

Data Submitted (UTC 11): 2/7/2020 8:00:00 AM

First name: Michael

Last name: Kissel

Organization:

Title:

Comments: Sirs,

I received a Klamath National Forest (KNF) notice dated 7 January 2020 and post marked 22 January 2020 regarding the Oak Knoll Range Project Environmental Assessment dated January 2020. Under this Environmental Assessment (EA), KNF proposes continuation of livestock grazing in the East Beaver, Ash Creek, and Hornbrook allotments.

I agree that the forest plan determined the Ash Creek Allotment (ACA) is suitable for commercial livestock grazing. (pg 3) This contradicts the false statements and promises made to me by KNF officials Grantham, Harris, and McMorris who had represented that the ACA was not suitable for cattle grazing, and as such made a Finding Of No Significant Impact (FONSI) under the 2010 EA.

I object to the use of any on and off Provisions as a satisfactory management tool for grazing activities under this permit (pg 3). KNF has no physical controls in place, i.e. fences to contain grazing only to NFS lands, thus inviting impact to adjacent private landowners, namely me, who have determined cattle grazing to be an incompatible activity to tree farming. KNF has no monitoring proposed and no authority to enforce the on and off Provisions when its grazing permit activities damage or impact private landowners who are impacted by this permit. When I ordered the KNF permittee (Lemos) to cease and desist his damage to my property due to his grazing activity, he cited this KNF permit as his authority to confiscate my private property, without my permission, and without compensation to me.

I object to KNF's stated intent to "promote efficient use of intermingled ownership" (pg 3). KNF and Lemos have no legal right, permission, or other grounds to manage, profit, control, or otherwise violate my personal property rights within the ACA.

I object to the design criteria established for the ACA (pg 5) because the proposed monitoring and controls are insufficient to achieve said design criteria. There are no physical controls in place, namely fences and cattle guards, to contain grazing only to NFS lands. My observations of ACA cattle grazing is that cows bunch up and overgraze along watercourses, especially sensitive riparian environmental habitats and forested areas. Cattle also tend to bunch up around salt/supplement licks placed on my private property by Lemos, after he trespassed, damaged my gate, and destroyed my no trespassing signage. The impacts of this bunching is devastating to soils, water quality, creek banks, and timber production on my private property, all resulting from the existing permit that this EA proposes to renew.

I object to the proposed utilizations levels criteria (pg 6) proposed for use in the ACA. KNF proposes no monitoring of the ACA, and therefore no assurance that these utilizations would be limited to these levels, nor if they are even appropriate under the variables of any given grazing season.

I object to the Monitoring Strategy limitation of Range Readiness only for the ACA (pg 8) because this has proven insufficient to protect the environment, public safety, and my private property interests under the current and past permits.

Though I object to any permitted cattle grazing by permit in the ACA, cattle drift monitoring (pg

10) is necessary to protect my property from the East Beaver and Hornbrook allotments as a minimum.

Nowhere in this report do you recognize the affects that the Lime Fire (September 2019) will have on the ACA. Environmental damage due to cattle grazing on this high intensity fire must be recognized and justification for the "No Action Alternative". The lime fire burned off about 50% of the vegetation within the allotment in September of 2019. These soils are extremely fragile and tender due to the intensity of this fire. Cattle grazing under these conditions will cause extensive soil disturbance, accelerated erosion, and negative impacts to water quality.

Your statement that Adaptive Management Strategy (pg 12) is currently implemented on the ACA is patently false. Adaptive Management is impossible because no monitoring of the ACA has, is, or will be implemented by KNF under this EA.

I object to the use of salt/supplement (salt lick) use as an Adaptive Management Option (pg 13) because containment is not required by the EA. Uncontained salt blocks sterilize soil and kill plants. Use of salt licks has promoted bunching of cattle for extended periods on my property, resulting in overgrazing and other environmental damage, especially in riparian habitats and my forested areas.

Forage areas for livestock are not limited to the areas listed (pg 15) for the ACA. I have observed significant soil compaction, path cutting, soil erosion, creek bank damage, water quality degradation, tree damage, and devastation of sensitive riparian habitats in Shake Gulch, Lime Gulch, and along Ash Creek itself.

I object to the Capability/Suitability (pg 19) section because it is incomplete and misrepresents the controversy (pg 48) that KNF's cattle grazing permit has instigated within the ACA for the following reasons:

1. KNF promotes the false truth that cattle grazing is suitable to the allotment, knowing this study is limited only to NFS lands, and while knowing that no controls will contain grazing activity to NFS lands.
2. I have placed KNF on notice that my lands do not permit cattle grazing because of my direct negative experiences of property damage, theft, violation of my constitutional rights, and environmental damages. These notices are attached as Exhibits 1, 2, 3, 4 and 5 to this letter.
3. Other sections of this EA prove KNF is aware of cattle drift and the negative impacts of those phenomena, yet you offer no solution under this EA. My request to provide fencing and cattle guards to protect my property from cattle drift impacts from this permit were denied by KNF in 2010. I ask that KNF provide fencing and cattle guards, and to maintain that fencing and those cattle guards, as mitigation for damages I have sustained, and will sustain under this cattle-grazing proposal.
4. KNF officials Patricia Grantham, Ken Harris, Stephanie McMorris told me that cattle grazing within the ACA was not commercially feasible and promised cattle grazing would not happen within the ACA. The content of this EA Section of proof that the commercially feasible promise was false.
5. KNF proceeded to issue itself a FONSI determination and approved the previous EA 29 December 2010. I objected to that determination. See Exhibits 4 and 5 attached.
6. When KNF promises to me proved false, namely that cattle grazing within the ACA was not commercially feasible and would not happen, I issued KNF a Cease and Desist Order dated 14 June 2013 that included a listing of the negative impacts your cattle grazing permit has had on my private property.
7. Cattle grazing activity was curtailed due to the death of the Lemos, rather than KNF's respect for the law, my threatened lawsuit, respect for me as an adjoining landowner, nor its own acts of

good faith and fair dealing.

8. This EA, without mitigation for KNF's false promises and damages to my property is proof positive of KNF's defiance of my good faith request for it to cease and desist this permitted grazing activity.

Table 12 (pg 34) is wrong. I have observed white bark pine within the ACA. Many of the trees I observed were distressed due to pine blister rust.

Statements of no significant impact to Public Health and Safety per Intensity Factor 2 (pg 46) and that "The proposed project meets all conditions required for coverage under Category B of the Waiver" (pg 52) are patently false. The EA fails to recognize cattle trails leading down to the stream channels in Ash Creek (pg 56). The EA fails to recognize damage caused by grazing in dense forested areas and makes the false statement that "dense forested areas are not used by cattle and are not affected by grazing (pg 56). This EA fails because it does not recognize that due to limited water availability in this entire area and that livestock grazing under this permit has contaminated and physically damaged these water sources. I have observed and have direct experience that livestock excrement and turbidity due to erosion caused this water resource to become non-potable.

This caused a significant risk to human health and safety in the basis that:

1. The EA does not recognize that water in Ash Creek water is used for human consumption. KNF has not addressed impacts to water quality under this EA.
2. There is not recognition under this EA of KNF's prior commitments to establish and report results for permanent sample plots to assess water quality impacts, evidence that it requested and received a California Water Quality Control Discharge (CRWQCB) waiver does not protect drinking water standards.
3. No mention of forest BMPs that it committed to in order to protect water quality, public health, and public safety.
4. EA fails to recognize every culvert crossing in the Ash Creek Drainage becomes a point discharge source per the CRWQCB.
5. The EA does not recognize that Ash Creek runs through my fee title holdings in Section 3. That there are several springs that feed Ash Creek along these holdings. That Ash Creek and these springs provide drinking water for human consumption for both for myself when I work my land and camp for extended periods of time; and for several cabins located downstream along Ash Creek. And that when Ash Creek goes dry in the summer, downstream residents fill tanks with potable water from a check dam on Section 2.
6. The EA does not recognize that I notified KNF of threats to Public Health and Safety in my Cease and Desist Order dated 14 June 2013 (Exhibit 5), In that letter I notified KNF of unlawful cattle grazing under this KNF Term Grazing Permit in the ACA about 14 miles north of Yreka, Township 46 North, Range 7 West on my private property. This cattle grazing activity is unlawful because the previous EA made a FONS! on the basis that the activity would not occur, and when it did occur, it invalidated the EA under which the activity was authorized.
7. The EA does not recognize that I advised you of Trespass Lemos, through a locked gate, on multiple occasions, to herd cattle on my lands and to place a salt block on my private land, without any containment, next to Ash Creek and seedlings I personally planted, and contaminating my soil; for the expressed purpose of holding cattle on my private property,
8. The EA does not recognize that Trespass of Lemos I observed, through a locked gate, personally observed on 25 March 2013 that disrupted the personal and private enjoyment of my private property. Locks were cut on my gate and no trespassing signs were removed. Damage to drainage facilities were observed, causing Ash Creek to jump its banks, run down an access road, and across Ash Creek

Road, rather than through the adjacent culvert, washing out a portion of the road, and threatening my only access to my private property, minerals, and timber. Cattle fecal waste and urine into my potable water sources. causing contamination of Ash Creek and three adjacent water springs, Damage to three water springs by trampling and damaging adjacent soil. Differential compaction of soil due to cattle was observed within, around, and under my forest. Trash was deposited. Exposure of bare mineral soil. especially at my gate and main landing areas. now subject to accelerated erosion and water quality violations.

EA treatment of Intensity Factor 7: Cumulatively Significant Impacts (pg 48) is woefully inadequate. I believe the reported NFS land acreage to be inflated and the total private land acreage to be understated for the ACA, under proposed project location. Grazing activities and damages caused by this grazing permit to private property adjacent to NFS lands within the ACA must be thoroughly recognized, studied, reported, and mitigated as cumulative impacts under this EA. Limiting the scope of this study to only NFS lands (pg 1) while knowing cattle drift is an issue and that damages to private property, namely mine, invalidates this draft EA completely.

Under the 2011 EA, KNF promised to engage in annual multiple indicator monitoring (MIM) for the ACA. Multiple indicating monitoring activities, especially those related to water quality within the ACA must be included in this EA. This 2020 EA must note the MIMs that were implemented, report the data collected, analyze and report environmental trends, and form a scientific basis for KNF's position that no environmental damage is expected by continuing this activity. If KNF did not implement the MIM or failed to maintain records of MIM activities, then that must also be noted on the permit, and a notice must be sent to the California Department of Fish and Game, California Water Board, and the California Regional Water Quality Control Board.

I operate a tree farm, manage forestland and conduct mining operations within the proposed boundaries of the Klamath National Forest (KNF) Land in the Ash Creek Grazing Allotment for the past 20 years. My holdings are located about 14 miles north of Yreka, Township 46 North, Range 7 west, Section 3, described as:

My holdings total 210 acres within the ACA, covering portions of the Shake Gulch, Lime Gulch, and Ash Creek Watersheds.

One of my management objectives of my forestlands is enhancement of wildlife, primarily Black Bear and Black-tailed Deer. I have observed declines in the populations of these two species within the ACA over the past 20 years. I attribute those population declines to cattle grazing activities authorized under this permit. KNF's declaration that "No changes in habitat trend or population trend for black-tailed deer are expected" (pg 59) is wrong.

This EA does not recognize Oregon Berry, Dwarf Mistletoe, and Star Thistle invasive species (pg 61) that are rampant in the ACA.

I note that not a single private landowner within the boundaries of this EA was consulted (pg 62); even though this activity will directly affect each and every one of us.

Your proposal provides for permitted grazing within Section 3, Township 46 north, Range 7 west. I privately own 210 acres in Section 3. The KNF and Lemos have no legal right to permit livestock grazing on my fee title holdings. I have no intention of granting or selling permission to the KNF

to permit grazing on my tree farm. Despite my explicit objections, notices and warnings, KNF has sold the grazing rights of my property under that permit as noted above; without permission and without just compensation.

Lemos has exercised his right under the permit and grazed cattle on my property, with out permission or compensation, and resulting in damages to me. Lemos denied my request for compensation for his grazing and damages. He refused, citing his payment to KNF, his rights to graze my land under the KNF permit, and the fact that my lands are included in the boundary of the ACA, without carve out nor exception.

KNF has engaged in this deceptive practice, namely the omission, exception, and failure to provide controls that limit grazing to only KNF lands, in order to inflate the number of available grazing acres and the bids for persons interested in buying this permit. KNF's action has resulted in a 100% take of grazing rights in this watershed and my private cattle-grazing asset. This is a violation of the associated case law and my fifth amendment of the Bill of Rights of the Constitution of the United States of America that legally requires,

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

I do not practice or lease livestock grazing rights on my property because livestock grazing is not compatible with tree farming that is limited to the rain shadows of east and north aspects in this area. Livestock grazing conflicts with my wildlife management objectives for this timber tract.

My land is not fenced and there are no cattle guards across my access road. Since Siskiyou County is an open range county, I would legally be required to fence my tree farm, build cattle guards to keep the livestock out, and to maintain these facilities at significant cost. I have no reason to fence my timberland and have not intention to do so, absent KNF permits for livestock grazing. If KNF permits livestock grazing, this activity would be the cause of an impact on my private property and for which I would demand mitigation. Perimeter fencing, cattle guards, and regular maintenance at KNF expense would be an appropriate mitigation measure under this EA.

Trespass, third party liability, cut pad locks and damaged access gates are ongoing issues and expenses for my small timber company. Livestock gazing in this area will only exacerbate these damages, liabilities, and expenses.

The courts and the public afford KNF the presumption of good faith and fair dealing, given it acts ethically, lawfully, and protects the public interest. This proposal does none of those things. In fact, KNF has been caught in lie because it can't keep its stories straight between this and the previous EA. I offer KNF the following proof:

1. This 2020 EA with its references to the current Forest Plan clearly states, "cattle grazing is commercially feasible".
2. Under the 2011 EA and permit, KNF made a Finding of No Significant Impact (FONSI) as its final environmental determination. The 2011 FONSI basis, as communicated to me, was that cattle grazing in the ACA was not commercially feasible and had not occurred over the past 30 years.

3. Under my appeal, (Exhibits 3 and 4) I argued to KNF that if ACA is not suitable for grazing, then it makes sense that the permit renewal be amended to prohibit grazing. I argued that fairness in this approach, since it protects my property and is fair to Lemos who won't be paying for grazing rights in an area where grazing isn't feasible.
4. My appeal noted that the "no grazing over the past 30 years" approach is technically and legally flawed under the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA).
5. I argued that the previous EA is fatally flawed and invalid because it justifies issuance of this cattle grazing permit under the assumption that the permit will not be used. This approach defies logic, common sense, and begs the question, "Why KNF is wasting government resources to environmentally study and permit an activity that it assumes will never happen?"
6. I pointed out that both CEQA and NEPA require KNF to assess the impacts of the permitted activities, regardless of Lemos' past elections and business practices.
7. KNF dismissal of my concerns based on Lemos' past elections is not acceptable.

For the reasons stated above, I request that KNF implement the mitigation measure of fencing and cattle guards installation and maintenance around our private property to protect us of further damages resulting cattle drift from the proposed cattle grazing activity in adjacent allotments under this EA. KNF must also install fencing and cattle guards around its property as the only feasible mitigation to contain cattle grazing to its lands in the ACA, since this entire EA is predicated on that limitation. Alternatively, KNF could adopt the No Action Alternative. Continuing under the current arrangement is not an option given KNF's bad faith efforts under the 2011 FONSI, its false statements, and broken promises.

I ask the KNF to respond and address each comment, concern, and objection directly. I further ask that that each be addressed, mitigated, and permanently placed into the Environmental Assessment (EA) record.