



**Western
Watersheds
Project**

Wyoming Office

PO Box 171

Bondurant, WY 82922

Email: Wyoming@WesternWatersheds.org

Web site: www.WesternWatersheds.org

Working to protect and restore Western Watersheds

David Whittekiend

Uinta-Wasatch-Cache National Forest Supervisor

857 West South Jordan Parkway

South Jordan, UT 84095



**Western
Watersheds
Project**

Wyoming Office
PO Box 171
Bondurant, WY 82922
Tel: (877) 746-3628
Fax: (208) 475-4702
Email: Wyoming@WesternWatersheds.org
Web site: www.WesternWatersheds.org

Working to protect and restore Western Watersheds

David Whittekiend
Uinta-Wasatch-Cache National Forest Supervisor
857 West South Jordan Parkway
South Jordan, UT 84095

August 2, 2019

Dear David,

Enclosed, please find our comments on the High Uintas domestic sheep DEIS. We incorporate by reference all previous comments and attachments (both via email and on CD, including those of Yellowstone to Uinta Connection, Dr. John Carter) into these comments.

The DEIS fails to comply with NFMA.

This process failed to put in place management needed to recover the FS Sensitive Species, including bighorn sheep. We provided a range of Forest Service handbooks and manuals and other direction documents, highlighted in the applicable sections, to help insure compliance, in our previous comments, but it appears that the Forest Service ignored them.

In FSH 2209.13 please specifically note 92.11.

The so-called 'desired conditions' in the DEIS continue to propagate degraded conditions by setting these at a very low bar, below the level needed to proper physical and biological function.

I provide as attachments from a project on the Bridger-Teton National Forest where the range con is attempting the same normalizing degraded conditions.

- 1) [SummaryOfGroundCoverIssues 2-26-19.pdf](#)
- 2) [SummaryOfPlantSppCompIssue.pdf](#)

The range cons created 'desired conditions' based on livestock production values not from ecosystem and Wilderness values.

The DEIS states:

Desired conditions for range vegetation for the WCNF include the following:

- Greenline Ecological Status: (G7) Manage Class 1 Riparian Area Greenlines for 70% or more late-seral vegetation communities as described in Intermountain Region Integrated Riparian Evaluation Guide (USDA Forest Service, 1992). Manage Class 2 Riparian Area Greenlines for 60% or more late-seral vegetation communities. Manage Class 3 Riparian Area Greenlines for 40% or more late-seral vegetation communities.
- Ground Cover: (S7) Allow management activities to result in no less than 85% of potential ground cover for each vegetation cover type.
- Desired Plant Communities (Cameron and Huber, 2018) Plant communities are dominated by native species of moderate to high value for watershed protection (or erosion control). Dominance is defined as 60% or more of composition as determined by ocular cover, weight, or other methods that define composition. This includes both woody and herbaceous species. Documentation associated with photography and other notes as well as measurements from studies are sources for determination of dominance. Values of plants for watershed protection are listed in the Region Four Range Analysis Handbook (December 9, 2005) and in a supplemental document by the Ashley National Forest (Goodrich, 2015-03-12).

Desired conditions for range vegetation on the Ashley are described below.

- The Forest will maintain a quality range program, managed to optimize the production and use of forage on all suitable range to the extent it is cost effective and in harmony with other resource uses (ANF- Forest Plan, IV-3).
- Livestock grazing is recognized as an appropriate use of wilderness. Results of livestock grazing are consistent with desired condition of water, soils, wildlife, and vegetation (ANF – Forest Plan, Amendment 12, p. 3).

So as long as the action meets these low bars, that look at the ecosystem as essentially a private feedlot, then everything is OK. Most of the project area is designated Wilderness, which does not have a livestock production emphasis despite the range conservation efforts to make it that way. Clearly these ‘desired conditions’ do not implement the wide range of Wilderness management requirements discussed here.

Merely reciting sections of Forest Plan does not mean the DEIS complies with them. Clearly, as an example, authorizing domestic sheep, in Wilderness, on top of bighorn sheep could be considered in any rational sense “in harmony with other resources uses”. The FS just ignores anything that is inconvenient to its rush to satisfy the two permittees.

In FSM 2320 specifically note Section .2 which requires:

2. Maintain wilderness in such a manner that ecosystems are unaffected by human manipulation and influences so that plants and animals develop and respond to natural forces.
3. Minimize the impact of those kinds of uses and activities generally prohibited by the Wilderness Act, but specifically excepted by the Act or subsequent legislation.

2320.3

The DEIS fails to complies with these requirements.

1. Where there are alternatives among management decisions, wilderness values shall dominate over all other considerations except where limited by the Wilderness Act, subsequent legislation, or regulations.
2. Manage the use of other resources in wilderness in a manner compatible with wilderness resource management objectives.
3. In wildernesses where the establishing legislation permits resource uses and activities that are nonconforming exceptions to the definition of wilderness as described in the Wilderness Act, manage these nonconforming uses and activities in such a manner as to minimize their effect on the wilderness resource.
4. Cease uses and activities and remove existing structures not essential to the administration, protection, or management of wilderness for wilderness purposes or not provided for in the establishing legislation.

2323.21

The DEIS fails to complies with these requirements.

Manage wilderness range in a manner that utilizes the forage resource in accordance with established wilderness objectives (36 CFR 293.7)

The DEIS fails to complies with these requirements.

2323.31 is particularly applicable here:

1. Provide an environment where the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist.

2. Consistent with objective 1, protect wildlife and fish indigenous to the area from human caused conditions that could lead to Federal listing as threatened or endangered.

3. Provide protection for known populations and aid recovery in areas of previous habitation, of federally listed threatened or endangered species and their habitats.

2323.32

The DEIS fails to comply with these requirements. The most gross example of these violations is in relationship to bighorn sheep.

5. Apply the "Policies and Guidelines for Fish and Wildlife Management in Wilderness and Primitive Areas," developed jointly by the Forest Service, Bureau of Land Management, and the International Association of Fish and Wildlife Agencies in a practical, reasonable, and uniform manner in all National Forest wilderness units. Use the guidelines as a foundation for or as addendums to State or individual wilderness cooperative agreements.

2323.33C

The DEIS fails to comply with these requirements.

Predacious mammals and birds play a critical role in maintaining the integrity of natural ecosystems. Consider the benefits of a predator species in the ecosystem before approving control actions. The Regional Forester may approve predator control programs on a case-by-case basis where control is necessary to protect federally listed threatened or endangered species, to protect public health and safety, or to prevent serious losses of domestic livestock. Focus control methods on offending individuals and under conditions that ensure minimum disturbance to the wilderness resource and visitors. Poison baits or cyanide guns are not acceptable. Poison bait collars may be approved.

The U.S. Fish and Wildlife Service or approved State agencies shall carry out control programs. The Forest Service is responsible for determining the need for control, the methods to be used, and approving all proposed predator damage control programs in wilderness (FSM 2650).

Only approve control projects when strong evidence exists that removing the offending individual(s) will not diminish the wilderness values of the area.

The DEIS fails to comply with these requirements.

The DEIS throws out the red herring excuse “The analysis will not address the general appropriateness of livestock grazing in designated wilderness because that has been determined by Congress.” The fact that livestock grazing was grandfathered in Wilderness does not absolve the FS of implementing its Wilderness management requirements.

Throughout the DEIS we fail to see documented impacts by authorized sheep grazing assessed against the much higher requirements for resource protection in designated Wilderness areas

Departmental Regulations 9500-4 require:

1. Manage "habitats for all existing native and desired nonnative plants, fish, and wildlife species in order to maintain at least viable populations of such species."
2. Conduct activities and programs "to assist in the identification and recovery of threatened and endangered plant and animal species."
3. Avoid actions "which may cause a species to become threatened or endangered."

The DEIS fails to comply with these requirements.

FSM 260.22 requires:

1. Develop and implement management practices to ensure that species do not become threatened or endangered because of Forest Service actions.
2. Maintain viable populations of all native and desired nonnative wildlife, fish, and plant species in habitats distributed throughout their geographic range on National Forest System lands.
3. Develop and implement management objectives for populations and/or habitat of sensitive species.

The DEIS fails to comply with these requirements.

2670.32 requires:

2. Review programs and activities as part of the National Environmental Policy Act of 1969 process through a biological evaluation, to determine their potential effect on sensitive species.
3. Avoid or minimize impacts to species whose viability has been identified as a concern.
4. Analyze, if impacts cannot be avoided, the significance of potential adverse effects on the population or its habitat within the area of concern and on the

species as a whole. (The line officer, with project approval authority, makes the decision to allow or disallow impact, but the decision must not result in loss of species viability or create significant trends toward federal listing.)

The DEIS fails to comply with these requirements. For instance, the DEIS admits that the bighorn sheep population is not viable and the only thing that allows bighorn sheep to survive at any level is continual dumping of animals to replace those killed off by FS authorizations.

2670.44 requires:

7. Develop Forest Service recovery strategies to implement approved Recovery Plans. Apportion recovery objectives among forests. In cooperation with the FWS and States, establish recovery objectives in the absence of, or interim to, approved Recovery Plans; integrate these objectives with regional and forest plans.

8. Identify and approve management strategies to achieve conservation.

Again, the DEIS fails to comply with these requirements.

2670.45 requires:

2. Develop quantifiable recovery objectives and develop strategies to effect recovery of threatened and endangered species. Develop quantifiable objectives for managing populations and/or habitat for sensitive species.

4. Determine distribution, status, and trend of threatened, endangered, proposed, and sensitive species and their habitats on forest lands.

The DEIS fails to comply with these requirements.

Manual 2209.13 requires the development of DFC's that are quantifiable and contain timeframes.

The DEIS fails to comply with these requirements.

The Ashley National Forest Plan requires in its Standards:

Inventory areas having a high potential¹ for cultural sites by 1990.

Inventory areas having moderate and low potential for cultural sites by 1995.

The DEIS fails to comply with these requirements.

The Plan requires the Forest Service to manage the Wilderness "within levels of acceptable change"

Identify area Issues and concerns.

Define and describe opportunity classes.

Select indicators of resource and social conditions.

Inventory selected existing resource and social conditions.

Specify standards for resource and social Indicators for each opportunity class.

Reestablish native species classified as sensitive. threatened or endangered.

(NOTE: this would include areas where bighorn sheep have been extirpated because of the Forest Service's misguided prioritization of welfare ranchers over their NFMA species duties)

The DEIS fails to complies with these requirements.

By 1988 place all allotments under management designed to protect the wilderness resources.

Manage livestock use within present capacity of allotment.

Maintain natural vegetative composition and diversity.

Complete aquatic inventories using General Aquatic Wildlife Survey (GAWS) and R-I stream channel stability ratings on stream orders 3, 4, and 5. Complete inventory of all streams.

Resource management activities will be allowed if they will not adversely affect any T and E or sensitive species.

NOTE: There is no rational or honest way the Forest Service could come to the conclusion that continued domestic sheep within bighorn sheep habitat would not adversely affect bighorn sheep which, of course, are a sensitive species.

The DEIS fails to complies with these requirements.

Complete Inventory of sensitive plant and animal species on the Forest to determine their occurrence, abundance, distribution, habitat requirements, and population.

The DEIS fails to complies with these requirements.

The High Uintas Wilderness Amendment requires:

The ability of soils to support naturally occurring vegetation communities is not significantly impaired by human activities.

Data needs to be collected and provided showing the currently permitted domestic sheep are not impairing vegetation communities.

Natural processes and the forces of natural selection determine the diversity of wildlife and fish habitat and species.

Current domestic sheep grazing permitted by the Forest Service is violating this requirement. Currently, bighorn sheep populations and occupied habitat are controlled, not by natural processes and natural selection, but by domestic sheep use which renders bighorn sheep habitat toxic. The Forest Service cannot comply with the amendment direction above and continue permitting domestic sheep.

The DEIS fails to comply with these requirements.

The High Uintas Wilderness acts as a component to maintain indigenous species presently existing in the area.

Again, indigenous species (bighorn sheep) cannot be maintained in the presence of domestic sheep and so this direction cannot be complied with if the Forest Service chooses to place the interests of a few permittees above its NFMA duties to protect and recover Sensitive Species, particularly in this Wilderness Area.

The DEIS fails to comply with these requirements.

In order to define standards for some wildlife and fisheries desired conditions, baseline data such as for Neotropical bird populations, rate of stream bank erosion, and acres of habitat available to potential TES resident species needs to be collected.

It appears that this requirement has not been implemented. The DEIS fails to comply with these requirements.

Results of livestock grazing are consistent with desired condition of water, soils, wildlife, and vegetation.

Again, livestock grazing is not consistent with desired conditions for wildlife or other values.

Human induced change is temporary, minor, and less than in Class II and III. Soil compaction and minor vegetation loss associated with human related activities is temporary, discontinuous, and limited in extent to the area of activity. Human induced changes to soils, water and air quality, wildlife habitats, natural fire regimes, and vegetation do not disrupt the continuity of natural processes within the watershed.

The human induced changes caused by the Forest Service's permitting of domestic sheep are neither temporary, under any reasonable interpretation of the word or minor as you are rendering over a hundred thousand acres of Wilderness, toxic to a native species on the Sensitive Species List. Clearly, the continued permitting of domestic sheep can not rationally be seen by the Forest Service as not disrupting the continuity of natural processes.

The DEIS fails to complies with these requirements.

We recognize there are areas of unsatisfactory range conditions in the wilderness. They are localized and not widespread. Groundcover requirements provided in standard MA01015 will begin to address these conditions. On the Wasatch Cache portion of the wilderness, utilization standards from the 1996 Rangeland Health Forest Plan amendment will also be applied. Even so, we know these problems will not be corrected overnight. Improvements in alpine settings or sites with harsh climatic conditions take time to heal.

In the Wasatch Cache Forest Plan, we find the following requirements:

Management actions move habitat conditions toward Historic Range of Variability (HRV), contribute to recovery of listed species, and maintain or improve conditions for sensitive species. Human activities are at a level that allows species to maintain desired distribution during critical life stages. Habitat conditions support populations of species for recreational, traditional and cultural significance.

Continued permitting of domestic sheep within bighorn sheep habitat would disallow this from being achieved. The DEIS fails to complies with these requirements.

Regarding Wilderness, the Forest Plan requires that:

Wilderness is managed and protected, for the plants and animals that live there and their habitat, the preservation of large, intact ecosystems, clean air and water, and primitive recreation opportunities. Natural ecological processes are dominant. Ecosystems are influenced by natural process with little or no intervention.

Native fish and wildlife species are featured and the habitat needs of species-at-risk receive protective measures where needed.

Again, continued permitting of domestic sheep within bighorn sheep habitat would disallow this from being achieved. The DEIS fails to complies with these requirements.

3b. Maintain pollinators and minimize impacts to pollinators or their habitats.

3g. Maintain and/or restore tall forb communities to mid seral or potential natural community (PNC) status.

3j. Manage Forest Service sensitive species to prevent them from being classified as threatened or endangered and where possible provide for delisting as sensitive (FSM 2670).

5.a. Fully implement the Rangeland Health Amendment Forestwide by finalizing riparian classification and notifying permit holders of utilization standards based on this classification within 1 year,

5.b. Validating key areas and focusing monitoring of utilization standards in Allotments containing riparian dependent TES within 3 years,

5.c. Developing ground cover potentials for missing vegetation cover types within 2 years,

5.d. Assess/validate existing conditions and continue establishing long-term trend monitoring for 10% of Allotments annually.

5.e. Establish clear expectations with all permit holders to achieve stated purposes within 1 year.

5.f. Assess and prioritize noxious weed infestations for appropriate treatment within 1 year.

(G24) Management activities that negatively affect pollinators (e.g. insecticide, herbicide application and prescribed burns) should not be conducted during the flowering period of any known Threatened, Endangered, and Sensitive plant populations in the application area. An exception to this guideline is the application of *Bacillus thuringiensis*.

This, of course, would apply to livestock removing flower sources. The DEIS fails to comply with these requirements.

(G75) Annual operating instructions (and/or Allotment Management Plans) should be evaluated and additional site-specific objectives defined if needed for any or all of the following five parameters:

- stubble height on selected key species on the greenline,
- stubble height on selected key species and/or the amount of bare ground within the riparian zone but away from the greenline,
- riparian woody browse utilization (trees and shrubs),
- stream bank trampling on key reaches, and
- stubble height and/or incidence of use on key species in the uplands.

The Bighorn Sheep Conservation Assessment states that management needs to focus on:

- eliminating the potential for contact between bighorn sheep and domestic sheep and goats

- managing bighorns and their habitat in a metapopulation context by maintaining connectivity among subpopulations
- minimizing human disturbance in sensitive habitats (i.e., lambing and winter ranges)

As is well known, it only takes contact between one bighorn and one domestic sheep to cause a disease outbreak and corresponding crash of the population. The NEPA document must discuss the use of habitat outside the CDOW's bighorn range polygons or the fact that "Extensive movement patterns by male bighorn sheep during the rutting season may increase their risk of coming into contact with domestic sheep and contribute to the perpetuation of disease in this species and significantly influence the probability of long-term persistence in isolated sheep populations (Gross et al. 2000)." Rocky Mountain Bighorn Sheep – A Technical Conservation Assessment..

The Conservation Assessment continues "Because disease may represent the most significant threat to bighorn sheep in Region 2, especially on national forests with domestic sheep grazing allotments in or near bighorn sheep habitat, the creation of effective separation between bighorns and domestic sheep and goats is likely critical for preventing disease epizootics in areas where there is potential for contact. BLM Guidelines (Bureau of Land Management 1992) suggest maintaining a minimum buffer of 13.5 km (9 miles) between domestic sheep and goats and wild sheep on BLM lands to minimize the risk of contact between the two groups." and "One of the more important activities that directly affect bighorns is domestic livestock grazing in bighorn sheep habitat. Bighorns are negatively impacted by disease transmission from domestic livestock, especially domestic sheep and goats. Areas that have been grazed by domestic sheep may not be suitable areas for wild sheep for up to four years after grazing has been discontinued (Jessup 1985). Bunch et al. (1999) suggested that domestic and wild sheep should never be allowed to occupy the same areas because of the potential for disease transmission and the risk of a major die-off."

RMRS-GTR-209 states "The disease related conflict between domestic sheep and bighorn sheep was tested in the United States District Court (Oregon) in 1995. The following summarizes United States Magistrate Judge Donald C. Ashmanskas' findings: "Scientific research supports a finding that when bighorn sheep intermingle with domestic sheep, large numbers of bighorn sheep die. While the exact reason for this result may be in question, it is clear that the die-offs occur. An incompatibility exists between the two species, and there is no way to avoid the incompatibility other than to keep the domestics and the bighorns separate" (Ashmanskas 1995)." Since that time there have been a number of other similar rulings where the Forest Service failed to implement appropriate measures to provide separation." This same Forest Service publication continues "The scientific literature and expert panels support the conclusion that bighorn and domestic sheep/goats should not occupy the same ranges simultaneously or be managed in close proximity to each other if maintenance of a bighorn sheep population is a management objective. The literature is clear regarding the high probability of bighorn sheep dying of pneumonia following contact with domestic sheep." It concludes by stating "In landscapes where management objectives include the maintenance or enhancement of bighorn sheep populations, the risk of potential of disease transmission between domestic sheep/goats and bighorn sheep must be addressed. The available

information supports creating spatial and/or temporal separation between domestic sheep/goats and bighorn sheep as a prudent management technique to manage the risk of disease transmission. (Callan and others 1991; Coggins 1988, 2002; Coggins and Matthews 1992; Desert Bighorn Council 1990; Festa-Bianchet 1988; Foreyt 1989, 1990, 1992a, 1992b, 1994, 1995; Foreyt and Jessup 1982; Foreyt and others 1994; Garde and others 2005; Goodson 1982; Hunt 1980; Hunter 1995a; Hunter and others in prep; Jessup 1980, 1982, 1985; Kistner 1982; Martin and others 1996; Onderka 1986; Onderka and Wishart 1988; Pybus and others 1994; Ward and others 1997; Wishart 1983). Recent disease incidents involving domestic goats have resulted in the same conclusion (Garde and others 2005; Heffelfinger 2004; Jansen and others 2006).

For a review of the disease transmission issue, we request you review pages 3-10 to 3-14 of the Payette National Forest DSEIS available at:

http://www.fs.fed.us/r4/payette/publications/big_horn/DSEIS_Chapter_3_Pages_1_through_33.pdf

The Forest Service failed to analyze, in a site-specific way, the capability of these lands on all these allotments to provide forage for livestock. There is no information in the DEIS regarding forage production within capable acres, as defined in the R4 Protocol. At its most basic, this decision is about allocating a certain amount of forage, over a certain amount of acres to a certain amount of livestock. Yet the DEIS is silent on this most basic issue. It is arbitrary and capricious to authorize the removal of X number of AUM's when you have no idea how many AUM's of forage are produced within the capable acres. This violates NEPA's "hard look" requirement.

Capability involves only the four major issues of slope, distance to water, highly erodible soils and availability of palatable forage, and the Forest needs to assess at a site specific level whether the more general Forest Plan process is accurate considering the specific slopes, forage availability, and distances to water sources on the allotment. This analysis must also ground-truth the Forest Plan assessment of capability especially in regard to erodibility of soils.

The Forest Service must also complete a suitability analysis for the allotments. This process needs to include analysis of a variety of impacts and conflicts that will occur at differing levels of livestock grazing which need to be considered in the alternatives of the EIS. Analysis of suitability necessarily will vary by alternative in the EA/EIS as differing assumptions need to be used with regard to defining protocols for suitability of "capable" lands for livestock grazing according to the level of livestock grazing impacts and conflicts which are deemed to be unsuitable when they conflict with other values such as wilderness, wildlife habitat, wildlife displacement, and negative impacts on recreation, Wilderness values, special status plants and animals including but not limited to Management Indicator Species (MIS) and species listed under the Endangered Species Act (ESA).

For example, even if lands are determined to be capable of supporting livestock grazing, they may be unsuitable for that use if the soils are at risk of compaction, if water quality will be unacceptably degraded, if recreational activities will be compromised unacceptably, if wildlife habitat will be damaged or degraded, if native plant ecosystems

and rare or sensitive plant species cannot sustain levels of livestock use and flourish, if predators will be routinely killed to protect sheep and cattle, if hikers and other users of these lands will be threatened and perhaps attacked by sheep guard dogs, if bighorn sheep are prevented from reestablishing within these allotments because of the risk of disease transmission from domestic sheep and if livestock serve as unacceptable vectors of weed seed dispersal. These conflicts and others need to be analyzed within a range of levels of livestock grazing as well as in a no- grazing alternative as part of the NEPA analysis.

The suitability analysis also needs to reveal the impacts of sheep grazing and trailing on lands deemed non-capable but still proposed for crossing or trailing of livestock. This is especially important for cumulative effects analysis of sheep trailing and trampling on the batholithic soils found on these allotments.

One aspect of the suitability analysis needs to address the likelihood of negative impacts of domestic sheep on bighorn sheep dispersing to or through the allotments, This part of the suitability analysis needs to be informed by the Payette National Forest in regard to domestic sheep and bighorn conflicts and risks of disease transmission.

The R4 Capability Suitability Protocol states for suitability:

Criteria for Rangeland Suitability: Once capability is determined, an assessment of suitability, by alternative, is conducted to address whether livestock grazing is compatible with management direction for a management area's other uses and values, and which, if any, other uses would be foregone with livestock grazing. Forest planning records should contain a description of the criteria used in the analysis to identify suitable rangelands. Advice for suitability criteria are listed below. Additional criteria may be developed if local conditions warrant. Situations listed below may or may not be suitable for livestock grazing depending on an overall evaluation of potential effects and opportunities to mitigate adverse effects:

- Developed recreation sites or special use sites.
- Special area designations such as Research Natural Areas.
- Administrative sites and research facilities or study sites.
- Key wildlife habitat areas (such as winter ranges).
- Important habitats for TES species (viability considerations).
- Noxious weed infestations where forage is not used by livestock or use would contribute to increase of the infestation.
- Unique habitats such as bogs, fens, jurisdictional wetlands, or rare plant communities.
- Areas where livestock grazing is impracticable due to economic considerations, either from a permittee or agency standpoint.
- Transitory range created by timber harvest activities where the associated mitigation costs to protect timber resource values is excessive.
- Areas where the social consequences and values foregone are not acceptable. (emphasis added)

This is a short list of potential issues of suitability which apply generally to the allotments; however, it is not inclusive, and it is the duty of the Forest Service to fully assess criteria for suitability by developing a protocol for determining whether the impacts from livestock grazing at any level is incompatible and therefore unsuitable for lands which otherwise may be designated capable of supporting livestock grazing.

The DEIS fails to provide any information as to:

- 1) how many capable acres are contained within the project area
- 2) how many suitable acres are contained within the project area
- 3) how many AUM's are produced within the suitable acres
- 4) how many AUM's are being authorized

These form the foundation for a rationale decision making process and all of these elements are missing in the DEIS.

The purpose and need section violates NEPA.

The courts have held that in defining a very narrow purpose and need, the agencies run afoul of NEPA:

The “purpose” of a project is a slippery concept, susceptible of no hard-and-fast definition. One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing “reasonable alternatives” out of consideration (and even out of existence). The federal courts cannot condone an agency’s frustration of Congressional will. If the agency constricts the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act. [42 U.S.C. § 4332\(2\)\(E\)](#).

Simmons v. U.S. Army Corps of Engineers, 120 F.3d 664, 666 (10th Cir. 1997).

The courts have recognized that agencies bring a degree of expertise to determining the scope of a particular project, but this deference is not unlimited:

Deference, however, does not mean dormancy, and the rule of reason does not give agencies license to fulfill their own prophecies, whatever the parochial impulses that drive them. Environmental impact statements take time and cost money. Yet an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality.

Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991).

“The stated goal of a project necessarily dictates the range of ‘reasonable’ alternatives and an agency cannot define its objectives in unreasonably narrow terms.” *Id.* at 1155 (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 192 (D.C. Cir. 1991)). “Project alternatives derive from an [EIS’s] ‘Purpose and Need’ section.” *Id.* Thus, a court begins by determining whether or not the

Purpose and Need Statement was reasonable. *Id.*; see also *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1066-67 (9th Cir. 1998).

Westlands Water Dist. v. Interior, (9th Circuit July 2004).
[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/02D5B997B004D17388256ECF00825DA9/\\$file/0315194.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/02D5B997B004D17388256ECF00825DA9/$file/0315194.pdf?openelement)

The purpose and need provided is in response to the Forest Service violating NEPA earlier. The entire section contains only authorities that allow the FS to authorize the action, but completely ignores the wide range of law, regulation and policy that requires authorized actions to meet other resource protection requires prior to any authorization. The most obvious example is Sensitive Species management.

The DEIS states “This DEIS considers whether actions described under its alternatives would result in a violation of any Federal, State, or local laws or requirements (40 CFR §1508.27)”

The actual statute reads :

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

But we have brought various federal laws and requirements imposed for the protection of the environment to the attention of the FS over the last half a decade that are violated by this proposed action, only to be ignored in the FS's haste to satisfy these two permittees. As such, the FS's 'consideration' is flawed and unsupportable.

Again, the DEIS asserts “This project would be consistent with the Ashley and Wasatch-Cache Forest Plans.” Yet we have discussed a wide range of Forest Plan requirements completely ignored by the DEIS.

As discussed earlier, there are also a wide range of requirements the FS must comply with beyond the Forest Plan. These requirements have also been ignored. As such, the FS's bald assertion is false.

The DEIS analyses for most species fail to contain any actual population data, trends or habitat condition data. It is entirely opaque on what rational basis species determinations were made.

A perfect example of the FS's fabricated assertions can be seen in CRCT. The DEIS admits in passing that populations are in decline, yet despite that they will 'persist' and that the impacts of increased sedimentation, red trampling, etc. will not increase this already clear trend towards federal listing. That fabrication violates NEPA's “hard look” requirement as well as NFMA's viability mandate.

We look forward to working with the Forest Service in fulfilling the intent of NEPA, NFMA and the other statutes and regulations the Forest Service works within, through a complete and accurate analysis of the impacts of the plan, prior to the issuance of a ROD.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan B. Ratner". The signature is fluid and cursive, with the first name "Jonathan" written in a more legible script and the last name "Ratner" in a more stylized, cursive form.

Jonathan B. Ratner
Director, Wyoming Office

Summary of Ground Cover Issue, from Standpoint of Wildlife
02-26-2019, Don DeLong

The biggest implication of implementing the proposed desired ground cover levels, in combination with the way ground cover is measured under the Proposed Action, is that it will allow reduced ground cover levels to persist across large portions of allotments, which contrasts with incremental progress that otherwise would be made toward meeting desired ground cover levels outlined in FSH 2209.21 and GTR-104.

This is illustrated in the following example (using results of two line point intercept transects):

Comparison of assessments based on (A) the current way of assessing range condition in Wyethia-dominated areas, and (B) the proposed new way of assessing range condition in these areas, relative to ground cover.								
	A. Percent Ground Cover (w/ <i>basal veg.</i>)				B. Percent Ground Cover (w/ <i>canopy counted</i>)			
	Existing (Measured)	Threshold in FSH 2209.21	Threshold in GTR-104	Assessment	Existing (Measured)	Threshold in Table 3 of Proposed Action	Threshold based on Gregory (1983)	Assessment
Transect 1	60	≥80	≥80	Functioning-at-Risk	76	≥64	≥75	At Potential / Functioning
Transect 2	63	≥80	≥80	Functioning-at-Risk	77	≥64	≥75	At Potential / Functioning
		This is the way it has been done on the BTNF for the last 20 years or more.				This is the proposed way it would be done on K-17 and other allotments on D1 & D3.		

Key:
 <60% = non-functioning
 60-79% = functioning-at-risk
 90-100% = functioning

An upshot of this table is that many Wyethia-dominated areas are deemed to be functioning-at-risk or non-functioning under the current way of assessing range condition could very well be deemed to be functioning under the proposed new way of assessing range condition.

Very little information has been put forth (1) showing that a change in minimum thresholds is needed and (2) supporting this change in how desired conditions are defined.

And the potential consequences to wildlife (as well as to watershed functioning and range health) are large.

A. If we Continue with Approach Used on the BTNF		B. If we Change to New Thresholds & New Methods	
...and if this is Correct	...but if this is Wrong (and 'B' is Correct)	...and if this is Correct	...but if this is Wrong (and 'A' is Correct)
Range health and wildlife diversity & abundance will increase, substantially in many places.	Range health will improve somewhat, and wildlife diversity & abundance will mostly remain as it is.	Same	Range health and wildlife diversity & abundance will remain well below their potential; i.e., major impacts.
Sheep #s or season-of-use could be reduced, but this would be justified.	Sheep #s or season-of-use could be reduced, but this will have been unnecessary.		Making no more than minor changes to sheep grazing mgt. will have been done in error.

What does management direction say about which approach to take if there is a question about the science both ways? Consider Organic Act's purpose of protecting water flow above all other uses (except timber), and DFC 10 emphasis of providing "...long-term and short-term habitat to meet the needs of wildlife managed in balance with... grazing..." Ground cover is integral to proving for long-term habitat.

Affected wildlife include mule deer, moose, a few bat species (including those reliant on moths), a range of migratory bird species (including raptors), pollinators, and numerous other invertebrate species.

Approach on the BTNF During For 15+ Years

Ground cover thresholds in FSH 2209.21 and GTR-104 (O'Brien et al. 2003) have been used in all Range decisions and other agency documents during the last 15 years or more:

- USFS (2004a) — *Greys River Landscape Scale Assessment*
- USFS (2004b) — *Final Environmental Impact Statement for Wyoming Range Allotment Complex*
- USFS (2005b) — *Decision Memo for Continuation of Forage Reserve Allotment Status on Three Forage Reserve Allotments*
- USFS (2007a) — *Comprehensive Evaluation Report (draft) for Tall Forb Communities* (prepared for the Forest Plan Revision effort)
- USFS (2007a) — *Decision Memo to Authorize Continued Livestock Grazing on the Three Forks, Corral Creek, and Mink Creek Allotments*
- USFS (2008) — *Allotment management plan for the Triple Peak forage reserve, Big Piney and Greys River Ranger Districts*
- USFS (2009a) — *Updated Assessment of the Condition of Management Indicator Species Habitat with Respect to Livestock Grazing Use on the Bridger-Teton National Forest*
- USFS (2009b) — *Decision Notice & Finding of No Significant Impact Reauthorization of Livestock Grazing and Allotment Management Plan Review & Revision for the Bear Creek, Virginia Peak, North Salt, and South Salt Sheep & Goat Allotments*
- USFS (2019) — *Final EIS for the Upper Green River Area Rangeland Project Final Environmental Impact Statement* (decision forthcoming)

Other Considerations

Persistence of reduced ground cover will allow functioning-at-risk and non-functioning conditions will perpetuate implications to wildlife habitat far into the future.

1. The low-end thresholds in 2209.21 represent the "...minimum ground cover needed for proper functioning sustainable ecosystems..."
2. When ground cover on a site drops below levels identified in O'Brien et al. (2003:2), the site "...would begin to lose basic functionality defined by increased soil erosion and loss of site sustainability," and more specifically that "ground cover levels below these minimum thresholds were determined to be functioning at risk for basic watershed protection."

Summary of Plant Species Composition Issue, from Standpoint of Wildlife
02-26-2019, Don DeLong

The biggest implication of implementing the proposed definition of desired plant species composition to wildlife is that it will allow greatly-reduced plant species composition (caused by historic sheep grazing practices) to persist across large portions of allotments, which will perpetuate negative impacts on a large number and wide variety of wildlife species (including mule deer, many migratory birds, several bat species, amphibians, and numerous pollinator species and other invertebrates).

Persistence of greatly-reduced plant species composition is mainly due to the following:

1. Reliance — in desired condition statement — on moderate or high value watershed species in 2209.21-2005-1 will allow continued domination by species such as:

- Mule ears
- Louisiana sagewort
- Black coneflower
- Cutleaf balsamroot
- Smooth brome – a nonnative species
- Kentucky bluegrass – possibly a nonnative species

Plant communities dominated by these species are of low value to vertebrate and invertebrate wildlife.

2. Reliance — in desired condition statement — on existing plant species richness measured by Gregory (1983) to represent desired plant species composition in tall forb communities.
 - a. Because desired conditions (DCs) = existing conditions (ECs), any comparison between ECs and DCs in the future will likely show no “gap” between, and no need to change grazing management.
 - b. This in turn will allow ECs to persist in the long term.
3. Moderate and high value watershed species in 2209.21-2005-1 provides a relatively-poor indicator of the suitability of plant species composition to wildlife, for the following reasons:
 - a. Of 323 grasses, sedges, rushes, and forbs rated as moderate or high for watershed value, about 30% were rated as low for mule deer and elk.
 - b. Of 101 forbs rated as moderate or high for watershed value, about 41% were rated as low for elk.
 - c. Of 235 grasses, sedges, rushes, and forbs rated as low for watershed value, 62% were rated moderate or high for mule deer.
 - d. Of 233 grasses, sedges, rushes, and forbs rated as low for watershed value, 50% were rated moderate or high for elk.
 - e. Several non-native species have high value for watershed protection (e.g., Kentucky bluegrass, smooth brome) or moderate value for watershed protection (e.g., Canada bluegrass, redbud, meadow foxtail), and dominance by these species signal deteriorated habitat conditions.
 - f. Numerous native herbaceous species important to vertebrate and invertebrate wildlife are not designated as moderate to high value for watershed protection. Their presence signals — erroneously — that a site is below desired conditions:
 - Numerous forb species and a portion of grass species with low watershed values provide seeds for many migratory bird and small mammal species.
 - Roughly half the plant species used by broad-tailed hummingbirds as a nectar source have low watershed value.
 - Numerous forb species and a portion of grass species with low watershed values provide leafy forage for insects which in turn are important to many migratory bird, bat, and shrew species.
 - Many forb species with low watershed value are important for pollinators (e.g., butterflies, moths, bees), and many of these pollinator species rely on specific plant species or genera.