



January 9, 2023

By Email and Certified Mail

Debra Haaland, Secretary of the Interior
U.S. Department of the Interior
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Tracy Stone-Manning, Director
Bureau of Land Management
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Re: Notice of Intent to Sue over Violations of the Endangered Species Act Regarding Impacts to Tiehm’s Buckwheat from Authorized Livestock Grazing

Dear Secretary Haaland and Director Stone-Manning:

This letter serves as a sixty-day notice from the Center for Biological Diversity (Center) of our intent to sue the Bureau of Land Management (BLM) pursuant to the Endangered Species Act (ESA), 16 U.S.C. § 1533(b)(6). BLM has authorized livestock grazing activities that adversely affect Tiehm’s buckwheat (*Eriogonum tiehmii* Reveal, Polygonaceae) and adversely modify Tiehm’s buckwheat’s designated critical habitat, without first complying with the consultation requirements of ESA Section 7(a)(2), 16 U.S.C. § 1536(a)(2). BLM has thus failed to ensure that agency-authorized grazing activities will not cause jeopardy to Tiehm’s buckwheat or adversely modify its critical habitat. The Center is providing this letter to you pursuant to the 60-day notice requirement of the citizen suit provision of the ESA, 16 U.S.C. § 1540(g)(2)(C).

Requirements of the ESA

The Endangered Species Act is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). “[T]he plain intent of Congress in enacting the [ESA] was to halt and reverse the trend toward species extinction, whatever the cost.” *Id.* at 184.

ESA Section 7(a)(2) requires each federal agency, “in consultation with and the assistance of” the U.S. Fish and Wildlife Service (FWS), to “insure that any action” it “authoriz[es], fund[s], or

carrie[s] out . . . is not likely to jeopardize the continued existence of any endangered species . . . or result in the destruction or adverse modification of [designated critical] habitat.” 16 U.S.C. § 1536(a)(2). This language imposes both substantive and procedural duties on all federal agencies. Procedurally, “[e]ach agency contemplating an action likely to affect a listed species must first confer with . . . the FWS . . . before taking the action” to ensure that the proposed action will not jeopardize and endangered species or adversely modify critical habitat. *Pyramid Lake Paiute Tribe of Indians v. United States Dep’t of Navy*, 898 F.2d 1410, 1415 (9th Cir. 1990) (emphasis added) (citing 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.01(b), 402.12). Substantively, an agency must avoid any action that jeopardizes an endangered species or adversely modifies critical habitat. *See Thomas v. Peterson*, 753 F.2d 754, 763 (9th Cir. 1985); *Carson-Truckee Water Conservancy Dist. v. Clark*, 741 F.2d 257, 262 (9th Cir. 1984); *Sierra Club v. Marsh*, 816 F.2d 1376, 1385 (9th Cir. 1987); *Pyramid Lake Paiute Tribe*, 898 F.2d at 1414.

“[T]he strict substantive provisions of the ESA justify more stringent enforcement of its procedural requirements, because the procedural requirements are designed to ensure compliance with the substantive provisions.” *Thomas*, 753 F.2d at 764; *see also Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 741 (9th Cir. 2020). If an action is allowed to proceed without compliance with those procedural requirements, “there can be no assurance that a violation of the ESA’s substantive provisions will not result.” *Thomas*, 753 F.2d at 764.

Tiehm’s Buckwheat

Tiehm’s buckwheat (*Eriogonum tiehmii* Reveal, Polygonaceae) is an extremely rare plant species that is found only on 10 acres of Bureau of Land Management administered land in an isolated location of the Rhyolite Ridge area of the Silver Peak Range mountains of western Nevada. It faces numerous threats, including proposed mining development and as-yet-unexplained collection/destruction events that have eliminated approximately 40 percent of the species’ global population. Additional disturbances within the species’ habitat continued to occur through 2021 and 2022, underscoring the significant risk that this species faces to its survival.

Tiehm’s buckwheat occurs entirely within the Silver Peak livestock grazing allotment, which is managed by the BLM Tonopah field office. Currently, 658 active AUMs (animal unit months) and 2,507 temporarily suspended AUMs are associated with the Silver Peak allotment. *U.S. Fish and Wildlife Service, Endangered and Threatened Wildlife and Plants; Endangered Species Status and Designation of Critical Habitat for Tiehm’s Buckwheat*, 77 Fed. Reg. 77368, 77375 (December 16, 2022). However, BLM has represented to the Service that active AUMs may increase in the future. *Id.*

On December 16, 2022, the Service issued a Final Rule listing Tiehm’s buckwheat as an endangered species and designating 910 acres of critical habitat. 77 Fed. Reg. 77368. In this final

listing rule, the Service identified livestock grazing as one of the threats to Tiehm's buckwheat necessitating listing, and described how livestock can impact the species:

Livestock grazing has the potential to result in negative impacts to Tiehm's buckwheat individuals, subpopulations, and/or the population, depending on factors such as stocking rate and season of use. Livestock grazing may result in direct impacts to individual Tiehm's buckwheat plants due to trampling of vegetation and soil disturbance (compaction) in ways that can render habitat unsuitable to established plants, while also discouraging population recruitment (by discouraging seed retention, seed germination, and seedling survival). Patterns of soil disturbance associated with grazing can also create conditions conducive to the invasion of nonnative plant species (Young et al. 1972, entire; Hobbs and Huenneke 1992, p. 329; Loeser et al. 2007, pp. 94–95).

87 Fed. Reg. 77375. The Service also noted that grazing could work in combination with other existing threats, such as mining exploration and invasive species, to elevate the risk of extinction:

[M]ineral exploration, road development and OHV use, and livestock grazing can introduce nonnative, invasive plant species, which in turn can directly compete with and displace Tiehm's buckwheat within its habitat. With only one population (eight subpopulations), the risks to a small plant population like Tiehm's buckwheat include losses in reproductive individuals, declines in seed production and viability, loss of pollinators, loss of genetic diversity, and Allee effects (Eisto et al. 2000, pp. 1418–1420; Berec et al. 2007, entire; Willis 2017, pp. 74–77), which will impact a species that already has very limited redundancy and representation.

87 Fed. Reg. 77378. For these reasons, the Service concluded that “[s]pecial management considerations or protection may be required” to address the threat of livestock grazing. 87 Fed. Reg. 77392. The Service also identified actions that could ameliorate the threats to Tiehm's buckwheat, including “minimization of livestock use or other disturbances that disturb soil or seeds.” 87 Fed. Reg. 77391.

Although grazing was identified as a threat, the Service acknowledged BLM representations that the grazing permittee has agreed to move livestock west of the Tiehm's buckwheat subpopulations in order to avoid any further grazing impacts. 87 Fed. Reg. 77375.

Livestock Grazing Impacts to Tiehm's Buckwheat

On January 3, 2023, the Center's Great Basin Director, Patrick Donnelly, visited Rhyolite Ridge and observed cattle within the occupied critical habitat of Tiehm's buckwheat. Specifically, Mr.

Donnelly observed seven cows within Subpopulation 1, and numerous cattle tracks throughout Subpopulations 1 and 2. Contrary to BLM's representations to the Service, it is evident that cattle have not been removed from Tiehm's buckwheat's range, and are actively damaging the species' designated critical habitat. Mr. Donnelly also discovered that several individual Tiehm's buckwheat plants had been directly trampled by cattle. Finally, Mr. Donnelly observed significant ground disturbance from cattle, which, as the Service noted, could render the habitat unsuitable or inhibit recruitment. The full extent of impacts are documented in Attachment A to this letter.

ESA Violation

BLM has permitted livestock grazing within the occupied critical habitat of Tiehm's buckwheat without first consulting with Service as required under ESA Section 7(a)(2). BLM has therefore failed to ensure that agency-authorized grazing activities will not cause jeopardy to Tiehm's buckwheat or adversely modify its critical habitat. Without completing the required consultation, BLM cannot fulfill its mandatory duty under the ESA to ensure against jeopardy and adverse modification. Further, Mr. Donnelly has provided direct observations of cattle damaging Tiehm's buckwheat's critical habitat, as well as individual Tiehm's buckwheat plants, demonstrating that adverse modification has already occurred.

To avoid further damage and comply with the ESA, BLM must immediately remove cattle from Tiehm's buckwheat's designated critical habitat and ensure that cattle are unable to access the critical habitat going forward. BLM must also immediately commence consultation with the Service concerning livestock grazing on the Silver Peak allotment. Until BLM completes the required consultation, it must prohibit grazing any such grazing within Tiehm's buckwheat's designated critical habitat to ensure against any irreversible or irretrievable commitment of resources which would foreclose implementation of reasonable and prudent alternatives. 16 U.S.C. § 1536(d).

Conclusion

If BLM fails to remedy the violations described herein within the next 60 days, the Center intends to file suit. It is our practice to pursue negotiations whenever possible. In keeping with this policy, we invite BLM to contact us to discuss the issues raised in this notice.

Sincerely,

/s/ Scott Lake
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Attachments:

- A. Observations of cattle impacts to Tiehm's buckwheat habitat on Jan 3, 2023, by Patrick Donnelly, Great Basin director, Center for Biological Diversity

Observations of cattle impacts to Tiehm's buckwheat habitat on Jan 3, 2023

Patrick Donnelly, Great Basin director, Center for Biological Diversity

On January 3rd, 2023 I observed seven cows within subpopulation 1 of Tiehm's buckwheat. There was a fresh layer of snow on the ground, perhaps 2" deep, which had fallen January 1st. I observed numerous cattle tracks through Tiehm's buckwheat subpopulations 1 and 2, including trampled and crushed buckwheats, as well as lots of cow dung. Cows appear to be freely moving at will through Tiehm's buckwheat habitat.

Photos of tracks through the buckwheat habitat are below in Figures X1 through X11. Figures X12 through X20 are of crushed buckwheats in cattle tracks. Figure X21 is a map of the photo points and areas of impacts.

On December 26th, I observed that cattle grates on Cave Springs Road on either side of the Tiehm's buckwheat habitat were filled in with sediment and passable to cows. Photos below in Figures X22 and X23.



Figure X1: Seven cows seen within subpopulation 1.

37.8163708,-117.8571184

Approximate location of cows 37.817345, -117.857230



Figure X2: another view of seven cows within subpopulation 1.
37.8163708,-117.8571184
Approximate location of cows 37.817345, -117.857230



Figure X3: Cattle tracks behind the fence at subpopulation 1, with cows above to left.
37.8166474,-117.8567779



Figure X4: Cattle tracks in occupied Tiehm's buckwheat habitat in subpopulation 1.
37.8169746,-117.8563298



Figure X5: Cattle tracks in occupied Tiehm's buckwheat habitat in subpopulation 1.
37.8171083,-117.8562065



Photo X6: Cattle tracks in occupied Tiehm's buckwheat habitat in subpopulation 1.
37°49'2.80"N, 117°51'21.56"W



Figure X7: Cattle tracks in occupied Tiehm's buckwheat habitat in subpopulation 1.
37.8171083,-117.8562065



Figure X8: Cattle tracks leading into subpopulation 2.
37.8182144,-117.8547712



Figure X9: Cattle tracks in occupied buckwheat habitat in subpopulation 2.
37.818809,-117.8532446



Figure X10: Cattle tracks in occupied buckwheat habitat in subpopulation 2.
37.8195185,-117.8516166



Figure X11: Significant disturbance in occupied buckwheat habitat in subpopulation 2.
37.8192239,-117.8520823



Figure X12: Dormant Tiehm's buckwheat crushed in a cattle track in subpopulation 1. 2nd photo is detail of 1st.
37.8171083,-117.8562065



Figure X13: Dormant Tiehm's buckwheat crushed in a cattle track in subpopulation 1. 2nd photo is zoom of 1st.
37.8171083,-117.8562065



Figure X14: Dormant Tiehm's buckwheat crushed in a cattle track, next to fresh cow dung, in subpopulation 1.
2nd photo is detail of 1st.

37.8171083,-117.8562065



Figure X15: Dormant Tiehm's buckwheat crushed in a cattle track in subpopulation 1.

37.8171083,-117.8562065



Figure X16: Dormant Tiehm's buckwheat crushed in a cattle track in subpopulation 1.
37°49'2.49"N 117°51'22.21"W



Figure X17: Dormant Tiehm's buckwheat crushed in a cattle track in subpopulation 1.
37°49'2.31"N 117°51'22.03"W



Figure X18: Broken off Tiehm's buckwheat taproot in cattle track in subpopulation 2. 2nd photo is detail of 1st.
37.8191866,-117.8520611



Figure X19: Dormant Tiehm's buckwheat crushed in a cattle track in subpopulation 1. Broken peduncles (flower stalks) can be seen in the track. 2nd photo is detail of 1st.
37.8196197,-117.8516807



Figure X20: Dormant Tiehm's buckwheat crushed in a cattle track in subpopulation 1.
37.8195311,-117.8518041

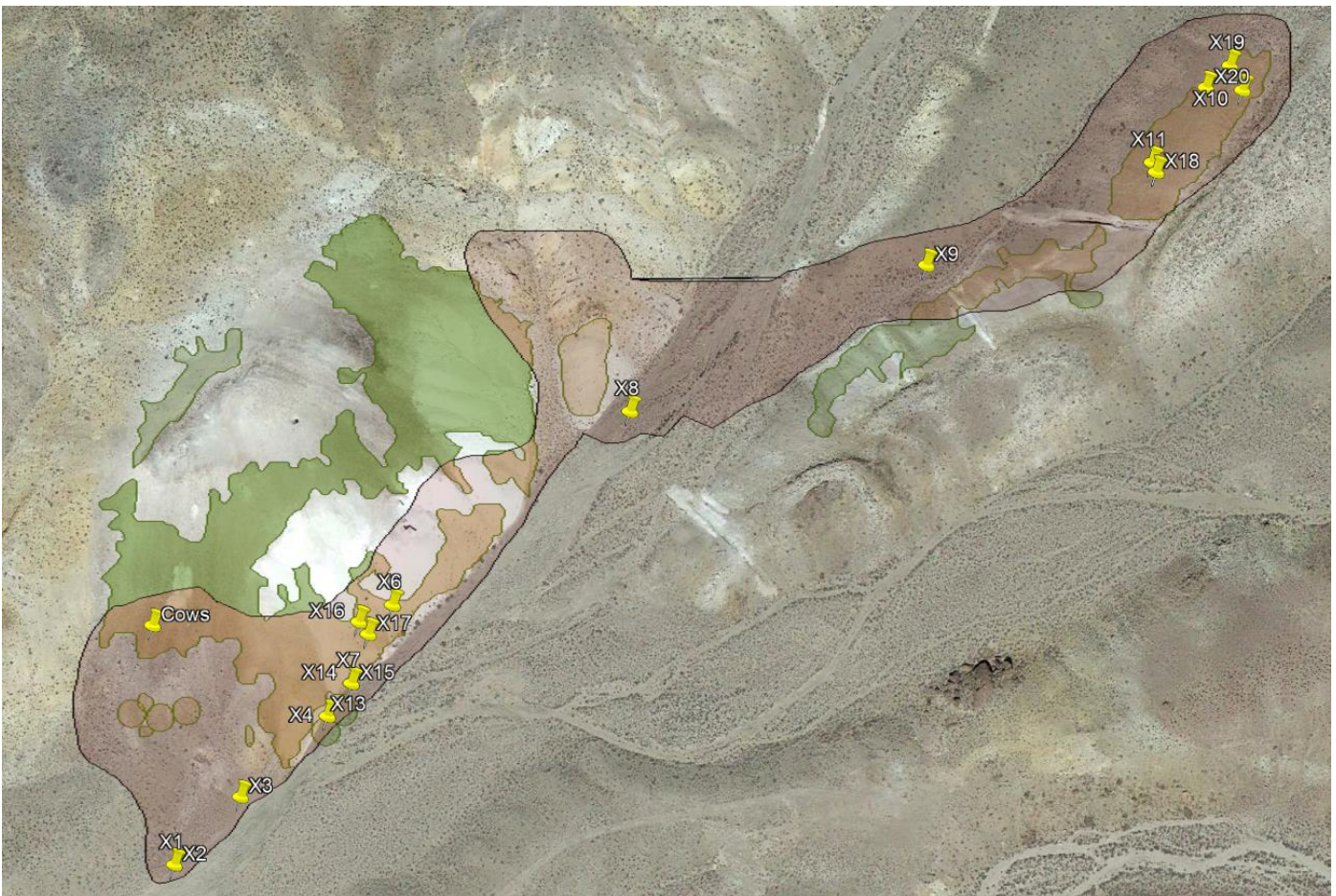


Figure X21: Map of photo monitoring points from January 3, 2023. The green shading is Tiehm's buckwheat occupied habitat. Red shading is areas of observed cattle impact during January 3rd monitoring visit.



Figure X22: Cattle grate at Cave Spring filled in with sediment and passable to cows.



Figure X23: Cattle grate west of Rhyolite Ridge on Cave Springs Road filled in with sediment and passable to cows.