* Chanin Decl. Ex. 9 (Point Reyes Act: Hearings on S. 2472

[3] Further, the Service is required to manage all units of the park system "uniformly with the fundamental goal of resource protection in mind." *Bicycle Trails Council*, 82 F.3d at 1452-53.

[4] This purpose comports with the Organic Act, which directs NPS to manage all Park System lands to advance their fundamental purpose, "*which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein* and to provide for the enjoyment of the same in such manner and by such means *as will leave them unimpaired for the enjoyment of future generations.*" *See* 16 U.S.C. § 1 (recodified 54 U.S.C. § 100101(a)) (emphases added).

Before the Subcomm. on Int. and Insular Affairs, 94th Cong. 306, 317 (1976) (Statement of NPS Director Everhardt)). Such inconsistency must be assessed in a new GMP/EIS, and will not be addressed by the RMP.

Congress also placed important limits on the Park Service's authority to issue leases for "commercial" ranching at the Seashore. In 1970, when Congress greatly increased the appropriation to acquire ranch lands to complete the Seashore, and repealed an earlier prohibition on exercising eminent domain of such lands, it explicitly provided that "no freehold, leasehold, or lesser interest in any lands hereafter acquired shall be conveyed for residential *or commercial* purposes…." *See* Chanin Decl. Ex. 10 (S. Rep. 91-738) at 12. During the hearing on these 1970 amendments, at the behest of intervenor Marin County, a spokesperson for all the dairy ranchers within the Seashore assured the Senate Subcommittee that, while the dairymen had originally objected to the formation of the Seashore and wished to continue dairying on their land, conditions had changed, and they all now favored repeal of the no-condemnation provision and addition of the no sellback/leaseback proviso:

> I asked them if, when they sold their land to the parks assuming they made an agreeable sale, would they want to put in a provision that allowed [them] to continue operating their dairies, and their answer, without exception, again was, let's sell the land and never mind putting in provisions.
>
> They are willing to deal with the Park for the sale of their land without any conditions, meaning that they recognize they aren't going to dairy indefinitely in Marin County. None of us are … *This is because we recognize something that the Park Service was not made aware of by us when they came in and set this Pastoral zone up, and that is that dairying, with the necessity of confining large herds of cattle tightly into pastures, is not compatible with public ownership of land.*

See Chanin Decl. Ex. 11 (Hearings on S. 1530 and H.R. 3786 Before the Senate Subcomm. on Parks and Recreation at 59-60 (1970) (Statement of Dairyman Boyd Stewart)) (emphasis added).

With its increased appropriation, and subject to the no-leaseback proviso, the Park Service acquired the vast majority of the lands at issue in this case between 1970 and 1978. Coda Decl. ¶ 18; *see also id.* Ex. J at 3. Subsequently, in 1978, Congress further amended the Act to allow owners of ranching or agricultural property acquired by the Park Service to elect, *at the time of sale*, a right of use and occupancy for twenty-five years, or alternatively the latter of the life of the owner or his/her spouse, with the caveat that any such reservation may be terminated if "it is being exercised in a manner inconsistent with the purposes of this Act." Pub. L. No. 95-625, § 318(b), 92 Stat. 3467 (1978)

(codified as amended at 16 U.S.C. § 459c-5(a)). In fact, at the time of the 1978 amendments, very few ranch lands remained to be acquired, and all but one of the original reservations have now expired. Coda Decl. ¶ 18; *see also id.*, Ex. J at 3; Chanin Decl. Ex. 4.

Congress also amended the Act in 1978 to allow NPS to lease acquired lands that were formerly agricultural, but subject to such restrictive covenants as are in keeping with the purposes of the Act. Pub. Law 95-625, § 318(a) 92 Stat. 3467 (1978). Importantly, while granting this authority, Congress did not repeal or amend the prohibition on leases "for residential or commercial purposes," thereby limiting the purposes for which these lands could be leased.[5] Nor did Congress alter the Act's mandate that property acquired for the Seashore must be managed to provide "maximum protection, restoration, and preservation of the natural environment, … and in accordance with other laws of general application relating to the national park system…." 16 U.S.C. § 459c-6.

C. NPS has Embarked on a Plan to Grant up to 20-year Leases for Commercial Ranching Without a Current GMP and No EIS.

The GMP for the Seashore was issued in 1980 with an accompanying EA (not an EIS). Chanin Decl. Exs. 12-13. While the 1980 GMP identified a "Pastoral Zone" in which, "where feasible, livestock grazing will continue within the limits of carefully monitored range capacities" (*see id.*, Ex. 13 at 18), even then the Park Service recognized that "natural resource management considerations will not support grazing in all areas where it has occurred historically." *Id.* at 90. The 1980 GMP stated: "the primary objectives for the park must continue to relate to the natural integrity of the seashore, upon which the quality of a Point Reyes experience totally depends." *Id.*, Ex. 12 at 1.

Since issuance of the 1980 GMP more than thirty-five years ago, conditions at the Seashore have substantially changed. For example: annual visitation rose from 1.4 to 2.5 million between 1980 and 2015, *see id.*, Ex. 14; native Tule elk populations have been restored, but are now in competition

[5] Similarly under the National Park Service Act, NPS may issue regulations to "grant the privilege to graze livestock" within a Park System unit only when the "use is not detrimental to the primary purpose for which" that unit was created. 54 U.S.C. § 100101(a)(2). Under this authority, NPS has issued regulations that prohibit livestock grazing of any kind at a Park System unit except:

(a) as specifically authorized by Federal statutory law;
(b) as required under a reservation of use rights arising from acquisition of a tract of land; or
(c) as designated, when conducted as a necessary and integral part of a recreational activity or required in order to maintain a historic scene.

36 C.F.R. § 2.60(a). NPS's Management Policies further declare that the agency "will phase out the commercial grazing of livestock where possible." NPS Policies § 4.4.4.1.

with cattle for the Seashore's resources, *see* Coda Decl. ¶¶ 7-10; Chanin Decl. Ex. 15; droughts and global warming prompted the Seashore to commit to reducing greenhouse gas emissions, 78% of which are attributable to ranching operations, *see* Chanin Decl. Ex. 16 at 4, *and* Ex. 1 at AR 10666; nearly 50 new threatened or endangered species at the Seashore have been federally recognized since 1980, *compare id.*, Ex. 13 at 257 *with* Ex. 17; and most leases, permits, and reservations that ranchers held at the time of the 1980 GMP have now expired, *see id.*, Ex. 12 at 11-12. NPS and other agencies also have accumulated substantial information showing that ranching operations are adversely impacting soils, plant composition, air and water quality, wildlife and wildlife habitat (including endangered species), recreational uses, and other values of the National Seashore.[6]

In the late 1990s, the Park Service acknowledged that conditions at the Seashore had changed sufficiently to require a new GMP/EIS. *Id.*, Ex. 20 at AR 00748 (explaining that the "management zoning and proposed actions in the current GMP are completely out-of-date"). On February 3, 2000, NPS published a notice of intent (superseding two prior notices) to prepare an "Environmental Impact Statement and General Management Plan (EIS/GMP)" for the Seashore "to provide strategies for addressing major issues," and "guide management of park lands over the subsequent 10-15 years." *Id.* at Ex. 21 at 3-4. NPS spent the next 8 years and over $350,000 in public funds conducting studies, and engaging the public in the planning process. *Id.*, Ex. 16 at 1-2 *and* Ex. 22 at AR 07686. In a 2003 public newsletter, NPS presented five, alternative long-term management concepts for the Seashore, three of which contemplated phasing-out or reducing commercial cattle ranching to protect natural resources, and none of which contemplated long-term leasing or permitting. *Id.*, Ex. 23. In 2008, NPS announced it had synthesized all public comments, was nearing completion of its assessments, and had prepared the Unreleased Draft GMP/EIS to provide management guidance for the next 20 years, to be released for public review in the fall/winter of 2008, and finalized in 2009 or 2010. *Id.*, Ex. 16. But then, without any further word or explanation, the Unreleased Draft GMP/EIS was sidelined.

During the ensuing years, Defendants separately prepared an EIS to guide their decision

[6] For example, in the early 2000s, NPS and other federal agencies documented adverse ranching impacts to species protected under the Endangered Species Act that inhabit PRNS. Chanin Decl. Ex. 18. And more recently, in 2013, the Park Service issued a 2013 "Coastal Watershed Assessment" that found cattle ranching harms coastal resources at the Seashore. *Id.*, Ex. 19.

whether to renew the Drakes Bay Oyster Company's commercial oyster farming lease. *Id.*, Ex. 3. In a 2012 Memorandum former Secretary Salazar directed the Park Service to discontinue commercial oyster farming at the PRNS on the basis of the EIS. Surprisingly, however, in just a few paragraphs at the end of the Memorandum, and without any environmental analysis or public input, Salazar directed NPS to continue cattle ranching on 18,000 acres of public Seashore lands by granting leases for up to 20 years, to "reaffirm my intention" that ranching be maintained at PRNS. *Id.* at AR 07986-87.

To implement this directive, in April 2014 NPS began preparing an RMP with an EA, instead of an EIS. Coda Decl. ¶¶ 15, 16, 19. Its express purpose is to "establish a comprehensive framework for the management of existing ranch lands administered by Point Reyes National Seashore under agricultural lease/special use permits (lease/permits) with terms up to 20 years." *Id.*, Ex. E at 2.[7] PRNS Superintendent Defendant Muldoon candidly stated in an accompanying press release that the RMP "will set a strong foundation for ranching now and into the future." Chanin. Decl. Ex. 24. Even after this lawsuit was filed, an NPS spokesperson reiterated Defendants' pre-determined conclusion that: "[r]anching is here to stay at Point Reyes National Seashore." *Id.*, Ex. 7. To make good on its word, NPS has been issuing one-year letters of authorization to ranchers whose long-term lease/permits and use reservations have expired (which includes all but two of the 25 ranch units within PRNS) until such time as the RMP is complete, when ranchers may apply for up to 20-year terms. *Id.*, Exs. 4-5.

D. Ranching Not Approved though a Current GMP/EIS Irreparably Harms Plaintiffs.

Every day of cattle ranching that passes at the Seashore, without a current GMP/EIS, and while the Park Service instead expends its resources on completing the RMP and issuing long-term leases, irreparably harms the Seashore's natural resources, and in turn Plaintiffs and their members. *See generally* Declarations of Huey D. Johnson, Jeff Miller, Michael Connor, James Coda, Chance Cutrano, and Karen Klitz.[8] As a result of Defendants' ongoing mismanagement of the Seashore, the landscape has been sullied by industrial dairy facilities and manure, decomposing cattle carcasses,

[7] A second purpose is to "devise an effective management strategy for Tule elk affecting ranch lands," using "tools" that include "contraception, translocation, and fencing, as well as lethal removal by NPS employees…." Coda Decl. Ex. E at 1, 5.

[8] These declarations establish Plaintiffs' Article III standing as well as irreparable injuries that justify the relief requested in this Motion.

sprawling residential structures and trailers, and barbed wire fences that prevent hiking, restrict the movement of wildlife, and injure the Tule elk who try to leap the wires. *Id.* As set forth more fully in the supporting declarations, Defendants' conduct has harmed the interests of Plaintiffs and their members who regularly visit the Seashore for recreation, to enjoy its aesthetic values, and to further their professional interests, as it does the more the 2.5 million other members of the public who visit the Seashore every year.

Defendants' mismanagement of the Tule elk, and resulting diminishment of Plaintiffs' members' aesthetic, recreational, and professional enjoyment of the Seashore, is exemplary of the kind of harm that Defendants' actions are causing. The Tule elk were reintroduced beginning in 1978 after being extirpated from the seashore by hunting and cattle ranching in the mid-1800s; according to the Park Service, they are "treasured by visitors, photographers, naturalists and locals alike," and have come to symbolize "the conservation of native species and ecosystem processes, one of the primary missions of the National Park Service." Coda Decl. Ex. B at 3; Chanin Decl. Ex. 15. The Tule elk may not have standing in this case, but cattle ranching has unquestionably interfered with Plaintiffs' members' enjoyment of the elk at the Seashore, which is the only National Park unit where they can be observed. For example, cattle erode the Seashore's pastureland, pollute streams, and deprive native elk of limited forage and water resources. Coda Decl. ¶¶ 12-14; *see also* Chanin Decl. Ex. 19. During recent droughts, approximately 250 of the Tule elk that were confined to a fenced preserve to protect adjacent dairy farms died of starvation and thirst. Coda Decl. ¶ 9. Others have died from Johne's disease contracted from cattle, or been killed by the Park Service to test for Johne's and "protect" the cattle who gave the disease to the elk in the first place. *Id.*, ¶¶ 7-11, Exs. A-D. As part of the RMP, the Park Service has also proposed to subject the Tule elk to population control "tools" that, in 2008, it described as "inhumane" and irresponsible. *Id.*, Ex. E *and* Ex. A at 2. The Park Service's mismanagement of the Tule elk is attributable to the lack of guidance concerning resource management that should have been provided by an updated GMP/EIS. As a result, Plaintiffs' members' enjoyment of the Seashore has been irreparably harmed. Sadly, this is but one example.

II. ARGUMENT

Plaintiffs respectfully request that the Court issue an order temporarily prohibiting NPS from

pursuing the completion of its RMP or granting long-term leases/permits for commercial dairy and beef ranching until the Court can decide through a motion for partial summary judgment, or otherwise, whether a GMP/EIS must first be completed.[9] By law, NPS must prepare a new or revised GMP and accompanying EIS for public review and comment which identifies measures for the preservation of the Seashore's resources, evaluates competing alternative uses, assesses the environmental consequences of those alternatives, and ensures that chosen uses serve the Seashore's fundamental purpose to provide maximum protection for its natural resources, so as to leave them unimpaired for the enjoyment of future generations. 54 U.S.C. §§ 100101(a), 100502; 16 U.S.C. § 459c-6(a). This Court may grant such relief under the APA, 5 U.S.C. § 706(1), and Federal Rule 65.

A preliminary injunction is warranted here because: (1) Plaintiffs are likely to succeed on the merits; (2) Plaintiffs will suffer irreparable harm in the absence of relief; (3) the balance of equities tips in Plaintiffs' favor; and (4) the requested injunction serves the public interest. *See Winter*, 555 U.S. at 20. Under the Ninth Circuit's sliding scale approach, an injunction is also warranted because Plaintiffs raise serious questions going to the merits and the balance of hardships tips sharply in their favor. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). This court has "broad discretionary power" to fashion injunctive relief. *Ctr. for Biological Diversity v. Brennan*, 571 F. Supp. 2d 1105, 1132 (N.D. Cal. 2007) ("*Brennan*"); *see also United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 495-96 (2001).

A. Plaintiffs are Likely to Succeed on The Merits.

Plaintiffs' First Claim for Relief (ECF No. 78 ¶¶ 103-111) arises under § 706(1) of the APA, which holds that a "reviewing court shall . . . compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). As the Supreme Court explained in *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 63-64 (2004) ("*SUWA*"), the court can compel agency action under this section where there is "a specific, unequivocal command" placed on the agency to take a "discrete agency action," and the agency has failed to take that action. *See also Vietnam Veterans of Am. v. Cent.*

[9] Prior to the first Case Management Conference in this case, Plaintiffs asked Defendants if they would stipulate to suspending the RMP and the grant of any long term commercial ranching leases while this issue was decided, in return for which Plaintiffs would agree to stay their second and third claims challenging the interim ranching authorizations issued within the past six years, but Defendants declined to so stipulate. Chanin Decl., ¶ 2.

Intelligence Agency, 811 F.3d 1068, 1078-79 (9th Cir. 2016); *Brower v. Evans*, 257 F.3d 1058, 1068-70 (9th Cir. 2001). Here, NPS has plainly shirked Congress' "specific, unequivocal command" that a GMP "shall be prepared and revised in a timely manner." 54 U.S.C. § 100502.

Where, as here, a statute does not prescribe a specific deadline to complete a non-discretionary action, the Ninth Circuit applies a balancing analysis—known as the "TRAC" factors—to determine whether an agency has delayed unreasonably in taking action. *See In re Pesticide Action Network N. Am.*, 798 F.3d 809, 813-14 (9th Cir. 2015); *see also Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177, n.11 (9th Cir. 2002). The TRAC factors contemplate:

(1) the time agencies take to make decisions must be governed by a rule of reason;
(2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason;
(3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;
(4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority;
(5) the court should also take into account the nature and extent of the interests prejudiced by delay; and
(6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

In re Pesticide Action Network, 798 F.3d at 813. In *Pesticide Action Network*, the Ninth Circuit found that the EPA's eight-year delay in responding to an administrative petition was unreasonable in light of the human health risks at stake. *Id.* at 813-15. Many other courts have similarly found that multi-year agency delays are unreasonable. *See, e.g., In re United Mine Workers of America Intl. Union*, 190 F.3d 545, 551 (D.C. Cir. 1999); *In re Bluewater Network*, 234 F.3d 1305, 1315-16 (D.C. Cir. 2000); *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1345-50 (D. Ariz. 1995) (less than two years); *National Wildlife Federation v. Cosgriffe*, 21 F. Supp. 2d 1211, 1217-1219 (D. Or. 1998) (six year delay in completing management plan unreasonable); *Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202 (E.D. Cal. 1999) (delay in management plan); *Hells Canyon Preservation Council v. Richmond*, 841 F. Supp. 1039, 1048-49 (D. Or. 1993). Defendants' failure to issue a new GMP/EIS for 36 years—19 years after it acknowledged that the time had come for one, and without providing any public explanation for the delay—is far more egregious than in any of the cases cited. Consideration of the TRAC factor confirms this conclusion.

Factor 1: To survive the rule of reason, the agency must proffer some reason for its delay. Indeed, courts in the Ninth Circuit and across the nation have consistently held that an agency's failure to offer a specific, compelling justification for its delay, is unreasonable per se, and warrants relief. *See, e.g., Razaq v. Poulos*, No. C 06-2461, 2007 WL 61884, at *14 (N.D. Cal. Jan. 8, 2007) (granting summary judgment against agency because "respondents have failed to present evidence of specific justifications for [two-year] delay"); *Kashkool v. Chertoff*, 553 F. Supp. 2d 1131, (D. Az. 2008) (entering judgment and granting relief against agency "in view of the lack of any explanation for the [six-year] delay"); *Aslam v. Mukasey*, 531 F. Supp. 2d 736, 746 (E.D. Va. 2008) (entering judgment and granting relief against agency in view of "the government's inability or unwillingness to proffer specific reasons for the [three-year] delay"). Here, Defendants' decades-long delay violates Defendants' own policies and has never been publicly explained.

Factor 2: Congress commanded that GMPs must be prepared and revised in a "timely manner," which NPS has itself interpreted to mean every 10 to 15 years, or sooner when there are significantly changed conditions (as here). NPS Policies § 2.3.1.12; *see also Hells Canyon Preservation Council*, 841 F. Supp. at 1045 (interpreting APA command that agencies "decide matters in a reasonable time" to mean a "timely manner"). As set forth above, it has now been seven years since NPS prepared the Unreleased Draft GMP/EIS which *admitted* a new GMP/EIS was necessary, nineteen years since it first gave notice in 1997 that a new GMP was needed, and decades since an update was required by Defendants' own Management Policies. NPS cannot reasonably dispute that numerous conditions have changed significantly since 1980 and that a new GMP/EIS is needed. *See supra* at 8, 10-11. Yet, the agency has withheld the Unreleased Draft GMP/EIS until it can make its RMP/long-term lease/permits a *fait accompli*, in an apparent effort to put the cow before the Seashore's natural resources.

Factor 3: Human welfare is at stake, not just economic regulation. *See, e.g., Cosgriffe*, 21 F. Supp. 2d at 1219 (considering under third factor whether a management plan would ensure proper management of a river to enhance wildlife, scenery, and recreational opportunities). Here, NPS's overarching management directive is to conserve and leave unimpaired for the enjoyment by this and future generations of users the natural resources and wildlife of the Seashore. NPS's delay has harmed and continues to harm Plaintiffs' members' use and enjoyment of the Seashore.

Factor 4: Issuing a new, foundational GMP/EIS that sets long-term priorities for the management of the Seashore is required by a law, and unquestionably a "higher priority" than completion of the wholly elective RMP process, or issuing long-term leases/permits. In contrast to the RMP whose predetermined purpose is to implement a long-term, special use that may subvert the purposes of the Seashore and impair its natural resources, the GMP/EIS will comprehensively analyze alternative uses for the Seashore's resources to "ensure that the park has a clearly defined direction for resource preservation and visitor use." NPS Policies § 2.3.1. While NPS may argue that completion of the RMP and long-term lease/permits are necessary to give ranchers certainty so they can make investments and other plans, the RMP is plainly a subordinate planning process that cannot be prioritized over a mandatory duty established by Congress for every Park System unit. The agency should not be permitted to divert scarce resources to complete elective activities while postponing its statutory duty to complete a new GMP/EIS. *See Brower v. Evans*, 257 F.3d at 1070 ("Completion of other [actions] does not relieve the Secretary from progressing with clearly mandated [actions].")

Factor 5: Both public and environmental interests are prejudiced by the Park Service's delay in issuing a GMP/EIS revision while it embarks on an RMP for the express purpose of implement long-term, commercial ranching leases. This course of action defies Congress' statutory scheme for the management of all Park System units, under which NPS must ensure it has a issued a valid draft GMP and NEPA-compliant EIS for public review and comment that evaluates the appropriateness and impacts of all Seashore uses, before undertaking steps to approve a specific use—especially one as impactful as commercial cattle ranching. The RMP forecloses public and agency consideration of alternative management concepts that would limit ranching operations at the Seashore, such as those that were proposed in the Unreleased Draft GMP/EIS. Chanin Decl. Ex. 1 at AR 10586-601.

Factor 6: The existing, partial administrative record strongly suggests NPS shelved the Unreleased Draft GMP/EIS in bad faith. *See Independence Mining Co. v. Babbitt*, 105 F.3d 502, 510 (9th Cir. 1997) ("[i]f the court determines that the agency [has] delay[ed] in bad faith, it should conclude that the delay is unreasonable"). Between 2009 and 2012, the agency faced significant pressure from ranchers and their political allies to authorize long-term commercial ranching at the Seashore. Chanin Decl. Exs. 25-28 at AR 07702, 07705, 07950, and 07948. Rather than openly

address this input and consider its merit in light of NPS's statutory obligations, however, NPS simply buried the Unreleased Draft GMP/EIS without explanation. Thereafter, Defendants moved to implement Secretary Salazar's unilateral directive—which was issued effectively by fiat, without public notice or opportunity for comment, and without any EIS. *See, e.g.*, *id.*, Ex. 3. At least until the full record is before the Court, Factor 6 suggests an injunction is warranted. *Tummino v. Torti*, 603 F. Supp. 2d 519, 544 (E.D.N.Y. 2009), *amended sub nom.* No. 05-CV-366, 2013 WL 865851 (E.D.N.Y. Mar. 6, 2013) (explaining an agency decision is "invalid if based in whole or in part on the pressures emanating from [political actors]") (quoting *D.C. Fed'n of Civic Assocs. v. Volpe*, 459 F.2d 1231, 1246, 1248 (D.C. Cir. 1971)).

B. A Preliminary Injunction is Required to Avoid Irreparable Harm, Balance the Equities, and Serve the Public Interest.

In *Brennan*, this Court compelled a recalcitrant agency under APA Section 706(1) to complete a study required by Congress where the agency had delayed doing so for more than a year. *Brennan*, 571 F. Supp. 2d at 113. Here, Plaintiffs request only a preliminary injunction that prohibits Defendants from expending further public resources to complete the RMP, or issuing new long-term cattle ranching leases/permits, until the Court can decide whether a new GMP/EIS must first be completed. If NPS continues on its current course, scarce public resources that should be devoted to completing a mandatory GMP/EIS will be expended instead on an optional RMP that benefits private, commercial ranching interests. Similarly, if Defendants are permitted to issue long-term leases/permits, the status quo will substantially change before a new GMP and EIS are taken up again. Ranchers who are granted long-term leases/permits will rely on them to invest in new infrastructure, obtain financing, and make other decisions that cannot be undone—and then will demand that their reliance be accounted for in any future GMP/EIS, or will demand compensation for the "taking" of their interests should that occur. Indeed, the Lunny Ranchers' Motion to Intervene makes clear that they intend materially to rely upon the RMP and longer-term lease/permits to make long-term investments and other planning decisions. *See* ECF No. 56 at 12; ECF No. 56-3 ¶ 7; ECF No. 56-4 ¶ 7.

Other courts have entered preliminary injunctions prohibiting specific projects comparable to Defendants' RMP and leasing/permitting activities until a valid management plan is completed to guide the future direction of public lands and resources. *See Friends of Yosemite Valley v. Norton*, 366 F.3d

731 (9th Cir. 2004) (enjoining projects in national park until valid management plan adopted); *Friends of Yosemite Valley v. Kempthorne*, 464 F. Supp. 2d 993 (E.D. Cal. 2006) (holding management plan invalid, ordering new valid plan, and enjoining projects until valid management plan is adopted); *Oregon Natural Desert Association v. Green*, 953 F. Supp. 1133 (D. Or. 1997) (enjoining grazing where management plan not valid to protect wild and scenic values from grazing impacts).

Kempthorne is instructive. There, the court ordered the Park Service to prepare a valid Wild and Scenic River Comprehensive Management Plan ("CMP") and EIS for the Merced River within Yosemite, and enjoined the agency from completing multiple projects before it completed the plan. 464 F. Supp. 2d at 1012-13. Comparable to what would occur here if the RMP and leasing/permitting is not enjoined, the court found irreparable harm would flow from the continuation of one specific project, because "any progress" on that project "will at least to some extent predetermine" part of the required management plan, which "in turn could easily prejudice Defendants' decision making." *Id.* at 1002-04.

The same is true here. Further progress on the RMP or any issuance of long-term leases will undoubtedly influence, and likely predetermine, the nature of a GMP/EIS. For example, new long-term leases would likely be considered "existing conditions" that would be "adversely impacted by an alternative use strategy" in any future GMP/EIS; or, alternatively, the "termination" of such leases may be deemed an additional "cost" to limiting or reducing ranching in future general planning processes. Further, if NPS is permitted to spend its finite resources on an optional planning process, the legally-required GMP/EIS will be further delayed. *See* Chanin Decl., Ex. 29 (PRNS lacks funding for over $100 million in deferred maintenance obligations, and the Park Service is facing a $12 billion shortfall overall). This Court has entered injunctive relief to prevent irreparable harm to procedural and informational interests in far less egregious circumstances, and it is appropriate to issue a preliminary injunction against the end-run RMP/leasing process here until the Court can decide on summary judgment whether to compel a mandatory GMP/EIS revision and permanently enjoin the RMP/long-term lease effort until a valid GMP/EIS is completed. *Cf. Brennan*, 571 F. Supp. 2d at 1132-36.

An injunction also is needed to prevent other irreparable procedural and informational harms that Plaintiffs will suffer should the RMP precede a GMP/EIS. Full evaluation and disclosure of the measures to protect the Seashore's resources, adverse impacts of ranching, and alternative uses of the

Seashore through a GMP/EIS is required under the NPS Act, the agency's policies, and NEPA's EIS requirement; all of this will be avoided if Defendants move forward with the pre-determined RMP and its more cursory EA. *See* NPS Policies at §§ 2.3.1.5, 2.3.1.7. NPS's failure to fulfill its procedural duties irreparably harms Plaintiffs as well as other interested members of the public. *See High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 642-43 (2004); *Sierra Club v. Bosworth*, 510 F.3d 1016, 1033-34 (9th Cir. 2007) (injunctions prevent harm until the agency complies with procedural duties); *Brennan*, 571 F. Supp. 2d at 1105.

The kinds of harms to the Seashore's values and natural resources caused every additional day that a GMP/EIS is delayed and the RMP/long-term lease project is advanced are irreparable, or will take decades to mitigate. Such harms cannot be adequately remedied with money damages. *See League of Wilderness Defenders/Blue Mountain Biodiversity Project v. Connaughton*, 752 F.3d 755, 764-65 (9th Cir. 2014) ("[T]he Supreme Court has instructed us that [e]nvironmental injury, by its nature … is often permanent or at least of long duration, i.e., irreparable."); *Idaho Rivers United v. Probert*, No. 16-cv-102-CWD, 2016 WL 2757690, at *17 (D. Idaho May 12, 2016) (irreparable harm where "it may take years to restore" aesthetic and scenic values); *Californians for Alternatives to Toxics v. U.S. Fish & Wildlife Serv.*, 814 F. Supp. 2d 992, 1023 (E.D. Cal. 2011) (irreparable harm where species would not recover); *Nw. Envtl. Advocates v. E.P.A.*, No. C 03-05760 SI, 2006 WL 2669042, at *11 (N.D. Cal. Sept. 18, 2006). A GMP/EIS must include measures for the preservation of the Seashore's resources, but the 1980 GMP is so outdated that it fails to address current threats to these resources caused by ranching, climate change, increased visitation, and other conditions noted in the Unreleased Draft GMP/EIS. A new or updated GMP that incorporated the alternatives proposed in the Unreleased Draft GMP/EIS—which contemplated varying degrees of reductions in ranching activities—would likely redress these harms. But further delay of a new or revised GMP/EIS, completion of the RMP, or issuance of the long-term leases, will propagate such harm for a generation to come.

Further, equity favors an injunction that effectuates Congress's intent to preserve an unimpaired, natural, National Seashore for purposes of public inspiration, recreation, and benefit, and

for the enjoyment of future generations as against the needs of a special interest.[10] *See* 16 U.S.C. § 459c; *Brennan*, 571 F. Supp. 2d at 1135; *see also Nw Envt'l Advocates*, 2006 WL 2669042, at *12 ("[T]he balance of harms usually favors issuance of an injunction to protect the environment.") (quoting *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987)). A GMP/EIS that does not take commercial ranching as a given, but assesses its costs and benefits against alternative uses in light of the statutory purposes for which the National Seashore was created, furthers the public interest and outweighs the few, private and commercial interests served by an RMP. *See Kempthorne*, 464 F. Supp. 2d at 1003 ("the public's interest in having NPS make an unprejudiced decision" in a comprehensive management plan outweighs the interests served by a specific project).

Whereas Plaintiffs and the public face these irreparable procedural, informational, and substantive harms in the absence of injunctive relief, neither Defendants nor the intervenors can point to any irreparable harms of comparable or greater weight that would result the requested relief. Plaintiffs are not asking to enjoin the current, short-term annual ranching authorizations or even new ones so long as they extend no more than a year; they simply ask the Court to halt the RMP/long-term leasing process, as the Park Service agreed to do for a month just to give its counsel more time to oppose this motion (*see* ECF No. 53 at 2) until the Court can decide the merits. If Defendants complain they have already committed resources to their RMP/lease plan, or that the ranchers need the assurances of new, long-term leases to make their own long-term plans for further commercial ranching at the Seashore, such contentions militate in favor of completing the GMP/EIS first, not against it. If properly conducted, the GMP/EIS will determine the future of ranching at the Seashore before the ranchers invest more resources in support of their operations. *See, e.g.*, *Connaughton*, 752 F.3d at 767 (delay in economic benefits did not outweigh irreparable injury to elk habitat).

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion and enter a preliminary injunction until the Court can resolve Claim One on summary judgment.

[10] When the government is a party, the public interest and balance of the hardships factors merge. *Connaughton*, 752 F. 3d at 766.

Dated: August 12, 2016

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