

BLM Response to King Protest of Bruneau Field Manager's December 24, 2008 Proposed Decisions ID-120-2008-EA-45

The following includes the individual points of protest made by King, regarding the Proposed Decisions for reissuance of grazing permits on the East Castle Creek Allotment. For the sake of clarity, the original numbering of the protest points has been preserved, although some numbers are associated with portions of the Proposed Decisions that were not protested. These numbers are noted as "Not protested" and the original text from these points in King's protest letter has been deleted. The protest received from King included three exhibits consisting of letters previously submitted to BLM by King. Copies of these exhibits are available by request from the BLM Bruneau Field Office.

1. **King:** King protests the Proposed Decision's (including the associated Environmental Assessment in EA #ID-120-2008-EA45) reliance upon erroneous field data, rangeland health field assessments, and sage grouse habitat suitability assessments.

King addressed the erroneous nature of this underlying information, via *at least* letters from Intermountain Range Consultants, dated September 1, 2006 (relative to utilization data) and December 21, 2007 (relative to field assessments and utilization and other data). The December 21, 2007 correspondence is attached hereto as **Protest Exhibit 1**. BLM did not correct the errors and omissions pointed out in those notices. Instead, BLM continued to rely upon such information in the issuance of its Evaluation and Determination (ED/FMD) dated May 21, 2008. King incorporates herein Protest Exhibit 1 as protest points and statements of reason.

BLM Response: King's letter of September 1, 2006 (not included with the protest received) was in reference to data collected in Pasture 12 after grazing in June, 2006. Several points are relevant:

- King's letter did assert that "the conditions on the pasture are erroneously depicted by the use pattern map and utilization forms" and requested that BLM meet with Intermountain Range Consultants (IRM) "to revise the use pattern map and the utilization records."
- Those data reflected use in excess of amounts agreed upon in the Settlement.
- Those data were part of BLM's deliberations in a trespass investigation.
- Photos of those conditions were presented in the Assessment and again in the EA.
- BLM recognizes that much of Pasture 12 has made progress over the past 40 years, but identifies specific portions of that pasture and specific resources which have not that are addressed by the Proposed Decision.
- The Settlement required that the two late spring pastures be rested in one year of three, unlike the Proposed Decision.
- Both permittees stated at that time and subsequently that placing the full herd in each of the late spring pastures has too much impact and recommended against continuing that practice in the future.
- The Proposed Decision specifies similar amounts of use to the Settlement, and does not continue the practice of placing the full herd in each of the late spring pastures.

King's letter of December 21, 2007 was in reference to BLM's Draft Rangeland Health Assessment for the East Castle Creek Allotment that was released for review and comment on November 29, 2007. (*See Protest Exhibit 1.*) The major themes of that letter in the context of

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this point of protest were as follows (numbering corresponds to the numbered comments in the December 21 letter):

III. 1. The Rangeland Health Evaluation worksheets may not represent all ecological sites present in ECC or disclose an acreage or percentage to weight the worksheet results by allotment or by pasture.

BLM Response: While the RHA did not quantify on a landscape basis, it did discuss patterns in condition in relation to landscape features and to fence lines, water locations and other management actions that influence both historic condition and current patterns of use. These descriptions allowed BLM to make judgments about the magnitude of current impact for purposes of the required Determination.

III. 2. The RHA did not discuss the most recent ecological condition/production data available (provided by King in 1997)

BLM Response: That data was formally addressed by a response submitted by BLM on December, 1997. It reevaluated inventory sites in pastures 5B, 8B, and 12. It did not show markedly different results from the 1979-80 inventory, in most cases; and, like BLM's RHE data, did not have updated condition mapping to go with it. BLM's findings in the Determination were consistent with the 1997 IRM data; i.e. most lakebeds samples had little perennial grass understory with differences in the amount of cheatgrass dependent on annual growing conditions, the foothills samples showed static or upward trend in Pasture 12 and a static or slightly upward trend in Pasture 8B since 1969.

III. 3. The RHA discusses fenceline contrasts especially at a single point in time, but this is not an approved method to determine ecological condition or health or to judge condition differences away from the fencelines among pastures. Differences in utilization levels should also not be confounded with differences in condition.

BLM Response: BLM made an effort to differentiate between the findings of the 1997 AIE and findings based upon subsequent monitoring and RHE worksheets. The AIE summarizes substantial evidence that condition is better in the higher elevation portions of the allotment, with a substantial role played by early construction of drift fences and accompanying limitations on the season of use. Subsequent monitoring and RHE substantiate that generalized improvement has continued in those areas, consistent with earlier findings based upon fence line contrasts, trend, and ecological condition inventory. As a result, the Purpose and Need section of EA #ID-120-2008-EA45 was limited to specific areas and resources. The Proposed Decision focuses primarily upon improvement of resources that still receive concentrated livestock use. BLM is well aware that the fenceline contrast at the upper end of the late spring pastures has been documented repeatedly over many years, and is not a sole consequence of current permitted use.

IV. 1a & 1b. BLM's application of TR 1734-6 falls short of the requirements specified for choosing indicators by the TR; particularly the requirement for accepted thresholds or criteria to distinguish between reportable classes (e.g. meets vs. doesn't meet the Standard).

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This “fatal flaw” renders the field assessments (RHE worksheets) unusable. BLM cannot decide after the fact what “degree of departure” is acceptable.

BLM Response: BLM conformed to TR 1734-6 v 3's definition of accepted thresholds for RHE worksheets, found on page 38: “The moderate rating is somewhat analogous to an ‘at risk’ rating . . . and should be most responsive to management activities.” By analogy, then, the ‘none to slight’ and ‘slight to moderate’ categories would be functional; and the ‘moderate to extreme’ and ‘extreme’ categories would be non-functional. Further, TR 1734-6 v 4 states on page 43 that: “areas in which one or more attributes is rated ‘Extreme to Total’ or ‘Moderate to Extreme’ usually have easily identified severe resource problems and have often crossed an ecological threshold.”

In all but two instances, BLM's overall attribute rating conformed to the distribution of the indicators rather than giving greater weight to the significance of particular indicators also described on page 38 of v 3 and on pages 41 and 42 of v 4. These were RHE worksheets 8S1W28 in Pasture 28 and 7S1E23 in Pasture 10B.

IV. 1c. BLM's comparison of the indicators to pristine conditions overstep the applicable MFP objective where pristine conditions did not exist in 1983 and were not subsequently required by that MFP objective.

BLM Response: BLM recognized in the RHA and in the Determination that these areas (mostly in the lakebeds) may have crossed an ecological threshold, and have little potential to recover to their pristine state under grazing management alone. BLM therefore conformed to the applicable objective, and further, selected appropriate grazing management in the Proposed Decision. BLM also recognized that areas where increasers are dominant and decreasers are scarce have, at best, slow potential rates of recovery toward the pristine state. The MFP did not require a condition change for many poor condition shrublands, but did require that areas with a remnant understory at least meet the minimum MFP watershed protection objective.

IV. 3. The field assessments use an inappropriate reference site, namely a ‘native’ reference site, to evaluate seeded areas. . .Such areas are in a different ecological state due to the soils having been plowed and non-native species having been seeded. These sites should be evaluated using a ‘seeded’ reference site in similar soils and precipitation zones.

BLM Response: Although BLM Idaho developed a generic reference sheet for seeded communities (not specific for ecological sites) early in the implementation of Standards and Guidelines, Boise District has not used it for several years. The newest draft Ecological Site Descriptions do not provide specific criteria for evaluating seeding condition, although they do recognize seedings as a separate vegetational state from native shrub communities or from annual grass communities. While BLM used ecological site descriptions of native vegetation in its pristine state to evaluate seeded areas, we explicitly acknowledged that the areas had been plowed and seeded precisely because the original understory was lacking and because those remnants were insufficient to meet watershed or vegetation objectives in the MFP. We

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further acknowledged that the soil surface characteristics observed were more a consequence of plowing than of subsequent grazing management, and carried that recognition forward into the Evaluation (page 5).

IV. 4. The field assessments use an inappropriate reference site, namely a 'native' reference site, to evaluate areas dominated in the understory by exotic annual species. . . Such areas are in a different ecological state due to the invasion of these species, and such dominance is recognized in both this draft RHA and in the 1997 AIE. . . These sites should be evaluated using an 'annual grassland' reference site in similar soils and precipitation zones.

BLM Response: Although BLM Idaho developed a generic reference sheet for annual grass communities (not specific for ecological sites) early in the implementation of Standards and Guidelines, Boise District has not used that for several years, either. That reference sheet provided a health rating system for the final stage of development of annual grasslands, in which the shrub layer had already been lost to repeated wildfires. The newest draft Ecological Site Descriptions also define the final stage of development of annual grasslands as a separate state from native shrublands, with the shrub layer already removed by repeated wildfires, but do not provide a health rating system for variations within that state. The RHA and AIE do explicitly acknowledge the dominance of annuals in these areas, which has been carried forward into the Determination and into the management described by Proposed Decision. The Proposed Decision (page 13) acknowledges that an objective to improve these areas through grazing management alone may not be valid, and provides for reevaluation of that objective.

IV. 5a. None of the field assessments, obtained via King's FOIA dated November 3, 2006, includes an Ecological Reference Area Worksheet or Reference Sheet, or Evaluation Matrix, as are required. . . . We believe such protocols are not permitted by 1734-6.

BLM Response: For the 2005 and 2006 RHE worksheets, Boise District used the Ecological Site Descriptions available up to that time, which did not describe a range of values for each indicator, but did describe the species composition and production range of the pristine shrub community for each ecological site, which was useful in defining the structural and functional groups. In September, 2006, Boise District acquired draft Ecological Site Descriptions from NRCS, which did include Reference Sheets. These were referenced in developing subsequent RHE worksheets. The Boise District developed an annotated generic Evaluation Matrix for RHE worksheets that has been used since 2002. It was based upon the generic one found on pages 82-87 of TR1734-6, v 3. Boise District has not developed ecological-site specific Evaluation Matrices. Indicator ratings for all worksheets which we provided were based upon this annotated generic Evaluation Matrix.

IV. 5b. In addition, on the occasions that we observed BLM's field assessments in 2007, BLM field personnel did not refer in the field to any such Reference Sheets. . . but instead relied on the memory of one team member . . . We believe such protocols are not permitted by 1734-6.

BLM Response: See above response, BLM understands your comment.

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IV. 7. It also appears that at least the 2005 information was collected by seasonal technicians, rather than by journey-level professionals with familiarity and knowledge of the use of the method. We believe this to be a violation of the protocols of TR 1734-6 (v. 4).

BLM Response: The 2005 information was collected by a contractor, URS; by personnel who each had several years of experience in collecting RHE data as BLM seasonals, including annual training and periodic quality control by the Boise District Soil Scientist. The 2006 and 2007 data were collected by BLM professional personnel. Both versions of the TR direct that the method be used “by knowledgeable, experienced people or technical assistance specialists. . . who . . . have experience or knowledge of the rangeland ecological sites they are evaluating.” IM 2004-086 (Attachment 1-3) directs that the ID team review and use riparian and upland assessment and sage grouse framework data collected by seasonal employees and contractors “as appropriate to support the RHA.” This was done.

IV. 8. Most field worksheets are incomplete or contain other errors, including the fact that the level of departure from the expected is not identified for one or more of the indicators, size of evaluation area is not identified, and other errors and omissions.

BLM Response: The size of the evaluation area was identified on the URS worksheets from 2005. While BLM worksheets did not identify the size of the evaluation area, the areas examined generally conformed to the directive to examine indicators on an area of at least ½ to 1 acres in size and up to 2 acres of each ecological site (v. 4, page 18).

IV. 9. In some cases, the qualitative field assessments came to conclusions that are not consistent with long-term quantitative field data, demonstrating the danger of depending upon one-point-in-time “impressions”. An example is the field assessment vs the quantitative data in Pasture 28 at 08S01W28.

BLM Response: TR 1734-6 (v. 4) directs that quantitative measurements be made where it is necessary to document assessments for direct comparisons with other locations, or where monitoring data are required to determine trend. Quantitative values and measured trends in several relevant indicators were reported in the RHA for each trend location. Some, but not all trend locations also had RHE worksheet information. Where available, trend information was used to check the validity of apparent trends implied by the indicator ratings given, and was incorporated in the Determination, which found that uplands were meeting Standards 1 and 4 in this and in other pastures. The Determination also recognized that larger areas and pastures that did not meet Standards 1 and 4 may have crossed the threshold to annual grass dominance or at least that recent trends had not been determined. The Proposed Decision consequently addresses only localized upland issues, not generalized upland issues in the East Castle Creek Allotment.

IV. 10. For at least the reasons stated... the draft RHA should not depend or rely upon the field assessments of Rangeland Health. Assuming for discussion that this recommendation is not followed, we provide additional comment below [i.e., to Standards 1, 4, 8].

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BLM Response: As required by IM 2004-086 (Attachment 1-3) , our assessment of rangeland health is not based solely upon the “field assessments” (RHE worksheets), but considers all data available to us, including trend, utilization, actual and licensed use, other administrative information, and photos. Earlier information that was summarized in the 1997 AIE is incorporated by extensive reference.

Standard 1: Watersheds.

IV. 11. Throughout, the draft RHA incorrectly reports the field assessment findings. Examples are:

BLM Response: In all but two instances, BLM’s overall attribute rating conformed to the distribution of the indicators rather than giving greater weight to the significance of particular indicators also described on page 38 of v 3 and on pages 41 and 42 of v 4. These examples are all from URS data, which was checked by BLM and had been correctly summarized. Further, URS provided a written rationale for the attribute ratings on each worksheet.

IV. 12. Having incorrectly reported the field assessments. . . the draft RHA also incorrectly reports the “departure from the expected” for Idaho Standard 1.

BLM Response: BLM checked for correctness the indicator ratings against the numbers of indicators shown in each departure category for the Attribute Rating Justification, and nearly always chose the attribute rating indicated by the relative numbers and distribution of indicators. In only two instances did BLM choose a different rating based upon giving greater weight to particular indicators, and also provided the justification required by the TR in those instances. In the RHA and Determination, BLM provided other information necessary for the reader to understand why RHE attribute ratings may differ among portions of pastures, seasons, or years, since the ratings must be based on what can be observed at the time of examination. We do not feel that we have incorrectly reported the field assessments, nor have we made these one-point-in-time samples of larger landscapes the sole arbiters of whether Rangeland Health Standards were met in the uplands of the allotment.

Standard 4: Native Plant Communities.

IV. 13. See comments above. . . these errors are also made relative to the Biotic Integrity Attribute. . . . the draft RHA also incorrectly reports the “departure from the expected” for this Standard.

BLM Response: As for Standard 1, BLM checked for correctness the indicator ratings. You did not offer any specific examples about errors in the overall RHE attribute ratings for Biotic Integrity. We believe that we reported them correctly.

IV. 14. The Idaho Standards and Guidelines developed Standard 5 . . . and Standard 6 . . . to address exactly those kinds of changes. . . The Assessment made here, with native ecosystem descriptions as the reference area(s), are wrong, and any Evaluation made on the same basis will be wrong.

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BLM Response: The draft Ecological Site Descriptions that BLM has acquired support your assertion that seedings and annual grass communities are now separate ecological states from the original shrub communities. While they include Reference Sheets; they, too define reference conditions based upon the original shrub communities. The generic Idaho BLM reference sheets developed earlier do not define reference conditions using any quantitative descriptors, and further, Standard 6 is oriented toward annual grass communities where the native non-sprouting shrub layer has already been removed rather than toward shrub communities with annual grass understories. BLM acknowledged in the Determination and in the EA that these depauperate communities may have crossed a threshold, and has designed management and monitoring strategies that are appropriate. If these communities burn, Standard 6 will clearly become the appropriate one to use.

Standard 5: Rangeland Seedings.

IV. 15. *However, the “dominance of the sites is not the relevant parameter to assess seeded pastures under Standard 5, for at least three reasons:*

BLM Response: The RHA and Determination clearly acknowledged the influence of the plowing treatment on the S and H indicator ratings. The generic reference sheets prepared by Idaho BLM did not address the effects of treatment on soil surface characteristics explicitly, but looked more at the relative composition of seeded species, exotic species, and remnant natives.

The FMD Rationale for Standard 1 acknowledges that these areas were plowed and seeded precisely because native understory was lacking and because the treatment fulfilled in part the MFP objectives to treat selected areas to improve overall watershed and vegetation condition.

This trend site was not necessarily typical of the whole- seeded grass species are now very patchy, particularly areas where they are still dominant, as disclosed by the RHA and FMD. The generic reference sheets for Seedings and for Exotic Communities, while no longer in use by Boise District, and not specific for individual ecosites; at least had the advantage of recognizing that those communities usually have different potential composition and successional pathways than State 1 (native plant communities) described by the draft Ecological Site Descriptions that BLM has acquired. BLM acknowledged that both climate and grazing practices prior to 2005 had been a factor in the decline of the seedings, and the RHE worksheets were not necessarily the most important component of that finding. Just the trend photos for Appendix E and the utilization photos that were sent with the Final RHA are sufficient to document our findings.

Standard 6: Exotic Plant Communities.

IV. 18. *The draft RHA erroneously makes no assessment of Idaho Standard 6. . .*

BLM Response: See responses for IV. 4. and IV. 14.

Standards 2, 3, and 7:

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IV. 20. Standards 2, 3, and 7 . . . must be addressed relative to the objectives of the Bruneau MFP that are specifically applicable to the ECCA. The draft RHA does refer to some of the stream improvement objectives of the MFP, but does not do so for lotic areas.

BLM Response: While BLM's assessment of resource conditions and trends must evaluate specific MFP requirements, it must also examine other resources that do not have specific MFP requirements in order to conform to policy, manualized procedure, regulation, and to the Idaho Standards for Rangeland Health. The MFP objectives address both stream and wetland habitats.

IV. 21., II. 1. & II.2. See discussion herein above under II. Current Management and Past Decisions, which we incorporate as relevant to these Standards.

BLM Response: BLM's Proposed Decision acknowledged that only specific actions and projects were appealed and stayed in the Background section. The RHA and the FMD both acknowledge that fall trailing down Birch Creek has ended and that progress had been made toward meeting these Standards.

Standard 2: Riparian Areas and Wetlands And Standard 3: Stream Channels and Floodplains

IV. 22. The draft RHA appears to relegate the MFP objectives to secondary consideration... Any findings for portions of streams not stated in the MFP are irrelevant to the RHA, and should not be discussed.

BLM Response: BLM's RHA and FMD discussed all streams that were found to support riparian and wetland habitats by BLM inventory. Only those segments that were affected by currently permitted livestock grazing were brought forward into the Purpose and Need of EA#ID-120-2008-EA45 and were subsequently addressed by the Proposed Decision.

IV. 24. [T]he discussion fails entirely to discuss the Poison Creek Road, which for the most part runs adjacent to and in most places abuts the stream corridor, crossing the stream in numerous places... The draft RHA also fails to report that the portion of Poison Creek within the recreation area is backed up behind a pipeline diversion, and therefore receives the benefit of ... impounding water...

BLM Response: BLM's RHA and FMD focus on livestock grazing impacts along Poison Creek, while acknowledging that the road facilitates livestock access to many portions of the stream channel. The indicators measured and reported are primarily those that are responsive to grazing impact levels. Certainly, road maintenance activities and the presence of the road affect sedimentation, which is recognized in those areas and is not blamed on grazing.

*IV. 26. & II. 1. As to lotic areas (springs) MFP objective WL 4.3 addresses **at least** Standard 2... See also MFP objective RM 1.4c which also addresses **at least** Standard 2. The draft RHA is silent as to this objective and is silent as to the lack of authorization of such projects*

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by BLM to accomplish this objective. King remains supportive... of [1997] Decision-approved projects.

BLM Response: While the draft RHA may not have cited these MFP objectives in discussing wetland condition, it did list them as relevant in Appendix K. The Proposed Decision includes a substantial number of projects that exclude grazing from wetlands that are important to sage grouse and other wildlife species which will result in significant progress toward meeting Standards 2 and 8 and Guidelines 6, 11, and 17. Two of these projects will also allow for improved distribution or management of livestock. Alternative D also lists additional wetland exclosure and spring development projects that were not considered integral to the Proposed Decision that were analyzed for future implementation if needed.

Three projects referred to under **II. 1. in Protest Exhibit 1** were not located in pastures where wetland condition was part of the Purpose and Need, one was on the list of additional projects for Alternative D, one was located in John Anchustegui's pasture, one was considered but not analyzed in detail, one was analyzed under Alternative C, and the remainder were already built. Of the 6 unbuilt projects within King's use area, only 3 were located in pastures where wetlands did not meet applicable Standards.

Standard 7: Water Quality

IV. 28 & 29. *As to Water Temperature, we believe Table 53 does not contain all of the data available to BLM... As to bacteria, the draft RHA does not include all of the data available to BLM...*

BLM Response: BLM data and other data is not differentiated in the referenced tables, although inclusion of their 1998 and 1999 bacteria data is specifically acknowledged, no acknowledgement of any later bacteria data or any temperature data in associated narrative or in Appendix B in Final RHA.

IV. 30. *As to bacteria, King and/or ECCAP have commented previously on several occasions regarding BLM's biased sampling of the streams, including biased sampling when livestock were being driven up Poison Creek. This type of sampling does not represent the conditions when cattle are spread throughout the pasture...*

BLM Response: The Final RHA accounts for differences in water quality sampling between King and BLM for at least the 1998 and 1999 grazing seasons, with fecal coliform exceeding the State standard during and for a period after grazing for both data sets.

Standard 8: Threatened and Endangered Plants and Animals

IV. 31. *As to the title of this section, it does not correctly address the Idaho Standard...*

BLM Response: The title is the same as found in the Idaho Standards for Rangeland Health booklet. We recognize that most of the species discussed in the section are considered sensitive or special status rather than "Threatened" or "Endangered".

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IV. 34. Several of the species discussed were assessed in 2002. However, in that year, the Grand View 2 weather station received the lowest precipitation in its records... This information should be added to the discussion relative to the "assessed vigor".

BLM Response: The Final RHA acknowledges that habitat damage to the Mulford's milkvetch population which was the basis for not meeting Standard 8 in Pasture 5B "probably occurred when livestock trampled the sandy soils before fall moisture arrived." However, that was at the end of 2003, another very low precipitation year, which was also disclosed in the Final RHA (on page 15, among many other references). The conclusion drawn in the FMD was for the habitat, not for individual plant vigor.

IV. 35. Table 57 at page 81 unreasonably and erroneously identifies purported "Potential conflicts with Livestock" An Assessment is not properly addressed only to livestock, but to other potential conflicts as well...

BLM Response: While the table focuses on potential grazing impacts, the Final RHA narrows the description of actual conflicts with current grazing to one population of one species. Other types of "threats" were also disclosed where documented. The FMD, the EA, and the Proposed Decision were all consistent with the Final RHA. Further, botanical clearances were conducted of proposed projects to ensure that additional sensitive plant populations would not be affected. Some readers will unfortunately continue to conclude that "potential" impacts accurately describe what is actually happening regardless of what is presented in any BLM disclosure documents.

IV. 38. The draft RHA discusses at page 87 Bighorn Sheep... however, NONE of these are relevant to bighorn sheep habitat. Bighorn sheep avoid riparian areas with thick cover...

BLM Response: While BLM's discussion of bighorn sheep in the Final RHA focuses on competition with cattle for riparian area forage based upon excessive use levels; the use described is not by cattle permitted in spring, but by unauthorized cattle in summer and fall.

IV. 40. At page 87, the draft RHA states that the allotment contains suitable habitat for pygmy rabbits... but then states that "the habitat is not up to potential." The draft RHA fails to address both the Standard and the Objective... [n]either... calls for maintaining vegetative habitat at its potential...

BLM Response: While BLM's discussion of pygmy rabbits focuses on habitat quality rather than population status, the data presented imply that in spite of long-term upward trends in the understory, the habitat quality based upon the canopy cover data presented in Table 59 is still not as good as in the pristine condition. The final RHA does acknowledge that "no studies have documented whether or how the condition of grasses and forbs affect pygmy rabbit populations." That judgment was carried forward in the FMD, in the Purpose and Need section of the EA and in the actions included in the Proposed Decision.

IV. 42. The draft RHA presents some photographs which infer certain riparian conditions. However, at best, these photos represent a one-point-in-time condition on a point in the

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landscape, but cannot inform either as to other areas, or as to trend of the subject areas over time.

BLM Response: BLM acknowledges that photos are only as good as their interpretation, but we would point out that photos were also used to document long-term progress in many portions of this allotment, including riparian areas; and that the Purpose and Need section of EA #ID-120-2008-EA45 was consequently limited to specific areas and resources based in part upon photos. The photos presented in the draft RHA focus primarily upon areas that were carried forward into the Purpose and Need section. The projects in the Proposed Decision address all three situations shown in the photos.

VI. 1. The draft RHA errs in identifying Mitchell Jaurena and John Biar as "Interdisciplinary Team Members, since they apparently only provided editing services, which is not a natural resource discipline.

BLM Response: These two individuals served as arbiters in several disagreements of interpretation among authors, which required that they draw upon their natural resource backgrounds.

VI. 2. The draft RHA errs in identifying Mike Boltz as the Interdisciplinary Team Responsibility for Standard 1, as Mr. Boltz's name does not appear as the observer on any of the field assessments delivered in response to King's 11/3/06 FOIA request.

BLM Response: The findings of Standard 1 in the RHA and in the FMD were not based solely upon the RHE worksheets, as required by TR 1734-6 and by IM ID-2004-086. Mr. Boltz gathered much of the trend data, analyzed the cover data reported in Standard 1, compiled the comparative trend photos and the utilization photos, and the utilization, actual use, and administrative history presented in these documents. Mr. Boltz was also the primary author of the 1997 Final AIE, which he cited extensively under Standard 1 in these documents.

VI. 3. The draft RHA errs in identifying Pam Druliner as the Interdisciplinary Team Responsibility for Standard 4, as Ms. Druliner's name does not appear as the observer on any of the 2005 field assessments delivered in response to King's 11/3/06 FOIA request.

BLM Response: The findings of Standard 4 in the RHA and in the FMD were not based solely upon the RHE worksheets, as required by TR 1734-6 and by IM ID-2004-086. Ms. Druliner gathered some of the trend data, analyzed the frequency data, and was present during completion of all BLM RHE worksheets during 2006 and 2007.

Appendix F – Precipitation Data

F. 1. The draft RHA provides no reference for the purported precipitation data. Mud Flat is not on the national weather data base. Should include empirical data, not just graphs...

BLM Response: The Mud Flat graph provides the source citation, i.e. NRCS Sno-Tel.

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F. 2. Relative to plant growth, the RHA should discuss crop year (September through June) precipitation... not the annual precipitation.

BLM Response: The colored graphs in the Final RHA are crop year precipitation for Mud Flat and annual precipitation for Bruneau and Grand View, although not labeled as such. The latter two were not corrected for the Final RHA.

Appendix K – Land Use Plan Objectives

K. 1. The draft RMP [sic] does not accurately report the Land Use Plan objectives...

BLM Response: The example cited was corrected in the Final RHA.

King: *We also specifically reserve the right to comment relative to the accuracy of statements made in the RHA, draft or final, not supported by the quantitative data or the qualitative information provided in response to King's FOIAs dated 11/3/06 and 12/17/07.*

BLM Response: The grazing regulations afford the opportunity to protest and appeal BLM's decisions, however, you bear the burden of proof in demonstrating that the decision is in error; specifically, that it is not supported by the quantitative data or qualitative information which BLM had available in reaching its proposed decision.

King: *Kings respectfully request that they be involved in all meetings to correct the errors and omissions of the draft RHA, to finalize the RHA, to develop the Evaluation, and to develop the Determination.*

BLM Response: BLM met with members of your family on both January 9, 2008 (prior to receiving your written permit renewal application) and again on January 29, 2008 (providing feedback to your initial permit renewal application). Our review of the resource issues that we attributed to currently permitted grazing that we presented on January 9 to you and again on January 10, 2008 to John Anchustegui are essentially similar to those captured in the FMD of May 22, 2008 and to those addressed by the Proposed Decision. The Proposed Decision has many common points with your final permit renewal application submitted on June 22, 2008, although BLM considered and analyzed many other options for future management of the East Castle Creek Allotment.

- King:** King protests the Proposed Decision's (including the associated Environmental Assessment in EA #ID-120-2008-EA45) reliance upon erroneous determinations/findings in the ED/FMD and/or erroneous field data, rangeland health assessments, and habitat assessments.

King addressed the erroneous conclusions of the ED/FMD and/or its underlying information, via letter dated June 20, 2008. See **Protest Exhibit 2**. BLM did not correct the errors and omissions pointed out in that notice. Instead, BLM continued to rely upon such erroneous information in the issuance of its EA #ID-120-2008-EA45, dated concurrent with the Proposed Decision. King incorporates Protest Exhibit 2 as protest points and statements of reason.

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BLM Response: The Field Manager's Determination (FMD) reconciled a great deal of staff input and discussion, yet found that the original review of the resource issues that we presented in January 2008 was correct. The FMD acknowledged that the lakebeds portion of the lower pastures may have crossed an ecological threshold (similar to your statements in Protest Exhibit 1) but determined that upland trend following the 2005 change in management could not be determined in the spring pastures, even if subsequent utilization levels were within the MFP objective. It acknowledged that soil surface characteristics on the seedings were largely the result of the plowing itself, as you had affirmed. BLM's earlier statements about the condition of wet meadows and springs and of Poison Creek, in particular, were carried forward. Your Scoping Comments of October 31, 2008, focused particularly upon solutions for springs and wet meadows. Browse utilization was also found to exceed the MFP objective for mule deer summer ranges.

The following passages (in italic font) relevant to Protest Point #2 are taken from the June 20, 2008 letter from Gordon and Rose King, included with the King protest as Exhibit 2. BLM responses follow each of these passages.

King: *...[T]he Final Rangeland Health Assessment (FRHA) made very few substantive changes as were requested by King... The FRHA states at page 3 that the comments provided by Intermountain Range Consultants were also responded to by letter. This statement is incorrect. . . .King requested involvement in the development of the Final Rangeland Health Assessment. This request was effectively denied by BLM, as King was not part of the "interdisciplinary team" ... These Denials by BLM have resulted in continued errors and omissions in the Final Rangeland Health Assessment...*

BLM Response: BLM considered King's requests for changes to the FRHA, but in most cases affirmed the original information because it was already reported correctly from what was on the original data forms. Your requests also did not address every type of data or specific item of data that BLM had reported in the DRHA. In a few cases, BLM did not complete corrections or additions prior to release of the FRHA, but they would not change the interpretation of the data presented in the FMD or the factual basis for the subsequent Proposed Decision. These Protest Responses, in effect, replace the response letter that BLM did not complete in February, 2008. It is important to recognize that the role of the RHA is to report the known facts while the role of the Evaluation is to draw conclusions about the reasons for the facts and finally, the role of the FMD is to decide whether those conclusions warrant the modification of existing grazing practices.

King: *In addition, it appears that BLM's Evaluation and Determination document relies upon information and data not considered by BLM in its Rangeland Health Assessment. . . . The ED/FMD purports to rely upon a number of sources which were not relied upon by the FRHA...*

BLM Response: Under IM ID-2004-086, which guides BLM's reissuance of grazing permits, the role of the Evaluation document is to draw conclusions about the reasons for the facts that were disclosed in the RHA. The Laycock and Bestelmeyer et. al. references do not

BLM Response to King Protest of Bruneau Field Manager's December 24, 2008 Proposed Decisions ID-120-2008-EA-45

supply new facts, but provide a basis for their interpretation. The draft NRCS Ecological Site Descriptions have Reference sheets that were used in collection of the 2007 RHE data, but also describe specific state and transition models for ecosites that occur within East Castle Creek Allotment. While not presented or cited in the FRHA, the Mulford's milkvetch references were used to support BLM's finding in the FMD that only one population was impacted by currently authorized grazing and associated activities. The MFP was used to make the required judgment of conformance to land use plan objectives by the FMD. These uses also conformed to IM ID-2004-086.

King: *Therefore, BLM did not consider states and transition models in its collection and assessment of the data in the DRHA or in the FRHA, which is where such assessment should have occurred... King's comments to the draft RHA specifically requested that the FRHA be modified from the DRHA to address those specific issues[...*

BLM Response: BLM clearly did consider state and transition models in the FMD in assessing the potential for change if grazing practices under the Settlement and during the previous seven years (1998-2004) were further modified. Under IM ID-2004-086, that is the appropriate point in BLM's permit renewal process to consider such questions. There was disagreement on whether the depauperate shrub communities on the lakebeds had sufficient understory to respond to grazing practices. A discussion can be found on both pages 13 and 40 of the ED.

The FMD explicitly addressed that disagreement on page 58, and the Proposed Decision implements Annual Indicator Criteria and a Monitoring Plan that includes additional study exclosures to further address the issue of potential for response in these communities. Your comments to our Scoping Document (**Protest Exhibit 3**) also proposed additional upland study exclosures in these pastures. BLM's impact analysis in EA #ID-120-2008-EA45 also acknowledges that restoration practices may be necessary to change the composition of these communities (see page 60), and further, acknowledges that they are vulnerable to wildfire because of the nature of the understory (see page 65).

King: *As to guidelines: The FMD misstates the findings of the ED, which made specific findings to specific pastures, including only portions of the some pastures or some streams or some meadows... In short, the ED states that only some of the 10 guidelines not met at certain locations, but not that all 10 as a group were not met at the same locations.*

BLM Response: In the FMD, BLM had to make an overall call for each guideline, but did not choose to create a similar table as for the Standards, which would have shown some of these details better. The detailed explanations under each Standard therefore continue to provide a detailed description of conformance to Guidelines.

King: *We hereby contest in part the Field Manager's Determination . . . and the relevant portions of the supporting Evaluation, FRHA, and field data and information. Specifically, we contest the conclusions of the FMD . . . that the FMD determines are not being met and are not making significant progress and current livestock management is a significant factor.*

BLM Response to King Protest of Bruneau Field Manager's December 24, 2008 Proposed Decisions ID-120-2008-EA-45

BLM Response: BLM will address your critiques of our findings and Determination by Standard and by Pasture, in the same order as we presented them on page 57 of the FMD and as you presented them in **Protest Exhibit 2**.

King:

Standard 1

The FMD determines that Standard 1. . . is not met, and current livestock grazing practices are a significant factor, in Pastures 8B, 8BI, 8BIII, and 10B. King contests these determinations. . . that Pastures 8B, 8BI, 8BIII, and 10B “do not meet Standard 1 because of continued early spring use during the critical growing season prior to 2005; excessive livestock use on seeded areas (1998-2004)”... because the season of use or the period of use are not the Standard... and are not a rational basis to determine that the Standard is not met.

BLM Response: If a Standard is not fully met, progress toward meeting it must at least be evident. At least one RHE worksheet in each of these pastures received a “Moderate” or greater departure rating, all on portions of these pastures that showed the greatest historic changes. Other portions of your **Protest Exhibits 1 and 2** acknowledge your belief that those areas have crossed an ecological threshold, and cannot meet any Standard based upon characteristics of the original, pristine shrub communities. However, the full determination was also based on trend in cover indicators, utilization, and other information, not solely upon the respective RHE worksheets, as required by TR 1734-6. These factors were cited in the rationale because they are pertinent to evidence of progress during those particular years of the evaluation period. The determination also described portions of these pastures where the Standard was met and trend was acceptable during those same years.

King:

Standard 1 – Pasture 8B

Assuming the RHAs could be relied upon to make a determination, the RHAs support a conclusion that Standard 1 is met in Pasture 8B...

BLM Response: Other watershed cover categories partially compensated for loss of some of the original components and evidence of surface stabilization also accounted for the more favorable RHA ratings. However, the replacement of the original understory by other components still limits the potential for change based on grazing practices alone. The grazing practices were less favorable during the years cited, and were similar to those prior to 1997 that were evaluated in the AIE. The impact analysis for Alternative A also reflected the same judgment.

King: *The quantitative long term trend study does not justify a determination of “not meeting” Standard 1...*

BLM Response: This trend study was located in the foothills, had better perennial watershed cover and showed a static or positive trend in watershed cover. The description of plant community dominance from the AIE is also for the foothills, and generally applies to all

BLM Response to King Protest of Bruneau Field Manager's December 24, 2008 Proposed Decisions ID-120-2008-EA-45

spring pastures. However, the other three trend studies were located on the lakebeds, and showed the fluctuating but greater bare ground typical of cheatgrass communities, with little contribution by remnant perennial grasses to watershed function. The lakebeds comprise about 70% of Pasture 8B.

King: *The FMD errs in the determination, because changes to livestock management practices changed in 2005 [and] progress toward meeting Standards as a result...are yet to be determined.*

BLM Response: You have cited the ultimate FMD finding for Standards 1 and 4 correctly, and this finding was carried forward into the design of the Proposed Decision, as well as into the impact analysis of this and Alternatives B, C, D, and E in EA #ID-120-2008-EA45. Future monitoring and evaluation under the Proposed Decision will determine both the validity of an objective to improve these areas as well as whether improvement is occurring under similar livestock management practices to those addressed by the FMD. The applicable MFP Watershed objective is to at least maintain “perennial vegetation where it exists”, as you have generally pointed out, and not to require improvement in ecological condition where the original understory is essentially lacking.

Standard 1 – Pasture 8BI

King: *King... via a 12/17/07 FOIA request requested all information related to rangeland health assessments conducted from 11/3/06 through 12/17/07. BLM's response contained NO rangeland health worksheets, etc. relative to rangeland health assessments conducted in 2007. King has thereby been effectively denied by BLM a report upon which BLM has made its Determination.*

BLM Response: By oversight, BLM apparently did not provide these documents prior to your preparation of **Protest Exhibit 2**. However, they were provided to you in the protest meeting on January 23, 2009. BLM checked for correctness the indicator ratings. In all but two instances, BLM's overall attribute rating conformed to the distribution of the indicators rather than giving greater weight to the significance of particular indicators also described on page 38 of v 3 and on pages 41 and 42 of v 4.

King: *... Therefore, the FMD should be “No Determination” relative to Standard 1 in Pasture 8BI.*

BLM Response: This is not among the options available to the Field Manager. The only option not used was “Not Meeting the Standard, cause not determined”, which still finds that the Standard was not met. Under IM ID-2004-086, BLM is directed to go out and gather data necessary to make a determination if existing information is inadequate. The Settlement also required additional data collection, which was completed. BLM had a wealth of information to draw from, dating from the late 1950's.

King: *... [T]he rationale offered, i.e. excessive livestock use on seeded areas (1998-2004) is not rational... BLM monitored utilization... only in 2001 and 2002.*

BLM Response to King Protest of Bruneau Field Manager's December 24, 2008 Proposed Decisions ID-120-2008-EA-45

BLM Response: The General Response for Standard 1 also applies; however, BLM's actions under the 1997 Decision were Stayed, and no voluntary rest was documented during this period in spite of adverse growing conditions, which you have also pointed out in the context of your Mulford's milkvetch discussion in **Protest Exhibit 1**. The timing of use was not regulated closely under the Stay, and was repetitive in successive years. The lack of a trend study does not invalidate professional opinion that the dominance of seeded species has declined during those years.

King: *The BLM ocular estimations that are available cannot be rationally relied upon, because BLM did not calibrate their ocular estimates to the growing conditions and the actual growth of plants in any year.*

BLM Response: The method BLM used, the Landscape Appearance Method, does not require the type of calibration that you say is lacking (Interagency Technical Reference, 1996). It explicitly states (page 119) that the method does not require unused areas for training purposes. It also rates utilization on species populations at each observation point, not on individuals, using descriptive criteria.

In cases such as the lakebeds, where a species is often represented by a single individual at an observation point, Grazed Class Photo Guides were used, which is also a procedure accepted by that same Interagency Technical Reference. The Grazed Class method also has the advantage that "variations in height growth due to site characteristics or seasonal precipitation can be disregarded" because the method is based on plant growth form.

Furthermore, a series of utilization cages are scattered throughout the pastures (see Appendix Photos in FRHA) and unused plants are common enough were used by the observers to judge growth and seedhead production during years when data were collected.

King: *BLM's ocular estimations are demonstrably wrong, and overstate the actual utilization levels...*

BLM Response: The differences in estimates are both from BLM-approved methods. As with other methods, the "previously prepared utilization scales must be checked to see whether or not these scales fit the species on the rangeland where they will be used (page 92)." Photos of both of these sample sites are presented in the FRHA Appendices, and are located within Pasture 8BIII.

BLM has continued to collect seasonal utilization data on spring pastures because it is necessary to differentiate non-use from use with regrowth in order to determine whether "current livestock grazing practices are significant factors" in observed trends. Intensity must be known in order to apply BLM's Grazing Response Index tool. BLM's seasonal observations of "no use" show no evidence of clipping on any current growth.

King:

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Standard 1 – Pasture 8BIII

General Response: The same issues were raised and addressed for Pastures 8B and 8BI.

Standard 1 – Pasture 10B

The FRHA cannot be rationally relied upon by the ED/FMD to make determinations relative to Standard 1, because the FRHA and the underlying RHAs did not assess the observed conditions against the relevant MFP objectives...

BLM Response: Pasture 10B is located entirely in the foothills portion of the spring pastures, with the majority having a perennial grass understory. However, the same MFP watershed objective still requires that BLM at least maintain “perennial vegetation where it exists” and “allocate no more than 50% of vegetation to consumptive use.”

King: ... [T]he FRHA reports that two RHAs were conducted in Pasture 10B, one of which BLM selected in ‘the lower slopes’ of the pasture where ‘the original understory has long been lost’, thereby biasing the sampling. . . The ED and FMD erroneously focus on [that] site and erroneously ignores the RHA that BLM selected 25 years ago... to represent the condition of the pasture... where such condition was capable of change...

BLM Response: The AIE, the FRHA and also the ED clearly acknowledged that most areas have at least an increaser grass understory, with many areas having a decreaser grass understory, and a few areas where historic impacts have removed understory components, such as this RHA site, where Standard 1 was not met. The FRHA further correctly described the origin of the situation, and pointed out that “historic” trend appears upward for most of this pasture, except for locations such as this RHA. Such areas, though of limited extent, do exist, and serve as the focus of public complaint about impacts of currently permitted grazing.

King: *The long term trend studies support a conclusion that Standard 1 is met for Pasture 10B, as reported by the FRHA at page 26... where the capability to meet the Standard exists.*

BLM Response: The FMD also described portions of this pasture where the Standard was met and trend was acceptable, such as this trend site.

King: ... [A] Determination of “Current Management Not a Factor” is the reasonable determination. See FMD, p. 58.

BLM Response: The FMD on page 58 found that repetitive “continued” use during the critical growth period under the grazing practices in effect during 1998 through 2004 did not fully meet the growth needs for some species of perennial grasses, but as in the other pastures, recognized that livestock management practices changed in 2005 and progress toward meeting Standards as a result are yet to be determined.

King:
Standards 2, 3, and 7

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The FMD determines that Standard 2 as applicable is not met in Pastures 8B, 12, 17, 19, 28A, 29A, and 44... The ED clarifies that the determination relative to Pastures 8B and 12 is relevant to "portions of Poison Creek", the determination relative to Pasture 28A is relevant to "portions of Sheep Creek", the determination relative to other pastures is relevant to "wetlands and springs"... King contests these determinations... Therefore, King contests the findings for Standards 3 and Standard 7 for the same reasons.

BLM Response: The distinction between those streams that were specifically addressed by the MFP and those that were not does not control BLM's assessment and evaluation process. Neither does their ability to support fisheries. The same is true of wetlands and springs. They are addressed in the ED and FMD because they were found to support riparian and wetland habitats by BLM inventory. Since no specific comments were offered under Standard 7, they are addressed by reference here.

King:

Standards 2, 3, and 7 – Pasture 8B

The discussion of conditions in Pasture 8 is relevant... However, the objective is to improve fisheries habitat... The draft RHA should assess that this objective is not reasonably achievable...

BLM Response: BLM notes that this is the same point made in **Protest Exhibit 1, IV. 25.**, and addresses it here to reduce duplication. The distinction between those streams that were specifically addressed by the MFP and those that were not does not control BLM's assessment and evaluation process. Again, BLM's RHA and FMD discussed all streams that were found to support riparian and wetland habitats by BLM inventory. Only those segments that were affected by currently permitted livestock grazing were brought forward into the Purpose and Need of EA#ID-120-2008-EA45 and were then addressed by the Proposed Decision.

King: ... *The FMD is nevertheless wrong, because current livestock management changed in 2005/2006, and the ED and FMD both note this fact... Therefore, if the potential exists to achieve the objective, the appropriate determination is "cause not current livestock management."*

BLM Response: The FMD notes on page 58 that although management changed in 2005, Standards are not being met, and an Environmental Assessment would be prepared to adjust management "in order to make significant progress toward meeting the Standards." BLM has now completed this process, retaining practices from the 2005 changes that show promise for making progress and adjusting others to ensure that progress is made as embodied in the Proposed Decision. In the case of Pasture 8B, practices implemented under the Settlement were largely retained.

King:

Standards 2, 3, and 7 – Pasture 12

Like Poison Creek in Pasture 8B, Poison Creek in this pasture is mostly historically incised, and has often been dry for the majority of the length of the stream in the summer.

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BLM Response: See BLM's Response for Standard 2, above.

King: *The FMD is nevertheless incorrect, because current livestock management changed in 2005/2006, and the ED and FMD both note this fact... Therefore, the appropriate determination is "cause not current livestock management".*

BLM Response: The FMD notes on page 58 that although management changed in 2005, Standards are not being met, and an Environmental Assessment would be prepared to adjust management "in order to make significant progress toward meeting the Standards." BLM has now completed this process, retaining practices from the 2005 changes that show promise for making progress and adjusting others to ensure that progress is made as embodied in the Proposed Decision. In the case of Pasture 12, practices implemented under the Settlement were modified, particularly because streambank and riparian impacts imposed by the Settlement were too great in 2006.

King:

Standards 2, 3, and 7 – Pasture 28A

...[T]he determination is nevertheless wrong, because the majority... is in PFC, and the FMD erroneously focuses on the minority while ignoring the majority.

BLM Response: The FMD notes that the other segment of Sheep Creek in this pasture is dry when grazed by livestock (page 26) [and is] largely not impacted by livestock. BLM did give credit for this fact, but focused on the segment where the stream channel and dependent vegetation are unstable, an unacceptable condition.

King:

Standard 2 – Pastures 17, 19, 28, 29A, and 44

The functionality ratings cannot rationally be relied upon by the FMD...

BLM Response: BLM notes that this general critique of the functionality ratings in Table 20 on pages 45-47 of the FRHA is not specific except for one example, and applies to spring wetlands in Pastures 10B, 11B, 12, and 28A in addition to those pastures listed as not meeting Standard 2 on page 21 of the FMD. Most of your critiques are of the checklists that BLM used rather than the ratings assigned to springs in Table 20, and cannot be addressed on a site-specific basis.

King:

Standard 2 – Pasture 44

The FMD erroneously concludes that the Standard... is "not met" ... Of four springs in the pasture ... [o]nly one... was found to be Functioning, at risk [and attributable to livestock grazing management practices]. Therefore, the Standard is met overall for the pasture's four springs reported in FRHA Table 20 on page 46.

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BLM Response: BLM made the judgment that since two of the three springs supporting a definable wetland were FAR, that the level of livestock impacts was too high to meet Standard 2, although the notes in Table 20 do not describe livestock impacts directly. Additional description occurs in Table 60 on page 92 of the FRHA under Standard 8.

King: *The FMD and FRHA fail to assess other relevant facts pertinent to the MFP objectives... a livestock grazing management system is in place for the allotment, Pasture 44 is not continuously grazed throughout the grazing season, and salting is performed away from the water sources. All of these are in conformance with... MFP objective WL-aq 4.3a.*

BLM Response: BLM does not receive any information about how this pasture is grazed in the form of actual use reports, and the easiest administrative access for compliance purposes is across the private property of another permittee. Our disclosure documents have reported the available information pertinent to MFP compliance.

King: *To the extent that a minority of springs in the pasture may not be achieving the Standard... there exists a fallback provision contained in WL-aq 4.3b, mandating BLM to physically protect the springs (via fencing)... The permittees proposed in 1997 some specific developments and pipeline extensions... almost none of which were constructed... Therefore, to the extent that this objective is not being achieved, it is not the fault of the livestock management actions so far as King is concerned...*

BLM Response: BLM's Proposed Decision includes a substantial number of wetland enclosures, sufficient to make significant progress toward this Standard in pastures where wetlands did not meet it, including 2 of the 3 that the FRHA and FMD identified in Pasture 44. King's Alternative C identified many additional ones as mitigation for grazing impacts to wetlands which are also being analyzed in EA #ID-120-2008-EA45.

King:

Standard 4

The FMD determines that Standard 4... is not met, and current livestock grazing practices are a significant factor, in Pastures 8B, 8BI, 8BIII, 10B, 12, 28 and 28A... King contests these determinations... that Pastures 8B, 8BI, 8BIII, 10B, and 12 do not meet Standard 4 "because of the depletion of deep rooted perennial bunchgrasses and the season and intensity of livestock use..." because it is based upon a comparison of sites that were historically depleted... to 'pristine' sites described by the Ecological Site Description. However, the MFP objective for most of the are... was not to attain "pristine" conditions. . . Further, the MFP specifically recognized that such sites would likely not achieve an improvement in condition... The FRHA failed to assess against the ecological potential that the sites are capable of attaining, which limitations are recognized by the MFP.

BLM Response: Other portions of your Protest Exhibits 1 and 2 acknowledge your belief that at least those communities which now have an annual grass or remnants of a crested wheatgrass understory have crossed an ecological threshold, and cannot meet any Standard that is based upon characteristics of the original, pristine shrub communities. This situation

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applies to the communities in Pastures 8B, 8BI, 8BIII, and 10B that received a “Moderate” or greater departure rating for the RHE worksheets. The FMD considered the results of 40 years of rest in two exclosures associated with these pastures. For these communities, the ED (page 40) acknowledges that there is a divergence in thought as to whether these communities have crossed an ecological threshold, but also acknowledges (page 58) that management changed in 2005, and, while upland utilization levels have been generally favorable following the change, progress toward Standards (and MFP objectives) could not be determined as of May 21, 2008. The Proposed Decision continues management that is similar to that since 2005 and provides for additional monitoring exclosures to determine whether progress toward the Standard is an attainable objective under that management. If not, the MFP objective of “increasing the vigor, density, and production of desirable vegetation” would be affirmed as appropriate. The Proposed Decision also provides Annual Indicator Criteria to assist in providing favorable grazing practices during the implementation period, with Decision Tree and specific Management Responses to guide short-term adjustments to management.

For communities that now have a “short-rooted bunchgrass understory with overly dense canopies of sagebrush”, you have stated that the MFP recognized that such sites “would not likely achieve an improvement in [ecological] condition”, which describes the RHE worksheet in Pasture 12 that received a “Moderate” or greater departure rating. On page 34, the FMD described the topographic pattern of condition “based on historic condition ratings.” The FMD stated that Standard 4 was not met in this pasture, “particularly on gently sloping areas near Poison Creek” and that upland utilization exceeded the MFP objective especially in those areas in 2006 under the Settlement grazing system (page 37). For these communities, you have also proposed upland grazing exclosures and monitoring to determine whether progress toward a Standard based upon “pristine” conditions is an attainable objective, in which we concur. The FMD did, however also describe portions of this and other pastures where the Standard was met.

King: *Further, “season of use” and “intensity of livestock use” are not the Standard and are not indicators of the Standard. Also... the determination is not rational, because the FMD states that the current management, i.e., that initiated in 2005... has not had enough time to be evaluated.*

BLM Response: At least one RHE worksheet in each of these pastures received a “Moderate” or greater departure rating, all on portions of these pastures that showed the greatest historic changes. If a Standard is not fully met, progress toward meeting it must at least be evident. However, the full FMD was also based on trend, utilization, and other information, not solely upon the respective RHE worksheets, as required by TR 1734-6. These change agents were cited in the rationale because they are pertinent to evidence of progress during particular years of the evaluation period.

Specifically, the FRHA disclosed that in communities similar to the “Moderate” worksheets, frequency of crested wheatgrass and bluegrass had declined in Pasture 8BIII, frequency of squirreltail had declined in Pasture 8B, while squirreltail declined and remnant needle-and-thread increased in Pasture 12. No formal trend studies were available for Pasture 8BI. The

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burned trend study in Pasture 12 showed loss of deep-rooted bunchgrasses before the evaluation period but recovery of shallow-rooted bunchgrasses (Sandberg bluegrass) during the evaluation period. Utilization on remnant perennial grasses did not exceed the MFP objective after 2004 in 8B, 8BI, and 8BIII, and only as already described in Pasture 12 after 2004.

The trend study in 10B, while paired with a "Slight to Moderate" worksheet, showed that remnant bluebunch wheatgrass had increased during the evaluation period. Utilization did not exceed the MFP objective in Pasture 10B during the period of evaluation. The Proposed Decision continues management that is similar to that since 2005 and provides for further monitoring and for mid-term or long-term adjustments, if needed.

King: Standard 4 – Pasture 8B

The RHAs support a conclusion that Standard 4 is met in Pasture 8B. The ratings are wrongly reported in the FRHA and the ED, and are more favorable than those depicted... [t]herefore... the Standard is met.

BLM Response: As for Standard 1, BLM checked for correctness the indicator ratings. URS assigned the attribute rating for Biotic Integrity based upon the preponderance of the evidence at the location and time of sampling. We do not concur that the attribute rating should now be changed after the fact. Aside from that, your belief that at least those communities which now have an annual grass understory have crossed an ecological threshold does appear to be compatible with an attribute rating that recognizes as a minimum that several structural groups are greatly reduced or lacking and are effectively replaced by invasive species, but is not compatible with a conclusion that Standard 4 was met.

King: *The long term quantitative trend study data also does not justify a determination of "not meeting" Standard 4... they certainly show "progress toward" meeting the Standard, due to the substantial basal cover and improved cover... it is also recognized by BLM that areas that lack decreaser grasses lack them because of historic, not current livestock management practices.*

BLM Response: Trend in cover indicators related to the Soil and Site Stability attribute and to the Hydrologic Function attribute were reported under Standard 1. Under Standard 4, the pertinent trend indicators relate to changes in biotic composition and dominance, primarily Nested Plot Frequency. In addition, this one study is located in the foothills portion of Pasture 8B, and does not necessarily represent trend on the lakebeds during 1998 through 2007. As you have pointed out, BLM did recognize that decreaser (deep-rooted) grasses were lacking at foothills sites such as this one because of historic, not current livestock management practices. At that study, trend in the dominant Sandberg bluegrass was static, while squirreltail declined.

Although frequency of squirreltail on the lakebeds during those years was downward at all three studies, squirreltail is a short-lived species and subject to "drought intolerance", which would have been a factor in its decline. Shadscale and bud sagebrush have also shown a pattern of mortality and recruitment that follows climatic fluctuation. Other species were

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inconsistently present and exhibited low frequencies. These observed trends do not document progress toward meeting the Standard, although they may be interpreted as part of the evidence that these communities have crossed an ecological threshold.

King: *As to “intensity of use...” [a]lthough King asserts that BLM’s ocular estimations consistently overstated utilization of perennial grasses, nevertheless, the data as documented show that the average perennial forage utilization... Utilization has therefore not been excessive over time, and has averaged 52% prior to livestock management changes in 2005. This is “moderate” utilization...*

BLM Response: BLM looked primarily at whether MFP utilization levels were exceeded in sample data rather than computing averages. Obviously, with small numbers of sample locations that were not necessarily the same from year to year, and with different species present, comparison of averages imparts limited information. In this pasture, 50% utilization on remnant perennial grasses is used primarily as a proper use factor “under the assumption that use levels of 50% or less generally assure that the physiological needs of perennial grasses are being met” (FRHA, page 67). The FMD acknowledges that utilization levels on perennial grasses have limited influence on the level of watershed cover in plant communities where annual grasses are the predominant understory or where shrubs are the predominant structural component (page 11). Nonetheless, utilization levels of perennial grasses exceeded MFP objectives [sic] at several transects in Pastures 5B, 8B, 8BI, 8BIII, and 12 during 1998 through 2004 (FMD, page 11). However, BLM agrees that 52% would be considered “moderate” utilization, unless statistical separation of pasture, species, or year averages had actually been demonstrated per Smith et. al 2005.

King:

Standard 4 – Pasture 8BI

Likewise, a site disturbed by plowing cannot rationally be expected to have a “biotic” component similar to an undisturbed, pristine, native rangeland... [t]herefore... the FMD should be “No Determination.”

BLM Response: This is not among the options available to the Field Manager. See again the response for Protest Exhibit 1, IV. 3.

King: *Assuming a determination can rationally be made, the rationale offered, i.e. “depletion of deep-rooted perennial bunchgrasses and the season and intensity of livestock use” is not rational... First, BLM has not monitored the trend in deep-rooted perennial grasses in this pasture over time.*

BLM Response: The trend study that was established in the Phase I seeding as reported by the AIE ended up within the portion assigned to the West Castle Creek Allotment (FRHA, page 22). However, the professional judgment of long-term employees indicates that crested wheatgrass is reduced in dominance from the early 1990’s. Such judgment is not irrational even if not based upon measured trend. The RHE worksheet could be misleading if not compared to earlier knowledge of the sample site for a seeding, since the stand is also a

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function of treatment success. However, it also suggests that the existing crested wheatgrass stand is less than the maximum possible stand.

King:

Standard 4 – Pasture 8BIII

...BLM presumably relies upon “frequency” of the seeded and non-seeded perennial grasses at trend site 07S02E28GE to make the determination of “depletion”... However, trend in seeded (decreaser) grass basal cover was static during 2000 through 2006...

BLM Response: For Standard 4, BLM did rely upon changes in frequency. However, Standard 1, which reported changes in basal cover, also noted that “general inspection of the seeding indicates that areas where crested wheatgrass is still dominant are patchier than in 1997” (FMD, page 8), again, based upon professional judgment of long-term employees. The administrative record also documents a number of complaints about the vigor and utilization levels on this seeding prior to 2005.

King: *... [I]f a depletion has occurred, it is not likely the result of livestock grazing, since the FRHA states “Compared to the Poison Creek Exclosure after 40 years without grazing...*

BLM Response: This comparison was made (FRHA, page 23) to document the lack of change in deep-rooted perennial grasses within the exclosure without deliberate restoration measures, not to imply that no change had occurred on the Phase III seeding during the evaluation period. The FMD indicated that climate as well as grazing practices during 1998 through 2004 had influenced the trend in seeded species (FMD, pages 8, 36, 58).

King:

Standard 4 – Pasture 10B

The Determination cannot rationally conclude that Pasture 10B was grazed to excessive levels... a Determination of “Current Management Not a Factor” is the reasonable determination. See FMD, p. 58.

BLM Response: The determination on page 57 (table) and 58 found that repetitive “continued” use during the critical growth period under the grazing practices in effect during 1998 through 2004 did not fully meet the growth needs for some species of perennial grasses, but as in the other pastures, recognized that livestock management practices changed in 2005 and progress toward meeting Standards as a result are yet to be determined.

King:

Standard 4 – Pasture 12

... the preponderance of evidence indicates that Standard 4 is “met” because ... The ED and the FMD therefore give unreasonable weight to the one site which purportedly does not meet the Standard

BLM Response: See **Standard 4- General Response 1**, second paragraph.

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King: *Moreover, the site rated S-M . . . was selected by BLM to represent the condition and trend of the pasture as a whole... trend of deep-rooted ... decreaser grasses was upward... from 1983 through 1990...*

BLM Response: The 1983 trend site burned in 1992, and was selectively grazed for several years, reducing any original representation of the pasture as a whole.

King: *At the second trend transect, frequency of deep-rooted . . . perennial grasses over time has remained stable.*

BLM Response: BLM selected a second trend site in 1990 to represent poorer condition areas with remnants of deep-rooted perennial grasses. Squirreltail declined and remnant needle-and-thread increased at this study during the evaluation period (FRHA, page 62).

King: *If the Standard is not currently being met, then a Determination of “Current Management Not a Factor” is the reasonable determination. The ED and FMD both note that livestock management changed significantly in 2005.*

BLM Response: The determination on page 57 (table) and 58 found that repetitive “continued” use during the critical growth period under the grazing practices in effect during 1998 through 2004 did not fully meet the growth needs for some species of perennial grasses, but as in the other pastures, recognized that livestock management practices changed in 2005 and progress toward meeting Standards as a result are yet to be determined. However, the FMD noted that utilization levels (under the Settlement grazing system) exceeded the MFP objective in 2006 (pages 37, 40).

King:
Standard 4

The FMD determines that Standard 4. . . is not met, and current livestock grazing practices are a significant factor, in Pastures 8B, 8BI, 8BIII, 10B, 12, 28 and 28A. . . King contests these determinations. . . that Standard 4 is not being met in Pastures 28 and 28A “because of the high utilization of bitterbrush and mahogany”. . . [because it is] not rational. . . . The ED states that Rangeland Health Assessments (RHA) are used for Standard 1 and Standard 4. . . . NONE of these indicators is “utilization” and NONE of these indicators is measured by “utilization”. . . . Therefore, the FMD determination made on the basis of “utilization” is not rational or reasonable.

BLM Response: The full determination for these pastures was also based on trend, utilization, and other information, not solely upon the respective RHE worksheets, as required by TR 1734-6. Utilization is a change agent, not an indicator toward the Standard, but was cited in the FMD rationale on page 58 because it is pertinent to conformance with the associated Guidelines during the evaluation period. Particularly, Guideline 12, which BLM paraphrased on page 41 of the FMD.

However, the 50% browse utilization objective is a specific MFP objective for mule deer summer ranges within the allotment, and was evaluated for conformance in the same way as

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other specific MFP objectives. It is not the MFP [watershed] objective relative to forage allocation and use, as you have noted. Standard 4 does require that native animal habitat is maintained within the overall context of native plant communities. Consequently, conformance to the Guideline for Grazing Management was reported under Standard 4.

King:

Standard 4 – Pastures 28 and 28A

Assuming “utilization” were an indicator, the FMD cannot rationally rely upon the underlying data, because it did not record utilization of current annual production, but rather estimated the “percent of leaders that showed any evidence of use...” However, this is not the MFP objective...

BLM Response: Although this comment is also relevant to *King Protest Point 1*, inclusion here addresses BLM's application of this data to evaluate the MFP browse utilization objective under *King Protest Point 2*. Both the Cole and the Extensive Browse methods measure or estimate “incidence of use” rather than the measuring the standard definition of utilization (“consumption of current year's growth”), as you have noted. BLM continued using the Cole Browse Method (FRHA, page 109) for purposes of continuity with the findings of the 1997 AIE, which had been favorable for these pastures. However, incidence of use exceeded the MFP objective during this evaluation period, and, furthermore, “there was little difference between incidence of use and typically defined utilization in the reported measurements“(Helen Ulmschneider, pers. Comm.). We have made adjustments in this FM Final Decision to use incidence of use as the monitoring method to indicate the use level and utilization by twig length as a final determination of compliance with the MFP objective.

King: *The RHAs also do not reliably inform the Field Manager of the condition and trend of the Pasture. . .the RHA at site 08S01W28, which is also a location BLM selected in 1983 to represent the pulse of the range, was rated as having . . . “Moderate” departure.*

BLM Response: BLM acknowledged that the trend in perennial grasses is upward at the co-located (FRHA, page 63) trend study (FMD, page 35), and further, that browse utilization was the [sole] reason why these two pastures did not meet Standard 4 (FMD, pages 41 and 58).

King: *As to hedging of bitterbrush, the MFP objective is not “vigor”, but if it were, “vigor” of bitterbrush is not determined by its shape, which is all that “hedging” informs one of..*

BLM Response: BLM acknowledged that “both bitterbrush and mountain mahogany are very resistant to heavy browsing, as evidenced by the low numbers of dead and decadent plants (FRHA, page 75).

King: *Although there are no long-term trend studies in Pasture 28A, it is composed of the same range site types as occur in Pasture 28, it is composed of the same range site types as occur in Pasture 28; has been managed the same as Pasture 28 over time, and can therefore expect to be experiencing the same trend in condition over time...*

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BLM Response: Although the FRHA reported that there are no long term [quantitative] trend studies in Pasture 28A (page 65), there are two long term upland photo plots which do document a long-term upward trend in understory components, but also encroachment by western juniper (FRHA, pages 33, 37, and Appendix E, pages 44 & 45). The ED also describes the upward photo trend (page 10) and incorporates it into the FMD (pages 12 and 57).

King:

Standard 8

The FMD determines that Standard 8. . . is not met, and current livestock grazing practices are a significant factor, in Pastures 5B, 8B, 10B, 11B, 12, 28, 28A, 29A, and 44. . . King contests these determinations. . .

Standard 8 – Pasture 5B

The FMD determines that Pasture 5B does not meet Standard 8 because of heavy grazing and trampling associated with a water haul site near one population of Mulford's milkvetch. . . King contests this determination . . . for the whole of Pasture 5B . . . There exist 7 populations of Mulford's milkvetch within Pasture 5B, only one of which . . . purportedly receives impacts from livestock grazing. . .

BLM Response: Although seven populations are found in this pasture, Mulford's milkvetch is the highest priority of the nine species found in the allotment (FMD, page 55). Mulford's milkvetch is the only Type 2 sensitive species in the allotment (FRHA, Table 57, page 83). Type 2 species "have a high likelihood of being listed [as Threatened or Endangered] in the near future due to their global rarity and significant endangerment factors", giving them a high priority for corrective actions.

King: *As to EO11, no conclusion of not meeting the Standard on account of its proximity to the water-haul trough location, because similar trends in transect counts occurred at other locations that are not situated near water troughs and throughout the species range. . . . The length of time monitoring has been conducted is too short to make any conclusions as to population trends or causes. The ED confirms that . . . anthropogenic impacts and natural variation are often difficult to discern.*

BLM Response: BLM acknowledged all of these facts in its documents, but chose to take corrective actions because of the priority status of this species. These actions formed part of the Purpose and Need and were analyzed in EA #ID-120-2008-EA45 and subsequently carried forward into the Proposed Decision. Mr. King has shown a willingness to move the trough location to reduce impacts to EO11.

King: *The monitoring of the species over time by ICDC do not support a conclusion of heavy grazing and trampling associated with the water haul site.*

BLM Response: BLM based its finding upon impacts to the habitat, not to the species. The FRHA (page 84) noted that habitat damage probably occurred when livestock trampled the

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sandy soils before fall moisture arrived. The plants themselves are dormant when livestock are present. The same soil conditions do not occur every year, but did occur in 2003, the second year in a row of extremely dry conditions (FRHA, page 15 and Appendix F, graphs 1 and 2).

King: *Each of the purported Rangeland Health Changes claimed by the ED is either misleading or is entirely erroneous... notwithstanding these statements, the ED admits...*

BLM Response: BLM is well aware that detectability of forb species such as Mulford's milkvetch can vary a lot from year to year without signifying an actual change in population status. BLM did not propose unreasonable actions based upon data that it acknowledged could lead to false conclusions about impacts to Mulford's milkvetch populations. BLM instead disclosed the limitations to the data, as you have noted, but then took reasonable actions based upon the status of the plant species.

King: *The discussion of Livestock Grazing Management at ED page 55 also provides no rationale support for the FMD. The ED hypothesizes that. . . (1) The roots and general habitat are at risk to trampling by cattle... (2) Increases in invasive species such as cheatgrass... could cause decreases in Mulford's milkvetch populations... Therefore, the Determination is wrong [and the FRHA is wrong].*

BLM Response: BLM is aware that Mulford's milkvetch has a deep taproot and is dormant when cattle are present. BLM has also disclosed that cheatgrass is a predominant species on the lakebeds, with populations that fluctuate with climate in the FRHA (pages 15 and 17, among others) and in the FMD (page 15). However, BLM has chosen to take reasonable actions to reduce impacts to the habitat considering the priority of this species and the availability of alternatives to conform to BLM Manual 6840. BLM's actions as analyzed in EA #ID-120-2008-EA45 and its accompanying FONSI and as presented in the Proposed Decision must conform to MFP objectives, policy, and manualized guidance.

King:

Standard 8 – Pasture 8B

The FMD determines that Standard 8 is not met in Pasture 8 “with regard to special status fish, on portions of W.F. Shoofly Creek because of heavy livestock use and levels of bank alteration . . . The determination is wrong, and should state that the Standard is “met”, and where not met, “current livestock grazing management practices are not significant factors.”

BLM Response: The table on page 57 of the FMD has a conflicting message for Pasture 8B, in that it indicates that Standard 8 shows both “progress toward” and “not meeting-cause current livestock management”. Both determinations are for West Fork Shoofly Creek (FMD, page 54). However, the FMD further notes in the Rationale on that page that the segment not meeting the Standard “is additionally affected by summer grazing (outside of the traditional spring grazing use for Pasture 8B)” and “received summer grazing use in 2006, reducing plant vigor and cover. . . .” No summer use is permitted, consequently, this finding addresses

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impacts of potential unauthorized grazing use. You have also pointed this out in our protest meeting on January 23, 2009.

King:

Standard 8 – Pastures 10B, 11B, 12, 28, 28A, and 44

The FMD concludes that Standard 8 is not met in Pastures 10B, 11B, 12, 28, 28A, 29A, and 44 “with regard to special status animals because of heavy livestock use of springs and wet meadows . . . The ED clarifies that “The standard is not met for sage grouse brood-rearing habitat. . . .” The FMD determines that Standard 8. . . is not met, and current livestock grazing practices are a significant factor, in Pastures . . . 10B, 11B, 12, 28, 28A, 29A, and 44. . . King contests these determinations. . .

King notes that neither the FRHA nor the ED/FMD cites any scientific literature. . . which identifies late summer brood-rearing habitat as consisting of wet meadows and riparian areas that are not in canyons. In fact, late brood habitat consists of a much larger landscape and usually multiple species of sagebrush juxtaposed in the landscape, meadows, riparian areas, . . . and agricultural fields. . . the birds make use of more than just wet meadows during this time. . .

BLM Response: BLM’s description of brood-rearing habitat is based upon site-specific observations of distribution over a period of years, not upon scientific literature, which may not describe the same complex of available habitats that occur within this allotment and in adjoining allotments. Some of the habitats that you describe are not a significant component of the habitat complex in this area (dry lakebeds, greasewood, or agricultural fields), therefore, BLM evaluated the habitats that are present.

Figure 1 (FRHA, page 95) shows the seasonal habitats that have been defined based upon long-term observation. The evaluation criteria on forms used under the “Framework. . .” methodology recognize the value of forbs in particular and of wet areas in general to sage grouse in late summer. Interspersed or adjoining upland habitats were not ignored, but were also assessed with the data reported under Standard 4 (FRHA, page 111). The ED (page 51) acknowledges the improving condition of the associated upland habitats, at least in the summer pastures. However, the condition of the wet areas based upon current livestock impacts was judged by BLM to be the limiting habitat factor (ED, page 50), and was emphasized in BLM’s FMD (pages 51 and 58).

Finally, your ***Protest Exhibit 3*** does propose grazed exclosures for many of these wetland habitats, and your comments in our protest meeting on January 23, 2009 indicate that you recognize that these habitats are a source of complaint and controversy from interested publics.

King: *King notes that neither the FRHA nor the ED/FMD cites any scientific literature. . . which creates any nexus between meadow condition per se and the ability of the allotment pastures to sustain a viable sage grouse population.*

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BLM Response: BLM does have a Bruneau MFP objective (WL 4.3) requiring that “springs, seeps, meadows and adjacent upland areas be managed as key wildlife habitats for upland game. Your *Protest Exhibit 1, IV. 26.* cites that objective, as does *Protest Exhibit 2, Standard 2 – Pasture 44.*

King: *The assessments cannot be relied upon, because they fail to assess whether site potential is limiting, and therefore, a “suitable” habitat rating is beyond the potential of the site. This is the case with several . . . assessment sites, where the assessment purports to rate wet meadow conditions where no wet meadow or spring exist. . . . An evaluation of the site potential is required for each and every site that is rated marginal or unsuitable. Here, BLM’s . . . and FMD all fail to make this crucial evaluation of limiting site potential . . .*

BLM Response: Although this comment is also relevant to *King Protest Point 1*, inclusion here addresses BLM’s application of this data to evaluate the MFP objective for springs, seeps, meadows and adjacent upland areas under *King Protest Point 2*.

While these habitats may support different types of riparian communities, with varying vegetational potentials, they were distinct from the upland communities around them. Livestock impacts, however, were still generally noted, and forbs were limited, even if potential to produce them varied with site potential and disturbance history. Nonetheless, the Bruneau MFP objective still applies.

3. **King:** King protests the pre-decision making that occurred in the formulation of EA #ID-120-2008-EA45 and the Proposed Decision.

King commented to the EA Scoping Document, noting that BLM did not have the authority to decide what parts of his application were and were not to be considered part of his application, which purportedly became Alternative C of the EA. See **Protest Exhibit 3**. BLM not only continued such errors in the creation of EA #ID-120-2008-EA45, but exacerbated the errors of the scoping document by eliminating additional clarification from King’s application in the EA itself. King incorporates Protest Exhibit 3 as protest points and statements of reason.

In accordance with IM No. ID-2004-086, King proposed and subsequently clarified his term grazing permit application so as to leave no doubt about the range improvement projects applied for to address the concerns expressed by BLM’s evaluation documents, notwithstanding King’s belief that the evaluation documents are themselves severely flawed. King applied for such projects so as to remove any perceived conflicts. Nevertheless, in formulating the EA and the Proposed Decision, BLM significantly altered King’s term permit application by *at least* the removal of such projects from the application, which the EA purports to be Alternative C.

This is an improper manipulation of King’s term permit grazing application without King’s knowledge or permission. Such manipulation cannot result in an EA that renders an accurate environmental assessment of King’s application/Alternative C, because BLM pre-decided to remove the majority of King’s mitigating environmental actions from his proposed action, as well as numerous projects designed to improve livestock distribution away from streams and balance the forage resource uses of pastures used in rotation systems. King contends that BLM acted in an

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illegal manner in altering King's grazing permit application without King's knowledge and agreement. Such illegal activity has acted to the prejudice of King in the EA, and to the prejudice of King in the Proposed Decision.

ALL SUBSEQUENT POINTS OF PROTEST ARE SUBJECT TO THE ABOVE-NOTED OVER-ARCHING ERRORS CONCERNING THE PROPOSED DECISION AND ITS ASSOCIATED EA.

BLM Response: BLM acknowledges this protest of its presentation and analysis of Mr. King's application, and has elected to go back and include the remaining components of Mr. King's June 20, 2008 application, including his clarifications to that application that were submitted as part of his response to BLM's October 10, 2008 Scoping Document in its analysis of Alternative C within EA #ID-120-2008-EA45.

However, BLM did not fail to analyze the impacts of Mr. King's short- and long-term proposals for mandatory terms and conditions, grazing practices, and interim evaluation of impacts and of progress. BLM must note that modified Alternative D, which was presented in the original EA and in the Proposed Decision, had many points in common with Mr. King's June application, including initial numbers of cattle, interim nonuse, and the grazing system for the lower spring pastures, and provision for mid-term adjustments. While Mr. King clarified in *Protest Exhibit 3* that he could not obligate the other permittees to interim nonuse (page 7), BLM provided for equal percentages of spring nonuse for all permittees. Modified Alternative D also retained common use by current permittees in the spring pastures, consistent with Mr. King's application, and retained the same grazing system in his summer pastures and all grazing practices in his winter pasture, consistent with his application. BLM also heeded Mr. King's advice against continuing the rest rotation grazing system in the late spring pastures, consistent with his application. BLM also formulated its own Monitoring Plan and modified its proposed use of Annual Indicator Criteria, Mid- and Long-Term Indicator Criteria, and Adaptive Management Responses based upon Mr. King's June 2008 application (*Protest Exhibit 2*) and his October 31, 2008 Scoping Comments (*Protest Exhibit 3*) that were ultimately presented in the EA and in the Proposed Decision. Since Mr. King expressed a willingness to relocate the waterhaul site in Pasture 5B in *Protest Exhibit 2* ["if data indicate need, and provided that another suitable haul site is located"], that is another common feature with the Proposed Decision.

Although Mr. King's grazing practices and project proposals address the wetlands and associated sage grouse habitat objectives from the Purpose and Need of the original EA well, they do not adequately address all components of the Purpose and Need, even with the addition of more mitigating exclosure and headcut stabilization projects. Specifically, they do not address conformance to the MFP browse utilization objective in Mr. King's summer pastures, and they do not fully address riparian progress on Poison Creek. BLM, however, does acknowledge that the troughs and Horsehead Spring Pipeline Extension would at least provide off-stream water sources. Also, in BLM's judgment, the relocation of the boundary fence between Pastures 8B and 10B that was part of Mr. King's application could undermine the effectiveness of the grazing practices that are common to both Alternative C and to

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modified Alternative D and would potentially aggravate differences in capacity among those pastures in poor growth years. Some of Mr. King's project proposals do, however, address some other livestock management issues that are not strictly related to compliance with CFR 4180.

Consequently, Alternatives D and E were developed and analyzed in the original EA, as directed by IM No. ID-2004-086, but with many common points to Mr. King's application. Based upon project design and clearance and upon the outcome of the analysis, modified Alternative D of EA #ID-120-2008-EA45 was selected by the Bruneau Field Manager as the Proposed Decision, with the rationale presented in the Proposed Decision itself and supported by the Finding of No Significant Impact for that EA.

4. *No protest.*

5. **King:** King protests the Number of Livestock, the Grazing Period, and the Animal Unit Months described in Table 1 (See page 9 of the Decision relative to permit #1101607; page 9 of the Decision relative to permit #1102293), for the following reasons:
- The Decision provides no rationale for denying King's application relative to the numbers, periods, and AUMs applied for by King. To the extent that the EA contains a discussion of such rationale based upon BLM's assessments, evaluations, and determination documents, see also Protest Exhibits 1, 2, and 3.
 - The Decision destabilizes King's livestock operation by requiring fluctuating numbers of livestock through the season, rather than a stable herd size through the season, as applied for by King.
 - The Decision and its underlying assessments provide no determination of livestock grazing capacity for the allotment.

BLM Response:

- BLM's Proposed Decision did conserve the numbers that you applied for in your interim Application, and also provided for short-term adjustments based upon AIC and for mid- and long-term adjustments based on monitoring, similar to your Application. BLM modified the mandatory removal provision of many of the AICs from the Scoping Document in consideration of internal review. As stated in the Final EA under Annual Indicator Criteria, "[a]djustments during the grazing year may include redistribution of livestock within a pasture if not all areas exceed the annual indicators or removal of livestock from a pasture." However, a shorter period of use (a week) in the late spring pastures, particularly 12, and a shorter period of use (10 days) with fewer permitted AUMs in Pastures 28 and 28A address the portions of the Purpose and Need more clearly than did either the interim or long-term portions of King's Application.
- BLM considered other alternatives, including the Settlement, which required greater fluctuations in numbers for your operation than this one. The large fluctuation in numbers in Alternative E was one of the less desirable aspects of it from the standpoint of a stable livestock operation. In modified Alternative D and in the Proposed Decision, BLM did reduce or eliminate the gap in authorized seasons of use between the spring and summer pastures that was present in the Settlement and in several other alternatives that were considered, but were not fully analyzed. We recognize that the length of time

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between the potential closure date for the summer pastures and the opening of the winter pasture is now 17 days longer than under your Application, and 24 days longer than under the Settlement. However, the Proposed Decision does provide some flexibility if the AIC for browse utilization is not exceeded at that time.

- c) In formulating the 1997 decision, the BLM presented a number of grazing capacity estimates for most pastures, and presented the pros and cons of each method of estimating the capacity in a public meeting, and selected capacities based on these and on public feedback in formulating that decision. BLM also considered some estimates of capacity which Mr. King presented at that time, and entertained many of the same critiques of BLM's estimates that were presented in *Protest Exhibit 2*. These estimates varied considerably for the same pastures, even if based on data for successive years and whether or not climatic adjustment factors were applied.

Furthermore, BLM is well aware that Smith et. al. (2005) counsels against basing stocking rates for ranges where annual grasses and shrubs are the predominant forages on utilization of remnant perennial grasses. We are primarily concerned that utilization of these same available plants during the growing season does not undermine the benefits of the grazing system so that the applicable MFP objectives can be met.

BLM reconsidered and discussed these same estimates in formulating EA #ID-120-2008-EA45, but concluded that the fact that perennial grass utilization did not generally exceed the MFP objectives under the Settlement established a basis for continuing the stocking rates in the Settlement as a starting point and for modifying other aspects of the grazing practices as necessary to address the Purpose and Need. Consequently, these stocking rates in the spring pastures were the starting points for development of Alternatives B, D, E, and also for your Application, and were inherent in judging responses to these and to Alternative A in the impact analyses in EA #ID-120-2008-EA45.

The stocking rate in the Proposed Decision for Pastures 28 and 28A were based on application of the formula found on page 60 of BLM's TR 4400-7 to average browse utilization in each of these respective pastures.

6. **King:** King protests the indefinite nature and conditions of the "temporarily discontinued" AUMs (See pages 9 and 10 of the Decision relative to permit #1101607) in addition to the reasons stated in Protest Point 5.
See response under #9.
7. **King:** King does not protest Term and Condition 1 (See page 10 of the Decision relative to permit #1101607; page 9 of the Decision relative to permit #1102293), subject to the resolution of King's Protest.
See response under #9.
8. **King:** King protests Term and Condition 2 of the Decision relative to permit #1101607 (page 10), for the reasons stated in Protest Points 5 and 6, and for the reasons discussed in Protest Exhibits 1, 2, and 3.
See response under #9.

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9. **King:** King protests Term and Condition 3 of the Decision relative to permit #1101607 (page 10), for the reasons stated in Protest Points 5 and 6, and for the reasons discussed in Protest Exhibits 1, 2, and 3.

BLM Response to points #6 through #9: This provision of the current grazing regulations (1995) provides an alternative to permanent reduction, since those regulations do not provide for suspension of permitted use. The stated purpose for the regulatory provision cited is consistent with the adaptive management approach that BLM has adopted in modified Alternative D and in the Proposed Decision. However, we understand that you don't wish to be hampered by monitoring that is inadequate or entirely lacking to substantiate the continuing need for nonuse to address the Purpose and Need of the EA after the 2011 grazing year. Monitoring in this allotment has been and will continue to be of the highest priority because of the nature and history of the situation, but BLM cannot guarantee what its future budgets and personnel capabilities will be. In our protest meeting, Mr. King offered to assist us with required monitoring.

For reasons stated in Protest Point 5, please see that response. Also, these particular T&Cs were not in BLM's October 10, 2008 Scoping Document, consequently, Mr. King did not offer any specific responses to these T&Cs in *Protest Exhibit 3*.

10. *No protest.*

11. *No protest.*

12. **King:** King protests Term and Condition 6 at page 10 of the Decision relative to permit #1101607, and Term and Condition 4 at page 10 of the Decision relative to permit #1102293, relating to livestock closures. King's application applied for grazing of larger exclosures in a targeted and specific manner so as to facilitate improvement and maintenance of meadows for sage grouse breeding and late brood-rearing purposes. The Decision provides no rational basis for the de facto denial of this specific portion of King's application.

BLM response: King did not elucidate what the targeted and specific manner of grazing the exclosures would be or support its claim that grazing in any particular way would improve meadows for sage grouse. The primary need in the exclosures is to stop the excessive use that has occurred and prevent further erosion and loss of soil and wetted area. Because the past grazing use has not shown stewardship of wetland resources by the permittees, BLM reserves the control of any potential grazing in the exclosures to itself. There is some evidence that some light level of grazing may be preferred by sage grouse (Klebenow 1981), but because there is no conclusive evidence that BLM is aware of that would allow us to specify a grazing plan for each exclosure that we would be confident would be the best for sage grouse and other species, we have elected instead to leave the possibility open for grazing - "or as otherwise approved by the Authorized Officer" - when and how BLM determines there might be a benefit.

In our protest meeting on January 23, 2009, Mr. King offered the suggestion that exclosures intended to benefit sage grouse habitat should be periodically grazed to 4" stubble (no more)

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or burned to maintain the forb component and to remove dormant material. This T&C provides for some flexibility to address this Protest Point and also this provision of your permit renewal application. Livestock exclosures are closed to livestock use "or as otherwise approved by the Authorized Officer."

13. *No protest.*

14. *No protest.*

15. **King:** King protests Term and Condition 9 at page 11 of the Decision relative to permit #1101607, and Term and Condition 7 at page 10 of the Decision relative to permit #1102293, relating to actual use reports. The Decision requires King to provide actual use on a BLM report form whose distribution King does not control. Such form is within the records and files of the BLM, but not in the possession of King. Further, so long as actual use is reported, the form and format of such reporting should not be relevant.

BLM Response: We acknowledge that you do not have control of the distribution of this form. In our protest meeting, we committed to continuing to provide copies of this form for your use, as we have in the past. We also did emphasize that we must have actual use by pasture, not by season on these reports, in order to accurately assess impacts and progress toward Standards. This has been lacking in past reports submitted by Mr. King, but becomes even more important under the type of monitoring and adjustment program to be implemented under the Proposed Decision or under the specifications of your Application.

16. *No protest*

17. **King:** King protests Term and Condition 11 at page 11 of the Decision relative to permit #1101607, and Term and Condition 9 at page 10 of the Decision relative to permit #1102293, relating to FFR pastures. King contends that such lands are properly assessed by the specific provisions of the pertinent Land Use Plan, not the more nebulous and non-specific ISRH.

BLM Response: The MFP objectives address upland, stream and wetland habitats and their influences upon wildlife populations, as do the ISRH. While BLM's assessment of resource conditions and trends must evaluate specific MFP requirements, it must also examine other resources that do not have specific MFP requirements in order to conform to policy, manualized procedure, regulation, and to the Idaho Standards for Rangeland Health.

18. **King:** King protests Term and Condition 12 at page 11 of the Decision relative to permit #1101607, and Term and Condition 10 at page 10 of the Decision relative to permit #1102293, relating to ear tags. No rational basis is provided for this arbitrary and capricious term and condition.

BLM Response: All permits received that same requirement in their Proposed Decision. BLM is concerned with livestock numbers in pastures that are open for use. BLM has had difficulty in establishing the precise level of livestock impact in relation to permitted use, also in part due to deficiencies in available actual use reports. That information will be as

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important in any sort of adaptive management feedback loop as it has been in the past. BLM has also had complaints about impacts of trailing cattle without being able to easily define whose they were. Consequently, BLM has imposed this requirement impartially on the East Castle Creek permittees.

19. **King:** King protests Term and Condition 13 at page 11 of the Decision relative to permit #1101607, and Term and Condition 11 at page 10 of the Decision relative to permit #1102293, relating to the requirement to “coordinate” movement between pastures prior to initiation, and providing that a trailing permit may be required prior to crossing public land. Movement between pastures is set forth in the grazing schedule, which provides for five-day flexibility. Further, King should not be required to apply for a crossing permit within his own allotment.

BLM Response: While we realize that the Proposed Decision provides 5 days flexibility in livestock movements between scheduled pastures, it does not address in particular fall trailing from FFR or private pastures (which are not necessarily part of the schedule described in Table 4 of the Proposed Decision) to the winter pasture 5B. BLM needs to know when this will occur, not least because we receive internal and external inquiries about it. Even though your statement about trailing permits not being required for movements within East Castle Creek Allotment is true, BLM will continue to require trailing permits form movements across other allotments, as you typically apply for at spring turnout.

20. *No protest.*

21. **King:** King does not protest Flexibility provision 1 at page 11 of the Decision relative to permit #1101607, and Flexibility provision 1 at page 10 of the Decision relative to permit #1102293, except as consistent with King's protest of Table 4.

BLM Response: See response at #33, below.

22. King does not protest Flexibility provision 2 at page 11 of the Decision relative to permit #1101607, and Flexibility provision 2 at page 11 of the Decision relative to permit #1102293, except that King protests the de facto denial of King's application for 7 days flexibility in pasture move dates. The Decision provides no rational basis for the de facto denial of this specific portion of King's application.

BLM Response: The wording of this T&C will be modified in the Final Decisions to provide some additional flexibility as follows: “Five days flexibility in dates will be allowed in moving between pastures unless authorized otherwise.”

23. **King:** King protests Flexibility provision 3 at page 11 of the Decision relative to permit #1101607, and Flexibility provision 3 at page 11 of the Decision relative to permit #1102293, relating to the restriction of use of Pastures 28 and 28A to 26 days, and other provisions. See protest points #5 and #6. See also Protest Exhibits 1, 2, and 3.

BLM Response: BLM notes that this provision is included in the Proposed Decision for permit #1102293 for sake of completeness, but does not govern Mr. King's use under that permit. The same is true for its inclusion in the Proposed Decisions issued to the other East Castle Creek permittees.

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We recognize that the length of time between the potential closure date for the summer pastures and the opening of the winter pasture is now 17 days longer than under your Application, and 24 days longer than under the Settlement. Again, the Proposed Decision does provide some flexibility if the AIC for browse utilization is not exceeded at that time.

While Flexibility Provision 3 does mention other AIC than the one governing bitterbrush and mountain mahogany, exercise of this flexibility should not hinder other objectives consistent with the Purpose and Need of EA #ID-120-2008-EA45.

See #5, above, for a discussion of the application of AIC monitoring results.

24. **King:** King protests Annual Indicator Criterion 1 at page 12 of the Decision relative to permit #1101607, and Annual Indicator Criterion 1 at page 11 of the Decision relative to permit #1102293, for the following reasons:

- a) The AIC fails to properly identify the forage species available within the "spring" pastures.
- b) The AIC is also not in conformance to or consistent with the Land Use Plan consumptive forage allocation provision.
- c) The AIC would, according to the Monitoring Plan at pages 187-189, be measured at a time before complete plant growth has occurred, and therefore would not measure true utilization of the grass species.
- d) The AIC is unnecessary to provide for the minimum physiological needs of the key species. This AIC fails to recognize that grasses grazed in April will completely regrow if grazing is terminated by the end of April/first part of May, but instead imposes an unreasonable restriction of 40% of the then-occurring growth.
- e) The AIC fails to apply a statistical standard to the numerical value.
- f) King protests, in part, the Monitoring Plan as it relates to this AIC.

BLM Response:

- a) Key species will be identified within the Annual Indicator Criteria section of the Final Decision(s).
- b) This provision as applied to perennial grasses is part of the MFP watershed objective, and is not specific to any particular class of vegetation. That objective provides an upper vegetation allocation limit, but does not prohibit lower limits in form of utilization AICs such as this one. BLM does acknowledge that this AIC could influence long-term stocking rates under the provisions of the Adaptive Management Responses described on pages of the original EA and in the Proposed Decision. However, the Proposed Decision does also provide for upland study exclosures (which Mr. King supports) and associated monitoring to evaluate the validity of the EA and MFP objective(s) that this AIC is intended to promote.
- c) BLM has continued to collect seasonal utilization data on spring pastures because it is necessary to differentiate non-use from use with regrowth in order to determine whether "current livestock grazing practices are significant factors" in observed trends. Intensity must also be accurately known in order to apply BLM's Grazing Response Index evaluation tool. BLM's seasonal observations of "no use" show no evidence of clipping on any current growth.

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- d) BLM does recognize that the grazing system that the Proposed Decision (as well as Mr. King's application) specifies does provide for the minimum physiological needs, particularly if utilization of available plants is also favorable. That was one of the considerations in adopting and in continuing this grazing system. The FMD notes on page 10 that this grazing system provides that "the perennial grasses are not grazed during the critical growth period in successive years." This schedule may avoid the critical growth period by ending before it is reached, or by beginning after it is over (original EA, page 63). Some species in the 8B pastures may reach dormancy before scheduled use occurs in some years, notably Sandberg bluegrass. However, in some years growth conditions are unfavorable for regrowth, particularly on the lakebeds.
- e) BLM is well aware of the counsel of Smith et. al. (2005), who provided an excellent review of utilization studies as applied by federal agencies to resource management. Specifically, they state that ". . . differences in utilization levels of 5-10% or less should probably be interpreted as non-significant unless statistical separation is demonstrated (page 4)." As discussed in our protest meeting, if sample size is not sufficient to demonstrate this separation, BLM would likely not conclude that the AIC has been exceeded. BLM further acknowledged in that meeting that in many lakebeds communities, an adequate sample of plants is difficult to attain without wandering into a different ecological site or utilization stratum, which violates manualized sampling protocols.
- f) This statement is non-specific. However, monitoring protocol relative to the referenced AIC is discussed above under responses 24 a) through 24 e).

25. **King:** King protests Annual Indicator Criterion 2 at page 12 of the Decision relative to permit #1101607, and Annual Indicator Criterion 2 at page 11 of the Decision relative to permit #1102293, for the following reasons:

- a) The AIC fails to identify the "key upland grass species".
- b) The AIC imposes a utilization restriction that is unnecessary to maintain the minimum physiological needs of the perennial grass species and *at least* the shrub winterfat. These species are capable of sustaining higher grazing utilization in the winter without harm.
- c) The AIC fails to apply a statistical standard to the numerical value.
- d) King protests, in part, the Monitoring Plan as it relates to this AIC.

BLM Response:

- a) See response 24(a), above.
- b) This provision of the MFP is not specific to any particular class of vegetation, but does provide an upper vegetation allocation limit and governs utilization, even under dormant season use.
- c) See response 24(e), above.
- d) This statement is non-specific.

26. **King:** King protests Annual Indicator Criterion 3 at page 12 of the Decision relative to permit #1101607, and Annual Indicator Criterion 3 at page 11 of the Decision relative to permit #1102293. See Protest Exhibits 1, 2, and 3. In addition, the AIC lacks specificity as to what constitutes "ground disturbance", and what constitutes "decreases" in such purported "ground disturbance".

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BLM Response: The referenced Exhibits 1, 2, and 3 do not specifically address the issue of whether soil trampling by livestock in Mulford's milkvetch populations should be included as an Annual Indicator Criterion. These exhibits point to perceived inaccuracies in BLM data and subsequent analysis of impacts to Mulford's milkvetch. The response below addresses the concerns with intensive ground disturbance in Mulford's milkvetch habitat as a whole (not limited to data gleaned from one transect) to help clarify the selection of this criterion.

Ground disturbance or habitat disturbance is defined as the results of livestock trampling on soils as described in the Monitoring plan in Appendix B of the EA (Pages 187-189 of Final EA# ID-120-2008-EA45). Deep hoof-prints created from livestock concentration on sandy soils are the type of ground disturbance that is of concern to the BLM for this Annual Indicator criterion. The water haul site in 5B has resulted in a level of soil disturbance that is not conducive to the continued viability of Element Occurrence #11. Livestock trampling can have adverse effects on Mulford's milkvetch through reduction of habitat quality. Habitat degradation in the form of weed invasion associated with livestock grazing is one of the major conservation threats in Idaho (Moseley 1989, U.S. Fish and Wildlife Service 1995, Mancuso 1999). Increased soil disturbance and weakening of perennial native plants often results in an increase in weedy annual species that are aggressive competitors with Mulford's milkvetch for water and nutrients. Extirpation of a subpopulation of EO#11 in 2003 was attributed to excessive trampling impacts. During field trips to other subpopulations of EO #11 in Spring 2008, extensive soil disturbance and heavy utilization of perennial grasses and shrubs were observed over a large portion of Mulford's milkvetch habitat. Field form III (Mancuso 2006) also reports the presence, and in some cases, increases in weedy species such as *Salsola iberica*, *Sisymbrium altissimum*, *Bromus tectorum*, *Erodium cicutarium*, and *Halogeton glomeratus* at the monitoring location. Locating water troughs away from known Mulford's milkvetch populations is likely to improve habitat quality and slow the spread of cheatgrass into the population by reducing trampling of Mulford's Milkvetch habitat. If trampling impacts do not decrease (reduction in number of hoofprints per measured area) in and around the population, it is reasonable to expect that the habitat quality will continue to decrease and the Mulford's milkvetch population will not be able to persist. BLM monitoring of trampling impacts in and around the population tied with Idaho Conservation Data Center monitoring of transect specific parameters will provide a quantitative way to assess improvements to the habitat and population. The BLM will offer to include the permittee and other interested publics in the monitoring. The results and analysis of the monitoring data will be made available to the permittee and interested parties. An acceptable level or rate of decrease in trampling impacts will not be arbitrarily set at this time. Instead an evaluation of the data, discussions with the permittee and the Idaho Conservation Data Center, and professional judgment will guide decisions about whether habitat condition is improving and what, if any, changes would need to be made in trough location in the future.

Mancuso, M. 1999. A Review of *Astragalus mulfordiae* (Mulford's milkvetch) in Idaho, and Results of Field Investigations in the Owyhee Front and Boise Foothills. Idaho Department of Fish and Game, Idaho Conservation Data Center, Boise, ID. 26pp. plus appendices.

Mancuso, M. 2006. Monitoring Mulford's Milkvetch (*Astragalus mulfordiae*) in Southwestern Idaho: 2005 Results. Idaho Department of Fish and Game, Idaho Conservation Data Center, Boise, ID. 25 pp. plus appendices.

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Moseley, R.K. 1989. Report on the Conservation Status of *Astragalus mulfordiae* in Idaho. Idaho Department of Fish and Game, Idaho Conservation Data Center, Boise, ID. 31 pp. plus appendices.

U.S. Fish and Wildlife Service. 1995. Habitat Conservation Assessment for Mulford's Milkvetch (*Astragalus mulfordiae*). Report prepared as part of the Idaho Conservation Effort for the U.S. Fish and Wildlife Service, Boise, ID. 13pp, plus appendices.

27. **King:** King protests Annual Indicator Criterion 4 at page 12 of the Decision relative to permit #1101607, and Annual Indicator Criterion 4 at page 11 of the Decision relative to permit #1102293, because:
- The AIC fails to apply a statistical standard to the numerical value.
 - King protests, in part, the Monitoring Plan as it relates to this AIC.

BLM Response:

- See response 24(e), above.
- This statement is non-specific.

28. **King:** King protests Annual Indicator Criterion 5 at page 12 of the Decision relative to permit #1101607, and Annual Indicator Criterion 5 at page 11 of the Decision relative to permit #1102293, because:
- The AIC fails to apply a statistical standard to the numerical value.
 - King protests, in part, the Monitoring Plan as it relates to this AIC.

BLM Response:

- See response 24(e), above.
- This statement is non-specific.

29. **King:** King protests Annual Indicator Criterion 6 at page 12 of the Decision relative to permit #1101607, and Annual Indicator Criterion 6 at page 11 of the Decision relative to permit #1102293. The restriction to 25% utilization of the production does not conform to and is not consistent with the Land Use Plan. Further, the restriction is excessive, and is not necessary to meet the minimum physiological needs of the woody species.

BLM Response: This annual indicator for Poison, Birch, Sheep, and W.F. Shoofly creeks is not inconsistent with the 1983 Land Use Plan. These streams were identified for improvement in wildlife habitat, wildlife-aquatic habitat, riparian habitat condition, and fisheries habitat in the 1983 Land Use Plan. The goal of the LUP was to restore these creeks to proper functioning condition (PFC) within a time frame that has already passed. To improve these creeks, the BLM has elected to allow light grazing rather than total rest because light spring grazing has resulted in improvement on other creeks. The goal is to increase woody plants on the streams, not to just meet the minimum physiological needs of the plants that are there. Substantial grazing of riparian shrubs usually does not occur if a sufficient herbaceous forage supply exists (usually noted as 4" herbaceous stubble height) (Clary and Webster 1989). When herbaceous forage supply is in short supply, increases in willow consumption by cattle are expected (Hall and Bryant 1995, Skinner 1998). If livestock are eating the woody plants, the first ones to be eaten are the new sprouts,

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which are the ones that we are trying to give a chance to grow and increase. Thus 25% utilization limit is appropriate. If we were trying to maintain conditions on good condition streams that were in proper functioning condition with good fisheries or wildlife habitat a heavier utilization may be okay, but as we are trying to improve conditions, and increase woody species, on streams presently in poorer conditions, a lighter utilization is more appropriate to reach our resource objectives.

30. **King:** King protests Annual Indicator Criterion 7 at page 12 of the Decision relative to permit #1101607, and Annual Indicator Criterion 7 at page 11 of the Decision relative to permit #1102293. The restriction is excessive, and is not necessary to meet the minimum physiological needs of the herbaceous species at the stated locations.

BLM Response: The minimum 4" stubble height and the limit of 10% streambank alteration were included in the MFP as habitat condition standards. They are included as indicators in order to promote recovery of the streams, to prevent excessive erosion, to protect stream banks, trap sediment, improve functioning condition, and to promote water quality, not to meet the minimum physiological needs of herbaceous species. In general, as stubble height approaches 3 inches for the most palatable species grazing preference will change to sedges, rushes or willows. Based on studies by Bryant (1985, 1988) utilization could be 70% if about 3 inches of forage stubble height remained. (in Clary and Webster TR-263, 1989). Similar opinions on stubble stubble height were given by Krueger (1989). Kauffman and others (1983) report observations by F.C. Hall that a shift to shrub use does not generally occur (except in the case of highly palatable shrubs) if 4 inches of herbaceous stubble remains. Elmore (1988) suggested that 3 to 4 inches of stubble height would maintain plant vigor, provide streambank protection, and aid deposition of sediments to rebuild degraded streambanks. Elmore also suggested that in some cases the use on willows begins when use on herbaceous plants reaches about 45%.

The indicator for streambank alteration is not that different from what the King's proposed in Alt. C on page 35 of the EA. We could use the Alt. C which just includes more detail in regards to Multiple Indicators Monitoring. The monitoring plan in the EA states that we will be consistent with the Monitoring Stream Channels and Riparian Vegetation- Multiple Indicators (Idaho BLM Technical Bulletin [TB] 07-01).

AIC monitoring is consistent with IM ID-2005-074 and Monitoring Strategies for Rangelands. "Annual grazing use indicators, both within and end-of-season, along with other required management practices will result in a reasonable expectation that long-term desired condition objectives will be achieved." Implementation monitoring, such as stubble height, woody browse and bank alteration, help determine whether the agency's decisions are being implemented in a timely manner, and as described in the agency's decision.

BLM is not only trying to meet the minimum physiological needs of the herbaceous species but to improve the vegetation on the creeks. Experience on many creeks has shown that leaving 4 inches of stubble and keeping streambank alteration under 10% generally will insure an improving condition. BLM could have reasonably elected to rest these streams entirely, to meet LUP objectives.

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31. **King:** King does not protest Annual Indicator Criterion 8 at page 12 of the Decision relative to permit #1101607, and Annual Indicator Criterion 8 at page 12 of the Decision relative to permit #1102293 (except, King protests, in part, the Monitoring Plan as it relates to this AIC).

BLM response: The AIC states that bacteria in Battle and Poison creeks will not exceed the State of Idaho Water Quality Standards. The monitoring plan states that BLM will monitor water quality parameters on streams within the allotment. The BLM has the authority and responsibility to monitor resources and comply with environmental quality standards.

32. **King:** King protests the *Mid-and Long-term Indicator Criteria* at page 12-13 of the Decision relative to permit #1101607, and at page 12 of the Decision relative to permit #1102293, for the reasons stated in Protest Exhibits 1, 2 and 3.

BLM Response: Mid and Long-Term Indicator Criteria presented in both decisions identify a timeline for review of monitoring data. Such review is necessary to ensure that significant progress is being made towards meeting applicable Standards and Guidelines, and the Fundamentals of Rangeland Health as required by 43 CFR 4180.1(a). This section of the decision(s) also outlines possible management responses, depending upon the outcome of monitoring data review and analysis. Exhibits 1, 2 and 3 do not specifically refer to the Mid and Long-Term Indicator Criteria, so it is not possible to determine specifically what is being protested.

33. **King:** King protests the *Livestock Grazing Management for East Castle Creek Allotment for all Permittees (Table 4)*, as it relates to King, described at page 14 of the Decision relative to permit #1101607, and at page 14 of the Decision relative to permit #1102293, for the reasons stated elsewhere herein, as well as in Protest Exhibits 1, 2 and 3.

Specifically, King protests:

- a) the number of livestock, period of use (but not the dormant-season system over time), and AUMs relative to Pasture 5B;
- b) the number of livestock and AUMs (but not the period of use or deferred rotation system over time) relative to Pastures 8B, 8BI, 8BIII, and 10B.
- c) the number of livestock, period of use (but not the split-herd system over time), and AUMs, relative to Pastures 11B and 12;
- d) the number of livestock, period of use, (but not the deferred rotation system over time), and AUMs, relative to Pastures 28 and 28A.

Additionally, King specifically protests the de-facto denial of his term grazing permit application, including its related range improvement projects.

BLM Response: Although Mr. King's grazing practices and project proposals address the wetlands and associated sage grouse habitat objectives from the Purpose and Need of the original EA well, they do not adequately address all components of the Purpose and Need, even with the addition of more mitigating enclosure and headcut stabilization projects.

See #5, above, for a discussion of the application of AIC monitoring results.

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34. **King:** King does not protest *Monitoring Enclosures* in Pastures 5B, 8B, and 10B, described at page 15 of the decision relevant to permit #1101607 and at page 14 of the decision relevant to permit #1102293; but King protests the size of the proposed enclosures, as they are excessive for the needs expressed. King also protests the de facto denial of construction of upland monitoring enclosures in Pastures 11B, 12, 28, and 28A, included in King's term permit application. No rational basis is provided by the Decision for the de facto denial of this particular portion of King's application.

BLM response: King does not explain why the sizes of the enclosures are excessive. None of the enclosures are big enough to even provide enough forage for one AUM. Enclosures can be built with a Categorical Exclusion and so are not precluded by not including them in this EA. With the monitoring enclosures, BLM is trying to target the areas with the most contention about the potential of the vegetation.

Monitoring enclosures must be sufficiently large to avoid edge effects, or the response of vegetation from growing along the edge of a fence. Animals will trail along the edge of a fence and weeds will collect along fencelines. These factors can influence the response of the vegetation in ways not tied to release from grazing, confusing the results. Enclosures must also be sufficiently large to contain replicated monitoring plots to ensure the robustness of the data collected. No standard or recommended size for a given vegetation type exists but one acre enclosures that were built in the past are typically viewed as too small to serve as a control (Hughes 1996, Stohghren 2007). Larger enclosures are also less of a risk for wildlife that could become entangled or strike the perimeter if startled when inside the enclosure.

Hughes, L. 1996. What's in an Enclosure? *Rangelands*, 18(5), October 1996.

Stohghren, T.J. 2007. *Measuring Plant Diversity: Lessons from the Field*. Oxford University Press. 390 pp.

35 through 39: *No protest*.

40. **King:** King does not protest the *Buck Spring Enclosure*, described at page 15 of the decision relevant to permit #1101607 and at page 15 of the decision relevant to permit #1102293. King's term permit application includes this project. However, King protests the size of the enclosure, as it is excessive. BLM's monitoring indicates that the spring is less than 0.25 acre, yet the Decision proposes to exclude 47 acres.

BLM response: As described in the EA, the stream and large spring complex are highly degraded with multiple headcuts in the stream. In addition to the spring area, the meadow above the spring and the stream channel down to the next pasture fence are of concern to the BLM. The creek had a number of large headcuts, and the meadow was drying from overuse and trampling. The enclosure perimeter was laid out in the field, and was chosen due to fencing constraints, including land form and soil type, which prevented a smaller enclosure design. Aside from the wet areas to be protected, the enclosure encompasses mostly juniper and low sage communities on rocky points and cliff bands, which are not high value grazing lands.

41. *No protest*.

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42. *No protest.*

43. **King:** King does not protest the *Gopher Spring Enclosure*, described at page 15 of the decision relevant to permit #1101607 and at page 15 of the decision relevant to permit #1102293. King's term permit application includes this project. However, King protests the size of the area proposed for fencing, as it is excessive.

BLM Response: King fails to justify why the size of any enclosure is 'excessive'. The BLM laid out enclosures on the ground with a team. For wet meadow enclosures, BLM included surrounding sagebrush in order to provide cover for sage grouse, include pygmy rabbit habitat which was often immediately surrounding wet meadows, avoid going through big sagebrush pygmy rabbit habitat as much as possible, and keep the fence back away from meadows to reduce possibility of fence strikes by birds flushed from the meadows.

In the case of the Buck Springs enclosure, field observations revealed that the riparian area was larger than previously thought. In order to protect damaged riparian areas, including a head cut adjacent to the existing water trough, the enclosure was expanded to include additional area. The final size of the enclosure was necessary due to the complex, steep and rugged terrain surrounding the riparian area, which limits options for fencing.

44. **King:** King protests the *Rock Spring Enclosure Expansion*, described at page 16 of the decision relevant to permit #1101607 and at page 15 of the decision relevant to permit #1102293, for the reasons stated in Protest Exhibit 3. See also Protest Exhibits 1 and 2.

BLM Response: The proposed enclosure is not a water gap but a wet meadow. The water gap is below, on the stream, and is not proposed for enclosure.

45. **King:** King protests the *Station Spring Enclosure Expansion*, described at page 16 of the decision relevant to permit #1101607 and at page 15 of the decision relevant to permit #1102293, for the reasons stated in Protest Exhibit 3. See also Protest Exhibits 1 and 2.

BLM Response: The protest point is not concise enough to determine how to respond. What specifically about the project proposal is being protested? The project was not yet conceived when Exhibits 1 and 2 were drafted. The project appears on a list, by name only, without a description on pages 16 and 15 in the respective decisions.

46. *No protest.*

47. *No protest.*

48. **King:** King protests the *West Fork Shoofly Creek Fence Realignment*, described at page 16 of the decision relevant to permit #1101607 and at page 15 of the decision relevant to permit #1102293, for the reasons stated in Protest Exhibit 3. See also Protest Exhibits 1 and 2. King notes that the EA at page 47 purports this project to be in Pasture 14; however, elsewhere in the EA and the preceding assessments, evaluations, and determinations place it in Pasture 8B. If the EA and preceding assessments, evaluations, and determinations are wrong, and it is in Pasture 14, then the

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preceding documents wrongly found that certain Standards of Rangeland Health are not met in Pasture 8B.

BLM Response: The fence realignment would improve a portion of the West Fork of Shoofly Creek and affect grazing and therefore is eminently relevant to these permit renewals and decisions.

49. **King:** King protests the de-facto denial of each of the projects applied-for in Kings term permit application, which is dated January 14, 2008, but was revised and clarified on June 20, 2008 after BLM input, and was further clarified on October 31, 2008, to facilitate BLM's understanding of projects. These projects include, among others, riparian monitoring exclosures which would serve the same purpose as upland monitoring exclosures, relative to providing ungrazed reference locations to assess changes caused by weather and other factors. They also include projects to facilitate livestock use off-stream and to comply with the land use plan as it relates to meadow management. No rational basis is provided by the Decision for the de-facto denial of these particular portions of King's term permit application.

BLM response: Please see the revised EA for analysis of projects.

50. **King:** King does not protest management design 1, relative to *fences*, described at page 16 of the decision relevant to permit #1101607 and at page 15 of the decision relevant to permit #1102293, but protests the portion of the provision that fences will be built to standards recommended by Idaho Fish and Game. BLM thereby wrongly abrogates its responsibilities to IDFG. Further, the provision allows deviations from BLM standards which are not made known to King and the interested public, at the whim of the authorized officer. Such unknown designs by IDFG may result in impacts to livestock management (e.g., such fences could allow for passage of cows, thereby putting King's permit in jeopardy at the whim of the authorized officer, due to the design of the fences).

BLM Response: BLM will add "in consultation with the permittees".

51. *No protest.*

52. *No protest.*

53. **King:** King protests management design 4, relative to *pond repair*, described at page 17 of the decision relevant to permit #1101607 and at page 16 of the decision relevant to permit #1102293, as it pertains to fill material being taken from the existing area of disturbance. This provision does not, but should, allow for flexibility in bringing in fill material, or using fill material outside the existing area of disturbance if so authorized by the authorized officer.

BLM response: At the time these projects were visited in the field, it was determined that there was adequate material present at both pond sites to use during the repair projects. Using the already disturbed material decreases the risk of weeds from outside the area from being introduced to the sites.

54. *No protest.*

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55. *No protest.*

56. **King:** King does not protest management design 7, relative to *weeds*, described at page 17 of the decision relevant to permit #1101607 and at page 16 of the decision relevant to permit #1102293, except King protests the lack of specificity that BLM or its contractors will monitor for weeds, as opposed to some other party.

BLM Response: BLM reserves the right to determine how and by who weed monitoring may be conducted. Such specificity in designating monitoring responsibility could preclude future collaborative efforts with volunteers and/or partner agencies, and would therefore be counterproductive and potentially result in unnecessary agency expenditures.

57. **King:** King does not protest management design 8, relative to *seeding/transplanting*, described at page 17 of the decision relevant to permit #1101607 and at page 16 of the decision relevant to permit #1102293, except King protests the limitation of restoration as described.

BLM Response: The restoration methods described in management design item 8 are appropriate, as they are within the scope of analysis of EA#ID-120-2008-EA45. More extensive restoration efforts involving ground disturbing activities are beyond the scope of EA#ID-120-2008-EA45. Such activities would require additional project design and would be analyzed in an additional, separate NEPA document.

58. **King:** King protests the inadequate consideration of economic hardship to the livestock operation that will be the result of imposition of the Proposed Decision. King contends that the authorization of King's application, without the illegal modifications made by BLM, would achieve or make progress toward achievement of SRH as specified in the land use plan. King contends that such authorization would make progress at least to the extent that the Proposed Decision does so, in a less onerous manner to King's livestock business.

BLM Response: Title 40 C.F.R. 1508.14 requires that economic and social effects should be discussed when they are interrelated with natural or physical effects. An economic analysis looks at impacts, both positive and negative as they relate to the region, community, or a group resulting from natural or physical effects. An economic analysis does not look at impacts to an individual. It would not be possible, in most cases, to isolate the impacts of an action to the individual from other economic impacts outside the proposed action, such as individual spending habits and priorities.

In the case of the analysis for the King Proposal vs. the Proposed Action the projects proposed in the King permit, as amended, will be analyzed. This analysis does not change the total permit allocation and therefore will not have an impact in terms of the overall value of the permit. Furthermore the total AUMs identified in the Proposed Alternative is the same as the average actual use from 1998 to 2006. This would not result in any economic impact to the permittee under the Proposed Alternative.

The purpose of the economic analysis is not to identify the most economically profitable alternative but rather to identify any significant economic impacts to the region under each alternative. The Proposed Alternative indicates very little change in either number or grazing

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management practices over the King proposal and therefore there would not be a significant economic impact. Economics did not prove to be a major issue in the selection of a proposed alternative because of the lack of a significant difference in economic impacts. The deciding factors centered around which alternatives made progress toward meeting S&Gs and the timeframe needed to make this progress.

59. **King:** King protests the Rationale for the Proposed Decision, for the reasons stated herein, and in Protest Exhibits 1, 2, and 3.

BLM Response: While this statement is also non-specific, BLM presumes that you refer to statements made in the Proposed Decision Rationale itself. The Rationale accurately states what the Proposed Decision modifies in the existing grazing permits in the first paragraph. BLM has provided substantial responses to your many-faceted critique of the FRHA, the FMD, and the Purpose and Need of the EA and demonstrated how they track among documents. We have also pointed out the many common features of Mr. King's grazing permit renewal Application and the modified Alternative D that was analyzed in EA #ID-120-2008-EA45 and accompanying FONSI and subsequently adopted as the Proposed Decision by the Bruneau Field Manager. Those responses will not be repeated at length here. Finally, we have stated and state again that we believe that the prescribed grazing practices and level of project work will be sufficient to meet or make significant progress toward the ISRH and toward existing Bruneau MFP objectives.

60. **King:** King protests the proposed adoption of the *Key Species Method* relative to utilization monitoring of herbaceous species (EA, Appendix B., Monitoring Plan, Implementation Monitoring, page 187). As noted in IRC's September 1, 2006 letter; as noted in Protest Exhibits 1, 2, and 3; and as noted herein, BLM's application of this method has not resulted in accurate monitoring data collection, and BLM has consistently over-estimated the actual utilization, and has consistently NOT followed the methodology, particularly as it pertains to training and calibration. See TR 1734-3, pages 81-82. Demonstrably more accurate data (i.e., via the Height:Weight Method) demonstrates the gross errors that have resulted from these training and calibration failures. King's term permit application identifies and proposes a method (Height:Weight) that provides accurate data relative to herbaceous species.

BLM Response: The Key Species Method (formerly the Modified Key Forage Plant Method), is identified as the preferred utilization measurement method in the Bruneau-Kuna Grazing Environmental Impact Statement (1982), and is in conformance with the Bruneau MFP. Use of the Key Species Method is also in accordance the Idaho Monitoring Strategy for Rangelands (2007), which recommends a *qualitative* utilization monitoring procedure (page 28). Additionally, the Key Species Method is described in Interagency Technical Reference 1734-3 (1996) as an accepted methodology. BLM will continue to measure utilization using this method, according to current guidance.

61. **King:** King protests the proposed adoption of the *Cole Browse Method*, relative to utilization monitoring of browse species (EA, Appendix B., Monitoring Plan, Implementation Monitoring, page 187), because the method is incapable of determining consumptive use, which is the directive of the Land Use Plan. The method calls for making an estimate of leader use, but such

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estimate “is based on the number of leaders that have been browsed and not on the percent of growth removed.” TR 1734-3, page 36. This method, like the Extensive Browse Method, is incapable of determining 50% consumptive utilization, which is the directive of the Land Use Plan and the Decision itself. King’s term permit application identifies a monitoring method that provides accurate data relative to shrub species. No rational basis is provided by the Decision for the de facto denial of this particular portion of King’s term permit application.

BLM Response: The monitoring plan should have identified the Extensive Browse Method instead of the Cole Browse Method, although they are very similar. The protest point would be the same, however, because the Extensive Browse method does not use measurements of twig length to determine utilization, as the permittee desires. The reason the BLM chooses the Extensive Browse method is that it is more practical with limited personnel than the method advocated by the permittee. The description in the Utilization Studies and Residual Measurements technical reference (TR1734-3) says: “**Advantages and Limitations.** The Extensive Browse Method is rapid and can be used on all browse species. It is well adapted to situations where browse data must be obtained from large areas with limited personnel. All browse species within the plant community can be sampled on one transect. The method is more rapid than methods which require measurements. However, it is somewhat less accurate than measurement methods in determining utilization because estimates rather than measurements are used. This method is designed to eliminate personal bias and keep consistency at a maximum.”

In the browse studies BLM has already conducted on East Castle Creek Allotment using the Extensive Browse method, field personnel have noted that when utilization is in the 60-100% range, usually all of a leader has been browsed. Thus, for example, when 70% of the leaders show use, it equates to a true 70% use of the current annual production of the plant and is not biased on the high side. When the use levels are at or under 50%, field personnel have noted that some browsed leaders are not completely eaten. Thus when 30% of the leaders have been browsed, the true utilization level of annual production would be less than 30%. However, at these lower utilization levels it would make no difference to the permittee if the estimate was high, because no action to reduce livestock use would be taken. Thus the point that the permittee raises is moot.

62. **King:** King protests the proposed decision to monitor utilization *during and at the end of the grazing period* in pastures 8B, 8BI, 8BIII, 10B, 12, 28 and 28A (and presumably pasture 11B also) (EA, Appendix B., Monitoring Plan, Implementation Monitoring, page 187). Monitoring during the growth period of the key forage species yields results which are incapable of informing the authorized officer, King, and the interested publics what is the annual utilization (i.e. the annual consumptive utilization), but can only relate what is the use relative to the amount of growth that has occurred at the point of monitoring. For example, a finding of 50% utilization of squirreltail on April 30 of plants that have been grazed in only April cannot inform as to the end-point utilization, because the plant has virtually all of its growth ahead of it. Only in the case of Pasture 5B is the monitoring properly conducted during or at the end of the grazing period, because it will have completed its growth each year by the time it is grazed. King’s term permit application applied for monitoring that would be conducted at the end of the growing season or grazing season, whichever occurs later. No rational basis is provided by the Decision for the de facto denial of this specific portion of King’s term permit application.

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BLM Response: Utilization criteria are included as annual grazing use indicators, which have been designed to facilitate progress towards meeting, or maintenance of standards. Regarding application of annual grazing use indicators, Instruction Memorandum ID-2005-074, which provides current guidance for application of annual grazing use indicators states:

“Within-season annual grazing use indicators are also valuable to determine when livestock should be moved from a grazing unit to achieve the end-of-season annual grazing indicators... Annual grazing use indicators, **both within-season and end-of-season**, [emphasis added] along with other required management practices, are a total package that, when implemented and adhered to, will result in a reasonable expectation that long-term desired condition objectives will be achieved.”

Avoiding heavy utilization levels on new growth at any one point in time is appropriate to prevent injury to key species. When grazed during the spring, bluebunch wheatgrass exhibited significantly lower mortality when grazed to a 15 centimeter stubble height, as compared to a 5 cm stubble height. Heavy grazing during the spring growth period is associated with reduced productivity in the following year, despite allowing grazed plants to regrow for several weeks prior to summer senescence (i.e. April/May grazing). (McClellan and Wikeem 1985).

McClellan, A. and S. Wikeem. 1985. Influence of Season and Intensity of Defoliation on Bluebunch Wheatgrass Survival and Vigor in Southern British Columbia. *J. Range Manage.* 38(1):21-26.

63. **King:** King protests the woody browse portion of the MIM indicators (EA, Appendix B., Monitoring Plan, Implementation Monitoring, page 187). King's term permit application identifies a monitoring method that provides accurate data relative to shrub species. No rational basis is provided by the Decision for de facto denial of this specific portion of King's term grazing permit application.

BLM Response: See # 61, above.

64. **King:** King protests the proposed decision to monitor stubble height and woody browse utilization *during and at the end of the grazing period*, (EA, Appendix B., Monitoring Plan, Implementation Monitoring, page 187), for the same reasons stated in protest point #62.

BLM Response: Monitoring during the grazing period is consistent with IM ID-2005-074 and is part of the adaptive management process in *Monitoring Strategies for Rangelands*. It is very important to understand the level of use as it is occurring in order to correlate that to the conditions at the end of the growing season and long term trend. Limiting monitoring to the end of the growing season does not tell the manager what level of grazing occurred during the grazing season. Allowing livestock use to continue as long as annual indicator criteria are not met is one alternative to allow continued grazing on depleted riparian areas and is appropriate for riparian pastures. Monitoring of annual indicators is valuable to determine when livestock should be moved from a grazing unit.

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See also response under protest point 62. Also see utilization as it relates to browse use under protest point #30.

65. **King:** King protests the proposed decision to monitor Mulford's milkvetch in the manner described (or not described) by the Monitoring Plan (EA, Appendix B., Monitoring Plan, Implementation Monitoring, page 188), for the reasons stated herein at Protest Point #26, and in Protest Exhibits 1, 2, and 3.

BLM Response: The referenced protest exhibits do not address the BLM's monitoring plan or methods. For a response to soil disturbance impacts see the response to Protest Point #26. Without specifics about why the King's protest the Mulford's monitoring, the response below addresses the validity of the step-point to monitor disturbances to Mulford's milkvetch habitat.

The step-point method would record the presence or absence of livestock hoofprints along a walking transect at a pre-determined number of steps, or intervals. A step-point method of evaluating trampling will allow an observer to cover a larger area of ground and therefore gain a bigger picture of impacts. In this way, the evaluation is not based on disturbance observed in a sampling frame that covers a very limited area. The step-point data can be used to track changes over time in abundance of ground disturbance recordings. The step-point is an approved BLM method for evaluating ground and vegetation cover (See BLM Monitoring Plan in Appendix B, Final EA# ID-120-2008-EA45).

66. **King:** King protests the proposed decision to restrict water quality monitoring to only the time periods when livestock are within particular pastures and only during the grazing season. The accurate reporting of water quality information requires that it be monitored year-round, and not just targeted to times when livestock grazing is occurring.

BLM response: Water quality has been monitored periodically in different months throughout the year and during the grazing season by BLM and IDEQ. The monitoring plan described the minimum of water quality sampling that would occur, but in response to this protest point will now state additional water quality sampling will occur throughout the year.

67. **King:** King protests the proposed decision to retain without review all of the existing Nested Plot Frequency Trend locations (EA, Appendix B., Monitoring Plan, Implementation Monitoring, page 188). King has identified at least one of these locations as being very close to water, which is incapable of determining frequency trend at locations more representative of the pasture. The locations of all existing plots should all be reviewed per the Key Area site selection criteria (stratification process) expressed at EA page 187. King applied for such review. The Decision provides no rational basis for the de facto denial of this specific portion of King's term permit application.

BLM Response: In most cases, continued monitoring of established trend sites provides invaluable information on vegetation condition over multiple decades. This trend information should only be interpreted within the context of the site location (i.e. increased grazing effects would be expected at sites adjacent to developed livestock waters). Where trend sites are not representative of larger areas of a pasture, additional, more representative sites will be established. In some situations, such as extreme proximity to fences, roads or water, BLM may discontinue

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monitoring at sites that are not providing valuable information, so long as they are replaced by more representative monitoring sites.

68. **King:** King protests the proposed decision to rely for vegetation monitoring upon TR1730-1 *Measuring and Monitoring Plant Populations* (BLM 1998). This is a TR that is mostly pertinent to single-species monitoring of sensitive plant species, not to general upland and riparian monitoring of a variety of species. As such, considerations of monitoring design and other aspects are different than they are for normal rangeland monitoring.

BLM Response: The monitoring plan relies most heavily upon TR 1734-4 *Sampling Vegetation Attributes Interagency Technical Reference* (BLM, 1996). However, BLM reserves the right to use any methods described in TR1730-1 *Measuring and Monitoring Plant Populations* for targeted monitoring of plant species as necessary to monitor range and plant community conditions, as well as any other approved monitoring methods and protocols.