



**Western
Watersheds
Project**

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Working to protect and restore Western Watersheds

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September 13, 2021

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OBJECTION TO THE DRAFT DECISION ON THE BRIDGER-TETON NATIONAL FOREST,
PINEDALE RANGER DISTRICT BY DISTRICT RANGER ROB HOELSCHER FOR THE LIVESTOCK
GRAZING AUTHORIZATION FOR THE SWEETWATER, BLUCHER CREEK, AND EAST SQUAW
CREEK ALLOTMENTS

Dear Tricia,

We object to the proposed decision for the following reasons, contained within our comments to the EA and attachments to those comments:

- 1) The EA failed to analyze compliance with the Forest Plan and the proposed decision fails to implement actions needed to comply with the Forest Plan

We raised issues regarding Forest Plan compliance on pages 1, 2, 3, 4, 5 and 6 of our comments on the EA.

Let's review applicable Forest Plan direction, in the order it appears in the Forest Plan.

The Forest Plan defines Policy as:

Policies include Land and Resource Management Goals, Objectives, Desired Future Conditions, and management prescriptions in this document.

Discussing the Forest Plan and its structure, the Plan states, at 93:

Although all of the Goals are attainable, some objectives conflict with others. Consequently, some objectives will not be met on all areas of the Bridger-Teton National Forest. For example, lands used for timber production may not help reestablish historic elk migration routes as stated in Objectives 1.1(a) and 1.1(g). The conflicts are resolved by application of the different Desired Future Conditions to different areas of the National Forest.

Most of the analysis area is DFC 12, which has a specific wildlife emphasis. Despite the fact that DFC's are the zoning of the Forest Plan and prescribe differing management, the EA and resultant proposed decision is entirely silent on this foundational Forest Plan direction.

The Forest Plan states:

Like the Bridger-Teton National Forest-wide Management Prescriptions, Standards, and Guidelines, the Desired Future Conditions (DFCs) describe land management direction intended to accomplish the Goals and Objectives. In one sense, the DFCs are consequences of the response to demands, public issues, resource productivity potential, and the need for environmental standards found in the Goals and Objectives. That the DFCs exist at all is in recognition that not all the Goals and Objectives can be achieved at the same time from the same land areas. Therefore, 17 DFCs- (13 non-Wilderness and 4 Wilderness)-have been developed to accomplish multiple, compatible Goals and Objectives.

Each Desired Future Condition will be achieved over the 50-year planning horizon by applying Management Prescription "policies" and Standard and Guideline "limits" specific to that DFC. Therefore, each DFC has a unique set of Prescriptions, Standards, and Guidelines.

Each Management Prescription contains a management emphasis statement that ties the prescription to specific Land and Resource Management Objectives, individual resource Management Prescriptions, and resource management Standards and Guidelines to further define the Prescriptions.

What is obvious here is that areas within different DFC's are to be managed differently, based on the emphasis of that particular DFC. The EA and proposed decision ignore this fact, and thus, violate the Forest Plan.

Resolution: The EA needs to be revised to fully implement DFC emphases in the alternatives and the proposed decision must be revised to reflect DFC policy.

Goal 1.3b and the Water Quality Standard require:

Water Quality Standard -Forest Service or permitted activity or project will, at a minimum, adhere to state rules and regulations concerning surface and ground water quality.

The Forest Service, in its proposed decision, continues authorization of actions with a high likelihood of degrading water quality, especially through deposition of feces and urine in or near waterbodies. Yet the proposed decision fails to provide monitoring of the impacts of its actions on water quality.

The EA is deficient. The statement on page 7 is misleading, illogical and incorrect. "Based on downstream monitoring, water quality of streams in each allotment support their assigned beneficial use and stream channels are generally in good condition (WDEQ 2018)." Firstly, there is the foundational principle of logic that absence of evidence is not evidence of absence. Without actual data collection on the water quality impacts of the action, no such inferences can be drawn. Further, without any information regarding the location of this "downstream" monitoring, no inference can be drawn. Finally, without a

connection between the parameters assessed and the parameters affected by the action, no rational inferences can be drawn.

Simply referring to the state's reporting does not result in compliance with the Water Quality Standard.

Resolution: Implement mandatory water quality monitoring related to e. coli, temperature and turbidity during the periods of livestock use. Implement actions to fully comply with water quality standards if exceedances are found. Comply with NEPA's 'hard look' requirement.

Goal 3.1b requires:

Prevent needless encounters between grizzly bears and people, and prevent grizzly bears from gaining access to such attractants as food and garbage.

The proposed decision fails to comply with this policy. It authorizes large, widespread "attractants [such] as food" and fails to prevent bears from gaining access to this unnatural food source and fails to prevent needless conflicts.

As such, the proposed action fails to comply with the Forest Plan.

This requirement is echoed in Forest Service policy at FSM 2600 under 2676.12, which states:

2. Eliminate preventable mortality of grizzly bears and minimize the potential for grizzly bear-human conflicts on National Forest System lands.

This policy was ignored in the EA and proposed decision.

This FSM at 2676.14c also requires that District Rangers:

1. Contribute to grizzly bear conservation through site-specific planning and management actions.
2. Ensure that conservation provisions for grizzly bears and their habitat are included in leases, permits, contracts, and other authorizations affecting grizzlies and their habitats, and inspect sites under contracts, leases, permits, or authorizations for compliance with grizzly bear conservation measures.
3. Develop and implement practices to minimize potential for grizzly-human conflicts (for example, monitoring of livestock allotments and hunting camps, managing access, or providing bear-resistant containers) and to maintain or improve habitat effectiveness.

At 2676.16d the FSM requires:

2676.16d - Livestock Grazing

Historical and recent conflicts between grizzly bears and livestock are well documented. Grizzlies prey more readily upon sheep than cattle, but cattle may compete with grizzlies for forage in key habitats such as riparian sites. Minimize the potential for depredation or other conflicts between grizzly bears and sheep, cattle, and other livestock on national forest lands by implementing the direction in the guidelines or conservation strategy concerning grazing in occupied grizzly

bear habitat. Relocate sheep to alternate ranges outside of grizzly bear habitat if grizzly bear depredation has occurred or is likely to occur and the management options in the guidelines are not completely successful.

Resolution: Implement actions to comply with Goal 3.1b and FSM.

Goal 3.3 and 3.3a dealing with the recovery of Sensitive Species has not been implemented as it relates to impacts from the proposed decision.

The proposed decision fails to ensure “suitable and adequate amounts of habitat”.

Resolution: Implement permit terms and conditions that ensure “suitable and adequate amounts of habitat” for all Sensitive Species based on the best available science.

Goal 4.7 and subgoals have not been implemented in the EA or proposed decision. For instance, the proposed action authorizes “Specific allowable use levels include a maximum forage utilization of 50 percent of key forage species in the uplands” but the proposed action does not provide any scientific basis for this high level of a utilization rate by livestock. The EA is also silent as to whether this high level of utilization provides for Sensitive Species or other wildlife habitat, as required by the Forest Plan. As discussed in detail in attachments to our comments, there is little, if any, scientific support for a 50% utilization level providing for the habitat needs of wildlife. There is no difference in utilization limits in DFC 10 and 12 compared to other DFC’s.

The EA and proposed decision’s reliance on ground cover values as low as 60% does not comply with FSH 2209.21 at 22.1 Upland Rangeland Health Criteria or comport with current science, as discussed in the review of this issue attached to our comments.

The Forest Plan states:

These Prescriptions, Standards, and Guidelines represent land management direction responsive to the Issues, Concerns, and Opportunities shown in Chapter 3 and the Bridger-Teton Management Problems, Challenges, Goals, and Objectives shown in Chapter 2 and the beginning of this chapter.

The resource Management Prescriptions are stated in the present tense because they apply to forest activities beginning immediately after the plan is approved.

Regarding wildlife, the Forest Plan Prescription requires:

Fisheries and Wildlife Prescription -The Bridger-Teton National Forest provides habitat adequate to meet the needs of dependent fish and wildlife populations, including those of Threatened, Endangered, and Sensitive species.

The stocking rates, impact limits and other aspects of the proposed action and decision fail to ensure “habitat adequate to meet the needs of dependent fish and wildlife populations”. As discussed in attachments to our comments such as those dealing with Sensitive amphibian species, a 50% utilization rate does not for suitable and adequate habitat for those species. Another example would be wolves. Currently, wolf habitat is rendered toxic and deadly to wolves due to the authorization of livestock within wolf habitat, particularly DFC 10 and 12 where conflicts between livestock and wildlife are to be resolved to benefit wildlife.

The EA ignores the Sensitive Species, wolf, despite the fact that dozens of wolves have been killed in the analysis area to protect private livestock.

Resolution: Fully implement the Fisheries and Wildlife Prescription in the EA and decision.

The Forest Plan requires:

Grizzly Bear-Human Management Standard - Within Grizzly Bear Management Situation 1, 2, and 3, existing and future Interagency Grizzly Bear Management Guidelines will be followed to minimize grizzly bear-human conflict potential and resolve grizzly bear-human conflicts. The Special Order for Sanitation In Occupied Grizzly Habitat signed by the Regional Forester will also be followed.

This Standard has not been implemented in the proposed action or decision.

Resolution: Fully implement this Standard.

The Forest Plan requires:

Sensitive Species Management Standard - Quantifiable objectives will be developed to identify and improve the status of Sensitive species and eliminate the need for listing. Crucial habitats of priority I, II, and III species as listed by Wyoming Game and Fish and the Intermountain Region Sensitive Species List will be protected and maintained. The Forest Service will cooperate with Wyoming Game and Fish on management programs when needed to maintain population objectives of these species, especially with species which have been identified as needing immediate attention and active management to ensure a significant decline in breeding populations do not occur.

No quantifiable objectives to protect Sensitive Species from the impacts of the proposed action have been implemented in the EA or decision.

Resolution: Implement quantifiable objectives to protect all applicable Sensitive Species.

The Forest Plan requires:

Fish Habitat Management Guideline - For fish habitat providing a fishery at or near its potential, fish populations should be maintained at existing levels. For habitat below its potential, habitat should be improved and maintained to at least 90 percent of its natural potential.

This Guideline has not been implemented in the proposed action or the decision.

Resolution: Implement specific actions with timelines and triggers to comply with this Guideline.

The Forest Plan requires:

Stream bank Stability Guideline - At least 90 percent of the natural bank stability of streams that support a fishery, particularly Threatened, Endangered and Sensitive species, and all trout species, should be maintained. Stream bank vegetation should be maintained to 80 percent of its potential natural condition or

an HCI rating of 85 or greater. Stream bank stability vegetation and fish numbers and biomass should be managed by stream type.

This Guideline has not been implemented in the proposed action or the decision.

Resolution: Implement specific actions with timelines and triggers to comply with this Guideline.

The Forest Plan requires:

Allotment Planning Standard -All livestock grazing use will be managed under the direction of an allotment management plan.

The EA and proposed decision provided no AMP. As seen in the UGRA situation, years have gone by and still no AMP's have been developed.

Resolution: Provide the AMP with the revised proposed decision.

The Forest Plan requires:

Allotment Management Plan Standard - Fisheries; riparian habitats; and Threatened, Endangered, and Sensitive species' needs will be addressed in allotment management plans. Findings from big-game winter range evaluations will be incorporated into allotment management plans as wildlife habitat objectives and management procedures. Plans will identify the amount and kind of streamside vegetation needed to maintain or improve riparian areas.

Given that the proposed action and decision fail to address and provide for the needs of fisheries, riparian habitats and TE&S species there is no way any AMP developed as a result would be able to comply with this Standard.

Resolution: Revise the proposed action and decision to fully comply with this Standard.

The Forest Plan requires:

Proper-Use Guideline - Range proper-use standards, including forage utilization standards, should vary depending on site-specific objectives.

Obviously, some of those "site-specific objectives" are the DFC emphases which the EA and decision so assiduously ignore.

Resolution: Implement proper use standards based on DFC, Sensitive Species habitat needs, etc.

The Forest Plan requires:

Forage Utilization Standard - Season-long grazing only exists on a few allotments and will be changed to rotational grazing as Allotment Management Plans (AMPs) are revised.

During AMP revision, the Interdisciplinary (ID) Team and livestock permittees will prescribe site-specific utilization levels needed to meet Forest Plan objectives.

ID Teams will prescribe other proper-use standards to achieve site-specific objectives for the rangeland being managed.

The proposed decision continues season long grazing, every other year in the Sweetwater allotment and permits season long grazing two years in every 3 in the Blucher Creek allotment, which violates this Standard.

The proposed decision fails to implement Forest Plan objectives, such as 4.7 or the DFC's

The EA's reliance on ground cover values as low as 60% does not comport with current science, or Forest Service policy, as discussed in the attachments that review of this issue, provided during the comment period.

The EA provides two contradictory descriptions:

This measure accounts for any basal vegetation, litter, and rock fragments greater than three-fourths inch in diameter. It represents the percent of material other than bare ground (e.g. live or dead vegetation, litter, cobble, gravel, stones and bedrock) covering the land surface (USDA Forest Service, 2003).

The first sentence above is the correct definition. The second could be interpreted to include foliar and standing dead which is incorrect.

Resolution: revise the proposed action and decision to fully implement the Forage Utilization Standard.

The Forest Plan requires:

Fish; Wildlife; and Threatened, Endangered, and Sensitive Species Standard - Range improvements, management activities, and trailing will be coordinated with and designed to help meet fish and wildlife habitat needs, especially on key habitat areas such as crucial winter range, seasonal calving areas, riparian areas, sagegrouse leks, and nesting sites. Special emphasis will be placed on helping to meet the needs of Threatened, Endangered, and Sensitive species.

As examples, how does the proposed decision help meet the needs of wolves or amphibians, or sage grouse? It doesn't.

Resolution: revise the proposed action and decision to fully implement this Standard.

The Forest Plan requires:

Streambank Vegetation Standard - Grass and shrub vegetation will be maintained within about 25 feet plus 2 to 4 feet for each 1percent side slope adjacent to live streams.

How does the pathetic 4" stubble height provide for compliance with this Standard? It is unknown as the EA and proposed decision fail to mention it, let alone implement it.

Resolution: revise the proposed action and decision to fully implement this Standard.

The EA fails to analyze an alternative that complies with the Forest Plan's sage grouse amendment. The proposed decision fails to implement the Forest Plan's sage grouse amendment.

Resolution: Comply with the Forest Plan amendment.

Overall regarding Forest Plan compliance the EA misleadingly states on page 6, that "Guidelines are flexible by definition and are meant to generally constrain organizational actions or define desired resource conditions (Forest Service 2015)."

This does not comply with agency directive found in FSM 1909.12_10.

Responsible Official may adjust guidelines when it is necessary to address effectively specific circumstances. In such a case, the Responsible Official should:

1. Document a clear rationale for adjusting the guidelines in both the project analysis and decision documents.
2. Recognize the purposes for which the guideline was developed and provide assurance that the project or activity will still achieve those purposes. (emphasis added)

Again on page 8, the EA incorrectly states "Although some monitoring sites do not meet all desired conditions, Forest Plan guidelines are intended to be flexible with the overall goal of continuing a positive trend in meeting resource goals and objectives." Both Standards and Guidelines are requirements.

The EA fails to even mention all applicable Forest Plan Standards and Guidelines and certainly doesn't analyze compliance with them. Without providing such an analysis, the Forest Service is basically saying 'trust us' but NEPA doesn't allow for that. The Forest Service must take a 'hard look' at each applicable Forest Plan direction and provide full rationale that can be examined.

The IDT seem to not understand what cumulative impacts are under NEPA. The EA's definition of cumulative impacts is inaccurate and does not comply with NEPA. See attachment to our comments.

Resolution: Revise the EA to properly analyze cumulative impacts.

The proposed decision violates the Endangered Species Act. Again, grizzly bears exist within the allotments, there is a well-worn path regarding grizzly bears eating unnatural food attractants (i.e. non-native private livestock) and being killed as a result, but somehow stuffing the area full of unnatural food attractants will have not have adverse effects on grizzly bears.

The Forest Service failed to comply with the call definitions provided by the USFWS Consultation Handbook.

"No Effect" means absolutely no effect, which can't be supported by the analysis or the Forest's experience.

No effect - the appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat.

May affect - the appropriate conclusion when a proposed action may pose any effects on listed species or designated critical habitat. When the Federal agency proposing the action determines that a "may affect" situation exists, then they must either initiate formal consultation or seek written concurrence from the Services that the action "is not likely to adversely affect" [see definition above] listed species.

Is not likely to adversely affect - the appropriate conclusion when effects on listed species are expected to be discountable, or insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur (see Exhibits 3-4 and 3-5).

Is likely to adversely affect - the appropriate conclusion if any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not: discountable, insignificant, or beneficial (see definition of "is not likely to adversely affect"). In the event the overall effect of the proposed action is beneficial to the listed species, but also is likely to cause some adverse effects, then the proposed action "is likely to adversely affect" the listed species. An "is likely to adversely affect" determination requires formal section 7 consultation.

Because there may be effects on grizzly bear due to the authorization of large amounts of unnatural food sources, habitat disturbance and the killing or removal of bears that predate on these livestock, and those effects would be adverse and are not "discountable" or "insignificant" as defined by the USFWS, the Forest Service is required to initiate consultation.

We also attach the USFWS's document discussing common flaws in BA-BE's. The current process is flawed as discussed in the attachment.

The BA's conclusions are arbitrary and unsupportable.

Resolution: Correct determination and initiate consultation.

In the range section, the EA states that range condition is assessed by species composition, but no information is provided regarding species composition or production.

Upon request, I obtained summary data for the 5 transects established in the 3 allotments and a review of the primary production species, one sees that the plant community is dominated by unpalatable and increaser species. While the summary sheets don't provide production data, given the dominance by unpalatable and increaser species, there is little chance that forage production is meeting the demand in the permits.

The EA fails to take a hard look at the ESDs for the capable acres but a simple review of likely ESD's such as the 20+ Loamy or the 12-19 Sandy show massive departures from HCPC.

As this site deteriorates due to a combination of frequent and severe grazing, species such as three-tip and mountain big sagebrush, buckwheat, and yarrow will increase. Rhizomatous wheatgrass and less palatable grasses such as Letterman needlegrass increase. Kentucky bluegrass may invade. Cool-season grasses such as bluebunch wheatgrass and Columbia needlegrass will decrease in frequency and production.

Potential vegetation is estimated at 70% grasses or grass-like plants, 20% forbs, and 10% woody plants.

It is likely that the Forest Service avoided providing Similarity Index calculations for grasses, forbs and shrubs because it would show that the grazable acres are in upper “poor” to lower “fair” condition.

This failure to examine the most basic components of range condition, which is critical to informed decision making is arbitrary and a violation of NEPA’s ‘hard look requirement.

It also violates applicable agency policy contained in FSH 2209.21 which states:

A rangeland site is functioning when all the desired plants are present in the desired amount. The interpretation of desired species and amounts will change when goals change for specific purposes, like watershed sustainability, forage production, sage grouse habitat, low risk wildfire community, or a pleasing wildflower setting in a sagebrush community.

To determine the current plant community status in relation to a desired plant community a similarity analysis may be performed. Information from the Range Inventory Standardization Committee Report (1983) suggests that a value of 75 percent similar or greater may be used to differentiate between meeting and not meeting management objectives.

The EA fails to provide information on actual condition, other than meaningless and unsupported conclusory statements. The EA fails to provide any data regarding conditions of vegetation and soil. And the only information regarding vegetative condition is that that can be gleaned from the summary data sheets which were not included in the EA. This data shows severely degraded vegetative conditions.

Of note it that most of the grazable acres should have a major component of bluebunch wheatgrass, a strong decreaser under grazing pressure. Of the 5 transects, this species have been functionally eliminated from 4 of the 5.

Again, the data does not support the Forest Service’s unsupported claims that vegetative composition is fine.

Resolution: Revise the EA to comply with FSH 2209.21 and service wide directives on range management and planning

In the response to comments and the draft decision the Forest Service states it will implement a 6” stubble height maybe, on only one of the allotments, in the future, for streams that are currently not meeting Forest Plan requirements:

a minimum 6-inch stubble height retention would be required in the future if stability or site-specific riparian trend indicates a decline.

So just to be clear, for streams already not meeting Forest Plan requirements, the decision would implement a 6" stubble height, only in one of the 3 allotments AND only in the future AND if the Forest Service ever gets to monitoring AND if "riparian trend indicates a decline" who knows when.

This is bold, decisive leadership on the part of the Forest Service. Ignore problems that currently fail to meet the low bar provided in the Forest Plan by promising to do something, maybe, at some point if everything lines up to address worsening conditions of areas already below minimum requirements.

Resolution: Implement a mandatory term and condition for all permits of 6" stubble height as a minimum for riparian function and wildlife habitat and 20% maximum bank trample across all riparian areas

We request a meeting to discuss resolution of our objection.

Sincerely,

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

Jonathan B Ratner
Director – Wyoming Office