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Comments: 1. Attachments

We have included 2 appendices along with this Objection. Appendix A includes various references on grizzly bear issues, and Appendix B includes a variety of various other references, such as the presence and management of neotropical migratory birds, aspen and willow management, examples of information provided in BLM grazing assessments, and riparian management defined in the Revised Forest Plan for the Custer-Gallatin National Forest.

2. Connection between Objection and Prior Comments

On December 4, 2020, NEC and AWR submitted comments on the draft Environmental Assessment (EA) for the East Paradise Range Allotment Management Plan. In those comments, NEC requested copies of monitoring information gathered for the Suce Creek Aspen Restoration Project. The Forest Service did not respond to this request, including notification that it may require a Freedom of Information Request (FOIA). This information would have provided important information about the response of aspen to conifer thinning when it was not located on a grazing allotment. Cattle are known to have severe impacts on healthy aspen stands (Earnst et al. 2012; Bestcha et al. 2014).

On December 2, 2020, grizzly bear expert Dr. David Mattson also submitted comments on the East Paradise draft EA. In these comments, he noted that the Forest Service failed in the scoping duties. Even though he requested to be included in the NEPA process on September 4, 2020, for the East Paradise process when it became active, the Forest Service did not notify him of the comment period for the draft EA. He also noted that the initial scoping for this allotment management process occurred over 7 years ago, in the mid-2013. He believed that a new scoping period should have been initiated due to this long time lapse.

The following is a summary of the issues raised by NEC and AWR on December 4, 2020. We are incorporating by reference all these issues into this Objection, in order to avoid repetition. We would also like to incorporate by reference into this Objection all of the comments submitted by Dr. Mattson on December 2, 2020.

Where needed, we will expand upon these various issues.

The first issue we raised in our comments was the cost to American taxpayers for livestock grazing on public lands. This is an important issue because this same livestock grazing has severe adverse impacts on wildlife, including for the East Paradise landscape, on grizzly bears, elk, and neotropical migratory birds. There was no agency response to this issue in the draft Decision Notice (DN).

We raised concerns about the plight of neotropical migratory birds, which have a documented decline of 3 billion birds since the mid-1970s. These birds were not evaluated in the EA for the East Paradise Project, and the agency did not provide any response to this issue in the draft DN.

We raised the issue about protecting 30% of the landscape in the U.S. from development, including livestock grazing. There was no response to this issue, including if it would promote habitat for neotropical migratory birds and the threatened grizzly bear.

We raised concerns about the impact of barbed wire fences on wildlife. Although the wildlife section of the EA and other inclusions claimed that barbed wire fences are constructed to be "wildlife friendly," they still have

impacts on elk and birds.

Also, the status of all the existing fences was not identified. It is highly likely that none of these have a modified design to reduce entanglement impacts to wildlife.

The many potential modifications identified for fence construction by the Montana Fish, Wildlife and Parks to reduce impacts to wildlife were not identified in the draft ON. We also noted that pole and rail fences are not a hazard to wildlife, and should be used where boundary fences between public and private lands are required.

We raised a concern about the impact of water developments that result in a sacrifice area around roughly 125 acres surrounding each water development (USOI 2018). This issue was not addressed in the draft ON, although the decision includes an unidentified number of new water developments across the planned grazing allotments.

We requested information on the costs of the proposed grazing program. This request was not responded to in the draft ON. The public would like to know the total annual costs that will be required for these grazing allotments, including in comparison to monitoring and weed management costs. We also requested information on the cost of personnel for monitoring and management of these allotments, as well as the costs of each of the 3 grazing alternatives, including the no action, and the costs of all the proposed improvements for alternatives 2 and 3. Also, what number of days are Forest Service personnel expected to visit the allotments per year? The draft ON did not provide any information to the public on management costs for this grazing program.

We requested that more specific information be provided to describe each alternative, as well as how each allotment will be managed. There was essentially no information about specific allotment management regimes. We have provided examples of what typical allotment management plans include, which are very detailed summaries of grazing dates for each pasture (e.g., (USOI 2019, USOI 2018), in this objection. As another example, we requested information on the miles of fences that would be required for each alternative. The EA and draft ON do not provide any information on miles of fences that would be built for alternatives 2, 3 or the blended alternative selected.

We raised concerns about the extensive noxious weed problems that occur across the allotments, including due to past logging in the Mill Creek drainage, and what is likely past grazing impacts in Suce Creek. The EA notes that weed management is based on funding availability, which demonstrates that the lack of a funding priority is resulting in highly significant increases in noxious weeds on these allotments. The agency did not define in their response to public comments as to why adequate funding is not available for effective weed control.

We raised concerns about the impact of cattle in riparian areas, or areas that have high values to wildlife, especially neotropical migratory birds. The Gallatin Forest Plan has a standard to limit browsing on willow habitat in riparian areas. The implementation of this standard was never mentioned in the EA or the draft ON.

This standard would partially mitigate the impacts of cattle on willow and aspen in riparian areas. It appears, including due to a lack of any response to our comments on this issue, that the agency is not actually implementing this Forest Plan standard. Information in the EA on "Proper functioning condition" does not provide the public any information on the impact of cattle grazing on willow and aspen. We also raised a concern about potential mitigation for riparian damage by cattle with fencing, which are a severe hazard to many wildlife species.

We raised the issue of the EA claim that cowbird parasitism is not considered an important adverse impact on neotropical migratory birds because cattle are placed on allotments in July, when birds are done nesting. First, the EA notes that cattle will be placed on allotments on June 1, not July. And second, no references were provided to demonstrate that all birds are completely done nesting by July 1. We noted that many birds raise several broods during a summer, or as well, will renest if their initial nests are lost.

We raised the concern about the decimation of aspen stands due to yearly heavy browsing by cattle. This is a well-documented crisis in southwestern Montana, as well as other western states (Shepperd et al. 2006; USDI 2016). There was no response by the agency to this issue in the response to comments.

We raised the concern about removals of grizzly bears on these allotments, including due to an increase in the grazing season by a month or more on various allotments. Dr. David Mattson, a grizzly bear expert, provided extensive draft EA comments about the increased potential for grizzly bear predation on cow calves in June. Although the agency noted that this grazing would create an adverse impact on the grizzly bear, they determined that because the bear population is increasing, this would not be a significant impact. No citations were provided as per an increasing grizzly bear population. There was also no information provided in response to comments as to how grizzly bear predation on calves and cows would be addressed through "adaptive management." Certainly one adaptive response would be to close the offending allotment. The agency failed to define how adaptive management would be coordinated with such likely predations.

We raised the issue that there was no wildlife alternative developed in this very important wildlife management landscape. Certainly management of the threatened grizzly bear would drive the development of a wildlife alternative. IN addition, the well-recognized issues of aspen and riparian damage to wildlife from cattle, and the wildlife mortality created by barbed-wire fencing, would demonstrate that a wildlife alternative was required for the East Paradise allotments. This would be different from the no action alternative, because it would require removal of barbed-wire fencing within agency boundaries, and replacement of boundary fences between public and private lands with pole and rail fencing, which are generally {(wildlife friendly." A wildlife alternative would remove the livestock tanks that most certainly drown a significant number of birds annually. Also, a wildlife alternative would switch the funding used for grazing management and infrastructure to removal of barbed-wire fencing, and implementation of an effective weed control program due to priority funding. As well, a wildlife alternative would ensure that grizzly bears, including potential sows with cubs, would not be killed due to predation on cattle.

We raised a concern about how big game winter range is be managed to ensure adequate winter forage is provided to elk, which is a Forest Plan standard for Management Area 17. The agency did not define how this reservation of elk winter forage is being achieved.

In the following Objection, we have expanded on these issue somewhat, have included supporting references.

6. Remedy

Due to the various violations of the National Forest Management Act {{NFMA}}, the Nat ional Environmental Policy Act (NEPA}}, the Administrative Procedures Act (APA}}, and the Endangered Species Act {{ESA), we believe that the decision to continue livestock grazing on the majority of the East Paradise grazing allotments should be pulled. As will be demonstrated below, this landscape clearly needs to be managed for wildlife, including the grizzly bear and neotropical migratory birds, not cattle.

7. Violations of Law or Policy from the Proposed Action.

A.The Forest Service will violate the NFMA, the NEPA, the APA, and the ESA if the proposed management for the East Paradise grazing allotments is implemented.

1. The significant adverse impacts that will occur to the threatened grizzly bear requires completion of an Environmental Impact Statement (EIS), which would include how potential grizzly bear removals triggered by livestock losses on East Paradise grazing allotments, including those currently vacant (4 pastures of the Sixmile South allotment and 2 pastures of the Suce Creek allotment) that may be opened to grazing in the future, or used

as forage reserves, will affect ongoing recovery of the Yellowstone grizzly bear population; this EIS needs to include an analysis of cumulative effects of livestock grazing on grizzly bears on all allotments on the Custer-Gallatin National Forest that graze cattle in occupied grizzly bear habitat.

The agency acknowledges that the project will have adverse impacts on the threatened grizzly bear, as the determination of impacts was an adverse impact. However, the agency concluded that this adverse impact did not rise to the level of significant impacts to the grizzly bear for several reasons. First, the agency claims that the Greater Yellowstone grizzly bear population is increasing, so that any mortality caused by removal due to livestock depredations would apparently not cause the population to decline. There were no references provided in regards to the agency's claim that this Yellowstone grizzly bear population is increasing. This claim is a violation of the NEPA, the NFMA, the ESA and the APA because it has been reported for quite a few years that this population has been stagnant and potentially decreasing. The following examples include:

Interagency Grizzly Bear Study Team 2012: cub and yearling survival has been reduced for the last decade as compared to 1983-2001; a decrease in mean litter size and proportion of females with cubs may be associated with whitebark pine effects; when you use those vital rates to then estimate population growth under the known mortality scenario we see that the annual population growth rate has decreased by about 5% over the past decade; the more time spent outside the recovery zone the lower the population growth; if we look at this for the last 10 years this line has flattened out quite a bit, indicating that the populations has leveled out across the ecosystem.

Bozeman Daily Chronicle 2013: Study: Yellowstone grizzly numbers lower than estimated; flaws in how the government measures Yellowstone's grizzly bear population raise questions about whether the animals have recovered sufficiently to merit lifting federal protections; the study concludes that a major reason more bears have been counted in recent years is that more time is now spent counting bears; the authors argue that the region's bruin population could in fact be in decline, even as officials consider revoking the grizzly's threatened status. The study's author, Doak, noted that it's pretty standard that if you triple the amount of time you are looking for some rare species, it's likely you are going to see more of them; authors also noted that wildlife officials have mistakenly assumed that female grizzly bears reproduce throughout a 30-year lifespan, compounding the government's overly-optimistic population estimates.

Bozeman Daily Chronicle 11/4/2015: former government researcher disputes grizzly study results; Dr. David Mattson has doubts about a recent grizzly bear study that said the number of Yellowstone area bears passing genes to the next generation had more than quadrupled since 1980.....Mattson, who researched carnivores for the federal government for 30 years and now is a lecturer at Yale University, said most people would agree that the population size of the Yellowstone bears has been largely stagnant since the early 2000s.

Wilcox 2015: According to the federal government, 54 of the 59 Yellowstone grizzly bears reported dead in this year were killed by humans; this breaks the record for annual grizzly bear deaths by any cause since data started to be assembled in 1959; applying a federal estimate of unknown but probable bear deaths, there most likely are another 30 plus dead bears in Greater Yellowstone; this yields a total of roughly 90 dead bears, or over 12% of the estimated population of 717 bears, a 30% increase above the next-highest year, 2010, when 43 bears were killed.

Bozeman Daily Chronicle 2015: grizzly deaths and/or removals climbed to an all-time high in 2015 of 59 bears; the study team counted 28 known and probable deaths in 2013 and 29 in 2014.

Bozeman Daily Chronicle 2015: Recent YNP grizzly bear count shows decline; the estimated number of grizzly bears in and around Yellowstone National Park has been revised downward by 6 percent from a year ago; the estimate was 714, down from 757.

Mattson 2015: The Yellowstone grizzly bear population has not increased to any extent during the last 15 years; it may have even been declining since 2007.

Mattson 2016: Mattson noted that the traditional counting method, the Chao2 estimator, which extrapolates populations estimates and growth trends from ground and aerial observations of females and their young cubs, is prone to overestimation; and a newer technique, mark-resight, which uses a combination of radio-collar tracking and aerial observation, is also faulty, according to critics, in that it can generate populations trends that would be biologically impossible; Daniel Doak found that the aerial search effort had increased substantially over the past 27 years, giving the false impression that the Yellowstone population was increasing; this leads folks like Mattson to believe that the general population trend has remained stagnant, or even declined, despite the official counts.

Mattson 2017: the Yellowstone grizzly bear population has most likely seen little or no increase since 2002, and a marked decline since 2014...[hellip] assertions of substantial population increases are fabrications born of comparing results produced by different methods.

Mattson 2019: the Yellowstone grizzly bear population has not increased to any extent during the last 17 years; it may have even been declining since 2007 .

Bozeman Daily Chronicle 2021: Protecting grizzlies: according to the National Park Service, there were an estimated 728 grizzlies in the Greater Yellowstone ecosystem in 2019, much more than the 136 that lived in the area in 1975, but down from the estimated peak population of 757 bears in 2014.

The agency's claim that the Yellowstone grizzly bear population is increasing, and as a result, bear removals triggered by livestock conflicts, will have no significant adverse impacts on this population are highly questionable given that the current status of this population is static or possibly declining. Removals triggered by livestock losses could exacerbate or contribute to a decline, both from the East Paradise grazing allotments, as well as from cumulative removals of grizzly bears due to other grazing allotments on the Custer-Gallatin National Forest, such as in the Greater Red Lodge area. It is clear that livestock grazing in grizzly bear habitat on the Custer-Gallatin National Forest could contribute to a decline in this threatened species population on the forest, which would be a significant adverse impact, in violation of the ESA.

Although the agency dismissed the likelihood that grizzly bear will kill cattle on the East Paradise allotments, no actual analysis was provided in regards to a history of such depredations when cattle are put on allotments as early as June, as will occur for the East Paradise allotments. As per comments provided by grizzly bear expert Dr. David Mattson on the draft EA, turning cows with young calves onto grazing allotments in June will significantly increase the potential for grizzly bear killing small calves. This issue will also be exacerbated by the presence of young domestic calves in areas where elk are calving in the East Paradise allotments, or areas where grizzly bears would already be searching for elk calves as prey. We are referencing the entire comments submitted by Dr. Mattson on this issue, which demonstrates that the Forest Service did not consider how the June 1 allotment date could impact grizzly bears. The selected action did not retain the July 1 entry date in order to avoid increasing the risk of grizzly bear removals due to livestock conflicts. It is clear this issue was never addressed in alternative development.

The potential for grizzly bear removals due to livestock conflicts will clearly increase with a longer and earlier grazing season. There is actually a significant increase in the number of days cattle will be on the East Paradise allotments with the selected alternative. This not only increases the chances of direct predation of grizzly bears on cows and calves, but it also increases the chances that grizzly bears will be exposed to livestock carcasses, whereby they may learn to feed on livestock. The following numbers were obtained from Table 3 in the EA at page 7, and the draft Decision Notice Table 1 at page 3. Comparison of these tables shows that on the Mill Creek allotment, the grazing season will increase from 106 to 137 days; the grazing season on the Elbow allotment will

increase from 46 to 137 days; the grazing season on the Sixmile North allotment will increase from 107 to 137 days. It is not clear for the Pine Creek allotment the overall increase in days grazed, but on one pasture the grazing period will increase from 30 to 107 days. Discounting the unclear increase in the Pine Creek allotment, the selected alternative will increase the days on which cattle (cows and calves) are present in this grizzly bear habitat by 31 days for Mill Creek allotment, 91 days for the Elbow allotment, and 30 days for the North Six Mile Allotment, for a total of 152 days.

The current grazing system would have cows/calves on these 3 allotments for 259 days, while the proposed grazing system would have cows/calves present for 411 days. This is a 59% increase in the days cows/calves will be present on these allotments. The agency has provided no data or analysis to indicate why this would not significantly increase the risk of bear/livestock conflicts.

The potential for grizzly bears killing cows and calves has been well reported. We provide the following examples:

Montana Standard 2013: more grizzlies moving into Red Lodge area; Stewart (MFWP) says the Beartooth Face doesn't have a lot of grizzly bear food sources, and four grizzlies in about the last year have been euthanized by the agency, mainly for killing livestock; the agency euthanized a 200- pound 3-year-old male grizzly on Tuesday that had been killing sheep.

Montana Standard 2014: grizzly captures near Red Lodge relocated; state and federal officials captured a young grizzly bear west of Red Lodge on property where a cow had been killed and moved it to an area north of Yellowstone National Park; MFWP noted that if the bear was involved in any more conflicts with livestock, it could be killed.

Montana Standard 2015: grizzly bears kill more livestock in Montana than in all of 2014; expanding grizzly bear populations are killing more sheep and cattle; Montana's livestock-loss program has reimbursed ranchers for 42 animals killed by grizzlies so far this year, eight more than in all of 2014, not counting the 22 cattle lost this year to bears that have not yet been claimed; Wyoming officials noted they were having a steady increase in livestock depredation as grizzly bears expand in the area Bozeman Daily Chronicle 2018: wildlife officials can't find grizzly that killed calves; could not locate a grizzly that was believed to have killed 4 calves in the Gravelly Mountains in southwestern Montana; a camper heard the grizzly killing a calf on the evening of June 27; another calf was found dead on June 28; that evening a ranch had reported shooting a bear that was chasing cattle; MFWP was unable to locate a wounded or dead bear; 2 more dead calves were found June 30; MFWP reported that grizzly bear populations in the Gravelly Mountains are on the rise, as are incidents of depredation.

Independent Record 2018: grizzly bear kills calf near Two Dot, an area where griz are not known to roam; a grizzly bear killed a calf early this week on a ranch north of Two Dot; after determining that the calf was killed by a grizzly bear, Wildlife Services tried to capture the bear, but failed due to a large number of black bears in the area.

Bozeman Daily Chronicle 2019: grizzly euthanized for killing cattle near Wolf Creek; the bear was 5 years old and weighed 474 pounds; this bear killed 2 cows weighing about 1200 pounds each; the bear appeared to be traveling with another bear.

Independent Record 2021: wildlife services kill grizzly in the Big Snowies that killed a cow in May of 2021; traps were set after the discovery of a second cow carcass with bear sign nearby; wildlife services technicians confirmed that the bear had killed both cows; several grizzly bears have been confirmed in the area over the past month, in close proximity to cattle calving grounds on local ranches; a grizzly killed a yearling cow in early April in the vicinity; wildlife staff moved the bear to a more remote area in the upper Blackfoot Valley to help prevent more livestock loss during the spring calving season.

The newspaper reports of various grizzly bear removals from livestock conflicts provide a good indication that grizzly bear-livestock conflicts are relatively common in areas where grizzly bears and cattle occur together. And as grizzly bear deaths have been very high in recent years, livestock conflicts are an important factor in these deaths.

Thuermer 2015: conflicts with hunters and livestock were among the reasons a record 59 grizzly bears died in the Yellowstone ecosystem in 2015, the federal government's coordinator said last week; the number of deaths was the highest number of grizzly mortalities in the Yellowstone Ecosystem since 1970; 14 bears were killed or otherwise removed from the population for conflicts with livestock; when unrecorded bear deaths are considered, the total death tally could be 90 bears; bottom line, with the range of grizzly bear population levels being as low as 642, the 90 deaths could represent 12% of the population, which would reduce the population to below 600 bears.

Mattson 2018: there has been a tragic fourth straight year of record[shy] breaking grizzly bear mortality in the Greater Yellowstone Ecosystem; we have few if any more grizzly bears now than we had 15 years ago; there are mounting conflicts between grizzly bears and hunters and livestock producers; grizzlies are eating more meat from elk, bison and cattle; there can be little doubt that Yellowstone's grizzly bears are eating more human[shy] associated meat in compensation for catastrophic losses of key native foods; we also very likely have bears more assiduously seeking out grazing allotments and the environs frequented by big game hunters on a quest for much-needed high-quality food in the form of livestock and gut piles.

CounterPunch 2020: Louisa Wilcox wrote 59 grizzly bears were captured during conflicts last year; never have Wyoming wildlife managers killed so many grizzly bears in one year: 32, all outside National Park boundaries, almost all associated with conflicts over livestock; this toll is about half of the total 65 grizzlies that died ecosystem-wide; the size of the Yellowstone grizzly bear population more or less stopped growing over 15 years ago, but distribution has expanded by threefold due to the collapse of a key food, whitebark pine; today, big game hunters and livestock conflicts, not garbage, are the leading causes of bear deaths in the Greater Yellowstone;

Idaho State Journal 2020: Louisa Wilcox reported that during recent years Yellowstone grizzly bears have been dying at alarming and unsustainable rates; during 2015 through 2018, grizzly bear deaths shattered previous records in a population that has been flatlined for nearly 20 years; in each of these four years, bear deaths exceeded the government's thresholds for allowable mortality. If allowable limits are breached 2 years in a row, bear managers are supposed to do something. But they have not even admitted to a problem. At last month's meeting, managers were told that grizzly mortalities are below threshold, a clear contravention of the facts; grizzly bears have an extremely low reproductive rates and are especially vulnerable to high levels of mortality; grizzly bear deaths have increased dramatically since 2000, far in excess of anything that can be explained by changes in population size; conflicts with hunters and livestock producers have replaced conflicts over garbage as the leading killers of grizzlies;

Mattson 2020: Grizzly bears have been dying in record numbers in recent years, the result of increased collisions with vehicles, encounters with big game hunters, and conflicts over livestock and garbage; in four of the past 5 years, an unsustainable number of bears have been killed, almost wholly as a result of human causes; according to federal data, more than 300 bears have died during the past 5 years; by comparison during the preceding 10-years only 269 bears were killed in the same area.

We have included a published research paper in Appendix A of this objection where it was identified that from 46-51% of the total grizzly bear death toll was unreported but known due to radio-collaring (McLellan et al. 1999). This research is the current basis for estimating the total death count of grizzly bears per year as 50% higher than known deaths.

In summary, the claims made by the Forest Service in the East Paradise analysis of grazing impacts on grizzly bears that these impacts will not rise to the level of significance are unsubstantiated. There was also no assessment of cumulative impacts of livestock grazing on grizzly bears across the Custer-Gallatin National Forest. Due to the static or declining trend in the Yellowstone grizzly bear population, the increasing and potentially unsustainable of grizzly bear deaths per year, deaths that include those that resulted from conflicts with livestock, and finally, the increasing use of grizzly bears of meat, including domestic livestock to replace the loss of key foods such as whitebark pine, it is clear that not only maintaining, but actually increasing the presence of cows in the East Paradise allotments, will trigger what are likely direct and certainly cumulative adverse impacts on the Yellowstone grizzly bear population, in violation of the ESA.

2. The current Biological Assessment and Biological Opinion (BiOp) for grizzly bear management on the Custer-Gallatin National Forest is inadequate due to the failure to identify the significant adverse impacts livestock grazing has on grizzly bears; a new BiOp for livestock grazing in occupied grizzly bear habitat on this forest needs to be completed so that valid conservation measures will be implemented to be consistent with the ESA.

The proposed increases in livestock grazing in the East Paradise grazing allotments, by increasing the time frame over which cattle will be present in grizzly bear habitat (June instead of beginning grazing in July), and an increase of days when cattle will be present in this grizzly bear habitat from roughly 259 to 411 days in the summer season (a 59% increase), demonstrate that the existing measures for management of the grizzly bear on livestock allotments are incapable of conserving this grizzly bear population. A valid assessment of the potential adverse impacts on grizzly bears in a programmatic biological assessment (BA), and a valid updated BiOp from the U.S. Fish and Wildlife Service, which identifies terms and conditions that ensure conservation of the grizzly bear in occupied habitat, needs to be completed before any new management actions are finalized on forest grazing allotments, including the East Paradise allotments. Just doing a site-specific BA and BiOp will not address the cumulative impacts of livestock grazing in occupied grizzly bear habitat. Forest-wide impacts, including grizzly bear removals due to livestock conflicts, have to be considered in regards to population impacts. These impacts cannot be evaluated from just a few grazing allotments, such as the 6 allotments in the East Paradise area. This programmatic analysis is essential in order that decisions on grazing allotments, including those in the East Paradise allotments, are based on a forest-wide conservation strategy for the threatened grizzly bear.

3. The Forest Service is violating the Migratory Bird Treaty Act (MBTA) as well as the Gallatin Forest Plan by failing to evaluate grazing impacts on landbirds, and by failing to adhere to the Forest Plan standard for browsing utilization levels in riparian habitats, a standard that protects habitats for neotropical migratory birds; the agency will also violate the NEPA by failing to complete an EIS for the increased impacts that a 59% increase in the days livestock will be on the allotments, which will have unknown but likely adverse impacts on riparian habitats and thus landbirds.

The status of North American landbirds is a current ecological concern. As noted by Rosenberg et al. (2019) landbirds have declined in total numbers by 3 billion birds since the mid-1970s. In addition, the effects of climate change by severe weather events has recently caused the death of potentially millions of migrating landbirds in the southwestern U.S. in 2020 (D'Amassa 2020, USGS 2020). There are a potential 30 species of songbirds that occur in riparian aspen and willow habitats along the streams in the East Paradise landscape. These include the Yellow Warbler, White-crowned Sparrow, Warbling Vireo, Tree Swallow, Dusky Flycatcher, Yellow-rumped Warbler, Song Sparrow, Western Tanager, Cassin's Finch, Mourning Dove, House Finch, Dark-eyed Junco, American Robin, MacGillivray's Warbler, Black-headed Grosbeak, Lazuli Bunting, Western Wood[shy] pewee, Orange-crowned Warbler, Hairy Woodpecker, Fox Sparrow, European Starling, Bullocks' Oriole, House Wren, Northern Flicker, Swainson's Thrush, Mountain Bluebird, Brown-headed Cowbird, Downy Woodpecker, Red-naped Sapsucker, and hummingbirds. There was no analysis of these 30 bird species in the East Paradise EA or wildlife documents. In addition, the agency claimed that there would be no impact of cowbird parasitism on

songbirds, since most nesting is over by July 1, the livestock turn-on date. Yet the turn-on date in the draft ON is June 1, not July 1. Even claims that the July 1 livestock turn-on date avoids parasitism on nesting songbirds was not verified with any science that demonstrated that all bird nesting is complete by July 1. There will be second/third nesting attempts by many species, as well as renesting attempts when nests are lost. Although the number of nesting attempts likely declines as the season progresses, the impact of brood parasitism may still be substantial for many bird species.

The adverse impact of brood parasitism on North American landbirds has been well recognized for many years (Young and Hutto 1999, Goguen and Matthews 1999, Chace and Cruz 1999). The presence of cowbirds in riparian areas is also increased by livestock grazing (Krueper et al. 2003, Henzel and Earnst 2006). The association between cattle and cowbirds is also exacerbated by the degradation of riparian vegetation, including both willow and aspen (Earnst et al. 2012, Beschta et al. 2014, Poessel et al. 2020, Ratner et al. undated). Also of huge significance is that cowbird parasitism is increased when the vegetation density of riparian vegetation is reduced, as what happens with livestock grazing (Staab and Morrisonj 1999). So livestock grazing in riparian/aspen areas has a double adverse impact on songbirds, first by attracting cowbirds, and second, by reducing vegetation density which increases cowbird parasitism. Yet the proposed new grazing management for the East Paradise allotments is to bring on livestock to these allotments in June 1, which the NEPA analysis notes is the peak of the songbird breeding season. There was no analysis of these grazing impacts on neotropical migratory birds, although this is required by the MBTA and the associated Memorandum of Understanding with the U.S. Fish and Wildlife Service. This is also a NEPA violation, since songbirds are an important wildlife resource that will be impacted by livestock grazing in riparian/aspen areas.

The current condition of the riparian/aspen vegetation in the East Paradise allotments is unknown. The description of these conditions is limited to Proper functioning condition, which has no relevance to willow/aspen habitat conditions. Although the Gallatin Forest Plan has a standard to limit browsing in woody plants in the riparian areas to 50%, there is no information on this standard in the East Paradise NEPA analysis. So it is unclear that any such adherence to this Forest Plan standard has been achieved on these allotments. Without any monitoring information provided in the allotment NEPA analysis, one cannot actually determine what the condition of the various riparian areas across these allotments is. Given that livestock grazing is known to have severe impacts on both willow and aspen and thus reduce songbird density (e.g., Earnst et al. 2012, Beschta et al. 2014}}, the actual cumulative impact of past livestock grazing in riparian areas on the East Paradise allotments is unknown. Also, adherence to the Forest Plan standard of no more than 50% utilization of riparian browse plants is unknown. In addition, there is no indication that this Forest Plan standard will be applied to the new management plans for these allotments, as this standard is not mentioned in this NEPA analysis. The Forest Plan standard for riparian areas also notes at page 11-20 that livestock grazing in riparian areas will be controlled at levels of utilization listed in Management Area 7, which includes limits on browse utilization. The Forest Plan also requires in MA 7 to maintain suitable habitats for those species of birds, mammals and fish that are totally or partially dependent upon riparian habitat for their persistence. This standard clearly requires an analysis of livestock grazing on neotropical migratory birds to ensure Forest Plan compliance. The standard for range in MA 7 is that concentration of livestock will be kept at a level compatible with riparian zone-dependent resources and associated improvements.

It is clear that increasing the period for which cattle are present in riparian areas by 59% by moving the entry date from July 1 to June 1 will have significant increases in impacts to neotropical migratory birds, both by increasing parasitism rates and reducing riparian vegetation. This change requires completion of an EIS to address this resource impact.

In regards to the violation of the Forest Plan standard for no more than 50% browse utilization in riparian areas, the East Paradise NEPA analysis also would not adhere to the Revised Forest Plan direction for riparian habitats. Since this new management plan will occur almost completely under the new RFP, it is not clear why this new direction, including requirements for stubble height in the green riparian zone, would not be implemented (USDA

2020). Page 592-293 of the Draft EIS for the RFP notes that stubble height has been extensively studied and is widely put in practice as an end-of-season monitoring indicator; low gradient alluvial channels should have end of season stubble height of hydrophilic vegetation along the greenline to be at least 4 to 6 inches; under the revised plan alternatives, stubble height guidelines would be implemented in all allotments and could increase the amount of management needed within allotments to meet desired conditions; alternatively, woody plant utilization could be used as a management guide. This new RFP direction for riparian areas was only incidentally noted that greenline stubble height "might" be used. Thus the agency is not adhering to the current Forest Plan, but will also not adhere to the RFP. It seems like both of these failures constitutes NFMA violations.

We noted that the DEIS for the RFP actually does not even include most of the allotments for the East Paradise area in Table 76 at page 582. It is not clear why most of the allotments are not even listed.

The RFP includes a number of recommendations for grazing management, including addressing grazing management in the fall when livestock turn to browse, or areas where there are other resource concerns. This management action, to end the grazing season earlier, was not considered in the East Paradise alternatives, even though this would benefit riparian/aspen habitat and thus neotropical migratory birds by increasing the availability of riparian vegetation and reducing the impacts of cowbird parasitism.

4. The Forest Service is violating the Gallatin Forest Plan for management areas 13, 15 and 17.

The Gallatin Forest Plan requires that for MA 13, the agency needs to meet the grizzly bear mortality reduction goals as established by the Interagency grizzly bear committee. The current mortality reduction goals are not identified in the East Paradise EA. Even if current goals are unknown, it is clear that the Forest Plan requires grizzly bear mortality to be addressed in MA 13. The agency intends to increase grizzly bear mortality due to increased potential for livestock conflicts, which is counter to what is required for MA 13. A goal for MA 13 also requires that the MA be managed to provide habitat necessary to recover the grizzly bear. This would require that actions that increase grizzly bear mortality risk are inconsistent with providing habitat necessary to recover the bear.

These same Forest Plan standards apply to MA 15 for grizzly bear. So the standards for MA 15 are also being violated by the current and proposed management of the East Paradise allotments. For range in this MA, the agency is required to include in allotment management plans the specific measures that will protect food production areas important to the grizzly bear. This would include riparian areas, elk calving areas, and elk winter range. There are no measures identified in the East Paradise EA that addresses protection of these grizzly bear food production areas.

The agency is violating MA 17 direction which requires the Forest Service to meet big game forage needs before making forage allocations for livestock. There is no analysis in the EA as to what the current level of livestock forage utilization is in the East Paradise landscape, where it noted that most of the grazing areas are big game winter range. Instead of addressing the level of forage utilization by cows, the agency says that because elk herds are increasing, there cannot be any conflict for forage. Since elk are increasing due to fall displacement to private lands where their populations are difficult to control, the agency's claim that there are no forage conflicts between elk and cattle on this winter range is not supported with any actual analysis. So it is highly likely that this Forest Plan standard is not being met, since it is not even being addressed in the East Paradise EA.

5. The agency is violating the NFMA and the NEPA by failing to provide the necessary information to the public as to how the East Paradise allotments will be managed; this includes dodging any decisions as to how the Suce Creek and Sixmile South Allotments will be managed in the long-term; management criteria for the Mill Creek allotment for renewed grazing are also not identified; the agency appears to be fragmenting a decision for the allotments in order to avoid assessing cumulative impacts of separate decisions.

The Gallatin Forest Plan at 111-52 for MA 17 states that for range management, the agency will schedule structural improvements when identified in an approved allotment management plan. The East Paradise EA for allotment management does not schedule any structural improvements, including locations of many water developments.

The agency notes that there may be any number of new water developments on the grazing allotments. The number and location of these additional water developments is never defined. It is stated that these additional water developments may be needed to "improve the distribution of livestock," among other things (e.g., draft ON at 4). The current distribution of livestock is apparently unsuitable, and needs to be improved with additional grazing acres (e.g., page 18 of the Selected Alternative Wildlife Addendum). So the agency may add a considerable number of new water developments apparently when additional analysis and monitoring has been done, or because this need is currently known. The needs, however, are never identified to the public.

The addition of new water developments will have significant adverse impacts on wildlife, including big game winter range, because an average of 125 acres of range is severely degraded around each water development (USDI 2018). The water developments will also increase livestock utilization on portions of big game winter range that currently have a lower livestock grazing use because of a lack of water. Since the agency did not define how big game winter forage is being maintained on the allotments, the expectation that more water developments will be implemented needs to be fully defined to the public, including how big game winter forage availability will be impacted.

There is no analysis in the East Paradise EA about the miles of new barbed wire fencing that will be required for allotment management, including possible fencing of riparian areas and developed springs. The agency claims that barbed wire fencing is "wildlife friendly," without providing any analysis as to how much fencing designs actually reduce adverse impacts to wildlife, including birds as great gray owls and goshawks. As was noted in a recent article by Mander (2021) barbed-wire fences create untold impacts on wildlife, especially because of their massive distribution throughout wildlife habitat. Any management actions that maintain, let alone, increase the presence of barbed-wire fencing need to be fully evaluated in a NEPA document.

We have provided an example of how the management of water developments can impact the landscape. An employee of the BLM, Jessica French (undated) provided an extensive summary of the condition of BLM lands in the Marysville grazing allotments. This type of analysis should also have been done for the East Paradise allotments, so that the management of water developments would have been evaluated as a significant impact on livestock grazing.

We have also provided 2 examples of scheduling of grazing activities in 2 different BLM watersheds, in the Red Rocks/Lima Watershed (USDI 2018), and in the East Bench Watershed (USDI 2019). These examples demonstrate the very detailed planning for grazing activities that is required on the affected allotments. No such planning is provided for management of the East Paradise allotments.

Another disturbing lack of information in the East Paradise draft DN is the future status of the Suce Creek and Sixmile South allotments. The decision on these allotments has been put off for some unknown future date. It seems highly likely that these decisions are being postponed at this time because they are controversial. At some likely future date, the Forest Service may release some limited NEPA analysis and implement grazing on these allotments. This reasonable future action was not evaluated as per cumulative effects for the East Paradise analysis. This is an example of the agency "fragmenting" a decision in order to avoid evaluating cumulative impacts, including via an EIS.

Another postponed decision in the East Paradise draft DN is that the Mill Creek allotment will be grazed at some undefined future date when some undefined level of weed control has been achieved. The public has no information on what constitutes good control of weeds, or why livestock grazing will not exacerbate a weed

problem that is hopefully being controlled. Livestock are a known spreader and increaser of noxious weeds (Belsky and Gelbard 2000).

6. There was no wildlife alternative developed for the East Paradise allotments, even though wildlife management was a major public issue; this is a violation of the NEPA, the MBTA, and the ESA, since a wildlife alternative would promote conservation of the threatened grizzly bear and neotropical migratory birds.

A wildlife alternative is clearly the preferred public management direction for the East Paradise allotments, based on public input. Yet the agency did not ever develop such an alternative. This would be more expansive than the "no grazing alternative," since existing barbed-wire fences located on internal areas of the allotments would be removed, and existing water developments that are hazards to wildlife would be removed. The fences that provide boundaries between public and private lands would be converted to post and rail fences, in order to eliminate the mortality hazard to both birds and big game animals created by barbed wire fencing. Some of the dollars used to subsidize livestock grazing (Schweitzer 2015) could instead be used to build these wildlife-friendly fences, as they are much more costly to construct than barbed-wire fences normally built by the Forest Service. And as noted in our comments on the draft EA, the dollars that would be saved by removing livestock grazing could be expended instead on a massive noxious weed control program. As noted in the draft EA, weed control is based on priority treatment areas, since funding is limited. There are clearly many management activities that could be implemented to promote wildlife, including the neotropical migratory birds that are currently in crisis. The agency's failure to respond to this significant public interest indicates that there was a decision already made even before public involvement was initiated by the agency to continue livestock grazing on these allotments. The public involvement process was apparently just a procedural activity required before additional grazing levels could be implemented on the East Paradise allotments, in violation of the NEPA.