

California Native Plant Society

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Dear Ms. Rodman:

The following are the comments of the California Native Plant Society (CNPS) on the draft environmental impact statement (DEIS) analyzing range standards and guidelines for the Eldorado and Tahoe National Forests. CNPS is an organization of more than 10,000 laypersons and professional botanists organized in 30 chapters throughout California, including several in the DEIS project area. The mission of the CNPS is to increase the understanding and appreciation of California's native plants and to preserve them in their natural habitat through scientific activities, education, and conservation. CNPS has actively participated in the management of the Eldorado and Tahoe National Forests for many years. CNPS members use these National Forests extensively for recreation, research, and education.

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Introduction

We commend the Tahoe and Eldorado NFs (Forests) for initiating and, more importantly, persisting with this much-needed Land and Resource Management Plan (LRMP) amendment. We are aware of the substantial commitments of time and energy that have been required to produce this DEIS, and we congratulate the Forests for their perseverance. We also commend the Forests for the design of the two proposed action alternatives. Unlike many grazing National Environmental Policy Act (NEPA) analyses, these alternatives present realistic, well thought-out choices regarding livestock management.

Nonetheless, we do have concerns about the preferred alternative and we question the economic analysis on which its selection appears to be based. We were also disappointed that some important information was missing from the DEIS analysis.

Our primary concern is that the success of the preferred alternative depends so heavily on consistent leadership and adequate budgetary and staff commitments to implement it as written. The Forest Service has a long history of inconsistency in execution of grazing management plans, laws and regulations. Problems have increased in recent years as budget and staff cuts have decimated field staff in range and other resource programs.

This DEIS contains no data indicating how well or poorly the Forests have been able to implement current management direction. No data are presented showing how much of each allotment is monitored each year for forage utilization, streambank trampling, or browse utilization, how measured impacts compare to allowed limits, how frequently mandated on and off dates are complied with, how much livestock trespass occurs, or any other information regarding past monitoring or implementation of grazing standards and guidelines. Without some basis for assessing the ability of the Forests to properly implement the alternatives, it is impossible for the public to judge their probable impacts. In the sections on staffing and accountability (below), we provide some recommendations for measures that should be incorporated into the final amendments to improve implementation of monitoring and grazing management requirements.

In addition, we request that the final EIS include summaries of the following information to allow us to better understand the current ability of Forests to implement grazing management requirements:

1. Utilization monitoring records for the past 5 years for all allotments, including whether each allotment was monitored for utilization each year, comparison of actual measured utilization with allowed utilization, number of key areas monitored on each allotment, and whether utilization was measured qualitatively (i.e. ocular estimate) or quantitatively.
2. On/off date violation records for the past 5 years for all allotments, including whether any enforcement action was taken in cases of violation.
3. The watershed improvement needs inventory for each allotment.

4. The number and percentage of total project area streams that have been evaluated using proper functioning condition or other methodology within the past 5 years.
5. Staffing analysis (see discussion below)
6. The proportion of potential habitat for sensitive plants that has been surveyed within the last 5 years by a qualified botanist.
7. The proportion of potential habitat for sensitive animals that has been surveyed within the last 5 years by qualified specialists.

We propose that the Forests adopt Alternative C with certain modifications (see below for details). Because Alternative C proposes simple exclusion of livestock as a primary means to conserve and recover critical areas, Alternative C will be more effective, easier and less expensive to implement than the preferred alternative. Conservation benefits under the preferred alternative would be achieved primarily through NEPA analysis, new buffer zones, and changes to on and off dates. All of these measures are time-consuming and expensive, and require consistent staffing and leadership for successful implementation. Consistent staffing and leadership have not marked range programs in the Pacific Southwest Region in recent years, and there is no reason to think that this will change soon. The DEIS repeatedly points out that simple exclusion is the most certain and rapid method to conserve and improve ecological health in the project area, particularly in damaged areas. We agree. The project area contains rare and valuable resources, including wildlife, rare plants, and clean water, that can be adversely affected by mismanaged livestock. These resources deserve the most rapid and effective protection available. That is Alternative C.

If the Forests do select alternative B, this EIS should include a specific implementation plan, with timelines, which demonstrates that all of the management prescriptions and NEPA analysis on which this alternative depends will be accomplished. Please see sections on accountability and staffing below for suggestions.

Comments on DEIS analysis

Economics

We are disappointed by the economic analysis in this DEIS. The analysis both exaggerates the economic importance of Federal forage to the local economy and understates, in fact makes no mention of, the economic importance of the resources that may be adversely impacted by poorly managed livestock. The analysis also omits any analysis of the differences in impacts to taxpayers under the various alternatives.

Economic impacts to private lands

We are disturbed by the discussion of the possible impacts of the alternatives to privately-owned oak woodlands adjacent to the planning area. First, the analysis is extremely biased. For example, the Sierra Nevada Ecosystem Project report quoted on DEIS p. 4-13 listed four factors as indirect causes of loss of large ranches in the Sierra Nevada. Only one of these four factors has anything to do with Forest Service policies. Why does the DEIS provide no estimate of the relative contributions to the pressure to

sell ranches of skyrocketing land values, plummeting livestock prices, changing social values in younger generations, or any factor other than Forest Service grazing policies? We question how long even the most indulgent Forest Service management can compete with land values exceeding \$20,000/acre in some areas.

Second, the conclusions are speculative and greatly exaggerated. On page 4-13, the DEIS asserts that “between 38,000 and 75,000 acres of lands now in non-intensive agricultural use would be at increased risk for [subdivision] under Alternative C.” What is the basis for this claim? The DEIS provides no local quantitative analysis, even polling data of affected permittees, to support this estimate. The single study cited is not specific even to California, much less the Sierra Nevada or the project area. Even if we were to accept the Fowler study estimates as applicable to the project area, according to Tables 4-2 and 4-3, only 3 allotments are at risk of losing most or all of their forage under Alternative C: Perazzo, Sagehen, and Independence. How does this translate to 38,000 to 75,000 acres at risk? This assertion should be withdrawn or some quantitative analysis and evidence should be provided to substantiate it.

Finally, the Forest Service has no authority, jurisdiction, or control of land use decisions by any private landowner, including grazing permittees. The Forest Service does have a compulsory duty to uphold environmental and resource protection laws and to protect publicly owned resources for future generations. We would strenuously object to any decision to compromise resource protection based even in part on speculation that it may cause some private land to remain in open space for some unspecified period of time.

Economic impact to taxpayers and resource dependent businesses

Although the DEIS expends a great deal of discussion describing actual and alleged economic impacts to permittees under the various alternatives, inexplicably the document provides no comparison of the economic impacts to the taxpayers or to any section of the local economy other than ranching. We request that the final EIS provide a “taxpayer impact” analysis. Federal lands grazing has always been a money loser for taxpayers, but there are ways to approach grazing management that are more fiscally responsible than others. It is clear from the DEIS discussion (see e.g. DEIS p. A-24; p. 2-27) that Alternative C would require less staff time for monitoring and permit administration than the other Alternatives. This difference in cost to the taxpayer should be quantified in this EIS, as should the costs of the alternatives relative to a no-grazing alternative.

Furthermore, there are costs associated with resource damage such as damage to soils, water quality, and biological diversity which are more likely under Alternatives A and B than under Alternative C. High quality water is the most valuable resource produced by the Sierra Nevada, according to the Sierra Nevada Ecosystem Project. Increased fecal coliform and sediment concentrations can increase water costs for communities whose water supplies originate in the planning area. Riparian ecosystems, clean water and biological diversity are also extremely valuable to recreationists (anglers, birdwatchers, photographers, etc.) and to the businesses (guides, hotels, equipment and food stores,

etc.) which depend on them. Impacts to non-ranch businesses are not mentioned in this EIS. They should be. The differences in costs and impacts to all sectors of local economies should be quantified in this EIS.

Ecological conditions

The DEIS provides some information on ecological conditions in the project area. Much of that information is troubling. For example, Chapter 3 (p. 3-12 – p. 3-14) and Appendix A (Table A1) disclose that in many areas, meadow condition, stream channels, and soil condition are unhealthy.

However, a great deal of important information is missing from the DEIS, much of which was specifically requested during scoping for this NEPA analysis. Too often, the document provides vague general assertions rather than specific quantitative data to describe ecological condition. For example, DEIS p. 3-7 states

“Existing vegetative condition and trend data from rangeland analysis methods indicate that the majority of the rangeland vegetation within allotments on both National Forests is in mid-seral ecological condition with an upward trend.”

This statement is so general as to border on meaninglessness. Which specific areas/plant communities/allotments are not in mid seral condition? Which do not show an upward trend? What exact proportion does this ‘minority’ represent? Ten percent? Forty-nine percent?

Capability and Suitability Analysis

The DEIS does not explicitly discuss suitability or capability analysis, although it implies that suitability and capability analysis may occur during NEPA analysis for each allotment.

Some plant communities cannot support livestock without permanent damage or irreversible loss of resources or ecological services. Examples of areas that can be particularly susceptible to grazing damage include (a) high elevation mountain meadows (c) some riparian areas, including ephemeral streams and seeps (d) some rare species habitat.

Under the NFMA (36 CFR § 219.3), suitability is defined as:

“The appropriateness of applying certain resource management practices to a particular area of land, as determined by an analysis of the economic and environmental consequences and the alternative uses foregone.”

Capability is defined:

“The potential of an area of land to produce resources, supply goods and services, and allow resource uses under an assumed set of management practices and at a given level of management intensity. Capability depends on current conditions and site conditions such as climate, slope, land form, soils, and geology, as well as the application of management practices, such as silviculture or protection from fire, insects, and disease.”

Grazing suitability and capability analyses should be performed during allotment NEPA analysis by an interdisciplinary team. This analysis is mandated by the NFMA (36 CFR § 219.20), the Forest Service Manual (FSM 2212.11) and the Range Analysis Handbook for Region 5. This EIS should propose criteria and procedures to be used during allotment suitability evaluations. Criteria to be evaluated during suitability analysis should include productivity and fragility of vegetation or soils, conflicts with other uses (e.g. recreation, water use by communities, etc.), conflicts with any applicable resource protection designations under state or federal law or policy (e.g. heritage trout waters, special interest areas, wilderness), or exorbitant costs of protecting other resources. Capability analyses should include calculations of the carrying capacity, stocking rate, and expected use, quantitative evaluations of range condition, comparisons of the economic value of grazing with other potential uses forgone, as well as descriptions of resource and use conflicts.

Water Quality

On p. 3-11, the DEIS provides a good general discussion of water quality and livestock impacts. However, no specific or quantitative data are presented on stream temperature, fecal coliform, or sediment loading in the project area. The DEIS provides only a vague statement of concern:

“Water quality and water related habitat attributes, such as water temperature, continue to be a concern in relation to grazing practices. Livestock grazing impacts occur on an annual basis, resulting in cumulative impacts with variable recovery periods. Some areas recover annually, some may not recover prior to the next growing season, and others have the potential to never fully recover to pre-grazing conditions.” (DEIS 3-19)

The DEIS does provide evidence suggesting that water quality problems are likely within the project area. For example, DEIS p. 3-13, 3-14, and elsewhere reports serious damage to meadows and stream reaches on the Forests. Given this damage, actual data on water quality should be included for public and agency review. The Forests are required to comply with the Federal Clean Water Act and in light of documented stream channel damage, that compliance must be quantitatively documented. If quantitative data are unavailable, the EIS should follow NEPA direction regarding missing data (40 CFR § 1502.22):

“When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and

there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason."

Clearly, changes to water quality are reasonably foreseeable significant impacts of livestock management and should be analyzed as such.

No specific water quality improvement or monitoring program is proposed. As with other management improvements, specific planning is deferred to the allotment planning and NEPA processes (DEIS, p. 2-6). The DEIS also proposes to evaluate implementation and effectiveness of R-5 Best Management Practices, but no timeline or specific program is provided for these evaluations. This is inappropriate. Given evidence suggesting that water quality may be unsatisfactory, and in the absence of data showing compliance with Clean Water Act requirements, there is no justification for delay in evaluation and correction of water quality problems on these Forests.

We request that the final EIS contain quantitative data on existing water quality as well as an explicit plan and timeline to implement and monitor compliance with and effectiveness of Best Management Practices, the Clean Water Act and applicable Basin Plans.

Cumulative Watershed Effects

No data are provided from Cumulative Watershed Effects analysis for the planning area. The issue is essentially dismissed as insignificant on page 4-16. However, thresholds of concern and equivalent roaded acres are useful gauges of cumulative impacts and risk of excess sediment production in watersheds. Some summary of this information should

be provided so that the public can assess the general condition of the planning area, as required by the NEPA.

NEPA defines cumulative impact as:

" the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time [emphasis added]." (40 CFR § 1508.7)

Based on this definition, the impact of livestock and their trails on sediment production and watershed condition can not be dismissed from this NEPA analysis. We look forward to reviewing a CWE analysis in the FEIS.

Staffing Analysis

The ability of the USFS to meet its planning, management and monitoring commitments varies greatly from year to year for a variety of reasons, including budgets and staffing. Currently, many programs in USFS Region 5 are severely understaffed. The Eldorado and Tahoe National Forests are no exception. At this time, the west side of the Tahoe NF has no range staff. The single east side range conservationist currently has no seasonal or permanent assistance, which he acknowledges makes it difficult for him even to visit each allotment every season, let alone quantitatively monitor all impacted areas. The Eldorado is staffed by a single range conservationist who is must currently split her time between the Eldorado and covering part of the west side of the Tahoe. She also has no assistance this season. Given this situation, it is likely that some impacted areas currently receive no monitoring at all and therefore that ongoing resource damage - and violations of law - may well be continuing undetected and uncorrected.

Staffing also directly impacts the ability of the Forests to do NEPA analysis. Range staff on both the Tahoe and Eldorado have acknowledged that the Forests are not currently meeting NEPA schedules. We see no reason to think that this situation will change in the near future. Under Alternative B, much of the identification and correction of livestock management problems is deferred until allotment management planning and NEPA. This is a major flaw in Alternative B.

Because staffing is so central to the quality of planning, analysis, and on the ground management, all NEPA analyses should include staffing analysis. Staffing analysis should:

- i. calculate the level of staffing required to meet NEPA, monitoring, enforcement and mitigation goals,
- ii. compare current and projected future staff availability with those requirements, and
- iii. propose mitigation strategies where staffing does not meet workload requirements.

Staffing analysis should include all resource specialties relevant to livestock management in the project area, such as botany, range management, fisheries, hydrology, etc.

It is impossible for the public to estimate what portion of the proposed management and monitoring activities will be performed without a staffing analysis. Without some estimate of the probability that monitoring or NEPA will be performed as promised, the public has no way to judge the impacts of the alternatives. We request that the final EIS contain a staffing analysis for each alternative.

Understaffing adversely affects ranchers, who may be unable to obtain consistent information on management requirements or documentation of compliance with environmental laws. Recently, coalition of the California Cattlemen's Association, the California Farm Bureau Federation, the California Native Plant Society, California Trout, California Mule Deer, and the Central Sierra Environmental Resource Center have jointly asked Congress to augment funding for Region 5 specifically to augment monitoring of grazing impacts.

Comments On Proposed Alternatives

Ecological indicators

We commend the Forests for the design of a system of uniform, understandable, and most importantly, quantifiable indicators for use in ecological evaluation, monitoring, and management under Alternatives B and C. The use of uniform quantifiable indicators is the best way for Forest Service staff, permittees, and the public to clearly understand and implement management goals and requirements. We hope this approach will swiftly be adopted throughout the Region.

We particularly welcome the procedure presented on DEIS p. 2-42 for evaluating ecological condition. The use of a fully interdisciplinary process and team field visits is critical to successful evaluation and management planning. We applaud the Forests for placing such great emphasis on the interdisciplinary process – even extending to the use of capital letters to underline its importance. We hope that the process will be implemented as written.

Most of the indicators proposed seem reasonable. However, there are some elements that should be changed or added.

1. The presence and status of any non native invasive weeds in the project area should be evaluated as part of the ecological condition evaluation. The desired condition should be for all allotments to be free of invasive non native weeds.
2. The herbaceous species desired condition must be set to require more than a mere 50% native species. The seral stage targets proposed seem reasonable, but the native species cover targets do not. The desired condition should require at least 95% cover native species across all seral stages.

3. The deciduous woody riparian plant vigor indicator should be modified to explicitly include age as well as size class in the indicator language itself. The definitions for desired, transition, and unhealthy conditions currently reference only size class. Size class may be a poor indicator of age class in low fertility, dry, or heavily browsed sites.

Under Alternative B, evaluations will be performed only when allotment NEPA analysis occurs. Thus, many management problems will not be detected or corrected until NEPA analysis is performed. Because neither the Tahoe or the Eldorado NF currently is meeting its NEPA schedule for grazing, and because range staffing levels on the Forests make it unlikely that this will soon change, the reliance on NEPA calls into question the ability of the ecological evaluations actually to improve ecological conditions in a timely manner. We understand that under Alternative B, management may be changed before NEPA if monitoring discloses a problem. Nevertheless, the same understaffing that disrupts NEPA schedules also reduces monitoring capability. We reiterate that it is for these reasons that we recommend the adoption of Alternative C.

Utilization limits

We strongly support the proposal in Alternative C to implement more conservative utilization limits immediately to protect resources across the project area until ecological evaluations and NEPA can be performed.

As noted above, under Alternative B, most utilization limits in the project area will remain unchanged in advance of allotment management planning and NEPA analysis (See p. 2-16, S&G U-4). As discussed elsewhere, declining staffing and budgets has steadily reduced the amount of monitoring performed in recent years. We question whether the Forest Service has the ability to detect resource conflicts requiring management changes.

Season of use

We commend the Forests for explicitly stating that all livestock must be off allotments by the off-date or when any standard or guideline is reached for a specific area (p. 2-6). This requirement has rarely been codified so unequivocally in the past and is essential to proper management of livestock. We look forward to its successful implementation.

Rare plants

We appreciate the emphasis placed on planning for conservation of rare plants (TESPW, MIS, ES and other species of concern as defined on DEIS p. 2-5) across all alternatives. However, again we are troubled by the direction that many surveys and analysis for sensitive plants and livestock impacts must wait until NEPA analysis is performed. The Forest Service sensitive plant list has recently been revised. The DEIS acknowledges that a great deal of potential rare plant habitat in the project area has never been surveyed (Appendix B, Plant BE, p. 35-37). Serious grazing impacts may

well be ongoing and undetected. Under Alternative B, these impacts may continue indefinitely until NEPA analysis can be performed.

The rare plant BE states that livestock impacts could contribute to or even lead to a trend towards listing under the State or Federal Endangered Species Act for several taxa. It is unclear what action will be taken to ensure that these taxa remain viable in the interim before allotment planning and NEPA. Under both Alternative C and B, it is possible that management changes may not occur until NEPA analysis is performed. In some cases, this delay could allow impacts which may lead to a trend towards listing. This is clearly undesirable. Therefore, in addition to the reprioritization of allotment surveys propose the following measures to identify and correct adverse impacts to rare species known to be at risk from livestock in the interim before NEPA analysis.

1. All potential habitat for rare species identified in the BE as having the potential to be adversely impacted by livestock should be surveyed immediately, irrespective of NEPA schedule. Potential habitat should be prioritized for survey based on the probability of livestock-rare species conflicts.
2. Occurrences of vulnerable rare species should be evaluated for livestock impacts.
3. Management should be changed immediately (prior to the following grazing season) to eliminate adverse impacts.
4. Allotments found to contain rare species-livestock conflicts should be prioritized for early NEPA analysis. In all cases, allotments should be surveyed for rare plants well prior to the initiation of any NEPA analysis so that all relevant information can be given full consideration by the interdisciplinary team.

In addition, we recommend that areas should be prioritized for early survey – and early NEPA - based on the likelihood that rare plants are present which may be adversely impacted by recreation. Grazing and recreation are the two primary ongoing uses (vs. sporadic uses such as timber sales which receive NEPA and surveys prior to implementation) which may damage plants, so areas impacted by these activities should receive special attention.

The DEIS is somewhat unclear in its treatment of general management direction regarding rare species. The rare plant biological evaluation (BE, Appendix B, plant BE p. 32) and biological assessment (Appendix B, p. 6) make a number of management recommendations. The DEIS p. 2-5 states only that these additional management recommendations from the biological assessments, biological opinions, or BEs “may” apply in rare plant or animal habitat. This section should be clarified to state unequivocally that all management recommendations in BAs, BEs, and BOs will be followed under all alternatives.

Weeds

We commend the Forests for including a weed risk analysis with this DEIS. However, the information presented is incomplete and the action plan for weed control is

unacceptably weak. No information is provided showing where weed surveys have and have not been performed. No maps or other information is provided showing which allotments currently contain weed infestations or are at greatest risk of weed infestations. No information is provided describing which rare plant or animal species, which AREAs, special interest areas, research natural areas, wilderness areas, high value recreation sites, or other key resources are considered most at risk from weed spread. All of this analysis – as well as mitigation for weed problems once they are detected - is deferred to site specific NEPA analysis. As we have emphasized in these comments, we have little faith that NEPA analysis will proceed in an orderly or timely manner. The agencies ability to perform grazing NEPA fluctuates greatly over time, while weeds spread steadily into new territories.

The higher elevations of the Sierra Nevada are so far relatively free of weeds. However, that situation is temporary, and delay or complacency would be disastrous. Star thistle, cheat grass and other species are rapidly moving into the high country as the DEIS points out. The Forest Service has a small window of time in which to address this threat. This DEIS is well timed to expedite weed control efforts and facilitate protection of uninfested areas, but only swift, sure, and decisive action will be effective.

Grazing and recreation are the two major ongoing uses which spread weeds on National Forests. Thus, weed surveys must immediately be scheduled for all at-risk areas impacted by grazing or recreation. Areas should be prioritized for survey based on assessments by a qualified botanist of risk of weed infestation, irrespective of NEPA schedules. Infestations should then be prioritized for treatment following USFS direction (DEIS Appx. B, weed section, p.1). Management of uninfested areas should be reviewed periodically to ensure that they remain protected. If necessary to address weed problems, allotments should be scheduled for early NEPA.

In addition, incentives should be used to encourage Forest Service staff to give high priority to weed survey and control:

1. Funding, personnel evaluations, and other mechanisms shall be employed to provide incentives for keeping areas weed free.
2. Responsible line officers shall prepare a report each year describing the accomplishments of their weed management program, documenting the number of project analyses which included weed surveys and weed risk analyses, and providing explanations as to why project analyses that did not include weed surveys or risk analyses failed to do so.

Accountability

Because the success of the amendment depends so heavily on monitoring, ecological condition evaluation, NEPA analysis, and proper implementation of limits on streambank disturbance, utilization, and other impacts, it is critical that the amendment include measures to ensure that monitoring and implementation are performed on schedule.

In comments on the Sierra Nevada Framework, we have proposed several measures to help ensure that monitoring and implementation responsibilities are met and that utilization limits, disturbance limits, and on/off dates are enforced. We recommend that these measures, described below, be adopted as part of this decision.

1. Current management cannot continue in the absence of annual monitoring to ensure that impacts are within acceptable limits. If annual use (utilization, streambank disturbance) monitoring is not performed in any year, then grazing management will be adjusted the following grazing season. Adjustments should include
 - ◆ reductions in allowable utilization up to 10% each year monitoring is not performed, OR
 - ◆ reductions in season of use up to 10% for each year monitoring is not performed, OR
 - ◆ a combination of changes in season of use and utilization.

(Alternatively, grazing use may be suspended altogether until monitoring is performed. The point is to provide a positive incentive to both the agency and to permittees to ensure that monitoring is performed.)

2. Monitoring is a mandatory duty of Forest Service staff
 - ◆ The annual personnel evaluation and personnel record for the responsible line officer will reflect monitoring failures AND
 - ◆ The annual public statewide monitoring report (initiated by Region 5 following the 1998 season) will show where monitoring was not performed AND
 - ◆ Before the following grazing season, the responsible line officer will prepare a detailed explanation as to why monitoring did not occur and a detailed plan to ensure that monitoring occurs the following season. Both the report and the plan will be available for public review.

When monitoring is resumed, and if monitoring shows that standards are being met or exceeded, then management adjustments will be reversed.

Alternative C Should Be Adopted, With Modifications

As stated above, we recommend that the Forest Service adopt Alternative C, with certain modifications (see below). The Forests must meet strict legal requirements for ecosystem health under the Federal Endangered Species Act (FESA), the NFMA, the Clean Water Act (CWA), the Federal Noxious Weed policy, and other laws and policies.

We highlight some key legal requirements below. It is clear from the DEIS that Alternative C, by delineating AREAs which will be fully protected from grazing impacts, and by prescribing more conservative interim utilization limits outside of AREAs, provides a more reliable and rapid means to meet legal mandates throughout the planning area than the other alternatives.

- i. The proposed action must meet strict legal requirements to protect habitat quality, rare species, biological diversity, particularly in riparian areas.

Section 2 of the FESA (16 USC § 1531 et seq.) requires that

“. . . all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.”

The Forest Service Manual (FSM) §2670.21 further requires that National Forests be managed

“for threatened and endangered species to achieve recovery objectives so that special protection measures provided under the Endangered Species Act are no longer necessary.”

FSM § 2670.12 states that it is the Secretary of Agriculture’s Policy on Fish and Wildlife (Departmental Regulation 9500-4) to:

1. *Manage “habitats for all existing native and desired nonnative plants, fish, and wildlife species in order to maintain at least viable populations of such species.”*
2. *Conduct activities and programs “to assist in the identification and recovery of threatened and endangered plant and animal species.”*
3. *Avoid actions “which may cause a species to become threatened or endangered.”*

And FSM § 2670.32 requires, among other things, that National Forests

3. *Avoid or minimize impacts to species whose viability has been identified as a concern.*
4. *If impacts cannot be avoided, analyze the significance of potential adverse effects on the population or its habitat within the area of concern and on the species as a whole. (The line officer, with project approval authority, makes the decision to allow or disallow impact, but the decision must not result in loss of species viability or create significant trends toward Federal listing.)”*

The NFMA and also sets strict requirements for conservation of habitat in general, and requires special protection for riparian areas:

“Riparian areas. Special attention shall be given to land and vegetation for approximately 100 feet from the edges of all perennial streams, lakes, and other bodies of water. This area shall correspond to at least the recognizable area dominated by the riparian vegetation. No management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment shall be permitted within these areas which seriously and adversely affect water conditions or fish habitat.” (36 CFR §219.27(e))

For habitat in general, 36 CFR §219.19 requires,

“Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.”

And 36 CFR §219.27 (a) requires that

“All management prescriptions shall--

(1) Conserve soil and water resources and not allow significant or permanent impairment of the productivity of the land;

(2) Consistent with the relative resource values involved, minimize serious or long-lasting hazards from flood, wind, wildfire, erosion, or other natural physical forces unless these are specifically excepted, as in wilderness;

(3) Consistent with the relative resource values involved, prevent or reduce serious, long lasting hazards and damage from pest organisms, utilizing principles of integrated pest management. Under this approach all aspects of a pest-host system should be weighed to determine situation-specific prescriptions which may utilize a combination of techniques including, as appropriate, natural controls, harvesting, use of resistant species, maintenance of diversity, removal of damaged trees, and judicious use of pesticides. The basic principle in the choice of strategy is that, in the long term, it be ecologically acceptable and compatible with the forest ecosystem and the multiple use objectives of the plan;

(4) Protect streams, streambanks, shorelines, lakes, wetlands, and other bodies of water as provided under paragraphs (d) and (e) of this section;

(5) Provide for and maintain diversity of plant and animal communities to meet overall multiple-use objectives, as provided in paragraph (g) of this section;

(6) Provide for adequate fish and wildlife habitat to maintain viable populations of existing native vertebrate species and provide that habitat for species chosen under § 219.19 is maintained and improved to the degree consistent with multiple-use objectives established in the plan;.....”

The planning area contains numerous plant and animal species whose viability has been identified as a concern, including Forest Service Sensitive and State and/or Federally listed species. Many of these species are also aquatic or riparian dependent. The DEIS discloses that many riparian areas on the Forests are unhealthy. The DEIS repeatedly states that Alternative C will produce the greatest recovery of damaged habitats upon which many of these species depend. Statements to that effect include:

“The alternatives differ primarily in the rate-of-recovery of desired vegetation.”

(DEIS p. 4-33)

“The fastest rate of recovery for desired vegetation is expected under Alternative C, within AREAs and willow flycatcher and great grey owl high quality habitats” (DEIS p. 4-36)

“Willow habitat for willow flycatchers and other species dependent upon these areas would receive the most benefit and least adverse effects from livestock grazing [under Alternative C] compared to Alternatives A and B” (DEIS p. 4-44)

“Recovery rates of areas impacted or not at desired condition in AREAs would be highest under Alternative C...” (DEIS p. 4-28)

AREAs are defined as sites which

“... have a high value for aquatic and riparian biodiversity because of rich native species and communities and/or they contain some particularly rare or unusual biotic element.” (DEIS 2-24)

Thus, implementation of Alternative C is clearly the most rapid and reliable method presented in the DEIS to meet the Forest’s legal requirements to conserve and recover rare species, and biodiversity, particularly in riparian areas.

- ii. The National Forest Management Act sets requirements for National Forest monitoring and planning.

36 CFR §219.12(d) requires that,

“Each Forest Supervisor shall obtain and keep current inventory data appropriate for planning and managing the resources under his or her administrative jurisdiction. This may require that special inventories or studies be prepared. The interdisciplinary team shall collect, assemble, and use data, maps, graphic material, and explanatory aids, of a kind, character, and quality, and to the detail appropriate for the management decisions to be made.”

More inventory and other monitoring data is needed in situations where greater impacts are being allowed to a particular resource or area. Thus, increased effort and expense would be needed to meet this requirement under Alternative A or B than under Alternative C. The DEIS acknowledges this on page A-24 which explains that one of the rationales for Alternative C is to

“... reduce the risk for downward trends before an AMP is prepared, with less dependence on monitoring results.”

And on page 2-27, the DEIS explains that one reason Alternative C would require less monitoring than other alternatives is that willow flycatcher and great gray owl surveys would not be required.

We reiterate our request that the final EIS provide a “taxpayer impact” analysis which quantified differences in monitoring and other administration costs under the alternatives.

iii. Clean Water Act

33 USC §1323 states

“(a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner.”

Thus, the USFS is required to comply with the Basin Plans, developed by the California Regional Water Quality Control Boards, which set standards for water quality throughout California. As noted above, the DEIS provides no quantitative information so that the public can evaluate current water quality on the Forests or the extent to which the Forests are meeting the Basin Plans. However, the DEIS contains analysis, data and statements (p. 3-12 – p. 3-14; Appendix A) which indicate that there may well be water quality problems in at least parts of the planning area. We reiterate our request that the final EIS disclose what quantitative water quality information is available for the planning area.

Because, as explained above, Alternative C would implement the most rapid and reliable – and least expensive - conservation of riparian habitats of the three alternatives, Alternative C is also most likely to meet Clean Water Act and Basin Plan requirements in the planning area and to correct water quality problems most quickly where they exist.

iv. Weeds

The Forest Service is bound by numerous laws and regulations regarding the control of non native weeds, including President Clinton's February 3, 1999 Executive Order (enclosed), which requires that the Federal Government

"not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions." (Sec. 2(a)(3)).

The DEIS weed risk assessment states,

"those alternatives that graze the most livestock have the greatest risk of small site specific reductions of vegetation and soil cover to the point of changes in vegetative species composition."

Of the two action alternatives, Alternative C grazes fewer livestock, provides improved soil protection through reduced utilization limits, and excludes particularly sensitive and valuable areas from grazing altogether. Furthermore, under Alternative C these benefits accrue whether or not NEPA analysis takes place in a timely manner. Clearly, Alternative C is less likely to facilitate weed spread, and more likely to comply with Federal weed policy, particularly in AREAs.

v. Chief's Policies

The Chief of the Forest Service has proposed new priorities for the agency in recognition of the changing needs of society. In a March, 1998 speech, he outlined these new priorities. His speech included the following statement:

"How we manage our forests has a profound effect on the quality of our drinking water and the ability of our watersheds to perform their most basic functions. Recognizing the countless benefits that healthy watersheds provide to the American people, we will:

- ◆ *Make maintenance and restoration of watershed health an overriding priority in future forest plans and provide measures for monitoring progress.*
- ◆ *Propose to increase stream and riparian area restoration by 40% by 1999.*
- ◆ *Propose a 30% increase in habitat restoration and conservation of threatened, endangered, and sensitive species.*

.....

- ◆ *Improve efforts to prevent non-native species from entering or spreading in the U.S. “*

Again, Alternative C is the most consistent with this agenda of any Alternative proposed in the DEIS.

Suggested Modifications to Alternative C

Our analysis shows that Alternative C is would best comply with Federal law, policy, and regulation, particularly in these times of uncertain budgets and reduced staff.

Nevertheless, we recognize that closure of even limited areas to grazing may cause economic hardship to some livestock operators. Thus we suggest that Alternative C be adopted with modifications which may mitigate its economic impacts.

1. Under Alternative C, implementation of new standards and guidelines, and management changes following NEPA analysis should increase the general quality of habitat on the Forests over time, even outside AREAs. Thus, permanent exclusion of all AREAs may not be necessary to provide sufficient habitat and resource conditions in the future. The Forests should develop a schedule for periodic reevaluation of the condition and trend of aquatic and riparian species and habitats on both Forests. The purpose of the evaluation should be to release some AREAs from exclusion if general conditions recover adequately. Release of each AREA should require a determination by an interdisciplinary team, based on quantitative data, that water quality, willow flycatcher, other resources and native riparian plant and animal species adjacent to the AREA are in good condition with a stable or upward trend, and that release of the AREA will not threaten this recovery.
2. The DEIS states that both Forests contain vacant allotments. Parts of these allotments may able to replace some of the forage lost through protection of AREAs. Permittees most impacted by exclusion of AREAs should be given first priority for any forage in vacant allotments. No forage from vacant allotments should be released without a determination by an interdisciplinary team, based on quantitative data, that an area can be used by livestock without adversely impacting general resource condition or trend.
3. Economic condition varies greatly among permittees. Some permittees are better able than others to withstand changes in Federal forage availability. If maintenance of family ranching operations is a Federal priority, then permittees who are least able to withstand forage restrictions should receive priority in allocation of available forage. For example, portions of allotments leased by operators who have other economic resources or land available may be suitable for reallocation to economically vulnerable permittees, if resource damage would not result.
4. We recommend that the FEIS propose an evaluation process and timeline for attempting to mitigate impacts to the permittees who would be threatened economically by implementation of Alternative C. The purpose of the evaluation would be to determine if forage losses can be mitigated using one or more of the methods described in (1), (2), or (3).

Summary of Recommendations

The FEIS should include the following changes:

1. The FEIS should include data showing how much monitoring of livestock impacts is currently performed.
2. The discussion of the economic impacts of the alternatives to private lands should be substantiated or deleted.
3. An analysis of economic impacts of the alternatives to the cost of clean water for communities with water supplies in the planning area and to resource dependent industries such as tourism should be added.
4. Criteria for site specific capability and suitability analysis should be proposed in the EIS.
5. Quantitative data on water quality should be provided.
6. A specific plan for evaluation of compliance with Basin Plans and Clean Water Act requirements, with a timeline, should be proposed.
7. A staffing analysis should be provided for each alternative.
8. The recommended changes should be made to the ecological condition evaluation procedure.
9. The FEIS should unequivocally clarify that all rare plant management recommendations will be followed across all alternatives.
10. Surveys for weeds and rare plants should be scheduled based on resource risk
11. Early NEPA should be scheduled for allotments likely to be experiencing high risk of weed infestation or impacts to rare species from livestock or recreation
12. The FEIS should implement measures to improve the accountability and success of staff and line officers in monitoring and implementation of livestock management plans
13. The preferred alternative should be Alternative C, with modifications to mitigate economic impacts.

Conclusion

We hope these comments are useful. Please contact me if I or CNPS can be of assistance or if there are questions. We look forward to reviewing the final EIS for this amendment.

Sincerely,

Emily B. Roberson, Ph.D.
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