



Oregon Natural Desert Association

VIA EMAIL and U.S. MAIL

October 15, 2004

Wayne A. Wetzel  
Acting Jordan Field Manager  
Vale District BLM  
100 Oregon Street  
Vale, OR 97918

Re: Comments on EA # OR-030-04-013 (Louse Canyon GMA)

Dear Mr. Wetzel:

Please accept the following comments made on behalf of the Oregon Natural Desert Association (ONDA) and Western Watersheds Project (WWP), regarding the BLM's "Proposed Rangeland Management Actions Necessary to Remedy Resource Conflicts in Louse Canyon Geographic Management Area, Vale District, Bureau of Land Management" (EA # OR-030-04-013).

Despite the unusually lengthy delay in producing this document following the BLM's determinations that a number of areas within the LCGMA are failing to meet rangeland health standards because of current grazing practices, ONDA and WWP are pleased to see a document that will provide a good first step toward recovering these degraded public lands. However, as is described in more detail below, there remain several significant shortcomings in the EA that the BLM should remedy before issuing a final decision. Our concerns with the EA and the preferred alternative include the effects of the proposed grazing on sage grouse and their habitat, the BLM's refusal to conduct an analysis of the suitability of continued levels of grazing in these areas, the document's failure to incorporate and discuss important scientific studies in the analysis, the document's failure to address monitoring, and concerns over mitigation and funding of the preferred alternative.

#### **I. Potential Effects to Sage Grouse Populations and Habitat**

ONDA and WWP are concerned that the BLM's preferred alternative will have significant detrimental effects to sage grouse populations and habitat within the LCGMA. Large areas within the LCGMA are devoid of, or deficient in, necessary protective cover, food and other habitat attributes for many special status and important wildlife species. This has resulted in significant habitat fragmentation of this sagebrush habitat. However, the EA does not discuss the degree of existing habitat fragmentation present in the planning area, the new fragmentation that would be caused by the many new projects proposed, or the expanded fragmentation that

would be caused by reconstruction of long-defunct rangeland projects that would be re-built under the preferred alternative.

The BLM admits that “[c]ompared to current management, the cumulative impacts of proposed stocking levels, altered grazing schedules (including trailing), new pasture/exclosure fencing, pipeline extensions, and troughs would adversely affect wildlife forage, cover, and structure on native range in areas of concentrated use.” EA at 124. According to the EA, these impacts would be “most substantial” on the Horse Hill South, Horse Hill North, Middle Louse Canyon, Lower Louse Canyon, South Tent Creek and Southwest Tent Creek pastures. *Id.* These areas provide the “most abundant, high quality upland and riparian wildlife habitat in [the] LCGMA.” *Id.* The BLM also admits that “upland habitats would be the most vulnerable to adverse effects from intensified grazing” because by “reducing pasture size without reducing livestock numbers, more concentrated livestock grazing would result.” *Id.* To protect the sage grouse in the LCGMA, the Jordan Resource Area and beyond, the BLM’s strategy should include the significant reduction or elimination of major causes of disturbance, such as livestock grazing. *See* David Dobkin, *Management and Conservation of Sage Grouse, Denominative Species for the Ecological Health of Shrubsteppe Ecosystems*, USDI, Bureau of Land Management (1995). The preferred alternative, however, does not reduce numbers of livestock and instead relies heavily on “range improvements” to cure current failures to achieve standards.

The BLM tries to justify its preferred alternative as reasonable by comparing it not to the current grazing situation under the interim strategy, or even to the management that directly preceded implementation of the interim strategy—but rather to Alternative I, the “Enhance Commodity Production” alternative. *See id.* This is a useless comparison because Alternative I has no relation to current conditions on the ground. Alternative I “emphasizes livestock production,” would provide the least restrictive limits on grazing allowed by law, and would increase AUMs by increasing utilization levels well above current levels.<sup>1</sup> In other words, it clearly would not take much for an alternative to look good (from an environmental or conservation perspective) when compared to Alternative I. *See, e.g.*, Council on Environmental Quality, *Considering Cumulative Effects under the National Environmental Policy Act* (May 11, 1999) (“The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process.”).

The EA states that the preferred alternative would be consistent with WAFWA management guidelines<sup>2</sup> and the BLM’s Greater Sage-Grouse and Sagebrush-Steppe Ecosystems Management Guidelines (hereinafter “Guidelines”). ONDA and WWP dispute this assertion,

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<sup>1</sup> The EA creates a similar skewed comparison with respect to fencing in WSAs. The preferred alternative would build fences in all three WSAs present in the planning area, with 11.25 miles of new WSA fencing. EA at 145. The BLM never truly examines the impacts and significant environmental harms of these new fences in these areas that are supposed to be wild and untrammled public lands, instead forming a non-impairment conclusion by comparing these fence proposals to Alternative I. *Id.* at 146.

<sup>2</sup> Note, though, that the authors of the WAFWA expressly state that the document does not provide any such guidelines. *See* ES-1. The BLM should state, then, what “guidelines” it refers to in that document.

which is not well-supported in the EA. For example, the Guidelines state that “[t]iming and location of livestock turnout and trailing should not contribute to livestock concentrations on leks during the sage-grouse breeding season.” Guidelines at 11. Breeding season begins mid-March, and many of the turnout dates in the preferred alternative have been moved forward and now coincide with this time. See EA at 63, 125. Of considerable concern is the fact that the schedules and rotations shown on Maps 3–6 propose for livestock to be present on or very near known, mapped leks during the breeding and nesting season.

On the Anderson Allotment, for example, turn-in of 50 bulls on the Ambrose-Maher Pasture occurs in mid-February and they remain there through May. This is in the vicinity of several mapped leks. Compare EA at Map 3 with SEORMP Map WDLF-2.<sup>3</sup> Similarly, the 850 c/c turned into the North Pasture and herded into the Bull Flat Pasture appear to be very near leks in the latter pasture between April 1 and May 1. EA at Map 3. On the Campbell Allotment, livestock are scheduled to be in the Twin Springs South and North Sacramento Hill pastures between March 16 and May 15 (Herd B, 400 c/c), again near two mapped lek locations. EA at Map 4. The Kimble Wilkinson pasture moves show 650 c/c being turned in every year on the Starvation Brush Control Pasture, apparently right on top of a mapped lek location. EA at Map 5. The Noque Ranch and Fort McDermitt Stockmen’s Association pasture moves show 600 c/c being turned in apparently right on top of a lek on the Oregon-Nevada state line, on the Southwest Tent Creek Pasture. EA at Map 6. These livestock are then to be herded past several leks between March 1 and May 31 on the Southwest Tent Creek, South Tent Creek and North Tent Creek pastures. Id. Finally, the 400 c/c scheduled to be turned on March 1st on the Tristate Pasture are also mapped for turn-in apparently directly on top of a known lek location. Id. This herd’s route takes it directly past at least two more leks on the Tristate and Southwest Tent Creek pastures. Id. Despite all of these instances where turnout and trailing occur at or very near know

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<sup>3</sup> A very significant problem with the EA is its failure to provide a map or maps overlaying the locations of known sage grouse leks against the proposed grazing rotations, pipelines, watering troughs and other existing and proposed range developments. NEPA’s requirements are intended to achieve full public disclosure and informed decision making. See Robertson v. Methow Valley Citizens, 490 U.S. 332, 349 (1989) (NEPA “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.”); Idaho Sporting Cong. v. Thomas, 137 F.3d 1146, 1151 (9th Cir. 1998); see also Price Road Neighborhood Ass’n v. U.S. Dept. of Transp., 113 F.3d 1505, 1511 (9th Cir. 1997) (“One of the twin aims of NEPA is active public involvement and access to information”); Columbia Basin Land Preservation v. Schlesinger, 643 F.2d 585, 592 (9th Cir. 1981) (preparation of a NEPA document ensures that the public “can evaluate the environmental consequences independently”). The BLM obviously has lek information in its GIS system, having published maps with that data during the SEORMP planning process. Therefore, there is no compelling reason not to provide this critical information on the maps accompanying this proposed action. To fail to do so supports an argument that the decisions made are not fully-informed and that the BLM has failed to take a “hard look” at the consequences of the proposed action. The EA also fails to provide maps that overlap important information on special status species habitats and populations, topographic features, areas of exotic species or weed infestations, and areas of currently depleted vegetation.

lek locations, the BLM declines to engage in any detailed analysis of the impacts of large herds of livestock on these local sage grouse populations and their habitat.<sup>4</sup>

The Guidelines also address construction of new fences and pipelines. New livestock facilities (including watering troughs and fences) should be constructed “at least 1 km (0.6 mi.) from leks to avoid concentration of livestock, collision hazards to flying birds, or avian predator hunting perches.” Guidelines at 12. The guidelines with respect to water developments are even more conservative: “New livestock water developments should be built outside known/occupied sage-grouse nesting habitat unless it can be shown that the development will not adversely affect the habitat.” *Id.* According to the Guidelines, most nests are, on the average, located within 6.2km (4 mi.) of leks; however, some females or hens may nest more than 20 km (12 mi.) from the lek. *Id.* at 4; see also EA at 113. Thus, any proposed pipelines should be at least four miles, and possibly more away from known lek locations.<sup>5</sup> The proposed Tent Creek Pipeline appears to fall near at least one mapped sage grouse lek, within this 4-mile buffer. EA at Map 2. Again, however, with no map provided which shows the locations of leks in comparison to proposed pipelines, fences and other projects, it is very difficult to tell whether this is in fact the case.

Likewise, several of the proposed fences appear to run very near known lek locations. The South Tent Creek Division 2 fence is near a lek on the Oregon-Nevada state line. EA at Map 2. The Louse Division fence dividing the Lower and Middle Louse Canyon pastures appears to travel straight through a mapped lek location east of the relatively large private land block that is east of Pole Creek. *Id.* As well, the western end of that fence appears to run very near a lek on the south end of the smaller private block to the west of the one described above. *Id.* These fences and pipelines proposed very near known lek locations are particularly troubling in light of the BLM’s own recognition that:

Livestock facilities such as spring developments [], water pipelines, and fencing [] have distributed livestock use over areas formerly used only sporadically or lightly. In many areas, grazing has contributed to longterm [sic] changes in plant communities and reduced certain habitat components, such as biological crusts that contribute to the health of sagebrush-steppe habitat.

Guidelines at 6. The Western Association of Fish and Wildlife Agencies (“WAFWA”) recently found that more than 1000 km of fences have been built on public lands each year from 1996 to 2002. Connelly et al., Conservation Assessment of Greater Sage-grouse and Sagebrush Habitats (WAFWA, June 2004), at ES-3. Fences “provide perches for raptors, and modify access and movements by humans and livestock, thus exerting a new mosaic of disturbance and use on the landscape.” *Id.* Because fences result in habitat fragmentation so problematic to sage grouse and other sage-steppe dependent species, it is troubling that the BLM relies so heavily on fencing

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<sup>4</sup> These maps also raise concern with respect to overlapping use by several permittees in several areas where multiple trailing events would occur on top of the grazing use that is authorized. For example, Wilkinson and Lucky 7 move and graze in the Starvation seedings with multiple movements back and forth.

<sup>5</sup> The “Mitigation Measures” section provides only a “two to four miles” buffer from existing leks for land treatments. EA at 156.

(and other rangeland improvements) under the preferred alternative. The EA recognizes that “there is a shrinking pool of sagebrush habitat left for grouse, and disturbances, especially in nesting and winter habitat, are becoming more pronounced in their effects on a species which has declined substantially over a large area.” EA at 111. Yet, the BLM is proposing building 46 miles of new upland fencing, 11.5 miles of new riparian fencing, and 12.25 miles of new water pipelines. The BLM must find a better alternative that incorporates reduced levels of grazing rather than relying so heavily on “range improvements” to sustain currently unsustainable numbers of livestock.

## II. Suitability of Livestock Grazing at Continued Levels

Because the BLM failed to conduct an analysis of the suitability of continued grazing in the LCGMA during the course of its Southeast Oregon RMP planning process, the agency should conduct that analysis during this process. That the suitability analysis should occur at this point is even more important given the fact that the BLM also routinely declines to engage in such analyses during its decision-making points related to issuance of annual operating plans and development of allotment management plans. In fact, the Anderson, Campbell, Louse Canyon Community, Star Valley Community, and Ambrose-Maher allotments have no AMPs implemented. SEORMP, Vol. 2, at 220, 235, 239, 240, 269.

FLPMA requires the BLM to define which areas are suitable for specific uses. 43 U.S.C. § 1712(a) (referring to land use plans “which provide by tracts or areas for the use of the public lands”); 43 C.F.R. § 1601.0-5(k)(1) (RMPs to establish “[I]and areas for limited, restricted or exclusive use”) and § 1601.0-5(k)(2) (RMPs to establish “[a]llowable resource uses (either singly or in combination) and related levels of production or use to be maintained”); *id.* § 4100.0-8 (RMPs also “set forth program restraints and general management practices needed to achieve management objectives”). Moreover, the BLM’s assessment of the suitability of the public lands for continued levels, seasons of use and areas of livestock grazing is a decision that should occur at the RMP level of land use planning. Current Interior Board of Land Appeals (IBLA) precedent affirms the regulatory provisions cited above and indicates that the graze/no graze decision is made at the RMP level—not at the activity levels through adaptive management. Ore. Natural Res. Council Action, 148 IBLA 186, 189–90 (1999) (the appropriate juncture at which to consider and decide “whether to allow grazing and at what levels is clearly beyond the scope of an activity level plan such as an AMP”). However, because the BLM failed to undertake this analysis in the SEORMP, it must do so now.

This is amplified by the fact that the BLM has argued in the context of the SEORMP (1) that grazing decisions should be made on a more site-specific basis, and (2) that the “adaptive management” process will allow the agency to make necessary management changes as issues are identified over the life of the Plan. See SEORMP FEIS, Vol. 3 at 76 (SEORMP “does not identify site-specific livestock management actions that would be implemented with the signing of [the ROD]” and “[t]hroughout the life of the plan, the adaptive management process . . . would be implemented within GMA’s [sic] and may result in site-specific reductions or increases in levels of authorized livestock use”) (emphasis added); SEORMP at 111–13 (describing role of adaptive management in SEORMP implementation). If the BLM continues to decline to prepare

AMPs for these allotments, though, the GMA process is the clear, logical, and only remaining place to undertake this analysis.

There are large areas of land unsuitable or unusable for livestock grazing on these allotments. Not only are rocky canyons not suitable for grazing, large areas of low sagebrush communities are very rocky and serve to inhibit livestock movement and use in many areas. In these sites, livestock use is centered on the pockets or inclusions of deeper soil sites characterized by big sagebrush. The EA fails, however, to consider and assess the significant harm to big sagebrush inclusions and understories that is occurring in these low sagebrush areas. The EA also does not set a realistic stocking rate based on the land area that livestock actually use in the LCGMA. These big sagebrush islands and understories are critical habitat for sage grouse, pygmy rabbit, sage thrasher, loggerhead shrike and other sagebrush-obligate species present in this area. If the BLM shifts or increases livestock use in native pastures with large expanses of low rocky sagebrush, the deeper soil big sagebrush sites will suffer even more damage than at present.

Although the EA offers alternatives that would result in a range of authorized AUMs, ONDA and WWP are disappointed to see that the BLM's preferred alternative would result in no change in AUMs. EA at Table 1. Rather, the preferred alternative relies on a series of "cow shuffling" exercises—via changes in season of use and newly-created fences and pastures—to authorize identical numbers of livestock in the LCGMA. This is particularly troubling in light of the fact that the need for the proposed action is based on the BLM's own rangeland health assessment findings that standards and guidelines were not being met, with current grazing as the cause of those failures, on 6 of 21 pastures in the LCGMA. See LCGMA Evaluation at 3-8, 3-16, 3-33, 3-36, 3-39, 3-46.<sup>6</sup> These six pastures account for approximately 220,155 acres of public lands, which is about 42% of the land the LCGMA encompasses. See id. at Table 3.

While the BLM has argued that a determination of failing to meet a standard does not necessarily mean the entire pasture is failing, it is imperative to realize that a failure to meet standards in a pasture's critically important riparian area (where such areas are relatively few and far between in this GMA) is significant. According to the BLM, "[a]lthough riparian areas and wetlands cover less than 1 percent of the [SEORMP] planning area, their ecological significance

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<sup>6</sup> These are the Campbell Allotment's Horse Hill (standards 2 (riparian watershed function); 4 (water quality); 5 (native, threatened and endangered or locally important species)) and Starvation Brush Control (standards 2 (riparian watershed function); 4 (water quality)) pastures, the Louse Canyon Community Allotment's Louse Canyon (standards 2 (riparian watershed function); 4 (water quality); 5 (native, threatened and endangered or locally important species)), Pole Creek Seeding (standards 2 (riparian watershed function); 4 (water quality); 5 (native, threatened and endangered or locally important species)) and Steer Canyon Seeding (standards 2 (riparian watershed function); 4 (water quality); 5 (native, threatened and endangered or locally important species)) pastures, and the Star Valley Allotment's South Tent Creek Pasture (standards 2 (riparian watershed function); 4 (water quality); 5 (native, threatened and endangered or locally important species)). In addition, some allotments and pastures within the LCGMA failed to meet other standards for other reasons, for example because the pasture contains non-native seeded areas. See, e.g., LCGMA Evaluation at 3-19 to 3-21.

far exceeds their limited physical area. Riparian and wetland areas are major contributors to ecosystem productivity and structural and biological diversity, particularly in drier climates.” SEORMP Vol. 1, at 62. Further, these riparian areas provide critical food and shelter for fish and wildlife, affect the quantity and quality of water available, and help regulate the hydrologic regime. *Id.* In fact, nearly 50% of the streams in the LCGMA are not meeting Standard 2 (Watershed Function—riparian/wetland), with 27% “Functioning at Risk, Trend Not Apparent,” 5 reaches “Functioning at Risk, Downward Trend,” and 3 reaches “Not Functioning.” LCGMA Evaluation at 2-31 to 2-34; Table 4a; Errata Sheet. Seventy-five percent of the meadow/wetland complexes in the LCGMA are not functioning due to livestock grazing. *Id.* at 2-53.

The EA does not explain how maintaining status quo authorized AUMs will satisfy the rangeland health standards’ requirement that the BLM must make “significant progress” toward conformance with the Standards & Guidelines. *See* 43 C.F.R. Part 4180. In fact, the preferred alternative actually proposes an increase in AUMs over the current management situation—the “interim” grazing strategy, which is represented by Alternative IVa in the EA. *See* EA at 6 (the “Protect Natural Values” alternative, which “closely resembles the interim grazing system that has been in effect in [the] LCGMA since the 2002 grazing season subsequent to rangeland health determinations”). The EA suggests that subjecting the public lands to 6,460 more AUMs (a 17.5% increase) under the preferred alternative outweighs the fact that under Alternative IVa the South Tent Creek, Horse Hill and Louse Canyon pastures would not be rested because no new fences would be built in those areas. Thus, the BLM, having identified failures to satisfy basic rangeland health standards in areas throughout the LCGMA, now proposes to increase AUMs over the current grazing management situation—the management situation the agency deemed necessary beginning in 2002 to makes changes that would result in “significant progress” toward complying with standards. This conflicts with the BLM’s conclusion that “[r]educing available AUM’s [sic] by 6,460 would benefit rangeland vegetation by decreasing grazing intensity and maximizing growth potential, seed production, and volume of standing litter.” EA at 49.

Similarly, the preferred alternative would actually allow maximum utilization levels greater than those allowed under Alternative IVa, the current interim strategy. *See* EA at 49 (Alternative IVa utilization levels of 30% for native rangeland and 50% for seeded rangelands), 38–43 (utilization levels under preferred alternative generally 40% on native rangeland and generally 60% on seeded rangelands). This is in spite of the fact that even the interim strategy does not appear to be resulting in significant progress toward satisfying standards. *See* LCGMA Evaluation at 1-2 (stating that “gains in residual riparian cover by the end of the growing season [under the interim strategy] were reduced by trespass livestock (primarily horses from the Fort McDermitt Reservation) and late season trailing”). *See also* EA at 49 (even under “low” maximum utilization limits of 30% on Sacramento Hill Pasture, “[r]angeland vegetation could be adversely affected by early season use because clipped grasses and forbs would have to initiate growth more than once”). The BLM has indicated that the interim strategy has resulted in “general, but subtle, improvement” in ecological conditions in the LCGMA. Even if “general, but subtle” could be equated to “significant progress” under the Federal Rangeland Health regulations—and it cannot—reverting to a strategy that does less than one that is only achieving “general, but subtle” improvement would result in a failure to satisfy the FRH regulations.

Much of the problem stems from an irrational discussion regarding the “assumptions common to all alternatives” with respect to stocking rates and grazing use levels. EA at 11. Where the document does discuss stocking rates, its data are incomplete and its methods are flawed. For example, in Table 1, the BLM presents a the changes in livestock AUMs under the alternatives, but it never clearly presents data on the changes in livestock numbers that will occur in each pasture under the preferred alternative. This is necessary to understand the impacts on the pasture and surrounding lands and animal populations. Only for Alternative I does the BLM provide data on changes in numbers. See EA at Table 2. The maps that show livestock use patterns provide some information, but it is confusing and largely indecipherable. The EA fails to show how use and impacts to native pastures, ACECs, WSAs, and critical seasonal or year long ranges for native species will change or be altered and shifted. For example, the EA claims that the “[t]otal average AUM’s [sic] available for livestock within existing allotments would remain unchanged.” EA at 63. Yet, the EA never provides site-specific details of how the land and resources will be affected and how the many FRH violations will be cured without causing new and harmful impacts. In short, the EA simply obscures any understanding of the stocking rates, productivity or ability of the land to support the numbers of livestock proposed in the action.

Finally, it is well-known that the public lands throughout the LCGMA have been under the pressure of prolonged drought conditions for a number of years now. It is incomprehensible, therefore, why the BLM is proposing to adopt a grazing strategy that relies heavily on re-growth following early season grazing. See EA at 41 (analysis with respect to rangeland vegetation), 64 (rangeland grazing systems), 89–91 (soil, water resources, and riparian/wetland areas), 125 (wildlife and wildlife habitat), 136 (aquatic species and habitats), 154 (addressing cumulative effects). At a minimum, adjusting season of use to early season grazing and away from hot season grazing should be coupled with reductions in AUMs. Although a move away from damaging hot season grazing is important, the drought conditions present in the LCGMA mean that there will not be enough significant regrowth to sustain the currently authorized/proposed numbers of livestock while still protecting riparian and upland habitats.<sup>7</sup>

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<sup>7</sup> Note too, however, that while shifting grazing from hot season to early season grazing may provide some benefit to riparian vegetation, it is detrimental to biological crusts. Appropriate land management to protect biological crusts may include controlled winter grazing, which can reduce impacts of trampling disturbances on crusts because they are either soft and wet (and thus pliable), are frozen (and thus relatively resistant to disturbance) or are covered by snow (and thus protected from disturbance). Spring and summer grazing effects are more damaging because crusts are brittle and disintegrate when trampled. Moreover, if grazing during the appropriate time for minimizing damage to biological crusts will still cause negative environmental impacts, that implies that in these high desert ecosystems there is no time of year that grazing is truly sustainable—which is what the scientific literature suggests concerning the ability of intermountain West’s deserts, grasslands, shrublands, and woodlands to support livestock grazing. See R.N. Mack & J.N. Thompson, Evolution in steppe with few large, hooved mammals, 119 American Naturalist 757 (1982); R. N. Mack, Temperate grasslands vulnerable to plant invasions: characteristics and consequences, pp. 155–79 in J.A. Drake et al., eds. Biological Invasions: A Global Perspective, John Wiley & Sons, Chinchester, United Kingdom (1989); D.G. Milchunas & W. K. Lauenroth, Quantitative effects of grazing on vegetation and soils over a global range of environments. 63 Ecol. Monographs 327 (1993).

In fact, some researchers have recommended with respect to protecting sage grouse and other migratory birds dependent on the sagebrush steppe lands present throughout the LCGMA that to maintain bluebunch wheatgrass vigor, grazing systems should avoid grazing during the growing season until plants begin to cure. Christine Page & Sharon A. Ritter, “Birds in a Sagebrush Sea: Managing Sagebrush Habitats for Bird Communities,” Partners in Flight, Western Working Group (1999). According to Page and Ritter, bluebunch wheatgrass, which is the dominant key forage species in the uplands of the LCGMA, is especially sensitive to heavy grazing during the growing season. Recovery of these plants following heavy grazing during a single spring can require eight years under the best management and environmental conditions. See id. Other studies have concluded that no grazing management system appears to be satisfactory if that system results in overgrazing during the growing season in order to defer or rest vegetation in other grazing periods. See, e.g., Richard E. Eckert Jr. & John S. Spencer, Vegetation response on allotments grazed under rest-rotation management, 39 J. Range Mgmt. 166 (1986); Richard E. Eckert Jr. & John S. Spencer, Growth and reproduction of grasses heavily grazed under rest-rotation management, 40 J. Range Mgmt. 156 (1987). In fact, the BLM itself (Technical Bulletin, Anderson, 1991) has found that grazing at the harmful levels that are likely to occur under the preferred alternative here may weaken or kill bluebunch wheatgrass and other native bunchgrasses.

The EA confirms these concerns. For example, under the lighter (interim) grazing strategy analyzed under Alternative IVa, the BLM admits:

Rangeland vegetation could be adversely affected by early season use because clipped grasses and forbs would have to initiate growth more than once. Plants may not be able to fully complete the carbohydrate reserve cycle and go quiescent, with a net deficit at the end of the growing season. Repeated years of early use could cause individual grass plant mortality.

EA at 49. Alternative III’s proposal to graze this pasture more heavily is not mitigated by a rest year, given prolonged drought and the fact that more than a single year of rest would likely be required to recover from the proposed grazing.

*Increased Grazing in Upland Areas.* Similarly, the issue of grazing in the upland areas in the LCGMA would benefit from an actual, detailed suitability analysis to determine whether the proposed grazing systems would satisfy statutory and regulatory standards—including the requirement to “prevent unnecessary or undue degradation” and the requirement to insure no “permanent impairment” of the public lands or their natural resources. The EA envisions the proposed construction of 46 miles of new upland fences and 12.25 miles of new pipelines as a benefit because these projects would result in more “evenly distributed” grazing in the upland areas throughout the LCGMA. See, e.g., EA at 154 (assessing cumulative effects). However, there is no serious discussion of the price to be paid for this decision with respect to introducing large numbers of livestock to areas that have been virtually ungrazed previously. The EA notes elsewhere, but then never seriously addresses, the SEORMP statement that “maintenance of currently un-grazed native range conditions by avoiding new water developments, salting, and

fencing is considered a beneficial mitigating measure for the protection of wildlife habitat values.” *Id.* at 118.

The EA does admit that “[b]y reducing pasture size without reducing livestock numbers, more concentrated livestock grazing would result.” *Id.* at 124. The EA also acknowledges that the cumulative impacts of proposed stocking levels (unchanged), altered grazing schedules, new pasture and exclosure fencing, pipeline extensions and troughs, “would adversely affect wildlife forage, cover, and structure on native range in areas of concentrated use.” *Id.* The impacts would be “most substantial” in the pastures that provide the “most abundant, high quality upland and riparian wildlife habitat in [the] LCGMA” and the “upland habitats would be the most vulnerable to adverse effects from intensified grazing.” *Id.* Yet, despite acknowledging these significant potential effects to upland areas previously unaffected by the numbers and intensity of grazing seen elsewhere in the LCGMA, the BLM downplays those effects by comparing the preferred alternative to Alternative I, the “Enhance Commodity Production” alternative that would increase grazing by over 10,000 AUMs. *Id.* The failure to discuss these impacts in detail is a violation of NEPA and the certain significance of impacts to upland areas under the preferred alternative warrants consideration in an EIS rather than this lengthy, but sometimes disingenuous, EA.<sup>8</sup>

### **III. Impacts to Soils**

Even under moderate stocking rates, grazing substantially contributes to the deterioration of soil stability in deserts, thus leading to increased soil erosion. Soil erosion is further exacerbated by increased surface runoff triggered by loss of vegetation cover and litter, both of which have been shown by numerous studies to be reduced by livestock grazing. The BLM’s claim in the EA that “the potential for wind and water erosion in LCGMA is thought to be relatively low” is not based on site information and shows a fundamental misunderstanding of erosion processes in high desert landscapes. For example, ONDA’s and WWP’s on-the-ground observations in the LCGMA have found an upland exclosure “pedestaled” at 6-inches or more due to erosion outside the exclosure caused by livestock. This means six inches of soil have eroded in these uplands over large areas outside the exclosure since its construction. This is a phenomenally high erosion rate.

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<sup>8</sup> The CEQ has stated, “While the regulations do not contain page limits for EA’s [sic], the Council has generally advised agencies to keep the length of EAs to not more than approximately 10–15 pages . . . . In most cases . . . a lengthy EA indicates that an EIS is needed.” 46 Fed. Reg. 18,026, 18,037 (1981). In *Anderson v. Evans*, 314 F.3d 1006 (9th Cir. 2002) (the Makah whaling case, striking down an EA), the Ninth Circuit stated, “While a notable attribute of the creatures we discuss in this opinion, girth is not a measure of the analytical soundness of an environmental assessment. No matter how thorough, an EA can never substitute for preparation of an EIS, if the proposed action could significantly affect the environment.” Finally, as then Judge Breyer of the First Circuit observed in *Sierra Club v. Marsh*: “To announce that these documents—despite their length and complexity—demonstrate no need for an EIS is rather like the mathematics teacher who, after filling three blackboards with equations, announces to the class ‘you see, it is obvious.’” 769 F.2d 868, 874 (1st Cir. 1985).

ONDA and WWP also have observed evidence of large-scale head cutting in intermittent and perennial drainages throughout much of the LCGMA. Large areas of stream banks have sloughed away. Late winter and early spring runoff events result in drainages flowing bankfull of water and sediment. Water-borne vegetation material becomes trapped halfway up sagebrush plants on the sides of such drainages. This reveals the significance of the high flow events and the importance of such events to erosion processes in this area.

#### **IV. Impacts on Biological Soil Crusts**

Although we are pleased to see a more extensive discussion in the EA of potential impacts to biological crusts than was present in the Evaluation, the EA still omits important recent research on the role of biological soil crusts with respect to preventing the invasion and spread of noxious weeds. Crusts are critical to accomplishing several of the purposes of the proposal, including restoring vegetative communities and preventing the spread of invasive and noxious weeds. The EA recognizes the relationship between crusts and bare ground with respect to grazed versus ungrazed areas, but neglects to acknowledge studies that have shown exotic species richness to be strongly negatively correlated with crust cover, and that crusts often present a “physical barrier to invasive species establishment and growth.” See Thomas J. Stohlgren et al., Patterns of Plant Invasions: A Case Example in Native Species Hotspots and Rare Habitats, 3 Biol. Invasions 37–50 (2001). Crusts also add available resources to a site by fixing tremendous amounts of Nitrogen, increasing surrounding soil N by as much as 200%. Id. at 47–48. ONDA has cited this study to the Vale BLM previously, so it is not clear why the BLM continues not to discuss these findings in its environmental assessments, particularly in the context of a project proposing to build almost 70 miles of new fences and pipelines along with 9 new water troughs—all of which are project types known to be prone to subsequent colonization by invasive species. Moreover, the EA fails to acknowledge that the reason the primary place where crusts are found in the LCGMA (at the base and under the canopy of relatively dense sagebrush) is that these are the only places protected from livestock hooves and the mechanical damage of trampling. The EA and proposed action must take measures necessary to restore and enhance the damaged interstitial sites throughout the LCGMA.

#### **V. Undisclosed Presence of Potentially Threatened or Endangered Species**

The EA contains nothing about the presence of rare and sensitive mollusk species in the LCGMA and how those species may be affected by the grazing management actions analyzed. According to a July 2003 report prepared for the BLM, mollusk expert Terrence Frest observed some of the “most spectacular” and “most productive seen anywhere” populations of the Pacific ridgemussel (*Gonidea angulata*) were observed at “almost every riffle and free-flowing site” in the headwaters of the Owyhee River system in Oregon. Progress Report at 1. This taxon “was formerly fairly widely distributed in the western US but has now lost the majority of its former range.” Id. While many extant sites show little evidence of reproduction, the report confirmed reproduction at most of the Owyhee sites monitored, making potential conservation of these populations even more important. This is particularly so if the BLM is to satisfy its duty to aid in avoiding listing of species under the Endangered Species Act. Frest’s observations indicate that the Owyhee River is “by far the best stream known for this taxon.” Id. Moreover, the report is significant in that it “considerably enlarge[s] the known Owyhee mollusk fauna to at least 24

taxa” and it describes a number of new snail taxa in the few springs explored up to that point. Id. at 1–2.

In addition, there appear to be populations of at least one genus, *Taylorconcha*, for which the only described species is *Taylorconcha serpenticola*, the Bliss Rapids springsnail, which is listed as a threatened species under the ESA. Id. at 2. There are also several species of *Pyrgulopsis* present, which are related to the federally endangered Bruneau Hot springsnail (*Pyrgulopsis bruneauensis*). Id. Clearly, the BLM should have included this information and a detailed discussion of the presence of these species in the portions of the Owyhee River system at issue in this GMA, as well as the ramifications of the proposed management with respect to the BLM’s ESA and other statutory duties. Moreover, if the snail present in the LCGMA is indeed the Bliss Rapids springsnail, it is, obviously, protected under the ESA and the BLM would have a duty to consult with the U.S. Fish & Wildlife Service on the impacts of the proposed action. This information must appear in a full EIS.

## **VI. Defunct Rangeland Projects**

The EA fails to assess and consider the cumulative impacts of the proposal with respect to existing, operative, or defunct rangeland projects. This is compounded by the failure to assess the impacts of the reconstruction projects. As you know, and as detailed in great depth by Gene Bray and Katie Fite during several meetings and correspondence with the BLM, there are a great many projects in the Jordan Resource Area and the planning area that are long defunct, may have never worked to begin with, and are dilapidated to a condition where entirely new facilities would need to be built. Of the projects ONDA and WWP have reviewed in the field, they often show no sign of having worked, or been worked on, for many years. As an example of the magnitude of this problem, there are approximately 200 major projects within the Campbell, Star Valley Community, Anderson, and Louse Canyon Community allotments alone; based on field reviews, we estimate that fewer than 25% of those projects are in working order. The BLM has also received information on the scope of this problem from retired BLM employees in the form of the “Legacy Report.” In the end, it should be of paramount concern that rangeland projects in these extremely remote areas simply cannot be relied on to function or be maintained such that they could support the high stocking rates proposed in the EA.

## **VII. Water Quality and Quantity**

The EA does not assess the impacts of large amounts of livestock waste deposited on the land under the continued high stocking rates proposed in the EA, with nutrients, coliform bacteria and other disease organisms washing into downstream waters—including wild and scenic rivers and the Owyhee Reservoir. The EA must assess these impacts, including the lack of vegetation to slow down water and nutrient runoff into these stream systems. In addition, the EA does not adequately assess the impacts of the proposed utilization levels, stocking rates, seasons of use and livestock projects on water quantity. In short, the EA should take an integrated, watershed approach in analyzing the significant values present in the LCGMA that are impacted by livestock. Under the preferred alternative, the landscape would be further fragmented without any significant reductions in livestock numbers. Given the widespread ecological problems the BLM has documented across this landscape, any new grazing plan must be accompanied by a

much more protective level of utilization, trampling standards and other mandatory, measurable use standards.<sup>9</sup>

## **VIII. Monitoring**

The EA fails to address the critical issue of monitoring. The document does not discuss how land managers currently are monitoring the effects of grazing in the GMA and inventorying for baseline data. One of the few references to monitoring simply states, “Construction of riparian corridor fencing, which incorporates upland as well as riparian vegetation, would provide opportunities to compare conditions between grazed and un-grazed communities and aid in future monitoring.” EA at 37. But the EA provides no details on what type of monitoring will be done, when it will be done, how the information obtained will be used, and so forth. If the BLM truly intends to implement “adaptive management” in the LCGMA, as it stated in the SEORMP, the agency must perform ongoing monitoring and assessment of its proposed and implemented activities on the public lands. Moreover, mere photo monitoring and filling out qualitative PFC sheets is not the type of rigorous, objective and quantitative monitoring that will provide useful data to base future decisions on (let alone defend future decisions when challenged). In short, monitoring is key to effective, multiple use public land management and the supplemental or final EA or EIS should include a detailed explanation of monitoring for each alternative, including the preferred/proposed alternative.

Monitoring is critical because on the ground, the public lands throughout the LCGMA are very often in severely degraded condition. Conditions are particularly severe for several large areas surrounding water sources and many range facilities. The BLM’s “key areas” and the sites where utilization is measured are very rarely located in such areas. Instead, they are at sites distant from livestock concentrations and do not represent conditions over the vast areas of these allotments where fences, water sources and other impacts have resulted in soil depletion and degradation of vegetation, recreational values and special status species habitats. This flaw applies to the BLM’s rangeland health assessments sites, as well. The areas most frequented by livestock within the planning area produce much less forage than the reference communities. Without having mapped current conditions across the allotments, collected current forage production data, and calculated the areas thus impacted, the document cannot be argued to have set reasonable stocking rates.

## **IX. Mitigating Measures**

ONDA and WWP are concerned that the “mitigating measures” provided at the conclusion of the EA do not provide sufficient detail to ensure that potential significant environmental effect have been fairly evaluated. The Ninth Circuit allows consideration of mitigation measures in determining whether preparation of an EIS is necessary. See Friends of Payette v. Horseshoe Bend Hydroelec. Co., 988 F2d 989, 993 (1993) (requiring “significant

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<sup>9</sup> This includes mandatory, quantifiable standards for riparian area use, such as stubble heights, bank damage/stability standards, riparian browse standards, and the use of these standards to trigger livestock removal from pastures or riparian areas. The preferred alternative includes none of these critical standards.

mitigation measures”); City of Auburn v. U.S. Gov’t, 154 F.3d 1025 (1998). However, simply listing mitigation measures and/or best management practices is insufficient. Northwest Indian Cemetery Protective Ass’n v. Peterson, 795 F.2d 688, 697 (1986) (“A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA”). See also Idaho Sporting Cong. v. Thomas, 137 F.3d 1146, 1151 (9th Cir. 1998) (rejecting “mere listing” of mitigation measures in EA where analytical data was lacking); Neighbors of Cuddy Mtn. v. United States Forest Serv., 137 F.3d 1372, 1380 (9th Cir. 1988), (“Forest Service’s perfunctory description of mitigating measures” did not provide “sufficient detail to ensure that environmental consequences have been fairly evaluated”); Nat’l Parks & Conservation Ass’n v. Babbitt, 241 F.3d 722, 735 (9th Cir. 2001) (“speculative and conclusory statements were insufficient to demonstrate that the mitigation measures would render the environmental impacts so minor as to not warrant an EIS”). This section should include much more detail—for example, specific details on the number, location and characteristics “sagebrush leave areas” or detail on what factors the BLM considers in deciding how far from leks land treatments will be performed (let alone where those leks are in relation to proposed land treatments).

## **X. Funding**

Finally, we are very concerned about the financial resources required to implement the extensive range improvement projects called for under the preferred alternative. According to the EA:

Selection of Alternative III would be dependent on the acquisition of joint funding from BLM, livestock permittees, and the Owyhee Watershed Council. BLM funding alone would be inadequate to meet the financial demands of projects proposed. If these combined funds do not become available in a timely fashion, Alternative IV-a would need to be adopted on a final or temporary basis because it would meet management objectives with existing fences, water developments, and other management infrastructure.

EA at 67 (emphasis added). The EA does not state what “timely fashion” means and it does not explain what “final or temporary basis” means, leaving the selection and implementation of a proposed action in a vacuum apparently not subject to any public oversight or input. Without strictly defining and explaining the factors that would cause the BLM to select or implement one strategy or another, a proposed decision under this EA would run afoul of NEPA’s requirement of full public disclosure and informed agency decision-making. The EA indicates there is no outside money secured to implement the preferred alternative at this time. See, e.g., EA at 155. What if only some of the funds are secured? Does this mean certain range improvement projects would move forward while the interim measures described under Alternative IVa would be adopted elsewhere? See EA at 6 (“Alternative IV-a was added to address the possibility that the BLM and livestock permittees may not be able to fully fund all projects identified in Alternative III, the Proposed Action. If this financial shortfall were to occur, a less expensive fall-back option for management that still meets management objectives would become necessary.”). If this is the case, the BLM must analyze the environmental impacts and cumulative effects of this “new” alternative.

In addition, the EA provides no estimate of the cost of the projects proposed under the preferred alternative. As you know, to satisfy the requirement that it take a “hard look” at the consequences of its actions, the BLM must engage in a “reasoned evaluation of the relevant factors” to ensure that its ultimate decision is truly informed. Greenpeace Action v. Franklin, 14 F.3d 1324, 1332 (9th Cir. 1992). An agency’s failure to include and analyze information that is important, significant, or essential renders an EA or EIS inadequate. 40 C.F.R. § 1500.1 (“The information must be of high quality.”). These fundamental NEPA principles apply to the economic as well as environmental analyses included in an EA or EIS. See Kettle Range Conservation Grp. v. U.S. Forest Serv., 148 F.Supp.2d 1107, 1134–35 (E.D. Wash. 2001) (“Most important, *NEPA documents must concentrate on the issues that are truly significant to the action in question . . .*” 40 C.F.R. § 1500.1. That duty includes a specific requirement to adequately discuss cost/benefit considerations ‘which are likely to be relevant and important to a decision.’ 40 C.F.R. § 1502.23.”) (emphasis in original). The BLM must ensure the professional integrity of all discussions and analyses in an EA or EIS, including economic analyses. Id. §§ 1502.24, 1508.8 (The “effects” that an EIS must evaluate include economic impacts). Thus, an EIS that relies on misleading economic information or fails to include all relevant costs in its economic analysis violates NEPA, because it cannot fulfill NEPA’s purpose of providing decisionmakers and the public a valid foundation on which to judge proposed projects. See, e.g., Ore. Natural Res. Council v. Marsh, 832 F.2d 1489, 1499 (9th Cir. 1987); Animal Defense Council, 840 F.2d at 1439. Accordingly, courts will invalidate NEPA documents with incomplete or absent economic analyses, as is the case here.

## **XI. Conclusion**

In short, while ONDA and WWP believe the EA represents an important first step in the effort to recover the many areas throughout the LCGMA that have been adversely impacted by unsustainable livestock grazing practices, the document and the preferred alternative still suffer from a number of significant flaws. Because the EA covers a vast landscape with a host of special values and nationally significant lands—including relatively less fragmented sagebrush habitats in some areas, three wilderness study areas, areas of critical environmental concern, wild and scenic rivers and many important and special status species and cultural sites—the BLM should address these flaws in a full EIS. The EIS should contain the site-specific, current, baseline data the EA lacks, as well as information on the current productivity and carrying capacity of the land in areas that are actually able to be grazed by livestock.

It is our sincere hope that the BLM will take these comments seriously and engage in the type of environmental analysis and decision-making that will make the document both legally and ecologically supportable. It is very troubling that the BLM has engaged in a seemingly “pre-emptive” rhetoric in the Finding of No Significant Impact, stating:

[S]ome interest groups make rote assertions of dire effects that will stem from any decision to give the appearance of controversy. Such assertions, particularly when not supported by specific facts pertinent to the actions (and their locations), are not necessarily viewed as a measure of high controversy.

FONSI at 3. This statement is tellingly juxtaposed with the immediately preceding language invoking measures “successfully initiated by voluntary agreement with permittees.” Id. (emphasis added). By using such biased language and descriptions, the BLM diminishes public perceptions of the agency’s ability to make an impartial decision. The type of hyperbole quoted above does nothing to convince the public that an unbiased decision supporting sustainable multiple uses of the public lands can and will be made. ONDA and WWP wish to point out specifically that nothing in the comments provided in this letter amounts to a “rote assertion” of “dire affects” with respect to this project. Each of our concerns and criticisms of the EA and the preferred alternative is supported by factual, scientific and legal information and arguments. In turn, we expect full and honest responses to the issues raised in these comments.

Thank you for the opportunity to participate in this planning process and for your careful consideration of these comments. If you have any questions or wish to discuss these comments further, please feel free to contact me at the address below or Bill Marlett at 541-330-2638 (bmarlett@onda.org) or Katie Fite at 208-429-1679 (katie@westernwatersheds.org).

Sincerely,

s/ Peter M. Lacy

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