

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATIONAL WILDLIFE FEDERATION;
INDIANA WILDLIFE FEDERATION; SOUTH
DAKOTA WILDLIFE FEDERATION;
WASHINGTON WILDLIFE FEDERATION;
NEBRASKA WILDLIFE FEDERATION;
LOUISIANA WILDLIFE FEDERATION;
KANSAS WILDLIFE FEDERATION,

Plaintiff,

v.

ED SCHAEFER, Secretary of Agriculture; THE
UNITED STATES DEPARTMENT OF
AGRICULTURE; THERESA LASSETER,
Administrator of the Farm Services Agency; THE
FARM SERVICE AGENCY,

Defendant.

CASE NO. CV08-1004-JCC

ORDER ENTERING PERMANENT
INJUNCTION

This matter comes before the Court on Plaintiffs' Motion for a Preliminary Injunction. (Dkt. No. 2.) With the parties' concurrence, the Court has advanced the trial on the merits and consolidates it with the hearing held today, pursuant to Federal Rule of Civil Procedure 65(a)(2). The Court has carefully reviewed all of the papers filed by both the parties and various *amici curiae*, and has heard the parties at two separate hearings.

1 Being therefore fully apprised of the matter, the Court hereby VACATES the Temporary
2 Restraining Order (“TRO”) it issued on July 8, 2008 (Dkt. No. 12), and, for the reasons explained in its
3 Order issued on July 18, 2008 (Dkt. No. 60), FINDS that Defendants violated the National
4 Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, acting arbitrarily, capriciously, and
5 unreasonably, when they decided, on the basis of the “Environmental Evaluation” produced, that the
6 Critical Feed Use initiative would have no significant adverse environmental consequences, and
7 accordingly concluded that an EA or EIS was not necessary.

8 The Court, therefore, GRANTS Plaintiffs’ Motion for a Injunction IN PART (Dkt. No. 2),
9 ORDERING entry of the following permanent injunction:

- 10 1. All haying and grazing pursuant to CRP-598 is suspended, *except*:
- 11 a. Those CRP participants who, prior to the Court’s issuance of the TRO on July 8, 2008,
12 had already applied to and received approval from the Farm Service Agency (“FSA”) to
13 hay and graze pursuant to CRP-598, may immediately proceed with the approved activity,
14 subject only to certain limitations discussed below.
- 15 b. The FSA may also proceed to process and, where appropriate, approve, the remaining
16 applications that were filed by CRP participants prior to the issuance of the TRO. Once
17 approved, these CRP participants may also proceed to conduct whatever activity the FSA
18 approves, subject to the limitations discussed below.
- 19 c. No *additional* applications to hay or graze pursuant to CRP-598 may be accepted by FSA
20 *unless* the applicant can make a showing of significant reliance on CRP-598, to be shown
21 through:
- 22 1) Documentary proof of investment of \$4,500 toward haying or grazing
23 equipment or preparation made prior to the issuance of the TRO; and
24 2) A declaration from the contract holder attesting to his reliance on CRP-598
25 in making the above defined investment.

1 The FSA shall maintain this documentation for each additional application it approves, and
2 make it available for inspection upon the Court's request.

3 2. All haying and grazing authorized by and conducted in compliance with a Critical Feed Use
4 modification pursuant to CRP-598 in 2008 as permitted by this injunction and discussed in section
5 1, above, shall be subject to the following additional restrictions:

6 a. End Dates:

7 1. Where the application was submitted and approved prior to the issuance of the
8 TRO, all haying and grazing shall be completed by November 10, 2008.

9 2. For all subsequent approvals, haying for Critical Feed Use under CRP-598 shall be
10 completed by September 30, 2008. All grazing for Critical Feed Use under CRP-
11 598 shall be completed by October 15, 2008.

12 b. Frequency: Applicants participating in a Critical Feed Use modification pursuant to CRP-
13 598 in 2008 as permitted by this Order may not hay or graze lands enrolled in CRP again
14 except pursuant to a managed haying or grazing contract modification that is consistent
15 with the haying and grazing frequencies established by 7 CFR Part 1410 and the
16 Stipulation of Settlement in *NWF v. Johanns*, No. 04-2169-TSZ (W.D. Wash. Sept. 29,
17 2006). For purposes of compliance with these frequencies, haying or grazing this year will
18 "restart" the clock.

19 c. No Rental Reduction: No rental fee reduction shall be assessed on any applications
20 submitted or approved pursuant to this Order, other than the \$75 modification fee as per
21 the original provisions of CRP-598.

22 //


23 //

24 //

25 //

1 3. Defendants are further ordered to inform all CRP participants who have already or will, consistent
2 with this Order, receive CRP contract modifications pursuant to CRP-598 of this Order and the
3 restrictions herein.

4 SO ORDERED this 24th day of July, 2008.

5
6 
7 _____
8 John C. Coughenour
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25