



August 16, 2024

Mike Oldham, Refuge Manager
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RE: U.S. Fish & Wildlife Service's Draft Compatibility Determination for Grazing,
Haying, and Seed Collection, Quivira National Wildlife Refuge

Dear Mr. Oldham:

The Environmental Law & Policy Center (“ELPC”) appreciates the opportunity to comment on the proposed Compatibility Determination for Cooperative Grazing, Haying and Seed Collection on Quivira National Wildlife Refuge (“Draft CD”) that was re-posted on the United States Fish and Wildlife Service’s website on July 17, 2024.¹ ELPC is a public interest legal and policy advocacy organization focused on environmental and conservation issues in the Midwest and Great Plains, including work to protect our National Wildlife Refuges.

I. INTRODUCTION

Quivira National Wildlife Refuge (the “Refuge”) is a place of local, regional, and international ecological significance. It protects two at-risk ecological communities: saltmarsh, which ranks as an imperiled community globally, and sand prairie, which ranks as imperiled at the state level. *See* Quivira National Wildlife Refuge Comprehensive Conservation Plan (“CCP”) at 31. The Refuge provides an essential conservation function for an area in which “[a]griculture dominates . . . oil production is common, and water rights have been overappropriated[.]” CCP at 18.

The Refuge serves as indispensable wildlife habitat for more than 300 species of birds. CCP at 41. These may include an annual average of more than 30,000 shorebirds, as well as grassland obligate species such as the grasshopper sparrow and dickcissel. *See* CCP at 41, 91. The Refuge provides an important stopover for migratory birds, and the United States Fish and Wildlife Service (the “Service”) has remarked on the Refuge’s potential to contribute to bird conservation, “especially when considering that public lands compose less than 3 percent of Kansas,” and an even smaller percentage are “specifically managed for natural resource conservation.” CCP at 92.

ELPC submits these comments to express our concerns that the Draft CD does not establish sufficient protections for habitat and wildlife and that it does not comply with the Service’s proposed Biological Integrity, Diversity, and Ecological Health rule, published earlier this year. *See* National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health, 89 Fed. Reg. 7345 (proposed Feb. 4, 2024) (to be codified at 50 C.F.R. pt. 29) (BIDEH Rule). The 1997 National Wildlife Refuge System Improvement Act (the “1997

¹ The Service published an earlier version of the Draft CD on July 10, 2024, but the document became inaccessible shortly after. The Service re-posted a substantively similar document on July 17, 2024 with an updated public comment deadline of August 18, 2024.



Refuge Act”) confirmed that the mission of the National Wildlife Refuge System is the “conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States.” 16 U.S.C. § 668dd(a)(2). To that end, the Refuge Act prohibits the Service from “expand[ing], renew[ing], or extend[ing] an existing use of a refuge, unless [the Service] has determined that the use is a compatible use and that the use is not inconsistent with public safety.” 16 U.S.C. § 668dd(d)(3)(A)(i). In order to determine that a particular use is compatible, the Service must find that it “will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.” 16 U.S.C. § 668ee(1).

Three different statutory provisions establish the Quivira National Wildlife Refuge’s purposes. Among other things, these provisions identify “conservation[] and protection of fish and wildlife resources” and “use as an inviolate sanctuary, or for any other management purpose, for migratory birds” as refuge purposes. 16 U.S.C. § 742(f)(a)(4); 16 U.S.C. § 715d. Agriculture is not one of the Refuge’s statutory purposes.

In fact, both grazing and haying are among the uses identified by refuge managers as “harmful” uses occurring in our nation’s refuges as part of the survey of refuge managers conducted by the General Accounting Office (“GAO”) at the request of Congress. Of the refuge managers who regarded grazing and haying as harmful to their refuge, 55% believed that haying should be discontinued entirely and 60% supported altogether discontinuing grazing as a use. *See* U.S. Gov’t Accountability Off., GAO/RCED-89-196, National Wildlife Refuges: Continuing Problems with Incompatible Uses Call for Bold Action 3, 20, 21 (1989). In light of this acknowledgment by refuge managers that both practices are “harmful” uses, we urge the Service to give strong consideration to ELPC’s recommendations below.

The documentation of these “harmful” uses in the 1989 GAO Report “ignited a new wave of reform efforts to conserve refuge resources,” ultimately leading to the 1997 Refuge Act. The compatibility determination process is the “touchstone for determining what uses may be allowed in refuges,” and was intended by Congress to be “the key mechanism to ensure that the conservation mission of the System” effects real change to protect against incompatible uses within the System. Robert L. Fischman, *The National Wildlife Refuge System and the Hallmarks of Modern Organic Legislation*, 29 Ecology L.Q. 457, 496, 498–99, 547 (2002).

ELPC recognizes that some agricultural activities like grazing, haying, and seed collection can have ecological benefits as management tools in specific situations and circumstances. The Draft CD, however, lacks specific provisions to ensure that the benefits of grazing, haying, and seed collection outweigh the ecological costs. Although the Refuge’s current management may intend to follow best practices that do not appear in the Draft CD, ELPC is concerned that the Refuge might depart from those practices now or in the future if they are not set forth in writing in the final Compatibility Determination. ELPC recommends that the Refuge take the following actions in a revised draft CD for the reasons explained in more detail below:

1. Add specific limitations and mitigation measures to ensure that grazing, haying, and seed collection do not damage habitat and wildlife.
2. Evaluate the potential hydrological impact of grazing.

3. Add specific limitations to protect nesting birds.
4. Conduct a more thorough analysis of pollinators on the Refuge and provide greater protection for those species.
5. Provide for more extensive oversight and monitoring of grazing, haying, and seed collection on the Refuge.
6. Impose parameters for the use of equipment associated with grazing, haying, and seed collection.
7. Evaluate less disruptive alternatives such as prescribed burning and native grazers.
8. Provide greater public notice by publishing in a regional newspaper and on the federal register.

ELPC urges the Service to revise and reissue the Draft CD in accordance with these recommendations. ELPC also requests that the Service re-assess its Draft CD in light of the Service's proposed BIDEH Rule. Among other things, the BIDEH Rule "prohibit[s] the use of agricultural practices unless they are determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we cannot achieve refuge management objectives through natural processes." 89 Fed. Reg. 7345, 7352. The Draft CD does not make such a determination.

II. DISCUSSION

A. The Draft CD does not contain sufficient limits or mitigation measures, and improperly relies on special use permits to fill in key details.

Grazing, haying, and seed collection on the Refuge are not compatible uses absent clear limitations and conditions. The Service's regulations require that all compatibility determinations must detail "the nature and extent of the use," and the "stipulations necessary to ensure compatibility[.]" 50 C.F.R. § 26.41(a). Under the Service's "policy for determining compatibility," these stipulations "must be detailed and specific." 603 FW 2.12(A)(11). Moreover, "[i]f the use cannot be modified with stipulations sufficient to ensure compatibility, the use cannot be allowed." *Id.*

Stipulations are particularly important in the context of the Draft CD because, as the Draft CD recognizes, the potential effects of grazing, haying, and seed collection "are positive and negative, and largely dependent on local environmental factors and use." Draft CD at 5. Despite this potential for harm, the Draft CD contains very few express conditions on the proposed uses. Pages 7 and 8 set forth "Stipulations Necessary to Ensure Compatibility." Draft CD at 7. But these stipulations lack the necessary specificity and instead rely on special use permits and cooperative farming agreements not yet in existence and that would post-date the final Compatibility Determination to fill in key details. *See id.* at 8. For example, the draft CD states that "[f]or consistency with management objectives, we will require general and specific conditions for a haying or grazing permit." *Id.* at 7. And the stipulations provide that the refuge manager will "consider constraints" to "avoid or limit adverse effects," but does not provide clear and obligatory requirements, practices and policies. *Id.* at 7–8. While ELPC appreciates the need for adaptability under "changing environmental conditions and operational constraints," Draft CD at 7, the proposed stipulations fail to set forth meaningful parameters and constraints

for future decision-making and to ensure special use permits and cooperative farming agreements will comply with best practices. The Draft CD should do so.

In the case of grazing, “stocking rate/intensity” and “duration of grazing” both shape the cumulative impact of livestock grazing. Draft CD at 5. Although the Draft CD discusses this topic, the Service does not propose any stipulations that would expressly limit grazing intensity or duration. The Service notes that “[l]ong-term continuous heavy grazing (many successive years with vegetation use >60%) will not be used,” but fails to define “many successive years” or incorporate this limitation into the proposed stipulations. *Id.* at 3. The Draft CD notes that “primary use of light to moderate stocking rates will avoid or minimize many potentially adverse short-term impacts[,]” but fails to define “light to moderate” or include stocking rates part of the proposed stipulations. *Id.* at 6, 7.

Likewise, the Draft CD fails to commit to any spatial limits on grazing or haying, leaving open the possibility that these practices will not provide sufficient refugia for disturbed organisms. With respect to total acreage, the Service “estimate[s] that less than 10,000 acres will remain eligible for grazing,” and that “[h]aying typically occurs on <1,000 acres/year.” Draft CD at 2, 3. The stipulations themselves contain no numerical limits on any of the proposed uses. Perhaps more worrisome, 10,000 acres would amount to over half of refuge land other than open water, and 1,000 acres would amount to about 20% of total grassland. *See* CCP at 39 (3,005 acres of open water; 4,898 acres of grassland). The Draft CD should provide limits on the total proportion of these acres that could be grazed or hayed at one time.

The Draft CD also fails to identify the sites eligible for grazing, hazing, or seed collection, which may lead to the disruption of sensitive areas. The Draft CD states only that “[g]razing and haying are utilized in uplands and wetlands[,]” Draft CD at 2, which might encompass any part of the refuge other than open water. The Draft CD should provide special protections for wetlands or riparian zones, locations in which grazing has the potential to cause numerous harms, including soil compaction, excessive streambank erosion, elevated soil and water temperatures, increased runoff, sedimentation, and elevated concentrations of dissolved solids and fecal bacteria. *See* J. Boone Kauffman and W.C. Krueger, *Livestock Impacts on Riparian Ecosystems and Streamside Management Implications: A Review*, 37 *J. of Range Management* 430, 432–34 (1984). The Draft CD likewise lacks specific mitigation measures or restrictions on grazing in areas in which protected, endangered, or priority species may nest or dwell.

The absence of specific restrictions or mitigation measures in the Draft CD, and the Draft CD’s reliance on future special use permits and cooperative farming agreements to fill in those key details, is improper and contrary to law. While ELPC understands that permits may provide some details regarding a particular instance of grazing, haying or seed collection, permit conditions should not do the heavy lifting. A particular permit’s or cooperative farming agreement’s mitigation measures could make the difference between any such use serving as a compatible management tool versus grazing, haying or seed collection uses that harm wildlife and habitat. Hence, absent inclusion of more express requirements and limitations in the final CD, it is entirely possible that future permits will allow for an approach to grazing, haying and/or seed collection that is not compatible with the Refuge’s purpose, in conflict with the Refuge Act.

The Service should accordingly revise the Draft CD to describe the specific limitations and mitigation measures that every special use permit and cooperative farming agreement must

include. At minimum, the Service should adopt detailed restrictions on grazing intensity, frequency, and duration. The Service should also limit livestock access to wetland and riparian areas. Moreover, the Service should also adopt hard caps on the total allowable acreage of grazing and haying on the Refuge.

B. The Draft CD should evaluate the potential hydrological impacts of grazing activities.

Water resources are crucial to the Refuge's unique salt marsh and wetland ecosystems, but the Refuge has faced perennial challenges with water availability. The CCP listed "Water Quantity and Quality" as the Refuge's first planning issue, explaining that, given the over-appropriation within the water management district, "[f]uture water availability may not be assured." CCP at 18.

As a result, the Service promised that hydrology would be "of primary importance in planning our refuge management activities." CCP at 26. Yet, the Draft CD does not evaluate how a grazing program could impact Quivira's hydrological outlook. This undermines the Service's assertion that agriculture would support the "refuge landscape and native community goals and objectives" contained in Quivira's CCP.

The grazing plan does not provide adequate protections to the Refuge's hydrological resources. The Draft CD provides that water availability will factor into stocking rates, but it provides no insight into how the Service will determine the appropriate number of livestock given available water resources, or how the Service will respond to seasonal variation in water availability. Additionally, the Draft CD indicates "cooperators will enter into a CAA ranging from 1–4 years[.]" Draft CD at 3. A permit with a duration as long as four years may make it difficult for the Service to respond and adjust to changes in water availability.

Given the primary importance of water availability to Quivira, the Service should revise the Draft CD to include a thorough analysis of the hydrological demands and impacts of grazing. This analysis should address how the Service will determine the appropriate scope of grazing, given limited water resources. We also recommend that the Service add stipulations to the Draft CD that would limit permit length or incorporate the flexibility needed to respond to changing conditions.

C. The Draft CD fails to address potential harm to threatened and endangered bird species and bird species of concern.

The Draft CD lacks both seasonal and spatial stipulations, heightening the risk that the proposed uses would jeopardize migratory and listed bird species in the Refuge. A compatible use must "not materially interfere with or detract from fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge." 50 C.F.R. § 25.12. The Service has failed to show that this use would not detract from Quivira's purposes to operate "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds" and "for the development, advancement, management, conservation, and protection of . . . wildlife resources." 16 U.S.C. § 715d; 16 U.S.C. § 742(f)(a)(4)).

The proposed plan would allow both haying and grazing to coincide with nesting season. The Service has previously reported that, at the Refuge, "most nesting activities begin in April and extend to August." CCP at 42. The Draft CD states that Quivira has "[t]raditionally . . . used

seasonal grazing, mostly May through August,” and grazing “may occur throughout the year[.]” Draft CD at 3. In addition, the Service has not imposed a stipulation on the timing of haying, except to say that “haying will likely occur after July 15th[.]” Draft CD at 8. Even if the Service chooses to adhere to the July 15 start date, based on the Service’s own assessment of nesting behavior at the Refuge, that may not suffice to protect nests from destruction.

The problem of the temporal overlap with nesting season is compounded by an absence of concrete stipulations to protect the nesting locations for wetland and grassland birds. Even though grazing will likely coincide with peak nesting season and haying may begin before the season ends, the Draft CD proposes no concrete stipulations tailored to identifying and protecting nesting sites.

The Draft CD’s lack of protections for birds is particularly concerning in light of the endangered and threatened bird species that rely on the Refuge. The refuge supports three endangered bird species (the whooping crane, interior least tern, and Eskimo curlew) and two threatened bird species (the piping plover and western snowy plover). CCP at 45–56. Protecting the habitat of these species must be a top concern for the Service.

ELPC recommends that the Service evaluate the impact of grazing, haying, and seed collection on grassland and wetland birds during nesting season. Where seasonal limitations cannot suffice to protect bird habitat, ELPC recommends that the Service incorporate stipulations to identify and protect nesting sites.

D. The Draft CD understates the potential harm of grazing, haying, and seed collection to pollinators.

The Draft CD does not evaluate the potential impacts of grazing, haying, and seed collection on pollinators. The National Wildlife Refuge System mission includes the “conservation, management, and where appropriate, restoration of . . . wildlife . . . and their habitats[.]” 16 U.S.C. § 668dd. The Quivira National Wildlife Refuge goals include similar directives. *See* 16 U.S.C. § 742(f)(a)(4).

According to the Refuge’s Comprehensive Conservation Plan, fifty-nine species of butterfly occur on the Refuge. *See* CCP at 193–94. The Service has proposed to list one of these species—the eastern regal fritillary—as endangered. *Endangered and Threatened Wildlife and Plants; Endangered Status for the Eastern Regal Fritillary, and Threatened Status With Section 4(d) Rule for the Western Regal Fritillary*, 89 Fed. Reg. 63,888 (Aug. 6, 2024). In addition to meriting attention in their own right, pollinators like the eastern regal fritillary deserve a close look because of the essential ecosystem services they perform and because, in the past decades, up to 40% of pollinator species have declined, including many species in the Great Plains. *See* Brice B. Hanberry et al., *Pollinators of the Great Plains: Disturbances, Stressors, Management and Research Needs*, 78 *Rangeland Ecology and Mgmt.* 220, 220–21 (2021). Grazing, haying, and seed collection can negatively impact pollinators by removing floral resources, trampling, and consuming eggs that had been deposited in plants. *See id.* at 224. The Draft CD does not assess the potential impacts on pollinators, but, instead, simply concludes, “[m]anagement will also support pollinator conservation through actions that promote seasonal food resources.” Draft CD at 7. The service should identify and require those specific actions.

The Draft CD also does not provide a specific plan for conducting grazing, haying, and seed collection to support pollinators. A particular pollinator population's response to grazing depends on many factors, "including type of grazers, grazing intensity and duration, plant and pollinator community composition, climate, and interactions with other disturbances." Hanberry et al., *supra*, at 222. Even species occupying similar ecological guilds may also respond differently to disturbance regimes. See Jennifer Vogel et al., *Butterfly Responses to Prairie Restoration Through Fire and Grazing*, 140 *Biological Conservation*, 78, 84 (2007). The rangeland management guide cited in the draft CD describes its recommendations for best management practices as deliberately broad, given the "variation in how rangeland management is best implement across the Great Plains[.]" Sarah Hamilton Buxton et al., *Xerces Society for Invertebrate Conservation, Rangeland Management and Pollinators: A Guide for the Great Plains 2* (2020). The Service has not filled in these gaps to explain how it will "support pollinator conservation" at the Refuge. The Service should do so.

ELPC recommends that the Service revise the Draft CD to include a more thorough discussion of pollinators on the Refuge, including a discussion of protections for the regal fritillary. The Service should assess how grazing, haying, and seed collection methods over the past decade may impact pollinator populations. The Service should also adopt measures designed to support and protect the pollinators identified in the CCP and include those measures as stipulations.

E. The Draft CD contains inadequate oversight and monitoring measures.

A compatibility determination must provide for adequate oversight of a proposed use. According to the Service's policy for determining compatibility, "[m]onitoring of the use must be sufficient to evaluate compliance with stated conditions and swift action must be taken to correct or respond to any serious deviations." 603 FW 2.12(A)(11)(b). Absent adequate monitoring, a user (such as a livestock owner) may repeatedly violate conditions on a particular use, which in turn may damage habitat and wildlife.

The Draft CD does not establish adequate oversight mechanisms. It proposes to make "[c]ontrol and confinement of livestock . . . the responsibility of the permittee," but fails to establish a system to ensure cooperators fulfill their responsibility. Draft CD at 8. The Draft CD states that "existing refuge staff will monitor the CAAs to ensure compatibility and compliance," but also that "no additional effort" will be needed. *Id.* at 8. The Draft CD does not suggest that the Service plans to implement any robust compliance checks.

Furthermore, the Draft CD does not provide for technical monitoring. The stipulations in Quivira's previous grazing, haying, and seed collection compatibility determination included a "vegetation monitoring program" comprised of at least one "temporary biological technician . . . to check and document these activities" and "[a] biologist . . . to plan and oversee the monitoring program and to assess the effects of these management programs." CCP at 130. The current Draft CD omits this monitoring program, and instead concludes, "[h]abitat monitoring takes place periodically and no additional effort is proposed in relation to these uses." Draft CD at 4. This omission may deprive the Refuge Manager of information needed for sound permitting decisions, which is particularly concerning given the Service's intention to determine many of the conditions of use at the time of permitting.

ELPC recommends that the Service set forth additional oversight and monitoring mechanisms. Oversight mechanisms should ensure that permittees comply with the terms of their permits. They should include regular surveys of ongoing grazing, haying and seed collection activity and inspections of livestock management infrastructure (e.g., fencing). Monitoring mechanisms should provide refuge managers with up-to-date information about conditions on refuge habitats.

F. The Draft CD lacks controls to minimize harms from grazing, haying and seed collection.

The Draft CD would impose no restrictions on the type of equipment operators may bring onto the refuge. To the contrary, the Draft CD emphasizes that operators may use a wide range of equipment, including “ATVs/UTVs, trucks, horses, trailers, tractors, combines, skid steers, and other mechanical equipment[.]” Draft CD at 1. The Draft CD later specifies that “[c]ooperators are allowed to use multiple types of equipment to gather livestock, repair fence, and perform maintenance[.]” *Id.* at 3. The Draft CD does not evaluate potential harms this equipment may cause, particularly to wetlands, nesting birds, and pollinators in sedentary life stages. ELPC urges the Service to consider restrictions on the type of equipment allowed on the refuge, particularly in sensitive areas.

Moreover, the Draft CD imposes no standards for cleaning equipment prior to use on the refuge. According to the United States Forest Service, the vegetation that clings to the undercarriage or underbody parts of equipment may carry seeds and spores that can spread noxious weeds, invasive species, and disease. Joe Fleming, United States Department of Agriculture Forest Service, Pub. No. 0551 1203-SDTDC, Vehicle Cleaning Technology for Controlling the Spread of Noxious Weeds and Invasive Species (2005). This transmission would undermine the intended effect of the grazing, haying and seed collection programs. We recommend that the Service require operators to clean equipment prior to entry and implement a plan to inspect equipment.

G. The Draft CD disregards alternative management tools.

Under the Service’s regulations, a refuge should resort to Cooperative Agriculture Agreements as a management tool “[o]nly when we cannot meet our resource management objectives through maintenance, management, or mimicking of natural ecosystem processes or functions of the particular NWRS land area[.]” 620 FW 2.8(C). Agriculture on refuge lands should be a last resort, not a primary management tool. The Draft CD nonetheless contains only a limited analysis of the non-agricultural management tools that the Service evaluated before opting for grazing, haying and seed collection.

A variety of disturbance regimes may reduce incursions of introduced species and improve biodiversity. One potential regime would use native grazers such as elk or bison, a non-agricultural method that more closely resembles natural ecosystem processes while offering the additional advantage of enhancing visitor experience. The Draft CD does not mention this option or explain why the Service has selected an agricultural strategy instead.

Prescribed burning has received consistent support from the scientific literature and has in at least some cases proven more effective than grazing. *See* Marissa Ahlering et al., *Cooperatively Improving Tallgrass Prairie with Adaptive Management*, *Ecosphere*, Apr. 2022, at

1, 13 (finding clear improvement in prairie condition with prescribed fire but uncertain outcomes with grazing); Sarah Anderson et al., *Passerine and Secretive Marsh Bird Responses to Cattail Management in Temperate Wetlands*, 27 *Wetlands Ecology Mgmt.* 283, 289 (2019) (finding methods involving prescribed burning more effective at reducing invasive cattail biomass than grazing alone); Julia Leone et al., *Adult Monarch (Danaus plexippus) Abundance is Higher in Burned Sites Than Grazed Sites*, *Frontiers Ecology and Evolution*, Nov. 14, 2019, at 1, 9–10. Quivira’s CCP described prescribed burning as a primary management strategy (at that time the Service conducted prescribed burns on “about a third of the refuge each year.”). CCP at 47. We understand that climate change may shift or restrict burn windows, but the draft CD provides few details about why this method has proven infeasible to address ecosystem needs.

Furthermore, the Draft CD does not explore alternatives among grazing, haying and seed collection methods that may prove more effective and less harmful than conventional methods. For example, in the context of haying, Steve Apfelbaum, senior ecologist and founder of the Applied Ecological Institute, Inc. (whose curriculum vitae is attached to this comment as Exhibit 1), warns that the multiple passes required for conventional haying may disperse the after-ripened seeds of invasive species and leave tracks and ruts in the ground. Conversely, one-pass chopping can reduce both rutting and seed shattering.

For grazing, ELPC recognizes the Service’s observation that “short duration grazing on restored grasslands” and “multiple paddock grazing” have shown promising results, but these management strategies do not appear as proposed requirements that must be included in the cooperative farming agreements and special use permits agreed to by the Refuge. Draft CD at 6, 7. Mr. Apfelbaum has found that Adaptive Multipaddock Pasture Management, which involves intensively grazing small tracts for brief periods followed by a year-long recovery, better emulates the grazing patterns of large native herds than conventional grazing. *See* Steven Apfelbaum et al., *Vegetation, Water Filtration, and Soil Carbon Response to Adaptive Multi-Paddock and Conventional Grazing in Southeastern USA Ranches*, 308 *J. Env’t Mgmt.* 114576, 8 (Apr. 15, 2022). He has observed this method generate greater floral diversity than conventional grazing. Mr. Apfelbaum and other researchers have identified additional improvements to soil carbon, water infiltration, and arthropod diversity. *See id.* at 8, 10 (soil carbon, water infiltration); Ryan Schmid et al., *Adaptive Multipaddock (AMP) Pasture Management Increases Arthropod Community Guild Diversity Without Increasing Pests*, *Rangeland Ecology and Mgmt.* 94 (2024) 141, 146–47 (arthropod diversity). ELPC encourages the Service to more clearly define the appropriate grazing strategies and adopt them as stipulations.

The Draft CD itself acknowledges that conventional grazing and haying may have negative effects. Particularly given these drawbacks, the Service should explain why Quivira National Wildlife Refuge must allow livestock grazing and haying to meet its management objectives. ELPC recommends that the Service give due consideration to alternative management methods and revise the Draft CD to reflect that analysis.

H. The Service should publish the Draft CD and other complex compatibility determinations in the Federal Register and in regional and local newspapers.

The Draft CD is the third draft compatibility determination on which ELPC has commented in the past year. The Service failed to publish any of the three draft compatibility determinations in the federal register, thereby denying the general public sufficient opportunity

to learn of the existence of these important determinations and of a reasonable opportunity to comment. As with the prior two compatibility determinations on which ELPC has submitted a comment, the level of notice that the Service provided for the Quivira Draft CD was not commensurate with the scope and complexity of the proposed uses.

In November 2023, ELPC submitted a comment on the Sand Lake National Wildlife Refuge’s “Compatibility Determination for Public and Private Buried Utility 9 Lines, Road and/or Bridge Improvements, or Temporary Road ROW Expansions Occurring on FWS Easement Properties or Fee-Owned WPAs” (Draft Sand Lake Compatibility Determination). Among other issues, ELPC raised that the notice the Service provided for the Draft Sand Lake Compatibility Determination did not meet the requirements of the Service’s policy manual, 603 FW 2.12.A(9). The Draft Sand Lake Compatibility Determination concerned a complex use, but provided the bare minimum notice allowed under the Service’s manual by publishing the draft on the refuge website and posting a hard copy at refuge headquarters—a level of notice appropriate for an “incidental, on-time use.” The Service responded to ELPC’s comment by withdrawing the Draft Sand Lake Compatibility Determination.

In July 2024, ELPC submitted a comment on the Big Stone National Wildlife Refuge’s “Draft Compatibility Determination for Haying and Grazing,” which also provided inadequate public notice. The Big Stone draft Compatibility Determination stated that “[t]he public will be made aware of this comment opportunity through newspapers, radio, postings at local libraries, letters to potentially interested people such as adjacent landowners, states and tribes, public meetings, Federal Register, or other places and media outlets.” Draft Compatibility Determination for Haying and Grazing, Big Stone National Wildlife Refuge at 27. The Service, however, did not publish the Draft CD in the Federal Register. Nor could commenters find any evidence that the Service published the Draft CD in regional newspapers such as the *Minnesota Star Tribune*. Instead, to our knowledge, the Service published the Draft CD on its website, through one local newspaper (the Grant County Review), and with a physical hard copy at the headquarters.

The Quivira National Wildlife Refuge’s Draft CD did not appear in the Federal Register. Apart from posting the document at Refuge Headquarters and on the Refuge website, we are unaware of the Service taking any steps to publish the Draft CD.

Given the scope and complexity of the Draft CD, this level of notice is inadequate. The Draft CD sets forth a highly impactful policy that will remain in effect for at least the next ten years. In addition to the likely impact of that policy on wildlife and habitat within the Refuge, that policy will have a substantial effect on visitors to the Refuge. For example, visitors will be unable to access parts of the Refuge when grazing, haying and/or seed collection are in effect.

ELPC urges the Service to publish a revised Draft CD in the Federal Register and in regional and local newspapers. Publishing in the Federal Register will ensure the minimum public notice expected for most federal actions subject to notice and comment requirements. And publishing in regional and local newspapers like the *Kansas City Star* or the *Wichita Eagle* will increase the likelihood that interested members of the public receive actual notice of the Draft CD. This level of notification would then comply with the Service’s guidance for complex uses. Providing broader notice will also align with the spirit of the 1997 Refuge Act, which emphasizes the opportunity for “public review and comment” on all compatibility determinations. § 668dd(d)(3)(B).

For those same reasons, ELPC urges the Service to adopt a policy of publishing draft compatibility determinations in the Federal Register as a default. While certain one-off uses may not be appropriate for publication in the Federal Register, the Service should err on the side of too much notice rather than too little.

III. CONCLUSION

The Environmental Law & Policy Center appreciates the opportunity to provide input on the proposed Compatibility Determination for Cooperative Grazing, Haying and Seed Collection on Quivira National Wildlife Refuge. We encourage the Service to revise the Draft CD in accordance with the recommendations above. We would be pleased to discuss these recommendations with the Refuge Manager and the Service.

Respectfully submitted,

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