



December 22, 2016

***Via Electronic Submission and Certified Mail***

Bureau of Land Management  
Winnemucca District Office  
5100 East Winnemucca Boulevard  
Winnemucca, NV 89445-2921  
WFOWeb@blm.gov

**RE: Comments on the Winnemucca BLM District Office's November 22, 2016  
Notice of Proposed Action in Wilderness Area (NV030.09)**

Dear Mr. Mack and Mr. Kampwerth:

This letter contains the comments of the American Sheep Industry Association ("ASI") on the Notice of Proposed Action in Wilderness Area (NV030.09) (the "NOPA") as issued by the Winnemucca BLM District Office on November 22, 2016 and its described bighorn sheep translocation program (the "Program"). According to the NOPA, the comment period expires thirty days from the date of the letter, or December 22, 2016. Thus, these comments are timely.

**I. Introduction**

ASI is a national trade organization representing the interests of nearly 90,000 sheep ranchers located throughout the country who produce America's lamb and wool. ASI is a federation of forty-five state sheep associations and individual members. On behalf of its members, ASI advocates for public policy that protects and supports the economic viability of the sheep industry, creates strong national and international markets for wool through advertising, promotion and marketing, advances and coordinates science and technology of production and marketing, and supports communication and cooperation between all segments of the industry, related business and government agencies.

ASI has significant concerns about the Program. Most notably, the Program violates both the Wilderness Act of 1964 (the "Wilderness Act"), because it does not justify the use of aircraft in wilderness areas, and the National Environmental Policy Act ("NEPA"), for failure to fully analyze the impacts of the Program. 16 U.S.C. §§ 1311 *et seq*; 42 U.S.C. § 4321 *et seq*. The following letter describes these legal shortcomings and recommends BLM reconsider implementation of the Program.

Please add ASI to your list of "interested publics" and provide any subsequent public written information on this Program to ASI.

## **II. The Program violates the Wilderness Act of 1964.**

Under the Wilderness Act, certain activities—including the landing of aircraft—are expressly prohibited in wilderness areas unless the agency charged with administering the wilderness area—here, BLM—can show two things. 16 U.S.C. §§ 1133(b); (c); *Wilderness Watch v. U.S. Fish and Wildlife Service*, 629 F.3d 1024 (9th Cir. 2010); *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d 630 (9th Cir. 2004). First, the use of the prohibited activity must further a purpose of the Wilderness Act. *Id.* The Wilderness Act provides that wilderness areas “shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.” 16 U.S.C. § 1133(b). Second, the prohibited activity must be “necessary to meet minimum requirements for the administration of the area for the purpose of the act.” *Id.*

The Program fails to satisfy these two requirements. The Program contemplates landing aircraft—an activity expressly prohibited under the Wilderness Act—in the Calico Mountains, High Rock Lake, East Fork High Rock Canyon, Little High Rock Canyon, High Rock Canyon, Pahute Peak and Pine Forest Range wilderness areas (the “Wilderness Areas”) in order to capture and relocate bighorn sheep to unknown, or at least undisclosed, locations. The Program, and the prohibited activity it employs, does not further a wilderness purpose. Moreover, even if the Program furthered a wilderness purpose, it is not necessary to meet minimum requirements for administration of the Wilderness Areas in question.

### **A. The Program does not serve a wilderness purpose.**

The Program does not serve any of the purposes listed in the Wilderness Act: recreation, scenic use, science, education, conservation, or historical value.” 16 U.S.C. § 1133(b). Nowhere in the NOPA or the Environmental Assessment – Helicopter Capture of California Bighorn Sheep Within Black Rock-High Rock Area Wilderness (“2004 EA”), on which BLM relies for NEPA adequacy, does BLM explain how the Program satisfies wilderness purposes. BLM admits that “the wilderness values of the affected Wilderness Areas were not the primary consideration for this proposal.” 2004 EA § Appendix B, Part 6.

According to the 2004 EA, the purpose of the Program is to capture and *remove* bighorn sheep from the Wilderness Areas and to relocate them. 2004 EA § II.B. There is no guarantee that the bighorn sheep will be relocated to any wilderness areas. To the contrary, the 2004 EA states that new destinations “may include” wilderness areas or lands being managed to retain wilderness values. *Id.* Captured bighorn sheep will “help reestablish new populations or augment existing populations in Nevada or nearby states.” 2004 EA § IV.B.a. The NOPA states that the bighorn sheep would be relocated “where bighorn sheep populations would benefit from augmentation.” NOPA.

In this way, the Program is very different from other situations where administering agencies employ prohibited activities to manage wildlife *inside* wilderness areas. In these contexts, agencies argue that such management serves the wilderness purpose of conservation. *See Wilderness Watch v. U.S. Fish and Wildlife Service*, 629 F.3d 1024 (9th Cir. 2010); *Californians for Alternatives to Toxics*, 814 F. Supp. 2d 992, 1017 (E.D. Cal. 2011); *Wolf Recovery Found. v. U.S. Forest Serv.*, 692 F. Supp. 2d 1264, 1268 (D. Idaho 2010). For

example, in *Wilderness Watch*, the U.S. Fish and Wildlife Service installed watering tanks *within* wilderness areas in an effort to stabilize and grow bighorn sheep populations *in* wilderness areas. 629 F.3d 1024.

Here, there is nothing in the record indicating the removal of bighorn sheep from the Wilderness Areas is meant to manage, conserve or in any way protect the species in the Wilderness Areas. To the contrary—BLM admits that the Program “would not necessarily benefit the actual Wilderness Areas where the sheep will be removed.” 2004 EA, Appendix A, Part B. Indeed, it is difficult to imagine why BLM would carry out the Program if it was for the sake of the bighorn sheep occupying the Wilderness Areas, considering the good health of these populations. BLM notes that sheep reintroductions that occurred in the Wilderness Areas prior to their designation have been successful and approximately 500 sheep now occupy the Wilderness Areas. 2004 EA § III.C. “Recent inventories by NDOW indicate successful reproduction[.]” *Id.* The population is stable enough to allow for hunting of bighorn sheep in the Wilderness Areas. *Id.* Notably, if BLM declined to implement the Program, there would be no benefit to the bighorn sheep in the Wilderness Areas. *Id.* § IV.C.a.

Instead, the agency proposes to capture bighorn sheep in wilderness areas and relocate them elsewhere, maybe within wilderness areas, maybe not. The overall purpose of the Program, and its use of helicopters in wilderness areas, may be to ensure the long-term health of the regional or national bighorn sheep population. This general purpose that extends beyond wilderness areas, however, cannot be used to justify engaging in a prohibited activity—landing helicopters in wilderness areas.

**B. The Program is not necessary to meet minimum requirements for administration of the area.**

In the event a prohibited activity, such as landing a helicopter in a wilderness area, does further a wilderness purpose, the administering agency must still show it is necessary to meet minimum requirements for the administration of the area for that purpose. The agency must demonstrate that the prohibited activity itself is necessary to achieve the wilderness purpose. *Californians for Alternatives to Toxics*, 814 F. Supp. 2d at 1017 (citing *Wilderness Watch v. U.S. Fish and Wildlife Service*, 629 F.3d 1024 (9th Cir. 2010); *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d 630 (9th Cir. 2004)).

Here, assuming the management of bighorn sheep outside wilderness areas is a wilderness purpose, BLM has still failed to show that the use of helicopters is necessary to achieve this purpose. As multiple courts have noted, “machinery as intrusive as a helicopter is rarely necessary to meet minimum requirements for the administration of an area because helicopters carry man and his works, and so are antithetical to a wilderness experience.” *Wilderness Watch, Inc., v. Sarah Creachbaum*, 2016 WL 7231433, at \*10 (W.D. Wash. Dec. 14, 2016); *Wilderness Watch v. Iwamoto*, 853 F. Supp. 2d 1063, 1076 (W.D. Wash. 2012), *motion for relief from judgment granted*, C10-1797-JCC, 2012 WL 6766551 (W.D. Wash. Sept. 20, 2012); *Californians for Alternatives to Toxics*, 814 F. Supp. 2d at 1020-21; *Wolf Recovery Found., v.* 692 F. Supp. at 1264, 1268 (D. Idaho 2010). “It would be a rare case where machinery as intrusive as a helicopter could pass the test of being ‘necessary to meet minimum

requirements for the administration of the area.” *Wolf Recovery Found.*, 692 F. Supp. 2d at 1268 (D. Idaho 2010).

BLM has failed to show that this is one of those cases. BLM assumes, without providing any evidence, that the use of helicopters is necessary to capture bighorn sheep. When prompted by the Minimum Requirement/Tool Worksheet whether “there are any less intrusive actions that should be tried first?” BLM responds, “No, in order to reintroduce the sheep to locations were [sic] they have been impacted by human use the sheep must be captured.” 2004 EA, Appendix B, Step 1. In its Minimum Tool Analysis, BLM presents two alternatives, both of which utilize helicopters. *Id.*, Appendix B, Step 2. The only difference between the two is the method used to trap the sheep—a net weighted at each end versus a drop net method. *Id.* There is no exploration or discussion of alternative means of capture and so it is impossible to know whether the use of helicopters is the “minimum requirement” for achieving BLM’s purpose. Unless the Wilderness Act’s “minimum requirements” provision is empty,” BLM must present alternatives and “provide enough evidence and explanation in the record to assure [a] court that it fully considered those avenues and nevertheless rationally concluded that [the prohibited activity is], in fact, necessary.” *Wilderness Watch*, 629 F.3d at 1039, 1040. By not doing so, the NOPA fails to demonstrate that the prohibited activity itself is necessary to achieve a purported wilderness purpose.

### **III. BLM has not given the Program the analysis and review required by NEPA.**

NEPA requires that federal agencies prepare an environmental impact statement (“EIS”) for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). For those actions that are not expected to have a significant effect, the federal agency must prepare a Finding of No Significant Impact (a “FONSI”) and Environmental Analysis (an “EA”). 40 C.F.R. § 1508.9 Under certain circumstances, it is appropriate for an agency to rely on existing NEPA documents, such as an EIS or EA, for analysis of environmental effects of a proposed action, rather than produce a new NEPA document. That is what BLM proposes to do here.

In lieu of conducting NEPA analysis of the Program, BLM plans to issue a Determination of NEPA Adequacy, commonly referred to as a “DNA.” BLM explained in its NOPA that the environmental impacts of the Program “have been analyzed in a previous Environmental Assessment CA-370-05-01” (the “2004 EA”), and so no additional NEPA analysis is required. BLM’s reliance on the 2004 EA is, however, misplaced.

A DNA is not itself a NEPA analysis. Department of the Interior, Departmental Manual 516 DM 11, 11.6.B (2008). A determination of NEPA adequacy is appropriate where the agency “determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives.” 43 C.F.R. § 46.120(c). “When a DNA relies upon a prior [EA], BLM must determine whether the existing analysis took the appropriate hard look at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impacts will be reduced to insignificance by adoption of appropriate mitigation measures.” *Wildlands Defense*, 188 IBLA 68 (June 30, 2016).

The record relied upon must include “an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.” *Id.* BLM’s Handbook provides additional guidance regarding when it is appropriate for an agency to make a determination of NEPA adequacy, suggesting that an agency answer a series of questions, including:

- Whether the range of alternatives considered in the NEPA document are appropriate considering the proposed action, given current environmental concerns, interest and resource values;
- Whether the existing document is still valid in light of new information or circumstances; and
- Whether there are effects that would result from implementation of the proposed action that were not considered in the existing NEPA document.

Bureau of Land Management, National Environmental Policy Act Handbook H-1790-1, § 5.1.2 (2008) (“BLM Handbook”). If the agency answers affirmatively to any of these questions, a DNA is not appropriate.

BLM’s claim that a determination of NEPA adequacy is appropriate here is erroneous because the alternatives analyzed in the 2004 EA do not consider the impacts the Program is likely to have, new information and circumstances make the 2004 EA inapplicable, and the Program is likely to have effects not considered in the 2004 EA. The DNA is also inappropriate to the extent it may rely on documents not listed in the NOPA. In short, BLM has not made a “convincing case” that no new NEPA analysis is required.

**A. The alternatives analyzed in the 2004 EA are not appropriate given current environmental concerns, interests, and resource values.**

1. *The 2004 EA’s discussion of vegetative impacts, bighorn sheep “die-offs” and disease resulting from natural causes is inappropriate.*

Cumulative impacts are defined as effects from human actions, not natural processes. 40 CFR 1508.7; *see Roseburg Resources Company*, 186 IBLA 325, 337 (2015) (“NEPA applies only to agency action, even if inaction has environmental consequences.”). BLM suggests that adverse cumulative impacts to vegetation, apparently in Wilderness Areas, could result if the “bighorn sheep population is permitted to increase to levels exceeding the carrying capacity of the range or if populations fall in disease related die-offs.” 2004 EA § V. Consideration of impacts to resources that result from natural processes, such as grazing by native species, are not appropriate in a NEPA analysis. Such impacts are “environmental consequences” not caused by humans and should not be included in the EA analysis.

2. *BLM failed to consult with the Agricultural Research Service on the Program.*

BLM should have consulted with the U.S. Department of Agriculture Agricultural Research Service (“ARS”). The ARS provides scientific research focusing on finding solutions

to agricultural problems on a national scale. The ARS has experience and expertise addressing conflicts between domestic and bighorn sheep. It is for this reason that Congress requires that BLM consult with ARS in matters relating to bighorn sheep:

In order to ensure the Nation does not lose its domestic sheep industry or bighorn sheep conservation legacy, the [U.S. Forest] Service and the Bureau of Land Management shall implement a variety of solutions, including the following directives: ...engage the Agricultural Research Service to ensure the best scientific understanding of where disease transmission occurs and the degree of that risk[.]

161 Cong. Rec. H10212-221 (2015). There is nothing in the record to indicate that BLM included ARS in any part of the Program's planning process. Had BLM done so, the Program and its analysis likely would have considered impacts of translocation to both domestic and bighorn sheep, ensuring that both species are protected. BLM's failure to do so will result in effects from the Program that were not considered in the 2004 EA and that may have substantially changed since 2004 with the evolution of the science of animal infections and their transmission. ARS is the federal government's repository for the best available animal disease science.

3. *BLM failed to consult with the Nevada Department of Agriculture.*

In the cases of translocation of bighorn sheep, there is concern that sheep infected with *Mycoplasma ovipneumoniae* or sinus tumors would be introduced into areas and populations that are not currently exposed to or infected by these organisms. Past proposed BLM actions list additional areas of operation for sampling and translocation. These areas are not provided in the NOPA. Continued disease outbreaks adjacent to and within areas where sheep will be relocated cause concern of inadvertent continued spread of pathogens associated with morbidity, mortality, and decreased reproduction in bighorn sheep populations. As discussed below, in the spring of 2016, an entire population of bighorn sheep was depopulated from the Montana range in an attempt to prevent the spread of disease to adjacent populations. The continued allowance of these operations leads to the dissemination of diseased animals across other areas.

Because there is the potential for disease outbreaks and transmission, and because such events could be harmful to Nevada's bighorn and domestic sheep populations, BLM should have consulted with and included the Nevada Department of Agriculture in developing the Program. Nevada law requires that the Director of the State Department of Agriculture be informed "as soon as possible" of any reasonable suspicion that a communicable disease may be present in state wildlife and any sample collected by the Department of Wildlife in evaluating such a suspicion must be forwarded to the Department of Agriculture "as soon as practicable." Nev. Rev. Stat. § 501.352. Additionally, the Department of Agriculture has the authority to proclaim and enforce a quarantine with respect to "the importation into or transportation through the State of Nevada of animals which may be infected with, or which may have been exposed to infection with any infectious, contagious or parasitic disease." Nev. Rev. Stat. § 571.045(1).

Monitoring and sampling by biologists and veterinarians is not sufficient. Samples collected and results of these samples must be analyzed by the Department of Agriculture. Further, the sheep slated for translocation must be demonstrated to be free of pathogens known

to cause morbidity and mortality in bighorn sheep. Failure to do so would be a violation of Nevada law, or at the very least the spirit of the law. Because the 2004 EA does not provide any of this discussion, BLM should have consulted with and included the Department of Agriculture in its preparation of the Program.

**B. The 2004 EA is not valid in light of new information or circumstances.**

1. *The Program includes locations not analyzed in the 2004 EA.*

The Program contemplates capturing and removing bighorn sheep from the Pine Forest Range Wilderness, an area not included or analyzed in the 2004 EA. The BLM Handbook asks specifically if the proposed action is “within the same analysis area, or if the project location is different?” BLM Handbook § 5.1.2. The 2004 EA did not consider potential impacts to the Pine Forest Range Wilderness in any way. As a result, BLM’s reliance on 2004 EA to justify the Program is in error. A new NEPA analysis must consider impacts to all affected areas. Without this consideration, it is impossible to know the nature or extent of the impacts of the Program.

2. *The 2004 EA does not incorporate current law regarding landing aircraft in a wilderness area.*

Since the 2004 EA was issued, there has been significant development in the law relating the use of helicopters in wilderness areas. The 2004 EA considers the use of helicopters in wilderness areas under authority in existence in 2004, but the standards by which BLM may operate within the Wilderness Areas have been specifically addressed and clarified by courts since then.

Between the issuance of the 2004 EA and the BLM’s proposal to implement the Program, the Ninth Circuit Court of Appeals has spoken on the issue of whether and under what circumstances federal agencies may use helicopters in wilderness areas, and numerous federal district courts in the Ninth Circuit have addressed the topic. *See e.g. Wilderness Watch v. U.S. Fish and Wildlife Service*, 629 F.3d 1024 (9th Cir. 2010); *Californians for Alternatives to Toxics*, 814 F. Supp. 2d 992, 1017 (E.D. Cal. 2011); *Wolf Recovery Found. v. U.S. Forest Serv.*, 692 F. Supp. 2d 1264, 1268 (D. Idaho 2010). This precedent, discussed in more detail above, provides meaningful guidance for federal agencies administering wilderness areas.

It is unsurprising that, in the twelve years since BLM issued the 2004 EA, numerous courts have considered and spoken on whether helicopters should be permitted in wilderness areas. Because the 2004 EA does not address this precedent, a new NEPA document that fully considers the law as it stands today should be prepared.

**C. There are effects that will result from the Program’s implementation that were not considered in the 2004 EA.**

BLM must show that the 2004 EA considered effects that will result from the Program. “That the DNA cited prior NEPA documents does not mean there has been NEPA compliance if the cited documents themselves do not address an issue of significance.” *Center for Native Ecosystems*, 170 IBLA 331, 246-47. BLM’s reliance on the 2004 EA is misplaced because it does not address effects that the Program will very likely have.

1. *The 2004 EA fails to address where bighorn sheep will be relocated and the cumulative effects of such relocation.*

BLM is required to consider the cumulative impacts that result from the “incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7.

BLM fails to recognize that the area affected by the Program includes both where the bighorn sheep will be captured and removed, and where they will be taken. Nowhere in the NOPA does BLM identify where the captured bighorn sheep will be relocated, let alone the cumulative effects of such relocation. There are only general statements about where the sheep will go—destinations that “may include” wilderness areas” or lands being managed for wilderness areas, “Nevada or nearby states,” or where sheep populations would “benefit from augmentations.” 2004 EA § IV.B.a.; NOPA. Such vague and general statements simply cannot provide the agency the information needed to conduct a proper NEPA analysis. It is impossible to identify or analyze the impact of an action without knowing where the action will take place.

For example, there is a risk that bighorn sheep will be transferred to areas that are adjacent to or near domestic small ruminants located on public or private lands. If this is the case, BLM must consider the possibility of the transfer of disease between the species including transmission of endemic infections from bighorn sheep to domestic small ruminants. The NOPA does not explain whether bighorn sheep slated for relocation have been tested for *Mycoplasma ovipneumoniae* or members of the Pasteurellaceae family. The NOPA should explain whether all considered bighorn herds have previously (within the last 5 years) been tested for presence of *Mycoplasma ovipneumoniae* and members of the Pasteurellaceae family within the herd. If so, what are the results of any testing done to this point in time? What is the current ewe/lamb ratio of each herd, if known, or what was it at the last monitoring and when was that last monitoring? What gender and age of animals will be transplanted: rams, ewes, and/or lambs (near yearlings)? Consideration of disease is especially important considering the outbreak of polymicrobial pneumonia that caused, according to NDOW, an “all age die-off in a once healthy heard.” NDOW, *Bighorn Sheep “Disease Event” in Montana Mountains* (Feb. 16, 2016), available at <http://www.ndow.org/Bighorn-Sheep-Disease-Event-Montana-Mountains/>. Answers to these questions should be included in the NOPA or, if unavailable, answering these questions should be part of the proposed action.

2. *The 2004 EA fails to substantiate statements critical to the Program.*

As noted above, a DNA is not itself a NEPA document. A federal agency is not excused from NEPA’s mandate that it take a “hard look” at impacts of a proposed action, and if relying on an existing NEPA document, the agency must verify that that document took a “hard look.” *Wildlands Defense*, 188 IBLA 68 (June 30, 2016) (“BLM must determine whether the existing analysis took the appropriate hard look at the proposed action”). The 2004 EA provides a superficial consideration of impacts, providing unsubstantiated claims. This amounts to a failure to take a “hard look” and so, BLM’s reliance on the 2004 EA is misplaced.



The 2004 EA makes numerous claims without providing any evidence of their veracity, including the following:

- BLM states that NDOW is “extremely proficient” at safely trapping and releasing bighorn sheep, but provides nothing to substantiate that claim. 2004 EA § IV.B.a. BLM could have, for example provided success rates of past translocations or certificates of training or expertise in this area, but did not.
- BLM claims that blind-folding sheep reduces stress but provides no authority for this statement. *Id.*
- The NOPA states that the bighorn sheep populations in the Wilderness Areas are “very high” but does not explain how sheep densities (i.e., how many animals per some unit of measurement) are determined.
- The agency does not provide the current ewe-to lamb-ratio of any bighorn sheep herd, or the gender and age of animals that will be transported, and how this will affect population size.
- There is no explanation of what criteria BLM considers in determining when a herd would “benefit from augmentation.”
- The NOPA should states which bighorn herds will be affected by the proposed action, meaning which herds will be augmented and which herds are being considered for supplying the augmentation (as it is noted aerial surveys will be required to determine which locations the bighorn sheep would be removed from, but which herds are currently being considered).
- The NOPA should include a current map indicating location and name/designation of each of the herds. Also, it should include the locations (either on the map or indicate the distance in miles) of the closest public lands grazing of domestic small ruminants or private property that maintains domestic small ruminants and the distance to each of the bighorn herds that are being considered for this action plan.
- BLM does not provide analysis of whether the locations where bighorn sheep will be transported can sustain additional bighorn sheep. There are studies that suggest transplantation and augmentation may not, and often do not, work. A publication from 1988 entitled “Assessing the Rocky Mountain Bighorn Sheep Management Problem” by Risenhoover, Bailey, and Wakelyn, published in the *Wildlife Society Bulletin*, Vol. 16, No. 3 provides good insight into this issue.
- The NOPA does not explain why only “most” bighorn sheep will sampled and tested, not *all* bighorn sheep.
- BLM does not describe what the agency will do in the event bighorn sheep test positive for disease. Will the test results, should they be positive, lead to

ethanasia of infected animals or will the now stressed animals be allowed to shed the pathogens in their new environments, potentially leading to disease in other herds and also potentially leading to conflicts in areas with domestic sheep?

- The NOPA should explain the pharmacological agents (anti-inflammatory agents (steroidal or non-steroidal), antibiotics, anti-parasitics), vitamins, vaccines, and other agents that will be administered to the captured bighorn sheep.
- There is no explanation as to why there is no comma between the words “nasal” and “pharyngeal,” as both nasal and pharyngeal samples should be collected for identifying bacterial agents of interest (*Mycoplasma ovipneumoniae*, members of the Pasteurellaceae family, others).
- The NOPA provides: “Once the release complement has been obtained and loaded into the trailers the sheep are transported to the release site, located outside of wilderness, and discharged into their new habitat.” What is “the release complement”?
- BLM does not explain why the Program is set to take place during bighorn rut and early to mid-gestation, when stressful and strenuous events may have detrimental impacts, such as resorption or abortion. Stress upon a pregnant ewe can cause a decrease in quality of colostrum produced, so it is worth considering the prolonged effects that the ewe may experience upon being placed in an unknown environment. Recent studies provide strong evidence that physiological stressors during pregnancy (events that happen to a pregnant animal/human) can impact the offspring for the rest of its life (epigenetic impacts of in utero stressors).

These and other unsupported claims and issues show that BLM failed to take a hard look at the impacts of the Program, and whether the 2004 EA provided adequate analysis.

**D. The DNA is flawed if it relies on NEPA documents not listed in the NOPA.**

In “preparing the DNA,” BLM must “identify the environmental documents relied on to determine NEPA adequacy[.]” *Center for Native Ecosystems*, 171 EBLA 361, 367 (2008). In making a decision about whether to act on a DNA, the agency is “free to consider additional NEPA documents beyond those identified in a DNA, but its consideration of those documents *must be reflected and explained in the record.*” *Id.* at 368 (emphasis added). Any documents relied on by BLM in making its decision not to prepare a full NEPA analysis of the Program must be provided in the NOPA, DNA and Decision Record.

It was brought to our attention two days before the end of the NOPA comment period that BLM intends to list NV-020-03-04—an environmental assessment prepared by BLM in 2002 for a program involving translocation of bighorn sheep into wilderness areas (the “2002 EA”)—in its DNA. Nowhere in the NOPA does BLM suggest that it will rely on the 2002 EA in making its DNA. The NOPA does not mention it at all.

If BLM did not identify the documents it relied on to determine NEPA adequacy, the agency denied the public a meaningful opportunity to comment on such reliance in a violation of NEPA. Where a DNA is issued, “agency compliance with NEPA must necessarily be determined by reference to that DNA and its identified documents.” *Id.* We ask that, in the event BLM does rely on the 2002 EA, the agency reissue the NOPA, provide a complete list of documents on which the agency is relying, and reopen the comment period to give the public the opportunity to provide thorough and meaningful comments.

#### **IV. Conclusion**

BLM’s plan to translocate bighorn sheep from the Wilderness Areas to other unknown locations violates the Wilderness Act. The agency fails to establish that removal of bighorn sheep from the Wilderness Areas serves a wilderness purpose and that, even if there is a valid wilderness purpose, that the use of helicopters—a prohibited activity under the Wilderness Act—is necessary to further this purpose. BLM has also violated NEPA in that it has declined to conduct a new NEPA analysis, relying instead on a 2004 EA that fails to adequately consider the impacts that will result from the Program. For these reasons, BLM should abandon the Program, or at the very least, should postpone its implementation until the agency has fully addressed these flaws.

Thank you for the opportunity to comment on the Program. Please do not hesitate to contact me with question.

Sincerely

THE AMERICAN SHEEP INDUSTRY  
ASSOCIATION



Peter Orwick, Executive Director