

	<p align="center"> <b>United States Department of the Interior</b>  <b>National Park Service</b>  Valles Caldera National Preserve  PO Box 359  Jemez Springs, NM 87025  Phone: (575) 829-4100 </p>	
	<p align="center"> <b>United States Department of the Agriculture</b>  <b>Forest Service</b>  Santa Fe National Forest Supervisor's Office  11 Forest Lane  Santa Fe, NM 87508  Phone: (505) 438-5300 </p>	

December 19, 2022

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Madeleine Carey  
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WildEarth Guardians  
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Re: The October 19, 2022 Notice of Intent to Sue for Violations of the Endangered Species Act related to Valles Caldera National Preserve from WildEarth Guardians, Caldera Action, and Western Watersheds Project

Dear Ms. Tuell, Ms. Carey, and Ms. Ruscavage-Barz:

The National Park Service (NPS) and the U.S. Forest Service (USFS) share your concern regarding the impacts caused by trespass cattle within Valles Caldera National Preserve. The NPS has taken multiple steps to seek to reduce the incursion of trespass cattle as well as improve habitat for threatened and endangered species and other plants and wildlife within the park. The NPS and USFS are committed to working together to find long-term solutions to help prevent cattle incursion from nearby grazing allotments on the Santa Fe National Forest (SFNF), including discussing ways to improve fencing along the border between the SFNF and the Valles Caldera National Preserve.

## **National Park Service**

Since 2019, the NPS has allocated approximately \$350,000 to replace sections of the boundary fence between the Santa Fe National Forest and Valles Caldera National Preserve. This funding has been obligated to partners including the Pueblo of Santa Clara, Rocky Mountain Youth Corps, and Rio Grande Return. The funding that has been expended to date has contributed to the replacement of approximately six miles of fence with wildlife-friendly fencing (i.e., smooth wire on the top and bottom strand) along the eastern half of the boundary fence on the north side of the park. The park has approximately 51 miles of boundary and it costs approximately \$30,000 - \$50,000 per mile (depending on terrain) to construct a fence, and no fence is impregnable without year-round fence maintenance and repairs.

Elsewhere in the park, the NPS has expended upwards of \$10,000 for labor and materials to repair small breaks in the fence, such as near the East Fork Jemez River where trespass cattle were entering into the Valle Grande portion of the park. Based on these repair and maintenance efforts, the park has no documented reports of cattle trespassing into Valle Grande in 2022. After the 2022 Cerro Pelado Fire, the NPS Agency Administrator worked with the USFS to coordinate the replacement of approximately four miles of fence damaged by fire suppression efforts along the southern boundary with Valles Caldera National Preserve and western boundary with Bandelier National Monument. The NPS appreciates the USFS's contributions to shared maintenance of the fences that delineate the respective public lands that the two federal agencies manage on behalf of the American people.

With regard to past ecological restoration efforts, the NPS has worked with multiple partners, including Los Amigos de Valles Caldera, Keystone Restoration Ecology, Rio Grande Return, WildEarth Guardians, Rio Puerco Alliance, and the New Mexico Environment Department to restore riparian and wetland habitat throughout the park for the purpose of improving water quality and habitat for threatened and endangered species, like the New Mexico meadow jumping mouse, and other plant and wildlife species. This includes streambank stabilization and wetland creation, for a total of over 2,000 acres of wetlands restored. Since 2011, restoration efforts have improved wetland quality and extent throughout the park. Restoration has occurred along La Jara Creek, at several areas in the San Antonio Creek drainage, Jaramillo Creek, Redondo Creek, East Fork Jemez River, and Valle Seco, which drains into Sulphur Creek. Restoration techniques have included the creation of plug and pond features, repair of headcuts and localized planting efforts of woody vegetation with ungulate exclosures built for vegetation protection.

Wetland restoration projects completed over the last five years include the Valle Grande Sloped Wetlands project (162 water-control structures across 1,200 acres), the La Jara Creek project (4.25 miles of stream, with 65 acres of wetland restoration), the Redondo Meadow restoration project (30 acres of wetland, planted with 20,600 willows and cottonwood samplings), the East Fork Jemez River Headwaters project (170 water-control structures across 430 acres), and the Lower Jaramillo Creek project (7 miles of stream with 290 acres of wetland).

As a result of these efforts, a 2022 NPS condition assessment identified an improving trend in wetland conditions across the park with wetland plants increasing in all restoration sites post-treatment. This improving trend should provide a long-term benefit to the New Mexico meadow jumping mouse, and other important plant and wildlife species, and increase both habitat quality and quantity throughout the park. Moreover, the New Mexico Environment Department recently de-listed the upper reaches of Jaramillo Creek as being impaired for temperature, due to the restoration of willow stands along the banks of the creek to provide shading.

The NPS continues to coordinate with the USFS and its grazing permittees to ensure livestock do not leave permitted grazing allotments on National Forest System lands, and when such trespass does occur, that livestock are quickly removed. The NPS had prioritized fence replacement and sought to work collaboratively with the USFS on fence construction and maintenance. While fence replacement activities are on-going, the NPS has sought to identify owners of trespass cattle within the park and notify the livestock owner with instructions that the livestock must be removed as expeditiously as possible. NPS will work with the USFS as needed where USFS grazing permittees are involved.

Most USFS grazing permittees have been responsive when they received a notification from the NPS, and many were proactive in contacting the NPS when they believed their livestock may be located within the park. The NPS wishes to maintain the positive relationships that have been developed with these grazing permittees and neighbors through this proactive communication and response to decrease cattle trespass in the park.

In anticipation of the next phase of enforcement after sections of boundary fence had been replaced, the NPS sought to identify wrangler services to round up trespass livestock found within the park. Currently, Valles Caldera National Preserve does not have a horse program and therefore is not able to round up trespass cattle utilizing internal staff resources. Instead, the NPS contacted the USFS, Bureau of Land Management, Los Alamos County, and the Pueblo of Santa Clara for wrangler assistance, but without success. In 2018, the NPS conducted a round-up of trespass cattle utilizing local contractors from the surrounding community. However, after receiving threats and harassment for assisting the NPS with the round-up, those contractors no longer offered their services to the NPS. The NPS has not found any available wrangler services.

The NPS intends to pursue the following actions to continue its efforts to minimize the impacts of trespass cattle within the park:

- Fencing
  - The NPS will continue to seek funding to replace sections of the wire boundary fence with wildlife-friendly fencing. Where appropriate, the NPS will establish additional pedestrian pass-throughs along fence lines that provide for public access while keeping livestock out.
  - The NPS will continue to coordinate with the USFS regarding the maintenance of

- o allotment boundary fences adjacent to Valles Caldera National Preserve.
  - o The NPS will continue to coordinate with the USFS on a viable route for an appropriate style of fence near the north boundary of the park.
  - o The NPS will seek funding to establish a virtual fence system to supplement or replace physical fencing.
- Enforcement
  - o The NPS will begin investigating and issuing citations to owners of livestock trespassing within the park that are found to be in violation of 36 C.F.R. 2.60 and the System Unit Resource Protection Act, 54 U.S.C. §§ 100721-722, regardless of the status of boundary fence replacement projects.–Under these authorities, the NPS may impound trespass cattle – subject to available wrangler services – and hold parties responsible for damages attributable to trespass cattle
  - o The NPS will continue to notify the USFS when trespass cattle are identified and when citations are issued and seek its assistance in reducing impacts of trespass cattle.
  - o The NPS will continue to explore contracting options for wrangler support to round up trespass cattle from within the park.
- Monitoring
  - o An NPS plant ecology crew will conduct annual reviews of randomly dispersed plots throughout Valle San Antonio to inform vegetation utilization and ensure <40% forage utilization from combined wildlife and trespass livestock, consistent with the Valles Caldera Trust’s 2009 Multiple Use and Sustained Yield – Forage Environmental Assessment that the NPS is continuing to use pursuant to the authority found in the park’s enabling legislation regarding existing management plans (16 USC 698v-11(c)(3)(B)).
  - o The NPS, in collaboration with partner organizations, will continue water quality monitoring in streams throughout the park to ensure continued riparian improvements.
  - o The NPS will continue fisheries monitoring at three sites in San Antonio Creek to inform the status of native and non-native fish population trajectories.
  - o Starting in 2023, the NPS will fund a crew to expand New Mexico meadow jumping mouse surveys in both Valles Caldera National Preserve and Bandelier National Monument. These surveys will help identify existing populations and inform additional conservation and management efforts.
  - o Starting in 2023, the NPS will fund a crew to expand Mexican spotted owl surveys in the park. These surveys will help identify existing individuals and inform additional conservation and management efforts.
- Ecological Restoration
  - o The NPS will continue to pursue wetlands restoration projects throughout the park, including a large wetland restoration project in progress in Valle San Antonio and Valle Toledo (165 acres with 15 stream miles) and another stream restoration project in the proposal review stage for the western San Antonio Creek (50 acres over 3.5 stream miles).

- o The NPS will continue efforts to control and eradicate non-native noxious weeds throughout the park.
- Threatened and Endangered Species
  - o The NPS will prepare a new biological assessment that analyzes the potential effects of trespass livestock, removal and exclusion (including fence construction and maintenance) on federally listed threatened, endangered, proposed animal (wildlife, invertebrates, and fish) species, and critical habitats, pursuant to section 7(a)(2) of the Endangered Species Act. The commitments listed above may be incorporated into the biological assessment as mitigation measures to any impacts caused by the presence of trespass livestock within the park, along with additional measures developed through consultation with the U.S. Fish & Wildlife Service.
- Communication
  - o The NPS will issue an annual state of the park report that includes information on trespass cattle activity, progress of boundary fence replacement, and habitat and wildlife conditions within the park.
  - o The NPS will seek to develop improved methods for reporting trespass cattle by staff and the public to lead to the enforcement mechanisms under 36 C.F.R. 2.60 and potential legal action under the System Unit Resource Protection Act, 54 U.S.C. §§ 100721-722.

## **U.S. Forest Service**

The USFS and the NPS have been in discussion on a collaborative approach to address fence construction and long-term fence maintenance along the park boundary. Our experience is that no fence is perfect, and cattle often drift past damaged fences. A long-term plan on managing drift is also needed in order to deal with cattle that drift on to the Valles Caldera National Preserve when the boundary fence is not functional. Specifically, the USFS is working on the following actions:


- The USFS is seeking to develop a formal interagency agreement with NPS that identifies a clear path forward in improving the condition of the boundary fence as well as establishes agency procedures related to any current and future drift of cattle between the SFNF and Valles Caldera National Preserve.
- The USFS is willing to provide substantial funding towards the cost of construction (subject to available funding at the time) of the boundary fencing. The intent is to bring the fence to standard, and continue the wildlife friendly design, as soon as possible to minimize drift of livestock across boundaries. This would also secure the northern boundary and ensure that the current New Mexico Department of Game and Fish's Game Management Unit is clearly defined into the future for recreational visitors.
- The USFS is committed to working collaboratively with the NPS on identifying methods and mechanisms for the long-term maintenance of the boundary fence.
- The USFS will work with NPS to identify and notify grazing permittees, and where possible, assist with communicating responsibilities about controlling livestock and

preventing cattle drift to areas outside of those authorized under a USFS grazing permit. The USFS will pursue administrative grazing permit actions where warranted pursuant to applicable laws, including the USFS range regulations at 36 C.F.R. Part 222.

Please let us know if you have any questions. NPS and USFS propose to meet with you to further discuss your concerns and explore solutions to ensure the protection of important wildlife habitat on public lands.

Sincerely,

Acting Deputy Regional Director  
for the Superintendent  
of Valles Caldera National Preserve

  
(60) James Duran  
Acting Forest Supervisor  
Santa Fe Nat'l Forest