

**OBJECTOR'S NOTICE OF OBJECTION, STATEMENT OF ISSUES AND LAWS,
AND REQUESTED REMEDIES**

NOTICE OF OBJECTION

December 9th, 2019

Forest Supervisor, Reviewing Officer
c/o Beth Peer, Environmental Coordinator
Ochoco National Forest
3160 NE 3rd Street
Prineville, OR 97754

RE: Blue Mountains Biodiversity Project's objection to the Ochoco National Forest Bear Creek Cluster Allotment Management Plans Draft Record of Decision and Final Environmental Impact Statement

Dear Objection Reviewing Officer,

Blue Mountains Biodiversity Project (BMBP) hereby formally submits the following objections to the Ochoco National Forest Bear Creek Cluster Allotment Management Plans (Bear Creek Cluster) Final Environmental Impact Statement and Draft Record of Decision. BMBP has secured the right to submit objections and thereby participate in the pre-decisional administrative review process for this project. BMBP has submitted timely written scoping comments regarding this project and comments on the Draft Environmental Impact Statement. We also field surveyed the area with volunteers, including filling out allotment field survey sheets and taking photographs, but these were from years ago when the allotment management plans were first introduced to the public in 2014. We did not submit these survey sheets and photographs as we were unable to locate them in time to submit them with this objection and since they may now be outdated as being representative of current conditions since they are about five years old.

Decision Document

Bear Creek Cluster Allotment Management Plans Final Environmental Impact Statement and Draft Record of Decision

Date Decision published

October 25th, 2019

Responsible Official

Slater Turner, District Ranger, Lookout Mountain Ranger District, Ochoco National Forest

Description of the Project

The Ochoco National Forest Service has selected in its entirety Alternative 2, including the following proposed management actions. Therefore, this objection focuses on Alternative 2, as specified in the Draft Record of Decision. Alternative 2 includes:

*A grazing system of three pasture deferred rotation for cattle in the Elkhorn Allotment, Snowshoe Allotment, and potentially the Bear Creek Allotment, with a herded system for sheep in the Trout Creek Allotment and potentially in the Bear Creek Allotment instead of cattle grazing

*98 water developments, including planned reconstruction and new developments, for improved livestock distribution

*68.25 miles of fence maintenance

*active management (location checks and herding) in all allotments

*provision of forage at the current rate or increased rate if sheep are grazed in the Bear Creek Allotment

Other connected management actions include:

*33.45 miles of active restoration activities to improve riparian conditions in some reaches of some streams for increased streambank stability and to encourage recovery of riparian plants, and physical barriers in addition to upland water developments and active management of livestock for reducing cattle presence in riparian areas (with promised channel recovery 15 years after implementation)

*18 sites of aspen enhancement activities

The Draft Record of Decision also includes further detailed descriptions of the selected Alternative 2, which can also be found in various sections of the Bear Creek Cluster Allotment Management Plans Environmental Impact Statement.

Location

The area of the Bear Creek Cluster Allotment management plans encompasses approximately 61,262 acres of National Forest lands, located approximately 40 miles northeast of Prineville, Oregon and is located primarily on the Lookout Mountain Ranger District and a portion of the Paulina Ranger District of the Ochoco National Forest. The project area encompasses four grazing allotments (Bear Creek, Elkhorn, Snowshoe, and Trout Creek.)

Appellant's Interests

Blue Mountains Biodiversity Project has a specific interest in this decision, which has been expressed through participation throughout the NEPA process. BMBP supporters visit much of the affected area for hiking; camping; fishing; relaxing; bird, wildlife, and wildflower viewing; photography; hunting; and more. The value of the activities engaged in by BMBP volunteers, supporters, and staff would be damaged by the implementation of this project's continuation of livestock grazing without more effective prevention of negative impacts to riparian areas and plant diversity, as well as potential negative impacts to Gray wolves, climate stability, and other ecological and social values addressed in this objection.

BMBP is a non-profit organization that works to protect Eastern Oregon National Forests. Staff, volunteers, and supporters of BMBP live in various communities surrounding the Ochoco National Forest and use and enjoy the Forest extensively for camping; hiking; drinking water; hunting; fishing; general aesthetic enjoyment; gatherings; viewing flora and fauna; gathering forest products; and other purposes, such as solar eclipse viewing.

Request for meeting

BMBP requests a meeting with the Forest Service to discuss matters in this objection and seek resolution of concerns through negotiation before the Ochoco Forest Service makes a final decision on the Bear Creek Cluster Allotment Management Plans.

Specific issues addressed in this objection

NEPA (National Environmental Policy Act) violations, including: proposing actions inconsistent with achieving the stated purpose and need for the project; failure to provide an

adequate range of alternatives, failure to adequately analyze direct, indirect, and cumulative impacts of the project, and failure to use the full spectrum of best available science.

Violations of the National Forest Management Act (NFMA) and the Ochoco Forest Plan, include failure to provide for population viability for Management Indicator species and other wildlife species and violations of the Ochoco Forest Plan.

Potential violations of the Ochoco National Forest Plan include violations of Forest Plan standards, including PACFISH and INFISH requirements under the Eastside Screens, livestock grazing standards, and Region 6 Invasive Plant Management prevention requirements incorporated within or enacted through Region 6 Forest Plans.

Endangered Species Act violations include contributing to a trend toward federal uplisting for the following species: Threatened-listed Gray wolf; Threatened-listed Steelhead trout; Sensitive Redband trout; and various Sensitive-listed plants known to be or suspected to be within the project area.

Clean Water Act violations include failure to demonstrate that the proposed actions will not further impair or retard water quality recovery for riparian areas in general and for streams still on the 303 (d) list for water quality impairment (e.g. for stream temperature) or with TMDLs and water quality management plans.

We also express concerns regarding the excessive costs of 98 water developments and other planned management likely to be borne at least in part by taxpayers, detrimental effects to the Bridge Creek Wilderness Area of livestock use and impacts to climate stability from livestock grazing that were not analyzed in depth in the EIS analysis.

BMBP objects to the Bear Creek Cluster Allotment Plans for the following reasons:

I. The Bear Creek Cluster Allotment Management Plans violate the National Environmental Policy Act

The Bear Creek Cluster Allotment Management Plans (Bear Creek Cluster project) violate the National Environmental Policy Act in the following ways: inconsistency with the stated “purpose and need” of the project; failure to provide an adequate range of alternatives; failure to adequately analyze direct, indirect, and cumulative impacts of the project; failure to take the requisite “hard look” at project impacts required by NEPA; and failure to use best available science.

Inconsistency with the stated purpose and need of the project

The Bear Creek Cluster project is not consistent with all the purpose and need goals as expressed in the Environmental Impact Statement. The Bear Creek Cluster project FEIS included the following statement that constituted the purpose and need for the project on FEIS page 1:

“The purpose of this project is to manage livestock grazing within the allotments in a way that is consistent with the Ochoco National Forest Land and Resource Management Plan (Forest Plan), as amended, and other applicable legal requirements within the project area. This action is needed because Forest Plan standards associated with stream shade, bank stability, and vigor of aspen stands are not currently being met consistently throughout the four grazing allotments, and there is scientific evidence that suggests improperly managed livestock grazing can create unwanted effects to riparian areas and aspen stands. This action responds to the goals and objectives outlined in the Ochoco Forest Plan and helps move the project area towards desired conditions described in that plan.” (Bear Creek Cluster Allotment Management Plans FEIS, p.1)

Examples of our comments on the inconsistency of proposed management actions with the stated purpose and need for the Bear Creek Cluster project:

“No Action would bring about more riparian restoration sooner overall than continued grazing, especially with legacy impacts—there are set periods of time in which recovery of plants can be expected to take place with no further livestock grazing (in 4 to 8 years, based on Skovlin, 1984), but no such guarantee of timely recovery under continued livestock use. It’s vital to remove causes of degradation and removal of livestock is known to benefit riparian recovery based on a lot of field evidence.” (BMBP Comment, 5th comment, p. 368)

“There seems to be a big analytical disconnect between the assumption of ‘satisfactory conditions’ setting livestock stocking rates and forage allocation versus the documented failure to meet Forest Plan standards for INFISH [and PACFISH] RMOs (the purpose and need for management changes.) (BMBP Comment, 3rd comment, p.372)

In other words, the planned actions are inconsistent with the stated purpose and need, as planned management fails to deal effectively with the root causes of the problems being addressed and to make the proposed action consistent with best available science. The Forest Service acknowledged that the No Action alternative is the environmentally preferred alternative yet did not select that alternative. Forest Service rationales for not creating a more effective alternative to better meet the purpose and need fall back on arguments that the permittees are meeting grazing standards while ignoring the main problem driving the purpose and need for this project: that riparian management objectives are still not being achieved and riparian standards are still not being met, even as some grazing standards (e.g. stubble height, woody browse conditions) are being met. This means that either the grazing standard attainment is not enough to significantly improve riparian conditions enough to meet standards and riparian management objectives, and/or the legacy impacts from past livestock overgrazing, logging in riparian areas, and road building within RHCAs are too overwhelming to riparian ecological functioning to be resolved by meeting grazing standards without prior long-term rest of the most degraded riparian areas.

Likewise, Oregon Wild’s comments by Doug Heiken on page 382 get to the core of the inconsistency between planned management actions under alt. 2 and meeting the stated purpose and need for the project:

“The EIS shows that continued livestock grazing will retard attainment of RMOs, including: streambank stability, channel morphology, and riparian vegetation. This violates PACFISH/INFISH.

The Hydrology Report says ‘It is determined that because grazing standards are being met, that all alternatives will not retard nor prevent attainment of Riparian Management Objectives.’ This is arbitrary and capricious and makes no sense. The relevant question is NOT whether grazing standards are being met, but whether RMOs are being met. The analysis shows that multiple RMOs for many streams in the project area are not properly functioning (NPF), and that continued grazing will delay recovery of desired conditions for streambank stability, channel morphology, and riparian vegetation. The record indicates that existing management of grazing in this area is not doing the job, and more must be done. That is exactly the situation where INFISH/PACFISH mandates the Forest Service to take action to modify grazing until natural rates or recovery are unaffected.”

Resolution

BMBP has commented on its objection to the Ochoco National Forest’s (ONF) Bear Creek Cluster Allotment Management Plans Draft Record of Decision and FEIS in comments regarding

inconsistency between management actions under the proposed action alternative and the purpose and need stated for the project. (See quotes and citations above.)

To resolve this objection, the Forest Service needs to either produce a new EIS made available for public comment that avoids inconsistency between the purpose and need for the project and planned management actions or create an alternative to select in the final decision that avoids this inconsistency, preferably by combining long-term exclusion of livestock from the most degraded riparian areas (including all water quality impaired streams and all “not properly functioning” and “functioning at risk” riparian areas) with needed active restoration and other methods to improve conditions. The other alternative to resolve this objection is to select the “No Action” alternative and exclude livestock from the entire allotments area after two years, to allow for passive recovery over the whole area for at least ten years or in perpetuity.

Failure to provide an adequate range of alternatives and overly narrow purpose and need

The Bear Creek Cluster Allotment Environmental Impact Statement included an inadequate range of alternatives. Our comments on the DEIS explain our rationale:

“There is very little difference between alternatives 2 and 3, and the differences mostly represent repair of existing damages from these strategies not working so far, with the exception of active herding (as this apparently was not required or done.) Why would more of the same work now? (BMBP Comment, 2nd on p.368 of Appendix D: Response to Comments)

(All subsequent page citations for our comment quotes are from Appendix D of the FEIS.)

“The No Action alternative could be combined with active restoration planned such as hardwood planting, which would largely make unnecessary other expensive planned management.... This would be the cheapest, most ecologically sound alternative. We find the current range of alternatives is too narrow in not analyzing this.” (BMBP Comment, 3rd on p.368, with some minor corrections in wording for clarity)

“The Purpose and Need for the project should not be ‘to provide grazing’, it should be to evaluate whether livestock grazing should continue, and, if so, what needs to be changed to meet the Forest Plan, Clean Water Act, and ESA [Endangered Species Act] goals and standards.” (BMBP Comment, 5th of our comments on p.368)

“The Forest Plan goal of providing forage for domestic livestock is contingent on this being in a manner consistent with other resource objectives and environmental constraints while maintaining or improving ecological conditions and plant community stability.” (BMBP Comment, 1st on p. 368) See our arguments for why the proposed action would not be consistent with other resource objectives and environmental constraints below, under “Forest Plan violations”.

NEPA requires a full range of reasonable alternatives to be considered and analyzed in detail as potential action alternatives for Environmental Impact Statements. Simply having a “No Action” alternative that would remove all livestock from the area after two years, the status quo of current management (which is already deemed insufficient by the Forest Service) and a Forest Service proposed action alternative is insufficient. Surely the Forest Service could have imagined an action alternative that would bridge the gap between alternative 2, which is mostly current management practices plus a lot of water developments and active restoration, and the No Action alternative, which would allow for needed long-term passive restoration to take place. An alternative combining the best elements of each could significantly improve riparian condition outcomes while cutting costs significantly by not requiring so many water developments and scaling down the area that would need to be monitored and herded.

Resolution

BMBP has commented on its objection to the ONF's inadequate range of alternatives in the Bear Creek Cluster Allotment Environmental Impact Statement and requested a broader range of alternatives in our comments. See our comments quoted and cited above.

To remedy this problem, the Forest Service would either have to reissue a new Environmental Impact Statement offering a full range of alternatives as required by NEPA for public review and comment, or better meet our concerns expressed in related comments as follows:

Our proposed remedy is to create and choose an alternative that follows our suggestions above to combine parts of alt. 2, such as needed active riparian restoration and active herding with badly needed full rest (passive restoration) for many years (such as a decade) for the most damaged riparian areas that are not meeting riparian management standards or are rated as not properly functioning or are functioning at risk. These should include all water quality impaired stream reaches that are 303 (d) listed. Legacy riparian impacts from livestock overgrazing and other mismanagement often do not recover fully until livestock are completely excluded from the area for multiple years so that passive recovery is possible.

An anonymous commenter also suggested in their comments a more effective alternative, which we also consider a reasonable action alternative:

"The logical and legal course of action on the part of the Forest Service is to propose the complete closure of the most damaged pasture areas to livestock, reductions of livestock numbers in the most degraded allotments, and/or shortening the grazing season to avoid spring riparian damage [and] fall forage shortage for deer and elk." (Commenter #11, p. 386)

Notably, the Environmental Protection Agency, Region 10, also suggests incorporating exclusion of livestock grazing in damaged riparian areas, especially for streams that are not expected to meet desired conditions for many years:

"Similar actions such as exclusion of grazing in impacted riparian areas would also benefit many riparian areas where most hydrologic impacts are found. Further protection of riparian areas may be warranted, especially for streams that are not expected to meet desired conditions for many years, such as those on North and South Bear pastures where impacts may affect high quality habitats and other sensitive resources, such as fish and wilderness areas." (EPA Comments, p.2)

Yet despite multiple commenters suggesting that more effective measures needed to be taken, including the EPA, the Forest Service arbitrarily chose to stick to only their proposed action versus No Action or Current Management (Alternative 3), which is obviously not working to meet Forest Plan standards for riparian areas. This does not represent a full range of reasonable alternatives.

Failure to adequately analyze direct, indirect, and cumulative effects

The Bear Creek Cluster Allotment Environmental Impact Statement demonstrates failure to adequately analyze environmental effects of the project in the EIS, including omissions and distortions such as the following addressed in our comments:

"Obviously excluding livestock use from potential habitat for three sensitive sedge species should also be proposed since the three *Carex* species are all considered to be threatened with extirpation from Oregon. What is the point of citing science and the status of sensitive plants if nothing is proposed to protect them? NEPA intent is to use analysis to avoid or prevent ecological harms." (BMBP Comment, 5th on p.380)

The following two comments are highlighting issues completely omitted in the DEIS analysis. Other than clarifications about the specific meadows, there are no FEIS responses to our comments addressing the larger issues at stake that we pointed out: the importance of managing for maximum water retention under extreme climate change; direct competition between native

wildlife and exotic livestock for water and forage that will only increase into the future under climate change; the need for wildlife to take priority over livestock since they have no other options for water and forage and are essential to natural ecological functioning; and the key issue that global warming trends are leading to unsuitable conditions for livestock on such marginal and degraded grazing lands and to exacerbated declines in riparian conditions in the near future: "We are very concerned that there are indications of meadows being de-watered and of drops in the water table (see DEIS pp. 51, 53). It's especially crucial to manage for maximum water retention in this period of extreme climate change, which will likely lead to increased summer droughts, water loss, and poor forage conditions. Livestock are placed in direct competition with wildlife for water and forage in such times. Wildlife should take priority over livestock as they have no other options and are essential to natural ecological functioning, whereas livestock are essentially invasive exotic species."

"Lowering of the water table and de-watering of meadows are critical to not accept as the new norm. We are concerned that global warming trends are leading to unsuitable conditions for livestock grazing on such marginal grazing lands and to declines in riparian conditions as permittees would have harder times meeting standards." (BMBP Comments, 4th & 5th on p. 369)

Evidently the Forest Service is neglecting to consider critical relevant issues in analysis regarding livestock grazing in the context of extreme climate change due to following disingenuous orders from D.C. to use stock text on climate change for analysis that ignores both the current climate change crisis being based on a multitude of incremental cumulative causes that must be addressed to retain a livable planet and the implications of extreme climate change affecting standard "business as usual" assumptions for the sustainability of livestock grazing (and timber sales) on management degraded lands and last more pristine refuges for wildlife, such as Wilderness Areas.

We address problems with the stock language used to pass as climate change analysis directly in the following comment:

"The DEIS has inadequate analysis of known livestock industry and animal contributions to climate change effects by simply dismissing the Bear Creek AMP project from falling within major contributors of greenhouse gas emissions identified by the IPCC. Yet surely livestock use falls under "Agriculture" due to their feed and ranching as part of agriculture. This dismissal also ignores the Union of Concerned Scientists' recent statement that we need to move away from eating meat to a plant-based diet to effectively combat climate change. Thus the DEIS fails to consider best available science." (BMBP Comment, last on p.391, continued as 1st on p. 392) To clarify this last comment, the Union of Concerned Scientists recommends moving away from eating meat because of the negative impacts of widespread and intensive livestock operations on climate stability; this is not just an issue of vegetarianism versus meat-eating as a separate ideological issue, as the Forest Service response to this comment implied.

Resolution:

BMBP has commented on its objection to the ONF's failure to adequately analyze direct, indirect, and cumulative effects of the Bear Creek Cluster Allotment project on a range of receptors, including: potential project effects to Sensitive designated plant species; cumulative effects of livestock grazing to climate change; aspects of extreme climate change affecting the sustainability of continued livestock grazing on marginal or degraded lands; the need to maximize water retention; lack of convincing analysis supporting the proposed action's assumed success, such as field evidence (see BMBP Comment, last on p.388); inadequate site-specific analysis of ways to prevent livestock from introducing and dispersing invasive plants in the allotments (see BMBP Comment, 1st on p.379); potential effects to wolves from continued livestock grazing in the foreseeable event that wolves become established resident packs in the area (see BMBP Comment, 3rd of ours on p.379); and other gaps and deficiencies in the analysis

that can be found in our comments, some of which were addressed in the FEIS response to comments. Some of the most important issues raised in our concerns regarding inadequate analysis have still not been addressed sufficiently to meet NEPA standards for detailed analysis.

See our comment quotations and citations in the paragraph above and references to inadequate analysis in comments quoted in other sections of this objection.

To resolve this objection, a Supplemental EIS needs to be prepared that adequately analyzes direct and indirect effects of the Bear Creek Cluster Allotment project, and cumulative effects of the project in combination with past, ongoing, and reasonably foreseeable future actions to NEPA standards, with a public comment period to enable informed public comment and agency review.

Failure to use best available science and inaccurate use of the science

There are instances in the Bear Creek Cluster EIS of analysis not reflecting the full range of best available science or using science inaccurately. Examples of failure to use best available science from our comments:

“How was the actual carrying capacity of the land for the Ochoco NF determined (LRMP 4-11)? It does not seem to be accurate, based on continued violation of Forest Plan standards and an overly broad inclusion of almost all lands on the Forest as ‘suitable’ for livestock, including sensitive and easily degraded riparian areas. It’s past time for a reevaluation of carrying capacity based on current science.” (BMBP Comment, 5th on p.372)

“While we appreciate planned active management of livestock, just checking their current location every 2 days is unlikely to prevent significant riparian damage. ‘When needed’ is a very subjective requirement for moving livestock. According to the best available science, livestock management science, cattle should be moved at least every three days.” (BMBP Comment, 2nd on p. 375)

“Why is livestock grazing delayed until later in the season (as per Kagan 1990 and Dewey 2011) not considered to reduce impacts to riparian diversity and sensitive plants such as Peck’s mariposa lily?” (BMBP Comment, 3rd on p. 380)

Other BMBP comments regarding failure to use best available science include comments on FEIS pages 371 (2nd) and 391-392 regarding climate change.

Resolution

BMBP has commented on its objection to the ONF’s failure to use best available science in the Bear Creek Cluster allotment project analysis. See our comment citations and quotations in the paragraphs above.

In order for the Bear Creek Cluster allotment project to comply with NEPA, the Forest Service needs to incorporate the requisite best available science and use the science accurately with professional integrity in analysis in a new SEIS available for public comment for the Bear Creek Cluster allotment project, to better and more accurately inform public comments, agency review, and decision-making.

II. The Bear Creek Cluster Allotment project violates the National Forest Management Act

The Bear Creek Cluster allotment project violates the National Forest Management Act in the following ways: failure to ensure the viability of Management Indicator and other species, violation of Forest Plan standards and guidelines for riparian area (RHCA) protection, and

potential violation of livestock grazing standards, and failure to adequately plan prevention of livestock impacts regarding introduction and dispersal of invasive plants under the Region 6 Invasive Plant Management Plan FEIS. The Forest Plan requires adherence to Eastside Screens PACFISH/ INFISH requirements, including moving toward attainment of Riparian Management Objectives in riparian areas.

Failure to ensure the viability of Management Indicator Species

Our comments noted areas of analysis in which the Bear Creek Cluster allotment EIS failed to demonstrate that the viability of Management Indicator (MIS) and Threatened-listed and Sensitive species would be ensured with project implementation. Species of concern for protection of viability include the Management Indicator species and Sensitive-listed Redband trout; Threatened-listed Steelhead trout and Gray wolf; Sensitive Columbia Spotted frog; and the popular hunted species, Rocky Mountain elk and Mule deer.

The Forest Service has legal responsibilities to protect the viability of Management Indicator and other native vertebrate species, but not to provide livestock grazing as an over-riding goal when it is inconsistent with other Forest Plan resource objectives (including species' protection) and environmental constraints or is inconsistent with other applicable laws. It's not appropriate or legally justifiable to keep reducing Management Indicator species' suitable habitat (e.g. Redband trout) in multiple livestock grazing allotment permit renewals and other management projects, such as timber sales. The EIS did not include adequate cumulative effects analysis as to all these reductions and degradations of suitable habitat across the Forest. It is not justifiable to plan for continued impacts and cumulative potential loss of species viability for a Management Indicator species (e.g. Redband trout) based on "long-term" theoretical re-growth of suitable habitat eventually, as the species' viability may be lost before the habitat can grow back—especially given likely planned similar livestock grazing and timber sales with associated road reconstruction in the same area in the future, and the decades that properly functioning suitable riparian habitat structure would take to re-develop.

Examples of how our comments express these concerns regarding the failure to ensure the viability of Management Indicator and other species:

"Overall, the 26,364 acre Trout Creek Allotment is in 'not properly functioning' condition for sensitive species habitat/channel morphology and riparian hardwood shrub and tree cover and only functioning at risk for stream temperature and sediment/turbidity, all the subwatershed conditions and impairments measured. (See Table 99 DEIS p.160.) Yet there are both mid-Columbia River Steelhead (Threatened) and Sensitive Redband trout in the Foley Creek subwatershed of this allotment and in the headwaters Trout Creek subwatershed (see DEIS p. 163 and 168) and in the Opal Creek subwatershed (DEIS p. 170) and Redband trout are in the Upper McKay subwatershed." (BMBP Comment, last on p. 390, first on p. 391)

"We are very concerned that continued livestock grazing would threaten the viability of Gray wolves on the Ochoco due to livestock/wolf conflicts or perceived threats leading to their extermination. Wolves have recently been seen on the Ochoco NF and we want to be able to see them recover fully on the Ochoco and across Eastern Oregon." (BMBP Comment, 2nd of ours, p. 379)

"Wolves need to be able to forage for prey during dispersal without being shot or otherwise killed, for full recovery." (BMBP Comment, 4th of ours, p. 379)

See our additional comments supporting our objection re: the need to maintain the viability of MIS and other species under NFMA re: competition for forage between livestock and native ungulates Mule deer and Rocky Mountain elk on FEIS Appendix D pages 371 (4th, 5th, & 6th

comments) and p. 372 (1st, 2nd, & 4th comments.) Also see more of our comments documenting our concern over the future viability of Steelhead trout and Redband trout under the Forest Plan violation section re: PACFISH/ INFISH below. Our further concerns regarding the viability of Gray wolves in the allotment area under continued livestock grazing appear in comments quoted and cited in the Endangered Species Act section below.

Resolution

BMBP has commented on its objection to the Ochoco Forest Service failure to provide for viability of Management Indicator and other species in the Bear Creek Cluster allotment project. See our comment citations and sample quotes in the above paragraphs and in other sections of this objection, as noted above.

Resolution of this issue would include:

Re: deer and elk: Preserve more forage and security cover for calving and fawning (grasses, sedges, shrubs, riparian hardwoods) for deer and elk by effectively excluding livestock from the most damaged riparian areas (“pastures”) for passive recovery over at least a decade or until full riparian recovery such that the riparian areas meet riparian management objectives (RMOs) and are properly functioning ecologically.

Re: Steelhead trout, Redband trout (and Columbia Spotted frog, and any other amphibians): See recommended remedies below, under Forest Plan violations—PACFISH/INFISH. The riparian areas currently rated as not properly functioning or functioning at risk and other riparian areas not meeting multiple RMOs need to be rested for many years to allow for full recovery by effectively excluding livestock from access. To protect Steelhead and Redband trout in particular, these exclusions should include all critical and historic habitat for Threatened Steelhead trout and all occupied or suitable habitat for Redband trout. We also support planned active riparian restoration but would like to know more about the specific impacts involved in the Bear Creek Cluster allotment planned active restoration and how these impacts would be mitigated.

Re: Threatened-listed Gray wolf: The Forest Service needs to plan ahead to avoid conflicts between livestock/ranchers and wolves by considering effective prevention measures that would be required as part of allotment permit renewal, such as the use of red lights at night, flagging, herd dogs, fencing, etc. with adaptive management options for using more effective techniques. Closing parts of allotments that are damaged riparian corridors not meeting RMOs and/or which are likely impeding recovery of fish habitat can also help meet this concern by allowing wolves more areas free from potential livestock conflicts for dispersal. Adoption of the “No Action” alternative could also resolve this objection for Gray wolves.

Other Forest Plan violations

Additional Forest Plan violations in the Bear Creek Cluster allotment project include violations of the Eastside Screens Forest Plan standards by further setting back attainment of INFISH/PACFISH Riparian Management Objectives; potential violation of Forest Plan standards for livestock grazing; and not effectively preventing invasive plant introduction and dispersal from livestock use of the area, as per the Region 6 Invasive Plant Management Plan now in effect.

Violation of the Forest Plan Eastside Screens

PACFISH and INFISH Violations

Our comments on potential Forest Plan violations regarding failure to demonstrate attainment of Riparian Management Objectives or effective management plans that will achieve PACFISH/INFISH RMOs clearly state our concerns. See BMBP comments quoted and cited below:

“Current livestock grazing does not meet Forest Plan standards [for INFISH/PACFISH] and is evidently not moving toward INFISH [and PACFISH] RMOs. What is the argument for not cancelling those allotments or pastures, making them off-limits to livestock use at least until full recovery? Tinkering with water developments and active herding will not necessarily lead to full riparian recovery or to meeting Forest Plan/INFISH [and PACFISH] standards and attainment of RMOs. What field evidence supports the success of the proposed action?” (BMBP Comment, last on p. 388)

“There seems to be a big analytical disconnect between the assumption of ‘satisfactory conditions’ setting livestock stocking rates and forage allocation versus the documented failure to meet Forest Plan standards for INFISH [and PACFISH] RMOs (the purpose and need for management changes.)” (BMBP Comment, 4th on p. 372)

“We’re tired of seeing extreme degradation of springs, aspen, creeks, fens, and seeps by livestock not meeting RMOs over time. This is true for all the areas we’ve field surveyed with few exceptions. Active herding of sheep has improved conditions, but most stream systems are badly degraded.” (BMBP Comment, 1st on p. 390)

The Forest Service response to this comment admits: “Data displayed.... does show some stream segments that are not properly functioning or functioning at risk....”

“We are frustrated by the Forest Service’s continued refusal to reduce AUM numbers of cattle or sheep or to rest badly degraded pastures for the long-term (until full recovery) when there are ongoing violations of Forest Plan standards for riparian areas. The best evidence of full riparian recovery is from closing riparian areas to livestock for many years in succession.” (BMBP Comment, our 1st on p. 374)

Our other comments supporting this objection can be found on FEIS Appendix D pages 389, 1st and 2nd; 2nd on 370; and the 6th on p. 376 re: aspen. See also related comments quoted under potential remedies below.

Resolution

BMBP has commented on the Bear Creek Cluster Allotment Management Plans’ potential violations of PACFISH and INFISH Riparian Management Objectives under the Eastside Screens. See our comments cited and quoted above.

To resolve this objection, the Forest Service needs to consider the following options and choose either the No Action alternative or a much more effective approach to meeting Riparian Management Objectives, including closing the riparian areas that are not properly functioning or functioning at risk to livestock use.

Our comments suggesting resolution remedies for this objection:

“We are in favor of the No Action alternative as it would be expected to provide for the greatest improvement to riparian range conditions within the shortest time frame (DEIS p. 78). There is no guarantee that the proposed management actions would ever meet RMOs.” (BMBP Comment, last on p. 393) The Forest Service has acknowledged that the No Action alternative is the environmentally preferred alternative.

“Given that allotments are failing to meet multiple riparian standards, it is anathema to us that the FS is not considering closure of the most damaged ‘pasture’ areas, reductions in livestock numbers in the most degraded allotments, and/or shortening of the grazing season to avoid spring riparian damage and/or fall forage shortage.” (BMBP Comment, last on p. 376)

Re: aspen: "Exclosures for aspen stands should probably always be used. Are there guaranteed funds for exclosure maintenance? We find aspen exclosure fencing down and with gaps far too often and hedged by cattle as a result—strategies haven't worked so far." (BMBP Comment, 5th on p. 376)

The Forest Service response to this comment includes: "Exclosure maintenance falls on the Forest Service (FEIS p. 70) and is resource limited so other adaptive management tools are included in the proposed action like using thinned material to temporarily protect aspen." In other words, there is no guaranteed funding for aspen or other exclosure maintenance.

Livestock Grazing Management Practices Concerns due to use of an outdated Forest Plan and failure to use best available science to address the inadequacy of the current Forest Plan to meet the stated purpose and need for the Bear Creek Cluster Allotment Management Plans--and potential livestock grazing standard violations

Our comments on this issue express our concerns, including potential violations of livestock grazing standards, some of which were partially resolved by Forest Service responses. The Bear Creek Cluster EIS was not clear as to whether all livestock grazing standards were being met. "Surely forage production potential should not be the main driving force behind determining allowable Livestock AUMs, as RHCAs and wildlife are left behind." (BMBP Comment, 2nd on p.372)

"The distribution problem with cattle (way too much time in riparian areas) is a major reason that livestock AUMs should not be determined primarily by average forage production potential for a pasture, as there is disproportionate use and damage in riparian areas (see DEIS p. 72)." (BMBP Comment, 3rd on p.372)

While the Forest Service clarified that when stubble height and utilization standards are measured, there is no separation of which species is grazing in the area and that it therefore captures the cumulative use of big game and livestock, this still does not address the disconnect between permittees meeting stubble height and utilization standards and yet not moving toward attainment of Riparian Management Objectives on many or most riparian areas.

Likewise, although we appreciate the Forest Service clarifying that: "Forage allocation was determined using riparian community allowable use rates", this still does not address our objection that forage production should not be the main driving force behind determining allowable livestock AUMs, as a lot of cattle damage in riparian areas is not measured through utilization standards, such as trampling and erosion of stream banks; related widening of stream channels and increases in water temperature; trampling in streambeds; introduction and dispersal of invasive plants; and fecal contamination of stream water. These riparian impacts fall under INFISH/PACFISH RMOs which are not being attained over long time periods of livestock grazing since the 1995 Eastside Screens decision and incorporation into Forest Plans, Clean Water Act violations, and violations of the Region 6 Invasive Plant Management Plan, which emphasizes prevention of invasive plant introduction and dispersal. See our objections under these headings, which are not resolved by permittees meeting livestock utilization standards for grazing.

There is also the problem that riparian areas are more productive for forage than upland areas, meaning that more marginal grazing areas may not be measured for utilization compliance, and may be hit even harder than riparian areas.

Other BMBP comments related to this objection can be found on FEIS Appendix D pages 372 (4th, 5th and 6th or last) and on p. 371 (2nd, 3rd, 4th, 5th and 6th). While the previous listed BMBP comments relate to mostly "Stocking rates and forage allocation" starting on FEIS p. 371, BMBP

also submitted a number of comments listed under “Range Resources” starting on FEIS p. 368 through p. 371.

Resolution

Blue Mountains Biodiversity Project has commented on this objection as quoted and cited above. Resolution of this objection would include using our suggested resolution remedies under INFISH/PACFISH, the Clean Water Act, and the Region 6 Invasive Plant Management Act. This would be in line with a resolution remedy for the Forest Service to use best available current science to determine the best ways to manage livestock to meet INFISH/PACFISH RMOs, Clean Water Act requirements, and the Region 6 prevention guidance under the revised Invasive Plant Management Plan.

This objection also reflects the use of an outdated Forest Plan for livestock management, which could be remedied either by revising the Forest Plan to use best available science re: livestock management to attain RMOs and adhere to the Clean Water Act and by using the best available science to adjust management methods and goals to meet these requirements in the interim since Revised Forest Plans are notably many years in the making (up to the number of years the Forest Plan is supposed to be in effect), with substantial delays by the Forest Service.

Failure to Meet Prevention Requirements Under the Region 6 Invasive Plant Management Plan

Our comments describe our objection. First, our comments regarding site specific livestock prevention measures to reduce the introduction and dispersal of invasive plants:

“This is a terribly high concentration of invasive plants in this allotment cluster area. Why are particular invasive plants found in certain allotments and not in others? Could it be that there are different invasive species established in different permittees’ home ranches or along their particular travel routes into the allotment?” (BMBP Comment, 1st under “Invasive Plants” on p. 377)

“The FS needs to plan allotment [management] site-specifically for prevention of invasive plant introduction and dispersal.” (BMBP Comment, 3rd of ours on p. 377)

“The differences of invasive plant species found and their level of abundance between allotments suggests livestock as a potential introduction source, although there is also the need to prevent other possible sources such as vehicles (including ATVs) and subsequent prevention of livestock dispersing invasives from other sources.” (BMBP Comment, last on p. 377)

“Prevention measures for reducing introduction and dispersal of exotic invasive plants need to address livestock as an introduction and dispersal vector. For instance, it should be determined what invasive plants are established in the livestock’s home pastures so a source for that plant species from the home ranch can be traced or ruled out. Holding pens and first pastures used for the grazing season could reveal entry points for invasive plant species from other lands. Then these sources could be curtailed or successfully managed so these point sources of invasive plants do not continue to introduce them onto National Forest lands.” (BMBP Comment, 1st on p. 378)

“Why is the FS planning to maintain livestock grazing in invasive plant infested areas, and thus allow livestock to further spread the invasive plant populations? This is not the prevention emphasis required by the R6 Invasive Plant Management Plan FEIS. The least the FS can do is to keep livestock out of invasive plant infested pastures and track any livestock introduction of invasives and stop the source.” (BMBP Comment, 3rd on p. 378)

BMBP Comments on the contribution of the planned 95 water developments’ ground disturbance to the establishment and distribution of invasive plants:

“Why does the proposed alternative have a higher risk rating by number of points for invasive plants than Alternative 3, existing current use without improvement? The FS is supposed to be reducing invasive plants, not increasing them. Could it be that 95 planned water developments would cause excessive ground disturbance plus livestock as vectors would not be significantly reduced?” (BMBP Comment, 2nd on p. 378)

The Forest Service response admits: “The degree of risk is affected by factors such as species of weed, infestation size and degree of heavy equipment use, and proximity of an activity to existing infestation. Alternative 2 includes more points than Alternative 3 because of the use of heavy equipment and disturbance related to restoration and improvement projects.” (FEIS p. 378) In other words, the answer is yes: The 95 planned water developments would be a significant increased risk for invasive plants over existing management, along with similar impacts from proposed riparian restoration activities. Thus the No Action alternative would be the most beneficial to reducing invasive plants of the three alternatives by removing livestock and allowing for passive restoration to take place without more ground disturbance.

Other comments by BMBP on this objection issue include the following on FEIS pages: 378 (4th, 5th, 6th and 7th) and 379, 1st comment.

BMBP has commented on their objection that the prevention emphasis regarding preventing all sources and vectors of invasive plants (including livestock) under the Region 6 Invasive Plant Management Plan is not being followed effectively enough in the Bear Creek Cluster Allotment Management Plans as quoted and cited above.

Resolution

To resolve this objection, please consider and adopt the following resolution remedies that BMBP advocates to make the existing and planned prevention plans more effective:

We appreciate the prevention measures already being taken by the Forest Service as reflected in their response to our comments, including weed identification workshops for FS staff and permittees and requiring holding and feeding for several days when livestock enter the Forest from pastures known to be infested with invasive plants (but this should be standard, not just when pastures are already known to be infested.) However checking holding pens and first pastures, as well as cattle trail routes, riparian areas and livestock trough areas, tracing back invasive plants to areas where a particular permittee’s cattle or sheep congregate could yield significantly more efficient prevention measures by identifying the source and controlling and monitoring more infestations. I have seen invasive plants sprouting up from the middle of cow pies from seed within the scat. Disturbed areas could potentially be re-vegetated with native plants.

We also support use of all the planned prevention measures in Table 134 of the FEIS. However we are concerned that the Table 133 measure of “When cause/effect relationship is established between grazing and weeds, close pastures or portions thereof until infestations are controlled” is essential for prevention of continued livestock distribution of invasive plants yet it was rejected by the Forest Service on the weak grounds of expense and an overly narrow purpose and need confined to providing grazing privileges. First, expense to whom? Not to the general public or the Forest Service but to the permittees allowing the problem to continue. Invasive plant control is ever more expensive without prevention and the costs are borne by taxpayers via the Forest Service. Second, livestock grazing may be allowed where it doesn’t conflict with other resource values under the Forest Plan. There is no carte blanche to allow livestock use no matter what the consequences may be. Introducing and/or dispersing invasive plants conflicts with the need to preserve sensitive plants, plant biodiversity, and associated wildlife habitat. Invasive plants may also displace native plants that would otherwise better retain water or keep streambanks stable in riparian areas and could negatively impact macroinvertebrates needed by fish for prey. These are

some of the conflicts between livestock grazing with insufficient abatement of invasive plant introduction or dispersal and other resource (life source) values under the Forest Plan. Further, failure to implement this prevention measure directly conflicts with the related Table 134 prevention measure (considered feasible and incorporated as a project design feature) of avoiding or minimizing disturbance within existing infestations. Livestock use increases disturbance within existing infestations. Closing “pastures” or portions of “pastures” until infestations are controlled is a reasonable action to take that does not preclude livestock grazing elsewhere. This could be done with a few pastures at a time if all pastures are affected but it would be far more effective if all affected pastures were made off limits at once until the infestations are controlled. Some of the invasive plants at issue may not be traced to livestock but to other causes. Not to take this prevention measure (the 2nd in Table 133) is arbitrary and capricious and will doom prevention efforts to ineffectiveness.

It is also not difficult or expensive to “encourage” livestock permittees to maintain weed free feedlots and parking and staging areas (the 3rd measure in Table 133 that was rejected)—especially as the Forest Service is already giving invasive plant identification workshops to permittees involved in the allotments. Why not include information on invasive plant prevention in these workshops? A venue is already established. This is an especially easy task when permittees are being cooperative, which they seem to be, based on their comments in Appendix D. (See FEIS pp.292-293.)

Proposed remedies to resolve this objection can also be found in our comments: “Closing pastures when and where needed should be an option, as multiple values must be protected under the Forest Plan. Allowing livestock to use invasive plant infested pastures is not avoiding or minimizing disturbance.” (BMBP Comment, 4th on p. 378) “Livestock entry points and hot spots of invasive plants should be inspected. Timber sale landings and skid trails lead to dispersal of invasives by livestock.” (BMBP Comment, 1st on p. 379)

III. The Bear Creek Cluster Allotment Project Would Violate the Endangered Species Act

We are very concerned that the Forest Service is not adhering to the intent and management guidance of the Endangered Species Act. We are concerned by Forest Service disregard for the need to maintain sufficient suitable habitat and conditions to prevent a trend toward federal uplisting for Threatened-listed Gray wolf; Threatened-listed Steelhead trout; Sensitive-listed Redband trout; and Sensitive-listed plant species (as identified in the EIS or other documentation for the area.) All of these species have known active or potential suitable habitat in the Bear Creek Cluster Allotment area that is potentially threatened by proposed action management plans. We are also concerned by potential effects to Sensitive Columbia Spotted frog but presence of this species in the allotment area, suitable habitat available and potential effects to Columbia Spotted frog were apparently not included as part of the DEIS analysis.

Our comments explain our concerns regarding violation of the Endangered Species Act through degradation or elimination of suitable and core habitat setting back species recovery, threatening loss of population viability, or otherwise contributing to a federal uplisting trend for the species:

Our comments re: Threatened-listed Gray wolf:

“We are very concerned that continued livestock grazing would threaten the viability of Gray wolves on the Ochoco due to livestock/wolf conflicts or perceived threats leading to their extermination. Wolves have recently been seen on the Ochoco NF and we want to be able to see them recover fully on the Ochoco and across Eastern Oregon.” (BMBP Comment, p.379, 1st of ours under “Impacts to Wildlife”)

“The DEIS does not analyze potential effects to wolves from continued livestock grazing in the foreseeable event that wolves become established resident packs in the area.” (BMBP Comment, 2nd on p. 379)

“Wolves need to be able to forage for prey during dispersal without being shot or otherwise killed, for full recovery.” (BMBP Comment, 3rd on p. 379)

Re: meeting the need for Gray wolves’ suitable prey:

“We support the No Action alternative for being more beneficial to elk and deer recovery to greater abundance and meeting management objectives.” (BMBP Comment, last on p. 379)

The following are reasons why we support the No Action alternative over continued livestock grazing: Elk are known to avoid livestock, as well as having to compete for forage with livestock, narrowing the area where they graze and causing more energy expenditure through disturbance. For both elk and deer, concentrated livestock use of riparian areas is problematic as these areas provide the most nutritious forage, which is badly needed by both species for fat reserves to survive harsh winters. Mule deer are declining on both the Deschutes and the Malheur National Forests, likely from a combination of factors, including hunting, poaching, loss of adequate hiding and thermal cover through logging, and competition with cattle for nutritious forage. Such Mule deer decline could also be taking place on the Ochoco National Forest.

Our comments supporting our objection re: Threatened Steelhead trout and Sensitive Redband trout:

“Overall, the 26,364 acre Trout Creek Allotment is in ‘not properly functioning’ condition for Sensitive species habitat/channel morphology and riparian hardwood shrub and tree cover and only functioning at risk for stream temperature and sediment/turbidity, all the subwatershed conditions and impairments measured. (See Table 99 DEIS p. 160) yet there are both mid-Columbia River Steelhead (Threatened) and Sensitive Redband trout in the Foley Creek subwatershed of this allotment and in the headwaters Trout Creek subwatershed (see DEIS p. 163 and 168) and in the Opal Creek subwatershed (DEIS p.170) and Redband trout are in the Upper McKay subwatershed.” (BMBP Comment, last on p.390 to 1st on p.391)

The Forest Service response admits: “The commenter is correct that stream conditions in many reaches in the Trout Creek watershed are not properly functioning, especially in terms of large woody debris, pools, and riparian hardwood vegetation. We recognize that stream conditions are degraded, especially for Mid-Columbia River steelhead and redband trout.” (FEIS p. 391)

Our comments specifically addressing resolution remedies for Steelhead trout:

“Don’t allow turnout of cattle or sheep prior to July 15th (or the date set by the fisheries biologist later than that) wherever anadromous fish inhabit an allotment stream or were historically present.” (BMBP Comment, 3rd of ours on p. 374)

“Prohibit turnout of cattle or sheep prior to July 15th (or the best date for protecting Steelhead redds) for any pasture with Steelhead critical habitat, including the Bridge Creek pasture. Better yet, completely fence off all the Steelhead critical habitat or close those associated pastures to livestock use.” (BMBP Comment, 4th of ours on p. 374)

“We are concerned that current plans to simply use ‘temporary’ barriers or consider whether to change the timing of turnout will potentially miss or not protect vulnerable Steelhead redds. This is a Threatened-listed fish in danger of extirpations and eventual extinction, so protection must be prioritized.” (BMBP Comment, last on p. 374)

“Cattle can obviously trample and destroy Steelhead trout redds—what if a redd is not seen by the surveyor? This is insufficient protection of threatened reproductive habitat.” (BMBP Comment, 1st on p. 375)

See also our many comments relating to needed greater protection of fish habitat from livestock impacts under INFISH/PACFISH violations and Clean Water Act violations.

Our comments supporting our ESA objection concerning Sensitive plant species:

“We are concerned by continued livestock impacts to Sensitive plants with known occurrence in the planning area or moderate probability of occurrence—both from direct grazing and trampling and from increased introduction and dispersal of exotic invasive plants. Dewatering of streams and other water sources by livestock could also contribute to the loss of Sensitive and rare plant populations. Riparian and meadow-associated Sensitive plants are especially at risk, including Botrychiums, sedges, Mimulus, willows, Peck’s mariposa lily, and others. (BMBP Comment, last comment on p. 381)

“Prohibit and exclude all livestock use within or adjacent to fens. Fens can’t be easily restored once degraded or destroyed. (See DEIS science citations, p. 282). Fen ecosystems contribute disproportionately to local levels of plant biodiversity, especially re: rare and uncommon plant species. See DEIS p. 282. We are very concerned that the largest, most biologically diverse fen on the Ochoco is within the Bridge Creek pasture of the Elkhorn Allotment and that documented fens also occur within the Indian Prairie pasture of the Bridge Creek Allotment, both presumably open to livestock grazing, trampling, and de-watering. There should be systemic fen surveys within the project area and the Ochoco.” (BMBP Comment, last p.380-1st p. 381)

“So why are other riparian sensitive [plant] species not clearly identified as being threatened with extirpation in Oregon, being on the ORBIC list? (See DEIS p. 281-282). Are some of these species less at risk?” (BMBP Comment, 4th on p. 380)

Other BMBP comments supporting our ESA objection regarding the allotment management plans contributing to an upward listing trend for Sensitive plant species include our comments on the following FEIS pages: p. 380 (1st, 3rd and 5th) and p. 381 (2nd and 3rd comments, mid-page.)

Resolution:

Blue Mountains Biodiversity Project has extensively commented on our objection regarding violations of the Endangered Species Act. See our comment quotations and citations in the paragraphs above. Some of the species addressed in this objection have remedies cited under NFMA—MIS and other species viability above, that are also applicable to the ESA violations. Additional partial resolutions are by species below:

Re: Sensitive Redband trout and Threatened Mid-Columbia River Steelhead trout: See our resolution remedies above for Steelhead trout and our recommended resolution remedies under INFISH/PACFISH and Clean Water Act violations above and below.

To be clear, we are asking the Forest Service to completely fence off all the Steelhead critical habitat or close those associated pastures to livestock use.

Re: Gray wolf:

*Retain more good security cover and forage for elk and deer in riparian areas by closing to livestock use those riparian areas that are rated as not properly functioning or as functioning at risk or that are otherwise not meeting multiple Riparian Management Objectives.

*Choose the No Action alternative (the most beneficial for assuring recovery of Gray wolves) or reduce potential livestock/wolf conflicts by requiring permittees to take preventive measures such as flagging; red lights at night; guard dogs; fencing; active herding; carcass removal; etc. and keep livestock away from known wolf rendezvous and denning sites—and by closing areas to livestock use as needed. The Forest Service should do their part to educate the public about the ecological benefits of wolves and ways of preventing livestock/wolf conflicts--that is, to assist in ensuring wolf recovery in Oregon and elsewhere.

Re: Sensitive plants:

Our comments suggest multiple resolution remedies. The FEIS responses to our comments don't show any adoption of these remedies:

"Prohibit livestock grazing use in known Sensitive plant population areas, including the 45 acres of Peck's Mariposa lily in the Bear Creek Cluster Allotment area—or completely exclude livestock from all these Sensitive plant areas." (BMBP Comment, 1st on p. 380)

Sensitive plants on ORBIC lists 2 and 3 should also have been analyzed for protection in the DEIS based on the FEIS response to our comment (4th on p.380) and should be buffered from livestock through exclusion of livestock from those areas where these plants are found.

"Obviously excluding livestock use from potential habitat for the three Sensitive sedge species should also be proposed [and implemented] since the three Carex species are all considered to be threatened with extirpation from Oregon..." (BMBP Comment, 5th on p. 380)

"Prohibit and exclude all livestock use within or adjacent to fens..." (BMBP Comment, 6th on p. 380)

"Exclude all Ricegrass Sensitive species habitat from livestock grazing due to direct damage to biological crusts through livestock trampling (with only very slow recovery) and to acknowledged introduction and dispersal of competing invasive exotic plants from livestock." (BMBP Comment, 2nd on p. 381)

"Livestock should be completely prohibited on lithosol ('scabland') habitat to protect fragile soils and Sensitive plants associated with lithosol habitat, including the Ochoco lomatium and the spiny flame flower." (BMBP Comment, 3rd on p. 381)

Exclude livestock from riparian and wet meadow habitats to protect plant biodiversity and sensitive plants. (See our comment, last on p. 381)

See also our INFISH/PACFISH remedies regarding riparian habitat protection measures and our resolution remedy of either fencing off occupied or critical habitat for Threatened Steelhead trout or closing associated pastures to livestock use, which would also help protect Sensitive riparian plants and plant biodiversity.

IV. The Bear Creek Cluster Allotment Management Plans Would Violate the Clean Water Act

Examples of our comments regarding water quality and potential violations of the Clean Water Act:

"Notably there is no timeline for streambank stability recovery for the proposed action. No timeline is given for riparian vegetation recovery under the proposed action, while recovery time is predictable with no livestock use (passive restoration.) Is there science supporting channel morphology recovery under the proposed action management in 15 years? Often the riparian recovery changes under continued livestock use are so slow and minimal as to never attain RMOs or meet Forest Plan standards and other legal requirements, such as those under the Clean Water Act, while science supports full recovery of riparian conditions within predictable timeframes with no livestock use." (BMBP Comment, 2nd on p.389)

The Forest Service response to this comment admits: "There is no good literature available that is applicable for this area in terms of recovery in relation to our proposed action." (FEIS p. 389)

"The Snowshoe Allotment is an example of no data collected over almost all of the 2,658 acres, including no data for Sensitive species habitat and channel morphology, stream temperatures, sediment/turbidity, and riparian hardwood plant cover (see Table 93, DEIS p. 154)." (BMBP Comment, 3rd on p. 390)

The Forest Service responds in part: "The commenter is correct that very little data was collected in the Snowshoe Allotment....PFC ratings showed stream reaches that were functional at risk with an upward trend toward recovery." (FEIS p. 390)

"Overall, the 26,364 acre Trout Creek Allotment is in 'not properly functioning' condition for Sensitive species habitat/channel morphology and riparian hardwood shrub and tree cover and only functioning at risk for stream temperature and sediment/turbidity, all the subwatershed conditions and impairments measured. (See Table 99 DEIS p. 160) yet there are both mid-Columbia River Steelhead (Threatened) and Sensitive Redband trout in the Foley Creek subwatershed of this allotment and in the headwaters Trout Creek subwatershed (see DEIS p. 163 and 168) and in the Opal Creek subwatershed (DEIS p.170) and Redband trout are in the Upper McKay subwatershed." (BMBP Comment, last on p.390 to 1st on p.391)

The Forest Service response admits: "The commenter is correct that stream conditions in many reaches in the Trout Creek watershed are not properly functioning, especially in terms of large woody debris, pools, and riparian hardwood vegetation. We recognize that stream conditions are degraded, especially for Mid-Columbia River steelhead and redband trout." (FEIS p. 391)

"There is a strong disconnect between streams being rated as 'proper functioning condition' yet greatly exceeding state water quality standards for 7 day average maximum water temperatures. See Table 90 for Bridge Creek on DEIS pp. 150-151." (BMBP Comment, 2nd on p. 390)

The Forest Service clarified that Table 90 shows 5 exceedances >18 degrees Celsius in over 1,300 survey days from 1994 to 2010, so considers Bridge Creek stream temperatures to be properly functioning. (See FEIS p. 390)

Other BMBP comments supporting this objection include some of our comments under INFISH/PACFISH violations and our 1st comment on FEIS p. 371 regarding our field observations of apparent loss of water retention in creeks that appear to be perennial, well defined stream channels in Eastern Oregon.

Resolution

Blue Mountains Biodiversity Project has commented on our objection that planned management actions could violate the Clean Water Act. See our related comments quoted and cited in the paragraph above. See also our comments and proposed resolution remedies under INFISH/PACFISH violations which are applicable to the Clean Water Act

"We want the selected alternative to be changed to keep livestock out of all riparian areas, including all stream categories, seeps, fens, springs, etc. We want exclusion of livestock from all RHCAs, including flood plains, since livestock use seems to be incompatible with full riparian recovery. Separate water developments outside of RHCAs could be used but otherwise only fencing and closure of pastures with riparian areas are likely to work." (BMBP Comment, 3rd on FEIS p. 389) To clarify, we are not convinced that water developments, active herding, and active riparian restoration, etc. as planned will be enough to meet the requirements of the Clean Water Act and the Eastside Screens PACFISH/INFISH riparian management objectives and related standards.

Inadequate Analysis and Mitigation Regarding Effects to Climate Change

The Forest Service fails to accept responsibility for their increasing contributions to climate change through the effects of livestock grazing, including soil carbon storage reduction and loss of water retention through continued livestock grazing in an area with already degraded riparian conditions. See our related comments below:

“While we greatly appreciate the significantly increased and updated riparian monitoring by the Forest Service, the lack of ‘historic’ monitoring prior to 2011 makes it impossible to establish trends more than 3 years old on many riparian parameters and thus to judge causality and determine accountability for current conditions at the critical juncture of allotment permit renewal consideration. This is very frustrating, as any negative trends caused by livestock need to be effectively corrected—especially given the cumulative effects with climate change to water retention, plants, and wildlife.” (BMBP Comment, 3rd on p. 370)

“The DEIS has inadequate analysis of known livestock industry and animal contributions to climate change effects by simply dismissing the Bear Creek AMP project from falling within major contributors of greenhouse gas emissions identified by the IPCC. Yet surely livestock use falls under ‘Agriculture’ due to their feed and ranching as part of agriculture. This dismissal also ignores the Union of Concerned Scientists’ recent statement that we need to move away from eating meat to a plant-based diet to effectively combat climate change. Thus the DEIS analysis fails to consider best available science.” (BMBP Comment, last on p. 391-1st on p. 392)

“We are very concerned that there are indications of meadows being de-watered and of drops in the water table (see DEIS pp. 51, 53). It’s especially crucial to manage for maximum water retention in this period of extreme climate change, which will likely lead to increased summer droughts, water loss, and poor forage conditions. Livestock are placed in direct competition with wildlife for water and forage in such times. Wildlife should take priority over livestock as they have no other options and are essential to natural ecological functioning, whereas livestock are essentially invasive exotic species.” (BMBP Comment, 4th on p. 369)

“Lowering of the water table and de-watering of meadows are critical to not accept as the new norm. We are concerned that global warming trends are leading to unsuitable conditions for livestock grazing on such marginal lands and to declines in riparian conditions as permittees would have harder times meeting standards.” (BMBP Comment, 5th on p. 369)

These issues identifying livestock grazing as a source of Greenhouse gas emissions, broader effects of livestock industry practices exacerbating negative climate change effects, and implications of extreme climate change for the future of livestock production on marginal lands (as identified in our comments above) were not addressed in the DEIS and thus were not subject to public consideration of related analysis and public comment responding to these issues. The Forest Service response to our comments related to climate change discusses exclusion of cattle from a meadow upon signs of de-watering, monitoring in another meadow, restoration actions for the first meadow in 2019 and planned restoration for the other meadow to reconnect the water table. These are addressing mitigation after the damage is done and miss our point about the need for detailed analysis and preventative action to assess and prevent exacerbation of negative climate change effects from livestock use of marginal and already management-damaged lands.

Forest Service staff are apparently under orders from D.C. to use stock language that evades agency responsibility for climate change effects even though climate change is contributing to the 6th mass extinction; devastating storms and flooding; more extreme future wild fires; droughts and famines; mass emigrations of people sparking conflicts over available resources and sea level rise inundating major cities, occupied islands, and other low elevation parts of countries around the world. All of this is readily available information in best available current science that the Forest Service is ignoring despite climate change having reached extreme conditions that threaten to unravel intricately connected ecosystems and make human civilization impossible to maintain (if we reach 5 degrees Celsius average global warming, according to at least one climate scientist.) According to Robert Watson of NASA and formerly of the IPCC, the world is now on track through built-in climate change commitment through emissions to be locked into a 3 degree Celsius global average warming, which indicates that we could reach 5 degrees Celsius.

It is arbitrary and capricious for the Forest Service not to consider and greatly reduce the contributions to climate change that their proposed management actions cause. There is no law that we know of that lets the Forest Service off the hook for taking responsibility for their actions

causing environmental impacts. Obviously climate change is the global crisis of our time and is caused by cumulative impacts that add up from emissions the Forest Service dismisses as negligible and interactive root causes the Forest Service ignores to contribute to the situation we have today where the balance and integrity of ecological systems are starting to collapse. The fact that we currently have a rogue government busy dismantling environmental protections does not mean that the Forest Service should be free to disclaim responsibility for significant combined greenhouse gas emissions and other climate change exacerbating management contributions across the country. The Forest Service is not above the law.

Resolution

BMBP has commented regarding Forest Service failure to acknowledge and mitigate their contributions to catastrophic climate change through continued livestock grazing in the Bear Creek Cluster Allotment area. See our comments quoted and cited in the paragraphs above.

To resolve this problem, the Forest Service needs to make the following modifications to the Bear Creek Cluster Allotment Management Plans:

- *Retain more soil sequestration and storage of carbon by prohibiting livestock use in sensitive soil areas and in pastures that are not adhering to Forest Plan detrimental soil impact standards, or are not attaining Riparian Management Objectives, which include down wood abundance, streambank stability and riparian hardwood abundance, which contribute to carbon sequestration by soils.

- *Reduce or phase out livestock impacts to climate stability by following our remedies under INFISH/PACFISH and the Clean Water Act to better ensure water retention and riparian ecological functioning within the allotment cluster area .

- *Adopt our proposed remedies for Endangered Species Act violations to help stem the rising tide of species extinctions and loss of biodiversity, including loss of plant biodiversity and climate change threats to already Threatened and Sensitive fish species that are exacerbated by livestock use of riparian areas.

- *Scale down livestock damage to ecological integrity on public lands (some of the most intact wildlife habitat left) by excluding livestock from vulnerable riparian areas, including riparian areas currently not properly functioning or functioning at risk and failing to meet multiple Riparian Management objectives.

- *Otherwise, if the above remedies are not adopted, the Forest Service should select the No Action alternative or re-issue a Draft Environmental Impact Statement open for public comment for this allotment project that thoroughly analyzes livestock and agency responsibility for climate change and provides a full range of alternatives that could address potential impacts from livestock use to climate change and from climate change conditions to sustainable livestock use of already damaged and marginal lands.

Thank you for your consideration of these objections. We look forward to meeting with you to work on a resolution to our concerns. Many remedies for resolution were suggested throughout our comments.

Sincerely,



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