



relief before the 2007 grazing season.” *WWP Response Brief* at p. 2. WWP has not yet filed any motion concerning the 2007 grazing season.

The Forest Service challenges the Court’s ruling placing the burden of proof on the Forest Service. The Court rejects this challenge for three reasons. First, the Court had previously held that the Forest Service violated NEPA and NFMA. Second, the Forest Service’s own analysis shows the poor conditions on portions of the allotments. Third, the Court found that even if the burden was on WWP, they had carried their burden.

In support of the motion, John Faulkner, the President of Faulkner Land & Livestock Company, filed his Declaration explaining the economic loss he will suffer from the injunction, and concluding that conditions have improved along Frenchman and Beaver Creeks. *See Third Declaration of John Faulkner*. The Court assumed in its earlier decision that its injunction would have this effect, and so stated.

Prompted by the motion, the Court conducted a site visit with all counsel other professionals with expertise in the area. Based on the site visit, the Court has confidence that Faulkner and the Forest Service are making a concerted effort to remedy the grazing problems identified in the North Sheep EIS that the Court discussed in detail in its earlier decisions. The site visit gave the Court a much

better knowledge of both the Frenchman Creek and Beaver Creek areas.

Moreover, the Court was impressed with the expertise of the parties and their sincere desire to protect this land.

The site visit re-emphasized to the Court the superiority of settlements over court-imposed solutions. The expertise of the parties is put to best use in these settlements, which can be flexible and finely-tuned to the varying conditions of the allotments. The Court, on the other hand, is rigidly tied to formal legal doctrines, and is always interpreting the expertise of others while settlements apply it directly.

The Court would again urge the parties to engage in settlement discussions. The Forest Service's revisions to the Forest Plan and the North Sheep EIS will not be completed until after the 2007 grazing season, and so the parties will need to reach some resolution to apply to that interim period. Whatever agreement they reach will be a vast improvement over any decision the Court could issue.

### **ORDER**

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion to clarify and reconsider (Docket No. 75) is GRANTED IN PART AND DENIED IN PART. It is granted to the extent that it adopts the agreement of the parties that the Forest

Service shall have until March of 2008 to revise the Forest Plan and North Sheep EIS. It is denied in all other respects.



DATED: **January 12, 2007**

A handwritten signature in black ink, reading "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable B. Lynn Winmill  
Chief U. S. District Judge