



April 25, 2024

By electronic submission to the project website:

<https://cara.fs2c.usda.gov/Public/CommentInput?Project=59389>

Objection Reviewing Officer
Jon Stansfield
Forest Supervisor
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Responsible Officer
Lance Brown
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**Re: Objection—Monitor-Toquima Range Vacant Allotment Project (#59389)
Environmental Assessment, Draft Decision Notice, and Finding of No Significant
Impact**

Dear Supervisor Stansfield and District Ranger Brown:

The undersigned representatives of Western Watersheds Project, the Center for Biological Diversity, and Wilderness Watch, on behalf of those organizations, hereby object to your proposed Decision Notice (DN) to issue a term grazing permit for the Table Mountain allotment and designate the Meadow Canyon, Monitor East, Monitor West, Silver Creek, and McKinney allotments as forage reserves, and the underlying Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) pursuant to 36 C.F.R. § 218. This objection is timely because notice of the 45-day objection period was published in the Reno-Gazette Journal on March 11, 2024.

Request for Objection Resolution Meeting: We request an objection resolution meeting by videoconference.

Objectors: The following objectors each submitted timely, specific, written comments on this proposal. Those comments are incorporated by reference as part of this objection and attached.

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Overall Resolution of this Objection: We offer actions to resolve the specific issues identified below. However, this Objection would be resolved in whole by withdrawal of the draft DN, EA, and FONSI, and issuance of a DN closing these allotments under the Forest Plan or leaving them vacant, for example, by selecting the No Action alternative as the Forest Service did in its November 3, 2022 DN for the Bridgeport Southwest Rangeland Project.

Objection Issues: In general, we object to the Draft DN, EA, and FONSI because they are inconsistent with applicable laws and policy, including the National Forest Management Act (NFMA), Federal Land Policy and Management Act (FLPMA), Wilderness Act, National Environmental Policy Act (NEPA), Endangered Species Act, and Clean Water Act. These issues were raised in comments.

We request that your written response addresses each of the following points individually.

1. We object to having less than the full 45-day objection period to review many of the documents in the project record.

The Draft DN, EA, and FONSI and other initial documents were posted to the project website on March 11, 2024. However, many specialist reports that the EA and FONSI relied on, as well as the Fish and Wildlife Service's Biological Opinion, were not posted until April 1 or April 5, 2024. As a result, we did not have the amount of time prescribed by the regulations to review, consider, and incorporate information from these late additions into our Objection.

Resolution: Withdraw the DN, EA, and FONSI and begin a new 45-day objection period during which the public and potential objectors can review all documents and supporting materials for the decision for the full duration of the objection period.

2. We object to the analysis and reauthorization of livestock grazing on vacant allotments, which is contrary to USFS Region 4 policy.

The Forest Service Handbook at chapter 2209.21 lists priorities for analysis of grazing permits. These include several factors demonstrating that analysis of grazing on the vacant Monitor-Toquima allotments is a low priority. For instance, *active* grazing allotments with sensitive fisheries and ESA-listed species take precedence over “rangelands without a current rangeland management decision,” the only category to which these allotments could arguably belong. See FSH 2209.21(1-7). There are multiple allotments on the Austin-Tonopah Ranger District where ongoing grazing occurs on habitat of threatened Lahontan cutthroat trout and where NEPA analysis has not occurred for decades or more, including on the Washington, Tierney Creek, Marysville, and South Shoshone allotments. There are also dozens of other grazing allotments on the Humboldt-Toiyabe National Forest as a whole with occupied Lahontan cutthroat trout or bull trout streams and critical habitat that should be addressed with the agency’s limited resources before these allotments, which have not had active permits for 30 years.

Likewise, the Forest Service’s regional guidance notes in FSM 2230 R4 Supplement 2200-2003-1 that:

Issuance of a grazing permit on a vacant allotment [should] not interfere with the ability to complete rangeland priorities on allotments that are stocked. Stocking a vacant allotment will not take time or funding away from other allotments that require more funding for administration, monitoring, or management planning. . . . Stocking vacant allotments should be the exception and not the rule in the Intermountain region.

FSM 2231.03.2(b). The Austin-Tonopah Ranger District has not completed appropriate environmental analysis of grazing on currently-stocked allotments that are directly adjacent to these vacant allotments. In fact, the Forest Service began an analysis of grazing on nearly a million acres of land in the Monitor-Hot Creek Rangeland Project in 2010, 75 Fed. Reg. 8036 (Feb. 23, 2010), but quickly abandoned it. That project proposed to close some of the allotments at issue in the current Monitor-Toquima proposal, did not address others, and would not have issued a term grazing permit for any of them. 75 Fed. Reg. at 8037. The Monitor-Hot Creek Rangeland Project would have addressed active grazing on 10 stocked allotments in the Monitor and Hot Creek ranges that totaled over 550,000 acres. *Id.* How did the Forest Service determine that restocking these six vacant allotments takes precedence over analysis of multiple currently-stocked allotments in the same area? Does the Forest Service have a Rescissions Act schedule for the Humboldt-Toiyabe National Forest and the Austin-Tonopah Ranger District, and if so, why hasn’t the agency discussed it in this process?

In sum, this process to reauthorize grazing on six vacant allotments is directly contrary to current Forest Service national and Region 4 policy. The Forest Service did not even discuss these policies or its prioritization of grazing analyses on the Austin-Tonopah R.D. or the Humboldt-Toiyabe National Forest as a whole, which it was required to do. *W. Watersheds. Proj. v. Salazar*, 2011 WL 4526746, at*17 (D. Idaho Sept. 28. 2011) (agency cannot disregard its own policies without discussion or analysis). To the extent that the Forest Service is relying on

unreleased policies,¹ we object to it undertaking this process while the agency is reconsidering its directives but has yet to issue them to the public.

Resolution: Withdraw the Draft DN, EA, and FONSI and disclose to the public how the Forest Service determined that reauthorizing livestock grazing on these vacant allotments was a higher priority than considering the environmental impacts of ongoing grazing on dozens of other active grazing allotments on the Austin-Tonopah Ranger District and Humboldt-Toiyabe National Forest.

3. We object to the Forest Service relying on a 43-year old grazing capability and suitability analysis without considering whether its conclusions are valid.

Under NFMA, the Forest Service must “determine . . . the availability of lands and their suitability for resource management.” 16 U.S.C. § 1604(e). NFMA further provides that the forest planning regulations shall include: “specifying guidelines which[] require the identification of the suitability of lands for resource management.” *Id.* § 1604(g)(2)(A). In turn, the planning rules provide that:

[T]he suitability and potential capability of National Forest System lands for producing forage for grazing animals . . . shall be determined as provided in [] this section. Lands so identified shall be managed in accordance with direction established in forest plans.

(a) Lands suitable for grazing and browsing shall be identified and their condition and trend shall be determined. The present and potential supply of forage for livestock . . . shall be estimated. The use of forage by grazing and browsing animals will be estimated. Lands in less than satisfactory condition shall be identified and appropriate action planned for their restoration.

[. . .]

36 C.F.R. § 219.20. Capability is “the potential of an area of land to produce resources, supply goods and services, and allow resource uses under an assumed set of management practices and at a given level of management intensity.” 36 C.F.R. § 219.3. It “depends upon *current resource conditions* and site conditions such as climate, slope, landform, soils, and geology, as well as the application of management practices, such as silviculture or protection from fire, insects, and disease.” *Id.* (emphasis added). Suitability is “the appropriateness of applying certain resource management practices to a particular area of land.” *Id.* This requires an “analysis of the economic and environmental consequences and the alternative uses forgone.” *Id.*

When the Forest Service fails to adequately explain how it uses capability criteria to reach a determination on acres capable for livestock grazing, and declines to share the data it uses, or show allotment-by-allotment capability, it violates NFMA, as well as NEPA’s “hard look” doctrine. *W. Watersheds Proj. v. U.S. Forest Serv.*, No. 05-cv-189-BLW, 2006 WL

¹ <https://www.federalregister.gov/documents/2024/02/13/2024-02853/directive-publication-notice>

292010, at *6–*7 (D. Idaho Feb.7, 2006); *see also* 40 C.F.R. § 1502.24 (agency must disclose methodology).

Here, the Forest Service’s compliance with its regulatory requirements is called into serious question because its analysis of capability and suitability is 43 years old. The EA states that the capability and suitability analysis that the Forest Service used was a 2007 analysis, which is not cited in the EA. We assume the 2008 “Summary of Capability/Suitability for Livestock Grazing and MIS Analysis” cited in the NOPA is the document to which the EA refers. The 2008 Summary states that “[m]uch of the analysis for the [1986 LRMP], including the rangeland and MIS capability analysis was taken from a 1981 Analysis of the Management Situation (AMS), which *described the existing condition*” (emphasis added). This is the suitability and capability analysis that the Forest Service used here.

Nothing in the 1986 LRMP or the 2008 summary (excerpting the 1981 AMS) suggests that the Forest Service completed an allotment-specific capability analysis in 1981 or at any other time. The values discussed in the Forest Plan and 2008 Summary appear to apply to the Toiyabe National Forest as a whole. There is also no explanation for how capable acres were determined initially, as required by Region 4 guidance. For example, there is no discussion of slope that is capable of being grazed by cattle, minimum forage production, or appropriate distance to water. In the recent Santa Rosa Rangeland Project EA, the Forest Service applied the following factors to determine capable acres as a starting point: Land ownership, soil map unit, geology, potential plant community production, water, roads, and slopes. Here, there is no indication how capable acres were determined.

As noted, the Forest Service has apparently not revisited its capability and suitability determinations since 1981 and used the condition of the lands at that point. Thus, despite the EA’s assertion that there are “no apparent changes” since 2007, the relevant time period is actually the last four decades, and in fact, much has potentially changed with respect to the capability and suitability of these allotments for grazing.

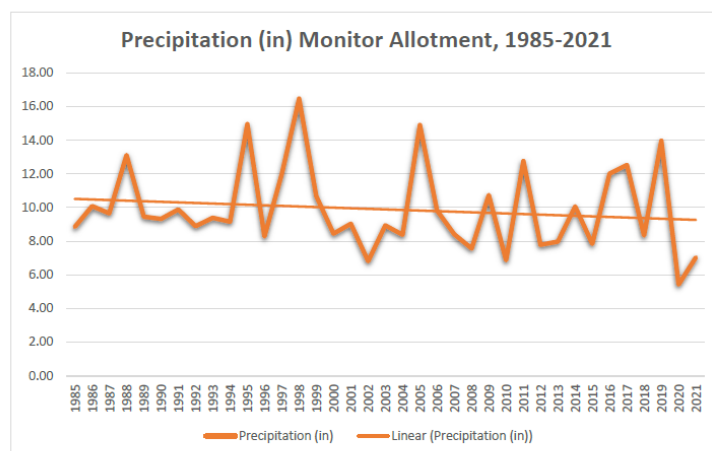
One resource condition that has markedly shifted since 1981 is the climate and the occurrence of regular, persistent, and severe drought. As the Forest Service’s own Climate and Carbon analysis shows at page 6, temperatures have increased substantially over this time, and will continue to do so. The Bureau of Land Management recently completed a Land Health Analysis for the Ralston and Monitor allotments, which stated that:

[Y]ear-to-year precipitation is unpredictable, though the past 40 years suggest a slight downward trend. Both irregularity and decline in annual precipitation are consistent with predictions under a changing global climate (Trenberth, 2011).

Land Health Assessment and Evaluation, Monitor Allotment. (September 23, 2022).² The BLM’s LHA also shows an appreciable decrease in precipitation since 1985.

² Available at https://eplanning.blm.gov/public_projects/2021649/200533966/20068092/250074274/20220923.Monitor.LHA_ER%20FINAL.pdf (last visited April 15, 2024).

Figure 1: Precipitation data 1985-2021, Monitor Allotment



Precipitation in recent years has been variable in Nye County. The following figures show county-scale figures for Nye County over the past 48 and 12 months, respectively. The figures show generally above-average precipitation for 2018 and 2019, and below-average precipitation for 2020 and particularly 2021 (Figures 2 and 3).

Grazing capability must be based on current resource conditions, including precipitation. 36 C.F.R. § 219.3. The LHA also demonstrates regular and consistent drought based on both the U.S. Drought Monitor and Palmer Drought Index. BLM Monitor LHA at 12-13. Several sources have described the severity of recent and ongoing mega drought in the Western U.S. as the most severe in the past 1200 years (Williams et al. 2022),³ leading to hot and dry conditions not experienced in since the 1600s (King et al. 2024).⁴ Much else has changed since 1981, including substantially better mapping, better understanding of sensitive species' habitat and needs, changing public values, increased recreation, and continued spread of invasive annual grasses.

Besides legally inadequate consideration of grazing capability, the EA states that the Toiyabe Forest Plan never made site-specific determinations on grazing suitability. This is inconsistent with the applicable regulations because suitability is the appropriateness of allowing particular uses on a “*particular* area of land.” 36 C.F.R. § 219.3 (emphasis added). Without a site-specific analysis of “economic and environmental consequences” and “alternative uses forgone,” there is no valid suitability analysis here. *Id.* The EA states that campgrounds, administrative areas, and research natural areas are often considered unsuitable, but what about other areas that have ecological values that are incompatible with livestock, especially those that may have arisen since 1981? Importantly, both wilderness areas (Alta Toquima and Table Mountain) were designated in 1989, and thus were not considered in the 1986 LRMP. Whether grazing is a suitable use of these wilderness areas is something that the Forest Service is required to determine for these allotments specifically prior to allowing

³ Williams, A.P., Cook, B.I, and J.E. Smerdon. 2022. Rapid intensification of the emerging southwestern North American megadrought in 2020-2021. *Nature Climate Change*, 12(232-234). <https://doi.org/10.1038/s41558-022-01290-z>

⁴ King, K.E., et al. 2024. Increasing prevalence of hot drought across western North America since the 16th century. *Science Advances*, 10 (2024).

livestock grazing. There is no analysis of whether the social consequences of grazing in popular wilderness areas, and values forgone, are acceptable. As noted, recreation and public values have changed substantially over the past 40+ years. How has visitation to these areas changed?

Region 4 guidance also advises considering whether key wildlife habitat areas and important habitat for TES species are suitable for grazing. These allotments contain thousands of acres of sage-grouse habitat, as well as habitat for other sensitive species. Threatened Lahontan cutthroat trout were introduced to Pine Creek and Mosquito Creek. Elk, mule deer, and a large bighorn sheep herd inhabit this area. Multiple rare plants are also found here. How has the Forest Service considered habitat values for all of these species and the forgone values of preserving their habitat without competition from livestock?

Resolution: withdraw the Draft DN, EA and FONSI and reconsider the proposed action only after a current and valid capability and suitability analysis that complies with NFMA and Forest Service regulations and policy has been completed and released to the public.

4. The Monitor-Toquima proposed decision to restock vacant allotments is not based on any recent carrying capacity analysis and the proposed permitted use is therefore arbitrary and capricious.

Determining a current and valid carrying capacity is critical to ensure that the Forest Service does not authorize more forage than can be grazed without unduly damaging public resources, as a quantified analysis often reveals.⁵ Occupancy for the allotments, including the initial head months and maximum head months, was “based on the last term grazing permits issued for the project area.” EA at 7. The AMPs for these allotments date to 1973 (McKinney); 1980 (Meadow Canyon); and 1987 (Table Mountain). Nothing indicates that 40 to 50-year old stocking rates for these allotments are still valid, and the Forest Service does not appear to have calculated the current carrying capacity in this process. Common sense suggests that these levels of grazing are *not* appropriate, because they caused and contributed to ecological problems on the allotments that have not fully healed despite 30 years without authorized grazing.

In contrast, when the Bridgeport Ranger District issued its proposed decision for the Bridgeport Southwest Rangeland Project, it calculated head months using NRCS Ecological Site Description forage production information based on updated capability and suitability analyses from 2019. Bridgeport EA at 3, 6. These included forage production for both “unfavorable” and “normal” years. Similarly, the BLM undertook carrying capacity analyses for both the Ralston and Monitor allotments adjacent to the Forest Service allotments at issue here. It also calculated carrying capacity using estimated forage production from applicable ESDs and verified those estimates by clipping and weighing vegetation in the field in 2020 and 2021. Unlike the Bridgeport Ranger District and BLM, the Forest Service here is flying blind with respect to the amount of forage that could reasonably be allocated to livestock on these allotments.

⁵ See, e.g., Carter, J., Vasquez, E., and Jones, A. 2020. Spatial Analysis of Livestock Grazing and Forest Service Management in the High Uintas Wilderness, Utah. Journal of Geographic Information System, 2020, 12, 45-69. Scientific Research Publishing.

Determining a grazing carrying capacity is an elementary and foundational aspect of rangeland management because it represents the maximum stocking rate possible without unduly damaging resources (Holochek 2011).⁶ The Forest Service here has set initial and maximum head months, but has not explained why these stocking rates are appropriate.

Typically, setting a stocking rate would start with properly determining capable acres, which consider the slope and water availability. Unfortunately, as discussed above, the Forest Service has no valid and current baseline of capable acreage. Next, the agency would determine the amount of vegetation production for those capable acres, using estimates from ESDs and imagery (Carter 2020) and then verifying that production in the field (Ogle and Brazee 2009).⁷ Next, the Forest Service would determine how much of the available forage was needed by wildlife, including the elk, mule deer, bighorn sheep, wild horses, small mammals, insects, and other species present in the allotments. The remainder would be available for livestock. The agency would then determine the appropriate utilization rate, which is likely 25-30%, and from there determine head months. The agency has done none of this. Accordingly, the occupancy rate in the EA and draft DN lacks a rational basis.

Resolution: The Forest Service should withdraw the DN, EA, and FONSI and complete a valid carrying capacity analysis based on current information.

5. The Forest Service cites no authority for its authorization of flexible permitted use, and none exists in the regulations.

The EA and Draft DN cite nothing that allows variable head months and a year-long season of use on a term grazing permit. The Federal Lands Policy and Management Act (FLPMA), which the Forest Service's regulations rely on as one basis for their authority, make clear that defined numbers of permitted livestock and seasons of use are required as mandatory terms and conditions of a grazing permit. 43 U.S.C. § 1752(e); 36 C.F.R. § 222.3(c)(1)(vi)(E); *see also Nat. Res. Defense Council v. Hodel*, 618 F. Supp. 848, 869–70 (E.D. Cal. 1985). Allowing a year-round season of use during which permittees can choose when to graze and how many livestock to graze, and adjustable head months, is contrary to this requirement.

Rather, the regulations define a process for changing the terms and conditions of a term grazing permit, including the number of livestock and season of use, demonstrating that this is the correct way for doing so, when changes are necessary or appropriate. 36 C.F.R. §§ 222.3(c)(1)(iii) (process to update terms and conditions of a grazing permit mid-term); 222.4(a)(8) (modifying season of use and number of livestock due to changes in resource condition or permittee request requires one year notice). Importantly, following these established processes allows public involvement.

⁶ Holochek, J. L., R. D. Pieper, C. H. Herbel. 2010. Range Management: Principles and Practices. 6th ed. Prentice-Hall. Upper Saddle River, NJ.

⁷ Ogle, D. and B. Brazee. 2009. Estimating initial stocking rates. Technical note: Range No. 3. June 2009. USDA Natural Resource Conservation Service. Boise, ID.

Indeed, without defining these terms, neither the public nor the Forest Service can adequately consider what the impacts of grazing use are, hampering NEPA. Domestic livestock have very different impacts on different resources at different times of the year; for example, during critical growth periods for vegetation and breeding seasons for species like sage-grouse. *See W. Watersheds Proj. v. Salazar*, 843 F. Supp. 2d 1105, 1111-1115 (D. Idaho 2012). Without a defined season of use, the public also cannot conduct appropriate oversight of livestock use of public lands because observers do not know when livestock are authorized or whether they are outside the season of use.

The Humboldt-Toiyabe National Forest recently recognized that additional head months are not appropriate under its directives in its objection resolution letter to WWP for the Santa Rosa Rangeland Management Project. There it stated that “[t]he final decision . . . will not allow for additional head months beyond what is authorized by the Forest Service Handbook Intermountain Region 4 FSH 2209.13 CH 10.”

Finally, the criteria that the Forest Service provides for authorizing maximum head months is arbitrary and capricious. According to the EA, “over time head months could adjust toward the maximum head months based on satisfactory range condition, a trend in monitoring data toward meeting desired condition, and compliance with the term grazing permit.” EA at 7. However, five of the six grazing allotments here would have no term grazing permit, making these criteria for implementing increases in head months irrational. In sum, the Forest Service should eliminate maximum head months from the proposed permitted use and rely solely on the lower “initial” head months.

Resolution: The Forest Service should eliminate the category of permitted use designated as “maximum head months” and define specific seasons of use.

6. Neither the Forest Plan nor Forest Service directives authorize the creation of “Forage Reserves.”

The EA and Draft DN do not cite any explicit authority for the creation of “forage reserves” on the Humboldt-Toiyabe National Forest, and we are not aware of any. This category of allotment does not appear to be authorized in the Toiyabe Forest Plan, or by current and available Forest Service policy.

The Toiyabe LRMP “specifies that Allotment Management Plans (AMPs) must be developed for livestock grazing allotments. EA at 18. However, five of the six allotments here would not have term grazing permits issued. It is not clear that the Forest Service can develop AMPs for a forage reserve allotment because by definition, an AMP is developed in consultation with the permittee. 36 C.F.R. §§ 222.1; 222.2(b). Here, the Forest Service would be unable to meet this requirement for most allotments. Further, without term grazing permittees, who would be responsible for maintaining fences and other range infrastructure? The EA states that it would be the responsibility of the “assigned grazing permittee” following the development of an AMP and the issuance of a term grazing permit. EA at 9. Does this mean that no upkeep, including fencing, will occur in five of the 6 allotments?

Further, the EA does not specify how public participation would occur for temporary use of a forage reserve. How would the public be notified of temporary occupancy? Would members of the public be able to comment on or protest such an authorization?

We also oppose creation of forage reserves because of the potential that forage reserves can be used by livestock grazing permittees who have failed to meet required conditions on their regular allotments, diminishing the incentive for good stewardship. *See* EA at 8.

Resolution: Do not authorize the creation of “forage reserves” using these allotments.

7. We object to the Forest Service’s proposal to allow grazing in areas that are not in satisfactory condition.

The Toiyabe LRMP requires the Forest Service to achieve or maintain rangeland in satisfactory/desired condition. IV-4, 26-27. However, the NOPA states that “two-thirds of the monitoring sites in the McKinney allotment and half of the monitoring sites in the Meadow Canyon allotment are not meeting desired conditions.” The EA elaborates on these failures to meet desired conditions. As one example, McKinney allotment exhibits overuse of springs and uplands and continued downward trends with decreases in perennial grasses and shrubs and increases in bare ground. EA at 4, 56. Further, no monitoring locations have been established for either Monitor Valley East or Monitor Valley West allotments. EA at 5.

The following chart from the EA summarizes the condition of uplands, riparian areas, and sage-grouse habitat on the six allotments.

Table 27: Summary of existing rangeland conditions on the allotments.

Allotment	Uplands	Riparian Areas	Sage-Grouse Habitat
Table Mountain	Satisfactory condition	Satisfactory condition	Shrub cover is lacking. Perennial grass and forb cover meets desired condition.
Meadow Canyon	Satisfactory condition	Unsatisfactory condition	Shrub cover is lacking. Perennial grass and forb cover meets desired condition.
McKinney	Unsatisfactory condition	Unsatisfactory condition	No PHMA or GHMA
Monitor Valley East	Satisfactory condition	No Riparian Areas	No data
Monitor Valley West	No data	Unsatisfactory condition	No data
Silver Creek	Satisfactory condition	No data	Limited GHMA – no data

EA at 58 (highlight added). The chart makes clear that no allotment is in satisfactory condition in both uplands and riparian areas and meets desired conditions for sage-grouse habitat, and multiple allotments lack data to determine condition.

These allotments should be closed permanently or left vacant to continue to recover rather than be reopened to grazing. Reauthorizing grazing on any allotments with significant

areas of unsatisfactory conditions is inconstant with the LRMP's requirements for satisfactory and desired condition and therefore violates the Forest Service's regulations and NFMA. 16 U.S.C. § 1604(i); see *Great Old Broads for Wilderness v. Kimbell*, 709 F.3d 836, 850 (9th Cir. 2013) ("After a Forest Plan has been developed and implemented, the NFMA prohibits site-specific activities that are inconsistent with the governing Forest Plan."); 36 C.F.R. § 219.15(b) ("activities authorized after approval of a [Forest Plan], plan amendment, or plan revision must be consistent with the plan").

Resolution: Withdraw the Draft DN and consider authorizing grazing only on allotments that have sufficient data, and which are not in unsatisfactory condition or failing to meet desired condition.

8. The Draft DN fails to require a bank alteration standard as a permit term and condition, as required by the Toiyabe LRMP.

The Draft DN does not include any standard for bank alteration from livestock trampling along riparian areas, despite a requirement in the Toiyabe LRMP to include such a standard, and the inclusion of bank alteration standards in the previous AMP for the Table Mountain allotment. The Forest Plan states that "Proper use criteria will be established" for all grazing allotments. LRMP at IV-30. It recognizes that "[t]rampling of soils by grazing animals may result in either soil displacement or soil compaction." *Id.* Further, "the amount of soil displacement or compaction [from trampling] will determine the limit of allowable grazing use." *Id.* Proper use based on soil displacement should generally not exceed 10% on steeper slopes and loose sandy soils, and in most stream bank zones. *Id.* Unsurprisingly, the AMP for Table Mountain allotment (1987) requires a streambank stability criterion of 80-100% stable, with proper use exceeded if 20% of the length of a reach has mechanical hoof damage. The standard for Lahontan cutthroat trout bearing streams is 90% stable (bank alteration of less than 10%). BA at 9. Because the DN here does not require a bank alteration standard as a mandatory term and condition of grazing on these allotments, the Forest Service has violated NFMA.

Resolution: Withdraw the Draft DN, EA, and FONSI and do not reissue until each alternative for every allotment requires an appropriate bank alteration standard of 10-20%.

9. The Draft DN, EA, and FONSI fail to adequately describe compliance with the Clean Water Act.

The EA here asserts that the Forest Service has complied with the Clean Water Act in analyzing and authorizing grazing on these allotments. However, the EA describes poor water quality conditions that call into question whether the Clean Water Act standards are being met.

The BE notes that, based on the agency's 2011 Watershed Condition Classification, "most of the watersheds within the project area have been rated as Functioning at Risk with specific parameters such as Riparian Vegetation, Water Quality, Water Quantity, and Aquatic Habitat receiving condition ratings of Fair." BE at 15. Further, "[r]ecent observations made on June 1, 2022, in Mosquito Creek revealed water quality being impacted by the geology, shading, and flow limitations which have resulted in warm slightly turbid conditions that do not appear to

support aquatic life.” *Id*; see also BA at 23-26 (describing poor water quality and riparian conditions along Mosquito Creek).

The documents also state that the Forest Service complied with BMPs, EA at 28, 65, but nowhere describes what the BMPs are, or how the analysis and decision complies with them. Appendix B at 7.

10. The Draft DN and FONSI rely on actions that are described in the EA as “guidelines” or are not otherwise clearly mandatory.

The Draft DN and FONSI rely on a number of guidelines, design features, narrative descriptions or other apparent mitigating features of grazing, but there is no clear mechanism ensuring these actually occur. For example, the FONSI notes a “conservative approach” to utilization levels, including adoption of the grazing “guidelines” from the 2015 GRSG plan amendment. EA at 69. Unfortunately, nothing ensures that the 7” stubble height standard will actually be measured and applied as the DN does not specify that it will become a mandatory term and condition of the permit instead of an unenforceable guideline.

Likewise, the EA and other documents in numerous places refer to grazing strategies like riding and herding to spread out cattle use, remove livestock from streams, and otherwise ensure orderly grazing. Appendix B at 6; EA at 9, 28. However, there is no clarification about this “guideline” including whether it is even required. How often would riding occur? Must it occur daily? Weekly? Seasonally? How many riders are required? Given the importance that the DN, EA, and FONSI place on this activity as a mitigation, it is bewildering why the agency does not define how often and where this would be required of the permittee. Absent that clarification, the assurance is meaningless. There is no guarantee it will occur at all. The same can be said for rest and deferment. While these are touted as management features, nothing indicates rest or deferment will actually occur.

Similarly, the reference in many places to following the Clean Water Act Best Management Practices is also hollow because there is no actual discussion about what these BMPs entail, how they will be implemented, whether they will be enforced, etc. For all of these reasons, the DN and FONSI are arbitrary and capricious and should not be relied upon as a basis for authorizing livestock grazing on these allotments.

Resolution: Withdraw the Draft DN, EA, and FONSI and only rely upon strategies, BMPs, and mitigation that is clearly defined, applies to the permits as mandatory terms and conditions, and is enforceable.

11. The proposed action should have been analyzed together with the authorization of grazing on the BLM’s Monitor and Ralston allotments.

The Forest Service erred here by not analyzing grazing on the Bureau of Land Management’s Montior and Ralston allotments together with the Forest Service Monitor-Toquima allotments in an EIS.

Under NEPA, “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a). Agencies use the criteria for scope in § 1508.25 to determine which proposals should be addressed in a particular environmental analysis. *Id.* A federal agency must analyze multiple actions together in a single impact statement if they are “connected actions” or “cumulative actions.” 40 C.F.R. § 1508.25; *Klamath-Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 998–99 (9th Cir. 2004). “The purpose of this requirement is to prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006).

Actions are “connected” if they “automatically trigger other actions which may require environmental impact statements; cannot or will not proceed unless other actions are taken previously or simultaneously; or are interdependent parts of a larger action and depend on the larger action for their justification.” *Id.* at § 1508.25(a)(1)(i–iii). In the Ninth Circuit, courts apply the requirement to consider connected actions together in the same environmental analysis to environmental assessments as well as EISs. *See e.g. Klamath-Siskiyou Wildlands Center*, 387 F.3d at 998. Cumulative actions are those “which when viewed with other proposed actions have cumulatively significant impacts.” *Id.* at (a)(2).

“Similar actions” are those that “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.” 40 C.F.R. § 1508.25(a)(3). An agency should analyze similar actions together in the same environmental analysis when doing so is “the best way to assess adequately the[ir] combined impacts.” *Id.*

Here, the Forest Service’s and BLM’s analyses of the vacant allotments in the Monitor and Ralston valleys and surrounding ranges should have been analyzed together because they are “similar” actions under NEPA, occurring in the same location at the same time. They are also “connected” actions because they are interrelated. Grazing on the Forest Service allotments will be difficult if not impossible for a permittee without a permit on the adjacent BLM lands, because Forest Service lands in most cases are not reasonably accessible except from BLM lands. Without either a BLM term grazing permit or crossing permit, a permittee would be forced to truck livestock to the allotment boundary, which is not possible in most locations and in many weather conditions. Further, many of the allotments are unfenced from BLM lands. EA at 59. Accordingly, these actions are also connected because “it would be irrational, or at least unwise, to undertake” the first project without the second. *Wetlands Action Network v. U.S. Army Corps of Eng’rs*, 222 F.3d 1105, 1118–19 (9th Cir. 2000). Grazing on the BLM and Forest Service allotments is “inextricably intertwined.” *Thomas v. Peterson*, 753 F.2d 754, 758–59 (9th Cir. 1985).

Resolution: The Forest Service should withdraw the EA and analyze grazing on these allotments together with grazing on the BLM allotments in a combined EIS by both agencies.

12. The stated purpose and need for the action is arbitrarily narrow, in violation of NEPA.

The “purpose and need” specified by the agency for a proposed action dictates the scope of the alternatives analysis. *League of Wilderness Defenders-Blue Mtns. Biodiversity Proj. v. U.S. Forest Serv.*, 689 F.3d 1060, 1069 (9th Cir. 2012). Here, the EA states that “more than 40 allotments [are] vacant across the HTNF” and that “[t]he Forest Service is considering these allotments for authorization of livestock grazing.” EA at 6. It further states that in accordance with the Toiyabe LRMP “there is a need to consider authorizing livestock grazing on these allotments.” *Id.* In other words, the Forest Service implies that authorizing livestock grazing on these allotments is necessary to comply with the Forest Plan. As a result, the agency unreasonably excluded alternatives that would not result in reauthorizing grazing on these vacant allotments. Where an agency defines the objectives of its action in “terms so unreasonably narrow that only one alternative . . . would accomplish the goals” and the EA becomes a “foreordained formality,” the agency violates NEPA. *Nat’l Parks and Conserv. Ass’n v. BLM*, 606 F.3d 1058, 1070 (9th Cir. 2009).

Despite the agency’s assertion, it is far from clear that the direction in the Toiyabe LRMP at the pages cited actually requires or even encourages restocking of these or any other vacant allotments. Nothing there speaks clearly to this issue, and because this is the sole justification given for the purpose of this proposal, the purpose and need statement lacks any rational basis, and cannot form the basis of the constrained range of alternatives analyzed in the EA. Further, even if the LRMP did clearly support restocking these allotments, the plan is now 38 years old, and does not reflect the priorities of the public in 2024.

Moreover, as WWP and WW noted in their comments, neither the MUSYA or NFMA requires grazing or any other use on all areas of a national forest. Rather, as discussed above, it is counter to Forest Service Region 4 policy to prioritize restocking vacant allotments where there are higher priorities (e.g., active allotments that lack current environmental analysis). Nothing in the NOPA, EA, or DN suggests that the Forest Service was acting in response to applications to graze these allotments, either. DN at 2 (noting a need to select a permittee). In sum, the project’s stated purpose and need is arbitrary and violates NEPA.

Resolution: The EA should be withdrawn and an appropriate purpose and need statement should be defined that does not illegally preordain grazing on these allotments.

13. The Forest Service disregarded reasonable alternatives.

In a NEPA analysis, the Forest Service must study, develop, and describe alternatives to the proposed action, and analyze “all reasonable alternatives.” 40 U.S.C. § 4332(C)(iii); 40 C.F.R. § 1502.14. The alternatives analysis is “the heart of the environmental impact statement,” and the agency must “rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. “The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992) (quotation omitted).

NEPA's alternatives requirement also serves to inform the public of "reasonable alternatives that would avoid or minimize impacts," 40 C.F.R. § 1502.1, or that "might be pursued with less environmental harm." *Lands Council v. Powell*, 395 F.3d 1019, 1027 (9th Cir. 2005). The EIS's alternatives analysis must "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public." 40 C.F.R. § 1502.14.

As discussed above, the agency's stated purpose and need for this project is arbitrarily narrow, and unreasonably confines the scope of reasonable alternatives. There are other clearly reasonable alternatives to restocking these vacant allotments, and WWP, WW, and CBD suggested a number of these alternatives to the Forest Service.

For example, WWP and WW suggested these alternatives:

- An alternative leaving them in vacant status;
- An alternative to amend the LRMP to designate them as unavailable for livestock;
- An alternative that would not authorize grazing within wilderness areas;
- An alternative that would implement the following mandatory use limits to protect sage-grouse and sensitive species:
 - 6" riparian stubble height
 - 35% riparian woody species utilization
 - 10-15% bank alteration
 - 35% upland herbaceous
 - 7" upland stubble height
- An alternative that implements mandatory grazing rest every other year; and
- An alternative that protects fish and riparian areas.

Likewise, CBD requested consideration of the following alternatives:

- "No action" or "no grazing."
- An alternative that does not authorize grazing in designated wilderness areas.
- An alternative that does not utilize any new or re-constructed grazing infrastructure.
- A conservation-focused alternative that permits—as a maximum—only the "initial head months" listed in the Notice of Proposed Action, Table 3.

- An alternative that includes clear and definite adaptive management “triggers” for ecological health criteria such as stubble height, streambank stability, shrub utilization, perennial bunchgrass cover, and riparian vegetation condition which, if exceeded, would result in the suspension of grazing or reduction of head-months.

Despite these requests, the EA considered only two alternatives: the proposed action to restock the vacant allotments, and a no-action alternative. It did not consider the reasonable alternatives of lower stocking rate, mandatory rest, lower utilization rates, and no grazing in wilderness. These are reasonable alternatives to the proposed action, and the Forest Service’s refusal to consider them violates NEPA. The Forest Service was also required to consider closing these allotments under the 2015 Greater Sage-grouse Plan Amendment. GRSG Amendment at 118.

An agency must briefly provide reasons for why alternatives that were not analyzed were eliminated from detailed study. 40 C.F.R. § 1502.14(a). An agency’s “decision to reject [an] alternative must stand or fall based upon the reasons the agency actually gave.” *Pac. Coast. Fed. of Fisherman’s Assns. v. U.S. Dept. of Int.*, No.1:12-CV-01303-LJO-MJS, 2014 WL 496906 at *16 (E.D. Cal. Feb. 6, 2014). Here, the only alternative to the proposed action and no-action that was considered was a no-grazing in wilderness alternative. However, it was dismissed because the Forest Service determined it was not consistent with the purpose and need for the proposed action and because grazing is allowed in wilderness. EA at 13. As discussed in this objection, neither of those justifications is valid.

Resolution: Withdraw the DN, EA, and FONSI and analyze a reasonable range of alternatives that complies with NEPA prior to reissuing a decision.

14. The Forest Service did not adequately consider the likelihood of unauthorized use if grazing is re-authorized.

Throughout these documents, the Forest Service asserts that access to the Mount Jefferson RNA is restricted for livestock by topography and water, and that that area would likely therefore not be grazed. *E.g.*, EA at 50, 53. However, multiple visits by WWP staff to the Mount Jefferson RNA confirms this is not the case. Livestock and wild horses have access to the tablelands at the top of Mount Jefferson, and, in fact, contribute to overuse of springs on the table and in the headwaters of canyons including Pine Creek and Barker Creek. Over the past recent years, these livestock have either been feral/wild or trespassing from other allotments. However, if livestock are re-authorized on the Meadow Valley allotment, unauthorized use of the RNA by cattle grazing on the Meadow Valley allotment is very likely to increase substantially, which the EA fails to address. Further, the EA describes a substantial list of fencing that is in disrepair on these allotments. EA at 10-11. It is not clear from the EA or Draft DN that this infrastructure would be in place before grazing occurs. The EA also notes lack of fencing between BLM and Forest Service allotments. In sum, there is a 30 year backlog of maintenance on these allotments, and livestock have never been reliably confined to the areas authorized.

Resolution: The Forest Service should withdraw the Draft DN, EA, and FONSI and recognize the likelihood of livestock damage to the Mount Jefferson RNA and unauthorized use in other areas as part of the environmental consequences of the action.

15. The analysis of Bighorn sheep is inadequate, and authorization of cattle grazing on these allotments endangers the declining bighorn sheep populations there.

Sadly, the Mount Jefferson population of bighorn sheep is currently experiencing a disease event.⁸ Information also indicates that bighorn sheep in the Hot Creek and Monitor Ranges have died back significantly, according to the NDOW Big Game Status Book for 2023.⁹ While the source of the outbreak on Mt. Jefferson is not clear at this point, we note that unauthorized cattle have been present on the Meadow Valley allotment in recent years, and that the Mount Jefferson bighorn come into contact with other cattle authorized by the Forest Service on the west side of the Toquima Range. WWP asked the Forest Service to consider the likelihood of disease transfer from cattle to bighorn sheep, including diseases such as epizootic hemorrhagic disease and bluetongue, but the Forest Service declined to do so.

Regardless, the Biological Evaluation did recognize that competition between cattle and bighorn sheep is likely to occur, and that cattle grazing would generally negatively affect bighorns. BE at 26-32. In light of the precarious positions of the bighorn sheep in the Monitors and Toquima range, the Forest Service should decline to authorize cattle in bighorn sheep habitat, especially Meadow Valley and McKinney allotments. If it does authorize livestock in those locations, it risks violating its sensitive species policy (FSM 2670) given the downward trend of this population. EA at 36.

Resolution: Withdraw the Draft DN, EA, and FONSI and adequately consider the risk to bighorn sheep from cattle as required by NEPA. Do not authorize cattle grazing in bighorn sheep habitat.

16. The EA failed to consider the likely impacts of cheatgrass from reintroducing grazing to these allotments.

In our scoping comments, we included significant information on the risk of establishment and spread of cheatgrass and other non-native invasive annual grasses, asking the Forest Service to consider this information in the EA. WWP-WWP comments at 10-12; CBD comments at 4-5. The EA fails to recognize the severity of this issue or adequately analyze the potential for habitat degradation from annual grasses exacerbated by the proposed action. The EA does not include any mapping or attempt to delineate the extent of current infestations as it does with other noxious but less aggressive species such as thistles. EA at 26. The failure to address this critical issue violates NEPA.

⁸ <https://www.ndow.org/wp-content/uploads/2024/02/Minutes-November-2023-NBWC-meeting-Final.pdf>

⁹ <https://www.ndow.org/wp-content/uploads/2023/08/2022-23-Big-Game-Status-Book-1.pdf>

Resolution: Withdraw the Draft DN, EA, and FONSI and appropriately consider the threat of annual grass invasions in an EIS.

17. The cumulative impacts analysis is deficient.

The Forest Service must consider cumulative impacts in the Monitor-Toquima EA. 40 C.F.R. § 1508.25(c). An EA, just like an EIS, must contain a cumulative impact analysis. *Kern v. BLM*, 284 F.3d 1062, 1076 (9th Cir. 2002). “An EA’s analysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and the differences between the projects, are thought to have impacted the environment.” *Te-Moak Tribe of Western Shoshone of Nevada v. U.S. Dept. of Interior*, 608 F.3d 592, 603 (9th Cir. 2010). To consider cumulative effects, some quantified or detailed information is required. *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998). “General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent justification regarding why more definitive information could not be provided. *Id.* at 1381.

The cumulative impacts analysis here does not consider the combined impacts of livestock grazing on BLM allotments when added to the impacts of the livestock grazing authorized on the National Forest. The BLM has proposed re-authorizing livestock grazing on the currently vacant Monitor and Ralston allotments that cover nearly half a million acres of adjacent valley bottom to these allotments. See <https://eplanning.blm.gov/eplanning-ui/project/2021649/510>. Nearly every resource that will be impacted by grazing on the Monitor-Toquima allotments by the Forest Service would also be affected by BLM-authorized grazing on the Ralston and Monitor allotments. This failure renders the cumulative impacts analysis invalid. As we noted above, this EA should have been combined with analysis of the BLM allotments in the same EIS, per NEPA. But at a minimum, the BLM allotments must be considered as cumulative impacts.

Resolution: Withdraw the DN, EA, and FONSI and appropriately consider the cumulative impacts of this action in an EIS.

18. The Proposed Decision and Biological Opinion Violate the ESA

The Endangered Species Act (ESA) is the “most comprehensive legislation for the preservation of endangered species ever devised by any nation.” *Tenn. Valley Auth. v. Hill (TVA)*, 437 U.S. 153, 180 (1973). In the ESA Congress mandated that “all Federal . . . agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities” to conserve listed species. 16 U.S.C. § 1531(c)(1).

Section 9 of the ESA makes it unlawful for any person to “take” an endangered species without express authorization from FWS. 16 U.S.C. § 1538(a)(1). “Take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). FWS defines “harm” to encompass habitat modification or degradation that injures an endangered species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. See 50 C.F.R. § 17.3. “Harass” is defined as

“an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.” *Id.*

Section 7(a)(2) of the ESA requires all 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 species . . . or result in the destruction or adverse modification of [designated critical] habitat of such species.” *Id.* § 1536(a)(2). To carry out this obligation, before undertaking any action that may have direct or indirect effects on listed species, an action agency must engage in consultation with FWS to evaluate the impact of the proposed action on listed species and designated critical habitat. *See id.*

During consultation, the action agency and FWS must use the best scientific data available. 16 U.S.C. § 1536(a)(2). If the action may affect any listed species or critical habitat, the action agency must engage in “formal consultation” with FWS. 50 C.F.R. § 402.14(a). The product of formal consultation is FWS’s Biological Opinion (BiOp) analyzing how the proposed action will affect listed species and critical habitat. *Id.* § 1536(b)(3); 50 C.F.R. § 402.14(g)(3)-(4), (l)(1). When preparing a BiOp, FWS must: (1) “review all relevant information”; (2) “evaluate the current status and environmental baseline of the listed species”; and (3) “evaluate the effects of the action and cumulative effects on the listed species or critical habitat.” 50 C.F.R. § 402.14(g). Additionally, a BiOp must discuss the environmental baseline of the listed species and critical habitat and analyze the effects of the proposed action on listed species or critical habitat. *Id.* § 402.14(h).

At the end of formal consultation, FWS must determine whether the action, when added to the environmental baseline and considering the status of the species and its critical habitat, will avoid jeopardy (*i.e.*, a no-jeopardy BiOp) or result in jeopardy (*i.e.*, a jeopardy BiOp). *Id.* § 402.14(g)(4). If, as part of a no-jeopardy BiOp, FWS determines that the proposed action will nevertheless result in the incidental taking of listed species, FWS must provide the action agency with an Incidental Take Statement (ITS) specifying the “impact of such incidental taking on the species”; “any reasonable and prudent measures that [FWS] considers necessary or appropriate to minimize such impact”; and “the terms and conditions . . . that must be complied with by the [action] agency . . . to implement [those measures].” 16 U.S.C. § 1536(b)(4). Take in excess of the amount authorized by the ITS violates the ESA’s take prohibition, *id.* § 1538, and requires the action agency to reinitiate consultation, 50 C.F.R. § 402.16(a)(1).

The ESA provides that agencies must hold actions in abeyance until any legally required consultation is complete. Section 7(d) of the ESA prohibits an action agency from making “any irreversible or irretrievable commitment of resources . . . which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures” necessary to comply with Section 7(a)(2). 16 U.S.C. § 1536(d). “This prohibition . . . continues until the requirements of section 7(a)(2) are satisfied,” 50 C.F.R. § 402.09, and ensures that the “status quo” will be “maintain[ed]” during the consultation process, *Lane Cnty. Audubon Soc’y v. Jamison*, 958 F.2d 290, 294 (9th Cir. 1992).

A. The Forest Service Cannot Rely on an Invalid Biological Opinion

As discussed above, Section 7 of the ESA imposes a substantive duty on the Forest Service to ensure that continued grazing on the Table Mountain Allotment is not likely to jeopardize listed species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(a)(2). Relying on a faulty BiOp violates this duty. *Ctr. for Biological Diversity v. BLM*, 698 F.3d 1101, 1127-28 (9th Cir. 2012) (“In particular, [the agency] cannot meet its section 7 obligations by relying on a [BiOp] that is legally flawed.”).

For the following reasons, the project BiOp is arbitrary, capricious, and unlawful. Accordingly, implementing the proposed decision would violate the Forest Service’s substantive duty to ensure that its authorization of grazing would not jeopardize the survival of Lahontan cutthroat trout (LCT). *Id.* at 1128.

B. The Biological Opinion Does not Adequately Describe the Proposed Action

The ESA requires that a biological opinion assess the direct and indirect effects of the agency action on a listed species. 50 C.F.R. §§ 402.14(h)(2), 402.02; FWS 2031. To determine the effects of the action, the BiOp must adequately describe the proposed action. *See e.g. Wild Fish Conservancy*, 628 F.3d at 522 (agency action that is defined too narrowly does not allow for full analysis of the impacts of the action); *Greenpeace v. NMFS*, 80 F. Supp. 2d 1137, 1144-48 (W.D. Wash. 2000) (all relevant portions of agency action must be identified and described in detail to analyze the impacts). The BiOp here does not contain sufficient detail about the proposed grazing management to adequately assess the effects of that management on LCT. Although the BiOp relies on the implementation of particular “grazing systems” to conclude that the proposed action will not jeopardize LCT, see BiOp at 35, the BiOp fails to describe the proposed “grazing systems” in any meaningful way, and instead explains that the Forest Service will provide a tremendous amount of “flexibility” in grazing management. For instance, the BiOp explains that the season of use dates may be “adjusted” based on various factors. *Id.* at 7-8; *see also id.* at 11 (“Flexible seasons also would provide the ability to authorize more cattle for a shorter season, or fewer cattle for a longer season.”). The BiOp also fails to specify the pasture rotation on the Table Mountain allotment. *See id.* at 8. Under the proposed action, rotations in the Table Mountain allotment could vary widely season to season, ranging from season-long use in all pastures to season long rest in all pastures. *Id.*; *see also* Biological Assessment at 7-11. Deferred-rotation and rest-rotation schedules would also be available. *Id.* The range of options articulated in the BiOp thus covers virtually all conceivable grazing systems and schedules. Cattle numbers, head-months, and forage utilization are likewise subject to change at the Forest Service’s discretion. BiOp at 8-9.

Seasons of use, pasture rotations, cattle numbers, head-months, and forage utilization limits are all fundamental components of a “grazing system.” Because the BiOp fails to specify any of these, it fails to adequately describe the proposed action.

C. The BiOp's Trigger for Reinitiation of Consultation is Arbitrary and Capricious.

An ITS must include a trigger to identify when the level of authorized take is exceeded, thereby requiring reinitiation of consultation. 50 C.F.R. § 402.14(i)(4). FWS can use a surrogate instead of a numerical value to identify when take is exceeded, but must articulate a rational connection between the surrogate and the taking of the species. *Or. Natural Res. Council v. Allen*, 476 F.3d 1031, 1037-38 (9th Cir. 2007).

Here, the BiOp selects forage utilization as a surrogate for a numerical take limit. BiOp at 36. However, there is no empirical support for the selected forage utilization triggers, and no rational relationship between the selected triggers and LCT conservation requirements. Rather, the triggers appear to be derived from the “maximum” allowable levels in the Humboldt-Toiyabe Forest Plan. *See id.* at 8-9. Nowhere in the BiOp does FWS explain how these generally-applicable utilization limits relate to LCT habitat needs or site-specific conditions in Mosquito Creek. Further, the only scientific support offered for the proposed utilization limits comes from general studies that do not take into account LCT habitat needs or the current status of LCT habitats and populations in the project area. *See id.* at 29 (citing Holechek 1988, Clary and Webster 1989). Ultimately, the BiOp offers no rationale for the selection of these generally applicable utilization limits other than their inclusion in the 1989 Forest Plan. And because the selected utilization triggers bear no apparent relationship to LCT habitat values, they do not actually establish whether take—i.e., the destruction or degradation of suitable LCT habitat to render it non-functional or minimally functional—has occurred. The BiOp thus fails to “articulate a rational connection between the surrogate and the taking of the species.” *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 531 (9th Cir. 2010).

Additionally, the BiOp's utilization-based reinitiation triggers fail to account for all foreseeable forms of “take” from the proposed action, including direct take and non-lethal take. The BiOp explains that “take” will occur through other mechanisms besides the removal of riparian vegetation. According to the BiOp, livestock grazing affects the stability, fertility, and hydrology of riparian soils, and increases the amount of bare ground. BiOp at 25. As noted, grazing also impacts streambank stability (see above), and contributes to increases in sedimentation. *Id.* at 31. Other impacts to water quality from livestock grazing include increases in nutrient levels, *id.*, increases in bacteria and protozoans, *id.* at 30, and increases in water temperature, *id.* Finally, grazing can have direct, adverse, impacts on LCT individuals and habitat, as described in the BiOp:

Direct adverse effects of livestock grazing on salmonids include wallowing and wading in streams. Wading in streams by livestock can be assumed to induce mortality on trout eggs and pre-emergent fry. Gregory and Gamett (2009) estimated that cattle trampling disturbed between 12 and 78 percent of simulated bull trout (*Salvelinus confluentus*) redds during a 2-to 3-week grazing period. Cattle densities and site condition (e.g., presence of large woody debris) strongly influenced the number of simulated redds being disturbed (Gregory and Gamett 2009). Peterson et al. (2010) modeled the impacts of cattle trampling of cutthroat trout redds; they found that cattle trampling, especially during critical developmental stages, can lead to population declines. Furthermore, the authors

state that small cutthroat trout populations which have low demographic resilience are more susceptible to disturbances, such as trampling of redds, and even small amounts of trampling can lead to negative population growth (Peterson et al. 2010).

Id. at 33. These impacts are of particular importance to the proposed action, because it would authorize grazing in occupied LCT streams during the spawning season (April through July). *See id.* Nevertheless, the BiOp’s surrogate limit for incidental take accounts for only one type of impact—removal of riparian vegetation—and thus does not take into account other means of foreseeable “take,” such as direct and non-lethal take during the spawning season, that could impact the survival and recovery of LCT in Mosquito Creek.

For all of these reasons, the BiOp’s utilization-based surrogate for incidental take violates the ESA.

D. The BiOp Fails to Consider Recovery

The ESA was enacted not merely to forestall the extinction of species, but also to allow a species to recover to the point where it may be delisted. *See* 16 U.S.C. § 1532(3) (defining “conservation” as all methods that can be employed to “bring any endangered species or threatened species to the point at which the measures provided pursuant to this [Act] are no longer necessary”); *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 699 (1995) (noting that Congress’ intent in enacting the statute “was to halt and reverse the trend toward species extinction, whatever the cost.”). Thus, Congress “by its own language, viewed conservation [i.e., recovery] and survival as distinct, though complementary goals.” *Gifford Pinchot Task Force v. FWS*, 378 F.3d 1059, 1070 (9th Cir. 2004)

Accordingly, to give effect to both the statute’s plain language and Congressional purpose, the duty to “insure” against jeopardy requires an examination of an action’s impacts on a species’ recovery, separate from its survival. *Cf. Gifford Pinchot*, 378 F.3d at 1070-71 (finding that the ESA requires FWS to consider impacts to both survival and recovery in its adverse modification determination).

The statute, regulations, and caselaw make clear that to satisfy its mandatory duty to ensure against jeopardy, FWS must demonstrate that the effects of the proposed action will not impair the species’ chances of recovery. Legally and logically, whether an action pushes a species across the jeopardy threshold depends on both the magnitude of the species’ pre-existing status and the action’s additional impacts. *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv. (NWF)*, 524 F.3d 917, 936 (9th Cir 2008) (holding that FWS must consider whether harm from the proposed action, when added to baseline conditions, threatens to “tip[]” listed species “too far into danger”). Thus, for the jeopardy analysis to be meaningful, FWS must first determine whether the species’ survival and recovery are already compromised before it can conclude that the species can withstand additional harm—i.e., FWS must first determine the current status of the species (*i.e.*, the baseline). *See id.* at 929-31 (holding that the jeopardy analysis must incorporate the “independent or baseline harms” to listed species). Only if FWS concludes that the species’ baseline condition does not threaten its survival and recovery may the agency

proceed to determine whether the additional effects of the proposed action will result in jeopardy. *Id.*

In the absence of an objective metric for determining the point at which recovery (or survival) is compromised, the duty to insure against jeopardy becomes a meaningless exercise. Accordingly, to satisfy its obligations under the ESA, FWS “must logically know the rough survival and recovery needs (i.e., ‘tipping points’)” to determine whether the action will cause the species to reach that tipping point and cross the threshold into jeopardy. *NWF*, 524 F.3d at 936. Indeed, unless FWS “knows roughly at what point survival and recovery will be placed at risk,” it is impossible for FWS to “conclude that no harm will result from ‘significant’ impairments to habitat that is already severely degraded.” *Id.* at 936. Even projects with seemingly minor impacts may jeopardize a species whose baseline status is severely degraded. A tipping point analysis thus prevents “a ‘death by a thousand pinpricks’ by determining if an agency action with a small overall effect will push a species across the line to eventual extinction, or past a point from which recovery is impossible.” *Ctr. for Biological Diversity v. FWS*, 441 F. Supp. 3d 843, 857 (D. Ariz. 2020).

Here, the BiOp contains no such analysis, and instead includes only a conclusory statement that the proposed action will not impact LCT recovery. *See* BiOp at 36. As an initial matter, this conclusion is factually inaccurate, as it states that the proposed action “would not increase the rangewide threats currently affecting LCT.” *Id.* This is demonstrably false because there has been no authorized grazing on the Table Mountain allotment for over 20 years. The proposed action thus introduces a threat that was previously absent. The BiOp entirely fails to consider how this might impact the status of the Mosquito Creek population or its contribution to LCT recovery.

Even though the Mosquito Creek population is not within the historical range of LCT, it is managed to support the species’ recovery. *See* BiOp at 23. Specifically, the Mosquito Creek population “contributes to the conservation of the fluvial life-history strategy of LCT” and is one of several “existing, isolated” populations currently managed to “result in at least one additional recovery population.” *Id.* Further, the Mosquito Creek population may prove to be uniquely important to LCT recovery efforts because it remains genetically pure, and does not exhibit hybridization with non-native trout. *Id.* at 21. Nevertheless, the BiOp fails to consider how introducing a new threat to this population will impact its contribution to LCT recovery. Instead, it assumes that because the impacts of the proposed action would not substantially affect the survival of the species on a rangewide basis, it will not impact recovery. *See* 33-34. As discussed above, this is insufficient.

Further, the BiOp fails to consider whether LCT faces jeopardy even without the proposed action. According to the BiOp, LCT is currently in a precarious state throughout its range. Self-sustaining populations currently inhabit only 17 percent of the remaining potentially suitable habitat, which has itself been substantially reduced from its historical extent. *Id.* at 14. Non-native trout species present “significant” threats to many LCT populations. *Id.* at 16. Moreover, about 72 percent of LCT populations “are completely isolated in small stream stretches lacking adequate habitat size and complexity.” *Id.* at 17. As the BiOp acknowledges, “[f]ragmentation accelerates extinction, especially when movement of fish among stream

segments is not possible.” *Id.* “Isolated populations are more vulnerable to extinction through demographic stochasticity, environmental stochasticity, loss of genetic heterozygosity, and human disturbance.” *Id.* At the same time livestock grazing impacts about 90 percent of LCT populations, *id.*, and LCT in the Truckee, Walker River, Reese River, and Humboldt River watersheds have been substantially and adversely affected by water management actions, *id.* at 18. Climate change is expected to further imperil LCT, including through more frequent droughts and wildfires. *Id.* at 18-19.

Within the action area, the Mosquito Creek population has been adversely impacted by non-native trout, habitat fragmentation, isolation, and degraded habitat conditions. *Id.* at 23-24. Information contained in the BiOp suggests that this population may be highly imperiled. For instance, two recent NDOW sampling efforts found no fish in mosquito creek. *Id.* at 21. And the upper reaches of Mosquito Creek continue to exhibit degraded conditions despite rest from livestock grazing. According to the BiOp:

The upper portion of Mosquito Creek is moderately entrenched along several stream sections and generally runs through compacted and sparse-to-moderately vegetated soil with eroding banks and frequent undercut banks. The top of the watershed had small, wetted widths compared to bankfull widths and water was barely flowing, followed by an ephemeral section approximately 0.75 mi long downstream (between points 4 and 7 in Figure 5) until flow was buffered by spring inputs just above the natural fish barrier. Below these springs, flow increased and pools were present. The top of the watershed flows through a mix of *Artemisia sp.* (sagebrush) meadows and *Populus tremuloides* (aspen) stands. In both, riparian cover was minimal and typified by short-cropped grasses. *Salix sp.* (willows) were absent from meadows and were very rare under the aspen stands. Several dispersed camping sites were evident nearby or in the riparian areas at points 1, 2, and 7 along the creek (Figure 5), where trash was left in and around the stream and unofficial trails were trampled along stream banks by people and pack stock horses (USFS 2022).

Id. at 21-22.

Although the BiOp discusses all of these threats, its analysis on LCT survival and recovery fails to consider the precarious state of the species throughout much of its range, as well as the current threats the species faces in the project area. In fact, the BiOp’s “no jeopardy” conclusion appears based entirely on the impacts of the proposed action, considered in isolation. *See id.* at 34-35. As a result, the BiOp does not consider whether LCT faces jeopardy with the incremental, additive impacts of the proposed action, and does not identify a “tipping point” beyond which survival and recovery would be jeopardized. The BiOp thus lacks an objective metric for determining when recovery would be compromised, and it fails to ensure that the proposed action will not contribute to “death by a thousand pinpricks.” *Ctr. for Biological Diversity*, 441 F. Supp. 3d at 857.

E. The Biological Opinion is Arbitrary and Capricious.

Indeed, there is nothing “objective” whatsoever about the BiOp’s jeopardy analysis. The BiOp repeatedly concludes that various aspects of the Forest Service’s proposed action will “reduce” or “minimize” impacts. But this begs the question, “Compared with what?” As noted, there has been no grazing on the Table Mountain allotment since the mid-1990s. The baseline for the BiOp’s analysis is therefore no grazing. It defies reason to conclude that adding grazing stress to the Mosquito Creek population, after a decades-long rest from grazing, will “reduce” or “minimize” impacts. Moreover, there is no existing grazing system in place with which to compare the proposed action, so the BiOp’s assertions that impacts will be “reduced” or “minimized” is completely meaningless. The BiOp thus fails to provide a rational basis for its “no jeopardy” conclusion.

The BiOp’s conclusion that “the HTNF has proposed grazing systems which are expected to result in maintaining or improving stream, riparian, and spring habitat” is equally meaningless because, as discussed above, the BiOp fails to specify which “grazing systems” will be utilized on the Table Mountain allotment—the proposed action would allow the Forest Service to employ virtually any grazing system permitted under the Forest Plan.

In addition, the BiOp’s conclusion that impacts from the proposed action will be “temporary,” *see* BiOp at 35, are entirely unsupported. Nowhere in the BiOp’s discussion of the impacts of livestock grazing generally, *id.* at 24-33, or in its discussion of the proposed action, *id.* at 33-34, does it suggest that the impacts of livestock grazing to aquatic ecosystems are “temporary.” In fact the discussion reveals multiple long-term impacts from grazing. Most impacts are discussed generally, and are not characterized as either temporary or long-term. However, the discussion notes multiple impacts that are inherently long-term, such as soil erosion and stream channel degradation. *See id.* at 27-28. According to the BiOp, rapid recovery from grazing impacts has been documented in ungrazed areas and enclosures, *id.* at 24-33, but the proposed action does not include construction of any enclosures; rather, the Table Mountain allotment will be grazed in the ecologically sensitive “hot season,” and cattle will have access to all occupied LCT habitat that is not protected by natural barriers. Further, the BiOp’s discussion largely focuses on the impacts to habitat, and does not consider the severity or duration of impacts to LCT themselves. Even if vegetative conditions recovery quickly, it may take years for isolated LCT populations to recover from all of the direct and indirect effects of grazing. Impacts to LCT populations may also be compounded by other threats such as drought, wildfire, and non-native trout, something the BiOp’s jeopardy analysis entirely ignores. The BiOp therefore fails to articulate a rational basis for its conclusion that impacts from the proposed action will be “temporary.”

Finally, proposed action and BiOp also fail to specify a streambank alteration limit, even though the BiOp acknowledges that “allowable streambank alteration from livestock is an important metric to measure.” *Id.* at 29. The impacts of grazing on streambank stability are well documented and summarized in the BiOp:

Duff (1983) found that streambank stability decreased by 14 percent in stream areas following introduction of livestock into an area which had been ungrazed

for 4 years; also, stream-channel widths were 173 percent greater in grazed areas. After 23 years of no grazing, Batchelor et al. (2015) documented channel widths decreased in 64 percent of sites and eroding streambanks decreased in 74 percent of sites. Clary and Kinney (2002) found that simulated heavy season-long grazing on an Idaho stream significantly increased streambank surface depression, bank retreat, and bank angle in just 2 years. Doubling the speed of streamflow increases its erosive power by 4 times and its bedload and sediment carrying power 64 times (Chaney et al. 1993). Accelerated runoff can cause unstable stream channels to downcut or erode laterally, accelerating erosion and sediment production (Chaney et al. 1993). Lateral erosion results in progressively wider and shallower stream channels that can adversely affect fish populations (Overton et al. 1994, Matthews 1996). Marcuson (1983) found that the combination of overgrazed streambanks and poor soils resulted in 80 percent more stream channel alteration in grazed areas compared with an adjacent ungrazed area along Rock Creek, Montana. Even within grazing exclosures, where the vegetation response can be relatively fast, there may be a lag time before the stream channel responds which is dependent on large scale watershed level effects such as streamflow, geology, roads, timber harvest, and grazing in other parts of the watershed (Kondolf 1993, Magilligan and McDowell 1997; Herbst et al. 2012).

Streambank damage can reduce or eliminate fish habitat associated with banks (Kauffman et al. 1983, Armour et al. 1994, Matthews 1996, Goss and Roper 2018), alter stream morphology such as pool/riffle and width/depth ratios (Gunderson 1968; Platts 1979, 1991; Overton et al. 1994; Myers and Swanson 1995; Knapp and Matthews 1996; Lyons et al. 2000; Herbst et al. 2012), and cover spawning areas with sediment which reduces survival of fish embryos (Phillips et al. 1975; Myers and Swanson 1996a, 1996b; Wood and Armitage 1997; Herbst et al. 2012). In some areas of the affected allotments, particularly in meadows, hoof shear led to bank collapse, removing a habitat component important to trout. Increased sedimentation due to this collapse may decrease pool volume downstream, eliminating other important habitat (Duff 1983, McIntosh et al. 2000). Cattle grazing in watersheds supporting aquatic species could increase predation of fish by birds and mammals because of the effect the cattle have on streambanks. Channels become wider, shallower, and cover is eliminated on the banks and within the channel. Fish are more exposed and vulnerable to predation due to lack of escape cover.

Id. at 26-27. “To maintain high levels of streambank stability,” the available scientific literature recommends a 10 to 20 percent streambank alteration limit. *Id.* (citing Cowley 2002, Bengeyfield 2006, Burton et al. 2011, Goss 2013, Roper 2015, Goss and Roper 2018). But even though the BiOp’s reasonable and prudent alternatives (RPAs) include annual monitoring of streambank alteration, BiOp at 38, neither the Forest Service nor FWS specifies a bank alteration limit for the proposed action. Without a substantive standard, the BiOp’s monitoring requirement is meaningless—it provides no authority or guidance for changing management to respond to deteriorating streambank conditions. And because this critical component is missing from the proposed action, FWS lacks a rational basis from which to conclude that the proposed action will

not jeopardize the survival and recovery of LCT. Even if the proposed action ultimately has severe and detrimental effects on streambank stability, there is no requirement on the part of the Forest Service or FWS to correct the problem.

For all of these reasons, the BiOp for the proposed action is arbitrary, capricious, and invalid, and the Forest Service cannot rely on it to satisfy its substantive and procedural duties under ESA Section 7. *Ctr. for Biological Diversity v. BLM*, 698 F.3d 1101, 1127-28 (9th Cir. 2012).

Resolution of ESA Issues: Withdraw the DN, EA, and FONSI; select the “no action” alternative or reinitiate consultation with FWS; do not reauthorize livestock grazing on any of the vacant Monitor-Toquima grazing allotments unless such consultation results in an ESA-compliant “no jeopardy” BiOp.

19. The DN, EA, and FONSI are inconsistent with the Wilderness Act and management of wilderness areas.

Our comments stated:

The provision allowing grazing in the Wilderness Act is an exception to the general premise of the Act, which requires agencies to manage wilderness areas to preserve their wilderness character and natural conditions. The Wilderness Act is not a procedural statute, though the agency often behaves as though it is. It is a substantive law passed because all the federal land management agencies, and in particular the Forest Service, could not be trusted to ensure the preservation of wilderness lands in the United States. The language concerning livestock grazing in wilderness is a mere forty words long: “Within wilderness areas in the national forests designated by this Act...the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.” Thus, grazing which existed in wilderness areas when the Wilderness Act was enacted may continue.

In other words, grazing is an exception to normal wilderness protections. It is a use that, by definition and practice, degrades Wilderness. Unlike what some in the agency may believe, the Wilderness Act does not grant special privileges to those that graze their cattle or sheep in Wilderness that are not available on other national forest system lands. The agency can, and should take action when grazing is affecting other values such as wildlife or watersheds. The fact the allotments have been vacant for so long is also significant. There is no question that grazing by domestic animals will degrade the Table Mountain and Alta-Toquima Wildernesses from what it is today.

This is an overriding concern regarding Wilderness. The fact that these allotments in Wilderness—Table Mountain, Meadow Canyon, Monitor Valley West, and Monitor Valley East—are vacant means that no rancher relies on them for their operations. There is this important opportunity to protect the wilderness character and the Wilderness without affecting any rancher. The failure to do so degrades Wilderness and violates agency policy found in the Forest Service Manual, “Where a choice must be made between wilderness values and visitor or

any other activity, preserving the wilderness resource is the overriding value.” FSM 2320.6. These concerns are explored in more detail in the following subsections.

A. There is no need to reissue these allotments. Our comments raised the point that the long vacancy suggests there is truly no need for these allotments to be grazed:

Restocking the four vacant allotments that contain wilderness acreage would be as if opening new grazing in Wilderness. These allotments have been vacant for over 20 years (Meadow Canyon, Table Mountain, Monitor Valley East, and Monitor Valley West). The urgency to do this, as expressed in the PA, is belied by the fact they have not been allocated for many years and that 40 other allotments on the Humboldt-Toiyabe National Forests are also vacant, including other wilderness allotments contiguous to some of these. It would seem nobody is clamoring for these allotments. Further, the Toiyabe Forest Plan does not require stocking, as the PA may lead one to believe.

Our scoping comments further stated, “these allotments have been vacant for far longer since the Table Mountain and Alta-Toquima Wildernesses were designated in 1989 than they have been used. The information in the PA suggests grazing may have only taken place for a short period of time.” Indeed, the EA admits:

Historically, these allotments have generally been used by cattle. Term grazing permits were originally issued for cattle in 1956, and Pine Creek Ranch acquired the permits in 1976. The permitted cattle head, head months and season of use for the period between 1976 and 1984 is provided in Table 1. Permits for all six allotments were reissued between 1981 and 1983. The Nevada Wilderness Protection Act of 1989 (Public Law 101-195) designated the Alta Toquima and Table Mountain Wildernesses. Portions of these wilderness areas are within the project area. Public Law 101-195 allows grazing to continue in these wilderness areas so long as the grazing use is administered in accordance with section 4(d)(4) of the Wilderness Act of 1964 (Public Law 88-577). Permits for the McKinney, Meadow Canyon, and Silver Creek allotments expired and were not reissued in 1994. In that year, the permits for the Table Mountain, Monitor Valley East, and Monitor Valley West allotments were canceled for compliance issues from the permittee. After cancelation of the permits, the permittee and the Forest Service were involved in a series of trespassing of livestock primarily on Meadow Canyon allotment. This trespass case was resolved in February 2017. There is currently no permitted use on the allotments.

EA at 2. While much is unsaid in this brief description of past grazing and violations, it is clear that in 2024 it has been at least 30 years since grazing legally took place in these allotments. That time frame may have been longer, calling into question whether grazing was really established prior to wilderness designation.¹⁰

¹⁰ Further, Table 1 leads the reader to conclude that no grazing took place after 1984. If that perception is accurate, then the permits should have been cancelled after the 1987 grazing season. If indeed that was the case, then allotments in the Table Mountain and Alta Toquima Wildernesses should have been vacant and cannot be reissued.

Even the EA makes the case, inadvertently, that there is no need to reauthorize grazing on these allotments. “There are more than 40 vacant allotments across the HTNF. The Forest Service is considering these allotments for authorization of livestock grazing. The Forest Service has developed a phased approach for performing the analysis of vacant allotments for authorization of livestock grazing. This project is the first phase of that approach” EA at 6. Forty vacant allotments suggests that is no need for these allotments. Apparently, nobody really wants these allotments for whatever reasons. Because of the mandates of the Wilderness Act, vacant wilderness allotments should be the last ones to consider, if at all, not the first.

B. The proposed decision would degrade the Table Mountain and Alta Toquima Wilderness. Our scoping comments raised issues specific to each allotment, based on the information in the Forest Service scoping letter:

- The Meadow Canyon Allotment is not meeting desired conditions. Therefore, it should not be allotted in order to meet the Forest Plan. This allotment is also adjacent to the Mt Jefferson RNA, which is off-limits to grazing. Stocking this allotment might invite livestock into the Mt. Jefferson RNA.
- The Monitor Valley East and Monitor Valley West Allotments would be used year-round by cattle. This would have additional impacts. Even with rotation, year-round grazing causes significant problems.
- Riparian areas, especially in the Table Mountain Allotment, could be negatively affected by grazing. Lahontan cutthroat are found in Mosquito Creek in the Table Mountain Wilderness. There is also a segment of Pine Creek in the Alta Toquima Wilderness that contains this rare variety.

The EA and other materials are inconsistent on the current condition of the allotments. For example:

1. Table Mountain Allotment. Page 6 leads the reader to conclude that everything is fine. Yet Appendix C in the EA shows many sites that are in low vegetative and/or soil condition. Further, the BA points out on page 24 regarding the upper portion of Mosquito Creek, a Lahontan cutthroat stream, “riparian cover was minimal and typified by short-cropped grasses (Figure 4). Willows were absent from meadows and were very rare under the aspen stands, only found in one hard-to-access spot during our visit.” This is not indicative of meeting desired conditions. The photos on page 25 of the BA show severe erosion and head cutting. Appendix C in the EA also notes sites that are in low vegetative and/or soil condition, including those in upper Mosquito Creek.
2. Meadow Canyon Allotment. Pages 4 and 57 discuss current conditions, leading the reader to conclude all is well, without revealing whether all sites meet desired conditions. They apparently don't, judging by Appendix C in the EA, which notes many sites that are in low vegetative and/or soil condition. The EA also admits on page 57 regarding areas in the Wilderness that “[b]ank cover varied from poor to excellent.”

3. The Monitor Valley West Allotment has only two sites, one of which, according to Appendix C, is now in vegetative condition. The other has no data.
4. The Monitor Valley East Allotment has no monitoring data, according to Appendix C of the EA.

Appendix C reveals real problems that are downplayed in the EA's analysis. After thirty years of rest, one would expect greater recovery on these areas. The fact that “short-cropped grasses” are found in these areas indicate either that ranchers are illegally grazing their cattle in the area of that wildlife use and need the available forage in parts of the Table Mountain Allotment. The other allotments are in a similar situation. Permitting these allotments to be grazed by cattle, either by term permit or for forage reserves, is inconsistent with the maintaining current conditions in the Wilderness or the mandate to preserve wilderness character.

C. Relevant information to Wilderness and this project was put on the Forest Service website after the legal notice. The Forest Service put several documents on the website after the legal notice that are relevant to the proposed decision. Two of them are wilderness character monitoring reports. These documents should have been available when the legal notice was issued.

A quick review of the two reports does reveal important information. Regarding the Table Mountain Wilderness and cattle grazing, page 34 of the *Table Mountain Wilderness Character Baseline Assessment Report* states:

Livestock grazing practices (especially those not in compliance with Annual Operating Instruction prescriptions) degrade stream banks, reduce riparian vegetation by use or trampling, and negatively impact water quality within or outside wilderness. Wild horse populations also contribute to such degradation. As a result, 88 percent of the watersheds in Table Mountain Wilderness are functioning at risk, with only 12 percent are functioning normally.

The same page notes there is insufficient information to assess water quality in Mosquito Creek. Page 36 includes another reason to reject grazing on any of these allotments, “In the past, there have been staffing gaps that inhibited USFS from monitoring livestock grazing use at desired levels.” That is evident by data in the EA and BA, which shows little if any monitoring that is less than 10 years old. In addition, “From 2020 through 2021, there has been less vegetative growth and water recharge due to the continued drought conditions.” *Ibid.*¹¹

¹¹ The statement on page 42 of the same report is almost certainly false, “Table Mountain Wilderness has been grazed for a long time, dating back to the early 1800s when settlers moved into the area.” The first permanent settlement of settlers of Euro-American descent in Nevada is commonly accepted to be 1851, not the early 1800s. It appears there were no permanent Spanish or Mexican settlements in the area of the Monitor Mountains prior to that time. An identical inaccuracy occurs on page 43 of the *Alta Toquima Wilderness Character Baseline Assessment Report* regarding the Alta Toquima Wilderness.

Page 22 of the *Alta Toquima Wilderness Character Baseline Assessment Report* indicates that grazing threatens Wilderness by increasing the opportunity for invasive species. Pages 35 and 36 of the same document state:

Authorized and unauthorized livestock grazing in and outside of wilderness has degraded stream banks, reduced riparian vegetation, and negatively impacted water quality. In active allotments, livestock grazing utilization exceeding allowable use levels in riparian and wet meadows has been recorded. The Forest Service use the permittee administrative process to address such issues. Wild horse populations also contribute to degrading these habitats as well. As a result, all percent of the watersheds in Alta Toquima Wilderness are functioning at risk.

This is an amazing admission and reason enough to reject authorizing the vacant allotments in Wilderness, even as a forage reserve.

Page 38 also states, “In 2021, there is less growth and water recharge due to the continued drought conditions. With the current situation, USFS may implement annual adjustments to grazing in the future. Any changes will be determined through discussions with the permittees (sic) and no permit changes will occur.” Yet another reason to not permit grazing as a forage reserve.

D. There is a question whether infrastructure will be built or rebuilt in Wilderness using motorized equipment. The *Table Mountain Wilderness Character Baseline Assessment Report* shows extensive water developments in the Table Mountain Wilderness in the Mosquito Creek Area (Table 16, pages 42 and 43). The BA page 16 also indicates there are water developments. Even the EA admits on page 52 there are 15 water developments in the Table Mountain Wilderness, though it states they won't be rebuilt. Yet, the EA confuses the issue on page 10:

Backhoes, tractors, or similar equipment would be used to level sites for troughs or tanks, dig and cover ditches for laying pipe, create gravel aprons underneath the troughs, and place the tanks and troughs. Future maintenance of the water systems would also require the occasional use of equipment. Spring sources would be fenced to prevent uncontrolled livestock access to the source area. Exclosure sizes would vary based on the site; in general, they would be large enough to protect the source area habitat and to allow for occasional controlled grazing to maintain open-water habitats. **There are no water developments in the Alta Toquima or Table Mountain Wilderness Areas.**

Emphasis added. The EA reiterates on page 50 “[t]here are no range related water developments within the Table Mountain Wilderness.” This lack of clarity results in an inadequate analysis.

For example, are the water developments in working order? If not, it seems that the cattle will spend even more time in the riparian areas damaging the vegetation, stream banks, and

Lahontan cutthroat habitat. If the intent is to do a later analysis on rebuilding some or all of these developments, then this decision is a connected action and has cumulative impacts that are not evaluated.

E. The analysis of impacts to Wilderness is inadequate. Aside from the problems identified above, the analysis shortchanges Wilderness in the following ways.

Rather than look at the Wilderness as a whole, the analysis fragments the wilderness into various qualities. The notion of five wilderness qualities came about in Landres' *Keeping it Wild* protocols—internal agency guidance documents that have not gone through formal notice and comment rulemaking. These documents are the subject of much disagreement and controversy, largely because they promote—intentionally or not—an interpretation of the Wilderness Act that is internally inconsistent and result in management actions that are antithetical to Wilderness preservation. *See, e.g. Cole, et. al. 2015.* While initially envisioned as a tool to help agencies measure wilderness character, on the ground it has had the unintended consequence of agencies, including the Forest Service, engaging in a divide and conquer strategy about Wilderness.

Domestic cattle grazing, by definition, harms Wilderness. It is a non-conforming use, an exception to Wilderness. Rather than honestly evaluating the impacts from grazing of non-native cattle on the Wilderness, the EA suggests that this economic activity doesn't really trammel Wilderness too badly because negative “effects would be offset by cattle depositing urine and dung in the allotments that would increase soil productivity.” EA at 51. The EA also claims that somehow grazing plans would be followed when evidence from the Forest Service included in this objection suggests otherwise.

One of the most dismissive parts of the analysis is found under the heading of solitude on page 52 of the EA:

Domestic livestock grazing can have a variety of impacts on opportunities to experience solitude. Livestock make noise, defecate, urinate, and congregate in areas often preferred by people, including riparian areas. The sight, smell, and sounds of livestock typically overlap with the primary season of human visitation. Management of livestock by range riders/herders requires livestock managers to visit the allotments, typically on horseback. Some recreationists encountering these managers may perceive that their solitude has been disrupted. However, for these visitors, there are ample opportunities throughout the entire two wilderness areas, especially in allotments or pastures being rested, in higher elevation and steeper terrain to access solitude away from livestock grazing. Other recreationists are not bothered by cattle grazing and do not feel that their solitude has been disturbed. Overall, the opportunities for solitude would remain unchanged and there would be minimal impact to visitor's solitude within the Alta Toquima Wilderness or Table Mountain Wilderness and any impact would be short-term and localized to where livestock are actively grazing.

These short-term impacts are actually permanent as they “overlap with the primary season of human visitation.” It seems the Forest Service expects recreationists to carry around the Annual Operating Plans for allotments in a particular part of the Wilderness they visit so they

can avoid cattle. This is not analysis of impacts, rather a biased justification of a proposed decision.

F. There is a failure to look at other alternatives and a deliberate misrepresentation of scoping comments. The EA dismisses an alternative that would close the allotments in Wilderness on page 13. It states:

The Forest Service considered but dismissed a single alternative from further analysis; this was an alternative to categorically prohibit grazing in wilderness. Commenters requested this alternative during the Scoping/Notice of Proposed Action comment period described above. Commenters justified that such an alternative was appropriate given the need to preserve wilderness characteristics in the wilderness areas and, as argued by commenters, the fact that grazing is not aligned with the intent of the Wilderness Act.

The Forest Service dismissed this alternative from further consideration because the argument that grazing is not aligned with the Wilderness Act is incorrect. When the Nevada Wilderness Protection Act of 1989 designated the Alta Toquima and Table Mountain Wildernesses, the law allowed grazing to continue in the wilderness areas so long as the grazing use was administered in accordance with section 4(d)(4) of the Wilderness Act. The Forest Service would continue to comply with this provision of the Nevada Wilderness Protection Act in its issuance of permits on the allotments. Authorizing livestock grazing in wilderness is aligned with the Wilderness Act.

Further, closing wilderness areas to grazing would eliminate over 50,000 acres from availability. This loss of acres available for grazing would fail to meet the purpose of and need for the proposed action. Finally, the no-action alternative considers the potential effect of not authorizing livestock grazing in wilderness; thus, if the no-action alternative's analysis is sufficiently compelling, the responsible official could select that alternative when completing the decision notice for this project.

There are at least four problems with these statements. First, there is a real question of whether grazing was ongoing at the time of designation as the EA has a paucity of information as addressed in this objection. Second, the fact that the allotments have been vacant for 30 years and have likely been ungrazed for even a longer period suggests that the exception in the Wilderness Act allowing grazing is no longer operative. This is not continuation of an allotment that is active. Rather it is a new use and damaging use in Wilderness. As such, issuing a new permit would not align with the Wilderness Act as the exception is really not operative in this case. Third, the purpose and need is too narrowly defined, in violation of NEPA and case law, if it precludes closing allotments that have been vacant for 30 years, whether in Wilderness or out of Wilderness. Fourth, closing allotments is different than leaving them vacant (no-action).

Summary: The fact that these four allotments in Wilderness have been vacant for 30 years and probably have not been grazed for even more years is reason enough to close them. There is no current permit holder or a potential transfer of a permit such as in the case where a rancher sells base property. The EA contains errors and fails to recognize that even after 30 plus years,

the allotments have yet to recover even though some of the supporting information points this out.

Resolutions:

Close the Table Mountain, Meadow Canyon, Monitor Valley West, and Monitor Valley East Allotments.

Keep the Table Mountain, Meadow Canyon, Monitor Valley West, and Monitor Valley East Allotments in a vacant status.

Withdraw the EA, draft Decision, and FONSI and complete an EIS for these allotments.

Withdraw the draft Decision and FONSI and issue a new decision to correct errors and to allow for a full objection period with all relevant material made publicly available at the time of the legal notice.

* * *

Conclusion

Thank you for your consideration of this objection. Please do not hesitate to contact us with any questions. We hope to discuss this objection with you in a resolution meeting.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Ruprecht".

Paul Ruprecht
Western Watersheds Project

s/Scott Lake

Scott Lake
Center for Biological Diversity

s/Kevin Proescholdt

Kevin Proescholdt
Wilderness Watch