

CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 0944)

Brad Luscombe
1622 Lower Klamath Lake Road
Tulelake, CA 96134

Authorization #3601784

CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 0937)

Eugene Stanley
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Eagle Point, OR 97524

Authorization #3600117

NOTICE OF THE FIELD MANAGER'S FINAL DECISION

Dear Mr. Luscombe and Mr. Stanley:

INTRODUCTION

The purpose of this Final Decision is to address timely received points of protest submitted by members of the interested public regarding my Proposed Decision to renew the grazing lease on the Conde Creek Allotment for a period of ten years. This Final Decision documents my rationale in response to points protested and serves as the next step toward selecting an alternative for implementation.

BACKGROUND

On August 9, 2011, I mailed my Notice of Field Manager's Proposed Decision to renew the grazing leases on the Conde Creek Allotment for a period of 10 years to interested public members or those who submitted comments during scoping or the Environmental Assessment (EA) comment period. The Proposed Decision included a Finding of No Significant Impact (FONSI) to the Environmental Assessment (DOI-BLM0OR0M060-2009-0014-EA) and an analysis of comment letters received.

On August 17, 2011, a joint protest letter to the Proposed Decision was timely received from the Klamath Siskiyou Wildlands Center, Oregon Wild, and the Soda Mountain Wilderness Council. The protest letter restated issues previously submitted in comment letters from the same groups regarding the scoping process, the EA public comment period and the Proposed Decision protest period. The comments were considered and addressed in the NEPA process in; the EA analysis, the Decisions' comment analysis, and again in the protest points #1-10, summarized below. On August 25, 2011, a protest letter to the Proposed/Final Decision was timely received from Eugene Stanley. The protest letter included four protest points which are summarized in protest point # 11-14 below.

KS WILD et al. PROTEST RESPONSE

Protest Point #1: Range of Alternatives is too narrow

Response: Alternatives respond to the purpose and need which is to determine under what conditions the lease would be renewed consistent with the Federal Lands Policy and Management Act of 1976 (FLPMA)

(43 U.S.C. § 1701 et seq.) and regulations set forth under 43 CFR 4100, Grazing Administration to “establish efficient and effective administration of public rangelands” so as to “provide for the sustainability of the western livestock industry and communities dependent upon productive, healthy, public rangelands.” (EA p. 1) Using *Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands in Oregon and Washington* provides a basis for assessing the rangeland condition and trend.

The EA considered a range of alternatives designed to meet the BLM’s legal duties, and purpose and need for action. According to the CEQ regulations and the Department of the Interior NEPA regulations, “[t]he range of alternatives includes those reasonable alternatives (paragraph 46.420(b)) that meet the purpose and need of the proposed action, and address one or more significant issues (40 CFR 1501.7(a)(2–3)) related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed” (43 CFR 46.415(b)).

The BLM considered a reasonable range of alternatives as required by NEPA and CEQ regulations. In the development of alternatives, the EA follows the guidance stated in Section 102 (2) (E) of the National Environmental Policy Act of 1969, as amended (NEPA). Federal agencies shall “...study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” CEQ regulations require BLM to analyze those alternatives necessary to come to a reasoned choice in meeting the purpose and need for the project (40 CFR 1502.14).

The Ninth Circuit has rejected the argument that an EA requires consideration of more than two alternatives. See *Native Ecosystems Council v. Forest Service*, 428 F.3d 1233, 1246 (9th Cir. 2005). Further, in the *Morongo Band of Mission Indians v. Federal Aviation Admin.*, 161 F.3d 569, 576 (9th Cir. 1998), the Ninth Circuit held that parties claiming a NEPA violation involving failure to consider a reasonable alternative must offer a specific, detailed counterproposal that has a chance of success. Also an agency does not have to consider alternatives that are not feasible, (See *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-1181 (9th Cir. 1998)), and an agency does not have to consider alternatives that would not accomplish the purpose of the proposed project. See *City of Angoon v. Hodel* 803 F.2d 1016, 1021 (9th Cir 1986).

The purpose of the No Action alternative is to provide the baseline/current condition and disclose effects if no change in the lease are to occur and to provide a comparison of effects of other action alternatives to the current condition. . “*In choosing an alternative, the Field Manager will consider how well the alternative responds to the identified project needs, along with the relative merits and consequences of each alternative related to the relevant issues.*” (EA p. 2)

The Standard for Riparian/Wetland Watershed Function, and Water Quality were not being met **due in part** [emphasis added] to current livestock grazing management practices (EA p. 1). Therefore, the objective of the purpose and need is to provide alternatives that address the issues that result in the Standard not being met or that do not make progress towards meeting the Standards for Rangeland Health in the Conde Creek Grazing Allotment determined to be caused by livestock grazing alone. Other factors, such as historic logging, road use, and water withdrawals (EA p. 24-25) that also influence riparian and vegetative conditions will be addressed in other planning analysis for those activities. Therefore, progress through adjustment of grazing management will only lead to recovery from impacts associated with grazing.

Both Alternative 2 and 3 meet the requirements specified above. Alternative 2 addresses late season grazing impacts by adding three terms and conditions specific to livestock being removed by the end of the authorized grazing season and provides for adjust of late-season grazing if the conditions do not improve according to guidance requirements. Strict adherence to livestock removal at the end of the grazing season reduces impacts from grazing in the late season. In addition, late season grazing has the potential to reduce residual plant heights (stubble heights) beyond desired levels (EA p. 39). Therefore, the term and condition of maintaining stubble height above 5 inches (average) would reduce the impacts of late season grazing.

The degree of streambank trampling and disturbance in wet areas would reduce mitigation measures and terms and conditions (EA p. 10) that; (1) exclude two riparian areas identified as not meeting the Rangeland Health Standards, (2) improve livestock watering facilities to facilitate livestock distribution, (3) seed areas of bank disturbance, and (4) herd livestock to reduce the amount of congregation in the riparian zones.

The EA (pp. 7-8) lists seven monitoring protocols that are ongoing and two additional monitoring protocols that will provide evaluation of the proposed mitigation and terms and conditions. The list of ongoing monitoring demonstrates that while funding is never constant or guaranteed, regular monitoring is occurring.

As a result of the terms and conditions and the mitigation, Alternative 2 makes improvement to the condition of the riparian areas, with a slight decrease in bank trampling and disturbances near water sources (EA p. 47-48). Because grazing is but one of the factors impacting water quality (EA pp. 24-25), changes in livestock management will not translate into high levels of improvement to the water quality.

Both Alternatives 2 and 3 demonstrate the ability meet the purposes and needs for the actions described within the provisions of NEPA, and they both will also make progress toward meeting the functional requirements of the Standard for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands Administered by the Bureau of Land Management in the States of Oregon and Washington (S&Gs). Since the S&Gs require that progress to be made toward functionality, the actions described in Alternative 2 meet the functional requirements of the S&Gs, FLPMA, NEPA, and 43 CFR 4100 regulations.

Protest Point #2: Requirements of the Aquatic Conservation Strategy (ACS).

Response: Under BLMs 1995 RMP, the Northwest Forest Plan's ACS protocol requires that projects "not retard or prevent the attainment of Aquatic Conservation Strategy objectives." Effects from projects that occur within the scope of the BLM's 1995 RMP effects analysis do not require that improvements be made with every project implemented. Also, "evidence . . . that a project will result in some degradation does not, standing alone, constitute ACS noncompliance" BARK v. BLM, 643 F. Supp. 2d 1214, 1234-1235 (D. Or. 2009). For the same reasons the court found in BLM's favor in BARK, the expected reduction in grazing effects to riparian vegetation, streambank instability, sedimentation, temperature, water quality and watershed function defined in Alternative 2 meet the requirements of ACS. As stated, your protest point does not show how BLM's conclusions on this issue are in error.

In your protest, you have reiterated effects associated with livestock grazing that were disclosed in the EA. You also acknowledge that appropriate management practices, proposed in Alternative 2, may

diminish the “*rate* [emp. added] of sediment input” or “may reduce adverse impacts” to riparian vegetation (KS Wild et al., Protest Letter 8/17/11, p. 6). While you’ve expressed your preference for an alternative that reduces use or eliminates grazing impacts altogether, BLM remains obligated under the Federal Land Policy and Management Act of 1976 (FLPMA) to provide multiple-use opportunities to the public on allotted lands, including grazing activities. Additionally, NEPA requires that effects are disclosed, not that all effects are avoided.

Alternative 2 alters the terms and conditions of the lease to make progress toward: 1) improving plant cover and community structure to promote streambank stability, debris and sediment capture, and floodwater energy dissipation in riparian areas; 2) improving livestock distribution; 3) improving water quality; and 4) avoiding unwanted or damaging concentrations of livestock on streambanks and wetland areas. The mitigation measures implemented at the specific sites in the allotment will make progress toward meeting the ACS objectives. The nine additional terms and conditions and active herd management are vital for this alternative to meet ACS objectives at the site level and HUC 7 level across the entire allotment (EA p. 35 & 36). In Summary, Alternative 2 meets the requirements of the grazing regulations for Rangeland Health, (43 CFR 4180) and therefore, is also in compliance with the ACS because aquatic ecosystems will be maintained with improving conditions across the allotment and the most rapid recovery will occur in areas excluded from grazing.

Protest Point #3: Riparian Reserve objectives

Response: The Riparian Reserve objectives related specifically to livestock grazing is to meet the Aquatic Conservation Strategy. See responses to *Protest Points #1 and #2* addressing points you’ve suggested are not being met (watershed function including physical integrity, sediment regimes, riparian vegetation, flow characteristics, forest health, special status species and other concerns). Alternative 2 would not prevent or retard riparian reserve objectives with mitigations; such as grazing exclosures in the most heavily impacted riparian locations and special status species areas, and nine additional terms and conditions of the lease, therefore, Alternative 2 does not violate the RMP (EA p.10).

Protest Point #4: Alternative 2 violates the Clean Water Act because the alternative perpetuates the 303(d) listing for temperature for Conde Creek and continues the management whereby sedimentation occurs.

Response: The BLM is recognized by Oregon Department of Environmental Quality (ODEQ) as a Designated Management Agency for implementing the Clean Water Act on BLM-administered lands in Oregon. The BLM and DEQ have a Memorandum of Agreement (MOA) that defines the process by which the BLM will cooperatively meet State and Federal water quality rules and regulations. In accordance with the MOA, the BLM in cooperation with the Forest Service, DEQ, and the Environmental Protection Agency is implementing the *Forest Service and Bureau of Land Management Protocol for Addressing Clean Water Act Section 303(d) Listed Waters* (USDA and USDI 1999). Under the Protocol, the BLM will protect and maintain water quality where standards are met or surpassed, and restore water quality limited water bodies within their jurisdiction to conditions that meet or surpass standards for designated beneficial uses (EA p. 25). (Stream temperature data from 1994 – 2005 is summarized in Table 3-6, of the Environmental Assessment for Cove Creek.) (EA p. 27)

As acknowledged in the EA, natural erosion processes occurring in the allotment include; landslides, surface erosion, and flood events contribute to increased sedimentation. Sediment sources resulting from

human activities include; roads, logging (tractor skid trails, yarding corridors, and landings), off-highway vehicle (OHV) trails, and concentrated livestock grazing in riparian zones. Livestock grazing contributes to sedimentation through bank trampling and the reduction or elimination of riparian vegetation (EA p 28). Thus, sedimentation would be reduced if utilization of riparian vegetation, concentrated livestock grazing, and/or bank trampling is reduced (see responses to *Protest Points #3* above).

Removal of riparian vegetation, and the shade it provides, contributes to elevated stream temperatures. Past human-caused activities in riparian areas such as timber harvest, road construction, residential and agricultural clearing, and livestock grazing, have reduced the amount of riparian vegetation in the analysis areas (USDI 2006). Water withdrawals which date back to the late 1800s, during the summer, also contribute to elevated stream temperatures (EA p. 24). However, the BLM manages only 60% of the total stream miles listed for temperature (EA, p. 26, 27) and has no control over effects being generated from private lands including logging, road use, recreation, grazing, agricultural conversion or other influences. Finally, shade is lacking by only 11% and only on Soda Creek (EA, p. 27).

Because there are numerous other factors involved in the current condition of stream temperature listing for Conde Creek, the proportion of the listed streams that are actually managed by BLM; the shade needed to meet standards is 11% and only needed along Soda creek; there is a current trend of stream temperatures being downward (improving) due to recovering riparian vegetation (EA p. 27); and there is also mitigation to improve riparian vegetation (shade) by providing exclosures in riparian areas (EA, p. 35).

Alternative 2 would slightly reduce grazing effects along perennial waterways through new terms and conditions (EA p. 36). Concentrated livestock grazing would be reduced by two exclosures proposed as mitigation measures on Conde Creek and the Big Glades area of Soda Creek. Concentrated grazing at the lower end of Conde Creek meadow system has resulted in disturbed banks, widened channels, elevated fine sediment levels and heavy grazing of riparian vegetation. Fencing this area will allow the recovery of the physical integrity of this site. Fencing the wet meadow in Big Glades will improve conditions at the site level by relieving saturated ground of the trampling effects of cattle (EA p. 35).

The degree of streambank trampling and disturbance in wet areas would be reduced by both mitigation measures and terms and conditions (EA p. 10) that (1) exclude three riparian areas that were identified as not meeting the Rangeland Health Standards, (2) improving livestock watering facilities to facilitate distribution, (3) seeding bank disturbance areas, and (4) providing herding to reduce the amount of livestock congregation in the riparian zones.

Therefore, with reductions in riparian vegetation utilization, concentration of livestock, and streambank trampling, the stream temperature and sedimentation would be reduced. Alternative 2 does not perpetuate the current conditions, and does not violate the Clean Water Act.

Protest Point #5: Alternative 2 violates the Clean Water Act because the BLM arbitrarily stated its conclusion that the Water Quality Restoration Plan for source water for the cities of Medford, Gold Hill, Rogue River and Grants Pass is likely not affected by the Conde Creek Allotment.

Response: Conde Creek flows into Dead Indian Creek which flows into South Fork Little Butte that flows into the Rogue River. The surface water source for these four public water systems is the Rogue

River. The allotment is located over 27 miles upstream from the closest public water system intake (EA p. 30). In between Conde Creek and the public water intake are numerous other major watersheds such that any impact from livestock grazing at Conde Creek at the public water intake is negligible and not measurable. Renewal of the lease with required mitigation and Terms and Conditions will not be a significant contributor of contaminants to public water systems because of the relatively low number of cattle (268) across a 10,919 acre allotment, and the allotment is 27 miles from the Rogue River intake for public water (EA p. 33). Therefore, the conclusion is not arbitrary, and lease renewal is in compliance with the Clean Water Act.

Protest Point #6: Continued use of the temporary corral at Conde Creek violates the Clean Water Act and the Medford District RMP standards and guidelines to remove livestock management facilities within riparian reserves.

Response: The Medford District RMP notes that where ACS and riparian reserve objectives cannot be met, facilities should be removed or relocated (RMP p. 92). The RMP also offers guidance saying “[l]imit livestock trailing, bedding, watering, loading, and other handling efforts to those areas and times that will ensure Aquatic Conservation Strategy and riparian objectives are met”.

The current location of the temporary corral in Conde Creek is preventing the attainment of ACS objectives because cattle are gathering and herded in the area including the riparian zone before being moved into the corral. This causes livestock to cross the main channel of Conde Creek several times while being moved to the corral. Effects from the corral or itself location are not the causal factor (it’s situated on a hardened road turnout), but the activity of managing the livestock near riparian locations adjacent to the corral area, prior to being moved into the temporary corral is the causal factor of the impacts.

The Decision to implement Alternative 2 with mitigation measures along Conde Creek deferred the need to relocate the temporary corral because no practical location was found when BLM staff and the lessee searched for potential locations recently, as well as several times in the past. However, the mitigation measure to construct exclosures approximately 500 feet above and below the temporary corral will result in exclusion of livestock use and herding-impacts in the riparian portions of Conde Creek. The noted mitigation measures will promote impact recovery due to exclusion and defer the need to relocate the temporary corral. The exclosures will ensure that the ACS and riparian reserve objectives of the RMP are met while attainment of required guidelines will ensure compliance with the Clean Water Act.

Protest Point #7: Alternative 2 will spread noxious weeds by authorizing the same number of AUMs and the same grazing season as the current condition.

Response: The Medford District RMP objective for noxious weeds is to contain and/or reduce noxious weed infestations using an integrated pest management approach, and to reduce infestations *where possible* [emp. added] (RMP p. 92).

Canada thistle (*Cirsium arvense*), Klamath weed (*Hypericum perforatum*), medusahead rye (*Taeniatherum caput-medusae*) and Armenian (Himalayan) blackberry (*Rubus discolor*) are all “B-Designated Weeds” on the allotment. There are no species from the federal noxious weed list in the project area. Eighty-nine percent of documented Armenian blackberry, Canada thistle and Klamath weed populations occur along existing roads or other areas that have a disturbance regime due to management activity (EA p. 67). Thus, the spreading mechanism for noxious weeds is attributed mostly to roads and

not livestock grazing. Because BLM has a weed treatment program, populations of noxious weeds selected by the BLM for treatment and control efforts in the allotment would continue to decrease in size (EA p. 67). This treatment program would be enhanced by a new term requirement to pressure wash vehicles and equipment before entering the allotment. Therefore, Alternative 2 meets the RMP objective to reduce weed infestations by reducing weed seed abundance and spread vectors.

Protest Point #8: Alternative 2 violates the Medford RMP because it would lead toward listing of the Franklin's bumblebee.

Response: This species was once locally common throughout the Rogue Basin in southern Oregon. There was only one known site confirmed to be active in 2006 (Robbin Thorp Pers. comm.), but the species is in steep decline. The likely cause for the decline is the introduction of a parasitic fungus from Europe and not habitat loss or degradation (Robbin Thorp Pers. comm.) (EA p. 74) Surveys for the species were conducted in the vicinity of Howard Prairie Reservoir and Hyatt Lake prior to the decline of this species and never produced any individuals of this species. The expert's opinion is that there is an invisible, but real division created by the Sierra-Cascade crest and so this species would not be affected by the grazing within the Conde Creek grazing allotment (Robbin Thorp Pers. comm.).

Protest Point #9: Alternative 2 violates the Medford RMP (p. 34) because it retards or prevents attainment of Late Successional Reserve (LSR) objectives.

Response: This point does not specifically state how the RMP is violated, but simply reiterates the guidance for protecting LSRs. However, there is no mapped late-successional LSR in the Conde Creek allotment. LSRs also include known northern spotted owl activity centers (RMP, p. 32). There are no known spotted owl activity centers in the Conde Creek allotment (EA p. 73). Therefore, Alternative 2 does not violate the RMP by retarding or preventing attainment of LSR objectives.

Protest Point #10: Alternative 2 violates the Medford RMP at page 34 because BLM has failed to ensure that Alternative 2 would not lead to a trend toward listing of certain rare plant species (*Cimicifuga elata* and *Scirpus pendulus*).

Response: Alternative 2 analyzed impacts from grazing on these two species and other species of concern through ongoing monitoring of the plants and their habitats.

“The 6 *Cimicifuga elata* populations occur in areas considered to be less desirable to cattle due to their lack of perennial water sources. Trampling and loss of seed bank due to livestock-caused soil disturbance would pose threats to the long-term health of these populations. However, average utilization data indicates the populations are located in an area that averages “slight” to “light” use (6-40%); risk for impacts to plants is present but very low.” (EA, p. 64)

“The 9 populations of *Scirpus pendulus* would continue to face the potential for population decline due to use as forage and damage due to soil disturbance (i.e. trampling, soil compaction and erosion). Implementation of terms and conditions and/or mitigation measures would reduce impacts, but would not eliminate risk of population damage. However, if monitoring indicates a negative change in population size (decrease), exclosures would be constructed and/or adaptive management practices would

be employed to protect SSP and to mitigate for further damage.” (EA p. 66)

Alternative 2 was developed to improve ecosystem health overall with addition of new terms and conditions and mitigations. The EA on pages 68 & 69 describe how the new terms and conditions and mitigations will benefit botanical resources. Alternative 2 is in compliance with the Medford RMP because it would not lead to a trend toward listing of rare plant species (*Cimicifug elata* and *Scirpus pendulus*).

EUGENE STANLEY PROTEST RESPONSE

Mr. Stanley protested three terms and conditions that were proposed in the August 9, 2011 Proposed/Final Decision and the decision to amend Alternative 2 to reflect an automatic default to Alternative 3 if there is a nonwillful, willful or repeated willful violation (43 CFR §4140), such as with Unauthorized Use regarding removing cows at the end of the season (Proposed Decision pg. 2).

For terms and conditions protested, the following questions were asked of each. Answers applicable to all protest points are given below each question, and specific responses to individual protest points are provided in protest responses respectively.

1) *How will the items be administered and monitored by the BLM?*

Monitoring, as defined in section 4100.0-5, will be accomplished through annual checks by BLM staff for compliance with lease terms and conditions and through measurements taken on resources using techniques described in the Conde Creek EA (EA p. 7-8). Additional monitoring techniques may be employed should new processes or needs be identified. Any new monitoring technique will be discussed with lessees and interested parties pursuant to sections 4110.3 Changes in permitted use or 4120.2 Allotment management plans and resource activity plans.

2) *How will the terms and conditions listed above be implemented? Will the unauthorized cattle found have to be identified as to whom the branded cow belongs to, determination made as to how many belong to each owner (if multiple owners are represented) and their location given? If so, will this information be given to both permittees? As there are two permittees on the Conde Creek Allotment, what would the BLM do if three cows belonging to me and either cows belonging to the other permittee were found in one or more unauthorized locations? Would both of our permits take-off dates be adjusted to the September 10th the following year? The previous situation mentioned is an example of which there could be numerous variations.*

3) *What are the written procedures for the BLM to follow in the enforcement of terms and conditions?*

4) *What are the notification and appeals procedures that would be used if I am found in violation of any of the four above mentioned regulations and the other Terms and Conditions in Alternative 2?*

5) *Will the BLM follow these notification and appeal process procedures during the term of this permit?*

For question 3-5; notification, comment, protest and appeal procedures will follow the regulations contained at 43 CFR 4160 – Administrative Remedies or as applicable to specific CFRs or procedural requirements.

Protest Point #11: Amendment to Alternative 2 in which Alternative 3 would be the automatic default if there is a nonwillful, willful or repeated willful violation (43 CFR §4140), such as with Unauthorized Use, regarding removing cows at the end of the season.

Response: BLM will follow appropriate CFRs and processes required to preserve lessee's rights should an adverse action be required due to non-compliance by one or more lessees.

Protest Point #12: The Term and Condition which states; "Lessees are expected to commit continuous, day-long riding and gathering efforts necessary to effectively locate and remove all livestock by the end of the annual authorization period" needs further clarification.

Response: BLM will conduct compliance checks in the field and contact lessees to determine if all cows have been removed from the allotment. Actual use reports will also be used to analyze if livestock have been removed by the required take-off date. If the BLM finds cattle were on the allotment past the take-off date or are unaccounted-for in actual use reports, each lessee will be asked to show cause for why the livestock were not removed from the allotment and what efforts were made to meet the lease terms and conditions.

Protest Point #13: The Term and Condition which states; "If more than 10 unauthorized cattle are found on the allotment past the take-off date, the following year's take-off date may be adjusted to September 10th, to provide protection from the previous year's late-season unauthorized use due to ineffective removal of livestock. An additional year(s) with the September 10th take off date will be applied if recovery from unauthorized use does not occur" needs further clarification.

Response: BLM will follow appropriate CFRs and processes required to preserve lessee's rights should an adverse action be required. In the event that more than ten cattle are found on the allotment after the required take-off date, the owner will be notified. When ownership can't be determined, each lessee will be contacted with the expectation that the lessee will respond by; determining if the livestock are theirs, removing them, and reporting back to the BLM.

Confirmation of ownership and location of unauthorized cattle will be documented, and any lessee who has more than ten unauthorized cattle on the allotment may have their season of use shortened to September 10th, to provide protection from the previous year's late-season unauthorized use. However, if resource specialists find that a shortened season of use is not required for recovery of resources from the ineffective removal of livestock then the season of use will not be adjusted to September 10th.

BLM, at the authorized officer's discretion, may pursue an unauthorized use case against any livestock owner determined to be in an unauthorized use status. Unauthorized use can lead to penalties for forage consumed, resource damage, and other administrative costs pursuant to 43 CFR 4140 (Prohibited Acts), 4150 (Unauthorized Grazing Use), 4160 (Administrative Remedies), and 4170 (Penalties).

Protest Point #14: The Term and Condition which states "To prevent the further spread of nonnative species in the allotment vehicles used for livestock transport and herding (trailers, trucks, all-terrain vehicles [ATVs]), and all motorized vehicles intended for use off of established roadways, must be power-washed prior to entry onto BLM-administered lands. Washing must remove all mud, dirt, excrement, and vegetative debris from vehicles" needs further clarification.

Response: The vehicle washing term and condition has been modified to clarify that vehicle washing is required only after driving through a weed infested area (Final Decision, p.11). BLM will monitor this by noting if vehicles present on the allotment were washed prior to entry on the allotment, or if mud, dirt, excrement, and vegetative debris remain on the vehicle after driving through a weed infested area. BLM will manage this effort primarily through cooperative discussion with lessees and will take action when violations are determined, as described in 43 CFR 4140.1 (Acts prohibited on public lands).

FINAL DECISION

I have considered the statement of reasons included in the protest letters, information received through consultation, communication, and coordination with the current grazing lessees, and several members of the interested public. Under the authority of 43 CFR 4130.2a, 43 CFR 4130.2d, and 43 CFR 4160.3, it is my Final Decision is to issue two separate grazing leases, each with a term of 10-years, beginning March 1, 2012 to February 28, 2022. The potential impacts of these grazing leases were considered under Alternative 2 and described in the Environmental Assessment, EA# DOI-BLM-OR-M060-2010-0027-EA which includes terms and conditions, as shown in Table 1, because I believe it best meets the purpose and need, and best addresses the issues identified in the EA with acceptable environmental consequences.

The implementation of Alternative 2 will renew the Conde Creek grazing leases with the same season of use and same AUMs as the existing livestock grazing lease. The lease will authorize 168 cattle (601 AUMs) on BLM managed lands and 100 cattle (352 AUMs) on private land under Exchange of Use (EOU) Agreement from June 16th to September 30th. I am clarifying the new term and condition relating to the Soda Creek meadow fence (project #750200) in 37S 3E Section 5. Use in the west portion of the Soda Creek meadow fence adjacent to the wooden corral will be used during gathering and livestock will be removed within two days. The separately fenced, east portion of the Soda Creek meadow fence will continue to be used as a rotational pasture. The term and condition as adjusted is in Table 2, below.

The selection of Alternative 2 includes implementation of four mitigation measures and nine additional Terms and Conditions of the lease. The following table (Table 1) describes terms and conditions to be included as a requirement of the lease renewal; Table 2 (below) lists the range improvements and party responsible for maintenance.

Table 1 – Lease Terms and Conditions

Authorization	Use Type	Number of Livestock	Season of Use	AUMs	EOU AUMs	Total AUMs
Lessee 1	Active Lease	135 cattle	06/16-9/30	485		485
Lessee 1	Exchange of Use	100 cattle	06/16-9/30		352	352
Lessee 2	Active Lease	33 cattle	06/16-9/30	116		116
Total		268 Cattle		591		943
Terms and Conditions (43 CFR 4130.3-2)						
<ul style="list-style-type: none"> • Turn-out will be based upon range readiness. • Actual use reports are to be returned within 15 days of off-date. • Billings are due upon receipt and must be paid prior to turn-out. • Late payment may result in unauthorized use, late fees and/or interest penalty. • *Lessees are expected to commit continuous, day-long riding and gathering efforts necessary to effectively locate and remove all livestock by the end of the annual authorization period. • *If more than 10 unauthorized cattle are found on the allotment past the take-off date, the following year's take-off date may be adjusted to September 10th, to provide protection from the previous year's late-season unauthorized use due to ineffective removal of livestock. An additional year(s) with the September 10th take off date will be applied if recovery from unauthorized use does not occur. • *Grazing use after the take-off dates may result in unauthorized use fees for forage consumed. • *When an average stubble height of 5 inches is reached and/or there is greater than 20% active, livestock caused bank alteration in the seeps, springs, intermittent and perennial waterways along Conde, Soda and Lost Creeks, or their tributaries, livestock would be moved away from these areas. If any livestock return to these areas they are to be confined and removed from the allotment by the lessee within 3 days. • BLM approved ear tags may be a requirement of the lease. 						

- *Lessees would conduct active management practices such as herding to promote livestock distribution to reduce grazing use in riparian areas as often as needed to be in compliance.
- *Salt/mineral blocks will be placed at hardened locations at least ¼ mile from streams, springs, seeps or other wetlands with riparian vegetation, special status species, and recreation areas and would be rotated monthly to promote livestock distribution and movements into areas where utilization levels are low.
- *Lessees are expected to annually commit labor, materials and/or funds necessary to keep improvements fully functional prior to livestock turn-out for the duration of the lease, including during periods of approved nonuse.
- *While gathering, livestock will be removed from the west portion of the Soda Creek meadow fence (project #750200) in 37S 3E Section 5 within two days.
- *To prevent the spread of invasive species all vehicles that have travelled through a weed infested area shall be washed prior to entry onto BLM-administered lands. Washing must remove all mud, dirt, excrement, and vegetative debris from vehicles.

*New Term and Condition

Mitigation Measures That Will Be Implemented Under This Decision

- Two protective exclosures will (In Sec. 7, along Conde Creek and Sec. 31, in the Big Glades area) exclude grazing around two affected riparian areas. The exclosure at Big Glades would have water piped approximately 100 feet into an existing spring box.
- Pump chance/fire water sources that are inaccessible to livestock would be made accessible by pulling the banks back or adding rock where it is possible without affecting the existing stream channels entering or exiting the pump chances.
- Riparian areas determined to have levels of soil disturbance exceeding 20% may be seeded using native seed mixtures. Seeding would be limited to native seed supply and workforce availability.
- BLM project number 750535, Aspen Exclosure will be extended to protect an area inhabited by the Mardon skipper from livestock grazing. The extension increases the size of the current exclosure from approximately 0.25 acres to 2.17 acres in size.

Mitigation Measures Deferred Under This Decision

- An alternate location for the current temporary corral location along Conde Creek in T. 38S. R.3E Section 7 will be constructed along road 38-3E-11 (approximately 0.2 miles North of current location). This may require cutting trees and adding rock to harden and level the surface to accommodate a 30'x50' temporary holding pen and allow a truck and trailer to load cattle. Drift fences may be constructed to facilitate herding into the temporary corral.

The mitigation measure to develop an alternate location for the temporary corral is being deferred at this time because Conde Creek is going to be fenced below and above the location where the corral is currently set-up annually for approximately 6 weeks. The corral is placed within the road prism at a compacted pull out along the Conde Creek Road. Because livestock will no longer have access to the Conde Creek riparian at this location impacts associated with livestock movement into the corral will be precluded. However, if monitoring data indicates that the alternate corral location is needed to protect the Conde Creek riparian, a new analysis and a second decision will be made to meet resource needs.

Monitoring

Monitoring data will be collected annually at key areas chosen in the field in cooperation with the lessees. Key areas will be static unless monitoring of utilization patters determines key area movement is necessary. Cooperative discussion with the lessees will be done prior to any change being made. Data will be collected during the hot season (June 15-September 30) and will be used to work collaboratively with the lessees to ensure that livestock are moved from riparian areas prior to crossing the thresholds identified in the Terms and Conditions and to trigger management changes the lessees may have to

implement for compliance with the lease (EA p.8 & 11). In addition to being used as a management tool, the data gathered will be used to determine the effectiveness of the additional terms and conditions and mitigation measures in the analysis for the next lease renewal period.

Range Improvements & Maintenance

Under Alternative 2 maintenance responsibilities for seven range improvement projects will be transferred to the lessees (Table 2). A new maintenance agreement will be developed after lease renewal has taken place formalizing maintenance responsibilities for each lessee. The requirements for maintenance and associated penalties are described in the EA on page 9-10.

Table 2 - Range Improvement Project Maintenance

Project Name	Project Number	Project Type	Alt 2 Maintenance Responsibility
Soda Creek Meadow Fence	750200	20 Acre Pasture	Lessee
Conde Fence	750480	Internal fence	Lessee
Conde Cattleguard	750481	Internal cattleguard	Lessee
Soda Creek Cattleguard	750493	Internal cattleguard	Lessee
Brainstorm Spring	750521	Trough	Lessee
Soda Meadow Corral	750526	Wooden Corral	Lessee
Aderondack Reservoir	750360	Reservoir	Lessee
Conde Creek Pump Chance 1	750321	Pump Chance	BLM
Conde Creek Pump Chance 2	750322	Pump Chance	BLM
Lost Creek Pump Chance	750402	Pump Chance	BLM
Soda Meadow Pump Chance	750409	Pump Chance	BLM
Rainbow Meadow Spring Exclosure	750561	Riparian Exclosure & Trough	Lessee
Soda Bill Meadow Exclosure	750562	Riparian Exclosure	Lessee
Big Glade Spring Exclosure	750563	Riparian Exclosure	Lessee
Aspen Exclosure	750535	Aspen and Mardon Skipper	Lessee
Deer Creek-Conde Drift Fence & Cattleguard	000218	Fence & cattleguard	Lessee (shared with Deer Creek lessee)
Conde Crk. Exclosure	To be assigned	Riparian Exclosure	Lessee
Big Glade Exclosure 2	To be assigned	Riparian Exclosure & waterline	Lessee

DECISION RATIONALE

Based on my review of the EA for Grazing Lease Renewal of the Conde Creek Allotment (DOI-BLM-OR-M060-2010-0027-EA), reissuing two 10-year grazing leases with identified terms and conditions will balance the need to allow for livestock grazing as part of the Medford District’s multiple-use program, while complying with the *Standards for Rangeland Health and Guidelines for Grazing Management for Public Lands in Oregon and Washington* (1997).

This Final Decision finds a balance between reducing impacts while allowing a viable grazing operation. Concerns about the viability of ranching operations from the ranching community were strongly considered. The primary effects to resources in the Conde Creek Allotment are the result of late-season grazing particularly within the riparian systems. The differences between the alternatives that were crafted were driven by the need to address those concerns. Alternative 1 made no changes to the current grazing scheme and gave us a base analysis if BLM left AUM rates, seasons of use, and terms and

conditions unchanged. Alternative 4 eliminated grazing for a ten year period. Alternative 2 added substantial responsibilities on behalf of both the BLM and the lessees, while Alternative 3 essentially eliminated the late season grazing and the impacts associated with grazing into late August and September, and constituted a good substitute for Alternative 2 if cooperation with the lessees was lacking.

Short of eliminating grazing or fencing off all areas with water, there will be impacts from grazing in riparian zones (acknowledged in the Medford District RMP via its accompanying EIS). Therefore, the objective is not zero impact. I have made a number of trips to the allotment to see first-hand the most impacted riparian zones. In Alternative 2, the most heavily impacted riparian areas are proposed for exclusion from grazing as mitigation, and I am choosing to implement those mitigation measures. Thus, these additional riparian areas will be physically closed to cows. Additional mitigation such as improving livestock watering sites and seeding riparian areas will also be implemented to improve riparian health. Therefore, the EA correctly concludes that riparian conditions will improve under Alternative 2.

The emphasis of the proposed management changes focus on being timely and diligent in getting livestock off the allotment by the end of the grazing season. Terms and conditions in Alternative 2 include penalties that may include reducing the grazing season on an annual basis until recovery from unauthorized use has occurred if more than 10 cows are found on the allotment after the turn-off date. In the event of unauthorized use, the authorized officer will apply the provisions of 43 CFR 4150 – Unauthorized Grazing Use. Under these provisions, the authorized officer shall determine what type of unauthorized use has occurred, what extenuating circumstances or penalties apply, and what is necessary regarding resource protection and recovery. Other administrative review shall be done to determine if terms and conditions of the grazing authorization were violated and may result in additional actions. Ongoing monitoring on the allotment will provide the BLM with site-specific data to validate that improvements in the riparian areas are occurring.

The Rangeland Health Determination implicates livestock grazing as a contributing factor for not meeting Standard 2, Watershed Function – Riparian/Wetland Areas, and Standard 4, Water Quality. My Proposed/Final Decision to modify the existing livestock grazing lease for the Conde Creek Allotment, which includes four mitigation measures, and nine additional required terms and conditions will reduce impacts to riparian areas and plant communities, and is expected to make progress towards meeting the Standards for Rangeland Health in the Conde Creek Grazing Allotment.

LAND USE PLAN COMPLIANCE

The Medford District initiated planning and design for this project to conform and be consistent with the Medford District's 1995 RMP. Following the March 31, 2011 decision by the United States District Court for the District of Columbia in Douglas Timber Operators et al. v. Salazar, which vacated and remanded the administrative withdrawal of the Medford District's 2008 ROD and RMP, we evaluated this project for consistency with both the 1995 RMP and the 2008 ROD and RMP. Based upon this review, the selected alternative does not contain design features not included in either the 1995 RMP or the 2008 ROD and RMP. Accordingly, this project is consistent with the Medford District's 1995 RMP and the 2008 ROD/RMP.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

I have considered both context and intensity of the impacts anticipated from the renewal of the livestock grazing lease on the Conde Creek Allotment relative to each of the ten significance criteria suggested by the CEQ. I have determined that my decision to implement Alternative 2, as described in the Environmental Assessment for the Conde Creek Grazing Allotment Lease Authorization, are within the range of effects described in the Environmental Impact Statements for the Medford Grazing Management

Program (incorporated by reference by the Medford District Management Plan Environmental Impact Statement), or the effects have been determined to not be significant. The estimated effects of implementing Alternative 2 are described below relative to each of the ten significance criteria suggested by CEQ.

With regard to the criteria related to intensity (severity of effect), Alternative 2 would not:

1) *Have significant beneficial or adverse effects*

Soils and Water Resources

While grazing was identified as a contributing factor for not meeting rangeland health standards of watershed function (riparian/wetland areas), and water quality conditions, Alternative 2 will modify the grazing lease by adding nine new terms and conditions of the lease and implementation of four mitigation measures in an effort to reduce the pressures of grazing on riparian function and water quality.

Removal of livestock when a 5 inch stubble height and/or 20% bank alteration threshold is met will slightly improve streambank stability, improve the ability of vegetation to trap sediment during higher streamflows, and reduce the solar radiation and heating of the water surface in seeps/springs/streams. Both the term requiring earlier take-off date in the years following unauthorized post-season grazing and removal of cows from the Soda Creek meadow within in two days of gathering will reduce late season impacts to riparian areas (*EA p.35*). The additional terms and conditions will also improve distribution within the allotment which will likely decrease bare ground, increase soil surface resistance to erosion, and improve soil stability in areas that currently receive heavy use (*EA p.78*).

The improvement of existing water facilities will aid in drawing cattle out of the perennial waterways and springs which will decrease soil disturbance in the local area(s) where cattle congregate for water. Access to reliable water sources will decrease use of perennial waterways and may aid livestock distribution across the allotment. The two exclosures proposed as mitigation measures on Conde Creek and the Big Glades area of Soda Creek will improve the conditions of water resources at those locations will prevent seasonal trampling in these perennial wet areas, and aid in the stabilization of these riparian areas (*EA p. 35 & 78*)

The long-term goal of the WQRP is compliance with water quality standards for the 303(d) listed streams in the North and South Forks Little Butte Key Watershed. The WQRP identifies TMDL implementation strategies to achieve this goal. Recovery goals focus on protecting areas where water quality meets standards and avoiding future impairments of these areas, and restoring areas that do not currently meet water quality standards. The recovery of water quality conditions on BLM-administered land in the North and South Forks Little Butte Key Watershed is dependent upon implementation of the BLM *Medford District Resource Management Plan* (USDI 1995). The RMP (Appendix D: 172) includes best management practices (BMPs) that are intended to prevent or reduce water pollution to meet the goals of the CWA (*EA p. 25-26*).

Best Management Practices described in the RMP (Appendix D: 172) call for protecting, maintaining, and improving water quality and riparian areas with the use of fencing, resting the allotment during periods of critical vegetation growth, and adjusting livestock management practices to meet resource objectives. The implementation of Alternative 2 conforms to these Best Management Practices as follows: fencing nonfunctional riparian areas and improving off-channel water sources to protect aquatic habitats; seeding bare ground in riparian areas; and requiring the maintenance of an average of 5 inch stubble height and/or 20% or less streambank alteration in riparian areas to prevent over utilization in riparian areas.

Vegetation

While many of the perennial plant species will not produce seed by June 16 much of the allotment is not grazed prior to seed set and the stocking rate is low enough to still allow 40-80% of the plants to produce seed every year. The Rangeland Health Assessment completed in August 2006 showed that there are varied departures in Biotic Integrity within the allotment, depending on the ecological site being evaluated. Six ecological sites were evaluated: Dry Meadow (Moderate departure), Wet Meadow (None to Slight departure), semi-wet meadow (None to Slight departure), Douglas fir forest (None to Slight departure), and Pine fescue (None to Slight departure) (*EA p.56*).

Wildlife

An extension of an existing enclosure (BLM project number 750535, Aspen Enclosure) will protect an area inhabited by the Mardon skipper from livestock grazing, a species that is a federal candidate for listing under the Endangered Species Act (ESA). Under the Bureau Special Status Species Policy (BLM Handbook 6840, 2008) candidate species are to be managed as Sensitive Species. The extension increases the size of the current enclosure from approximately 0.25 acres to 2.17 acres in size.

Under Alternative 2 impacts to wildlife will be lessened because of the proposed mitigation measures and additional terms and conditions of the lease (*EA p.75*)

Aquatic Habitat

Alternative 2 will slightly reduce grazing effects along perennial waterways through new terms and conditions, mitigation measures, and constant herding efforts (*EA p.48*).

Climate Change

Livestock grazing authorized in the Conde Creek grazing lease falls well below the production limit to be in compliance with the Council for Environmental Quality's directions for Methane production and the analysis assumes that changes in grazing practices on this allotment would not result in any change in total carbon storage (*EA p. 21*).

2) Have significant impacts on public health or safety.

I have not identified any aspects of this lease renewal as having the potential to significantly and adversely impact public health or safety. All operations on BLM-administered lands are required to meet Occupational Safety and Health Association regulations for worker and public safety.

Grazing animals were identified as a potential contaminant source for the Gold Hill, Rogue River, and Grants Pass drinking water protection areas. This allotment is within the source water areas for the cities of Gold Hill, Rogue River and Grants Pass; however, given that the numbers of AUMs authorized on this allotment is somewhat low, it is unlikely that this allotment grazed as authorized under the No Action or the three action alternatives will be a significant contributor of contaminants to source water (*EA p.33*).

3) Have significant, adverse effects on unique characteristics of the geographic area such as historic or cultural resources; park lands or refuge lands; wilderness areas; wild or scenic rivers; Areas of Critical Environmental Concern (ACEC); or prime farmlands.

The grazing allotment does not include; parks, refuge lands, wilderness areas, wild or scenic rivers, or prime farmlands. Nor does the allotment contain any ecologically significant areas such as significant caves, Areas of Critical Environmental Concern, National Monuments, Wilderness Study Areas, Research Natural Areas, or areas listed on the National Register of Natural Landmarks.

The grazing allotment is not near any established or developed recreation areas. Planned grazing activities are within the range of effects expected from the previous authorization and are within the guidelines approved for the Visual Resource Management rating applied to this site.

4) Have highly controversial environmental effects.

I have not identified any significant or unique level of controversy, or substantial dispute within the scientific community, concerning the effects of this lease renewal. The EA was published for public review and comments were received that supported non-use as the only means to improve riparian conditions. The concerns identified in this letters were addressed in the EA and these concerns do not elevate this to highly controversial environmental effects. The effects of renewing the grazing lease for the Conde Creek Allotment are similar in nature to those of other approved grazing leases that have been implemented within the scope of the Environmental Impact Statements for the Medford Grazing Management Program and Medford District Resource Management Plan.

5) Have highly uncertain and potentially significant environmental effects or unique or unknown environmental risks.

The analysis does not show that this action will involve any unique or unknown risks outside of those addressed and anticipated in the Environmental Impact Statement for the Medford Grazing Management Program.

6) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The decision to renew the Conde Creek Allotment grazing leases will not set any precedents for future actions with significant effects and is consistent with the level of grazing anticipated in the 1995 Resource Management Plan. These grazing lease renewals will reauthorize grazing activities with minor modifications similar to previously approved livestock grazing plans under the 1984 Medford Grazing Program Environmental Impact Statement.

7) Be directly related to other actions with individually insignificant, but significant cumulative environmental effects.

The Interdisciplinary Team (IDT) reviewed this project for the potential for significant cumulative effects considering past, present, and reasonably foreseeable actions. Terms and conditions are included as part of this lease renewal in order to implement it in a manner that reduces the potential for adverse effects to water quality, aquatic and wildlife habitats, botanical resources, and soils. Based on the analysis documented in the EA, there is no substantial potential for implementation of this lease renewal to contribute to significant beneficial or adverse cumulative effects.

8) Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places. This includes Native American religious or cultural sites, archaeological sites, or historic properties.

The Conde Creek Grazing Lease Renewal was reviewed for the potential for adverse effects on cultural resources. BLM determined that livestock grazing does not pose any significant threat to cultural sites (EA p.78).

9) Have adverse effects on species listed or proposed to be listed as Federally Endangered or Threatened Species, or have adverse effects on designated critical habitat for these species.

Coho, Coho Critical, and Essential Fish Habitat

In 1997, the Southern Oregon/Northern California (SONC) Evolutionary Significant Unit (ESU) of coho salmon (*Onchorynchus kisutch*) was listed as “threatened” with the possibility of extinction under the Endangered Species Act (ESA) by the National Marine Fisheries Service (NMFS). There are no coho salmon within the allotment area and, therefore, no potential for direct effects to coho. The nearest Coho Critical Habitat is approximately 1.5 miles downstream of the Allotment. There is no Essential Fish Habitat, as defined by NOAA fisheries within the allotment (*EA p. 41*).

Because Coho Critical Habitat for SONC coho salmon is 1.5 miles downstream of the allotment, and because there is no Essential Fish Habitat (EFH) within the allotment, BLM has determined that renewing the Conde Creek Lease Renewal under Alternative 2 is a “No Effect (NE)” for listed coho salmon, their Critical Habitat, and Essential Fish Habitat.

The Conde Creek Allotment is outside the range of federally listed plants known to occur on the Medford District of the BLM (*Fritillaria gentneri*, *Limnanthes floccosa*, *Arabis macdonaldiana*, and *Lomatium cookii*) as defined by the U.S. Fish and Wildlife Service (USDI Fish and Wildlife Service, 2003). No occurrences of any federally listed plant species are known on federal lands within the allotment (*EA p. 56*).

There are thirteen known Special Status vascular and nonvascular plants, and fungi within the Conde Creek Allotment. Grazing under Alternative 2 does not pose a threat to the persistence of Bureau Sensitive plants because loss of some individuals will not contribute to the need to list these species (*EA p. 64-65*).

There are no known Northern Spotted Owl nest sites in the allotment. Northern Spotted Owls prefer dense forest habitat and grazing is light to non-existent in these areas due to a lack of forage. Grazing does not affect this species in this allotment (*EA p. 73*).

10) Violate a Federal, State, Local, or Tribal law, regulation or policy imposed for the protection of the environment.

I have determined that implementing Alternative 2 will not result in actions that will threaten a violation of any federal, state, or local environmental protection laws. As designed, Alternative 2 will comply with the Medford Grazing Management Program and the Medford District Resource Management Plan.

These lease renewals are in conformance with the direction given for the management of public lands in the Medford District by the Northwest Forest Plan, the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the Endangered Species Act (ESA), Safe Drinking Water Act (SDWA) of 1974 (as amended in 1986 and 1996), the Clean Water Act, and the Archaeological Resources Protection Act of 1979 (ARPA).

The BLM ID Team reviewed this grazing lease renewal for the potential for disproportionately high or adverse effects on minority or low income populations; based on that analysis, I have determined that no adverse impacts to minority or low income populations will occur as a result of implementing Alternative 2. *Executive Order 12898 (Environmental Justice)*.

The grazing lease renewals will not result in restricting access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites. No sites have been identified in the project area. *Executive Order 13007 (Indian Sacred Sites)*.

This project will have no effect on Indian Trust Resources as none exist in the project area.

AUTHORITY

This decision is made under the authority of the following 43 CFR 4100 citations:

4100.0-8 (Land use plans), 4110.2-2 (Specifying permitted use), 4120.3 (Range improvements), 4130.2 (Grazing permits or leases), 4130.3 (Terms and conditions), 4130.3-1 (Mandatory terms and conditions), 4130.3-2 (Other terms and conditions), 4130.3-3 (Modification of permits or leases), 4130.4 (Approval of changes in grazing use within the terms and conditions of permits and leases), 4160.3 (Final Decisions), 4180.2 (Standards and guidelines for grazing administration).

RIGHT OF APPEAL PROCEDURES

Any applicant, lessee or other person whose interest is adversely affected by the Final Decision may file an appeal (*in writing*) in accordance with 43 CFR 4.470 and 43 CFR 4160 .4. The appeal must be filed within 30 days following receipt of the Final Decision. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471 and 4.479, pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the authorized officer, as noted above. The person/party must also serve a copy of the appeal by certified mail on the U.S. Department of the Interior, Office of the Regional Solicitor, Pacific NW Region, 805 SW Broadway, Suite 600, Portland, Oregon 97205, and person(s) named [43 CFR 4.421(h)] in the *Copies sent to*: section of this decision.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the Final Decision is in error and otherwise complies with the provisions of 43 CFR 4.470.

Should you wish to file a petition for a stay, see 43 CFR 4.471 (a) and (b). In accordance with 43 CFR 4.471(c), a petition for a stay must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on the merits.
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer and served in accordance with 43 CFR 4.471.

Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the Office of the Solicitor and any other person named in the decision (43 CFR 4.472(b)).

If you have any questions, feel free to contact Steve Slavik at (541) 618-2471.

Sincerely,

/s/: *John Gerritsma*

John Gerritsma
Field Manager
Ashland Resource Area

Enclosures

cc:

CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 0951)

Robert Morris, President
Dead Indian Stockman's Association
225 West Valley View Road
Ashland, OR 97520

CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 0968)

Randy White
Jackson County Soil and Water Conservation District
573 Parsons Drive
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 0975)

Joseph Vaile
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 0982)

Dave Willis
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 0999)

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CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 1002)

Amy Atwood
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 1019)

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CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 1026)

Doug Heiken
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 1033)

James Miller
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 0685)

Tom Dover
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED (7005 1820 0003 8142 1040)

Peter Cotton
The Way Foundation
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Ashland, OR 97520

APPENDIX A

PUBLIC INVOLVEMENT

COMMENT ANALYSIS

APPENDIX A: PUBLIC INVOLVEMENT–CONDE CREEK GRAZING LEASE RENEWAL EA

Written comments received in response to the Conde Creek Grazing Lease Renewal EA were reviewed by the interdisciplinary team and responsible official and substantive comments are addressed below

Substantive Comments are those that:

- Provide new information pertaining to the Proposed Action or an alternative;
- Identify a new relevant issue or expand on an existing issue;
- Identify a different way (alternative) to meet the purpose and need;
- Identify a specific flaw in the analysis;
- Ask a specific relevant question that can be meaningfully answered or referenced;
- Identify an additional source of credible research, which if utilized, could result in different effects.

Non-substantive comments are those that:

- Primarily focus on personal values or opinions;
- simply provide or identify a preference for an alternative considered;
- Restate existing management direction, laws, or policies that were utilized in the design and analysis of the project (or provide a personal interpretation of such);
- Provide comment that is considered outside of the scope of the analysis (not consistent or in compliance with current laws and policies, is not relevant to the specific project proposal, or is outside of the Responsible Officials decision space);
- Lack sufficient specificity to support a change in the analysis or permit a meaningful response, or are composed of general or vague statements not supported by real data or research.

COMMENT ANALYSIS

This section contains comments received and the BLM's response to comments. Some comments listed below were received from more than one commenter. To avoid duplication, comment statements with similar content were summarized into one comment statement. The comments and responses are intended to be explanatory in nature and where applicable to guide the reader towards analysis or information contained in the Environmental Assessment (EA).

Preliminary list of substantive comments identified in KS Wild's et al. (Center for Biological Diversity, Oregon Wild, Soda Mountain Wilderness Council, and The Wilderness Society), Eugene Stanley et al., and Brad Luscombe's Conde Creek Grazing Lease Renewal EA comments:

RANGE IMPROVEMENTS AND MAINTENANCE

Comment 1: Deer Creek-Conde Drift Fence & Cattleguard is currently being maintained by the Deer Creek Allotment Lessees.

Response: Maintenance for the Deer Creek-Conde Drift Fence & Cattleguard is currently the BLMs responsibility. With the renewal of the leases maintenance will be transferred and split equitably between the Conde Creek and Deer Creek allotment lessees.

POTENTIAL MITIGATION MEASURES

Comment 2: Seeding riparian areas is a waste of resources because there are native plants that produce seed.

Response: If there is adequate cover of native plants near riparian areas with soil disturbance exceeding 20% with sufficient seed heads intact (<50% removed) then seeding will not occur.

Comment 3: There will be no need to move the temporary corral location with construction of exclosures along Conde Creek.

Response: The mitigation measure to develop an alternate location for the temporary corral is being deferred at this time because Conde Creek is going to be fenced below and above the location where the corral is set up. If monitoring data indicates that the alternate corral location is needed to protect Conde Creek then a second decision will be made to construct and incorporate this range improvement.

TERMS AND CONDITIONS

Comment 4: Removing cattle 20 days early for having 10 cows past the off date would cost \$15,000 in hay and is unjustified.

Response: Extenuating circumstances that make this Term and Condition unattainable in any given year will be considered on a case by case basis by the decision maker prior to making a grazing decision to require livestock removal 20 days early (by September 10th) the following year.

Comment 5: The penalty for having 10 cows found on the allotment past the off date should be a reduction of the total percentage of AUMs and not a reduction in the late season use.

Response: Seven of the nine new Terms and Conditions of the lease were developed specifically to reduce impacts to riparian areas and make progress toward meeting Rangeland Health Standards. Analysis has shown that many of the riparian impacts can be associated with late season grazing and the 20 day early removal requirement will likely compensate for impacts associated with grazing after the September 30th off date.

Comment 6: Soda Creek Meadow fence and removal of cows within two days is not using the pasture the way it was intended.

Response: Because gathering of livestock occurs over several weeks and cows will be allowed to be held there for up to two days the meadow will get used the equivalent of 15-20 head of cattle for 3-4 weeks just as the pasture was originally designed to be managed.

AQUATIC CONSERVATION STRATEGY OBJECTIVES AND RIPARIAN RESERVES

Comment 7: BLM is not meeting its requirements under the Aquatic Conservation Strategy of the Northwest Forest Plan specifically; Physical Integrity of the Aquatic Ecosystem, Sediment Regime of the Aquatic Ecosystem, Riparian Plant Communities, and Flow Characteristics.

Response: Alternative 2 alters the terms and conditions of the lease to make slight progress toward: 1) improving plant cover and community structure to promote streambank stability, debris and sediment capture, and floodwater energy dissipation in riparian areas; 2) improving livestock distribution; 3) improving water quality; and 4) avoiding unwanted or damaging concentrations of livestock on

streambanks and wetland areas. The mitigation measures implemented at the specific sites in the allotment will make progress toward meeting the ACS objectives. The nine additional terms and conditions and active herd management are vital for this alternative to meet ACS objectives at the site level and HUC 7 level across the entire allotment (EA p. 35 & 36). In Summary, Alternative 2 meets the requirements of the grazing regulations for Rangeland Health, (43 CFR 4180) and therefore, is also in compliance with the ACS because aquatic ecosystems will be maintained with improving conditions across the allotment and restored in areas excluded from grazing.

WATER QUALITY RESTORATION PLAN & CLEAN WATER ACT

Comment 8: BLM must comply with the Clean Water Act.

Response: This allotment is within the source water areas for the cities of Gold Hill, Rogue River and Grants Pass; however, given the numbers of AUMs authorized on this allotment is somewhat low, it is unlikely that this allotment grazed as authorized under the No Action or the three action alternatives is a significant contributor to the identification of grazing as a potential contaminant source (EA p.33). Stream temperatures are on an upward trend (decreasing) on federal land (EA p. 27). Also see response to comment 7 above.

SPECIAL STATUS SPECIES

Comment 9: BLM must not trend species towards listing under ESA.

NORTHERN SPOTTED OWL

Response: There are no known Northern Spotted Owl nest sites in the allotment. Northern Spotted Owls prefer dense forest habitat and grazing is light to non-existent in these areas due to a lack of forage. Grazing does not affect this species in this allotment (EA p.73).

MARDON SKIPPER BUTTERFLY

Response: Under all alternatives an enclosure will protect areas known to be inhabited by the Mardon Skipper. This enclosure will aid this butterfly species through limiting trampling of eggs, larvae, or adults and through increased availability of preferred vegetation for oviposition and nectaring (EA P.72). With the construction of a protective enclosure at the reproductive site, impacts to the Mardon Skipper are greatly reduced (EA p.74).

FRANKLIN'S BUMBLEBEE

Response: The likely cause of the steep decline in Franklin's bumblebee is the introduction of a parasitic fungus from Europe and not habitat loss or degradation (EA p.74). Mitigation measures and Terms and Conditions which facilitate distribution of livestock will result in improved forage and habitat conditions for wildlife (EA p.75).

GRASSHOPPER SPARROW

Response: Mitigation measures and Terms and Conditions that **benefit** the grasshopper sparrow include; construction of two riparian enclosures, seeding of native species in riparian areas, active herding of livestock, removal of livestock when stubble height and/or bank alteration benchmarks are reached, rotation of salt block locations, and adjustment of take-off date to September 10th in years following location of more than 10 unauthorized cattle after designated take-off date. Measures noted above which facilitate distribution of livestock will result in improved forage and habitat conditions for wildlife (EA p.75).

SCIRPUS PENDULUS

Response: If monitoring indicates a negative change in population size (decrease), exclosures would be constructed and/or adaptive management practices would be employed to protect SSP and to mitigate for further damage (EA p.66).

CIMICIFUGA ELATA

Response: The 6 *Cimicifuga elata* populations occur in areas considered to be less desirable to cattle due to their lack of perennial water sources. Average utilization data indicates the populations are located in an area that averages “slight” to “light” use (6-40%); risk for impacts to plants is present but very low (EA p.64).

NOXIOUS WEEDS

Comment 10: The Medford RMP’s Resource Programs require BLM land managers to “[c]ontain and/or reduce noxious weed infestations” on BLM lands, “[a]void introducing or spreading noxious weed infestations in any areas,” and “[r]educe infestations where possible.”

Response: The Term and Condition requiring lessees to wash vehicles will help prevent the spread of weeds. Education and outreach measures will be taken (EA P. 6-7) and documented noxious weed populations would continue to be treated as prescribed in the 1995 RMP and *Medford District Integrated Weed Management Plan Environmental Assessment (1998)*. The potential for the introduction of nonnative species would be reduced in comparison to the no-action alternative (EA p.67). In addition, weed treatments would continue to occur within the allotment as part of other projects.

Comment 11: Vehicle washing is unrealistic.

Response: For compliance with; *BLM Manual 9015: Integrated Weed Management* and the 1995 RMP, the BLM requires vehicle washing for projects that could transport noxious weed seed onto BLM lands to reduce the potential for spread. Vehicles would need to be washed only when the vehicle has travelled through a weed infested area and could transport weed seeds on BLM lands (EA p.67).

BLM MUST PREPARE AN EIS

Comment 12: Grazing alternatives would result in the continuation of significant environmental impacts from grazing, such that the BLM will be required by NEPA and its implementing regulations to prepare a full environmental impact statement (“EIS”).

Response: Alternative 2 would authorize the same AUMs and season of use that was analyzed in the 1995 Final EIS with the addition of stricter management requirements and mitigation measures. Because the decision to authorize alternative 2 will not result in significant effects beyond those disclosed in the 1995 Final EIS completing an EIS will not be necessary.