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Lee Bradshaw
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Eagle Point, OR 97524

Authorization #3601674

NOTICE OF THE FIELD MANAGER'S FINAL DECISION

Dear Mr. Bradshaw:

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 Cove 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 September 22, 2011, I mailed my Notice of Field Manager's Proposed Decision to renew the grazing lease on the Cove Creek Allotment for a period of 10 years to interested public members or those who submitted comments during scoping or the Environmental Assessment 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 (Appendix A).

On October 7, 2011, a joint protest letter to the Proposed Decision was timely received from the Klamath Siskiyou Wildlands Center 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 clarified protest points summarized below.

KS WILD et al. PROTEST RESPONSE

Protest Point 1: Riparian Reserve and ACS Objectives

"Authorizing grazing on the Cove Creek Allotment does not meet Riparian Reserve and ACS objectives" (KS Wild et al., Protest Letter 10/7/2011, p.3).

BLM Response: Under BLM's 1995 RMP, the Northwest Forest Plan's ACS objectives require 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 in with every case. 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 of this project meet the requirements of ACS, and 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 Revised EA. While you've expressed your preference for an alternative that eliminates the 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 adjusts the season of use, alters the terms and conditions of the lease, improves an existing range improvement (Cove Creek Pipe Pump Chance #750080) by, constructing an enclosure and piping water off site into a trough, and divides the allotment into two pastures 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 construction of the enclosure, the additional terms and conditions, and active herd management will be essential to the success of this alternative (*Revised EA p. 19*). 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 (ACS Evaluation, in record).

Protest Point 2: Range of Alternatives and NEPA

2A. “*The range of alternatives are too narrow and do not substantiate the hard look that the National Environmental Policy Act (NEPA) requires*” (*KS Wild et al, Protest Letter 10/7/2011, p. 5*).

BLM 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 EA includes three alternatives; a No Action Alternative which would renew the grazing lease as is, the Proposed Action, an Alternative that; changes the season of use, splits the allotment into two pastures, adds four Terms and Conditions, and excludes a pond from grazing, and a No Grazing Alternative that would rest the allotment for ten years. In addition, the August 2011 revision of the Cove Creek EA (DOI-BLM-OR-M060-2009-0014-EA) discusses an alternative that was considered by the Interdisciplinary Team but was dismissed at Revised EA page 10. An alternative to reduce the AUMs by approximately 50% was not analyzed in detail because although there is an expected slight improvement in conditions under alternative 3 (no grazing), there would be no appreciable differences between this reduction and alternatives 2 and 3.

2B. *“Astonishingly the BLM proposes to increase grazing on this allotment” (Protest p. 5).*

The current Cove Creek Allotment grazing authorization recognized one pasture. However, due to a fence improvement made inside the allotment boundary by owners on private lands, the allotment was split in two. This change made the development of Pasture 2 necessary with an appropriate use authorization level that reduces grazing effects levels overall.

The Proposed Action shows an increase of 13 AUMs (5 cow pairs for 1.5 months) on the Cove Creek Allotment in Pasture 2. Pasture 2 is comprised of 13% BLM land (120 acres of approx. a 920 acre area). BLM considered adjusting the allotment boundary to exclude the 920 acre parcel (including the public land) but is required under the Federal Land Policy and Management Act (FLPMA) to make public lands available for grazing as part of the allotment. By keeping Pasture 2 in the allotment with new Terms and Condition and mitigating measures (see p.4), the likelihood of incidental Unauthorized Use* on unfenced BLM lands is greatly reduced and pressure on riparian areas and other natural resources will be reduced by lowering livestock numbers (from 75+ unauthorized cows, to 5), and fewer days of grazing (from 90+ days unauthorized to 45). Grazing at the levels shown for Pasture 2 are expected to reduce impacts to acceptable levels and make progress toward functional standards for Rangeland Health on Public Lands in Pasture 2. It is also expected that if an Annual Exchange of Use Application is received, BLMs ability to set stocking levels on private lands consistent with the allotments authorization level may extend beneficial effects to all lands within the allotment boundary, further reducing grazing effects to riparian and other natural resources in the area.

* Because no use term or condition was made at the time the new fence was installed, the Pasture 2 authorization level was incorrect, resulting in undetected Unauthorized Use. During that time, grazing followed private land use levels. Because the public lands in Pasture 2 were unfenced, incidental Unauthorized Use on BLM occurred.

2C. *“The BLM has an obligation under NEPA to prepare an EIS” (Protest p.5).*

A Finding of No Significant Impact has been completed and no significant effects were identified (DR p. 6). This decision is within the range of effects described in the Environmental Impact Statements for the Medford Grazing Management Program, or the effects have been determined to not rise to the level of significance.

Protest Point 3: Clean Water Act

BLM Response: The BLM is recognized by Oregon Department of Environmental Quality (DEQ) 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 (Revised EA p. 28).

There are no 303(d) listed streams within the Cove Creek Allotment (*Revised EA p. 14*). Riparian Reserves are adequate to maintain riparian conditions necessary to protect stream shade and restore water temperature over time (USDA and USDI 2005). Water quality on federal lands is on an upward trend with reductions in summer stream temperatures and sediment input because of the establishment of riparian reserves, the decline in road construction, increase in decommissioning, and implementation of BMPs (*Revised EA p.15*). Under alternative 2, the later season of use, the 5” riparian stubble height term, and increased herding efforts will likely improve the stability of streambanks and slightly decrease grazing-related erosion (*Revised EA p. 19*). The elimination of grazing on this allotment would not change the identification of grazing as a potential contaminant in the source water areas for the cities of Gold Hill, Rogue River, and Grants Pass. The singular action of eliminating grazing in this allotment is not likely to change the water quality listing for Walker Creek (*Revised EA p. 19*).

FINAL DECISION

I have carefully considered the statement of reasons included in the protest, information received through consultation, communication, and coordination with the current grazing lessee, and several members of the interested public. Under the authority of 43 CFR 4130.2a, 43 CFR 4130.2d, and 43 CFR 4160.1a, it is my Final Decision to issue a grazing lease with a term of 10-years, beginning March 1, 2012 to February 28, 2022. The potential impacts of this grazing lease were considered in the proposed action described in the Revised Environmental Assessment, EA# DOI-BLM-OR-M060-2009-0014-EA which includes terms and conditions, as shown in Table 1 (below). I believe these terms and conditions best meet the purpose and need, and best address the issues identified in the EA with acceptable environmental consequences.

The implementation of Alternative 2 will modify the existing livestock grazing lease to change the season of use in the Cove Creek Allotment and split the allotment into two separately fenced pastures in order to reduce impacts to riparian areas and plant communities within the allotment. Pasture 1 will contain approximately 2,065 acres and includes; T. 38 S., R. 2 E., Section 3, and BLM portions of Sections 4, 9, and 10. Pasture 2 will be approximately 920 acres and includes T. 38 S., R. 2 E., BLM managed portions of Sections 10 and 11. A modified grazing lease will be issued authorizing 49 cattle (75 AUMs) to graze public lands within Pasture 1 of the Cove Creek Allotment. The season of use will be changed to May 15 through June 30. Pasture 2 will be authorized for 5 cattle (13 AUMs) to graze on public lands within Pasture 2. Additionally, an Annual Exchange of Use (EOU) application may be made by the lessee or member of the public who owns or controls lands intermingled with federally managed lands. Exchange of use agreements allow grazing on private lands to comingle with cattle being managed on federal grazing allotments. Exchange of use is requested and approved on an annual basis and is not reflected in Grazing Leases. The season of use for the Public Land AUMs in Pasture 2 will be a period of 45 days, of the lessees choosing, to occur within the dates of May 15 through November 15. The implementation of

Alternative 2 also includes the fencing of the pond located in T. 39 S., R. 2 E., Section 11, to further reduce impacts to riparian habitat. The Proposed mitigation measure to rest the allotment for two years to recover from unauthorized use in 2008 will not be implemented in this Decision. The following table (Table 1) describes terms and conditions to be included as a requirement of the lease renewal; Table 2 lists the range improvements and party responsible for maintenance.

Table 1 – Cove Creek Allotment Authorization Terms and Conditions:

Allotment	BLM Acres	Total Acres	% Public Land	Number of Cattle	AUMs	Season of Use
Cove Creek						
Pasture 1	1,080	2,065	100	49	75	5/15-6/30
Pasture 2	120	920	100	5	13	Between 5/15-11/15 (45days)

Terms and Conditions (43 CFR 4130.3-2)

- Turn-out will be based upon range readiness*.
- Actual use reports are to be returned within 15 days of the take-off date.
- Maintenance of assigned range improvements is a requirement of lease prior to annual turn-out.
- Billings are due upon receipt and must be paid prior to turn-out.
- BLM approved ear tags may be a requirement of the lease**.
- Lessee will use salt placement and herding away from riparian areas in sections 3 and 11 to reduce use levels and promote progress toward recovery in functional at risk and non-functional rated areas.
- An average stubble height of 5 inches will be maintained in riparian areas throughout the season.
- Lessee shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of public lands.
- Salt blocks will be placed at least ¼ mile from streams (intermittent and perennial), wet areas, ponds, springs, seeps, and special status species.
- All livestock will be removed from the allotment by the schedule off-date.

*Range readiness is generally determined to be when the soil moisture is low enough to prevent impacts from livestock hooves and damage to soils, and the stage of plant growth has progressed enough to where grazing may begin without damage to vegetation.

**BLM approved, and provided, ear tags will be required if BLM deems it necessary to identify livestock during compliance checks within the allotment.

Range Improvements & Maintenance

Under Alternative 2, maintenance of two range improvement projects will be transferred to the lessee, as noted in Table 2. A new maintenance agreement will be developed after lease renewal has taken place formalizing maintenance responsibilities. The requirements for maintenance and associated penalties are described in the Revised EA on pages 6 and 7.

Table 2 - Range Improvements & Maintenance

Project Name	Range Improvement Number	Project Description	Alt. 2 Maintenance Responsibility
Cove Creek Detention Dam #1	750083	Water Development	BLM
Cove Creek Detention Dam #2	750082	Water Development	BLM
Cove Creek Detention Dam #3	750081	Water Development	BLM
Project Name	Range Improvement Number	Project Description	Alt. 2 Maintenance Responsibility
Cove Creek Pipe Pump Chance	750080	Pump Chance Fence and Trough	Lessee
Cove Creek Spr. #2	750262	Water Development & Trough	Lessee

The existing water development (#750080, Pipe Pond) in T. 39 S., R. 2 E. in Section 11 will be redesigned by BLM to upgrade existing pipes, and pipe water to a trough outside of the riparian area and construct an enclosure around the pump chance pond. Trees will be felled towards riparian areas at key locations in Section 11, as needed to obstruct access to the riparian areas by livestock.

DECISION RATIONALE

Based on my review of the EA for Grazing Lease Renewal of the Cove Creek Allotment (DOI-BLM-OR-M060-2009-0014-EA), reissuing a 10-year grazing lease 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).

The Rangeland Health Determination implicates livestock grazing as a contributing factor for not meeting Standard 2 Watershed Function – Riparian/Wetland Areas, Standard 4 Water Quality, Standard 5 Native, T&E, and locally important Species, and for not conforming to several Guidelines for Livestock Grazing Management. My Final Decision is to modify the existing livestock grazing lease for the Cove Creek Allotment, which includes a changed season of use, separating the allotment into pastures, and additional required terms and conditions will reduce impacts to riparian areas and plant communities, and will make progress towards meeting the Standards for Rangeland Health in the Cove Creek Grazing Allotment.

The proposed mitigation measure to require two years of rest is not going to be implemented because a voluntary nonuse/rest period was agreed to by the lessee and has occurred on the Cove Creek Allotment during the 2009 grazing season. The lessee has also made repairs to the damaged fence that contributed to unauthorized grazing. Based on specialist input following field review of the allotment after the season of non-use, I believe that recovery is well underway and I am not requiring any further rest from grazing at this time.

LANDUSE 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 Cove 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 Revised Environmental Assessment for the Cove Creek Grazing Lease Renewal, and this decision, 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 be insignificant. 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 2 Watershed Function (riparian/wetland areas), Standard 4 Water Quality conditions, and Standard 5 Native, T&E, and locally important species, Alternative 2 will modify the grazing lease by creating two pastures and change the release date from May 1 to May 15 in an effort to reduce the pressures of grazing on riparian function, water quality, and riparian dependent wildlife.

Historically, "hot spots" (where livestock tend to congregate causing higher levels of disturbance) occurred where livestock congregated in areas of high soil moisture. The implementation of a later season-of-use will allow more of the riparian and wetland soils to dry out before the grazing season starts, reducing areas of soil compaction. This alternative will also allow more time for soils and vegetation to recover after a season of grazing by allowing for two more weeks of spring growth prior to cattle turn out the following spring. This recovery could include increased riparian species in some areas and increased vigor of streamside vegetation (*Revised EA p. 18*).

The enclosure of the pipe pond water development in Section 11 and installation of a watering trough outside of the wetland on road 39-2E-11.1, will decrease trampling of the pipe pond banks and will reduce the hoof impacts to wet areas on the hillside below the water source and in the ditch along the lower road. Cattle will rely on the off-channel water trough instead of trampling up and down the hill to the pond (*Revised EA p. 19*). BLM will monitor the hillside wetland and additional measures will be implemented if needed to discourage cattle from utilizing this wetland area.

The long-term goal of the WQRP is compliance with water quality standards for the 303(d) listed streams in the Upper Bear Creek Analysis Area. 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 Upper Bear Creek Analysis Area will be assisted by 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 (*Revised EA p. 19*).

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: adjusting the grazing season to allow for additional spring vegetation growth and soil drying; fencing the pond and providing an off-channel water source to protect this aquatic habitat and the wetland below; falling trees in certain riparian areas to discourage cattle use; and requiring maintenance of an average of 5 inch stubble height in riparian areas to prevent over utilization in riparian areas.

Vegetation

While many of the perennial plant species will not produce seed by May 15, much of the allotment is not grazed prior to seed set. In addition, the stocking rate is low enough to still allow 40-80% of the plants to produce seed every year. Removing cattle from the majority of the allotment on June 30 will allow plants to restore carbohydrate reserves for growth in the spring. Most of the grazing that will occur in pasture 2 will be on private land; the BLM parcels (120 acres) are steep enough that they are not favored by livestock.

Recent surveys found two Special Status Plants within the Cove Creek Allotment *Poa rhizomata* and *Carex serratodens*. The *Poa rhizomata* populations occur in areas that receive slight-light utilization (*EA p. 21*). The *Carex serratodens* population occurs in wet habitats in areas seldom visited by livestock, and thus remain generally unaffected by grazing. Because of its wet habitat and its growth of fibrous root masses, *Carex* species generally recover well from herbivory. Grazing under Alternative 2 does not pose a threat to the persistence of Bureau Sensitive plants *Carex serratodens* and *Poa rhizomata* because loss of some individuals will not contribute to the need to list these species (*Revised EA p. 23*).

Wildlife

The potential direct and indirect effects to the northwestern pond turtle will not be significant or trend this species towards listing because southern Oregon supports extensive pond turtle populations (Ashton et al. 1997) (*Revised EA P. 31*). Fencing of the pipe-pond and development of an watering trough outside the riparian area (#750080, Pipe Pond) in T. 39 S., R. 2 E. Sec.11, will reduce the potential for adverse effects from grazing to the northwestern pond turtle; therefore, the effects to this species of implementing this alternative will be negligible.

The indirect and direct effects to the foothill yellow-legged frog from this alternative do not rise to level of significance because the areas of heavy-severe use are isolated and are only a small percentage of the potential habitat in the Cove Creek watershed. Even though research has shown that this species avoids areas of grazing (Olson and Davis 2007), this species benefits from areas where direct sunlight basking is available. Any threat of direct mortality from trampling when this species may travel overland to adjacent streams is reduced because this usually occurs from November through March, or outside the grazing allotment window (*Revised EA P. 31*)

The effects of grazing to the travelling sideband, chase sideband, Oregon Shoulderband and Siskiyou Hesperian mollusks under this alternative will not be significant because the loss of some individuals from trampling or the indirect effects of habitat loss will only represent a fraction of the local population.

Most terrestrial mollusk species present at a site utilize refugia that is undisturbed by grazing. Habitat degradation is isolated to a few locations in the allotment (*Revised EA p. 31*).

The term and conditions requiring herding and the requirement to maintain an average of 5 inch stubble height in riparian areas will reduce the potential for adverse effects to the northwestern pond turtle, foothill yellow-legged frog, terrestrial mollusks and Big Game Winter Range habitat. Delaying turn-out until May 15th will also enhance vegetative vigor and seed head production before grazing occurs. Removing cattle from the majority of the allotment by June 30th will reduce the impacts of hot season grazing in riparian areas, and provide a greater opportunity for fall green-up that elk and deer depend on for winter forage (*Revised EA p. 32*).

Aquatic Habitat

Aquatic mollusk habitat in T. 39 S., R. 2 E, Section 11 was evaluated in 2007 and reported to be in good condition. The riparian survey summaries made no mention of cattle impacts on these springs in 2007. In 2008, following the grazing season, several of the springs were reported to be in poor condition due to cattle impacts. Subsequently, several monitoring sites established by BLM hydrology staff documented areas of post-holing and bank erosion in T. 39 S., R. 2 E., Section 11 following the grazing season of 2008. The poor aquatic conditions found in 2008 appeared to be the result of unauthorized cows entering BLM lands from the adjacent private land lease.

The modifications to the existing lease provided with the implementation of Alternative 2, will contribute towards improving aquatic conditions within the allotment. Delaying cattle turnout in Pasture 1 will allow riparian and wetland conditions to be drier than under the current season of use and will increase vegetative growth and seed head production before grazing occurs. Reconnaissance of the allotment following the 2009 non-use period indicates partial recovery of impacted riparian areas has occurred. Aquatic conditions are expected to improve as stream shade will increase as a result of increased yearly plant growth. In the long term as more banks become vegetated, there will also be a decrease in sediment input to streams from grazing. The proposed fencing project around the pipe pond will improve aquatic habitat for pebblesnails and other aquatic organisms in the short and long term.

In summary, Alternative 2 will reduce site level impacts to aquatic habitats and in turn, reduce chronic downstream impacts to fish habitat. At the site level and likely at the HUC Level 7 level, hydrologic function will be restored and aquatic habitat will improve, meeting ACS objectives (*Revised EA p. 24*).

Climate Change

Livestock grazing authorized in the Cove 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 (*Revised EA p. 12*).

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 number of cattle grazed on this allotment is low and the grazing seasons short, it is highly unlikely that this allotment, grazed as

prescribed under this alternative, will be a significant contributor of contaminants to source water (*Revised EA p. 16*).

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 Cove Creek Allotment are similar in nature to those of other approved grazing projects 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 Cove Creek Allotment grazing lease 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. This grazing lease renewal 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 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, implementation of this lease renewal will not 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.

This project 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 and no sites have been identified in the allotment (*Revised EA p. 34*).

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

There are no coho salmon within the allotment area and, therefore, no potential for direct effects to coho. Because the nearest Coho Critical Habitat is approximately 3.5 miles downstream of the Allotment and Because there is no Essential Fish Habitat, as defined by NOAA fisheries within the allotment BLM has determined this grazing lease renewal to be a “No Effect (NE)” for listed coho salmon, their Critical Habitat, and Essential Fish Habitat (*Revised EA p. 21-22*).

The allotment is outside the range of federally listed plants (*Limnanthes floccosa, Fritillaria gentneri, Lomatium cookii, and Arabis macdonaldiana*) defined by the U.S. Fish and Wildlife Service (USDI Fish and Wildlife Service, 2008) (*Revised EA p. 18*).

There is one know location for northern spotted owls (Federally Threatened Species) within the Cove Creek allotment. Northern spotted owls are unlikely to be affected by the current livestock grazing because their preferred habitat is dense forest where livestock seldom forage (*Revised EA p. 26-27*).

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.

This lease renewal is 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)*.

This project 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 0708)

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APPENDIX A

PUBLIC INVOLVEMENT

COMMENT ANALYSIS

APPENDIX A: PUBLIC INVOLVEMENT-COVE CREEK GRAZING LEASE RENEWAL EA

Written comments received in response to the Cove 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

Comment 1: BLM proposes to increase grazing when grazing should be reduced to help riparian areas recover.

Response: The authorization for AUMs in Pasture 1 remains unchanged (75 AUMs) and the season of use has been moved to a drier period when riparian and upland soils will be more firm. While the proposed authorization indicates an increase in AUMs, the formal development of a second pasture will result in a co-mingled area with 120 BLM and 800 private acres. Through a voluntary, cooperative agreement*, use will be reduced to 5 animals for no more than 45 days (13 AUMS) on BLM lands in Pasture 2. Establishment of the pasture rotation, the shift in the season of use, fencing around the BLM pump chance (pond), development of an off-site water trough, directional falling of trees in riparian areas to prevent access to livestock, repairs to the boundary fences in 2008, and additional terms and conditions will facilitate recovery of riparian areas in the Cove Creek Allotment.

* details regarding this cooperative agreement process are clarified in the decision explanation on page 4.

Comment 2: Tree falling (which trees, how large, effectiveness).

Response: Trees and brush selected for placement in the drainage will emphasize brushy forms and be placed in the drainage bottom to discourage animal movement up and down the stream channel. Trees selected for falling are expected to be small in diameter (<10 inches dbh) so that they can be moved and placed appropriately in the drainage as needed by a hand-crew. The brush and tree placement will not exclude livestock use from all riparian areas, but will break the movement patterns to prevent stream bank

instability, retain riparian vegetation and further reduce erosion. The plan for this project is not expected to use more than 10 trees and may utilize downed limbs or small amounts of local slash as impediments.

Comment 3: What actions were taken in response to unauthorized use

Response: The fence along section 3 was damaged allowing cows from private land to enter BLM lands in T. 38 S., R. 3 E., in Section 3 (Pasture 1). Lack of fencing between private land and BLM administered lands in Section 11 allowed cows from the private land to have access to the two BLM parcels in section 39-2E- 11 (Pasture 2) for approximately 6 months.

When unauthorized use was discovered by BLM staff, the trespass livestock were reported to the lessee who quickly removed the cattle. As follow-up, the lessee rode fences and made repairs to locations that were determined to be the point where livestock gained entry to Section 3 of the allotment. Because over-utilization did occur in 2008 (and possibly in years prior to 2008), a voluntary nonuse/rest period was agreed to by the lessee and occurred on the Cove Creek Allotment during the 2009 grazing season allowing riparian areas in the allotment to recover. The changes in the lease (management of two pastures and modified terms and conditions) to be implemented under the selection of Alternative 2 are also a response on BLMs part to correct conditions resulting from past grazing management. The BLM identified the unauthorized use and has effectively resolved trespass according to 43 CFR, Part 4100.