

June 13, 2015

**SENT VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)
AND ELECTRONIC MAIL**

Tom Tidwell, Chief
United States Forest Service
United States Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

**RE: Petition for Agency Action on Presence of Exotic Mountain Goats in
Mount Peale Research Natural Area**

Dear Chief Tidwell,

Grand Canyon Trust (“the Trust”), Utah Native Plant Society (collectively “Conservation Groups”) hereby petition the U.S. Forest Service and the Manti-La Sal National Forest (“Manti-La Sal NF”) to take the following “agency actions,” as defined under 5 U.S.C. 551(13). This Petition is submitted under the Administrative Procedure Act. 5 U.S.C. § 555(e) and requests that the Manti-La Sal NF:

- (1) immediately remove, or arrange for the immediate removal of, all mountain goats from the La Sal Mountains; and
- (2) prohibit the Utah Division of Wildlife Resources (“UDWR”) from introducing additional goats to the La Sal Mountains.

The Conservation Groups respectfully request that the Forest Service provide a formal written response to this Petition, indicating that the requested actions will occur by a date certain or that the Petition is denied accompanied by a “brief statement of the grounds for [the] denial.” 5 U.S.C. § 555(e); *see Tourus Records v. Drug Enforcement Admin.*, 259 F.3d 731, 737 (D.C. Cir. 2001) (requiring “the agency explain why it chose to do what it did”). We request a response by July 15, 2015, because of the ongoing damage to RNA resources being caused by the goats and because UDWR is intending to introduce more goats in the fall of 2015. A prompt response is also warranted because the Forest Service is currently violating Federal law by allowing goats in the National Forest and Mount Peale RNA.

THE PROBLEM

The Manti-La Sal NF manages the approximately 2,400-acre Mount Peale Research Natural Area (“Mount Peale RNA”) in the alpine area (11,000-12,721 feet) of the La Sal Mountains on Moab-Monticello Ranger District in southeastern Utah (Figs. 1-2). The Manti-La Sal NF designated the area as an RNA in 1988 to protect the unique resources found on these public lands, including the “sensitive” La Sal Daisy, which exists only in the La Sal Mountains alpine area. According to the RNA’s Establishment Record: “The objective for establishing the Mount Peale RNA is to protect ecosystem structure and function in representative (though isolated) alpine and subalpine habitats of the Colorado Plateau.” Within the alpine area of Mount Peale RNA, there are only 360 acres of herbaceous alpine vegetation, and 2,020 acres of talus and barren rock. There is no evidence that mountain goats ever existed in the La Sal Mountains or Mount Peale RNA –they are an exotic species in Utah.

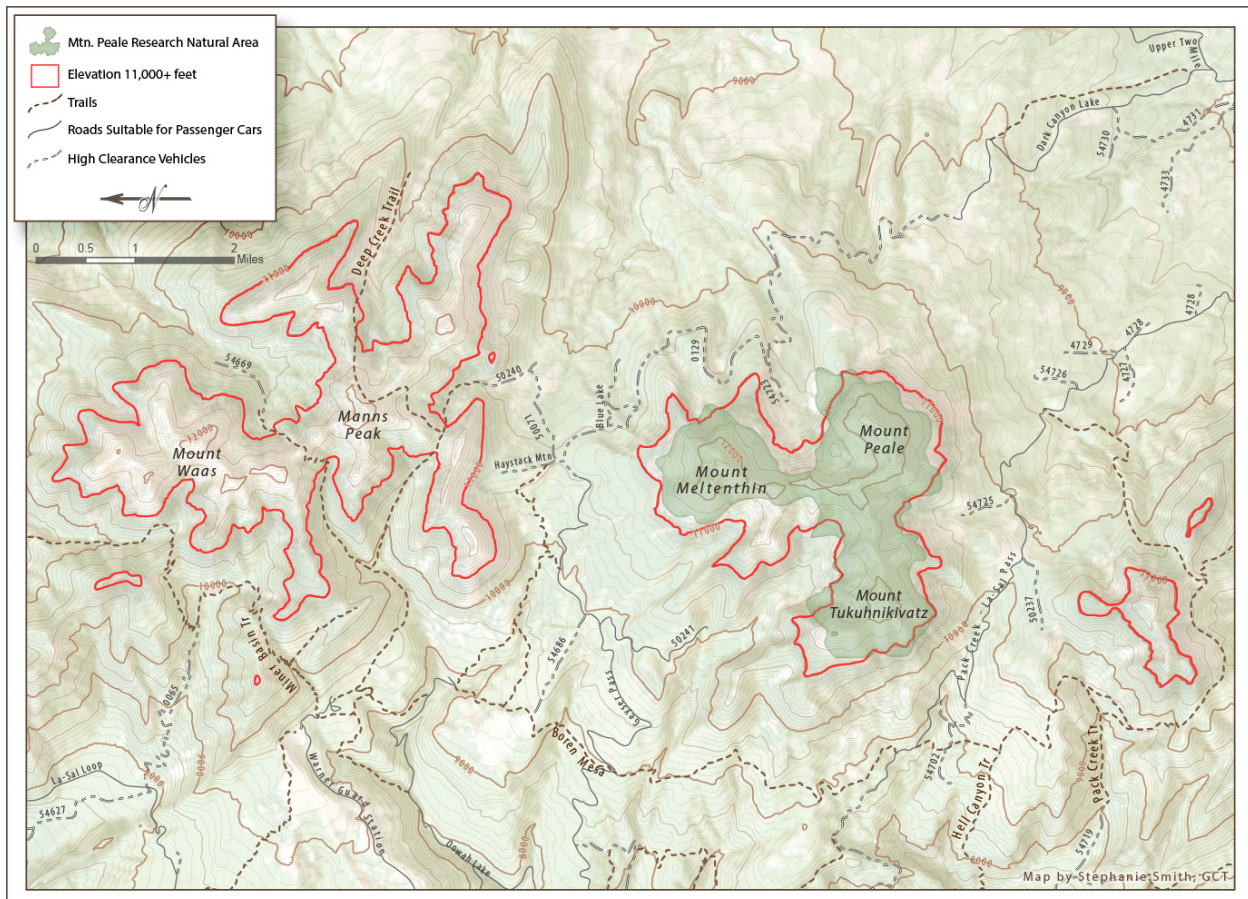


Fig.1. Mount Peale Research Natural Area (shaded) almost exclusively within the alpine area (>11,000’ elevation) in the La Sal Mountains

During the past two years (2013 and 2014), the UDWR has airlifted thirty-five mountain goats from the Tushar Mountains on the Fishlake National Forest to a small and isolated section of state land in the La Sal Mountains. Although introduced on unfenced state lands, UDWR’s expressed intent was for the goats to use the surrounding Manti-La

Sal National Forest as habitat, which includes the Mount Peale RNA. UDWR's stated purpose of the introductions is for hunting and wildlife viewing. The introductions will yield a targeted population of 200 mountain goats. The introduced goats and their offspring are grazing and digging wallows in the Mount Peale RNA (Fig. 2). The Forest Service did not issue a "special use permit" authorizing UDWR to introduce the goats into the National Forest.

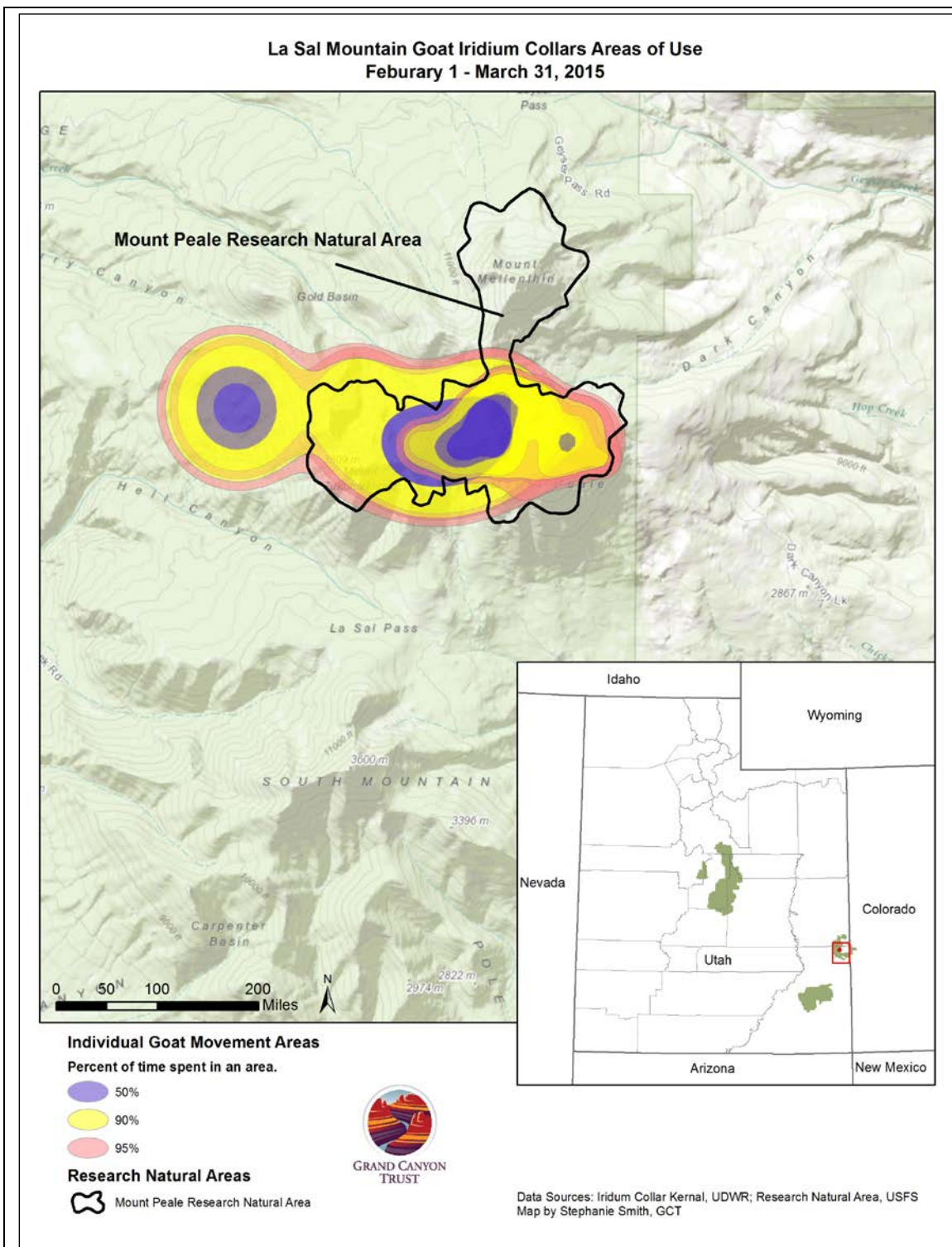


Fig. 2. Concentration within Mount Peale RNA of 4 of 9 Mountain Goats (the only goats for which UDWR provided collared data for February-March 2015). Inset: Locator map, La Sal Mountains in southeastern Utah.

The Forest Service and UDWR anticipated developing and implementing a “specific habitat and vegetative monitoring plan for the La Sals, which will include monitoring of sensitive plant species and use of the Mount Peale RNA.” Among other things, the Plan was to ensure baseline data was obtained prior to the first introductions in 2013. Such baseline monitoring never occurred. Accordingly, monitoring at this stage will have little to no use in assessing mountain goat impacts, or separating such impacts from passing deer or elk, or climate change.

RATIONALE FOR REQUESTED AGENCY ACTION

As set forth below, the introduction and presence of mountain goats in the Manti-La Sal National Forest and Mount Peale RNA is unauthorized and unlawful. The following are the applicable Forest Service rules and regulations prohibit occupation of a Research Natural Area by mountain goats:

Code of Federal Regulations: Forest Service, Department of Agriculture; Experimental Areas and Research Natural Areas - 36 CFR § 251.23

Research Natural Areas will be retained in a virgin or unmodified condition except where measures are required to maintain a plant community which the area is intended to represent.

Forest Service Manual: Research Natural Areas § 4063

Research Natural Areas may be used only for Research and Development, study, observation, monitoring, and those educational activities that do not modify the conditions for which the Research Natural Area was established

The prime consideration in managing Research Natural Areas is maintenance of natural conditions and processes. Protection and management of any RNA must comply with the following standards:

1. To the extent practicable, protect Research Natural Areas against human activities that directly or indirectly modify the integrity of the ecological processes.
2. Establish a level of acceptable casual or incidental livestock use that can be tolerated and is consistent with the management prescription.
3. Remove exotic plants or animals to the extent practicable.

Manti-La Sal National Forest Land and Resource Management Plan (1986 at III-83)

The protective emphasis units are set aside from other uses for protection of the specific features that exist and to maintain as much as possible their near natural conditions (unmodified by man) so long-term changes can be monitored.

The objective is on protection, research, study, observations, monitoring and educational activities that are non-destructive and non-manipulative. In Research Natural Areas unmodified conditions are maintained as a source to compare with manipulated conditions outside of these units.

Establishment Record for Mount Peale Research Natural Area (1988)

The objective for establishing the Mount Peale RNA is to protect ecosystem structure and function in representative (though isolated) alpine and subalpine habitats of the Colorado Plateau.

In 2013, UDWR approved introducing mountain goats into the La Sal mountains. In August 2013, UDWR completed *Goat Management Plan for the La Sal Mountains*,¹ and, in September, airlifted twenty mountain goats onto State Institutional Trust Lands Administration (SITLA) lands in the Beaver Basin area. The Forest Service participating in the development of the State's Management Plan, but, despite the authority and prohibitions identified above, did not affirmatively object to the State's introduction.

However, shortly after the Forest Service provided its tacit approval of the goat introductions, the Regional Forester clarified the Forest Service's position on goat introduction. In an August 21, 2013 letter to the State (Attachment A), Nora Rasure urged the Utah Wildlife Board to reject the proposal to transplant goats into the La Sal Mountains, based in part on "potential impacts" to the Mount Peale RNA. Ms. Rasure explained: "[i]mpacts to these habitats from introduced goats appear contrary to the establishment record for the Mount Peale RNA and inconsistent with Forest Service policy regarding management of RNAs, which includes maintaining natural conditions and protecting the integrity of ecological processes." Shortly thereafter, the Forest Service Region 4 Ecologist wrote a detailed memorandum summarizing the legal and policy bases for removing goats from the RNA (Attachment B). The Memorandum states in relevant part:

The introduction of mountain goats into the La Sal Mountains has already altered ecosystem processes in the alpine and subalpine

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¹ Utah Department of Natural Resources, Utah Division of Wildlife Resources. *Mountain Goat Herd Management Plan: Wildlife Management Unit #13 (La Sal Mountains)* (Aug. 2013).

zones. They are non-native, large herbivores that occupy those zones nearly year round, and create a grazing regime that never existed in those mountains. They also add trampling and wallowing activities at unprecedented levels. These conditions are outside the historic range of variation in the La Sal Mountains, and are thus prohibited within an RNA by the Forest Service Manual and the Code of Federal Regulations. Compliance with those directives requires that the mountain goats be removed from the Mount Peale RNA. FSM 4063.32 states, “***If exotic plants or animals have been introduced into an established Research Natural Area***, the Station Director and the Regional Forester exercise control measures that are in keeping with established management principles and standards to ***eradicate them***, when practical.” [Emphases in original.]

Notably, according to this memorandum, the Forest Service knew that the mere presence of goats in the Mount Peale RNA was illegal and required their removal.

Consistent with the law and the Forest Service’s own recognition of what is required to address this problem, the Conservation Groups have communicated their concerns regarding the goats’ detrimental impacts on the RNA and the legal bases for removal. In particular, on December 24, 2014 the Clinical Legal Education Program of the University of Colorado submitted a letter to the Regional Forester (Attachment C), noting the factual and legal reasons why UDWR’s use of the national forest was unlawful and the authority for removing the mountain goats from the La Sal Mountains:

The Forest Service has plenary authority over the federal lands it manages and the wildlife found on these lands. Therefore, the Forest Service has the authority to remove the mountain goats from Manti-La Sal National Forest and to prevent any use or occupancy of the La Sal Mountains that conflicts with the Manti-La Sal Forest Plan, and provisions designed to protect the Mount Peale RNA. Additionally, the Forest Service’s statutory and regulatory obligations, including those related to the Mount Peale RNA, require the Forest Service to comply with its own regulations related to special use permits for “uses” of National Forest System lands.

On January 12, 2015, Grand Canyon Trust met with representatives of the Regional Office. In a follow-up letter (Attachment D), the Trust highlighted the Forest Service’s permitting obligations for “special uses” of the national forests, which had not been undertaken in connection with UDWR’s introduction, and the fact that the agency’s regulations prohibit all special uses of RNAs. 36 CFR § 251.23. The Trust again called for removal of the mountain goats from the La Sal Mountains:

[I]t is our position that the goats’ presence is not compatible with

purposes of RNAs generally and the Mount Peale RNA in particular, as well as the Manti-La Sal Forest Plan and thus violates Forest Service regulations. The Forest Service should therefore take action to remove the goats within the next 6-8 months. Further delay will only make a solution more difficult and costly to implement, as the goats can be moved most successfully this fall, will again multiply in the spring of 2016, and more animals may be released into the La Sals by the State of Utah in the fall of 2015.

The Regional Office has not responded to the December 2014 or January 2015 letters from Grand Canyon Trust, despite repeated inquiries.

Instead, on information and belief, the Forest Service is currently considering a research project designed to document the goats' adverse impacts to sensitive plant species present in the La Sal alpine areas, including Mount Peale RNA. However, as detailed above, applicable law simply prohibits the goats from using and occupying the Mount Peale RNA, and thus there is no reason to document adverse effects before goats are removed. In fact, as noted by the Region 4 Ecologist, "[t]he introduction of mountain goats into the La Sal Mountains has already altered ecosystem processes in the alpine and subalpine zones." Further, absent baseline data, it is a waste of federal resources to assess damage to these plant species or the Mount Peale RNA; such limited resources ought to go to removing the mountain goats from the La Sal mountains.

Request for Relief

Forest Service rules and regulations do not allow for the use and occupation of Mount Peale Research Natural Area by exotic mountain goats. The status quo violates laws applicable to Forest Service management of the national forest and RNA.

The Forest Service must take action to comply with Forest Service Regulations, the Manti-La Sal NF Plan, and the Establishment Record for the Mount Peale Research Natural Area. The Conservation Groups request that the Forest Service immediately (1) remove mountain goats from the La Sal Mountains, and (2) prohibit additional introductions by UDWR. Time is of the essence not only because of the ongoing irreparable harm to fragile alpine grasses, forbs, shrubs, lichens, and mosses, whose growing and reproduction season is very short, but also because the Wildlife Board

recently approved the reintroduction of five additional mountain goats to La Sal Mountains in 2015. Goat reproduction takes place each Spring and the goat population moves toward the objective of 200 goats.

In addition to the Forest Service inherent authority in managing the national forest, the Forest Service has the authority to affirmatively remove the goats because they occupy the Mount Peale RNA. See Forest Service Manual § 4063.3(4) (“Remove exotic plants and animals to the extent practicable.”); § 4063.32 [“If exotic plants or animals have been introduced into an established Research Natural Area, the Station Director and the Regional Forester exercise control measures that are in keeping with established management principles and standards to eradicate them, when practical (FSM 4063.3).”]; see also § 4063.3(5) (providing authority to prohibit recreational uses of an RNA, which was UDWR’s primary purpose of the goat introductions).

If you have any questions, please do not hesitate to contact the undersigned. We respectfully request a formal written response by July 15, 2015.

Sincerely,

[see attached signature page]

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