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**BEFORE THE REGIONAL FORESTER
OF THE PACIFIC SOUTHWEST REGION
OF THE UNITED STATES FOREST SERVICE**

In Re: Appeal of the Decision Notices and Findings of No Significant Impact for the **Alder Creek, Buckeye, Cozy Cove, Gorda, Salmon Creek, San Carpoforo, Twitchell and Torre Canyon** grazing allotments in the Monterey R.D., Los Padres National Forest.

**APPELLANTS' NOTICE OF APPEAL,
STATEMENT OF REASONS
AND REQUEST FOR RELIEF**

Dated this 21st day of December, 2001

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NOTICE OF APPEAL

This appeal is brought by the Center for Biological Diversity (CBD) and the Ventana Wilderness Alliance (VWA). Notice is hereby given pursuant to 36 CFR 215.7 that the CBD and the VWA appeal the Decision Notices (DN) and Findings of No Significant Impact (FONSI) issued on November 1, 2001 by the Responsible Officials (RO) Acting Monterey District Ranger John Bradford and Forest Supervisor Jeanine Derby and which reauthorize continued livestock grazing on the ALDER CREEK, COZY COVE, GORDA, SALMON CREEK, SAN CARPOFORO allotment and to cancel grazing on the BUCKEYE, TWITCHELL and TORRE CANYON grazing allotments. Appellants request a remand of the DNs, and a stay of all livestock grazing until a valid final Environmental Impact Statement for all allotments is prepared that is in conformity with existing law.

Timeliness of Appeal

This appeal is filed in a timely manner. Under 36 CFR 215.13 this appeal must be filed within 45 days of the date of publication of legal notice. The DNs notify the public of an appeal deadline of December 22, 2001.

Standing of Appellants

Appellant Center for Biological Diversity (CBD) is a non-profit conservation group with over 6000 members dedicated to protecting and restoring the deserts, rivers, forests and wildlife of the Western United States. CBD claims standing per 36 CFR 215.11 to participate in the Forest Service decision-making process based on its ongoing involvement with Los Padres forest management, and based on its involvement as an "interested public" in the National Environmental Policy Act (NEPA) process on these allotments. The CBD submitted comments on the Environmental Assessments for these grazing allotments on April 16, 2001. Many of CBD's members and staff regularly use this allotment for work, recreation, wildlife observation, scientific research, and other forest and grassland related activities.

Appellant Ventana Wilderness Alliance (VWA) is a non-profit conservation group composed of more than 160 dues paying members from all walks of life, a board of advisors and several corporate supporters. The VWA mission is to protect, preserve, enhance and restore the wilderness qualities and biodiversity of the public lands within the northern Santa Lucia Mountains. VWA claims standing per 36 CFR 215.11 to participate in the Forest Service decision making process based on its ongoing involvement with Los Padres forest management, and based on its involvement as an "interested public" in the NEPA process on these allotments. The VWA submitted scoping comments to these eight proposals on August 23, 1999. Comments on the eight Environmental Assessments for these grazing allotments were submitted on April 12, 2001, with an Addendum sent on April 16, 2001. Many VWA members regularly use these allotments for volunteer work, recreation, wildlife observation, scientific research, and other forest and grassland related activities.

Appellants' members and staff are all U.S. taxpayers who have unwillingly borne the monetary and ecological cost of the taxpayer-subsidized federal grazing program on our public lands. Appellants find that livestock grazing is a land use that degrades and harms values and interests held by appellants. These decisions, by allowing this degrading activity to continue, significantly and negatively affect appellants' interests and values by permitting livestock grazing in areas used and valued by members of the appellants' organization. These decisions furthermore involve effects not analyzed in the project records that also directly and significantly degrade and harm public land uses and values for the appellants.

BACKGROUND

Table 1 summarizes the essential features of these allotments:-

Allotment	Acres	Special areas	Present use	Proposed use	Other actions
Alder Ck	2525	Wilderness MA 42, 48	5 horses yearlong	8 horses, yearlong	none
Buckeye	2,829	Wilderness, MA48 (Recreation)	vacant	20 feb-jun	Actual decision to maintain vacant
Cozy Cove	256	MA 42 (Recreation)	vacant	25 jan-apr	Add to MA 42, 2 spring exclosures
Gorda- Mill Ck	17,112	Wilderness in Mill Unit	25 apr-aug	35 feb-jun	
Gorda-Pacific V.			50 apr-oct	40 apr-aug	1/4 mile + 450 ft of new fences, move corrals, protect Native Amer. site
Gorda-Plaskett			30 apr-oct	35 feb-jul	
Gorda-Prewitt			20 apr-oct	45 feb-jul	Divide into 2 past
Salmon Ck	360	MA 42 (Recreation)	vacant	4 yearlong	none
San Carpofo	3,570 (5696)	Wilderness, MA 42, 48	118 yearlings Nov-May	150 yearlings Nov-Apr	add Sur Sur and Sea Vista to MA42, remove Dutra Camp exclosure
Torre Cyn	1,750	MA 48 (recreation) and Wilderness	Vacant since 1989	vacant	
Twitchell	4,200	Ventana Wilderness, Cone Pk RNA	20 apr-aug	vacant	

CLAIMS AND STATEMENT OF REASONS

Endangered Species Act

Failure to consider species absence as result of habitat degradation by cattle

In the Biological Assessments (BA) as well as opinions and concurrences by the Fish and Wildlife Service (FWS), there is a pervasive failure to consider the possibility that non-occurrence of listed or sensitive species on these allotments is a result of grazing that might be reversed by termination of grazing. That grazing has and is continuing to have a pervasive impact on California coastal ecosystems is established by available science (Stromberg & Griffin, 1993).

Vernal pool crustaceans

In a concurrence from FWS dated October 5, 2001, it is noted that one potential habitat pond occurs in madrone scrub on Gorda where cattle cannot get at it. The Biological Opinion (BO) for the four southern California National Forests places top priority on surveys for vernal pools. However, neither the FWS nor Los Padres National Forest (LPNF) consider the possibility that such pools would become more common on these allotments if grazing were ended.

California Red Legged Frog

The BA for the Forest-wide Riparian Conservation Strategy: Los Padres National Forest, dated February 18, 1998, notes that “all the allotments on the Monterey District” have potential impacts on CRLF and determined that grazing was likely to adversely affect the species.

In the concurrence from FWS, dated Oct 5, 2001, it is noted that on SALMON CREEK, ALDER CREEK, GORDA, and SAN CARPOFORO surveys turned up no frogs, and creek habitats were considered unsuitable due to “high flows, rocky substrate and no vegetative cover.” However all these stream features have been shown to result from chronic livestock grazing (reviewed by Belsky et al 1999).

Neither the FWS nor LPNF consider the possibility that Salmon, Willow, Mill, Kirk, Wild Cattle, Plaskett, Dutra and San Carpofofo Creeks could become suitable for CRLF on these allotments if grazing were ended. The pond on Prewitt Creek (GORDA) is recognized as unsuitable because it is close to corrals and manure pollution. The BA and concurrence contend that the proposed extension of the riparian enclosure and moving corrals will correct this problem. Plaskett Creek (GORDA) only provides “few small, shallow pools” and an enclosure is planned to be constructed which might allow suitable habitat to recover for CLRF, indicating that grazing has indeed been impairing recovery of habitat.

For COZY COVE, the two springs were not found to have CRLF but it is noted that the proposed action would exclude cattle from these springs, indicating that grazing has indeed been impairing recovery of CRLF habitat.

Steelhead

Salmon (SALMON CK) and San Carpofofo (SAN CARPOFOFO) Creeks do not meet canopy-shading standard (BA on steelhead 1998 p 8). San Carpofofo Ck is at risk for sediment, chemical load (BA, August 2001, App. K).

All of the creeks on the GORDA allotment are at risk for high sediment, chemical load, poor substrates, debris, base flow and bank conditions. (Steelhead draft BA, August 2001). Although recent fire may explain some of the sediment problem on Prewitt Creek, it does not explain the same problem on other creeks (1998 BA p 10).

The FS and FWS have failed to consider that elimination of grazing together with active restoration could recover presently unoccupied habitat to the point of reoccupation. Recovery and reoccupation of potential habitat is a statutory obligation of agencies under the Endangered Species Act (ESA). For that to be possible, potential habitat must be identified and threats removed.

Critical habitat for steelhead is also designated on Limekiln, Mill, Prewitt, Plaskett, Alder, Willow, Salmon and San Carpofofo Creeks. The BAE (Biological Assessment/Evaluation) and concurrence are predicated on the assumption that direct access is the only means of adverse modification of critical habitat. The BAE fails to consider or cite important evidence that shows that even the “moderate” levels of grazing proposed can significantly impair watershed function. The EAs and BAEs fail to cite (Liacos, 1962) who found that winter grazing in California rangelands “reduces evapotranspiration and soil water storage opportunity, resulting in increased water yield. The ungrazed plot produced 33 mm, the lightly grazed plot produced 97 mm, and the heavily grazed plot produced 232 mm of run-off.” Therefore even “light” grazing significantly reduces water infiltration and storage and thereby reducing base flows, stream persistence and length while increasing overland flows, erosion and flashiness, degrading habitat for aquatic species to the point where it is no longer occupied by Steelhead and Red Legged Frog and perhaps other listed species.

These failures are violations of the ESA and NEPA.

Failure to use best available science

In response to comment 42, the RO states that he “believes” that the short list of references cited in the EA “provide the best available science.” Despite being provided with large bibliographies in appellants’ comments on the EAs, the RO ignored published evidence provided by appellants much of which is represented herein. The EAs do cite (Allen-Diaz *et al.*, 1998), but these authors strongly criticized the Sierra Nevada Ecosystem Project for failing to consider or incorporate much important scientific information into grazing decisions, a problem repeated in the EAs for these allotments.

In comments on the EAs, CBD noted the failure to consider abundant available science showing manifold negative impacts to vegetation, soils, riparian areas, watersheds, archeological resources and socioeconomic conditions by livestock grazing, citing numerous peer-reviewed publications that dealt with those issues. The ESA requires that “best available science” be considered and incorporated into all decisions affecting listed species. This was not done, contrary to the ESA.

Smith's Blue Butterfly (SBB) consultation based on misrepresentations

In a BO of December 22, 2000, the FWS issued terms and conditions for the proposed grazing action on these allotments. However, the action as described in the BO and as consulted on, differs significantly from that described in the DN for the GORDA allotment. Specifically for the Mill Ck unit, which is occupied habitat for the SBB, the consultation was based on 25 cattle from February 15 to August 15 (150 AUM). In contrast the DN would allow 35 head from February to June (175 AUM), this is an increase of 25 AUM in occupied habitat for SBB.

The action decided involves a significant departure from that consulted and so the GORDA decision must be withdrawn and consultation must be reinitiated to avoid legal action under the ESA.

The ALDER CREEK DN states “. . . Seacliff buckwheat, host plant for the Smith's Blue Butterfly, is poor to useless for horses. (EA, p. 14). Protection lies in preventing livestock from physically or chemically impacting quality habitat.”

However in the EA itself the mitigation cited is limited to placing a cap on the percent utilization of “low-value herbaceous forage plants.” No mitigation is listed which would stop seacliff buckwheat from being trampled or chemically damaged, as the DN claims, and therefore the BO for SBB is based on false understanding that mitigations would be implemented and is thus arbitrary and capricious under the Administrative Procedures Act (APA).

In the rare plant survey for ALDER CREEK allotment, researcher Jeff Norman noted that “French broom is becoming established throughout the surveyed portions of the allotment Another vector is probably livestock, which can collect French broom seeds in their hooves and deposit them elsewhere. This plant has already overtaken areas supporting seacliff buckwheat closest to the CalTrans yard and a potential exists for extensive impacts should the plant continue to spread.” (California Native Plant Society, 1999). In the DN it is stated that “The allotment has few noxious weeds.” (p. 2) However, this is at variance with the EA itself, which records that “[t]he western boundary of the Alder Creek Allotment, along Highway One, has severe (25-100% cover) French broom infestations. San Martin Top, along the eastern boundary, has light (1-5% cover) infestations of French broom” (p.11). The RO misrepresented this important evidence in the DN and made a decision to continue grazing, “running counter to the evidence before the agency” contrary to the APA, and also the ESA.

In the ALDER CREEK DN, there are two mitigation measures that appear to be incompatible with the approved yearlong grazing scheme, because of the inability to rotate pastures due to the lack of cross-fencing on the allotment: “Remove livestock from individual pastures and/or National Forest System lands when the maximum utilization levels (by weight) have been reached,” and “[w]henver possible, cattle and horses will be removed during the flowering period of seacliff buckwheat from pastures where medium to high-quality stands occur” (EA, p 2).

The EA states elsewhere that “Range improvements include . . . 1¼ miles of barbwire fence.” The map shows existing fence only at the Highway One frontage and

one location adjacent to a private inholding. No cross fencing appears on the map. Without cross fencing creating separate pastures and with yearlong grazing as proposed, the FS cannot implement these mitigation measures (EA p. 1). Failure to take mitigation seriously and implement them in the design of the proposed action is a violation of NEPA, and in the case of a listed species, also the ESA.

The Biological Evaluation (BE) for sensitive and listed plants on the GORDA allotment presents as if it covers all 4 units, citing the rare plant survey conducted by the California Native Plant Society (CNPS) and Jeff Norman. The BE admits that ... " A floristic survey of the allotment has not been conducted" but that "Norman also surveyed the Gorda allotment for rare plants as part of his survey for seacliff buckwheat".

In fact, only the Pacific Valley unit of the GORDA allotment was surveyed by CNPS and Jeff Norman in that study. The other three units of Gorda remain unsurveyed for sensitive, listed plants and the food plant of SBB. Therefore the BA and BO are based on a misrepresentation of critical facts contrary to the ESA.

In the EA for the COZY COVE allotment a stated "Purpose and Need" is to "[p]rotect habitats from the invasion of non-native and noxious weed species." (p. 1-2) Then it is noted: "Along the Highway One corridor there are severe infestations of kikuyu grass extending a few hundred feet onto the property. A few spot infestations of Italian thistle are also present on the Cozy Cove Ranch."

However in the rare plant survey dated July 28, 1999 in the project record it is disclosed that the following invasive exotic weeds, amongst others, were found: Pampas Grass (*Cortaderia jubata*) Yellow Star-Thistle (*Centaurea solstitialis*) and Tocalote (*Centaurea melitensis*) (Norman, 1999). This author writes, "[p]ampas grass (*Cortaderia jubata*) is becoming established on the allotment, and as it spreads will reduce available habitat for seacliff buckwheat" the food plant of the endangered Smith's Blue Butterfly (ibid. p. 3 emph. added).

Mr. Boon Hughey a member of appellant organization VWA, visited the allotment on Dec 15 and 16, 2001 and confirmed these findings: "The EA states that there is only kikuyu grass within 300 feet of the highway and some spot infestations of Italian thistle. I found both of these, and lots of other stuff. I also found infestations of Pampas grass in two places, a serious infestation of sticky eupatorium in one place, a serious infestation of yellow star-thistle in another place, and two large patches of kikuyu far deeper onto the allotment than 'a few hundred feet.'"

The DN states under "Reasons for the decision" that: "The chosen alternative is intended to meet the demand for forage produced on the Cozy Cove Ranch, while protecting the endangered Smith's blue butterfly and habitats from the invasion of noxious weeds." (p. 3) and later states that "[t]he allotment has few designated noxious weeds." (p. 4). Scientific evidence for the important role of livestock grazing in promoting weed infestations was made clear to the RO in comments submitted by appellant CBD, citing a crucial literature review on the subject (Belsky & Gelbard, 2000).

The evidence before the agency was that invasive and noxious Pampas grass and yellow star-thistle are present on the allotment, are aggravated by livestock and are

threatening the foodplant of a listed species, SBB. These facts were largely ignored or downplayed in both the EA and the DN.

The COZY COVE EA states that the "[p]roposed Action is to . . . Protect seacliff buckwheat, host plant for the endangered Smith's blue butterfly (*Euphilotes enoptes smithi*)" (p. 2). Also, "potential adverse effects (on SBB) are primarily limited to areas of intensive livestock use, such as near water troughs . . ." (p. 14).

In comparing the allotment improvement map included with the EA and the detailed vegetation map of the allotment prepared by Norman during the plant survey above cited, the westernmost of two existing cattle watering troughs on the allotment can be seen to lie within or immediately adjacent to an area where seacliff buckwheat is present. All the area downslope from the trough supports seacliff buckwheat.

No mention is made in the DN about the likely impact of concentrated livestock use around the trough on seacliff buckwheat nor is any mitigation in the form of relocating the trough suggested. Mitigation Measures provide only that "[n]ew water locations will be located a minimum of 0.25 mile from Smith's blue butterfly habitat" while "[e]xisting water developments that are located more than 0.25 mile from medium to high-quality seacliff buckwheat stands will be maintained in a usable state" (DN p. 2 emphasis added). Nowhere does the RO address existing water developments such as that identified by Norman that are located less than 0.25 miles from seacliff buckwheat, which is the case with the western trough on the allotment.

There were no mitigation measures put forth in the DN for stemming the spread of these weeds or dealing with the trough within a seacliff buckwheat stand, and there is no monitoring of the weed infestations proposed in the DN. This failure to consider important evidence, to mitigate and to monitor is contrary to NEPA and the APA. Because it also involved impacts to endangered species that were not disclosed to the Fish and Wildlife Service during consultation, it also is contrary to the ESA.

Therefore the BO for SBB is based on a misrepresentation of the actual state of knowledge about the food plant of SBB and hence may be challenged as arbitrary and capricious under the APA.

The NEPA process for these allotments failed to consider impacts on the California Sea Otter, a threatened species protected in the Refuge that extends along this coastline. Livestock operations may be adversely affecting the Otter by contributing sediment, nitrogenous wastes and mammalian pathogens into its inshore habitat and prey species consumed by the otter. Failure to consider or consult over impacts to the sea otter violates NEPA, APA, ESA and the Marine Mammal Protection Act.

National Environmental Policy Act

Interested public not provided with decision notices in timely fashion

Appellant CBD submitted timely comments on the EAs for these allotments on April 16, 2001. However CBD never received copies of the final Decision Notices from the Los Padres National Forest.

On November 26, 2001 CBD faxed a complaint to Jeff Kwasny, Monterey Ranger District, that we had not received DNs. In a telephone conversation between Martin Taylor of CBD and Mr. Kwasny, Mr. Kwasny said that he had mailed the DNs to us, but did not use certified mail, so could not prove that he had done so. Taylor replied that he would check to see if mail had been received but misplaced. Subsequent investigation failed to locate any sign of the DNs that Mr. Kwasny said he had sent to CBD.

CBD was forced to rely on copies of the DNs provided by fellow appellant VWA.

Failure to develop a "reasonable" array of alternatives.

NEPA requires that the agency consider a reasonable array of alternatives. The suppression of fire by both grazing and active management is a problem limiting recovery of native vegetative condition but no alternative is advanced which might link no grazing to prescribed fire and other restoration projects to encourage recovery.

The Forest Service (FS) is willing to amend the Forest Plan to add COZY COVE, augmented by recently acquired Sur Sur and Sea Vista Ranches into Management Area 42. If the FS is willing to contemplate amendments of LRMP to allow grazing to be expanded into an area previously free of cows, then the FS must also consider as a reasonable alternative an amendment to the LRMP to permanently retire the TORRE CANYON, TWITCHELL and BUCKEYE allotments from livestock grazing.

Public comments ignored, not addressed

Forest Service regulations require that "(2) The Responsible Official must consider all written comments postmarked or facsimile imprinted by the close of business on the 30th day following publication of the notice (Sec. 215.5) and all oral comments received by the close of business on the 30th day following publication of the notice" (36 CFR 215.6 (c)(2)) and "(d) The Responsible Official shall address comments received from the public during the comment period in an appendix to the environmental assessment." (36 CFR 215.6 (d)).

In a letter from the Ventana Wilderness Alliance (VWA) dated August 23, 1999, substantive scoping suggestions to help define Purpose and Need were made for the SAN CARPOFORO allotment. These comments were never addressed in the scoping process. These suggestions were also appended to VWA comments on the Environmental Assessment dated April 12, 2001 and were not addressed in the appendix A to the DN.

- "Please include an explanation of how this desired future condition will be consistent with the final version of the Los Padres National Forest Land and Resource Management Plan that is currently in the process of revision;" (p. 2). Comment ignored.
- "The cost analysis shall also include disclosure of the costs of obtaining equivalent forage on private grazing lands;" (p. 3). Comment ignored.
- "Also please consider constructing an effective enclosure for a period of not less than 5 years, in which natural ungrazed processes could be studied with regard to oak regeneration in the area." (p. 3). (Note that this

enclosure was suggested to be constructed on non-Wilderness portions of the allotment.) Comment ignored.

- "Given the addition of the Sur Sur Ranch rangeland to the San Carpoforo allotment, please consider the alternative of maintaining the total number of allowed cattle on the now larger allotment at the same level as in the past (118 yearling head). This increased grazeable area would make it possible to give large sectors of the allotment serious and total rest for several years in succession without negatively impacting the historic stocking numbers that the permittee is accustomed to. It might also give the valley oaks a chance to regenerate and grow above the browse line." (p. 3). Comment ignored.

In this same letter the following suggestion was made: "Consult with the Monterey Bay National Marine Sanctuary as part of the due diligence to be completed prior to authorizing this grazing allotment. The marine environment is very sensitive to pollutants carried into the ocean from management practices allowed on land, and the watercourses draining the allotment flow directly into the sanctuary and pose potential impacts in terms of turbidity, siltation, pathogenic pollution etc. Please include in the NEPA document a synopsis of the consultation, including recommended mitigation measures."

The FS response to this comment was: "Under 40 CFR 1501.7, NEPA instructs invitation of affected Federal agencies. During internal and external scoping (EA, p. 4-5), water quality and its effect on the Sanctuary was not identified as part of our Purpose and Need (EA, Section 11)" (response 4, p. 19, "App. A"). The RO failed to address the VWA suggestion during scoping that consultation with the Sanctuary should be part of Purpose and Need.

For the GORDA allotment the following substantive comments were submitted by the VWA and yet no response was made by the RO in the appendix to the DN:

Cost/ benefit analysis: "Please offer a comprehensive cost/benefit analysis including costs of resource degradation (e.g. any reductions in the quality and quantity)". (p. 2). A comprehensive cost/ benefit analysis was not provided or discussed in response to the comment. The EA only disclosed grazing fee receipts and distribution of receipts. (p. 28).

Public Safety: Cattle are escaping through poorly maintained fencing onto State Highway One, may pose a serious threat to motorists. No discussion of cattle on State Highway One was provided in either the EA or response to comments.

Requests for Additional Material: VWA requested, many times, additional material (VWA comments on Gorda EA p. 1). The revised Smith's blue butterfly BAE (1/31/00) was never received by us.

Deer Herd Management Plan: We requested that this required information be included in the EA. The DN (App. A, p. 17) only states that the requested information was not received. (See also MIS issue below.)

Recreation: Comments on the EA requested sources, data, and references for statements made in the recreation section. No supporting sources, data or references for such statements were provided in response to comments.

Trespass: In comments for scoping (p. 2) VWA requested RO address the damage caused by cattle trespassing and getting trapped within the fenced enclosure on the lower reaches of Prewitt Creek. Neither the EA nor DN responded to this issue.

For the ALDER CREEK allotment the VWA submitted the following comment concerning the likely cumulative impact of grazing on predator ecology: “A public lands livestock grazing operation of only 8 animals does not constitute a valid economic enterprise and is merely hobby ranching. Hobby ranching has the potential to negatively impact native mountain lions who may be subject to state or federal “predator control” efforts to protect the hobby rancher’s livestock. The minimal, if any, benefit to the land or US treasury resulting from the Proposed Action does not justify the potential destruction of native mountain lions. This argues against re-issuance of the permit.” (p. 2). This comment was not addressed in response to comments by the RO.

Reasoning to close some but continue other allotments arbitrary, capricious

The deciding officer elected to keep two allotments vacant (Buckeye and Torre Canyon) and to close a third (Twitchell).

In the case of the TORRE CANYON decision it was recognized that reintroducing livestock grazing would adversely affect Red-Legged Frog, Smith’s Blue Butterfly habitat, heritage resources, domestic water supplies and increase weed invasions (DN, p. 1-2). However the bottom line seemed to be that “[t]here is little demand for forage” due to the “considerable capital outlay” required to restart grazing. The RO indicates that the District could not find any permittee to take the allotment and that the decision therefore was driven by “demand for forage.”

In the case of the BUCKEYE allotment it was recognized that reintroducing livestock grazing would adversely affect Smith’s Blue Butterfly habitat, heritage resources and water quality, increase weed invasions and clash with public demand for cow-free recreation (DN, p. 1-2). However the bottom line seemed to be that “[t]here is little to no demand for forage” due to the cost of rebuilding fences to restart grazing. The RO indicates that the District could not find any permittee to take the allotment and that the decision was driven by “demand for forage.”

Table 2 summarizes the inconsistencies in reasons given in the DNs for deciding whether to graze or not to graze the allotments:

Grazing is to be stopped on two allotments to protect heritage resources, but then grazing is to be continued on another two for the exact same reason.

Grazing is to be stopped on three allotments to protect water quality, but then grazing is to be continued on another two for the exact same reason.

Grazing is to be stopped on two allotments to avoid adverse impacts to Smith’s Blue Butterfly, but then grazing is to be continued on another four to “protect” the same species.

Grazing is to be stopped on three allotments to prevent weed invasions, but then grazing is to be continued on another four for the same reason.

Grazing is to be stopped on one allotment to address concerns about conflict with recreation, but then grazing is to be continued on another for the same purpose.

The only factor that segregates consistently between allotments to be grazed or ungrazed is demand for forage, betraying the underlying dominant concern that is driving these decisions. This is made explicit for example in the EA for ALDER CREEK, in which it is disclosed that “The permittees have recently acquired additional horses or plan to in the near future.”

If ranchers want forage the Monterey RD seems determined they should have it, regardless of resource conflicts. If ranchers don’t want it, the allotment is finally “rested” and after the fact justifications issued about “protection of resources.”

This decision process is not only arbitrary and capricious but innately biased in favor of one priority that trumps all others:- supplying private business interests with subsidized forage. This is a violation of NEPA, APA, NFMA and the Multiple Use Sustained Yield Act, which requires consideration of the relative values of uses.

TABLE 2 Comparison of reasons for decisions

	Resource criterion								
	demand for forage	heritage resources	water quality	protect SBB	protect RLF	spread of noxious weeds	protect habitat of steelhead	recreation	sensitive plant species
GRAZED									
Alder	to meet	no mention	no mention	protecting	none	prevent invasion	no mention	no mention	no mention
Cozy Cove	to meet	no mention	no mention	protect	none	protect habitat from invasion	no mention	no mention	no mention
Gorda	to meet	to protect	mod. utilization will protect	protect hab.	none	addressed by permit	to protect habitat	no mention	to protect
Salmon Ck.	to meet	no mention	no mention	protect	none	no mention	no mention	no mention	no mention
San Carpofo	to meet	address protection	to protect	no habitat	none	protect habitat from invasion	no mention	avoid conflicts with recreation	no mention
NOT GRAZED									
Buckeye	little	to protect	to safe guard	avoid impacts	none	prevent invasion	no mention	address concern about cows in recr. areas	no mention

Torre Cyn.	little	to avoid impact to	protect domestic water sources	avoid adverse impacts	avoid adverse impacts	prevent invasion	no mention	no mention	no mention
Twitchell	little	no mention	to protect	no mention	none	protect from invasion	no mention	no mention	no mention

NEPA's ``rigorously explore'' & ensure scientific quality and accuracy

The Council on Environmental Quality (CEQ) regulations implementing NEPA require that "Agencies shall rigorously explore and objectively evaluate all reasonable alternatives" (40 CFR 1502.14a) in the process of fulfilling their obligations to analyze environmental impacts of federal actions under NEPA.

NEPA requires that agencies "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions relied upon in the statement . . ." (40 C.F.R. 1502.24).

NEPA requires that agencies "shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions relied upon in the statement.. " (40 C.F.R. 1502.24). To assure that a "fair discussion" occurs, agencies are required to obtain "high quality" information, including "(a)ccurate scientific analysis." (40 C.F.R. 1500.1(b)).

Interrelated and interdependent effects not analyzed

Private and state lands used by permittees of these allotments are likely to contain potential or occupied habitat for endangered species as well as archeological and other resources protected by federal law, but are subject to livestock use as an interrelated and interdependent effect (IIE) of the proposed grazing actions. These IIEs have not been adequately disclosed or analyzed in the project record. In particular they have not been considered in the cumulative effects analyses of some of the BAEs, and BOs for listed species. The BA for Forestwide Riparian Conservation Strategy did mention that private grazing actions might still continue, "even if public parcels are closed." However for GORDA allotment the EA admits that the "permittee relies on ranching as a livelihood and the federal grazing permit is a substantial part of their lifestyle and family income" (EA, p. 27). The EA also states that the no grazing alternative would "adversely affect the permittee's livestock operation" and that permittees "may be forced to sell some or all of their permitted cattle" (p. 28). Identical statements are made in EAs for the SAN CARPOFORO and SALMON CREEK allotments. These statements establish that grazing on private or other lands by the same permittees is an interrelated and interdependent effect of the federal action, but for which the non-federal grazing actions would not be likely to take place. This requires a disclosure of the environmental and endangered species impacts of the connected non-federal actions, under NEPA. The project record contains no such disclosures or considerations contrary to NEPA. Failure to consider important connected actions is also contrary to the APA.

Failure to consider impacts on arroyo willow habitat

In the rare plant study for the ALDER CREEK, COZY COVE and TORRE allotments Norman (1999) notes that Arroyo Willow Riparian Forest is considered rare by the California Department of Fish and Game and that “[l]ivestock are using a trough located near the highest elevation of this plant community. Their access to the trough necessitates pushing through and trampling of riparian-obligate vegetation.” Norman suggested that “[l]ivestock should be excluded from this plant community by enclosure fencing.” This evidence and advice by a Forest Service consultant was ignored and left unmentioned in the EAs and DNs, contrary to NEPA.

Claims for community/ecosystem impacts not based in science

The EAs made assertions that are not supported by science. It is asserted in all EAs, using stock phrases without the site specific consideration required by NEPA, that in the absence of livestock grazing grasses would become “decadent or stagnant” citing a single source -- Anderson 1993 (Alder Creek EA p. 10, Cozy Cove EA p. 11, Gorda EA p. 15, Salmon Creek EA p. 10, San Carpofo EA p. 13).

These concepts have no accepted ecological meaning. There is no scientific evidence from plant ecology that grazing benefits plants, only that some plants tolerate grazing more than others (Belsky, 1986; Belsky, 1987; Belsky *et al.*, 1993). In many plant communities, disturbance is a factor in maintaining species diversity, however the level and kind of disturbance provided by livestock does not adequately replace or mimic natural forms of disturbance such as fire and disturbance by wildlife for these coastal plant communities (Rice *et al.*, 1999; Valone & Kelt, 1999) and the project records for these allotments has produced no evidence to show otherwise. Callaway & Davis (1993) found that fire maintained the vegetative mosaic between grassland, shrubland and oak woodland in central coastal California, and that removal of livestock speeds transitions between seral stages, furthering the maintenance of mosaic vegetation.

All available evidence indicates that livestock are generally negative in their impacts on native community composition and production (Allen-Diaz & Jackson, 2000; Belsky, 1987; Bock & Bock, 1995; Brooks, 1995; Cannon & Knopf, 1984; Fleischner, 1994; Huber *et al.*, 1995; Johansen, 1986; Jones & Longland, 1999; Kauffman & Krueger, 1984; Kelt & Valone, 1995; Kelt & Valone, 1996; Kirsch, 1978; Page, 1978; Rambo & Faeth, 1999; Rickard, 1982; Rummell, 1951; Strand & Merritt, 1999; Wagner, 1978)

Dull (1999) found that vegetative composition in montane meadows of the Sierra Nevada shifted drastically following arrival of livestock in the 1850s.

The EAs and BAEs failed to cite important evidence by Stromberg & Griffin, (1996) who studied the Hastings Natural History Reservation near these allotments and found that grazed old fields had lower species diversity of native perennial grasses than ungrazed areas on the Reservation.

Considering animal biodiversity Cicero, (1997) reported that livestock grazing extirpated Lincoln’s Sparrows from boggy montane meadows in California. Erman &

Erman, (1995) suggested that caddisfly diversity in Sierra Nevada springs was impacted by livestock.

The evident failure to reference and consider important science in the project record and so ensure scientific integrity and accuracy of the decision violates NEPA regulations as cited above.

Weed invasions discussion based in poor science

The RO does not show how continued grazing would protect “habitats from the invasion of noxious weeds.” The statement in the EAs that removal of grazing would result in decreased productivity and plant diversity and result in thistle invasions is contrary to science (Belsky, 1986; Belsky *et al.*, 1993; Belsky & Blumenthal, 1995; Belsky & Gelbard, 2000). All available evidence shows that livestock grazing facilitates weed invasions (Belsky & Gelbard, 2000; Lacey, 1987; Olson, Wallander & Lacey, 1997).

The EAs are based on statements for which there is no scientific support as detailed in our comments of April 16, 2001. In response to comments the RO merely reiterates claims that thistles will thrive in the absence of livestock without reference to any scientific literature in support (Weeds section comment 16, App. A).

In fact there is a published review of pasture grass and thistle interactions completely ignored by the RO (Bourdou *et al.*, 1996). The abstract of that paper is worth quoting in full because it contradicts the statements made by the RO in response to comment 16:

“The proposition that thistles may be controlled in pasture biologically by interference from neighbouring pasture plants is reviewed. Central to this approach is the hypothesis that the species composition and vegetation cover of a pasture influence birth and death rates in thistle populations, and hence also, population size. Experiments conducted mainly in New Zealand, Australia, USA and UK with species of *Cirsium*, *Carduus*, *Silybum* and *Onopordum* confirm that pasture grasses and legumes exert powerful inhibitory influences over seedling emergence and seedling and rosette survival in thistles. Pasture grasses, particularly perennial species, are generally more effective than legumes. This appears to be related mainly to their higher cover density, implicating competition as a mechanism, although there is some evidence that allelopathy may also operate. *Lolium perenne*, *Holcus lanatus* and *Phalaris aquatica* are particularly effective inhibitors of thistles. Pasture gaps play a key role in thistle seedling emergence and it is concluded that pasture management that promotes a dominant perennial grass component and an absence of small gaps is most likely to prevent thistle invasions.” (emphases added).

In the ALDER CREEK DN it is stated that “[t]he allotment has few noxious weeds.” (p. 2). However, this is at variance with the EA itself which records that “[t]he western boundary of the Alder Creek Allotment, along Highway One, has severe (25-100% cover) French broom infestations. San Martin Top, along the eastern boundary, has light (1-5% cover) infestations of French broom” (p.11).

The decision of the RO has failed to consider important information and is based on scientific inaccuracies, and as such is a violation of NEPA and the APA.

Sensitive plants

In the COZY COVE EA under Sensitive or Rare Plants, it is noted: "Several plant species on the USFS Region 5 sensitive list have the potential to occur on the Cozy Cove ranch. They are: Late-flowered Mariposa Lily, San Benito Fritillary, and Cone Peak Bedstraw" (p. 13). In Norman's rare plant survey none of these were found. However he did report finding: Palmer's spine-flower (*Chorizanthe pameri*), and Santa Lucia gooseberry (*Ribes sericeum*) (Norman, 1999). Both species are on California Native Plant Society (CNPS) List 4. These species were not discussed in the EA or BE for COZY COVE. There is clear failure to consider important information before the agency, in violation of NEPA and the APA.

Although potential habitat is identified on SAN CARPOFORO allotment for Late-flowered mariposa lily, San Benito Fritillary, Cone Peak bedstraw and Hardham's bedstraw and the species had been reported close to the allotment, the CNPS did not find these plants on the allotment (BE p. 4-5). However the EA is inconsistent in saying first that Cone Peak bedstraw was found on Sur Sur ranch, but then saying it was not in the next paragraph. The BE fails to consider that perhaps the plants do not now occur in otherwise potential habitat because of ongoing livestock grazing. No comparison with areas closed to livestock is done which might address this issue in a scientific manner. The lack of accurate scientific analysis and high quality information is in violation of NEPA regulations.

Residual Dry Matter standard lacks scientific support

Grazing monitoring on all allotments is based in the unorthodox measure of "residual dry matter" (RDM). The RO insists that the standard of "moderate" grazing leaving 1000lb./ac. of RDM will leave "adequate feed and cover for wildlife as well as soil and water quality protection." As evidence the RO refers to research from a number of field stations. No reports from these stations are cited in the EAs, however.

We conducted a search of Biological Abstracts, BIOSIS and CAB abstracts from 1985 to present. The only published research that appeared to address this specific issue for southern California is that of Allen-Diaz & Jackson, (2000). These authors report on a study of three replicated grazing treatments in spring and creekside grassland of ungrazed, "lightly" grazed (to 1336 lb./ac. RDM), and "moderately" grazed (to 890lb./ac.)(converted from metric in original). It is noteworthy that these authors did not examine any level of 1000 lb./ac. Three years after total elimination of grazing, total herbaceous cover on ungrazed plots greatly surpassed cover at moderately grazed and lightly grazed plots. On moderately grazed plots herbaceous cover declined steadily throughout the first 3 years, while lightly grazed cover remained stable but less than ungrazed cover. The authors did not seem to account for the impacts of prior grazing history on the vegetative communities.

There were no published studies in the scientific literature showing any connection between wildlife, soil and water quality needs and the designated RDM standard. The only expectation from published research is for declining herbaceous cover under 1000 lb./ac. residual cover. Liacos (1962) (cited in Allen Diaz paper above) did find that bulk density of ungrazed clay loam soils around Berkeley, CA had significantly lower density than soils grazed for 35 years. The heavily grazed, lightly grazed, and ungrazed sites had residual dry matter levels of 600, 1250, and 3400 lb./ac. The most striking data to come from Liacos (1962) is that the definition of “light grazing” at 1250 lb./ac. of RDM, is a level that entailed the removal of 63% of total vegetative biomass.

This is inconsistent with the published opinion of prominent range scientists such as Jerry Holechek who define “light grazing” as ranging between 30-35% removal of current years growth (as opposed to total biomass) (Holechek, 1998; Holechek *et al.*, 1998; Holechek & Galt, 2000; Holechek *et al.*, 1999). The same authors recently recommended an even more conservative 25% intended use level, as actual use usually exceeds intended use by 10-15% (Galt *et al.*, 2000).

No published evidence shows that the 1000lb./ac. RDM standard is sufficient to protect wildlife, native plants, and soils. The fact that it is not enough to protect the food plant of Smith’s Blue Butterfly is evident from the special mitigation measures that are included to “protect” SBB food plant, seacliff buckwheat. However even these measures allow astoundingly high utilization levels of 50-60% that greatly exceed prescriptions of range scientists as cited.

The scientific analysis is neither high quality nor accurate and as such violates NEPA.

Failure to consider global warming

The likely impact of global warming on climate is not discussed in the EAs in such a way as to aggravate damage to resources caused by cattle grazing, such as accelerated soil erosion and vegetative stress under the predicted regime of higher temperatures, altered rainfall patterns and consequent stressed and dying vegetation. The Forest Service has issued a study on the impacts of global warming (Tinus, 1995) but the RO failed to consider grazing impacts in the light of this likely near-future scenario.

Failure to explain mitigation measures

Regulations require that an EA or EIS discuss “[m]eans to mitigate adverse environmental impacts” of the proposed action (40 CFR Sec. 1502.16(h)). The EAs list mitigation measures, but none analyze the mitigation measures in detail or explains how effective the measures would be for the purposes intended. A mere listing of mitigation measures is insufficient to qualify as the “reasoned discussion” required by NEPA (Adler v. Lewis, 675 F.2d at 1096).

Mitigation measures unenforceable

In the ALDER CREEK DN, there are two mitigation measures that appear to be incompatible with the approved yearlong grazing scheme, because of the inability to

rotate pastures due to the lack of cross-fencing on the allotment: "Remove livestock from individual pastures and/or National Forest System lands when the maximum utilization levels (by weight) have been reached," and "[w]henver possible, cattle and horses will be removed during the flowering period of seacliff buckwheat from pastures where medium to high-quality stands occur" (EA, p 2).

The EA states elsewhere that "Range improvements include . . . 1¼ miles of barbwire fence." The map shows existing fence only at the Highway One frontage and one location adjacent to a private inholding. No cross fencing appears on the map. Without cross fencing creating separate pastures and with yearlong grazing as proposed, the FS cannot implement these mitigation measures (EA p. 1). Failure to take mitigation seriously and implement them in the design of the proposed action is a violation of NEPA, and in the case of a listed species, also the ESA.

Socio economic analysis biased, lacks scientific accuracy.

Appellant CBD submitted extensive comments on the EAs concerning socioeconomic considerations. None of these concerns were responded to by the RO in response to comments appended to the DNs.

The socioeconomic analyses presented were superficial in the extreme and lacked important elements as suggested by appellants during scoping and comments on EAs:

- Consideration of possibly enhanced revenues from hunting and recreation, increased property taxes for the County or enhanced benefits of diversion of USFS funds toward T&E restoration that might come from ending livestock grazing (eg (Souder, 1997)).
- Disclosure of full net costs to the public of the grazing alternatives was incomplete and the economic analysis omitted a plethora of other federal and state subsidies.
- Consideration was given only to "lifestyle" interests of the permittee while no special consideration was given to the "lifestyle" interests of the far more numerous hikers, campers, hunters, bird watchers and biologists that use these lands in a low impact way to meet their recreational, cultural, scientific, spiritual and esthetic interests.

These and other concerns were expressed by the appellants in comments to the EA, but were ignored by the RO entirely in response to comments.

Case law requires decision makers to take a "hard look" at the proposed action and to take seriously all concerns raised by the interested public.

"If the decision was reached procedurally, without individualized consideration and balancing of environmental factors -- conducted fully and in good faith -- it is the responsibility of the courts to reverse." (Calvert Cliffs' Coordinating Committee v. U.S. Atomic Energy Commission, 449 F.2d 1109, 1115 (D.C. Cir. 1971); 42 U.S.C. Section 4332 (1976) emphasis added).

The Administrative Procedure Act (APA 5 USC 706), requires agency actions to conform with general standards of rationality. The courts may overturn, agency decisions that are "arbitrary, capricious, or an abuse of discretion."

The evidence of the scientific literature shows that the no-grazing alternatives are expected to be significantly superior to the grazing alternatives for achieving progress in all natural and archeological resource factors, and yet the RO ignored this evidence, substituting bald assertions not based in accurate science as detailed above and concluding that the no grazing and grazing alternatives would not significantly differ in environmental impact. Evaluation was not objective as required by NEPA.

The only "resource criterion" possibly suffering from the no-grazing alternatives is the permittees' incomes. Only if the permittee's income were valued of equal or greater importance than all other resource criteria could the agency logically conclude that the selected alternatives were optimal.

Neither the NFMA nor the Multiple Use Sustained Yield Act (MUSYA), make livestock grazing a compulsory use of the National Forests. Grazing is only one of several possible uses. Indeed the very purpose of the NEPA analysis is to determine on a site by site basis if livestock grazing is any longer a suitable or compatible use. The discussion and analysis of the no-grazing alternatives appears to be just a "strawman" easily knocked down. Termination of grazing on these allotments appears to have been precluded prejudicially. Thus, the whole NEPA process is a mere formality for *post hoc* justification, in violation of the purpose of the Act.

The CBD contends that the Responsible Officer has failed to rigorously explore and objectively evaluate all reasonable alternatives contrary to NEPA requirements. In particular the EA relies on repeated assertions of the supposed beneficial effects of grazing, or the supposed lack of significant difference between grazing and no grazing, assertions that are contradicted by the bulk of scientific evidence. Therefore the decision is also arbitrary and capricious and an abuse of discretion contrary to the APA.

Multiple Use Sustained Yield Act

The Multiple Use Sustained Yield act defines multiple use as "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people" and, ". . . the harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment . . . due consideration shall be given to the relative values of the various resources in particular areas" (16 USC 529).

The fact that grazing has already caused permanent impairment of the quality of the environment is established by much science already cited as well as admitted in the EAs. On that basis alone it should be stopped immediately.

Nowhere in the project record for these allotments is any analysis of the "relative values" of the non-grazing uses of the forest compared with the grazing use. Beef production is not a relatively scarce resource but one that can be carried on in many different places, indeed is more efficiently carried on private rangelands and feedlots.

Federal lands produce less than 2% of all feed fed to beef cattle in the US (Joyce, 1989). Federal grazing program costs taxpayers over \$100 million direct cost every year and yet livestock ranching ranks fifth as a cause of species endangerment in California (Flather, Joyce & Bloomgarden, 1994; Flather, Knowles & Kendall, 1998). This suggests that consideration of relative values of resource uses should result in termination of livestock grazing broadly on federal lands to “best meet the present and future needs of the American people” for protection of the many biological and cultural resources that are substantially degraded and threatened by livestock grazing.

The decisions of the RO lack any such analysis and as such are in violation of MUSYA.

National Forest Management Act (NFMA)

Capability analysis does not follow Handbook

Section 2209.21 of the Forest Service Handbook (FSH) requires that soils classified as "unstable," with natural soil loss rates that exceeds tolerable soil loss rates to maintain soil productivity be classified as "no capability range."

This constraint on designation of lands as capable is not mentioned in the listing of criteria for range capability (Appendix B).

Suitability analysis outdated, fails to consider uses foregone

NFMA implementing regulations require that: "In forest planning, the suitability and potential capability of National Forest System lands for producing forage for grazing animals and for providing habitat for management indicator species shall be determined" (36 CFR 219.20) "Suitability" is defined as "[t]he appropriateness of applying certain resource management practices to a particular area of land, as determined by an analysis of the economic and environmental consequences and the alternative uses foregone." (36 CFR 219.30)

The Los Padres Land and Resource Management Plan (LRMP) is vintage 1988. The suitability analysis has not been reviewed or revised and is no longer relevant or defensible in light of significantly changed resource demands by the public, as evidenced throughout the project record for these allotments in comments and complaints about livestock by adjacent landowners and other users and members of the public who vastly outnumber the permittees.

Significantly changed environmental and economic conditions and uses demand a revised suitability analysis under both NEPA and the APA. "Reliance on stale scientific evidence is sufficient to require re-examination of an EIS." (City of Carmel-By-The-Sea v. U.S. Department of Transportation, 9th Cir. 1996, 95 F.2d 892, 900. The original EIS has not been re-examined for suitability.

The suitability criteria listed in Appendix B of the DNs states that “Forest level suitability determinations should be reviewed during project level analysis.” Therefore the decisions on these allotments must entail a revised suitability analysis. No analysis

that discusses or quantifies alternative uses foregone appears in the project records for these allotments.

The areas listed in DN Appendix B that “**may** be used to adjust suitable acres for livestock” do not include any requirement to analyze the following “uses foregone.”

- Enjoyment of a wilderness with fully realized wilderness value, without fencing or livestock;
- Enjoyment of hiking and camping in a landscape untrammelled by fences, with full natural potential wildlife and vegetation undiminished by livestock degradation;
- The opportunity to see, appreciate and study archeological sites free of incremental degradation imposed by livestock impacts, or the enclosures contrived to exclude livestock;
- The opportunity to see, appreciate and study threatened endangered and sensitive species free of incremental degradation imposed by livestock impacts, or the enclosures contrived to exclude livestock.

The criterion listed: “[a]reas where livestock grazing is impracticable due to economic considerations (e.g. high administrative cost in support of a small number of head . . .” seems to apply perfectly to the proposed action on the SALMON CREEK allotment to graze just four cattle. SALMON CREEK has been the subject of extensive NEPA analysis, Biological Assessment and other costs to the public, and will continue to be a source of ongoing “high administrative cost in support of a small number of head.”

Similarly ALDER CREEK also has been the subject of extensive analysis and administrative costs all for eight horses which do not even constitute a conventional “livestock” operation in the accepted sense of a business producing meat or other animal products. The RO has failed to revisit or even mention the listed criteria in reviewing suitability on these allotments as regulations require.

The environmental and economic consequences and alternative uses impaired and therefore foregone because of livestock grazing on the Forest have grown significantly due to demographic and ecological changes, such as an increase in the population enjoying wilderness and wildlife values, recreation, hunting and fishing as well as an increase in the number of species requiring regulatory protection to prevent their extinction and an increase in awareness and concern for species protection in the general population. The increased conflict between cows and recreation is an example of this shift in relative values in the EAs as evidenced by numerous comments in Appendix A that question or criticize the continued presence of livestock on these lands.

According to the Southern California Mountains and Foothills Assessment 1999, (p. 352) SAN CARPOFORO creek has “high ecological significance.” The impacts of livestock on riparian areas is extremely well documented in the scientific literature by such reviews as (Belsky, Matzke & Uselman, 1999; Ohmart, 1996). (Allen-Diaz *et al.*, 1998) criticized the Sierra Nevada Ecosystem Project for failing to consider or incorporate such important information into grazing decisions.

The criteria for reviewing suitability of these lands for grazing (DNs App. B) include “Areas with unique habitats where habitat cannot be maintained” and “[k]ey wildlife habitat areas where suitable habitat cannot be sustained.” SAN CARPOFORO creek by the USFS own evidence fits both these exceptions to suitability, but the issue is not even discussed in the EAs or DN, a probable violation of NEPA and the APA.

Ongoing grazing on these allotments is therefore also contrary to NFMA.

No analysis of impacts to management indicator species

The National Forest Management Act (NFMA) and implementing regulations contain clear direction requiring quantitative monitoring of populations of Management Indicator Species (MIS).

36CFR219.19(2) states: “In order to estimate the effects of each alternative on fish and wildlife populations, certain vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species and the reasons for their selection will be stated.”

36CFR219.19(2) states: “Planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat and of animal population trends of the management indicator species.”

36CFR219.19(6) states: “Population trends of the management indicator species will be monitored and relationships to habitat changes determined.”

Inconsistent with NFMA, the Los Padres LRMP nowhere states why the MIS selected were chosen and what management actions they are supposed to act as indicators for.

Consistent with NFMA, the Los Padres LRMP states, “All Management Indicator Species should be monitored in cooperation with the California Department of Fish and Game, U.S. Fish and Wildlife Service and other agencies or organizations capable of providing usable data collected under established procedures and standards. Monitoring results will be used to verify, or modify as needed, the output assumptions in the Plan, or to justify needed changes in management activities” (p. 13 emph. added).

In a recent Federal District Court decision (Forest Guardians et al. v USFS CIV 00-714 JP/KPM-ACE) it was found that a timber sale on the Cibola National Forest violated the National Forest Management Act (NFMA) and implementing regulations through failure to quantify population sizes and trends for Management Indicator Species at the project level.

No quantitative data on population levels or trends is presented or referred to in the EAs or DN. Such data is required for the Los Padres National Forest LRMP to be in compliance with the NFMA and to allow agency managers and the public to know if and how management should be changed. None of the Biological Assessments or the EAs, even mention Management Indicator Species.

In response to comment 6 by appellants (DN, App. A, p. 16) the RO discusses impacts to MIS of the proposed action in a general way, without any population data

being presented. The statements made in response to comment 6 are not supported by any science. For example the statement that RDM standards would not harm quail habitat is not supported by any science, and is in fact contrary to available science as cited above. Negative impacts of grazing on quail are scientifically well documented but none of this evidence is mentioned or discussed by the RO (Bock & Bock, 1999; Brown, 1982; Goodwin & Hungerford, 1977; Klimstra, 1975).

On deer, the RO is inconsistent, claiming that no negative impacts are expected, while at response to comment 8 (p. 17) the RO admits that California Department of Fish and Game has not yet communicated any data in this respect.

Hence the RO admits that, contrary to Plan requirements, Los Padres has not yet “monitored in cooperation with the” California Department of Fish and Game (CDFG). Accordingly no grazing should take place until such data are available and the requirements of the Los Padres LRMP observed.

Furthermore, the RO failed to consider available scientific evidence that shows negative impacts of livestock on deer in California (Bowyer & Bleich, 1984; Kie, 1996; Kie *et al.*, 1991; Loft, Kie & Menke, 1993; Loft, Menke & Kie, 1991; Loft *et al.*, 1987).

The entire discussion in the RO’s response to comment 6 inverts the purpose of MIS in NFMA. The population trends of MIS are supposed to be quantified as a means of informing changes in management, not the other way round.

By failing to consider or present any evidence for how MIS populations have changed and how management has or will be adjusted in response to those indications, the decisions on these allotments are contrary to NFMA and also therefore the APA.

Compliance with new management direction and conservation measures

In February 2001 FWS issued a BO for the interim management guidance developed by USFS, Region 5 and promulgated on December 15, 2000 in response to the agreement to reconsult over the LRMPS for four national forests in Southern California. The following new directions and measures were agreed to by the Forest Service in the consultation:

New Management Direction “Where a TEP species’ key or occupied habitat is detected in a grazing allotment, implement actions to avoid or minimize negative impacts to the species. Use the least restrictive action that will effectively minimize or eliminate take of the species.” (p. 142)

New riparian and aquatic spp. direction “For grazing allotments in key and occupied TEP species habitat, maintain at least 60 percent of current year’s production of grass and grass-like plants and maintain at least 80 percent of current year’s growth of willows in riparian areas and shrubs in upland areas” (p. 138).

The provision to allow only 1000 lb./ac. of Residual Dry Matter (which may amount to over 65% forage use as shown above), or to allow up to 60% forage use in key areas next to Smith’s Blue Butterfly habitat already violate this prescription in the interim guidance to maintain at least “60% of current years production of grass”

“In Smith’s blue butterfly key and occupied habitat, conduct field surveys of 10 acres per year to determine the distribution and abundance of habitat (seacliff buckwheat), in the following order: (1) areas that are in or adjacent to suitable rangelands within active grazing allotments;” (p. 225, Conservation Measures).

This interim plan guidance is not incorporated anywhere in the EAs or DNs.

Wilderness Act

Failure to control trespass into Wilderness.

The EA and DN for COZY COVE failed to take into account or address comments by the VWA submitted during scoping to “[c]onsider the impacts of cattle grazing on the adjacent Silver Peak Wilderness Area. Essential elements of this analysis include the impacts of grazing on the natural integrity of the area as well as the effect of cattle on opportunities for solitude and high-quality recreational experiences. The Forest Service Handbook states that if a ‘substantial alteration’ of a roadless area’s primitive character is proposed an EIS must be prepared (1909.15 Section 20.6 WO Amendment 1909.15-92-1)”

A major portion of the northern boundary of COZY COVE with the Silver Peak Wilderness runs through open grassland on the southwestern face of Mt Mars, and is lacking in any natural barriers. According to a ground survey by VWA member Mr. Boon Hughey conducted Dec 15-16, 2001, and as confirmed by the Forest Service maps there is no existing fence to keep the cows from grazing in the Wilderness, nor is there any proposal in the EA or DN to construct a fence.

Mr. Hughey noted that “as I was descending the westward-trending ridge from Mt. Mars down toward the allotment I noted dozens of old cow manure piles all over the place in the grasslands, well above and outside of the allotment boundary. The hillsides up there also have some obvious terracing indicating cattle access.”

Therefore the DN is in violation of the Wilderness Act which does not permit any grazing except if a permit was issued before the act passed. No permit is currently issued to graze in the Silver Peak wilderness north of Cozy Cove allotment.

DN, Appendix B, Rangeland Capability and Suitability Criteria, noted that “[o]ne or more situations listed below may be used to adjust the suitable acres for livestock grazing... 3. Areas where livestock grazing is impractical due to economic considerations (e.g. high administrative cost in support of a small number of head, inability to control or sustain livestock without costly investment to meet resource objectives)” (emphasis added).

By failing to mention, consider or address this substantive comment made during scoping, the RO has violated NEPA, the APA, Forest Service Regulations, NFMA and the Wilderness Act.

Removal of enclosure in Wilderness

The RO claims that removal of the cattle enclosure would remove the “penned in” feeling at the Dutra Camp in the SAN CARPOFORO allotment. This decision runs counter to the evidence presented in the EA (p. 8) that “[c]ampers . . . prefer that cattle be fenced out of campsites.” The decision also runs counter to evidence in response to comment 10 admitting conflicts between livestock and recreationists in the area “between

Dutra and Turkey Springs Campsites in the fall and winter months, leaving manure piles in the vicinity.” Campers are not objecting to the enclosure as the RO implies, but rather to the presence of livestock.

The Wilderness Act requires that there be no additional grazing than that at the time of the Act. In House Committee Report 96-617, Congress made clear that, the intent of the Act was not necessarily to terminate grazing in wilderness that was established prior to the Act and was consistent with the purposes of the Act. The Dutra Camp is in the Silver Peak Wilderness Area and the enclosure was established prior to the Act. By removing the enclosure, cattle will have access to areas that they never previously had permitted access to. By making a decision counter to evidence presented, the RO has also violated the APA. By allowing cattle access to an area within a Wilderness, to which cattle did not previously have access, the RO has violated the Wilderness Act.

Clean Water Act (CWA)

California Water Resources Board did not have a statewide surface water monitoring program prior to 1999. Therefore the only data available for these creeks is Forest Service data.

The Steelhead BA discloses that many of the streams coming off these allotments are in a degraded state for sediment and chemical contamination. Specific data are not disclosed in the BA contrary to the RO’s response to comment 6 (DN App. A, p. 17). No riparian areas are in full functioning condition. Scientific research shows that even light levels of grazing result in significant erosion, soil compaction and increased overland flow (Belsky *et al.*, 1999; Liacos, 1962; Ohmart, 1996). This evidence was not considered in arriving at these decisions. Instead bald assertions are made that “research indicates that low and moderate grazing levels . . . have little to no more effect on the ground . . . than no grazing” (response to comments DN App. A, p 18). As already shown above, the California specific evidence of Liacos, (1962) indicates otherwise. The DO also argues that the RDM standard of 1000 lb./ac. would “safeguard infiltration and prevent erosion”. However the only regionally specific study addressing this question indicates that even light grazing can significantly compact soils and boost overland flows and erosion (Liacos, 1962).

The EAs cite Atwill, (1998) who shows that the gastrointestinal protozoan disease *Cryptosporidium* is prevalent in calves, but then does not discuss which of the allotments have cow calf operations and which are therefore most likely to generate disease risks to humans and mammalian wildlife. The RO does not consider Atwill, Johnson & das Gracas- Pereira, (1999) who show that stocking rate alone, not season of onset of calving nor rotations was the principal determinant of *Cryptosporidium* pollution by calves, the higher the rate the greater the risk. The EAs do not explain how the stocking rates chosen would minimize the risk to human and wildlife health posed by this source.

Given the condition of watershed and riparian areas, it seems unlikely that the grazing actions proposed are or would be in compliance with CWA standards. The State has not done any 303(d) determination for these waters. Failure to document compliance

with CWA standards and to prevent degradation of streams that could potentially be occupied habitat for listed or sensitive species is contrary to the CWA as well as the ESA.

Livestock grazing is customarily considered to be a “non point” source. However evidence presented in the project record for GORDA suggests that the corrals with “piles of manure” on Prewitt Creek and elsewhere on the allotments should in fact be considered a point source of pollution and be required to obtain an appropriate permit from the Environmental Protection Agency (EPA). No evidence is presented in the record that moving the corral a mere 300 ft. as proposed will significantly reduce pollutant input into the creek, an unlikely result so long as the corrals lie within the same watershed.

National Historic Preservation Act (NHPA)

Available scientific studies confirm that livestock have significant negative impacts on archeological resources (Osborn *et al.*, 1987). This evidence was raised by VWA in scoping and in comments on the EA.

The EAs use the same stock language that the actions would be in compliance with the NHPA without presenting any evidence of the extent of surveys that have been done or how the actions would avoid damage to resources. The informationless bald assurance that “heritage resources would be protected” is repeated in response to comments (p. 14).

The GORDA EA proposes to move corrals on Prewitt Creek to protect cultural resources that were being impacted by grazing there. This action is the same one justified elsewhere as “protecting” the Prewitt Creek riparian area. In either case, mere displacement of a corral and a drift fence does not stop cattle from still accessing the sites. A drift fence by definition is a fence that cows can walk around, it is not an enclosure. The RO does not give any adequate explanation of how this will significantly reduce impacts to this site.

The appellants contend that consideration of and disclosure of extent of cultural resources and impacts by livestock were inadequate and not sufficient under the NHPA.

The FONSI is "arbitrary , capricious"

For all the foregoing considerations the CBD and VWA contests the Responsible Officials’ findings of no significant impact. Therefore the FONSI is in violation of NEPA and also "arbitrary, capricious and an abuse of discretion" under the APA.

The FONSI failed to satisfactorily address the CEQ definition of "Significantly" point by point, as follows (40 CFR 1508.27):

i. Context

CEQ regulations state ". . . in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole."

RO claims no cumulatively significant effects

Appellants contend that the allotments collectively cover a substantial portion of the Big Sur coastline and a substantial portion of the Monterey Ranger District of the Los Padres National Forest. The Big Sur coastline is an area of great national scenic and biological significance. The RO is attempting to dilute significance by piece-mealing the NEPA process into separate EAs, when in fact a single EIS for the Monterey Ranger District grazing program is what should have been produced.

ii. Health And Safety

CEQ regulations require consideration of "[t]he degree to which the proposed action affects public health or safety."

RO claims that no significant effect on public health or safety would result.

Appellants contend that the EA fails to adequately consider the established risks to public health of infection by *Cryptosporidium parvum* (Atwill 1998; Tate et al. 2000) and other pathogens for the increasing numbers of recreational visitors to this coastline. *Cryptosporidium* cannot be eliminated from water supplies by normal disinfection methods. Another risk not considered at all in the EAs is the hazard to public safety from collisions between livestock and vehicles. This was raised by appellants and ignored by the RO.

iii. Proximity to unique sites

"Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas."

RO claims that there would be no such impacts.

Appellants counter that the regulations specify that "proximity" is enough to trigger "significance". The selected alternative would still have livestock grazing in proximity to unique resources. Unique resources the RO failed to consider are the Wilderness Areas in the mountains and the dramatic Big Sur coastline and the natural landscape of that coastline that has been and will continue to be transformed and degraded by long term livestock grazing. The Forest Service Handbook states that if a 'substantial alteration' of a roadless area's primitive character is proposed an EIS must be prepared (1909.15 Section 20.6 WO Amendment 1909.15-92-1)". The proposed actions will continue to worsen the esthetic, biological and scenic environment as more recreational users come into conflict with cattle.

iv. Controversy

CEQ regulations: "The degree to which the effects on the quality of the human environment are likely to be highly controversial."

RO rejects any controversy.

Appellants counter that that this appeal, representing as it does the objection of organizations collectively with over 6,000 members who are residents of California and neighboring states is significant evidence for controversy in and of itself. Appendix A to

the DN is replete with comments that indicate substantial public opposition to continued grazing on these allotments.

A search of the Lexis-Nexis database disclosed that 20 newspaper articles have been published in western US newspapers in the past two years linking the terms "controversial" or "conflict" to grazing on National Forests. The Regional Office well knows that livestock grazing on National Forests and BLM lands in California is the subject of constant lawsuits and appeals by the public. Plans to graze these allotments are patently controversial.

Appellants contend further that impacts of the actions are controversial in a scientific sense. As argued above, the scientific basis of the EA and DN are found to be wholly inadequate for the NEPA required obligation to "rigorously explore and objectively evaluate all reasonable alternative."

v. Precedent

"The degree to which the action may establish a precedent for future actions with significant effects."

RO claims no precedent will be set by allowing grazing to go on.

Appellants counter that continuing to allow grazing will necessarily bias future decisions toward grazing. By permitting grazing and also by installing new infrastructure the Forest Service has created a vested interest with an incentive and to push for continuance of grazing privileges. As admitted in the DNs, decision to allow continued grazing were driven by the demand for forage by ranchers. The history of effortless renewal of permits has cultivated a false sense of having a right to federal forage among permittees. This is particularly the case because of the inflated value of the permits to the permittee that result from grazing fees that are consistently well below market value. In contrast, cessation of grazing would not create a precedent for future actions by entrenching any vested interest.

vi. Listed species impacts

CEQ regulations: "The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973."

RO claims no significant negative effects, or that effects have been mitigated.

Appellants counter that the consultation is not founded in a full and undistorted consideration of the negative impacts of grazing on listed species, the Steelhead, the Red legged frog, Smith's blue butterfly and other species that may be impacted but which were not considered. The BOs and concurrences issued with respect to these species are arbitrary and capricious and impacts to listed species of the proposed actions are significant when considered on the cumulative scale.

vii. Violations of laws

RO claims no violations.

Appellants counter that all the aforementioned violations or probable violations constitute significance in CEQ regs.

CONCLUSION

Appellants contend that Acting District Ranger John Bradford's and Forest Supervisor Jeanine Derby's Decisions and Findings of No Significant Impact for these allotments are in error and not in accord with the legal requirements of the Endangered Species Act, the National Environmental Policy Act, the Administrative Procedures Act, the National Forest Management Act, the National Historic Preservation Act, the Clean Water Act, the Multiple Use and Sustained Yield Act and implementing regulations for these Acts. Please respond to every point and sub-point raised in this appeal.

REQUEST FOR RELIEF

Due to aforementioned violations of applicable laws and regulations appellants request a complete withdrawal of the Decision Notices and Findings of No Significant Impact for the abovementioned allotments.

In the light of ongoing damage to important resources and ongoing violations of resource protection laws, appellants request a stay of the proposed decisions to reopen the COZY COVE and SALMON CK allotments to grazing until a full Environmental Impact Statement has been prepared that compares alternatives using a transparent, objective and rational decision-making procedure using the best available scientific evidence and practice, that fully analyzes impacts of the proposed actions on all resource values, and is in accord with all applicable law.

Appellants request a remand of the proposed decisions to close the TORRE CANYON, TWITCHELL and BUCKEYE allotments to grazing and ask that the decisions be reissued with a provision to permanently retire the allotments from grazing use by amendment to the Los Padres LRMP.

In the light of ongoing damage to important resources and ongoing violations of resource protection laws, appellants request further a stay of all livestock entry onto the ALDER CREEK, GORDA and SAN CARPOFORO allotments until a full Environmental Impact Statement has been prepared that compares alternatives using a transparent, objective and rational decision-making procedure using the best available scientific evidence and practice, that fully analyzes impacts of the proposed actions on all resource values, and is in accord with all applicable law.

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Dated and signed this 21st day of December 2001.

Martin Taylor, Center for Biological Diversity