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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 NATIONAL WILDLIFE FEDERATION;
10 INDIANA WILDLIFE FEDERATION; SOUTH
11 DAKOTA WILDLIFE FEDERATION;
12 WASHINGTON WILDLIFE FEDERATION;
13 ARKANSAS WILDLIFE FEDERATION;
14 LOUISIANA WILDLIFE FEDERATION;
15 KANSAS WILDLIFE FEDERATION,

16 Plaintiffs,

17 v.

18 ED SCHAFER, Secretary of Agriculture; THE
19 UNITED STATES DEPARTMENT OF
20 AGRICULTURE; TERESA LASSITER,
21 Administrator of the Farm Services Agency; THE
22 FARM SERVICES AGENCY,

23 Defendants.

CASE NO. CV08-1004-JCC

ORDER

19 This matter comes before the Court on Plaintiffs' Motion for Preliminary Injunction. (Dkt. No. 2.)
20 The Court has carefully considered Plaintiff's Motion, Defendants' Responses (Dkt. Nos. 9 & 13),
21 Plaintiffs' Reply (Dkt. No. 47), together with all of the declarations and exhibits filed in conjunction
22 therewith and relevant portions of the record, as well as the various amicus briefs filed by several
23 interested and effected parties. The Court has now heard oral argument on this matter and, being fully
24 apprised of the issues before it, makes the following preliminary ruling.

1 Plaintiffs have demonstrated a strong likelihood that they will succeed on their claim that the Farm
2 Service Agency (FSA) violated the National Environmental Policy Act (NEPA), in that it acted arbitrarily
3 and capriciously and not in accordance with law.

4 However, as the Ninth Circuit most recently emphasized in *The Lands Council v. McNair*, ___
5 F.3d ___, No. 07-35000, 2008 WL 2640001, at *21 (9th Cir. July 2, 2008), “[o]ur law does not . . .
6 allow us to abandon a balance of harms analysis just because a potential environmental injury is at issue.”
7 That decision further stressed that hardships related specifically to the potential impact on employment
8 and local economies, as well as the public interest, must be weighed against the potential environmental
9 harm in determining whether an injunction should issue. *Id.* There are substantial competing hardships,
10 whose impact could be devastating to citizens who trusted that their government was acting legally in
11 implementing the Critical Feed Use (CFU) initiative, as well as to the nation and the world economy at
12 large, if the Court issues the injunction that Plaintiffs urge, which would suspend all haying and grazing
13 under CRP-598 until Defendants have completed an Environmental Assessment.

14 A district court has “broad latitude in fashioning equitable relief when necessary to remedy an
15 established wrong,” *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d 630, 641 (9th Cir. 2004), and to
16 this end, the Court ORDERS the following:

17 1. The parties will meet and confer in an attempt to agree on a modified preliminary
18 injunction that takes into account all of the relevant hardships. If they are unable to agree, they shall
19 nevertheless produce suggestions for mitigating these hardships. The parties might consider limiting the
20 total acreage that can be hayed and grazed under the CFU initiative to the 2.5 million acres that Deputy
21 Administrator John Johnson predicts will be the total number of acres actually affected by this initiative; a
22 provision that would forbid the Secretary from reviving this program without first conducting an
23 Environmental Impact Statement (EIS) or a Programmatic EIS; a provision that would forbid
24 participation by land that has been hayed or grazed within a certain number of years; as well as any other
25 provisions that the parties conclude would serve to mitigate the relevant harms.

