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### **Comments on the Big Summit Cluster Allotment Management Plans DEIS**

The Oregon Chapter Sierra Club and the League Of Wilderness Defenders – Blue Mountains Biodiversity Project have reviewed the Big Summit Cluster Allotment Management Plans DEIS for the proposed livestock grazing reauthorization and related management actions in the Big Summit, Brush Creek, Lost Horse, North Fork, and Pringle Allotments. We have the following comments on the proposed livestock grazing authorization and management actions:

The Oregon Chapter Sierra Club represents over 20,000 members throughout Oregon, including the Club's Juniper Group, which has over 1,200 members throughout central and eastern Oregon. Sierra Club members feel strongly about nature, wilderness, natural forest ecosystems - including ecological recovery, wildlife, fisheries, and the environment. Sierra Club members regularly enjoy hiking, camping, wildlife watching, birding, ecological study, and photography within the national forests of central and eastern Oregon, including the allotments and surrounding area forests and watersheds.. The Sierra Club has a significant, lengthy, and well-documented interest in the management of the forests and watersheds in which the allotments' livestock grazing is located.

The League Of Wilderness Defenders - Blue Mountains Biodiversity Project has many members and volunteers throughout the Northwest. Members and volunteers of the LOWD-Blue Mountains Biodiversity Project regularly use the Ochoco National Forest, including the allotment areas and surrounding forest watersheds, for hiking, ecological study, watching wildlife, viewing forest native botanical diversity, and avian species study. The LOWD - Blue Mountains Biodiversity Project has a long-standing and well-documented interest in the management of the public lands and waterways in which the allotments' livestock grazing is located.

Our organizations appreciate the Ochoco NF's efforts to reduce the adverse impacts from livestock grazing in these and other allotments. The proposed actions, while perhaps incrementally helpful, likely do not provide for sufficient management changes to effectively prevent ongoing natural resource cumulative degradation resulting from allotment grazing and associated management actions. Additionally, foundational analysis information and provisions for measurable assessments of the effectiveness of management provisions are lacking; with portions of the analysis apparently based upon

speculative assumptions rather than factual protocol surveys (particularly regarding direct and cumulative impacts to avian and other species of concern).

Our organizations appreciate the agency's decision to address allotment area conditions, resource objectives, and proposed management changes utilizing an EIS. As noted in our previous comments, given the size of the combined allotment areas, significant ongoing resource concerns, ecological objectives, and the extent of past, current, and likely future cumulative impacts in the greater project area; in-depth analysis is essential to begin to grasp the complexity of interwoven ecological and societal issues, and ensure the long term recovery of the affected allotment areas, species of concern, and downstream watersystems. We appreciate the field trip to the affected areas earlier this year, and continue to look forward to assessing allotment impacts and monitoring records for the allotment areas over the ensuing years.

### **Riparian Species, Habitat, & Watersystems**

The DEIS discloses that allotment area waterways exceed temperature and bank stability standards, and fail to meet INFISH standards. Area watersystems contain habitat for sensitive listed redband trout and for Columbia spotted frog. The DEIS discloses that area waterways fail to meet shade and riparian vegetation objectives and desired conditions:

- **“Bank Stability:** There is a need to promote the recovery of deep-rooted vegetation including willows and sedges to protect banks from erosion, capture sediment, and control stream channel pattern, profile and dimension. The desired condition is to have at least 80 percent bank stability (Forest Plan, p. 4-237 and INFISH, p. A-4). Stream survey information from riparian areas in the Big Summit Cluster AMPs project area indicates that streambank stability does not meet Forest Plan and INFISH standards.
- **Stream Shade:** There is a need to promote the recovery of vegetation in riparian areas to increase the amount of stream shade. The desired condition for stream shade is to provide greater than 80 percent shaded surface, or 100 percent of the site potential (Forest Plan, p. 4-240).”

Sensitive aquatic species in the allotment areas include redband trout and Columbia spotted frog. The Big Summit allotment contains sections of the Wild and Scenic North Fork Crooked River, with grazing provisions for this area which were adopted in 1988. Surveys and a field trip to the varied allotment areas revealed significant adverse impacts to waterways, including significantly lowered water tables, collapsed banks, deep headcuts, lack of riparian vegetation, trampled areas, and other related harmful grazing impacts.

The DEIS also identifies a number of 303(d) listed water quality impaired waterways, quite a number of which evidence continued downward and/or variable trends. The DEIS discloses that the project area has 216 miles of streams. Of seventy-six miles of 46 Class I, II, & III streams, 37% have not had any surveys at all, and there is an absence of surveys for Class IV streams. As such, it is highly probable that there are a significant number of waterways where stream temperatures and conditions merit 303(d) listing but which are currently not listed as such within the project area due to lack of surveys. The DEIS fails the NEPA's requirements to disclose when this missing survey and condition information will be obtained, or to provide meaningful analysis and management provisions addressing these significant resource degradation issues.

#### ***Authorizing grazing in the Big Summit Cluster Allotments will violate INFISH standards.***

In 1995, the Ochoco Forest Plan was amended by a regional aquatic conservation strategy, commonly referred to as INFISH, to “maintain options for inland native fish by reducing the risk of loss of populations and reducing potential negative impacts to aquatic habitat.” INFISH applies to the project area's redband trout-bearing streams.

INFISH created riparian goals which established “an expectation of the characteristics of healthy, functioning watersheds, riparian areas, and associated fish habitats.” To achieve the goals, INFISH sets

Riparian Management Objectives (RMOs) as “criteria against which attainment or progress toward attainment of the riparian goals is measured.” The RMOs are “good indicators of ecosystem health, are quantifiable, and are subject to accurate, repeatable measurements.” The RMOs include: pool frequency; water temperature (no measurable increase in maximum water temperature, which must be below 59 degrees F in adult holding habitat and below 48 degrees F in spawning and rearing habitats); bank stability (more than 80% stable); lower bank angle (more than 75% of banks must have an angle of less than 90 degrees); and width/depth ratio (the mean wetted width divided by mean depth must be under ten).

To achieve the RMOs, INFISH grazing standard GM-1 requires the Forest Service to

[m]odify grazing practices ... that retard or prevent attainment of [RMOs] or are likely to adversely affect listed anadromous fish. **Suspend grazing if adjusting practices is not effective in meeting [RMOs] or avoiding adverse effects on listed anadromous fish.**

To “retard” means “to slow the rate of recovery below the near natural rate of recovery if no additional human caused disturbance was placed on the system.” In other words, the “do not retard” standard prohibits status quo grazing practices where those practices are degrading, maintaining, or slowing the rate of recovery in areas with unacceptable ecological conditions. Instead, it imposes an affirmative duty on the Forest Service to move toward achievement of RMOs and riparian recovery.

The proposed action fails to indicate how it will comply with the INFISH mandate that grazing practices not “retard or prevent attainment” of RMOs. Instead, the Big Summit Cluster Draft EIS indicates that the redband-bearing streams are failing to meet RMOs, that grazing is retarding and preventing RMO attainment, and that grazing will continue to retard RMOs under the proposed alternative. The DEIS proposed actions are based upon conjecture that that by altering grazing timing, incorporating a mix of active and rest grazing years, requiring more permittee presence, additional water developments, and other piecemeal actions – that conditions in the area may reduce the level of harmful impacts. Disclosures in the DEIS evidence that proposed actions will not necessarily lead to recovery, just slow somewhat the rate of incremental long-term degradation.

Among specific concerns are provisions for creating 31 new ponds throughout the allotment areas, and a considerable number of new water troughs. These represent substantial additional water diversions from natural flow channels and hydrological patterns. Cumulative reductions in localized and overall water flow as a result of the planned water diversions and consumption have not been sufficiently addressed in the DEIS. The DEIS fails to adequately address issues of increased water temperature due to increased solar exposure in ponds, degraded water quality down system from pond water contamination, algae, pollution, sedimentation, and increased temperatures in pond and trough water runoff into downstream watersystems. Additionally, livestock ponds generally are contaminated with biotic and water borne parasites, from microbotic fauna to large leeches. The DEIS fails to disclose the direct and cumulative impact harms to watersystems, and aquatic, terrestrial, and avian species from increased abundance and exposure to introduced parasites and contaminated waters. In its desire to move riparian preferring cattle to dry upland areas, the agency is largely partially trading one pattern of harms for a series of other harmful impacts, many of which have not been assessed or acknowledged. It is likely ultimately that removal of livestock grazing from damaged areas is necessary to resolve the riparian, water quality, vegetation, and species of concern issues – rather than the proposed compounding and reconfiguration of current harms with additional short-sighted management harms as proposed. If and where diverted water ponds and troughs may be acceptable (once direct and cumulative impacts have been disclosed and assessed), given the issues of stream temperatures and water quality, it is imperative that ponds and troughs not be exposed to solar temperature increases and water contamination, and that outflow from these water locations not further impair either or both localized and overall watersystem

quality. Ponds and troughs as such would require adequate shading and flow through to avoid temperature increases, contamination, algae, and other water quality degradation.

In regards to direct and cumulative impacts to impaired water systems, and aquatic species of concern, the DEIS must be revised and new alternatives developed to effectively address these significant serious issues. The proposed reauthorization, while potentially altering and perhaps even reducing some levels of detrimental grazing impacts, is on the whole inconsistent with the ONF Forest Plan and INFISH, and if implemented will violate the Clean Water Act, and the National Forest Management Act. The DEIS analysis and proposed alternatives fail to comply with the NEPA due to science and information omissions, inaccurate assessment assumptions, and arbitrary insupportable conclusions resulting from disclosure deficiencies and a tendency to replace omitted or missing surveys and science with assumption and conjecture.

Concerning Clean Water Act issues, the State of Oregon has established state water quality standards for factors such as water temperature, sedimentation, habitat modification and pH, and an anti-degradation policy to protect water quality conditions. Under the anti-degradation policy in Section 303(d), water bodies that do not meet water quality standards are designated as “water quality limited.” As noted above the project area contains a number of streams that are currently on the 303(d) list for issues of water temperature, bank stability, and water quality. The analysis area also contains a large extent of waterways and reaches that have never been surveyed, which may also qualify for listing as water quality impaired.

The EIS fails to disclose effective monitoring plans or provisions for the funding, personnel, and resources necessary to effectively monitor and prevent continued ongoing abuse and harm to area water systems by livestock grazing. The EIS fails to address the current inability of its personnel, and apparent inability or unwillingness of permittees to prevent overgrazing that has already resulted in widespread severe riparian harms, including denuded grounds, collapsed and trampled stream banks and streambeds, and related harm to watersystems throughout the Big Summit Cluster AMP areas. Absent accurate and necessary disclosures and assessments, including disclosures addressing responsible monitoring and enforcement effectiveness, the DEIS arbitrarily claims that the proposed alternative would result in more riparian vegetation that in time would provide shade and reduce stream temperatures, which would lead to restoring water quality. Federal environmental policy laws require full disclosures and accurate assessments. The agency must disclose its current inability to prevent grazing harms. It must disclose how it plans to rectify this inability, and how it will prevent continuing severe harm by livestock grazing before it can reasonably and legally reach a conclusion. A new EIS must responsibly and meaningfully addresses these issues. Absent such assessment and effective management provisions, the approval of continued grazing in the analysis area is reasonably likely to result in serious water quality impairment of Oregon State listed 303(d) streams and as such will violate the Clean Water Act. The flawed analysis violates the NEPA and must be corrected before a legal decision may be reached.

### *Neotropical Migrant and Native Birds*

#### **Livestock grazing Impacts to Avian Species**

The DEIS fails to meet the requirements of the NEPA, NFMA, and MBTA concerning accurate impacts disclosures, effective monitoring, long term viability, population and distribution recovery, and prevention of direct mortality, harm, and indirect adverse impacts to avian species of concern. The DEIS evidences a lack of site-specific surveys and baseline population and distribution information for avian species of concern, including chipping sparrow, Brewer’s sparrow, vesper’s sparrow, MacGillivray’s warbler, willow flycatcher, red eyed vireo, veery, and likely other species of concern that are or may be within the greater allotment areas. Contrary to NEPA’s requirements, the DEIS fails to disclose why this pertinent information is missing, when it may be obtained, to make sound provisions ensuring undue harms are not incurred in the interim, and to establish effective ongoing monitoring protocol and site-specific surveys for each allotment area for the affected species of concern. It is critically important to

establish current population levels and distribution patterns to determine actual impacts from livestock grazing practices, possible changes from the proposed alteration of grazing management provisions, and verify population trends for these and other affected species. Disclosures in the EA that the two presented action alternatives would continue to result in adverse impacts to these species of concern establish the requisite need for additional protective provisions. Surveys are needed to establish concentrated home nesting, fledgling, and foraging territories. Excluding portions or the entirety of these areas from livestock grazing, or firm seasonal restrictions preventing livestock grazing from occurring in these areas until well after vulnerable nesting and fledgling periods have passed, are legally and environmentally requisite actions that are largely missing from the proposed action alternatives. Turing cattle out one month before the nesting period is over, allowing for potential direct mortality and harmful impacts to these species of concern, violates the Migratory Bird Treaty Act – which prohibits direct taking of avian species of concern, and violates the tenets of the NEPA and the requirements of the NFMA. The projected conclusions regarding likely impacts to these and other species of concern are based largely upon unverified conjecture and assumptions, failing the site-specific requirements and monitoring protocol necessary to found a legally and environmentally acceptable decision. Where requisite information is absent, it is imperative to establish environmentally protective interim provisions ensuring undue harm does not occur. Management options that must be incorporated into proposed alternatives must include:

- Interim identification and effective protection of likely concentrations of home nesting and fledgling territories for species of concern;
- Prohibiting livestock grazing in home territory areas until after vulnerable nesting and fledgling periods are completed;
- Excluding livestock grazing from concentrated home foraging territories and/or significantly reducing livestock numbers and impacts to ensure the interim viability and recovery of species of concern populations;
- Establishing site-specific protocol surveys and monitoring of population and distribution trends for species of concern;
- Establishing permanent exclosure areas in home territory concentration areas to serve as baseline natural condition templates by which to evaluate the effectiveness or lack thereof of resource protective grazing provisions;
- Refining management provisions to ensure the maintenance and recovery of species of concern by incorporating survey information on the presence, current distribution, population levels, trends, and habitat requirements of species of concern – reducing allotment extent, livestock numbers, seasonal use, etc. where survey and trend information indicate this may be necessary for species recovery.

The DEIS proposes one year of grazing within three years in areas of resource concern, resting areas for only two years before additional resource degradation from grazing. Scientific research recommends resting degraded areas for a minimum of five to ten years, until the affected areas evidence established substantial recovery trends – before considering the resumption of livestock grazing. By proposing a ‘two-steps forward one step back’ management approach, the agency is gambling that overall incrementally the affected areas will begin to recover. However, this fails to take into account the cumulative degradation of over a century of livestock impacts, and the consequent long-term rest and recovery the area truly needs to begin to move towards actual resource recovery. Recovery cannot be accomplished with a pattern of recurrent rest and degradation. Ecological functioning requires the recovery of the interwoven distribution and abundance of native species biodiversity. Native and migratory avian species play integral roles in the long-term ecological functioning and integrity of the analysis area; as prey species, in seed distribution and plant propagation, as part of the overall natural check and balance fluctuations helping to control insect and invertebrate species levels, in soil community functioning and nutrient replenishment, and a host of as yet only partially understood naturally inherent

roles. Territorial avian species of concern recovery requires home territory habitats that are not subjected to recurrent fluctuating disruption and displacement. The DEIS must be revised to comprehensively address and incorporate these issues in the proposed action alternatives.

Neo-tropical migrant and native forest and rangeland dependent birds (as well as numerous other native species) are in serious decades-long population declines due to the adverse cumulative impacts from over a century of management impacts in Oregon (see “Avian Population Trends” by Brian Sharp and Partners in Flight research). The DEIS for this planned project fails to fully and adequately disclose the current population status and trends of Neotropical migrant and native avian species within the analysis area and adjacent lands. While the DEIS acknowledges the presence of some avian species of concern that may be in the area, it fails to disclose recent surveys for many of the species that may occur in the greater project area and fails to address specific direct and cumulative impacts to these species from the proposed project, especially in conjunction with the District’s many other similar management projects. Compliance with both the NFMA and the MBTA requires that action alternatives presented within the DEIS must be capable of protecting forest habitat for these many species of concern, and of reversing any current downward population trends. Such a course of proactive protective action is also required by the ESA and the NEPA, Presidential and USFS directives, and the Migratory Bird Treaty Act, as well as credible conservation science and ethical integrity. However, in violation of these legal and ethical requirements, the DEIS presents only two action alternatives, both of which would admittedly degrade habitat to varying projected analysis levels based upon unverified analysis assumptions and unsubstantiated speculation. Directly, cumulatively, and incrementally the proposed livestock grazing reauthorization provisions would further imperil neotropical and native avian species populations, resulting in population and distribution trends that would likely over time contribute to the extirpation of at least some species of concern, and result in direct individual mortality as well as adverse cumulative habitat and population level harms.

The proposed livestock grazing reauthorization as proposed would significantly impact migratory birds in violation of the Migratory Bird Treaty Act, 16 U.S.C. §§ 703—712 (1994). It is well known amongst the conservation-science community that many migratory birds which are currently experiencing severe population decline trends are “strongly associated” with specialized habitat zones, ranging from interior forest, riparian areas, edge and transition zones, meadows, upland forest, and open rangeland areas – all of which are present in portions of the greater allotment management areas. The proposed grazing reauthorization would result in the continuation – albeit modified – of grazing management that has resulted in the direct and indirect mortality and ongoing cumulative habitat loss, and declining population and distribution trends for native migratory and native birds. As avian populations are strongly territorial, when home territory and preferred habitat locations are disrupted by recurrent seasonal trampling and overgrazing, affected species often have no alternative available territorial recourse. The proposed grazing reauthorization would cumulatively and incrementally continue to significantly reduce existing migratory and native species bird habitat, which has already been significantly diminished due to the cumulative impacts of past management throughout much of the Ochoco National Forest and surrounding private and public lands, including the greater allotments analysis area. Due to degraded and reduced extent of viable territories, avian species not able to locate suitable territory would be forced into poor quality habitat where the opportunities and potential for successful rearing of offspring and survival are greatly diminished, leading to increased mortality of affected individuals and continuing declining population trends for species of significant concern.

Proposed recurrent grazing would continue to irreparably degrade and disrupt migratory bird habitat. Areas that were overgrazed and trampled would also be negatively impacted by more adaptable generalist bird species, displacing species of concern and further stressing available forage and habitat resources. Other avian and predator species more adapted to degraded habitat would move into the

affected areas, further adversely impacting less adaptive neotropical and migrant avian species of concern. The impact these abundant and highly competitive bird species would have on sensitive bird species dependent on less degraded habitat conditions should have been adequately disclosed and evaluated in the DEIS. The adverse impacts that the proposed reauthorization of livestock grazing would incur on migratory birds are supported by multiple scientific studies. Failure to sufficiently disclose and comprehensively analyze pertinent scientific information violates provisions of the NEPA. Implementation of this DEIS as proposed would violate both NFMA and the Migratory Bird Treaty Act.

In August 1999, the FWS stated that agencies should take “an extremely cautious position with respect to the intentional take of migratory birds by federal agencies.” *Letter from Acting Director, United States Fish and Wildlife Service, to Regional Directors, Regions 1–7 and Assistant Director, Refuges and Wildlife (August 17, 1999), 3*. FWS also cautioned that “the Service should not assert in any communication or correspondence that federal agencies are not covered by the prohibitions of the MBTA [Migratory Bird Treaty Act].” *Id.*

In July 2000, the Eighth Circuit Court of Appeals held that federal agencies are required to obtain a take permit from FWS prior to implementing any project that will result in take of migratory birds. *Humane Soc’y of the United States v. Glickman*, 217 F.3d 882 (8<sup>th</sup> Cir. 2000). Due to this litigation, the FWS is operating under the assumption that the Migratory Bird Treaty Act applies to the Forest Service and its activities. 16 U.S.C. § 703 et seq. The Act states that “it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill . . . any migratory bird.” 16 U.S.C. § 703.

In January 2001, President Clinton signed Executive Order 13,186 that outlined the federal government’s responsibility to comply with the Migratory Bird Treaty Act. Exec. Order No. 13,186, 66 Fed. Reg. 3,853 (2001). During the tenure of his now competed term President Bush did not rescinded this Order, and neither has the current President Obama. Recent legal analysis confirms that the Forest Service must actively prevent the take of migratory birds, or obtain a permit for incidental take of individual species. *Helen M. Kim, Chopping Down the Birds: Logging and the Migratory Bird Treaty Act*, 31 *Envtl. L. 125* (2001). The Forest Service has failed to comply with these legal and scientific obligations. Until the agency can demonstrate that it has complied with the requirements of the Migratory Bird Treaty Act, the DEIS for this project must be revised to incorporate effective protective provisions and verifiable monitoring of trends and impacts before a decision may be authorized. The lack of adequate scientific assessment of these issues fails to meet NEPA’s requirement for high quality scientific analysis that would satisfy the “hard look” standard. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9th Cir. 1998) *cert. denied*, *Ochoco Lumber Co. v. Blue Mountains Biodiversity Project*, 119 S.Ct. 2337 (1999).

Overall, the DEIS failed to sufficiently and accurately address known, foreseeable, and likely direct and cumulative impacts to neotropical and native bird species resulting from past, ongoing, and proposed authorized grazing practices. By failing to base proposed management provisions on accurate site specific surveys and confirmed population and distribution trends for species of concern, the proposed reauthorization of grazing will have undisclosed and unforeseen harms to nesting and foraging avian species. Overgrazing and trampling impact trends systemically and cumulative occurring throughout the Big Summit Cluster allotments has not been adequately addressed or disclosed in this DEIS, nor have sufficient management and monitoring provisions made to effectively reduce these rampant impact harms. Impacts to additional avian species of concern that may exist within the project area have not yet been addressed. Potential additional, and ongoing current displacement of native and migrant species of concern that historically and/or currently occur within the analysis area by competitive species more adaptable to habitat disturbance and degradation has not been addressed in this DEIS. Long term habitat

restoration and recovery of historic native and migrant species of concern has not been sufficiently addressed by the DEIS. As a consequence, the proposed reauthorization would violate the Migratory Bird Treaty Act by causing mortality and habitat loss to avian species. The proposed action alternatives fail the NEPA by being based largely upon unverified conjecture and assumptions rather than site specific and population and distribution trend information. DEIS analysis and alternative provision deficiencies must be corrected before a legal decision may be reached reauthorizing livestock grazing in the Big Summit Cluster Allotments.

### **Resource and Management Monitoring and Enforcement**

The DEIS proposed alternatives provide for permittee monitoring and maintenance of allotment exclosures, fences, watering areas, and utilization patterns. Provisions for responsible Forest Service personnel oversight and monitoring are largely lacking. Areas with a record of historic and ongoing adverse grazing impacts must not be left largely to voluntary permittee compliance. Regular monitoring by responsible agency personnel is requisite to meeting resource recovery objectives. As was noted during the recent field trip, even conscientious permittees have areas where adverse impacts are recurrent problems. As has been discovered in our surveys of grazing practices across the region, broken fences have resulted in cattle trespass, harmful impacts in exclosure areas, and overgrazing in sensitive and unauthorized locations. The EIS must be revised to incorporate and disclose provisions for effective agency monitoring and enforcement.

### **Grazing Suitability Determination**

The agency must update its outdated assessment on the grazing suitability of the allotments. Determinations were made absent considerable scientific research conclusions. Since the 1989 determination, additional scientific research has transpired that must be incorporated into revised determinations. Public and agency resource management focus and objectives have changed considerably in the years since 1989, with greater emphasis on the restoration and maintenance of natural ecological functioning, resilience, and integrity. Population and distribution trends for species of concern have cumulatively significantly changed, largely evidencing incrementally adverse trends. NEPA requires the agency incorporate significant new scientific information and resource management direction changes. The DEIS fails the NEPA by basing its claims of grazing suitability upon an outdated, scientifically unfounded 1989 suitability determination. The EIS must be revised to adequately address this foundational issue. Recurrent problematic areas that evidence ongoing trends of harmful grazing impacts are clearly not suitable to livestock grazing. Effectively meeting recovery objectives for natural resources, salmonid watersystems, and species of concern habitat and populations requires the agency comprehensively reassess its determination that the affected allotment areas are suitable for livestock grazing. To accurately make such a determination requires the disclosure and assessment of pertinent scientific research; site-specific conditions; recovery objectives for species of concern, natural resources, and waterways; and ongoing patterns and trends in the greater analysis area. Such a foundational assessment must be done before the agency may reasonably conclude whether some or all of the proposed allotment area lands “are suitable for grazing and consistent with land and resource management plans” as per not only the FSM, but as governed by all applicable environmental policy laws, the LRMP as amended, and as consistent with resource recovery objectives. Among resource concerns that need to be addressed by this proposed reauthorization are the recovery of: salmonid redband trout populations, aquatic species habitat, water quality, restoration of impaired soils, recovery and abundance of biodiverse native botanical species, prevention of the spread of invasive exotic plants, abundance and viability of ground nesting birds and other avian species of concern, restoration of hydrological historical patterns essential to restoring forest ecosystems fire resistance and resiliency from severe fires – and addressing the impacts of ongoing climate change patterns, etc. NEPA analysis must identify areas that are not suitable for continued livestock grazing, and effectively remove these from further grazing. Areas that evidence significant harms, or a trend towards resource damage, must be withdrawn from grazing.

## **Cumulative Impacts Analysis and Provisions**

### ***Logging, Ground Disturbance, Fire Recovery, and Invasive Plants***

Significant portions of the analysis area and adjacent areas have proposed ground disturbing and habitat altering management actions. The Canyon logging-thinning project, the Lookout Mountain burning project, and the Big Summit ORV trail system are among planned resource impact actions. Additionally, natural conditions throughout the area are not static but instead area subject to ongoing dynamic change. Unforeseen wild and human caused fires, increased levels of naturally fluctuating disturbance events, and other changes may and will likely occur in the greater analysis area, cumulatively affecting resource conditions. The DEIS failed to meaningfully address these ongoing dynamic processes and potential and likely cumulative impacts across the area. The DEIS failed to disclose or effectively address adaptive management provisions in its proposed alternatives.

In areas where burning and/or ground disturbance occurs, scientific research recommendations call for resting livestock grazing for a minimum of five or more years throughout the affected areas. Where grazing is permitted, additional resource protections must be incorporated. Permittees that have failed to responsibly uphold livestock grazing standards must be restricted or terminated from continued grazing, with acreage and livestock AUMs reduced to address resource concerns and attainable responsible management objectives and standards. If resource goals are not attainable under current practices, the extent of livestock grazing must be curtailed so that resource protection and recovery goals can be reached. The restoration goals of projects such as Canyon and Lookout Mountain should not be compromised by the harmful impacts of livestock grazing. Similarly, the Ochoco Invasive Plant Treatment EIS has identified a number of invasive plant locations in the affected allotments. The DEIS failed to adequately address the cumulative impacts of the proposed livestock grazing reauthorization and the proposed recurrent use of toxic herbicides across the analysis area. Livestock grazing as proposed subjects the area vegetation and soils to disturbance conditions that facilitate the spread and introduction of exotic invasive plants, creating a recurrent perpetual program of herbicide use and toxic degradation across the area. The DEIS must be revised to adequately address effectively preventing and controlling invasive plant spread and introduction, as livestock grazing impacts are a root cause of invasive plants in the analysis area.

### **The EIS Premise is Inaccurate in Violation of the NEPA**

The EIS claims that livestock grazing is a “historical” use, but again fails to substantiate this. It is widely recognized regarding forest conditions, that many decades of prior logging does not constitute an historical “logging” use. Grazing, resulting from the forceful invasion of the area by people unfamiliar with the ecosystem, has resulted in an ever growing litany of ecological and social harms. Subsidized by the federal government, it exists only at great irrecoverable costs to the ecological quality of public lands, citizen taxpayers, and the natural heritage of generations yet to be born. Instead, historical has been scientifically defined as referring to pre-European settlement times. Livestock grazing, as logging, does not constitute an historical use, but merely an unwise short-sighted aberration in responsible human societal behavior. It is becoming increasingly clear over-time that such ecologically unsustainable human practices must be changed to sustain natural ecological processes, including fisheries and botanical diversity and populations for the generations yet to come. As the EIS alternatives, and its purpose and need arise from this scientifically inaccurate premise, the EIS must be revised and a legally compliant purpose and need developed. NEPA requires scientific accuracy and expert quality. NEPA also requires that purpose and needs not be written to bias the analysis and/or predispose decision-maker towards the selection of a particular management action at the exclusion of other reasonable and lawful alternative actions. This must be corrected in a new EIS for area livestock grazing.

## **The DEIS Fails the Requirements of the MUSYA & the NEPA**

The Ochoco National Forest's public lands are an ecological resource to all members of the public, not just allotment ranchers. Livestock grazing has resulted in severe widespread ecological damage throughout this allotment cluster analysis area. Just as ORVs, which also result in extensive damage, cannot be used across the entire national forest, so must livestock grazing – with its excessive significant harms to the forest and watershed ecosystems – be reasonably restricted. Not only are streams despoiled, fisheries populations and viability reduced, native species botanical biodiversity significantly diminished, and wildlife populations impaired – but grazed areas are riddled with olfactory offensive cow-manure stench, swarms of annoying flies, and an over abundance of harmful parasites including ticks and leeches. Livestock grazing destroys the recreational desirability throughout extensive areas of the Ochoco's National Forest lands. Federal Multiple Use (MUSYA) policy laws require the agency to make clear management provisions for all members of the public. It is not only unethical, it is illegal for a few commercially-motivated livestock ranchers to control and degrade nearly the entirety of the Ochoco Forest. At a minimum, the agency must develop a full range of alternatives, including assessing alternatives that prohibit livestock grazing in a sizeable percentage of designated “general forest” areas in these public lands. Given the conditions of the area, it is clear that the allotments' lands need both a lengthy rest and extensive restoration efforts as well from livestock grazing. A new DEIS must be developed which presents analysis and action alternatives that address these significant issues. Almost all allotments need to be downsized in acreage and impacts, with at least some eliminated entirely. To begin to understand the significant difference between healthy natural ecosystems and the overgrazed lands of the analysis area, sizeable areas need to be cattle-free in perpetuity. Long-term restoration in these areas can help provide baseline ecological reference locales by which to meaningfully evaluate the true impacts of livestock grazing in the area. Providing for these baseline areas will help guide management practices and restoration efforts in grazed areas, enabling both the agency and permittees to realize the full adverse impacts of grazing, and thus be better able to develop methods to meet federal and state environmental policy laws and resource objectives in the future. The EIS has failed to develop or disclose these necessary and scientifically reasonable actions.

## **The Stated “Purpose” of the DEIS Violates the NEPA**

The stated “purpose” of this project fails to begin to meet NEPA's most basic requirements. NEPA's requires the agency to develop a sound purpose and need, and incorporate expert advice and high quality science in developing a full range of reasonable alternatives that are all capable of meeting the purpose and need, and thus of selection, and which “take actions that protect, restore, and enhance the environment” (CEQ 1500 §1501.1(c)). NEPA directs that analysis include “reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions” and which “contribute to the preservation and enhancement of the environment.” Instead the foundational inclusion of the “authorization of livestock grazing” as the primary purpose of this EIS violates the requirements of federal law.

In *Muckelshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, fn. 7 (9th Cir. 1999) the Court held that the purpose and need cannot be so narrow that only one type of action alternative will work. In this case, the Forest Service has drawn its purpose too narrowly, with the unfortunate result that only one of its presented action alternatives could be considered acceptable. As the “purpose” is “to authorize livestock grazing in a manner that is consistent with the Ochoco Forest Plan as amended,” the selection of a no grazing alternative is not possible.

Yet, despite NEPA's requirement that all action alternatives presented must be suitable for possible selection by the decision maker, the EIS violates judicial caselaw (noted above) and NEPA requirements in its purpose for this project. While it is laudable that environmental qualifiers are placed upon continued grazing, this still has the end result of preventing the selection of a no grazing alternative, and predisposing the decision-maker to the selection of one of the grazing action alternatives presented instead. As a result of the EIS's narrowly contrived purpose, the Forest Service undermines the NEPA

process and does not give serious consideration to the no grazing action alternative, or to the development of other potential alternatives based upon sound ecological science and long-term restoration objectives and needs.

In *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815, rev'd in part, 490 U.S. 332 (1989) (internal citations omitted) the Court determined that the EIS was inadequate because it failed to examine all reasonable alternatives. The Court held that "the range of alternatives considered must be sufficient to permit a reasoned choice." Here, beyond the statutorily required "no action alternative," only two grazing alternatives were effectively developed, as the "no grazing – no action" alternative really is unavailable for selection due to the legally deficient contrived "purpose." As such, the Forest Service failed to comply with the NEPA by developing a scientifically sound legal purpose consistent with the needs of the project area, and by failing to fairly and objectively develop and assess all reasonable action alternatives.

Given the extent of significant resource degradation in the area; the failures of past management; and the scientific research recommendations concerning achieving resource recovery goals, grazing suitability, and grazing impacts; the purpose for this project should have read more appropriately as per the NEPA as: "The Purpose of this project is to provide for resource management and recovery in the allotment analysis area in a manner that is consistent with the Ochoco Forest Plan as amended." Such a legally unbiased and NEPA compliant purpose would have allowed for the full development, objective analysis, and potential selection of either the proposed grazing actions or the no grazing alternative, and the potential development of other reasonable grazing rest and/or termination and restoration action alternatives.

As noted before, given the unreasonable delay in the agency addressing and preventing resource degradation in these allotments, a decision authorizing the immediate suspension of livestock grazing in degraded portions of affected allotments for a period of at least five or more years is not only ecologically warranted, it is legally required. As such the EIS should not be withdrawn. A two-part decision should be made instead, part one of which rests degraded ecological priority areas from livestock grazing for five or more years, and part two of which compels the agency to conduct an EIS assessing conditions and recovery progress at the end of five or more years – before the authorization of livestock grazing may be considered. If the EIS indicates that resource recovery and long-term resource maintenance goals require a longer suspension or permanent termination of livestock grazing in this area, the decision to rest degraded areas for five or more years could be extended or revised accordingly. As the Ochoco LRMP is outdated, and its determination of this area as suitable for livestock grazing likely has proven to be erroneous, the EIS and/or the revised LRMP should also reassess this determination based upon the scientific research, site specific allotment conditions, and resource recovery goals and objectives in the revised EIS for this project.

### **Towards the Development of a Legally Compliant Purpose and EIS**

In addition to the NEPA and legal citations above, we include herein the following from the NEPA's core tenets to assist the agency in responsibly and legally developing a future EIS and reaching an ecologically and legally acceptable decision for management in this area, and as additional evidence that the agency's stated purpose and proposed authorization of continued livestock grazing is in contravention to the NEPA and the intent of Congress:

- 1) Directing that actions not harm the environment: "NEPA, CEQ Regulation part 1500 - Purpose Policy and Mandate" "Sec. 1500.1 Purpose. (c) Ultimately, of course, it is not better documents, but better decision that count. NEPA's purpose is not to generate paperwork - even excellent paperwork - but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions **that protect, restore, and enhance the environment**. These regulations provide the direction to achieve this purpose."

- 2) Directing the agency to develop and analyze a reasonable range of alternatives that avoid or minimize environmental harms: "Sec. 1502
  - a. (e) Use the NEPA process **to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.**
  - b. (f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, **to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment."**
- 3) More directions on the range of alternatives: "Sec. 1502.14 Alternatives including the proposed action. This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should 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 decisionmaker and the public. In this section agencies shall: (a) **Rigorously explore and objectively evaluate all reasonable alternatives,** and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."
- 4) And finally, the very core of NEPA - Congressional intent and directives to "prevent or eliminate damage to the environment" From "The National Environmental Policy Act of 1969; Purpose Sec. 2 [42 USC § 4321]. The purposes of this Act are:
  - a. (a) To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality."
  - b. (b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may –
    - i. 1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
    - ii. 2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
    - iii. 3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
    - iv. 4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
    - v. 5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
    - vi. 6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
  - (c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment."

### **Additional Concerns**

Though the DEIS included a no grazing alternative for this area, this was utilized not as an action alternative with potential for selection, but instead as just a no action alternative that is essentially

precluded from selection due to the agency's inappropriate inclusion of authorizing grazing within its project purpose. Improved EIS analysis must better address the direct and cumulative impacts, and long term alteration of subsurface soil communities; as well as the incremental loss of the diversity and abundance of native vegetative and fungal species. The DEIS must also better address the reduction of hiding and habitat cover for diverse species, including affects upon native predators of ungulates, riparian areas, salmonid redband trout watersystems, water quality, and soil hydrology and quality. The EIS must also provide for a sufficient percentage of the allotment areas to be excluded from grazing impacts, across all habitat types – from riparian to upland forests and wildlands – over an extended period of time (10 years at a minimum, in perpetuity ideally). These non-grazed areas can be utilized as baseline natural templates for how ungrazed portions of the ecosystem naturally function; helping to develop standards for grazed areas and fully assess the real impacts of livestock grazing. As such, exclosure areas must be of sufficient size and overall ecological complexity to accurately assess differences in grazing impacted areas and those not subjected to ongoing grazing year after year. Riparian habitat in particular is of considerable concern throughout this area.

Inadequate analysis is presented on potential conflicts between livestock permittees and natural predators, including cougars and other wildlife species. Wolves are beginning to return to the region's public lands, with evidence that they may now exist in the adjacent Malheur National Forest. Given that the management plan is for a ten or more year authorization period, it is imperative that the analysis address wolves, which – if Oregon Wolf Plan recovery objectives are realized, could exist in the Ochoco National Forest including the analysis area during the management lifespan of this proposed allotment reauthorization. Livestock grazing alterations to the foraging sustenance and movement patterns of ungulate prey species for wolves must be disclosed and addressed, with the consideration of the additional natural stress impacts of increased predation. These issues must be adequately addressed in the EIS, with provisions protecting wildlife predators from repercussions resulting from possible predation on livestock within their hunting territories, and provisions ensuring adequate cover and foraging territory needed by native ungulate species. In general, recurrently hunted populations need higher levels of good quality forage, extensive non-disrupted territory, and adequate hiding refuge to thrive at optimum levels, than the current minimally predated upon ungulate populations do today.

The length of grazing periods and AUMs in this area are excessive, given the cumulative impacts upon the land and vegetative resources. Many diverse native species depend upon adequate forage for survival. Grazing period extent and duration must be reduced as necessary to ensure adequate resources exist for native ungulates and other wildlife species. This is especially so given the additional proposed management projects cumulative impacts on vegetation and ecological conditions. The agency must establish effective actions including mid season reviews and responsible regular agency monitoring, including curtailing allotment use as may be necessary if resource objectives are not being met. These issues must be addressed more fully within the revised EIS.

The areas allotments are already failing to meet resource objectives. Merely shuffling cattle about more, and rearranging grazing timing is likely not to be sufficiently responsible to alleviate resource harms from grazing. ORV use and harms in this area are also compounding ecological and watershed problems. It is likely significant portions of this area need to be removed from livestock grazing, thus reducing AUMs throughout the area.

Beginning grazing before July 15 will result in significant resource harms to avian species. Grazing, if it occurs at all in this area, should not begin until soils have dried and ground nesting birds have successfully fledged. Mid to late July would be the earliest that livestock grazing should be considered for any areas with avian species of concern in the Ochoco forests. Additionally, livestock should never be permitted to graze within sensitive rare plant exclosure areas, and these areas may need to be enlarged to provide for the recovery of sensitive plant species. While adding riparian pastures that exclude such grazing is a possible beginning, this fails to address overall issues and concerns comprehensively. The revised EIS for this proposal must address these issues more fully and adequately.

Impaired water quality resulting from the excessive number of proposed ponds (31) and troughs that reduce instream water, increase water temperatures as sun-warmed trough and pond waters overflow into area streams, and result in increased evaporation reducing available waters, must be addressed and corrected – not augmented, compounded, and continued. If water ponds and troughs are to be employed, they must be located where shading and conditions are sufficient to maintain water temperatures and where flows can be maintained at levels necessary for aquatic species survival, recovery, and viability. Algae toxins must also not be introduced into aquatic species habitat from blooms in solar exposed ponds and troughs. These and related issues must be addressed in the revised EIS for this proposed reauthorization.

Exclosure fences must be maintained and in good repair before livestock are permitted in allotment areas. Monitoring of livestock must be done on either a daily or at a minimum every other day basis, including monitoring of exclosure areas. If exclosures are breached or broken, they must be repaired or cattle must be removed without delay until such time as exclosures are effectively functional. Where appropriate, additional exclosures or reduction in livestock or grazing time-periods must be employed to ensure natural resources are not impaired, degraded, or adversely impacted.

### **Conclusion**

We strongly recommend the proposed preferred alternative be revised to incorporate the above issues and concerns. We recommend that annual pre-and post grazing season review include not just agency personnel and permittees as proposed, but also include interested members of the community, representatives from Tribal governments with affected ceded treaty lands, representatives from national and state agencies involved in salmonid watersystem recovery and oversight, conservation representatives, and recreational representatives; as the management impacts and natural qualities of the affected area directly affect all of the above public. It would be helpful to have annual post-season public field trips to area allotments, reviewing both problem areas and areas where proactive grazing management may be beginning to accomplish resource recovery. It would be most helpful if annual public field trips involved permittees as well as responsible agency staff.

We refer the project planning staff and decision-makers to our previous comments and appeals addressing similar issues and concerns related to the proposed Big Summit Cluster AMP reauthorization, including our comments and appeals of Burns and Crystal Springs EA, and Maury Mountains AMP EIS. We also incorporate by reference our previous appeal resolutions for the Burns & Crystal Springs Allotment Management Plan, and for the Maury Mountains Allotment Management Plan EIS. The range of issues addressed in our previous comments, appeals, and appeal resolutions represent recurrent conservation issues concerning livestock grazing in the Ochoco's public lands forests and watersystems. These can help provide guidance regarding the environmental issues that still need to be disclosed and addressed in the EIS for the proposed Big Summit Cluster allotment management plans.

We appreciate your proactive concern for the allotment areas being addressed, and thank you for this opportunity to comment. Our organizations look forward to addressing conservation objectives and management actions during the revision and completion of this NEPA analysis process.

For Our Public Lands Natural Heritage,

A handwritten signature in black ink that reads "Asante Riverwind". The signature is written in a cursive style with a long, sweeping flourish at the end.

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