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March 21, 2003

Mr. John King, Asst. Dir.
WO Information Resources Management
USDA/FS/PPSB
1621 N. Kent Street, Room 808
Arlington, VA 22209

Re: Formal Request for Correction of USDA Information

Dear Mr. King,

This Formal Request for Correction of Information is submitted in concurrence with OMB's and USDA's Information Quality Guidelines under the authority of the Data Quality Act, and is made on behalf of Mr. Eddie Johnson of the Johnson Ranch in Arizona.

Requester Contact Information

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Description of Information to Correct

"Guidance Criteria for Determining The Effects Of On-Going
Grazing And Issuing Term Grazing Permits on Selected
Threatened And Endangered Species, And Species Proposed

For Listing and Proposed And Designated Critical Habitat," Region 3, Wildlife, Fisheries, And Rare Plants, USDA Forest Service, April 15, 2002. **Relied on by District Ranger to select an E.A. alternative for the Johnson Ranch, February 27, 2003.** (Attachment A)

Specific Information Contained In The Guidance Criteria For Which Correction Is Being Sought

"Livestock use will not occur within 5 miles of occupied [Southwestern willow flycatcher] habitat during the breeding season, or will not occur within 2 miles if cowbird trapping and monitoring or an approved cowbird research program is in place;" "No livestock grazing will occur in potential [Southwestern willow flycatcher] habitat." (Guidance Criteria, p. 70, based on information presented at pages 64-70) (Attachment B). "Presence of livestock facilitate[s] brood parasitism [of willow flycatchers] by the brown-headed cowbird;" "Nest parasitism by brown-headed cowbirds (Molothrus ater) is also partly responsible for declines in flycatcher populations." (Guidance Criteria, P. 67). "Increases in flycatcher populations have been observed where livestock grazing has been reduced, modified, or eliminated in riparian areas." (Guidance Criteria, p. 68).

Explanation of Noncompliance with OMB and/or USDA Information Quality Guidelines

The information disseminated in the Guidance Criteria relating to livestock exclusion from, potential willow flycatcher habitat and relating to the exclusion of all livestock within 2-5 miles of occupied flycatcher habitat during the breeding season because of the alleged threat posed by alleged cowbird parasitism due to livestock presence, lacks objectivity as required by OMB and/or USDA Information Quality Guidelines and the federal Data Quality Act.

A. The Information Challenged Is Not Presented In An Accurate, Clear, Complete, And Unbiased Manner

The information presented at pages 64-70 of the Guidance Criteria is not accurate, clear, complete, and unbiased because it is stale by its failure to incorporate substantial, highly relevant information published by the Forest Service that was readily available to the Forest Service when this Criteria was developed. (Attachment C). Moreover, the Guidance Criteria cites none of the considerable number of studies conducted after 1996 in reaching its conclusions about willow flycatchers, brown-

headed cowbirds, and livestock.

The disseminated information challenged is also not accurate, clear, complete, and unbiased because it is based in substantial part on a draft of the Southwestern Willow Flycatcher Recovery Plan and has yet to be revised to conform with the final Southwestern Willow Flycatcher Recovery Plan of August, 2002. Nevertheless, information disseminated in the Guidance Criteria is currently being used without revision as substantial basis for selecting E.A. alternatives in the livestock permit renewal process (see Attachment A), despite the fact that this information is contradicted in large part by the final Recovery Plan for the flycatcher (Attachment D).

Moreover, the Guidance Criteria challenged does not rely on any information developed after the year 1996, despite the fact that substantial, relevant information of more recent development was readily available to the Forest Service when this Guidance Criteria was published, April 15, 2002. (See Attachment C).

Further, the claim that ..."[n]est parasitism by brown-headed cowbirds (Molothrus ater) is also partly responsible for declines in flycatcher populations," (Guidance Criteria at page 67), attributed to personal communication from a former employee of the Fish and Wildlife Service, is not supported by citation to data but merely to an opinion rendered in personal communication in 1995 (Attachment E). Therefore, this claim is without full, accurate, or transparent documentation as required by the OMB's Guidelines. This same situation also applies to the Criteria's claim, at page 69, that . . . "[d]etrimental effects of cowbird parasitism have increased throughout the Southwest and these effects are directly associated with settlement of the west." To the contrary, the Breeding Bird Survey (BBS) database shows that for the years 1980-1994, populations of cowbirds significantly declined by 2.4% annually in Arizona, and .3% annually in New Mexico, when personal communication claiming the opposite was received by the Forest Service. (See Attachment E, pp. 13-15).

Thus, the information disseminated in the Guidance Criteria excluding all grazing of potential flycatcher habitat and excluding livestock use within 2-5 miles of occupied flycatcher habitat during the breeding season because of the alleged threat of cowbird parasitism, is not presented in an accurate, clear, complete, or unbiased manner.

B. The Substance Of The Information Disseminated Is Inaccurate, Unreliable, And Biased

The substance of the challenged, disseminated information is inaccurate because it is based on a stale, draft document that is contradicted in large part by the final form of that document. (See Attachment D).

The substance of the challenged, disseminated information is unreliable because it is stale and fails to incorporate any of the results of highly relevant studies conducted after 1996 that were readily available to the Forest Service prior to the publication of this information in 2002. Moreover, this information is further made unreliable by its failure to incorporate highly relevant and readily available information developed by the Service itself in reaching its conclusions regarding alleged threats posed to flycatchers by livestock presence and cowbirds. (See Attachments C and F).

The substance of the challenged, disseminated information is biased because it was not revised to comport with the final Southwestern Willow Flycatcher Recovery Plan of August, 2002, because it selectively ignores the highly relevant results of studies conducted by the Forest Service and others in reaching its conclusions, and because it circumvents rulemaking by its adoption as policy without any input from the public at large or the regulated public most substantially impacted by it (Attachment G).

Further, the disseminated information challenged meets OMB's definition of "influential scientific, financial, or statistical information" because it has a clear and substantial impact on important public policies and important private sector decisions. Here, the use of the challenged, disseminated information by the Forest Service has led to the District Ranger's selection of an E.A. alternative that if allowed to stand would severely impact Mr. Johnson's ability to viably operate his ranch by precluding his use of any potential flycatcher habitat and by precluding any livestock presence on the ranch within 2-5 miles of occupied flycatcher habitat during the breeding season. Thus, the challenged, disseminated information has a clear and substantial impact on both important public policies and important private sector decisions. As a result, the challenged, disseminated information must also be reproducible to demonstrate its objectivity.

"Reproducibility" means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. 67 F.R. at 8460. Here, the challenged, disseminated information is not capable of

being substantially reproduced subject to an acceptable degree of imprecision because it is stale, biased, inaccurate, and not based on reliable information in the first place. Moreover, because the challenged, disseminated information was neither subjected to rulemaking nor to independent, external peer review, it cannot be presumed to be of acceptable objectivity. 67 F.R. at 8459. Thus, the disseminated information here challenged fails the Guidelines' test of objectivity for these reasons as well.

Explanation of the Effect of the Alleged Error

The effect of the challenged, disseminated information is that an E.A. alternative has currently been identified based on its use which will cripple the economic viability of Mr. Johnson's ranch by precluding use by his livestock of potential willow flycatcher habitat and by excluding livestock from those portions of the ranch within 2 to 5 miles of flycatcher habitat occupied during the breeding season. This effect is directly attributable to the challenged, disseminated information's erroneous conclusions regarding livestock presence and cowbird parasitism of willow flycatchers.

Recommendation and Justification for How the Information Should Be Corrected

The information here challenged should be corrected to reflect the current state of knowledge regarding livestock presence in potential flycatcher habitat and cowbird parasitism as a threat to willow flycatchers. This current state of knowledge shows that neither the exclusion of livestock from potential flycatcher habitat nor the exclusion of livestock within 2 to 5 miles of habitat occupied by willow flycatchers during the breeding season is justified.

To the contrary, the publications of the Forest Service pertaining to the largest and most thoroughly studied population of these flycatchers in the Southwest (9 years) conclusively show that neither exclusion of livestock from potential habitat or even from occupied flycatcher habitat during the breeding season is warranted. These studies conclusively reveal that potential habitat is colonized, cowbird parasitism is negligible, and flycatcher reproductive success is generally high on the U Bar Ranch where both livestock and largest known population of these flycatchers occur together, and where cowbird trapping is not practiced. (See Attachment C).

Moreover, as stated in the final Southwestern Willow Flycatcher Recovery Plan, a relatively large population of these flycatchers coexists with livestock presence on the Kern River

in south-central California. Currently, livestock presence in this area varies from year to year with approximately 70% of the flycatcher population occurring in areas grazed at least occasionally. These areas are subjected to light to moderate winter grazing, and researchers do not believe that numbers of flycatchers were negatively affected by these grazing regimes. (See Attachment D).

These examples indicate that flycatchers can and do thrive with livestock grazing under circumstances similar to those found on the Johnson Ranch. In all three situations, livestock operators have access to alternative pastures in addition to natural riparian areas which relieves pressure on those riparian areas. Moreover, water is relatively abundant in all three areas, thus maximizing options for managing flycatchers and livestock in a manner that avoids undue and unnecessary restrictions on the widespread, traditional land use livestock industry. (See Attachment D).

Thus, in order to conform to the state of knowledge regarding livestock presence, cowbird parasitism, and light to moderate winter use of potential and occupied willow flycatcher habitats, the disseminated information challenged should be corrected to (1) allow light to moderate winter livestock use of potential flycatcher habitat, (2) remove the requirement of cowbird trapping altogether, (3) remove the requirement of excluding livestock within 2 to 5 miles of habitat occupied by willow flycatchers during the breeding season, (4) recognize the value of livestock grazing as a means of reducing the risk of loss of occupied and potential flycatcher habitats to stochastic fire event in Region 3 (Attachment H), and (5) acknowledge in statement that increases in flycatcher populations have been observed where livestock grazing is ongoing in riparian areas under prudent and responsible management.

Thank you for your consideration of this petition.

Sincerely,

Dennis Parker, Attorney,
Representing Mr. Eddie Johnson,
Requester of this Correction of
Information Disseminated by the USDA