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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Western Watersheds Project,

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No. CV-09-1573-PHX-MHM

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Plaintiff,

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ORDER

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vs.

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Glen Blankenbaker, et al.,

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Defendant.

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Currently pending before the Court is Defendant Gene Blankenbaker, in his official capacity as Supervisor of the Tonto National Forest, Chris Knopp, in his official capacity as Supervisor of the Apache-Sitgreaves National Forest, and the United States Forest Service’s (“Federal Defendants”) Motion to Dismiss, (Dkt.#26), and Plaintiff Western Watersheds Project’s (“WWP”) Motion to Stay, (Dkt.#29). After reviewing the pleadings and determining oral argument unnecessary, the Court issues the following Order.

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Plaintiff WWP’s lawsuit concerns a challenge to the federal government’s practice of permitting a bi-annual commercial sheep drive (known as the “Heber Reno Sheep Driveway”) across the Tonto and Apache-Sitgreaves National Forests due to the alleged risk posed to the local population of bighorn sheep. Plaintiff contends that the actions of the Federal Defendants are inconsistent with the National Forest Management Act (“NFMA”), 16 U.S.C. §§ 1600-1687 and 36 C.F.R. § 219.19, which requires the United States Forest Service to “maintain viable populations” of wild bighorn sheep across the Tonto and

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1 Apache-Sitgreaves National Forests.

2 On January 11, 2010, the Federal Defendants moved to dismiss WWP's Complaint
3 on the grounds that (1) WWP lacks standing to bring suit under Article III of the United
4 States Constitution, see Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); (2)
5 that WWP cannot point to a challenged agency action that is subject to judicial review by this
6 Court, see Norton v. Southern Utah Wilderness Alliance ("SUWA"), 542 U.S. 55, 62-64
7 (2004); (3) and that pursuant to Pub. L. No. 108-108, § 325, 117 Stat. 1241, 1308 (2004), the
8 Secretary of Interior is mandated to "reissue all expired, transferred or waived grazing
9 permits prior to completion of the processing of the permits in accordance with all applicable
10 laws and regulations and the required environmental analysis." See W. Watersheds Project
11 v. BLM, 629 F. Supp. 2d 951, 970-71 (D. Ariz. 2009) (internal quotations omitted).

12 On February 4, 2010, WWP moved the Court to stay the case. (Dkt.#29). In its
13 motion, WWP argues that a stay is required because the Forest Service is currently preparing
14 an environmental assessment pursuant to the National Environmental Policy Act ("NEPA"),
15 42 U.S.C. §§ 4321 et seq., and that the completed assessment will moot the NFMA claim
16 contained in WWP's Amended Complaint. The Federal Defendants oppose a stay, arguing
17 that, as their motion to dismiss sets forth, this lawsuit is nothing more than an attempt by
18 WWP to circumvent the NEPA process. The Federal Defendants maintain that the proper
19 manner for WWP to take issue with the Heber Reno Sheep Driveway across the Tonto and
20 Apache-Sitgreaves National Forests is during the upcoming notice and comment period, and
21 that after the NEPA review has been conducted and there is a final agency action on record,
22 WWP is free to file an another lawsuit under the appropriate federal statute. Accordingly, the
23 Federal Defendants contend that there is no justifiable reason for this lawsuit to remain open
24 pending the NEPA assessment. In its reply brief, WWP argues that no prejudice would result
25 from a stay in this matter and that this lawsuit was the obvious catalyst for the government's
26 decision to undertake an environmental assessment.

27 Because WWP admits that the ongoing NEPA process will moot the single NFMA
28 claim at issue here, the Court finds no reason to keep this litigation open for an undefined

1 period of time pending completion of the environmental assessment. There has been no
2 showing by either WWP or the government that a dismissal here would result in any
3 prejudice to Plaintiff's future ability to vindicate its allegations in another forum at a more
4 appropriate time. Indeed, WWP would be free to re-raise its NFMA claim, along with any
5 other claims WWP believes valid, after the environmental assessment is complete. In
6 addition, any future litigation between these Parties concerning the Heber Reno Sheep
7 Driveway across the Tonto and Apache-Sitgreaves National Forests would benefit from a
8 more fully developed administrative record. As such, dismissing WWP's Amended
9 Complaint without prejudice appears more practical from a case management perspective
10 than sanctioning an open ended stay on this Court's docket.

11 **Accordingly,**

12 **IT IS HEREBY ORDERED** dismissing without prejudice Plaintiff Western
13 Watersheds Project's Amended Complaint as moot in light of the environmental assessment
14 being currently undertaken by the United States Forest Service.

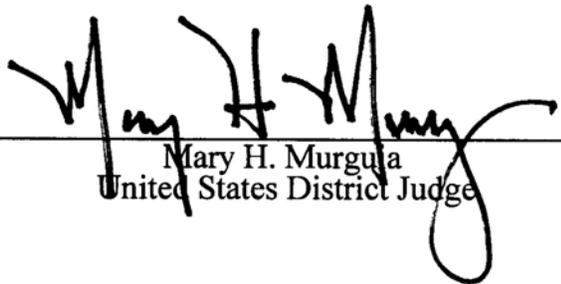
15 **IT IS FURTHER ORDERED** denying Plaintiff Western Watersheds Project's
16 Motion to Stay. (Dkt.#29).

17 **IT IS FURTHER ORDERED** denying as moot Defendant Gene Blankenbaker, in
18 his official capacity as Supervisor of the Tonto National Forest, Chris Knopp, in his official
19 capacity as Supervisor of the Apache-Sitgreaves National Forest, and the United States
20 Forest Service's Motion to Dismiss. (Dkt.#26).

21 **IT IS FURTHER ORDERED** closing this case and directing the Clerk of the Court
22 to enter judgment accordingly.

23 DATED this 10th day of May, 2010.

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Mary H. Murgula
United States District Judge