

The Wilderness Society * Idaho Conservation League
American Rivers

August 30, 2006

Via electronic mail and U.S. mail

John Sullivan
Snake River Birds of Prey Manager
Boise District BLM Office
3948 Development Ave.
Boise, ID 83705

2006 SEP - 1 PM 2: 03
BOISE DISTRICT

RE: Snake River Birds of Prey NCA Draft Resource Management Plan and Environmental Impact Study

Dear Mr. Sullivan:

Please accept the following comments on behalf of The Wilderness Society (TWS), the Idaho Conservation League and American Rivers, Inc. (American Rivers).

The Wilderness Society has been involved in land management since 1935, and has a vested interest in the Snake River Birds of Prey NCA. With over 250,000 members nation-wide, TWS represents a diverse range of citizens. Our goal at TWS is to ensure that land management practices are sustainable and based on sound science to ensure that the ecological integrity of the land is maintained.

For over thirty years, the Idaho Conservation League has worked to protect the clean water, wilderness and quality of life through citizen action, public education, and professional advocacy. As Idaho's largest state-based conservation organization, the Idaho Conservation League represents over 9,000 members, many of whom have a deep personal interest in ensuring that land management practices are consistent with protecting our air, water, and wildlife.

American Rivers is the national voice for rivers and river communities. Headquartered in Washington, D.C., American Rivers has eight field and regional offices and more than 50,000 members throughout the country. Founded in 1973, American Rivers has a long history of promoting designations of and providing protection for the National Wild and Scenic Rivers System. American Rivers also has several ongoing campaigns focused on the Snake River and promotes the designation of additional segments of the Snake as Wild and Scenic Rivers.

I. Decision-Making Context

The Snake River Birds of Prey NCA (hereinafter referred to as the NCA or SRBOP NCA) was established because it was found to have some of the densest known nesting populations of raptors in North America. 16 U.S.C. § 460iii(1). Congress recognized that the area



encompassing the NCA was of important ecological concern, and that it was worthy of Congressional action to protect the unique ecological values of the land. The fact that the NCA was established to protect one of the densest known raptor populations in North America provides the BLM with a unique opportunity to take the appropriate measures in its management plan to place an emphasis on protecting raptor habitat and the habitat of their prey and other associated species.

In recognition of this unique and important ecological region, the NCA was designated "to provide for the conservation, protection, and enhancement of raptor populations and habitats and the natural and environmental resources and values associated therewith." 16 U.S.C. 460iii-2(a)(2). It is important to note that the term raptor habitat "includes the habitat of the raptor prey base as well as the nesting and hunting habitat of raptors within the conservation area." 16 U.S.C. § 460iii-1(4).

The Bureau of Land Management must fulfill the NCA legislation's mandate through a management plan that "emphasizes management, protection, and rehabilitation of habitat for these raptors and of other resources and values of the area." 16 U.S.C. § 460iii(5)(a). Any management decisions must, therefore, be made within the context for which the NCA was formed, which is to protect for the habitat of raptors and their prey.

The decisions made in the Resource Management Plan are critical to maintaining the ecological integrity of the land and the survival of the raptors that inhabit it. The land encompassed by the NCA has been severely impacted and degraded by a number of factors, including the proliferation of invasive species, habitat fragmentation, and unsustainable grazing practices. In order to ensure that the goals for establishing the NCA are reached, the guiding principle for all management decisions should be ensuring and enhancing the protection of raptors, their habitat and the habitat of their prey above all other considerations.

We are encouraged by the fact that you have adhered to the protective principles of the NCA making it a priority in all management decisions. The Draft RMP/EIS demonstrates an effort to highlight and implement the NCA's goals of protecting and rehabilitating habitat for raptors and other resources. We appreciate your efforts to make conservation a priority, as well as to emphasize restoration, in fulfilling the mandates of the NCA legislation.

However, there are several areas of the Draft RMP that fall short of complying with the NCA enabling legislation and management goals directed by Congress, as well as with the BLM's obligations under FLPMA. Specifically, our concerns include the RMP's failures to:

- **Comply with FLPMA's requirement to "give priority to the designation and protection of areas of critical environmental concern" (43 U.S.C. § 1712(c)(3)) in order to ensure appropriate management of vulnerable resources such as slickspot peppergrass and the giant fairy shrimp;**
- **Conduct Wild and Scenic River suitability determinations in accordance with the Wild and Scenic River Act and BLM Manual 8351;**
- **Commit to a sufficiently definitive approach to restoration;**



- Ensure ongoing management to protect resources in the Orchard Training Area;
- Properly manage motorized vehicles and recreation;
- Apply appropriate visual resource management classifications;
- Commit to inventory and protection of cultural resources; and
- Limit wind energy development and designation of utility corridors.

II. Slickspot Peppergrass

The preferred alternative, Alternative D, will do little to address the most pressing threats to slickspot peppergrass. Any management decision concerning slickspot peppergrass needs to take steps to protect it from all the major threats that could affect its future.

The Draft RMP, under the description of alternatives for Special Status Plants (SSP), states, "management actions would focus on minimizing or eliminating the threats associated with wildland fire, competition from exotic species, grazing, and off-road vehicle activity" (pg. 3-23). The RMP also states that "implementation of appropriate grazing practices would be implemented in SSP habitats" (pg. 3-23).

The goals identified above for management of SSPs, particularly slickspot peppergrass, are beneficial because there is a stated commitment to address the long term viability of SSPs. While the goals identified in the RMP are admirable, none of the alternatives presented in the Draft RMP provides a management solution that will ensure the future of slickspot peppergrass.

As mentioned previously, the enabling legislation for the SRBOP NCA states that the NCA was established "to provide for the conservation, protection, and enhancement of raptor populations and habitats and the natural and environmental resources and values associated therewith." 16 U.S.C. 460iii-2(a)(2). Protecting raptor habitats, as defined in the NCA, includes the habitat of raptors and their prey. The loss of a species and consequential reduction in biological diversity meets the criteria for destruction to the habitat of raptor prey species, and appropriate measures need to be taken to ensure that all management decisions are consistent with the requirements of the NCA legislation to protect the ecosystem that supports raptor and raptor prey habitat.

Any effective management plan for slickspot peppergrass needs to address all of the known disturbances that negatively impact *L. papilliferum*. A study published in The American Journal of Botany in 2006 states, "disturbances known to negatively impact *L. papilliferum* populations include off-road vehicle traffic, wildfire, weed invasion and post-fire rehabilitation practices such as the use of pre-emergent herbicides, the seeding of invasive species such as *Kochia prostrata* (forage kochia), in addition to livestock trampling¹ (902)." While the agency preferred alternative addresses several of the documented threats to slickspot peppergrass, it fails to provide viable solutions to all of the threats.

¹ Meyer, Susan E., D. Quinney, and J. Weaver. 2006. "A Stochastic Population Model for *Lepidium Papilliferum* (Brassicaceae), a rare desert ephemeral with a persistent seed bank." *American Journal of Botany* 93(6): 891-902. Attached and incorporated by reference.



For example, the preferred alternative would limit the military's ability to maneuver in known slickspot peppergrass territory (Bravo area of the OTA (pg. 3-24)). Limiting military off-road vehicle traffic only helps one half of the off-road vehicle threat to slickspot peppergrass. Recreational off-road vehicle traffic must also be restricted in order to properly protect slickspot peppergrass habitat. Appendix 11 of the Draft RMP states, "BLM and the State will manage OHV recreation to minimize impacts to occupied and suitable habitat" (A-44). The Draft RMP does not define what "minimize impacts" means nor does the Draft RMP provide specific management prescriptions. Pursuant to BLM Manual section 6840, recreational OHV use should not and cannot supersede the need for protection of slickspot peppergrass (explanation provided below).

Another example of a threat to slickspot peppergrass that is not adequately addressed in the Draft RMP is livestock trampling due to grazing. This point will be discussed in greater detail below. Although grazing is one of the more serious threats to *L. papilliferum*, none of the alternatives analyzed in the Draft RMP provides an effective solution to curb this threat.

A. BLM is required by BLM manual section 6840 to manage slickspot peppergrass in the same manner as if it were a listed species under the Endangered Species Act.

Slickspot peppergrass is considered a Type 1 special status species by the BLM (ID CDC 2006, page 11 in online bluebook). Because *L. papilliferum* is a proposed endangered, it is must be managed in accordance with BLM manual 6840, which states that "the protection provided by the policy for candidate species shall be used as the minimum level of protection for BLM sensitive species." BLM Manual 6840.06E. Slickspot peppergrass is both a BLM sensitive species and a proposed endangered species. As such, it must be managed in accordance with the guidelines and requirements outlined in BLM Manual 6840.06C.

BLM's guidelines state that "the BLM shall manage species proposed for listing as threatened or endangered and proposed critical habitat with the same level of protection provided for listed species and designated critical habitat." BLM Manual 6840.06C2. BLM is required "to ensure that BLM actions will not reduce the likelihood of survival and recovery of any listed species or destroy or adversely modify their designated critical habitat." BLM Manual 6840.06A2. Necessary actions include protective management prescriptions, such as excluding slickspot peppergrass from grazing. Key areas are also appropriate for special management, such as the areas being proposed for the OTA and Kuna Butte Slickspot Peppergrass Concentrations ACECs (discussed in detail below), which are part of the area that the BLM calls the "slickspot peppergrass management area." BLM has already recognized this area for its unique habitat qualities and its importance to the perpetuation of the species, but needs to take the next steps to ensure the continued survival of slickspot peppergrass in the NCA.

B. The Draft RMP/EIS recognizes the threat posed by grazing, but does little to effectively alleviate this threat

As noted above, the Draft RMP takes some steps to address the impacts of off-road vehicle use on slickspot peppergrass. However, none of the alternatives address the threats posed by grazing in an adequate manner. Although the Draft RMP states that appropriate grazing practices will be



implemented in sensitive species habitat, the Draft RMP fails to mitigate against this threat to slickspot peppergrass. Within the Environmental Consequences section (pg. 4-38) the Draft RMP states:

All SSP species could be affected by grazing activities that affect vegetation...Management actions that reduce or eliminate these impacts...would help maintain or enhance SSP populations. Exclosures that specifically protect plant populations would have long-term benefits at the population level, but would have limited affect at the species or landscape level.

The Draft RMP attempts to reduce the significance of this recognized threat by suggesting that reduced grazing in slickspot peppergrass habitat will not benefit the species at the "species level," but does not provide any scientific data to support its claim that exclosures would have limited affect at the species level or that protection at the population level would not have important benefits. BLM must provide sufficient scientific evidence to prove that exclosures would have limited positive affects of providing this protection at the species level and/or population level.

Appendix 11 to the Draft RMP provides a discussion of conservation measures that will be implemented in order to protect slickspot peppergrass (App. 11, A-39). Included in this section are recommendations on how to manage "Priority Element Occurrences." This section details several measures that will help to protect slickspot peppergrass, however, in the OTA Slickspot Peppergrass Management Area, none of the solutions presented curtail livestock trampling because none of the solutions actually ensure that livestock will not trample slickspot peppergrass (App. 11., sec. 7.12-7.18).

The Draft RMP presents three proposed solutions to decrease the impacts of livestock trampling in the OTA. The first, laid out in section 7.14 in Appendix 11, states, "permittees shall place salt/supplements to minimize trampling of LEPA and of slickspots, respectively." The focus of this method is to provide attractants for cattle away from slickspot peppergrass element occurrences. The second directive states, "permittees will not trail livestock through element occurrences within the management area when soils are saturated (App. 11, 7.15)." The third solution, which is similar to the second, states, "permittee will delay turnout, when soils are saturated (7.16)."

While we are encouraged that BLM is trying to resolve the conflict in some places between cattle grazing and slickspot peppergrass, none of the aforementioned methods can adequately and reliably ensure that livestock trampling will not occur. All three solutions rely on certain circumstances being met prior to implementation. These methods may very well mitigate some of the negative effects of livestock trampling, but none of these proposed management prescriptions, whether applied independently or used in conjunction with one another, will provide sufficient protection for slickspot peppergrass. For instance, it is unreasonable to assume that the placement of salt supplements can serve as a primary means of keeping cattle from trampling this imperiled and proposed endangered species. As long as grazing is allowed to continue in the Slickspot Peppergrass Special Management Areas, the potential exists for livestock trampling. Cattle will continue to wander throughout the slickspot peppergrass



management area and their behavior cannot be reliably predicted or controlled by the methods proposed in the Draft RMP. **The approaches that BLM has proposed in Appendix 11 are not sufficient to ensure that livestock trampling will not significantly harm slickspot peppergrass.**

Contrary to both the BLM's recognition that grazing adversely impacts slickspot peppergrass (which is consistent with available scientific research) and the requirements of BLM Manual 6840 (for BLM to manage slickspot peppergrass as a listed endangered species), the Draft RMP does not propose eliminating grazing in known slickspot peppergrass habitat and proposes to manage this habitat in a manner that will have adverse impacts on the species.

Recommendation: Because the management prescriptions currently presented in the Draft RMP fail to adequately provide for protection of slickspot peppergrass, and since the impacts from grazing on slickspot peppergrass are not fully considered, we recommend that BLM require grazing exclosures in known slickspot peppergrass management area habitats in the OTA and in the Kuna Butte area, and also that BLM designate these areas as Areas of Critical Environmental Concern (explanation provided below).

III. Areas of Critical Environmental Concern (ACECs)

BLM failed to meet its obligations under FLPMA by not prioritizing the protection and designation of Areas of Critical Environmental Concern (ACECs) in the Draft RMP.

The Federal Land Policy and Management Act (FLPMA) obligates the BLM to "give priority to the designation and protection of areas of critical environmental concern [ACECs]" when preparing land use plans. 43 U.S.C. §1712(c)(3). ACECs are areas "where special management is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes." 43 U.S.C. § 1702(a).

BLM's ACEC Manual (1613) provides additional detail on the criteria to be considered in ACEC designation, as discussed in the applicable regulations, as well. See, Manual 1613, Section .1 (Characteristics of ACECs); 43 C.F.R. § 8200. An area must possess relevance (such that it has significant value(s) in historic, cultural or scenic values, fish & wildlife resources, other natural systems/processes, or natural hazards) and importance (such that it has special significance and distinctiveness by being more than locally significant or especially rare, fragile or vulnerable). In addition, the area must require special management attention to protect the relevant and important values (where current management is not sufficient to protect these values or where the needed management action is considered unusual or unique), which is addressed in special protective management prescriptions. For potential ACECs, management prescriptions are to be "fully developed" in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs).

The Draft RMP for the SRBOP NCA does not comply with (and does not adequately address) BLM's obligations with respect to designation of new ACECs. While the Draft RMP acknowledges that both the public and Owyhee County raised designation of new ACECs



(including RNAs) and protection of existing special designations during the public scoping period, no further discussion of considering new ACECs is given. Instead, the preferred alternative proposes releasing the only designated ACEC currently within the boundaries of the NCA (pg. 1-11, 3-10).

This oversight is especially troubling in light of the presence of two species of concern (slickspot peppergrass-*L. papilliferum* & the giant fairy shrimp-*Branchinecta raptor*) within the NCA that require additional special protection beyond that which is currently provided by the NCA. While the enabling legislation for the NCA (see, 16 U.S.C. § 460iii) specifically requires the protection of all species in the NCA, there is a need for more specific protective measures for these two species. Special protection is warranted and required under the guidelines set forth in 43 C.F.R. § 1610.7-2, and FLPMA (43 U.S.C. § 1712). Neither current management practices nor the preferred alternative in the Draft RMP provide sufficient protection for these species with regards to the known threats to their existence, making designation of ACECs an appropriate method to ensure protection. In order to comply with FLPMA, BLM must consider designating these ACECs and fully evaluate the ACEC nominations below.

A. New OTA Slickspot Peppergrass Concentrations ACEC Nomination & Kuna Butte Slickspot Peppergrass ACEC Nomination

Because current management practices do not provide sufficient protection for *L. papilliferum* from the known threats to its existence, and because the preferred alternative does not provide an effective strategy for protecting slickspot peppergrass, we propose the designation of two new ACEC's that will provide protection of this species. These ACECs will ensure that BLM's management decisions are in compliance with BLM manual 6840 and the Endangered Species Act.

Slickspot peppergrass is known to exist in several locations within the NCA, and protection of slickspot populations in the NCA is crucial to the perpetuation of the species. U.S. Fish and Wildlife has recently stated that "OTA populations [of slickspot peppergrass] are generally regarded as being some of the healthiest and intact populations within *L. papilliferum*'s range² (pg. 57)." Historically, abundant populations of this species existed throughout southern Idaho, however, most of its historic range has been reduced. Small populations have been found in various areas, but the largest populations can be found in the NCA and in the Jarbidge Field Office. Because the NCA has some of the healthiest and most intact populations, we recommend that all major known element occurrences of slickspot peppergrass in the OTA and the populations south of Kuna be considered for an ACEC to protect them from what is widely considered the largest threat to its survival other than wildfire: grazing. See attached map for location details.

This recommendation is consistent with current BLM protective measures, as the ACEC locations are within the boundaries of the Slickspot Peppergrass Management Area (Draft RMP,

² U.S. Fish and Wildlife. Feb. 27, 2006. "Best Available Biological Information for Slickspot Peppergrass." <http://www.fws.gov/idahoes/LEPA/DraftBAIFinal02282006.pdf>.



appendices, A-126). BLM has already identified this area as an area important to the survival of slickspot peppergrass; this ACEC simply takes the protection of the species a step further.

Slickspot peppergrass only survives in very limited areas within a narrow range of soil requirements. The areas where this species exists are commonly referred to as slick spots. Slick spots are depressions in the land where water gathers. They are typically recognized as having a layer of silt at the surface soil layer, resulting from rainwater carrying fine particles, draining into depressions, and leaving behind fine particles (Meyer et al. 2006).

It has been found that the population persistence of *L. papilliferum* is dependent upon having a seed bank that can withstand the variability and unpredictable nature of the desert climate. Seed banks are extremely important to the specie's survival because an adequate number of seeds must be present in the soil in order to survive several years of drought, waiting until enough moisture permeates the soil to trigger plant growth. Since the specie's survival is dependent upon this seed bank, any disruption or destruction to it can have severely damaging consequences (Meyers et al. 2006).

In addition, it has been found that because water sources are scarce in desert climates, grazing cattle naturally congregate around slick spots because they are some of the few locations that hold water in the harsh desert climates. Trampling by cattle around slickspots causes a disruption to the soil as a result of the weight of the cow hooves on the soft, wet soil. The impact from the hooves of the cattle has been found to severely disrupt the seed bank that is so vital to the perpetuation of slickspot peppergrass:

We examined the postulated short-term effects of livestock trampling on *L. papilliferum* population dynamics and concluded that abrupt declines following catastrophic trampling events are likely to result from a combination of deep burial of seed and increased germinant mortality. And even when abrupt declines are not observed, the model showed that trampling disturbance at lower levels of impact can still set in motion a long-term trajectory of decline. It seems likely that one reason that so much potential *L. papilliferum* habitat is currently unoccupied is related to a 150-yr history of continuous livestock grazing in the area (Meyers et al. 901).

In addition, U.S. Fish and Wildlife has noted "a decline in plant [slickspot peppergrass] numbers not associated with precipitation timing and amount (from thousands of plants in 1993 to three plants in 1996 and 8 plants in 2003) was documented following an intensive livestock trampling event in 1996 during a period when slickspot soils were saturated (Meyer and Allen 2005). These observations indicate that *L. papilliferum* may not be well adapted to high levels of disturbance (Fish and Wildlife 63)."

Ample evidence exists to document the effects that cattle have on *L. papilliferum* populations. These effects typically occur during the spring when slickspots are filled with water. However, a single storm can leave enough rain water to fill a slickspot with water for several days or weeks at any given point during the spring, summer or fall, leaving that area susceptible to damage from cattle.

