

*APPEAL TO THE REGIONAL FORESTER  
JACK BLACKWELL  
UNITED STATES FOREST SERVICE  
PACIFIC SOUTHWEST REGION  
FROM A DECISION OF A  
SEQUOIA NATIONAL FOREST DISTRICT RANGER*

In RE: Appeal of the Decision Notice and Finding of No Significant Impact (FONSI) Dated September 30, 2002 But Disclosed January 2, 2003 Concerning the Hot Springs Greenhorn Grazing Environmental Assessment In the Hot Springs and Ranger District of the Sequoia National Forest

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APPELLANTS )  
SEQUOIA FOREST ALLIANCE; )  
TULE RIVER CONSERVANCY; )  
KERNCREST AUDUBON SOCIETY; )  
SEQUOIA FORESTKEEPER; )  
SEQUOIA TASK FORCE SIERRA CLUB; )  
RANGE WATCH )

APPELLANTS, ) )  
VS. ) )  
Del Pengilly, District Ranger and )  
David Freeland, District Ranger, )  
Sequoia National Forest, )  
Pacific Southwest Region, )  
United States Forest Service )  
Responsible Officers )

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APPELLANTS' NOTICE OF APPEAL;  
DESCRIPTION AND STANDING OF APPELLANTS;  
STATEMENT OF REASONS; AND  
RELIEF REQUESTED

Dated this 14th day of February, 2003

For the Appellants:

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*VIA CERTIFIED MAIL 7001 0320 0004 7105 9674, RETURN RECEIPT REQUESTED*

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### NOTICE OF APPEAL

On January 2, 2003, Del Pengilly, Sequoia National Forest District Ranger, published a Decision Notice and Finding of No Significant Impact for the HOT SPRINGS/GREENHORN GRAZING ENVIRONMENTAL ASSESSMENT. This project proposes to authorize grazing on ten allotments on the Hot Springs and Greenhorn Districts.

NOTICE IS HEREBY GIVEN to the Regional Forester, Pacific Southwest Region of the United States Forest Service, pursuant to NFMA appeal regulations at 36 C.F.R. 215, that the Sequoia Task Force of the Sierra Club (STF), Sequoia Forest Alliance (SFA), Tule River Conservancy (TRC), Kerncrest Audubon Society (KAS), Sequoia Forest Keeper (SFK) Range Watch (RW), hereby appeal the decision of Dave Freeland, Greenhorn District Ranger and Del Pengilly, Tule River District Ranger to reauthorize livestock grazing on ten allotments in the Hot Springs and Greenhorn Ranger Districts (RDs) in the Sequoia National Forest (SNF). These allotments are Rube, Powder Magazine, Capinero and White River on Hot Springs RD, and Bear Creek, Cedar Creek, Little Poso, Lumreau, Sandy Creek and Fulton Administrative Pasture on the Greenhorn RD.

Appellants believe that the District Ranger's decision is in error and not in accordance with the legal requirements of the National Environmental Policy Act (NEPA, 42 USC § 4321, et seq.) and its implementing regulations, the National Forest Management Act (NFMA, 16 USC § 1600, et seq.), the Administrative Procedures Act (APA, 5 USC § 706), and the Sierra Nevada Forest Plan Amendment (Framework) Standards and Guidelines.

The Hot Springs/Greenhorn Environmental Assessment directly and significantly affects members of the Sequoia Forest Alliance, Tule River Conservancy, Kerncrest Audubon Society, Sequoia ForestKeeper, Sequoia Task Force Sierra Club, Range Watch, and Interested Parties in that they and their members regularly use the project area for work, recreation, wildlife observation and other forest related activities.

## DESCRIPTION AND STANDING OF APPELLANTS

### 1. SEQUOIA FOREST ALLIANCE

SEQUOIA FOREST ALLIANCE ("SFA") is an association of citizens dedicated to the protection of the natural resources of our forest. The purpose of this group is to educate the public of the need for the management of our forests to be based on sound biological principals, and to take whatever actions may be required to ensure that the letter and spirit of environmental laws, regulations and guidelines are adhered to.

Members of SFA regularly use the area of the Sequoia National Forest that is under consideration for the present proposed management activity. Members use this area for recreation, nature study, spiritual enrichment and studies of the natural resources. They believe the implementation of the present management activity would irreversibly harm the natural resources of the area, have significant impacts on wildlife and detrimentally interfere with members' ability to enjoy the area. Members of SFA believe that the National Forests must be saved for the benefit of future generations.

Address and phone number

### 2. TULE RIVER CONSERVANCY

The TULE RIVER CONSERVANCY ("TRC") is a California nonprofit organization. It is a local, grassroots conservation organization with members who reside near and/or frequently visit Sequoia National Forest and engage in physical and spiritual recreation in the forest. TRC is also a civic organization devoted in part to assisting the U. S. Forest Service to make management decisions in the best public interest. The TRC and its members will be affected by the present proposed management activity in that the proposed project will damage the forest and its diverse biological heritage and will result in a fiscal loss to taxpayers.

Address and phone number

### 3. KERNCREST AUDUBON SOCIETY

The KERNCREST AUDUBON SOCIETY ("KAS") is composed of members from the counties that are adjacent to the Sequoia National Forest. Members hike, fish, hunt, backpack, camp and sightsee on these lands. They also look for birds, wildlife and wildflowers and enjoy the diversity of the undisturbed forest and its wilderness.

KAS members have been actively working for ecologically sound forest management both locally and nationally.

### 4. SEQUOIA FORESTKEEPER

The Sequoia ForestKeeper's (SFK) mission is to protect and restore the ecosystems of the Southern Sierra Nevada including, but not limited to, the Giant Sequoia National Monument, Sequoia National forest and Mountain Home State Forest through monitoring, enforcement, education, and litigation.

Sequoia ForestKeeper members, many of whom reside in local areas including Kern, Tulare, and Kings Counties, and others who visit from across the country, use the forests of the Southern Sierra Nevada for activities such as hiking, bird and animal watching, aesthetic enjoyment, quiet contemplation, fishing and scientific study. Many Sequoia ForestKeeper members also have been actively involved in formulating management policies for public lands and preserving local areas including participating in the establishment and development of the Giant Sequoia National Monument. Sequoia ForestKeeper members will be harmed by the negative impacts of this project to forest resources including its functioning ecosystems and wildlife.

Sequoia ForestKeeper claims standing to appeal this decision. SFK and our 100 plus members and supporters have vital interests in protection of wildlife and imperiled species that occur on the public lands in the Sequoia National Forest and on these allotments in particular. SFK was consulted in this decision as an interested public and submitted comments for the NEPA process culminating in the DN that is the subject of this appeal.

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#### 5. SEQUOIA TASK FORCE, SIERRA CLUB

The Sierra Club will be directly and indirectly impacted by implementation of the Sequoia National Forest Hot Springs Greenhorn Grazing Project. The Sierra Club is a nonprofit corporation organized and existing under the laws of the State of California. It is a national conservation organization whose members include over 750,000 persons nationally and about one third of them reside in California. Members of many Chapters of the Sierra Club use the affected areas for recreation, inspiration, and study of natural ecosystems.

The Kern-Kaweah Chapter of the Sierra Club includes members in Kern, Tulare, and Kings Counties. Traditionally, this Chapter has been actively involved in formulating management policies of public lands and in the preservation of local areas.

Many Kern-Kaweah Chapter members live in areas that are directly and indirectly affected by this grazing project. The project would adversely affect the Sierra Club members' use and enjoyment of the affected area by degrading habitat, damaging vistas from roads and trails, and otherwise further altering the natural condition of the area. Further, many of the provisions in the Settlement Agreement of the Sierra Club's appeal of the Sequoia National Forest Land Management Plan would be violated.

The STF claims standing to appeal this decision. Sierra Club is a nonprofit corporation organized and existing under the laws of the State of California. It is a national conservation organization whose members include over 750,000 persons nationally and about one third of them reside in California. Members of many Chapters of the Sierra Club use the affected areas for recreation, inspiration, and study of natural ecosystems. STF was consulted in this decision as an interested public and submitted comments for the National Environmental Policy Act (NEPA) analysis culminating in the DN that is the subject of this appeal.

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Sierra Club, Sequoia Task Force  
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#### 6. RANGE WATCH

Range Watch claims standing to appeal this decision. Range Watch members and supporters have vital interests in protection of natural resources, wildlife, and imperiled species that occur on the public lands in the Sequoia National Forest and on these allotments in particular. Range Watch was consulted in this decision as an interested public and submitted comments for the NEPA process culminating in the DN that is the subject of this appeal.

Jane Baxter,  
Director  
Range Watch  
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### **Appeal of Hot Springs/Greenhorn Grazing Decision on the Sequoia National Forest**

Per National Forest Management Act (NFMA) appeal regulations at 36 C.F.R. 215 appellants; the Sequoia Task Force of the Sierra Club (STF), Sequoia Forest Alliance (SFA), Tule River Conservancy (TRC), Kerncrest Audubon Society (KAS), Sequoia Forest Keeper (SFK) Range Watch (RW), and Ron and Carol Wermuth hereby appeal the decision of Dave Freeland, Greenhorn District Ranger and Del Pengilly, Tule River District Ranger, to reauthorize livestock grazing on ten allotments in the Hot Springs and

Greenhorn Ranger Districts (RDs) in the Sequoia National Forest (SNF). These allotments are Rube, Powder Magazine, Capinero and White River on Hot Springs RD, and Bear Creek, Cedar Creek, Little Poso, Lumreau, Sandy Creek and Fulton Administrative Pasture on the Greenhorn RD.

The deadline for filing appeals disclosed on the cover letter dated January 2, 2003 to the decision notice (DN) and finding of no significant impact (FONSI) is Sunday February 16, 2003. Therefore this appeal is filed in a timely manner.

## **Background**

The current and proposed grazing actions on the respective allotments are as shown in the following Table.

Allotment	Primary Range (ac)	Current AM	AM/sq mile	Current grazing system	Proposed (alt 2)*
<b>Capinero</b>	<b>5,300</b>	<b>984</b>	<b>119</b>	<b>214 cow/calf 4/16-8/31</b>	<b>No change in stocking. Fence to excl. summer homes, new troughs, move troughs now in Riparian Cons. Area (RCA)“when feasible”</b>
<b>Powder Magazine</b>	<b>280</b>	364	<b>832</b>	<b>40 yrllings 2/1-10/31 rotate thru 3 units</b>	<b>No change in stocking. Move trough out of RCA “when feasible”</b>
<b>Rube</b>	<b>1,500</b>	1401	<b>598</b>	<b>379 c/c 5/1-8/15 + 4 c/c 1/1-12/31 Cane Spr.</b>	<b>No change in stocking. New trough in chute.</b>
<b>White River</b>	<b>1,860</b>	915	<b>315</b>	<b>130 c/c 4/1-10/31</b>	<b>No change in stocking. Rebuild trough and fence, move trough out of RCA.</b>
<b>Bear Ck</b>	<b>2860</b>	0	<b>0</b>	<b>ungrazed</b>	<b>Would be opened to livestock by adding to Cedar Ck</b>
<b>Cedar Ck (community )</b>	5,340	<b>1732</b>	<b>208</b>	<b>140 c/c 5/1-8/31 10 c/c 5/1-8/31(term private land permit TPLP) 199 c/c 5/1-7/15 145 c/c 7/16-8/31 100 c/c 4/16-7/31</b>	<b>No change in stocking. Fence along Creek but not to exclude! Open ? miles trails through brush w chainsaw. Redevelop 3 springs.</b>
<b>Fulton Pasture</b>	<b>50</b>	<b>35</b>	<b>448</b>	<b>75 c/c 4/15-4/30 30 c/c 9/1-9/15</b>	<b>No change in stocking.</b>
<b>Little Poso</b>	<b>6,070</b>	<b>1128</b>	<b>119</b>	<b>275 c/c 5/1-8/31 (2 units)</b>	<b>No change in stocking. Bulldoze ? miles cow trails through brush. Spring redeveloped. Fence 5.5 ac around 3 springs.</b>
<b>Lumreau</b>	<b>3,030</b>	<b>959</b>	<b>203</b>	<b>234 c/c 5/1-8/31</b>	<b>No change in stocking. Remove ? acres brush to open up to cattle.</b>
<b>Sandy Creek</b>	<b>1,190</b>	<b>460</b>	<b>247</b>	<b>150 c/c 5/1-7/31 10 c/c 5/1-7/31 (TPLP)- + cattle from Cedar Ck.</b>	<b>No change in stocking.</b>

\* ALL: 6” stubble in Functioning at Risk (FAR), 4” in Functioning riparian. Burn or mechanical removal of 4543 acres of brush annually over 4 years. “Key areas and riparian enclosures will be established along 030214-1.BLACKWELL SEQUOIA HS GH GRAZING page 6 of 21

perennial streams within each allotment” but no details given (EA p. 13) All riparian areas are “dominated by forbs and annual grass, with very little sedges or other late seral herbaceous species present,” (EA p 7) and woody species show limited regeneration (p 6) indicating long term degradation by livestock.

## **Statement of Reasons**

### ***NFMA- No valid Forest Plan***

The DN is not tiered to a valid Forest Plan. The Sequoia Forest Plan (Plan) is vintage February 1988. The mandatory revision within 15 years of any Plan required under the National Forest Management Act (NFMA) has not occurred. The Environmental Impact Statement (EIS) for the Plan is outdated with respect to grazing and is therefore no longer in compliance with NFMA. The Sierra Nevada Forest Plan Amendment (SNFPA) January 2001 identified new direction for management in several categories of wildlife habitat. However that amendment did not revise the Plan regarding the designation of the original grazing management units or areas in the 1988 Plan, nor did it modify the suitability analysis for grazing in the 1988 Plan.

Grazing on these allotments should by law, be suspended because the goals, objectives, standards, and guidelines contained in the 1988 Plan are no longer relevant or defensible in light of significantly changed resource demands by the public, significantly changed environmental and economic conditions, and significant changes in Forest Service management direction. These include:

1. Significant new information about the status, distribution, and effects of management activities on threatened, endangered, sensitive, and management indicator species.
2. Significant new scientific information about the beneficial role of natural disturbance and the detrimental effects of suppressing fires, insect outbreaks, or floods and salvaging timber from areas affected by these disturbances.
3. Significant changes in the social and economic setting in which the SNF operates including far less demand for commodities produced by the SNF and far greater demands for preservation of old growth forests, wildlife habitat, clean water, recreation sites, and other goods and services produced by natural forest ecosystems.
4. Significant changes in management direction, including the adoption of integrated resource management, ecosystem management, and principles of ecological and economic sustainability set forth in the Forest Service’s new forest planning regulations. (Fed Register V. 65 No. 218, 11/9/2000)
5. Vast changes in the composition and structure of rangelands and forests managed by non-Forest Service landowners caused by increases in road building, grazing, agriculture, urban development, mineral development, increased high impact recreation, and other uses that have caused detrimental cumulative impacts to terrestrial and aquatic ecosystems managed by the SNF.
6. New information about the inadequacy of the 1988 Plan’s goals, objectives, standards, guidelines, and land allocations in protecting environmental, economic, social, and cultural resources.
7. New information about the ecological and economic suitability of the analysis area for grazing.

These significant changes have been well documented in part by the Forest Service in the documentation for the recent SNFPA. These significant changes in public demands, conditions, and management direction render the goals, objectives, standards and guidelines in the 1988 Plan obsolete and inadequate for protecting and restoring ecological and economic sustainability.

***NFMA- no suitability analysis***

No valid current suitability analysis has been done per NFMA and implementing regulations to determine if livestock grazing is a suitable use of these lands. Any suitability analysis attached to the FEIS for the 1988 Forest Plan is now scientifically stale and has not been revised per NFMA deadlines. A suitability analysis must be redone as part of NEPA analysis due to increases in listings of endangered species, changes in relative values of other multiple uses in conflict with grazing, and increases in published research demonstrating the negative impacts of grazing to natural and archeological resources. All indications in the record are that these lands are not suitable for grazing. There seems to be no actual perennial “range” on these lands apart from chaparral. When asked to disclose range condition and trend by SFK, SNF in response to comment 2 stated that “Browse and stream data was used for this analysis in response to the 2 significant issues. Browse transects referred to on page eight of the EA were established by the California Department of Fish and Game to establish age current age classes and form. As stated on page 6 of the EA, known perennial streams reaches impacted by cattle grazing were evaluated using the PFC protocol.” Hence only age class and form of brush as a source of browse, not condition and trend, and PFC condition of riparian areas, which is not a measure of range condition or trend, are presented.

Monitoring has shown significant hedging and high utilization of over 40% on preferred upland browse (EA p 20). Recent monitoring data of upland browse on the adjacent Dunlap allotment indicates high utilization of upland browse, significant numbers of upland browse plants in moderately to severely hedged condition, and inadequate recruitment of hardwood seedlings. Most strikingly, there was absolutely no recruitment at all of upland browse seedlings on the Poso Unit of the Dunlap allotment as of mid-June, 2002. No equivalent monitoring is available for the subject allotments. This information indicates that significant competition with browse-dependent wildlife such as deer is likely also occurring in the analysis area, and that such competition may be establishing a significant "use foregone." This information also indicates that livestock grazing is stifling the development of a vibrant, multigenerational, native upland shrub and hardwood community – which is yet another "use foregone" as a result of grazing. Standards for hardwood browse utilization by livestock are established at 20 percent of seedlings and advanced regeneration, but this may not be consistent with other more stringent vegetative standards that site conditions may require in order to protect already damaged native upland shrub and hardwood communities.

***NFMA- Failures to implement Sierra Nevada Forest Plan amendment standards***

The SNFPA standards specific to grazing are:

Review grazing permit issuance for consistency with riparian conservation objective (RCOs) (ROD p.A8).

More monitoring for willow flycatcher occupancy in nest territories on grazing allotments, prohibiting grazing if there are and if not done within 3 years move to late season grazing (ROD p. A62)

**Changed utilization standards**

Requires weed prevention measures when permits issued (ROD p. 6)

Requires utilization that allows Blue oak recruitment (ROD p. 25) and 20% use on hardwood annual growth (p A31)

“Grazing utilization in annual grasslands will maintain a minimum of 60 percent cover. Where grasslands are in satisfactory condition and annual precipitation is greater than 10 inches, manage for 700 pounds residual dry matter (RDM) per acre. Where grasslands are in satisfactory condition and annual precipitation is less than 10 inches, manage for 400 pounds RDM per acre. Where grasslands are in unsatisfactory condition and annual precipitation is greater than 10 inches, manage for 1,000 pounds RDM per acre; manage for 700 pounds RDM per acre where grasslands are in unsatisfactory condition and precipitation is less than 10 inches. Adjust these standards, as needed, based on grassland condition.” (p.A31)

The DN implements alt 2, and the EA says that the grazing standards will incorporate the standards and guidelines of the Forest Plan, which are taken, for the most part, from the SNFPA. However, the DN is not specific about which areas are subject to which standards and does not indicate how frequently and when the monitoring for utilization will be conducted. The BAE stated there were both unsatisfactory and satisfactory rangelands but the specific areas and locations were not disclosed.

“Complete initial plant inventories of bogs and fens within active grazing allotments prior to re-issuing permits.” (p. A58) No such inventories appear in the project record or in the BE for plants.

Requires expeditious revision of grazing permits if “willow flycatcher, Yosemite toad, great gray owl or a species listed under the ESA is occupying a site.” (ROD p. 49) The BAE says that willow flycatcher do not have habitat because meadow habitat is only on private land, while all 145 mi of “riparian areas provide low habitat value for this species due to the steep and deeply incised nature of most creeks, lack of slow moving standing water, and lack of large willow complexes” (BAE p 15), a degraded state that is likely to have resulted from livestock grazing (Belsky *et al.* 1999).

The SNFPA was supposed to result in reductions in permitted AUMs: “The effect of habitat and ecosystem conservation measures are estimated to reduce the number of animal unit months (AUMs) in the Sierra Nevada by approximately 83,000 over the next ten years. One third of these reductions were already scheduled to occur under existing plans and policies.” (ROD p. 28). The proposed action, in contrast, involves no reductions in AUMs and actually expands grazing into the presently ungrazed Bear Ck allotment and riparian areas. This is inconsistent with the SNFPA.

The SNFPA provides that vegetation seral status be used to determine appropriate riparian utilization and rest from livestock grazing (see SNFPA ROD, RCO#5, A-58, 59, B-2]. The proposed action ignores this requirement and only proposes to adjust riparian grazing based on a PFC trigger that bears no relation to the SNFPA utilization standards for riparian areas.

SNFPA riparian conservation objective #5 provides for 6" min stubble for meadows/riparian areas in early seral condition (p. A-58). The proposed action exceeds this standard for meadows/riparian area in early seral condition.

SNFPA requires "meadows" (that is, riparian habitat) in early seral status with more than 10 percent bare soil and active erosion to be rested until the meadow improves to mid or late seral status (p. A59). There are 2000 acres of riparian habitat on the analysis area, and yet SNF has not disclosed if such degraded areas exist on the allotments and where they occur.

SNFPA (p.A5) RCO#6 requires: "Recommend and establish priorities for restoration practices in: (1) areas with compaction in excess of soil quality standards, (2) areas with lowered water tables, or (3) areas that are either actively down cutting or that have historic gullies. Identify other management practices, for example, road building, recreational use, grazing, and timber harvests, that may be contributing to the observed degradation." Soil compaction, lowering of water tables and downcutting are all watershed effects that are caused by livestock (Belsky et al 1999), and yet the SNF has failed to identify where such soil quality standards, downcutting and lowering of water tables may be occurring as a result of grazing in the analysis area. This standard is not even mentioned in the EA or DN.

SNFPA requires SNF to: "Prohibit or mitigate ground disturbing activities that adversely affect hydrologic processes that maintain water flow, water quality, or water temperature critical to sustaining bog or fen ecosystems and plant species that depend on these ecosystems. During project analysis, survey, map, and develop measures to protect bogs and fens from such activities as trampling by livestock ...complete initial plant inventories of bogs and fens within active grazing allotments prior to reissuing permits" (p. A58). No inventories of bogs or fens are in the project record, although the occurrence of "seeps" is admitted in the EA. Some seeps are proposed for enclosure from livestock, but the SNF failed to do any inventory of all such wetland elements.

RW asked SNF to provide justification for repeated claims that brush litter buildup and consequent fire was somehow unnatural and required removal, citing Keeley and Frothingham (2001) who found that pre-European fire regime was one of stand-replacing fires. The SNF failed to consider or respond to this evidence.

The SNFPA has a *minimum* ground cover standard for annual grasslands of 60%. However, "satisfactory condition of annual grasslands" (p. B2), is also defined as "a condition in which the soil is adequately protected and the forage species composition and production needs meets forest plan objectives; or the condition that represents a trend in forage species composition and production that is acceptable." It is questionable that applying only the minimum cover standard as proposed in the DN is adequate to meet this more stringent definition. 40% bare area may not adequately protect the soil, as noted by all the appellants in their comments to the EA. Forage species composition on all the allotments is poor. To determine if the SNFPA standard for soil protection is being met requires analysis of the level of cover for the various soil types which meets the more stringent definition of "satisfactory" annual grasslands condition in the SNFPA. No such study or analysis is evident in the record.

***NFMA- Proposal may overstock allotment.***

No grazing capacity is disclosed in the record. Without explicitly determining capacity, the SNF is unable to meet NFMA's sustainable use requirement that permitted use must be below or equal to capacity.

Proposed continuation of present levels of stocking has not achieved and is unlikely ever to achieve recovery of watersheds "at near-natural rates". Best available science contradicts this supposition by the Forest Service. Recent science showing that light to moderate grazing still results in statistically significant soil erosion and sediment pollution into streams- evidence that was not considered in arriving at this decision (Jones 2000)

***NFMA- Management indicator species- failure to quantify trends, change management***

The management indicator species (MIS) report (EA p. 20) fails to quantify population trends for Management Indicator Species Mule Deer and Western Gray Squirrel, as recent caselaw and regulations require, and fails to show that continued grazing at levels planned will halt observed declines of MIS known to be affected by cattle. Available science shows that livestock negatively impact mule deer (Austin and Urness 1986, Currie et al. 1977, Kie et al 1991, McClaran 1991: none of these are cited in MIS report). The Plan itself may be inadequate with respect to regulation as it fails to identify which management changes will be taken in response to declines in defined management indicator species.

***NFMA- absence of an ecosystem management focus***

NFMA and implementing regulations as well as NEPA require consideration of ecosystem level impacts of proposed actions. No consideration of such impacts is evident in the DNs. Rather, the primary criterion is the improvement of forage for livestock. This comment was made by RW and was not responded to by SNF. New NFMA planning requirements require national forests to provide "ecological conditions that provide a high likelihood of supporting over time the viability of native ... species well distributed throughout their ranges" (2000 regulations, Section 219.20). The proposed elimination of native chaparral may encourage invasion by non-native annuals, contrary to this regulation.

***APA- Irrational decision***

The decision making process is irrational and counter to the evidence before the agency. The EA and available research reveals that the no grazing alternative would be best for watershed, wildlife, riparian recovery, water quality etc - all the natural and archeological resource criteria. The conclusion that brush dominance would get worse under no grazing is contrary to published evidence as discussed below. The only criterion in which it is inferior to other alternatives is the income of the permittee, and even this analysis may also be flawed. Perhaps the permittee freed of an unprofitable and declining industry would make more income in another business. In spite of this evidence the agency decided to continue grazing based on an outdated determination that the land was "suitable" for grazing and a misinterpretation of the relevant laws which say that grazing may be one appropriate use, but which do not say it is an obligatory use. Consideration of the presumed loss of "traditional ranching lifestyle" is not balanced by consideration of the lifestyles and other interests of hikers, campers, birdwatchers, and other members of the general public whose passive use values are negatively impacted by the continuation of livestock grazing.

### ***MUSYA - failure to choose optimal alternative***

The decision does not meet the high standards of the Multiple Use Sustained Yield Act that the agency allow only that combination of uses that “will best meet the needs of the American people...without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.” (16 USC 531(a)). This amounts to an obligation to maximize the benefit to the public in general. The Forest Service in making this decision has not taken the optimal one of ending grazing, but a suboptimal one based on the sole consideration of the special economic interest of the permittees. The no-grazing alternative is clearly superior to the grazing alternatives for vegetative recovery from grazing, for wildlife habitat recovery, for protection of water quality, soils and archeological resources embedded in soils. And yet the SNF has opted for a grazing alternative. The process of considering different alternative actions according to NEPA is the means by which the SNF meets the obligation under MUSYA to “best meet” the needs of the public. Beyond NEPA, MUSYA places an additional obligation on SNF to not only disclose the relative impacts of alternatives on the human environment, but on the basis of those relative impacts to selected and implement the optimal alternative.

### ***NEPA – failures to consider***

#### **Range of alternatives is unreasonable**

Alternatives are not constructed or analyzed in a reasonable way. The EA says of the No-grazing alternative that: “Species composition and vigor would decline due to the abundance of rank decadent litter remaining year after year without grazing or fire being allowed to continue.” (p. 14). Belsky & Blumenthal 1995 reviewed the evidence that grazing is fire-suppressing and thus removal of grazing would allow reintroduction of a natural fire regime (unless active fire suppression by the SNF continued). No *reasonable* no-grazing alternative was considered that included prescribed fire treatments or removal of active suppression for restoration purposes. Instead prescribed fire was artificially and unreasonably attached only to the grazing alternatives, a clear bias by SNF against no-grazing to make no-grazing appear to be less ecologically desirable. In fact the accumulation of grass fuel under the no grazing alternative is likely to make wildfires more likely and so make prescribed burns unnecessary for recovery of a natural landscape mosaic.

Similarly, two action alternatives are presented that each includes just one range management prescription (Alt.2 limits riparian grazing, Alt.3 changes season of use). Both management prescriptions have benefits according to the EA, but no reasonable alternative which combined both prescriptions was considered. Comments made by RW on this point were answered by SNF as follows: “The grazing permit system allows the Forest Service to adjust numbers or season of use when needed through the Annual Operating Instructions (AOI). The proposed action changes the guidelines for livestock management. Numbers and season of use will be adjusted to meet the guidelines over time.” (DN p. 13). This statement is in error. Numbers and season of use are fixed on a permit. If that is so, then what point was there to develop Alt 3 in the first place? The NEPA analysis authorizes the issuance of a permit with prescribed numbers and seasons of use. Through AOIs SNF *can* also reduce numbers or shorten seasons of use on a temporary basis, but they cannot increase numbers or shift seasons of use without redoing NEPA analysis.

## **General failures to use available science**

The National Environmental Policy Act (NEPA) requires agencies to take a “hard look” at any grazing actions.

The SNF ignored recent science indicating that livestock grazing has profoundly harmful impacts to archeological resources (Broadhead 1999; Osborn *et al.* 1987), impacts to water quality by pathogens and pollution from manure (Atwill 1996; Tate *et al.* 2000), statistically significant impacts to soils, vegetation and rodents even under light to moderate grazing (Jones 2000). Moreover the SNF ignored the fact of a changing environmental baseline and cumulative impact of global warming (Southwest Regional Assessment Group 2000) urbanization and other evolving factors. All the foregoing constitute new information about relative values of resources but the Forest Service chose not to consult the relevant scientific literature to assess new information and take the required “hard look”.

Abundant evidence points to the role of livestock in encouraging brush and woody species dominance by suppressing fires. Therefore the statement “This would cause the forb species that presently thrive on the openings sustained by grazing to die off” (EA p. 14) is contradicted by known evidence that grazing encourages dominance by woody species, it does not “sustain openings.” EA makes many such statements unsupported by reference to relevant existing scientific literature.

## **Grazing does not benefit plants or soils**

Removal of standing dead biomass from dormant herbaceous plants as proposed in the DN can also have impacts not considered by the SNF. Sauer (1978) found that standing dead material influenced grass productivity; plants that had the dead material removed in January were found to produce less green material and have shorter leaves than plants that entered spring growth with dead material intact (Sauer, 1978).

The EA says of the no-grazing alternative that "Species composition and vigor would decline due to the abundance of rank decadent litter remaining year after year without grazing or fire being allowed to continue." (p. 14). This statement has no support in the ecological literature. The whole concept of “decadent” vegetation is unknown in plant sciences. It is a concept that incorporates value judgments about economic value of forage, it has no biological meaning. In a series of papers Belsky has shown that grazing does not confer any intrinsic benefit on plants (Belsky 1986; Belsky 1987; Belsky *et al.* 1993). Moreover, the importance of litter and living vegetation in protecting soils is well documented. Soil under mulch is moderated and has more moisture than bare soil, and mulch increases rapid water infiltration, reducing runoff and erosion, all of which benefits the native vegetation (Ellison, 1960). Earthworm casts have been found to be more numerous under undisturbed litter (Ellison, 1960). Mature plants (with high amounts of standing dead matter) are apparently unattractive to native herbivores such as deer, who may utilize the plants only when this natural protective barrier is removed such as by fire. Standing dead as a plant protective mechanism has been reported for a number of species (Ganskopp *et al.*, 1993; Johnson and Nichols, 1982; O'Connor, 1991; Painter, 1987; Sheppard, 1919; Weaver, 1954; Williams, 1897).

## **Riparian condition incompletely known**

The DOs have failed to examine all streams to determine their condition: “Not all streams have been surveyed.” (EA p.15). Three streams are disclosed as being

unsatisfactory due to livestock: Capinero Creek, Lower Little Poso and Middle White River.

In response to comment 17 (DN p. 11) the SNF admits: “Livestock tend to increase use of riparian areas in annual grass/foothill ecotypes later in the season as upland feed dries. Shortening the season in increments will reduce this problem by pushing use toward the early summer and late spring.” However, no shortening of the season is proposed. The concern expressed has not been addressed or answered.

Comments by RW drew attention of SNF to the fact that “numerous cattle-free, natural enclosures (i.e. water falls, granite out crops, etc.) on Von Hellem Creek, Peel Mill, and Mc Farland, where there are full arrays of native woody and herbaceous vegetation, is an important starting point in this process for assessing possible DFC for vegetation.” This suggestion for a means to assess desired future condition (DFC) was ignored in the response to comments, and was ignored by the SNF in assessing DFC, which focused on livestock needs to the exclusion of wildlife.

The EA (p. 15) refers to a riparian analysis method called SCI. No explanation or reference to this method or the meaning of the “rating” metric is given.

### **Economic analysis inadequate**

Comments by RW asked that economic analysis consider the full costs of continued grazing in terms of fencing, ongoing management, monitoring, and mitigation measures. The SNF failed to respond to this suggestion or engage in such analysis.

Comments by SFK pointed out that economic analysis was inadequate as it did not determine if permittees had a legitimate business interest or if instead they were hobbyists. (Gentner & Tanaka 2002) report that over 50% of all federal grazing permittees are hobby or trophy ranchers, that is, their primary interest in livestock raising is not to produce a sustainable flow of resources as MUSYA and NFMA presume of public lands ranching, but rather to engage in an ecologically-destructive form of lifestyle choice or recreation.

In response to comments SNF stated: “Economic status of the permittees is not an issue. Resource condition is the focus of this analysis.” This is a perverse comment for two reasons. First SNF has clearly chosen to continue grazing primarily out of concern for permittees. No grazing is superior to grazing for protection of natural and archeological resources. Thus the only consideration swinging the entire decision is the presumed impact on permittees of ending grazing. Under Socio-economic effects the no-grazing alternative was judged solely on its impact to permittees (EA p. 23). Now SNF seems to suggest otherwise, implying that economic factors are not to be weighted more than natural resource protection, thereby also deepening the failure of SNF to choose the optimal no-grazing alternative as discussed above. Second, the response indicates that SNF fails to understand NEPA and Forest Service NEPA implementing regulations which require consideration of impacts on all aspects of the human environment, including the socio-economic. Restriction of socio-economic considerations to only impacts on permittees without any attempt to assess benefits and costs to the wider public is a violation of NEPA. “NEPA's purpose is to protect the environment, not the economic interests of those adversely affected by agency decisions.” Nevada Land Action Ass'n v. United States Forest Service, 8 F.3d 713, 716 (9th Cir. 1993)

RW asked in comments why stocking rates were so different and what was the scientific justification for preserving these stocking rates. The present and proposed stocking rates

vary wildly from a low of 119 AM/sq.mi. on Capinero (Bear Ck is zero) to 832 on Powder Magazine on the same district, a sevenfold higher stocking density. The SNF failed entirely to respond to this question, failed to disclose the basis for these dramatic differences in stocking rates, failed to disclose capacities and failed to meet the requirement of NFMA to adjust stocking rates to be within capacity.

There is no data or discussion of range condition or trend, surely a fundamental task of a NEPA analysis to reauthorize grazing. When asked to disclose range condition and trend by SFK, SNF in response to comment 2 stated that “Browse and stream data was used for this analysis in response to the 2 significant issues. Browse transects referred to on page eight of the EA were established by the California Department of Fish and Game to establish age current age classes and form. As stated on page 6 of the EA, known perennial streams reaches impacted by cattle grazing were evaluated using the PFC protocol.” Hence only age class and form of brush as a source of browse, not condition and trend were assessed. Only PFC condition of riparian areas, which is not a measure of range condition or trend, was assessed. The BAE gives some information about range condition so non-specific (range is satisfactory in areas and unsatisfactory in others p. 7) as to be entirely uninformative.

### **Wildlife impacts ignored**

SNF failed to consider or discuss the impact of proposed additional fencing and range developments on wildlife movements and access to resources. SFK made this comment. SNF ignored this comment and gave no consideration to the issue. Impacts of fences (Knight 1980) and water tanks (Craig & Powers 1975) to raptors are ignored.

SNF failed to evaluate the effects of grazing on “Western Pond Turtle, the relictual slender salamander, and the California legless lizard [sic]” (BAE p. 6), leaving that to some unspecified future, with open-ended assurance that if impacts are discovered, unspecified changes may be made. The decision is therefore inadequate due to failure to consider wildlife impacts before implementing the action, when abundant research on impacts of grazing on wildlife is available to suggest the impacts are likely to be negative. This comment was made by SFK and was not answered by SNF in response to comment 8. Instead SNF claimed that riparian impacts would decline and so would not adversely affect these species. SNF does not give any rational explanation of how riparian impacts will decline if riparian areas remain largely open to grazing, and no reduction of permitted use is proposed. The SNF does not consider that even if riparian grazing may be reduced it may still not be enough to avoid adverse impacts.

SNF analysis of grazing on prey abundance for raptors and carnivores (California spotted owl, northern goshawk, pacific fisher, and marten) is outdated and inadequate. The BAE (p 22) cites a 1982 study by (Kauffman 1982) that late season grazing did not affect nongame wildlife relative to no grazing. This is irrelevant however, as yearlong grazing is proposed. The BAE also cites a 1975 vintage non-peer reviewed technical report from a range experiment station alleging no difference in (unspecified) animal biomass between grazed and ungrazed areas.

The BAE ignores more recent research such as (Jones 2000) that rodent diversity was reduced by light to moderate grazing, or (Ward & Block 1995) which found negative impacts of grazing on prey of Mexican Spotted Owl, or (Brooks 1995) who found increased native rodent density and diversity in a Mojave desert area closed to cows, or

(Bock & Webb 1984) who found greater small bird abundance in ungrazed grasslands, or (Taylor 1986) who found annual grazing reduced bird abundance.

The SNF fails completely to consider or evaluate grazing impacts on native fish and fisheries, although the project has many miles of permanent streams which surely could or should provide habitat for native fish, especially trout. The failing was pointed out by SFK but was completely ignored by SNF in response to comments, and in the BAE.

### **Weeds**

In discussing exotic weeds, SNF does not disclose how much of the grass and forb layer are exotics. The BAE discloses that *Bromus* species are present but fails to disclose if this includes the exotics cheatgrass and kentucky bluegrass, which are known to be favored by grazing.

### **ESA violations**

The Endangered Species Act (ESA) requires use of best available science in making determinations of impacts. SNF failed to consider that listed species such as California Condor and Red Legged Frog may not occur on the allotments because grazing has resulted in their extirpation by conversion of suitable to unsuitable habitat. SNF failed to consider if suitable habitat would recover upon removal of livestock. This is presented by SNF as a “No effect”. The BAE fails to consider that absence of suitable habitat may be a result of livestock grazing, which is therefore an adverse effect. The BAE notes that 39 miles of streams that *could* provide habitat for Red Legged Frog are on the analysis area. The BAE failed to consider impacts of fences, roads, presence of livestock workers and cattle roundup activities on California Condor. The BAE erroneously concludes that no grazing would “decrease habitat suitability for the condor through reductions in carrion availability, open space, and increased fire risk” (p. 19). This statement is self-contradictory as fire more than any other disturbance, maintains open grasslands [termed “open space” by SNF]. Fire has been lost from rangelands largely due to the suppressive effects of livestock grazing (Belsky & Blumenthal 1995). Further below this statement the SNF reveals this self-contradiction by noting that lack of prescribed fire would result in less open space. This statement also ignores the role of wildlife carrion in sustaining condors, and ignores the potential for wildlife to increase greatly after removal of grazing (Wagner 1978).

### **NHPA**

The analysis of archeological impacts is inadequate. Grazing in and of itself significantly harms archeological resources by increasing soil erosion and by direct hoof impact on artifacts in the soil (Broadhead 1999; Osborn *et al.* 1987).

### **Failure to consider Monument values**

The SNF admits that the grazing actions occur in part in the newly designated Giant Sequoia National Monument. Precisely which allotments occur within the monument is not even disclosed in the EA. SNF fails to discuss or consider the impacts on or compatibility with monument purposes. Proclamation of a national monument substantially modifies the multiple use mandate of the NFMA and MUSYA. Protection of the designated monument values as listed in the proclamation, is the primary purpose of the monument to which all other uses are secondary. Recent caselaw has established a similar standard for National Recreation Areas. Contrary to the assertion of SNF in

response to comment 30 that the monument proclamation allows grazing to continue, the proclamation actually says that grazing would simply be subordinated to all the laws and regulations that currently govern grazing. The proclamation then creates a new obligation in addition to these laws and regulations that grazing not harm monument values and objects. The SNF cannot defer consideration of these impacts to the monument planning process. The monument and its values are already established, and **MUST** be considered in *this* NEPA analysis for the reauthorization of grazing on such allotments as occur within the monument.

***FONSI is in error***

NEPA (40 CFR 1508.27) requires the Forest Service to complete Environmental Impact Statements for these allotments, because ongoing grazing has already caused "significant" environmental impacts and will continue to do so. NEPA recognizes several determinants of "significance" all of which are met for the proposed actions on these allotments:-

(1) Controversy; allotments have been and currently are the subject of dispute as to the validity of continuing grazing. The abundance of comments critical of grazing and this appeal are evidence of actually existing controversy.

(2) Precedent setting; allowing grazing to continue for another 10 years at the same level will further entrench permittees' stake and set a precedent for subsequent renewals.

(3) Cumulative effects; the effects of grazing for each allotment especially on riparian habitat are magnified by the fact that grazing also occurs on virtually all other allotments in the same watershed and Forest. A brief discussion of cumulative effects was done only for adjacent allotments, not at a watershed or ecosystem scale, and came to a conclusion of no significant impact that is contradicted by all known science for example by Jones (2000), who found statistically significant impacts of light to moderate livestock grazing on soils, vegetation and rodents throughout arid lands of the western US. There was no consideration of the cumulative effects of global warming and other large scale evolution in land use and resource values. The scale of the action which covers over 30,000 acres represents a significant portion of the entire forest.

(4) Uniqueness: contrary to the claim of SNF, grazing is to occur adjacent to and in a National Monument with potential to adversely affect monument resources. Grazing also would continue to occur in Riparian Conservation Areas. The proposed action would not exclude cows from these areas, instead offering only the minimal mitigation of moving troughs out of riparian areas.

(5) Impacts to listed species: Contrary to the BAE as mentioned above, grazing may be having significant impacts which have not been adequately analyzed. The No affect calls are challengeable under the ESA.

Davis v Coleman 521 F.2d 661, 673 (9<sup>th</sup> Cir. 1975) and subsequent case law has established that it is sufficient that significant impacts **MAY** occur for this requirement of NEPA to be triggered.

**Request for relief**

Due to aforementioned violations of applicable laws and regulations the Appellants request a complete withdrawal of the Decision Notice and Finding of No Significant Impact with respect to the Hot Springs and Greenhorn grazing allotments.

The Appellants request that no further decision be made 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, and that fully analyzes impacts of the proposed action on all resource values, including analysis and consultation over the impacts of the action to imperiled and sensitive species.

Dated and signed this 14th day of February, 2003

Ara Marderosian,  
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