

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

---

The following is a synopsis of protest points received by WWP, and BLM's responses. For the sake of clarity in providing responses, the protest points were summarized and in some cases re-worded by BLM to highlight the salient points.

- WWP:** BLM ignored requests to meet with them to discuss ACEC designation. The BLM failed to examine how long delays in the Bruneau RMP process have greatly increased the need for immediate action to designate ACECs.

**BLM Response:** The request that BLM develop several alternatives incorporating ACECs and other measures restrictive to permitted grazing was not timely, but was submitted well after the deadline BLM established for feedback to its Scoping Document. Furthermore, it does not directly address the Purpose and Need for the Proposed Action. Instead, it is a large-scale proposal to address issues of limited scope in not only East Castle Creek, but in adjoining allotments. It also misstates the findings of environmental analysis in those allotments as part of the justification for developing such alternatives. Designating and analyzing ACECs are therefore beyond the scope of the East Castle Creek EA. The BLM does not conduct this level of analysis in allotment specific EAs.
- WWP:** BLM acted with bias by excluding WWP from numerous meetings regarding the ECC process, while holding numerous exclusive meetings with the ranchers.

**BLM Response:** BLM is required by IM 2004-086 to assist permittees in developing their application, since they are recognized as the proponents of the application. Furthermore, BLM is required to provide feedback on their application, and if the final version does not fully address the Purpose and Need of the action, to develop alternative(s) that will. BLM incorporated portions of the permittee applications into its alternatives, and modified others. Finally, consultation, cooperation and coordination are required with permittees as well as with interested publics. BLM did not allow meetings with permittees to focus on the validity of the signed Determination, which was the purpose of your June 2008 request for meeting(s) and tour(s).
- WWP:** Portions of these lands and critically important habitats for native biota are also greatly threatened by WSA release under the Owyhee Initiative, potentially dozens of miles of new fencing... and other actions stemming from the Owyhee Initiative.

**BLM Response:** The Owyhee Initiative is a citizens' proposal, the outcome of which is purely speculative. Therefore, BLM would not consider any hypothetical outcome of such a proposal when formulating grazing management alternatives that address the Purpose and Need of this EA
- WWP:** BLM failed to consider alternatives to recover and reconnect very important redband trout spawning habitats, spotted frog habitats, and sage grouse brood rearing areas.

**BLM Response:** Recovery and maintenance of habitat for sensitive species, such as sage-grouse are guided by plans such as the July, 2006 Conservation Plan for Greater Sage-Grouse in Idaho (Plan). Development of such species-specific plans is beyond the scope of a grazing permit renewal. Fisheries and wildlife habitat, including sensitive species habitat, is discussed in sections 3.6 and 3.7 of the EA. The proposed action is in conformance with the applicable, existing plans for the species mentioned by WWP.

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

---

5. **WWP:** BLM failed to adequately analyze the risks of further invasive species expansion and dominance.

**BLM response:** Invasive species are considered in Rangeland Health Evaluations, cover data and trend data and are discussed in the Final East Castle Creek Standard & Guideline Assessment and are considered overall in the Affected Environment sections of the EA. Expected changes in weed populations are addressed under each alternative in the EA. On a broader scale, invasive species management in the Bruneau Field Office area is addressed in the 2007 Environmental Assessment Noxious and Invasive Weed Treatment for the Boise District and Jarbidge Field Office (#ID-100-2005-EA-265).

6. **WWP:** [BLM should not rely] on the Bennett Memo ID-2004-086 [which] sets up a situation where BLM is forced to analyze terribly destructive alternatives. . . there has never been any NEPA analysis of the disastrous effects of the Memo.

**BLM Response:** Aside from the legal requirement that BLM has to conform to existing policy, this Instruction Memorandum in itself does not determine the content of the alternatives that BLM analyzes, let alone adopts in its Proposed Decisions. The IM requires that BLM acquire adequate data to support its decisions, and clarifies the direction of policy and regulation into a procedure for the permit renewal process. Permittee applications must meet the BLM requirement that significant progress toward Standards and conformance with Guidelines occur. In this case, neither permittee application was chosen as the Proposed Decision, because they did not fully meet the Purpose and Need of the action. NEPA analysis of the directive itself would not yield any definable or consistent result.

7. **WWP:** BLM has never examined the effects of its previous spring developments, ponds, and existing exclosures on causing increased and shifted cattle use on all non-exclosed riparian and meadow areas. BLM has failed to provide mapping and analysis of sufficient detail to understand the location, areal extent, stability, headcutting, and other features associated with all riparian and meadow areas that would be excluded versus areas that would receive greater use.

**BLM Response:** Existing range developments, including spring developments, ponds and exclosures are considered within the context of the Affected Environment described in EA#ID120-2008-45 (sections 3.3 to 3.3.5). Detailed information pertaining to the condition of all riparian and meadow areas is presented in Final Rangeland Health Assessment for the East Castle Creek which is incorporated by reference in EA#ID120-2008-45 and the associated grazing decisions.

8. **WWP:** BLM's decision employs rest rotation, without assessing the negative impacts of shifted concentrated and intensified cattle stocking rates on lands that are being "rotated". . .

**BLM Response:** The Proposed Decision does not impose a rest rotation, and therefore does not change stocking rates to accommodate any such rested pastures. Further, in the rest rotation alternative that BLM did analyze (Alternative E), the stocking rates were the same as in other alternatives, and total AUMs were reduced to allow for non-use in the rested pastures.

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

---

9. **WWP:** BLM violated NEPA by failing to analyze any alternatives that substantially reduced grazing and/or removal of facilities (including spring developments, stock ponds, and fences). BLM failed to analyze the direct, indirect, and cumulative effects of existing facilities. BLM failed to provide a site-specific assessment of how existing facilities have adversely affected water quality and quantity, hydrologic processes and aquifers, and altered or reduced wildlife habitats. A full and detailed analysis, and identification of projects for removal and watersheds for rest from livestock disturbance is essential to allow BLM to fulfill its sensitive species requirements for sage grouse, migratory birds, redband trout, and Columbia spotted frog.  
**BLM Response:** BLM complied with the requirements of NEPA by analyzing a range of alternatives that meet the purpose and need as stated in EA#ID120-2008-45. BLM is required to formulate and/or adopt an alternative that addresses the issues identified through the Standards and Guidelines process which are attributable to currently permitted livestock use. The Field Manager's Determination did not identify livestock facilities as a factor in not meeting standards, and therefore analysis of removal of such facilities does not meet the Purpose and Need of the EA.
10. **WWP:** BLM failed to consider a range of alternatives that would have substantially reduced and simplified the existing fencing in the ECC allotment.  
**BLM Response:** As identified in the response to the previous protest point, the Field Manager's Determination did not identify livestock facilities as a factor in not meeting standards, and therefore analysis of removal of such facilities does not meet the Purpose and Need of the EA.
11. **WWP:** BLM failed to consider the amount of water consumed by livestock and the effects of the water demand on the limited waters already in each site. BLM failed to consider the weight of cattle so forage and water demands can be understood.  
**BLM Response:** The BLM Washington Office addressed the issue of livestock weights and resource consumption in a letter to Jon Marvel of WWP, dated April 30, 2008.
12. **WWP:** We protest BLM's embrace of loose and open-ended adaptive management . . . [in lands] undergoing devastating cheatgrass invasions and other ecological problems promoted by livestock grazing.  
**BLM Response:** Adaptive management is simply a description of finding practices that meet objectives in complex systems, involving trial, feedback, and adjustment. It is not a new concept, and has more recently been embodied in BLM's policy and resource planning (see BLM Handbook H-1740-2, p. 59). BLM's Proposed Decision drew upon data collected over a long period of time, and requires collection of more and is able to assess not only existing changes, but potential for change. WWP's protest misstates the result of an adaptive management approach in this and other allotments.
13. **WWP:** BLM failed to consider a range of alternatives that remove grazing from the BLM lands now annexed into the Anchustegui pasture.  
**BLM Response:** The No Grazing alternative is discussed in Section 2.2 of the EA as one of the alternatives that were considered, but not analyzed in detail. Additionally, WWP does not

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

---

explain why removal of grazing from the lands in the Anchustegui pasture should be considered separately for removal from the grazing allotment. There is no rational basis for consideration of this specific alternative.

14. **WWP:** BLM failed to take all necessary actions to recover and restore sage grouse habitat.  
**BLM Response:** The EA discusses effects of the alternatives on sage-grouse habitat at pages 138-141. "All necessary actions," which WWP does not identify, are not within the scope of this grazing permit renewal EA.
15. **WWP Contends:** BLM failed to conduct adequate soil, vegetation, watershed, and habitat studies necessary to establish an accurate baseline.  
**BLM Response:** WWP does not specify how BLM has failed to collect data that meets WWP's nebulous threshold of "adequacy." BLM has complied with current guidance and regulation in collecting data pertaining to the condition of soils, vegetation, watersheds and wildlife habitat. The collected data is presented in the 2008 Final Rangeland Health Assessment for East Castle Creek Allotment (Assessment), and is adequate to accurately evaluate rangeland health status, and prescribe appropriate livestock grazing management, as described in EA#ID120-2008-45, and the associated Proposed Decisions that are under protest here. Data presented in the Assessment includes: nested plot frequency trend, photo trend, rangeland health assessments, sage-grouse habitat assessments, pygmy rabbit surveys, proper functioning condition assessments, upland grazing utilization, riparian stubble height, water quality data, upland and riparian browse measurements.
16. **WWP Contends:** BLM failed to employ current ecological science in undertaking FRH analysis, establishing an environmental baseline, developing alternatives, analyzing environmental effects, and applying various conservation strategies.  
**BLM Response:** WWP fails to specifically identify how BLM has failed to employ current scientific knowledge. Rangeland health evaluations and field data collection were conducted according to current BLM guidance. Rangeland health conditions were then assessed relative to each of the eight Idaho Standards for Rangeland Health (ISRH). The ISRH were developed to comply with the Fundamentals of Rangeland Health (FRH) in conformance with 43 CFR 4180. The ISRH were subsequently approved by the Secretary of the Interior on August 12, 1997. The East Castle Creek Final Evaluation and Determination (E&D) at pages 59-60 details a list of agency technical references, technical reports, peer-reviewed articles and other literature published as recently as 2008, which was relied upon in completion of the E&D. Additionally, EA#ID120-2008-EA-45 at pages 177-182 includes citations of agency technical references, technical reports, peer-reviewed articles and other literature published as recently as 2008. This body of ecological information was used in assessing and evaluating rangeland health, formulating alternatives, and analyzing the effects of the alternatives in EA #ID120-2008-EA-45.
17. **WWP Contends:** BLM failed to conduct a full and detailed analysis of the Citizen Wilderness proposal.

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

---

**BLM response:** The environmental assessment describes the portions of the allotment that are included in the citizens' wilderness proposal. The EA discusses which proposed projects in each alternative would be constructed within areas included in the citizens' wilderness proposal. The EA also describes the impacts associated with development of the proposed projects, as they would relate to wilderness characteristics. BLM will be conducting wilderness inventory maintenance as part of the land use planning process, and will independently evaluate the citizens' proposal and other areas for their wilderness characteristics at that time. Potential impacts of proposed legislation that may release wilderness study areas from WSA status in the future are outside the scope of this EA.

18. **WWP:** BLM failed to fully examine the full direct, indirect, and cumulative impact of alteration and reduction of sage grouse nesting and wintering habitats from the Pixley prescribed burn and any other forage, vegetation manipulation or fuels treatments on BLM, state and private lands.  
**BLM Response:** The Pixley Prescribed Burn and Juniper Cut Environmental Assessment (EA#01066FA69) dated July 17, 2002, addressed the impacts and long-term benefits of vegetation treatments on sage-grouse habitat at Chapter 4-7, and cumulative impacts at Chapter 4-10.
19. **WWP Contends:** BLM failed to provide full and detailed analysis of changes in native understory vegetation and increases in cheatgrass presence and composition between past vegetation surveys and the present.  
**BLM Response:** Recent, detailed vegetation mapping has not been completed in this area, and is beyond the scope of the analysis of the alternatives included in EA #ID120-2008-EA-45. Best available data, including nested plot frequency trend data and rangeland health evaluations are included in the East Castle Creek Final Rangeland Health Assessment, and provide adequate information on the status of upland plant communities within the East Castle Creek Allotment. Status of native plant communities, seedlings, and exotic plant communities on the East Castle Creek Allotment are discussed in detail on pages 50-76 of the Final Rangeland Health Assessment for the East Castle Creek Allotment.
20. **WWP:** BLM failed to provide a full fair and balanced analysis of the wildlife habitat, watershed, and aesthetic and other values of western juniper communities. BLM has failed to conduct necessary site specific studies to quantify age structure and habitat values of juniper, and to develop science-based analyses to ensure retention of critical habitats that junipers provide. T  
**BLM Response:** WWP does not explain how any such detailed analysis of juniper-dominated communities is relevant to the proposed action being considered here. No juniper control treatments are prescribed by the proposed alternative.
21. **WWP:** BLM failed to disclose where sagebrush has been plowed, disked, treated with herbicides, prescribed burned, or burned in wildfires within the ECC allotment and surrounding Battle Creek, West Castle Creek, and Big Springs allotments within the past 50 years.

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

---

**BLM Response:** The 1997 Castle Creek Analysis, Interpretation and Evaluation (AIE), which was incorporated into the 2008 Assessment by reference, discloses the areas treated by BLM to control sagebrush or areas burned by wildfire in the East and West Castle Creek allotments. The EA at pages 67 through 70 describes the condition of all vegetation within the East Castle Creek allotment, including which areas have been burned and/or seeded. The other areas WWP identifies are not within the area of the proposed action and therefore are not described in the EA. Wildfires since 1997 have burned insignificant acreage, and no more areas have been treated under the MFP objectives to seed areas lacking sufficient understory to respond to management alone or to control juniper, with the sole exception of the Pixley Basin project, which is addressed in a previous response, above. The Battle Creek Allotment had one spray project dating from 1967 (disclosed in at least the Battle Creek AIE) where sagebrush is reestablishing and the Big Springs allotment has not received any treatments nor experienced wildfires of any consequence (the Draft Assessment was released in 2005). Some burning has been done on private fields, which was also considered in BLM's assessment of cumulative impacts in EA #ID-120-2008-EA45, as was juniper cutting projects in recent years. The acreage of treated areas and wildfires is minor in the overall context, and the removal of woody species is temporary, even in the lakebeds.

22. **WWP:** BLM failed to assess the cumulative effects of livestock and management facilities/infrastructure in promoting cheatgrass across all pastures of ECC and surrounding lands in Battle Creek, West Castle Creek, and Big Springs allotments.
- BLM Response:** WWP provides no scientific support for its assertion that proposed management facilities will result in long-term increases in cheatgrass "across all pastures." Risk of increased cheatgrass is discussed in sections 3.2-3.2.5 of the EA. Cumulative effects to upland plant communities, including invasive species, are addressed at pages 166-168 of the EA.

23. **WWP:** BLM failed to adequately examine Standards 1-8.
- BLM Response:** Standards 1 through 8 of the Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management were thoroughly examined through the preparation and issuance of the Final Rangeland Health Assessment for East Castle Creek Allotment dated February 1, 2008 (214 pp), and the Evaluation and Determination of Achieving the Idaho Standards for Rangeland Health and Conformance with the Guidelines for Livestock Grazing Management, dated May 21, 2008 (62 pp).

24. **WWP:** Mandatory terms and conditions fail to protect values of the public lands including sage grouse habitats, spotted frogs, water quality, recreational uses, and WSA values.
- BLM Response:** Mandatory Terms and Conditions, as defined by Title 43 CFR 4130.3-1 (a) include "kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease." These mandatory terms and conditions for each permittee are presented in Table 17 at page 44 of the EA, as well as in the proposed decisions. BLM modified mandatory Terms and Conditions in the Proposed Decision where conflicts were identified in the Evaluation and Determination. BLM also added or modified Terms and Conditions to address other administrative issues and to provide more detail

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

---

about how the mandatory Terms and Conditions would be implemented. BLM defined the limits of permittee discretion in these and in the accompanying Flexibility section of the Proposed Decision.

The BLM provided pasture-specific and resource-specific measurable standards of use, and defined how the results would be applied, in conformance with current guidance about how monitoring should be used to make short- and long-term adjustments to grazing use. The Proposed Decision, in short, provides everything necessary to define permitted use, monitoring, and adjustments during the next 10 years. BLM has not failed; these are groundless and repetitive accusations and overstated claims of adverse cumulative impacts.

25. **WWP:** Annual indicator criteria fail to provide:

- a. Necessary residual stubble height in uplands for successful sage grouse nesting.

**BLM Response:** Sage grouse nesting criteria for grass height are not for stubble height only, but also for both residual and new growth. Sage grouse nesting habitat evaluations did not indicate a problem with grass height. Sage-grouse habitat in Idaho is currently managed under the July, 2006 Conservation Plan for Greater Sage-Grouse in Idaho (Plan). The Plan (page 4-57) cites Connelly (2004), stating that "In Idaho, overall sage-grouse nest success is not considered a widespread problem averaging over 49%." The Plan does not specify a minimum herbaceous stubble height guideline for all sage-grouse habitats. Although the sage-grouse breeding habitat assessments developed in conjunction with this Plan identify a 7 inch average forb and grass height as an element of "Suitable" habitat, it is not identified as a sole factor in suitability of breeding habitat.

- b. Necessary stubble heights, bank trampling standards, and young and mature riparian browse standards that are adequate for protection.

**BLM Response:** Stream bank alteration, riparian woody browse, and stubble height criteria are incorporated as Annual Indicator Criteria on page 42 of the EA. Adherence to these criteria in conjunction with the proposed livestock management plan, are adequate to facilitate progress towards meeting applicable range health standards.

- c. Structural protections for sagebrush threatened by livestock breakage in critical pygmy rabbit habitats.

**BLM Response:** BLM found no problems or issues with broken down sage brush in pygmy rabbit habitat. Additionally, WWP does not explain what it means by "structural protections."

- d. Microbiotic crust measurable standards that limit disturbance effects.

**BLM Response:** EA#ID-120-2008-EA45 describes the relative importance of the microbiotic crust component as soil surface cover in different landscape units of East Castle Creek Allotment. However, with regard to AIC's, BLM does not currently have a crust sampling protocol that lends itself to rapid, reliable assessments of crust cover or crust disturbance. Due to the specialized nature of sampling microbiotic crust, and potential for large amounts of observer variability, this is not a feasible annual indicator criterion. Adherence to upland utilization criteria is adequate to limit disturbance.

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

---

Utilization estimates are more accurate and rapidly assessed, and therefore are more appropriate short-term monitoring criteria.

26. **WWP:** BLM failed to provide a detailed analysis of current conditions or benchmarks of improvement so that positive change can be gauged for any habitats, including for important and sensitive species.

**BLM Response:** A detailed analysis of habitat conditions for Mulford's milkvetch was presented in the EA (EA#ID120-2008-45) at pages 41-45. The following discussion provides a summary of additional background information on EO #11, as requested.

The purpose of the water haul troughs was to improve distribution in Pasture 5B and the location was chosen because there was existing disturbance from a gravel pit and OHV use. Surveys were conducted in December 1994 prior to trough installation and did not locate any Mulford's milkvetch. Element Occurrence #11 (EO #11) was first discovered in 1999 after placement of the water haul troughs. When this population was discovered in 1999, monitoring transects were not established and no weed species were noted in the general habitat description and it was given an EO rank of "A" (excellent estimated viability) because of the good condition of the population and the large area that it covered (Mancuso 1999). Monitoring of this site was initiated through a contract with the Idaho Department of Fish and Game's Idaho Conservation Data Center in 2004. *Bromus tectorum* was the only weed species recorded in 2004 (0.5%). An increase in *Bromus tectorum* (5.5%) and new recordings of *Sisymbrium altissimum* were noted in 2005. *Bromus tectorum* also increased in 2006 (12.9%) but decreased some in 2007 (4.4%) (ICDC 2008). Also noted was the presence of other weeds such as *Halogeton glomeratus*, *Salsola iberica*, and *Erodium cicutarium* (Mancuso 2006). While no data comparison can be made to pre-trough conditions because of the lack of comparable monitoring data, it appears that although *B. tectorum* was likely present in the general area, weeds were not a concern for the population prior to trough placement.

Trampling of soils can cause an increase in the weed invasions listed above but can also directly impact plants. The subpopulation located closest to the water haul troughs was extirpated in 2003 which was attributed to livestock trampling. In terms of decreases in surface disturbance from livestock trampling, the BLM will be monitoring the amount of surface disturbance (hoofprints) near this population and suitable habitat areas through step-point transects. Data trends will be analyzed to detect any significant reductions in hoofprint cover but a specific criterion for this is not established. Monitoring from the surface disturbance transects combined with the ICDC population monitoring would be evaluated together. An evaluation of population viability as it pertains to livestock grazing would be made through discussions of the data with ICDC and BLM botanists. It is important to note that EO#11 is comprised of several subpopulations that span at least one mile along Twentymile Gulch. The monitoring transect for EO #11 is located at the subpopulation that is close to the water haul site, has small population numbers, and is of the greatest concern for trampling impacts.

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. Natural Resource Policy Bureau. Boise, ID.

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

---

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.

Idaho Conservation Data Center. 2008. Mulford's Milkvetch (*Astragalus mulfordiae*) Monitoring in Southwestern Idaho: 2007 Results. Idaho Department of Fish and Game. Boise, ID.

27. **WWP Contends:** BLM violates the grazing regulations by excluding the public in choosing new monitoring areas.

**BLM Response:** This statement is false. The Monitoring Plan included with the EA #ID120-2008-EA-45 (page 187) states "Coordination with the permittee, local and state agencies and the interested public would occur during monitoring site (key area) establishment and data collection."

28. **WWP Contends:** BLM failed to adequately explain what will happen when annual use standards are exceeded... *Please provide full and detailed analysis of how mandatory and required Mandatory Terms and Conditions, Terms and Conditions, Annual Indicator Criteria are. What specifically happens if any AIC is not met for one year? 2 years? 3 years? What if one AIC is met and not others?*

**BLM Response:** BLM defined in detail in the Proposed Decisions what would happen if the AIC are exceeded for one year, several years, or consistently exceeded. In accordance with policy (IM ID-2005-074), BLM would examine the AIC measurements, compliance records, and other available information, and evaluate the reason(s) why AICs were not met. Short-term adjustments would be made to comply with the AIC; if consistently not successful, the grazing practices, the AIC itself, or the objective driving the AIC would be modified.

29. **WWP Contends:** WWP protests seasons of use that conflict with wintering wildlife and sage grouse lekking and nesting periods.

**BLM Response:** WWP does not specify how the proposed livestock management would conflict with wintering wildlife and what effects they are concerned about. BLM has no guidelines restricting timing of grazing based on wintering wildlife, or sage grouse lekking or nesting. No leks are known current in the allotment. Sage grouse nesting is generally over by the time the cattle get to the nesting habitat at the end of June.

30. **WWP Contends:** WWP protests allowing grazing in fragile sagebrush, salt desert shrub, mountain mahogany, and other habitats during the period when ground nesting migratory birds are present and when pygmy rabbits have young in shallow natal burrows.

**BLM Response:** WWP's opinion is noted. BLM is unaware of any data on this subject and has no guidelines to restrict grazing during these times.

31. **WWP Contends:** WWP protests BLM managing lands under the FFRS that have no basis in regulation.

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

---

**BLM Response:** Policy as well as regulation guides BLM actions. Instruction Memorandum (IM) ID-2004-086, which currently governs BLM's permit reissuance process, allows BLM to consider manageability of allotments, and by extension, pastures, based upon land ownership and size. This IM further states that the initial allotment review prepared using this procedure (i.e. Appendix B) can serve as the Rangeland Health Assessment, although its primary purpose is to identify the need for additional data collection. BLM collected data, assessed these pastures, identified few conflicts, and proposed projects that address the Purpose and Need of EA#ID-120-2008-EA45 on included public lands, as described in the EA and in the Proposed Decision.

It is BLM policy to allocate resources toward allotments or areas where investment would yield the greatest return, i.e. those with the greatest conflicts, resource values, or BLM influence based upon ownership patterns, (see WO Instruction Memorandum 82-292, entitled "Final Grazing Management Policy").

32. **WWP Contends:** BLMs claim that site specific clearances will be done prior to installation is inadequate to understand either the site specific impacts or the indirect and cumulative impacts of these facilities. Holly, Lois, Helen: BLMs claim that site specific clearances will be done prior to installation is inadequate to understand either the site specific impacts or the indirect and cumulative impacts of these facilities.

**BLM Response:** Impacts to special status plant species or cultural resources would be avoided during construction of any project described in the EA. Because some projects were included in the alternatives at a time when the optimal plant survey period had passed or after snow had covered the ground, additional site specific clearances and analysis would be required prior to any project initiation.

33. **WWP Contends:** BLM failed to adequately weigh the severely degraded conditions of lands and waters to determine the suitability of pastures and the allotment for continued grazing use.

**BLM Response:** BLM is not required to employ suitability standards or models to set stocking rates on BLM allotments. In large part, this is because suitability models were intended to be used where long-term monitoring of use levels and patterns is lacking, and were used in conjunction with vegetation production surveys done in the late 1970's and early 1980's to establish stocking rates in BLM's grazing EIS's. BLM was then directed not to use vegetation production surveys as the sole basis for adjusting stocking rates back in 1982. In this and in adjoining allotments, BLM has collected, and continues to collect the necessary long-term data to set stocking rates.

While BLM Range Suitability Standards are based primarily on slope and distance to water and secondarily on production and erosion hazard, the description of utilization by species, use patterns and patterns of condition in the FRHA and FMD suggests that other factors, such as phenology, cattle forage preferences and travel patterns, and stoniness interact with slope and distance to water to influence patterns and intensities of livestock use. Consequently, the predictive value of the BLM Range Suitability Standards in the context of these allotments varies

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

---

at least by timing of use. In practice, cattle do not graze areas uniformly and stocking rates must be set on a broad basis.

The season of use and timing of use in successive years interact with the stocking rate to determine the amount of the landscape that is grazed and the resource response. Suitability is therefore dynamic rather than a constant for all times and places. WWP's recommendations consistently focus upon stocking rate reductions alone, and treat suitability as an immutable constant, which was refuted by BLM's 1982 policy change.

34. **WWP Contends:** BLM failed to clarify what effects livestock grazing has had and continues to have on Sheep Creek areas claimed to be eroding due to loss of beaver dams.

**BLM Response:** Sheep Creek is discussed in the EA, and impacts of livestock use are disclosed for current management and each alternative (sections 3.3-3.4, and 3.7).

35. **WWP Contends:** BLM failed to honestly present information related to the scarcity of pygmy rabbits both in the allotment and their very reduced numbers and absence over large areas of the Bruneau FO and Owyhee Uplands.

**BLM Response:** See original EA pages 125-126. Also see BLM Response to paragraph 8 of WWP's recent Battle Creek Protest. No data exist to indicate that numbers are "reduced" because there is essentially no baseline data before the extensive surveys conducted by BLM biologists over the last 7 years. These surveys revealed that pygmy rabbits are far more widespread and common in the BFO than previously known. WWP is denying data to claim scarcity or reduced numbers. WWP has a pre-existing opinion on the status of the pygmy rabbit, established by its petition to list the species and its voluminous and repetitive communications to the BLM, and this well-established opinion is uninfluenced by new data from across the West.

36. **WWP Contends:** BLM attempts to use sage grouse as an "umbrella" species for sensitive species – including those for which it is simply not appropriate and for which BLM has no data (collared lizard and others). BLM failed to conduct systematic site specific surveys for these species, identify occupied vs. unoccupied habitat, and devise ways to restore and recover damaged habitats.

**BLM Response:** BLM uses sage-grouse as an umbrella species for other sagebrush species such as sage thrasher and Brewer's sparrow. BLM is not using sage-grouse as an umbrella species for Mojave black-collared lizard, as it is not a sagebrush species. Surveys have been conducted for Mojave black-collared lizards. There is no data that would guide "restoration" of habitat for this species; they appear to be doing well in habitats with very poor weedy vegetation, such as near Flat-top Butte. Rock structure appears to be one of the most important features of their habitat.

37. **WWP Contends:** BLM failed to examine the impacts of winter grazing use and failed to apply adequate standards to be measured on all shrubs.

**BLM response:** Impacts of winter grazing are discussed on page 72 of the EA. Utilization of palatable shrubs, including winterfat and Nuttall saltbush are limited to 50% Standards for browsing of other shrub species present in Pasture 5B in these pastures are not imposed because

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

---

issues related to livestock grazing of these species were not identified in the Assessment and Determination.

38. **WWP Contends:** BLM failed to disclose how different utilizations levels were factored into stocking rates across the allotment.  
**BLM response:** This is described generally on page 13 of EA#ID-120-2008-EA45 and more specifically on pages 14, 15, 33, 40, and 49 in the description of alternatives, and on at least pages 62 and 63 in the impact analysis for upland utilization of perennial grasses and on pages 127 and 128 for utilization of browse species in Pastures 28 and 28A. Stubble height (while not technically a measurement of utilization) was considered in designing modified management for streams in Pastures 8B and 12.
39. **WWP Contends:** BLM violates the grazing regulations by considering Alternative C (King's application) a viable alternative as it excludes the interested public in future stocking discussions.  
**BLM response:** BLM is required to provide feedback to permittee applications and assist in its development. The analysis in EA#ID-120-2008-EA45 and accompanying FONSI explains why it was not adopted as the Proposed Decision. Aside from that, it was presented to the interested public(s) in the form of BLM's Scoping Document, released for review on October 10, 2008.
40. **WWP Contends:** BLM failed to analyze the likely effects of climate change and global warming into any carrying capacity analysis and analysis of grazing effects.  
**BLM response:** BLM's cumulative impacts analysis on pages 173 -174 of EA#ID-120-2008-EA45 provides the required analysis.
41. **WWP:** WWP protests BLM stocking these lands at levels greatly in excess of the average annual use... and BLM failing to significantly cut livestock numbers... as was found necessary in the AIE analysis (30% reduction). WWP further contends that insufficient information has been provided to support proposed stocking rates.  
**BLM Response:** BLM is basing appropriateness of stocking on the monitoring of impacts, not upon relationships to other sets of numbers. Actual use was lower in years when adjustments were needed, to BLM's and to the permittees' credit. Several consecutive years during the evaluation period had precipitation well below normal, which obviously affects this average. In other cases, the grazing system under the Settlement itself prescribed rest and reduced stocking. BLM recognized in the Assessment and Determination that forage production fluctuates, and the Proposed Decision imposes measures to adjust use to current conditions in order to limit impacts to acceptable levels. BLM presented extensive information in the Assessment and Determination, which incorporated by reference the 1997 AIE. The AIE summarized all available inventory and monitoring information from the late 1950's through 1997. In the recent documents, BLM evaluated impacts of permitted grazing and trends in resources since 1997.
42. **WWP:** WWP protests new and expanded facilities hav[ing] been built ... the public was already promised that a battery of projects constructed in the past would solve problems...

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

---

**BLM Response:** Most of the previously proposed projects were not built, although few were actually stayed. In the Settlement, WWP agreed only that some of the projects would be reconsidered in this current permit renewal process, not that any more would be built. The projects that were built prior to the Settlement (creation of pastures 29B, 29C, 29D, and several enclosures) were successful in creating a trend toward meeting Standards, as disclosed in the Determination.

43. **WWP:** We Protest the failure of BLM to adequately assess the full ecological footprint of livestock grazing operations of permittee.

**BLM Response:** The implication that degraded conditions on other ownerships enhance the values on BLM lands is another unproven assertion by WWP. BLM is required to analyze the impacts of federally permitted actions, and did provide a cumulative analysis of impacts of the Proposed Decision on this and on adjoining allotments, which included a section on climate change. BLM considered in this cumulative effects analysis State and private lands controlled by the permittees within the boundaries of the allotment and in adjoining allotments. Generally, these lands are in as good or better condition, particularly upland habitats, as BLM lands because they were fenced away from the uncontrolled use early, most were grazed in early fall after summer permits ended, and because fewer regulatory impediments to juniper control exist, among other reasons. In many cases, wetlands are fenced away from uplands into smaller pastures to better control impacts. BLM used some reference areas on other ownerships in assessing conditions within East Castle Creek Allotment.

44. **WWP:** BLM failed to analyze the effects of relying on carryover forage.

**BLM response:** BLM will continue to apply range readiness criteria, including the availability of carryover forage in establishing annual turnout dates, movement dates, and numbers, as it has in the past, and as described in the Rationale for the Proposed Decision (page 18). Among the effects is that BLM and the permittees have adjusted use to fit forage conditions, which is reflected in the amount of reported actual use, but is also reflected in the utilization that BLM reported at some length in the FRHA, the FMD, and was carried forward into the design of the Proposed Decision, as described in the Rationale.