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**Comments submitted via email to:** [comments-southwestern-lincoln-sacramento@FS.fed.us](mailto:comments-southwestern-lincoln-sacramento@FS.fed.us)

### Comments on NMMJM Sacramento EA

Dear Ms. Humphrey,

WildEarth Guardians respectfully submits these comments on the NMMJM Habitat Improvement Projects on the Sacramento Grazing Allotment Draft EA. We appreciate the efforts of the Forest Service to address issues currently facing the New Mexico Meadow Jumping Mouse (NMMJM) and other ESA-listed species in the Sacramento allotment. However, we're concerned that the proposed project does not adequately conserve and recover NMMJM, Mexican Spotted Owl (MSO), Sacramento Mountains Thistle and their habitats, and could lead to further declines of these species.

- I. The stated Purpose and Need is too narrow and does not provide for the conservation and recovery of the NMMJM

The EA states that "The purpose of this proposal is to protect and improve the NMMJM critical habitat within the Sacramento Grazing Allotment by reducing impacts such as grazing and recreation, which decrease the cover and food essential for the continued survival of the NMMJM, while continuing to allow for livestock grazing and recreational activities." EA, p. 6. By focusing solely on critical habitat, however, the purpose and need – and thus the project itself – doesn't adequately address the recovery and viability of this isolated population of NMMJM. Viability is "the ability of the species to persist over the long term and, conversely, to avoid extinction." Recovery Outline, New Mexico Meadow Jumping Mouse, U.S. Fish & Wildlife Service, June 2014 (2014 Recovery Outline), p. 3. "To address the current status of the mouse and work toward long-term viability and recovery of the subspecies, recovery efforts should preferentially focus on restoring habitats and increasing the connectivity among suitable areas. The expansion of all remaining populations is an immediate and long-term need for the jumping mouse." Id., p. 8.

A more appropriate Purpose and Need, and one that complies with the ESA and the 2014 Recovery Outline, would provide for the protection, improvement and *increased connectivity* of NMMJM critical habitat *to expand the current NMMJM population and ensure its long-term viability*.

Due to the limited nature of the EA's Purpose and Need, as explained in detail below, neither of the alternatives (no action and the proposed action) adequately protect or restore critical habitat, fail to provide for increased connectivity and will not ensure the long-term viability of this NMMJM population.

II. The Forest Service is required to prepare and Environmental Impact Statement (EIS) for this project

NEPA requires that federal agencies must prepare an EIS for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). According to the NEPA regulations, determining significance requires considerations of both context and intensity. 40 C.F.R. §1508.27. "Intensity" refers to the severity of the impact. *Id.* When evaluating intensity, the Forest Service must consider a number of factor including, but no limited to, "[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas," and "[t]he degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973." 40 C.F.R. §1508.27(b)(3) and (9).

This project affects wetlands, critical ecological areas, and three ESA-listed species and their critical habitats - MSO, Sacramento Mountain Thistle and NMMJM. Wetlands and riparian areas in the project area have already been significantly impacted by livestock grazing and the associated facilities and developments. According to the EA, the proposed livestock grazing and associated developments and facilities will have additional impacts on wetlands and riparian areas. These impacts may be significant and include the spread of invasive and non-native species, direct impacts from grazing and construction of developments and facilities in wetlands and riparian areas, and removal of water from springs and streams. The EA found that the project is likely to adversely affect each of the ESA-listed species, as well as a number of Management Indicator Species and Regional Forester Sensitive Species. Because these affects may significant, including harming and even killing species and destruction of critical habitat, the Forest Service is required to prepare an EIS for this project.

III. The Forest Service is required to analyze a reasonable range of alternatives that comply with the ESA and the Forest Plan

NEPA regulations are generally meant to apply to EAs as well as to EISs. That is so because these NEPA obligation derive from Section 102(2) of the statute. 42 U.S.C. § 4332(2); 40 C.F.R. § 1500.3. Section 1500.3 states that "Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions" of NEPA, and that "[t]hese regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements)." 40 C.F.R. § 1500.3. Rather, "[t]he regulations apply to the whole of section 102(2)." *Id.* And an EA is expressly required to evaluate "alternatives *as required by section 102(2)(E).*" 40 C.F.R. § 1509.8(b) (emphasis added).

The "heart" of a the NEPA document is the analysis of reasonable alternatives. 40 C.F.R. § 1502.14. An agency "should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis of choice among options by the decision-maker and public. *Id.* To comply with the regulations implementing NEPA, an agency must "rigorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a). "Without substantive, comparative environmental impact information regarding other possible courses of action, the ability of an EIS to inform agency deliberation and facilitate public involvement would be greatly degraded. *New Mexico ex rel. Richardson v. Bureau of Land Mgt.*, 565 F.3d 683, 708 (10th Cir. 2009) (citing *Baltimore Gas and Elec. Co. v. Nat. Resources Def. Council, Inc.*, 462 U.S. 87 (1983)).

In addressing the range of alternatives, the Tenth Circuit applies a “rule of reason” to determine whether an EIS analyzed sufficient alternatives to allow an agency to take a hard look at the available options. *Id.* at 709. The “rule of reason” measures the reasonableness of the alternatives considered against two guideposts: (1) when an agency proposes an action pursuant to a statute, “an alternative is only reasonable if it falls within an agency’s statutory mandate; and (2) “reasonableness is judged with reference to an agency’s objectives for a particular project.” *Id.*

Here, the Forest Service analyzed only two alternatives – the no action and the proposed action. While the stated purpose of the project is to protect and improve the NMMJM critical habitat within the Sacramento Grazing Allotment, neither alternative does so sufficiently to comply with the agency’s mandates under the ESA, NFMA and the Forest Plan to conserve and recover the NMMJM and ensure its long-term viability. In particular, all alternatives must, at a minimum, comply with the requirements of the 2014 Recovery Outline and address those portions of the Biological Opinion from the U.S. Fish & Wildlife Service, dated October 20, 2016 (“2016 Bi-Op”) that the Forest Service has failed to comply with to date, and the ramifications of that non-compliance (i.e., take of listed species beyond that authorized in the BiOp’s Incidental Take Statement).

The no action alternative does not comply with the agency’s duty to conserve and restore NMMJM and its habitat. According to the EA, “[t]he no action alternative would continue use of the existing improvements with none of the proposed improvements being developed to help mitigate seasonal livestock use within sensitive areas for the NMMJM.” EA, p. 30. Thus, NMMJM habitat will continue to be negatively impacted by existing management activities, including livestock grazing, and the sole remaining population will continue to decline. Note that this is contrary to the EA’s claim that “no effect to the species and its critical habitat is expected” from the no action alternative. See EA, p. 35.

Nor does the sole action alternative (the proposed action) comply with the agency’s duty to conserve and restore NMMJM and its habitat to ensure its long-term viability. The Forest Service’s recovery efforts should be focused on restoring habitats and increasing the connectivity of suitable areas. “Because the jumping mouse requires such specific suitable habitat conditions, populations have a high potential for extirpation when habitat is altered or eliminated. When localities are extirpated there is little or no opportunity for natural recolonization of the area due to the species’ limited dispersal capacity and the current conditions of isolated populations.” Recovery Outline, p. 6. Unfortunately, the proposed action allows for the continued destruction of critical habitat, fails to focus on increasing connectivity, and thus does not ensure against extirpation.

According to the EA, “[t]he fencing in Rio Peñasco would all be within an existing livestock trap. The exclosure fencing in the Rio Peñasco Trap would be constructed if annual and seasonal monitoring of impacts from livestock grazing indicated that livestock management described in the annual operating instructions was not sufficient for meeting the habitat requirements for the NMMJM.” EA, p. 10. Does this mean that the permanent fencing is not going to be constructed at this time? Has the temporary fencing enabled this area to meet NMMJM habitat requirements? Is this area occupied or unoccupied critical habitat? If unoccupied, why is it currently unoccupied? What has past and ongoing monitoring of impacts from livestock grazing and monitoring for NMMJM found here? What evidence does the Forest Service have that the proposed grazing system (up to 14 days of use during the spring and fall) will adequately conserve and restore NMMJM and its habitat? How many cows will be within this section of NMMJM habitat during these 14 days? WildEarth Guardians believes that this area should be fenced immediately. At a minimum, the EA should have included an alternative that analyzed this and included information on the current condition of this area, whether it’s meeting NMMJM habitat conditions, and

the extent that this area is important to improve habitat connectivity. This is especially important given the permittee's persistent failure to meet stubble height and utilization standards.

According to the EA, "[n]ot all critical habitat would be fenced, the fencing would focus on areas known to be occupied by the NMMJM and areas that were previously fenced with temporary fencing that would improve habitat connectivity. Approximately 100 acres would be fenced; 60 acres in Wills Canyon and 40 acres in Rio Peñasco" EA, p. 10. According to the 2016 Bi-Op, p. 30: "Areas designated as critical habitat for the jumping mouse in this unit incorporate the only habitat known to be occupied by the species since 2005 within the Sacramento Mountains with the capability to support the breeding and reproduction of the species. Within the action area, there are 31 hectares (77 acres) of occupied designated critical habitat and 183 hectares (453 acres) of unoccupied designated critical habitat on the Forest excluding private land inholdings that is deemed suitable for jumping mouse and that contains the PCEs."

Thus, out of 530 acres of critical habitat, only 100 acres will be protected from livestock grazing and other uses. The EA also states that "some large areas of critical habitat outside of the livestock trap would remain open in Willis Canyon." EA, p. 11. We believe that allowing continued grazing in large areas of critical habitat does not adequately protect and restore NMMJM habitat in violation of the Forest Plan, the ESA and the NMMJM Recovery Outline. The EA's preferred alternative should protect all 530 acres of critical habitat and include at least one other action alternative that fences well over 100 acres of critical habitat.

In addition, the U.S. Fish and Wildlife Service states that the NMMJM needs patches of suitable habitat of at least 68 to 181 acres and relatively close together to support resilient and viable populations of NMMJM.

The ability of jumping mouse populations to be resilient to adverse stochastic events depends on the robustness of a population and the ability to recolonize if populations are extirpated... In considering the area needed for maintaining resilient populations of adequate size with the ability to endure adverse events, we estimate that resilient populations of jumping mice need suitable habitat in the range of at least about 27.5 to 73.2 ha (68 to 181 ac) along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals. This distribution and amount of suitable habitat would allow for multiple subpopulations of jumping mice to exist along drainages and would provide for sources of recolonization if some areas were extirpated due to disturbances. The suitable habitat patches must be relatively close together because the jumping mouse has limited dispersal capacity for natural recolonization.

Recovery Outline, pp. 5-6. Neither of the proposed protected areas meet these requirements. Further, the proposed alternative provides that fenced areas will have openings where livestock can access water and move to neighboring pastures, thus fragmenting the limited habitat that is being protected. See EA, p. 11. It is also unclear from the EA whether all 77 acres of occupied designated critical habitat will be fenced and therefore protected. All of the alternatives in the EA must comply with these and all other requirements of the Recovery Outline.

According to the EA "some of the handling facilities are located within or adjacent to critical habitat or near historical sites. Some of the handling facilities may have some adverse effects to PCEs by allowing grazing at higher use levels to riparian or upland habitat vegetation. The design features associated with the proposed action would help reduce these effects." EA, p. 37. Also, "The enhancement of the Peñasco horse trap and permitting high use would adversely affect upland PCEs for the NMMJM." Id., p. 38. Negatively impacting NMMJM critical habitat and PCEs does not comply with the agency's duty to

conserve and recover the species. All alternatives must provide for the protection, restoration and connectivity of NMMJM habitat, rather than allowing further degradation and destruction.

The Forest Service should also ensure that all action alternatives conserve and recover the Sacramento Mountains Thistle. Neither the no action nor proposed alternative do so. According to the EA, the water lanes and construction of permanent fencing could affect the thistle in a variety of ways. EA, pp. 38-40. The Forest Service must do better than including thistle individuals within the boundaries of exclosures "where possible." Id. Indeed, all action alternatives should protect Sacramento Mountains Thistle from further decline by ensuring that they are included within exclosures protected from livestock grazing.

The Forest Service must also ensure that in all alternatives, any water diversions from springs or streams do not reduce water levels to such an extent that they impact the invaluable riparian and wetland areas, which will negatively affect NMMJM, thistle, and MSO. All action alternatives must ensure adequate flows to conserve and restore these species' habitats and PCEs.

All action alternatives should also include active restoration efforts. According to the EA "[s]teep bare banks with little or no riparian vegetation would likely continue to have little or no riparian vegetation without active restoration efforts." EA, p. 65. Also, "for the full potential of restoring water quantity in the project area to be realized, active stream and riparian area restoration would need to be implemented in conjunction with the proposed action." Id., p. 66. Also, "A majority of sites along the stream channel in the upper Rio Peñasco and Wills Canyon have stream channels that are too incised for even the highest flows to access the original floodplain. High energy flows would continue in these areas and continued incision and channel widening would continue to occur unless active stream restoration is implemented to stabilize the headcuts, control the channel grade, and aid in stabilizing the adjacent banks." Id. Also, "[a]lthough the proposed action alone would result in some improvements, further action would be needed by way of active stream restoration in many areas to begin showing an upward trend. This is because many of the banks would not establish sufficient vegetation without activities such as planting, reshaping banks, and stabilizing banks using bioengineering techniques." Id. Thus, without active restoration efforts, severely degraded riparian areas will continue to negatively impact water quality, water quantity, riparian and wetland function, channel stability and, thus, NMMJM, Sacramento Mountain Thistle, MSO and other species' habitats. Active restoration is a reasonable action that should be incorporated as part of this project. WildEarth Guardians' Ecosystem Restoration Campaign partners with federal agencies to complete restoration activities of this kind.

#### IV. NEPA requires the Forest Service to analyze existing/baseline conditions and take a "hard look" at direct, indirect and cumulative impacts

NEPA requires the Forest Service to "describe the environment of the areas to be affected or created by the alternatives under consideration." 40 C.F.R § 1502.15. The establishment of the baseline conditions of the affected environment is a practical requirement of the NEPA process. In *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, the Court stated that "without establishing the baseline conditions... there is simply no way to determine what effect the [action] will have on the environment, and consequently, no way to comply with NEPA." 857 F.2d 505, 510 (9<sup>th</sup> Cir. 1988).

NEPA has dual goals: it "is intended to foster 1) informed agency decision-making and 2) informed public participation in the agency decision-making process." *Sierra Club v. U.S. Forest Service*, No. 1:09-vs-131 (March 7, 2012) (citing *Citizens' Comm. to Save Our Canyons v. Krueger*, 513 F.3d 1169, 1177-78 (10<sup>th</sup> Cir. 2008)). NEPA imposes an obligation on the Forest Service to disclose and analyze environmental information and consequences of federal action. *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983) (agency must take "hard look" at environmental consequences before taking action).

“The purpose of the ‘hard look’ requirement is to ensure that the ‘agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary and capricious.’” *Colo. Env'tl. Coal. v. Salazar*, 875 F. Supp. 2d 1233, 1250 (D. Colo. 2012) (citing *Baltimore Gas & Elec. Co.*, 462 U.S. at 97).

Federal “[a]gencies must ‘take a hard look at the environmental consequences of proposed actions utilizing public comment and the best available scientific information.’” *Biodiversity Cons. Alliance v. Jiron*, 762 F.3d 1036, 1086 (10th Cir. 2014) (internal citation omitted). This hard look “assessment of all ‘reasonably foreseeable’ impacts must occur at the earliest practicable point, and must take place before an ‘irretrievable commitment of resources’ is made.” *Colo. Env'tl. Coal. v. Ofc. of Legacy Mgmt.*, 819 F. Supp. 2d 1193, 1208 (D. Colo. 2011) (citing *New Mexico ex rel Richardson v. Bur. of Land Mgmt.*, 565 F.3d 683, 718 (10th Cir. 2009) reconsid. granted in part on other grounds, 2012 WL 628547 (D. Colo. Feb. 27, 2012). “An agency meets the ‘hard look’ requirement when it has ‘made a reasoned evaluation of the available information and its method was not arbitrary or capricious.’” *Jiron*, 762 F.3d at 1086 (internal citation omitted).

NEPA requires the Forest Service to disclose and analyze the direct, indirect, and cumulative impacts and consequences of its activities. 40 C.F.R. §§ 1502.16(a), 1502.16(b), 1508.25(c), 1508.27(b)(7). Direct effects include that “which are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). Indirect effects are those “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Cumulative impacts include “impact on the environment which results from the incremental impact of the action when added other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. Importantly, “[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.*

NEPA statutory standards found in Council on Environmental Quality (“CEQ”) regulations recognize that intelligent decision-making can only derive from high quality information. *See* 40 C.F.R. §§ 1500 *et seq.* “Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in [EISs].” 40 C.F.R. § 1502.24. Information included in NEPA documents “must be of high quality.” Accurate scientific analysis . . . [is] essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). If an agency has outdated, insufficient, or no information on potential impacts, it must develop information as part of the NEPA process.

The EA fails to analyze the existing condition of, and the direct, indirect and cumulative impacts of the proposed project on, upland vegetation and associated species’ habitats. According to the 2016 BiOp, “[m]onitoring using stubble height data indicates utilization for the 2011-2015 grazing years averaged greater than 50% in key areas of the allotment with a downward trend (USDA Forest Service 2012, 2013, 2015).” BiOp, p. 22. Further, “[t]he Forest Service changed to continuous seasonal-long grazing in 2006 as a strategy to distribute livestock and elk evenly within the summer range (USFS 2006). This strategy has not helped ameliorate long-term range degradation because the permitted forage utilization is still regularly exceeded, e.g., the average across key areas was 59.6% in 2015, 54% in 2013, 51% in 2012 (USFS 2012, 2013, 2015).” *Id.* The BiOp further explains the historic issues with stocking levels exceeding the allotment’s grazing capacity on the allotment and which resulted in degraded range conditions. *Id.*, p. 20. Yet despite the long-term overstocking, failure to meet utilization levels and resulting degradation, the EA is devoid of information on the existing conditions of the uplands across the allotment.

The Forest Service should conduct a stocking level analysis as part of this project. Clearly, stocking levels are too high and the Permittee has failed to comply with the terms and conditions of their permit. The Forest Service should determine whether a reduced stocking rate is necessary.

The Forest Service is proposing a number of new facilities and water developments to better distribute livestock away from NMMJM habitat. It's well known that the impacts of livestock grazing are significant near developments such as water developments, traps and corrals, and that those significant impacts radiate out from such development for a considerable distance. These significant impacts include the overutilization of native species, particularly grasses and forbs, and the spread of non-native undesirable and invasive plant species. According to the EA:

most of the invasive plant populations are spreading at a rate faster than can be effectively treated or managed (estimated increase of 11,000 acres between 2002 and 2015, [USDA FS 2015](#)). This is partially due to the need for an innovative adaptive management approach, which the new *Integrated Non-native Invasive Plant Management Project* would provide but it is also largely the result of a lack of funding. For such a situation, it is worth noting Executive Order 13112 ([Federal Register 1999](#)), which directs federal agencies to identify actions that may affect the status of an invasive species. E.O. 13112 requires federal agencies whose actions may affect the status of invasive species to, among other things, respond to and control populations of invasive species and provide for restoration of native species and habitat conditions in ecosystems that have been invaded by non-native invasive species. It also directs federal agencies to not authorize, fund, or carry out actions likely to cause the introduction or spread of invasive species unless the benefits of the action clearly outweigh the harm and the agencies take steps to minimize the harm.

EA, p. 71.

The EA states that areas around existing traps, corrals, tanks and other developments are invaded by less desirable and invasive species. EA, pp. 27-29. But how many acres have been impacted? The EA does not analyze upland vegetation outside of the immediate area of these heavily impacted sites. What is the existing condition of upland vegetation and species habitats' relative to what they should be? What are the Forest Plan standards, desired conditions, and requirements for managing upland vegetation and what is the FS going to do to meet these requirements given the increased livestock pressure in the uplands and historic over-use? How will the new developments and facilities impact the immediate areas where they will be located and how far will those impacts spread beyond that immediate area? How many acres will be impacted? How far will the invasive species spread? Importantly, what steps is the Forest Service going to take to comply with E.O. 13112 to minimize the harm of the new developments and more dispersed grazing, respond to and control populations of invasive species, and provide for restoration of native species and habitat conditions? These steps must be incorporated into the proposed project and analyzed in the EA.

While the EA identifies a number of new water developments and facilities, it does not provide specifics on where they will be located. EA, pp. 11-12. The EA appears to leave this until some later date. Unfortunately, by doing so, the EA fails to analyze the direct, indirect and cumulative impacts of these developments and thus the Forest Service excludes the public from reviewing and commenting on them. Pursuant to NEPA, this information must be included in the EA.

Given the fact that the purpose of this project is to protect and improve the NMMJM critical habitat within the allotment, we are surprised at the lack of analysis of existing conditions and direct, indirect and cumulative impacts to the species. The Forest Service's analysis of existing/baseline conditions fails to

provide sufficient information relative to the habitat requirements for NMMJM. See EA p. 34. The EA provides only one small paragraph on actual habitat conditions determined through monitoring since 2015. Id. What vegetation species currently exist relative to what should be there for NMMJM? What is the current status of the NMMJM population within the project area – has the population increased or declined since the 2016 BiOp? This baseline information is essential for the Forest Service to identify an adequate range of alternatives and develop proper mitigation and monitoring protocols, for proper consultation with FWS, and to comply with NEPA's requirements to provide high quality scientific information for informed public participation in the agency's decision-making process.

Further, the EA doesn't analyze the impacts to the NMMJM population of protecting less acreage than the Recovery Outline recommends (68 to 181 acres), and significantly less critical habitat than is present on the allotment (100 out of 530 acres). Nor does the EA sufficiently analyze the impacts of the facilities and water developments within NMMJM critical habitat, the numerous water lanes that will continue to fragment NMMJM habitat, and the high utilization levels authorized in NMMJM critical habitat. The same applies to the Sacramento Mountain Thistle. How much and to what extent will habitat for these two species continue to be impacted by livestock grazing and the associated developments and facilities, and how will this affect their long-term viability? While we agree with the likely to adversely affect determination, we are concerned with the lack of analysis in the EA of the direct, indirect and cumulative impacts of the project on the viability of the species.

The EA also fails to analyze the impacts of the project on upland NMMJM habitat. According to the EA, "[t]he enclosure fencing would exclude the riparian area along with small portions of upland habitat from livestock grazing; areas with elk fencing would exclude both livestock and elk. The amount of upland habitat included in the enclosure fences varied by location due to topographical constraints, roads, and to allow continued livestock passage and distribution." Where does the FS consider NMMJM habitat requirements in determining the amount of upland habitat included in the enclosure fences? NMMJM require upland areas adjacent to riparian areas for nesting and breeding. Since this is a project that is supposed to improve NMMJM habitat and prevent further declines of this population, the EA must consider all of the habitat requirements of NMMJM when designing its fencing locations.

The EA states that the No Action Alternative would have no effect to MSO, NMMJM and the Sacramento Mountains Thistle. EA, p. 35. The same is claimed for the Regional Forester's Sensitive plant and animal species and Management Indicator Species. EA, pp. 44, 53. This is not true as livestock grazing and the existing facilities and water developments will continue to negatively impact habitat conditions for all species. The EA must analyze these impacts. The No Action alternative is not a no grazing alternative, and thus the impacts of ongoing grazing and other management activities must be analyzed.

The EA fails to analyze the existing conditions of Mexican Spotted Owl and their habitat. According to the EA, there are 46 Protected Activity Centers within the Sacramento Allotment. EA, p. 33. But, there is no analysis of current habitat conditions or population status and trend within these PACs or the project area as a whole. The 2016 BiOp identified concerns with the effects on Mexican spotted owl prey habitat when the 35% use level is exceeded – it appears that this is exceeded annually. The EA states that the primary constituent elements (PCEs) related to maintenance of adequate prey species include a wide range of tree and plant species and adequate levels of residual plant cover to maintain fruits and seed, and allow plant regeneration. Id. The EA doesn't analyze whether, given the annual use level exceedances, the project area contains sufficient PCEs, how the historic and ongoing excessive forage use by livestock has impacted the PCEs and, accordingly, MSO prey species, or how the proposed project will impact them (direct, indirect and cumulative impacts). It doesn't appear that the Forest Service has conducted any of the monitoring required in the 2016 BiOp. Further, the EA admits that areas with developments and facilities have poor vegetative conditions and are infested with undesirable and non-native species. How



have these facilities and developments impacted MSO and prey species' habitats? What impacts will the new facilities and developments have? Site-specific, high-quality data and analysis is necessary to comply with NEPA, NFMA and the ESA.

The EA fails to analyze the existing conditions of the Regional Forester's Sensitive Species (RFSS) and their habitats. See EA, pp. 40- 44. While the EA provides some general habitat descriptions (not specific to the allotment) and makes vague statements about whether the species may be present on the allotment, there's no high-quality, site-specific information about their current population status and habitat conditions. Similarly, there's no site-specific analysis of the direct, indirect and cumulative impacts of the proposed project on the species or their habitats. Without site-specific information on their existing condition, there can be no site-specific analysis of the impacts of the project. This is the problem that runs throughout the EA. Vague statements about possible effects and some risk are not sufficient. NEPA and NFMA require more.

The EA similarly fails to analyze the existing conditions of, and direct, indirect and cumulative impacts of the project on, MIS species and their habitats. As with RFSS species, the EA provides some general habitat descriptions not specific to the allotment and makes vague statements about whether they may be present. There's no high-quality, site-specific information about population status or habitat conditions on the allotment.

As the EA states, "The Forest Service Manual (FSM 2600) defines management indicators as; 'Plant and animal species, communities, or special habitats selected for emphasis in planning, and *which are monitored during forest plan implementation* in order to assess the effects of management activities on their populations and the populations of other species with similar habitat needs which they may represent'." EA, p. 48, *emphasis added*. Yet, the Forest Service has failed to conduct the required monitoring: "No systematic surveys are conducted specifically for hairy woodpecker on the Lincoln NF." EA, p. 49. "No systematic surveys are conducted specifically for juniper titmouse on the Lincoln NF." Id. "No systematic surveys are conducted specifically for the pygmy nuthatch on the Lincoln National Forest." Id., p. 50. Detection during breeding bird surveys in southeastern New Mexico does not suffice as monitoring pursuant to NEPA or NFMA. Id, pp. 49, 50. "No systematic surveys are conducted specifically for Red squirrel on the Lincoln NF." Id., p. 51. Being "regularly observed" around the forest and southeastern New Mexico Mountains does not suffice as monitoring pursuant to NEPA or NFMA. Id. "There are no ongoing, systematic surveys conducted specifically for Mexican vole on the Lincoln National Forest." Id. The EA makes no mention of whether they are otherwise observed or detected. This wholesale failure to monitor MIS on the Lincoln National Forest violates NFMA and the Forest Plan and violates NEPA's "hard look" requirement.

The EA fails to analyze the impacts of the barbed wire exclosure fencing on other wildlife species. "The exclosure fencing would be a combination of 4 strand barbed wire fencing, pipe fencing and eight-foot tall elk fencing. Areas fenced with barbed wire may be upgraded to pipe fencing over time as funding becomes available." EA, p. 11. We do not support the use of 4 strand barbed wire fencing and request that the Forest Service use wildlife friendly fencing. This should be included in all action alternatives. The FS must analyze the impacts of using barbed wire fencing on wildlife species.

The EA also leaves for some later time, the identification of where and how much water will be diverted from springs and streams to new water developments. Thus, the EA fails to analyze how such diversions will impact these springs, streams and riparian areas, and water quantity. Again, this information must be provided in the EA to enable for proper site-specific and science-based analysis and meaningful public participation.

V. The Forest Service failed to include adequate monitoring, mitigation and enforcement requirements

We are concerned with the lack of specificity in the project's monitoring and the lack of enforcement assurances. The EA provides the following as its only Project Effectiveness monitoring:

- Fenced exclosure areas will be monitored to ensure desired NMMJM habitat conditions are being achieved or are progressing towards achievement.
- Project areas will be periodically monitored to ensure resource impacts are at an acceptable level and for the presence of invasive species.
- Range compliance monitoring will occur to ensure terms and conditions of the Term Grazing Permit, Allotment Management Plan and Annual Operating Instructions are followed.

There is no indication of what type of monitoring will occur and when. Nor what will happen if monitoring indicates that desired habitat conditions aren't being achieved or progress is not being made towards achievement. This is especially important given the Forest Service's lack of monitoring of T&E species, MIS and RFSS, and the historic and ongoing overuse and failure to comply with grazing utilization and stubble height standards. What are acceptable levels of resource impacts? What will happen if invasive species are detected? The lack of specific monitoring details and follow-up actions is not sufficient to ensure the protection and restoration of NMMJM and its habitat, or any other species. What are the monitoring and enforcement requirements in the 2014 Recovery Outline and Forest Plan? These must be identified in detail and assurances provided that they will be implemented.

The EA states that "[a]lthough the responsibility for monitoring the allotment is that of the Forest Service, the permittee would have the responsibility for ensuring guidelines are not exceeded." EA, p. 23. What happens when guidelines are exceeded? What happens when the terms and conditions of the grazing permit, AMP and AOIs are not being followed? End of season monitoring will not suffice to protect the three T&E species and their habitats. If the Forest Service only monitors at the end of the grazing season, significant habitat degradation could occur if utilization and stubble height standards are exceeded well before then. Given the history of excessive use on the allotment, this is not mere conjecture.

The monitoring plan must include, at a minimum, strict parameters for determining progress towards achieving habitat conditions, when and where monitoring will occur, the specific types of monitoring that will be done, terms and conditions, identified acceptable levels of resource impacts, and what actions the Forest Service will take when those acceptable levels are exceeded and habitat conditions are not progressing towards achievement.

VI. The Forest Service must comply with NFMA and the Forest Plan, and the 2014 NMMJM Recovery Outline

According to the EA, the Forest Plan requires the Forest Service to

Protect and manage essential and critical habitats of threatened, endangered, and sensitive species through ensuring that legal and biological requirements of designated plant and animal species are met; Identify, protect and enhance existing and potential habitat of all T&E and sensitive species; prohibit activities likely to cause disturbance, including public use, in the vicinity of any essential habitat for T&E species (p. 205). Provide for the improvement of habitat for threatened and endangered species to meet the goals and intent of the Endangered Species Act of 1973 (replacement p. 12). Manage

riparian areas to provide optimum vegetation and ecological diversity (replacement p. 13).

EA, p. 18. The 2014 Recovery Outline provides the minimum legal and biological requirements for the NMMJM. As explained previously, the proposed project doesn't comply with the requirements in these documents.

As discussed above is the Forest Service's failure to monitor RFSS and MIS. The Lincoln Forest Plan includes specific monitoring requirements, which the Forest Service appears not to have complied with since the Plan's inception in 1986, which puts the agency in long-standing violation of NFMA.

While the EA provides some basic information on the various Forest Plan management areas within the project area, it does not identify what actions will occur in each specific management area. It would be very helpful - and also help comply with NFMA and NEPA - for the EA to identify what components of the project will occur in each specific management area, along with the Forest Plan standards, objectives and desired condition of those management areas, and an analysis of how the project will comply with them. It would also be very helpful to include a map of the project relative to the Forest Plan Management Areas. As it is now, it's impossible to determine whether the project complies with the various requirements of the different management areas identified in the Forest Plan.

For example, according to the EA, "[t]he sites at the Dry Canyon Trap and Corral and Pasture Ridge Trap and Corral are more sensitive to disturbance than the other project sites. This is due to the localized climate, soil type, and vegetation composition associated with these more arid areas. The vegetation is less resilient to high and/or continued disturbances. Therefore, it is likely that the Dry Canyon Trap and Corral and Pasture Ridge Trap and Corral sites would show a change in the vegetation composition." EA, p. 30. The EA fails to disclose or discuss how (if) the degradation of these sensitive sites complies with the Forest Plan management requirements for those sites. In the existing conditions analysis, the EA explains how most areas with existing corrals, traps and water developments are heavily impacted by invasive and undesired species. Now, the Forest Service is going to add more developments and thus increase and expand these heavily degraded areas. Yet there's no analysis of what management areas these developments and facilities will be located in, and whether such degradation is authorized pursuant to the Lincoln Forest Plan.

VII. The Forest Service must develop an Allotment Management Plan and assess the allotment's grazing capacity

The Lincoln Forest Plan requires: "Manage and enhance the vegetation resource and bring permitted grazing use in balance with the forage allocated for use. Place all allotments under appropriate levels of management." Lincoln Forest Plan, Replacement Page 12.

According to the 2016 BiOp:

The 1996 study reported that excessive forage use was occurring in riparian zones and concluded that the Forest Plan guidelines were being exceeded, particularly in riparian zones. The decline in the quality of vegetation and soil conditions was caused by overutilization (*Forest Guardians v. United States Forest Service, et. al., CIV 00-490 JP/RLP* 2002). These historic impacts from livestock continue to cause significant soil loss and modification of habitat.

By 2003-2004, stocking rates in the winter units were reduced to a range of 200-335 cow/calf pairs in order to align with the Allotment grazing capacity (USFS 2004c). According to the 2016 Biological Opinion, “[a]n Allotment Management Plan (AMP) was developed in 2006, but the permittee refused to sign the document (USFS 2006a). It is unclear whether the AMP was ever implemented. To our knowledge, a new Allotment Management Plan for the current 2009 permit has not been developed.”

2016 BiOp, p. 20. Further, as explained above, stubble height and utilization standards have been persistently exceeded. Thus, it doesn’t appear that resource conditions have improved much since 1996.

Without a current AMP or proper stocking rate analysis, the Forest Service is not in compliance with NFMA and the Forest Plan’s requirements for proper management of livestock grazing. We request that, as part of this project, the Forest Service determine the allotment’s grazing capacity and develop an allotment management plan that will provide for the protection and restoration of the T&E and other species, and ensure habitat connectivity and improved vegetative conditions on the allotment. After decades of overuse, lack of monitoring, and the continued decline of many species and their habitats on the allotment, this is sorely needed.

#### VIII. The Forest Service must ensure that its action comply with the ESA

Section 7 of the ESA imposes a substantive obligation on federal agencies to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of” habitat that has been designated as critical for the species. 16 U.S.C. § 1536(a)(2); *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917, 924 (9th Cir. 2008). The Forest Service must consult with the U.S. Fish and Wildlife Service (FWS) under section 7 of the ESA as to the impacts of the project on species listed under the ESA and designated critical habitat. The Forest Service must ensure that this project will not harm NMMJM, MSO, and Sacramento Mountain Thistle, or degrade critical habitat.

Unfortunately, it appears that the Forest Service has not complied with the 2016 BiOp for NMMJM, MSO or Sacramento Mountain Thistle. Thus, it is highly likely that the authorized levels of incidental take for the three listed species has been exceeded. Yet, due to the agencies lack of monitoring, there is no information about this in the EA. The Forest Service must consult with the FWS on this project and must provide additional assurances that the required monitoring will occur and incidental take will not be exceeded. Particularly related to the NMMJM, it is highly likely that this project will jeopardize its continued existence. This is not acceptable and the Forest Service must do more to restore and reconnect NMMJM habitat and ensure the long-term viability of this population.

#### Conclusion

Thank you for considering our comments. If you have questions or wish to discuss our concerns further, please reach out us at the information provided below. Finally, please add our name and organization to the contact list to receive any future public notices regarding this action.

Sincerely,

/s/ Judi Brawer

Wild Places Program Director

WildEarth Guardians

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