

RECEIVED AT
BOISE DISTRICT

2006 SEP -1 PM 2: 05

JOE BLACK AND SONS
Joe and Margaret Black
Doug and Darlene Black
Jay and Penny Black
Box 67
Hammett, Idaho 83627

Snake River Birds of Prey NCA
C/O Content Analysis Group
P.O. Box 2000
Bountiful, Utah 84011-2000

John Sullivan, NCA Manager
Boise District Office
USDI-BLM
3948 Development Avenue
Boise, Idaho 83705

Re: Comments to the Draft Resource Management Plan and Environmental Impact Statement, Bureau of Land Management, Boise District Office dated April, 2006 (ID-111-2006-EIS-1740).

Dear Mr. Sullivan and Content Analysis Group:

Commentor is Black.

These comments are submitted by Joe Black and Sons (hereinafter, "Black").¹

Black owns private land within and/or adjacent to the Boise District Office, including lands within and/or adjacent to the Snake River Birds of Prey National Conservation Area (hereinafter "SNBP NCA"), along with water rights, livestock and improvements, such as buildings, corrals, fencing, pipelines, water containers, reservoirs, wells, pumps, ditches, roads, equipment and motor vehicles. These private lands, water rights, livestock, and improvements facilitate a yearlong cow-calf livestock operation which is dependent upon the use of public lands within the Browns Gulch Grazing Allotment, established under the provisions of the *Taylor Grazing Act*.

The majority, but not all, of the Browns Gulch Allotment lies within the present-day boundaries of the SNBP NCA. This fact means that, as the boundary is presently configured, portions of our grazing allotment will be potentially governed by two different sets of congressional mandates and two different RMPs, specifically the Bruneau or NCA RMP and the Jarbidge RMP.

¹ We were assisted in the preparation of portions of these comments by Robert N. Schweigert, B.S. Range Management/Wildlife Habitat, M.S. Forest and Range Management/Wildlife Habitat.

Black Comments to SNBP NCA
DRMP Page - 1 of 14



The Black family members also use and depend upon the public lands within the Boise District, including the area of the SNBP NCA, for purposes other than facilitating a livestock operation. Specifically, they use the public lands for scientific, educational, spiritual, aesthetic, and recreational (including hunting, fishing, camping, hiking, wildlife viewing, botanizing, bird-watching, sightseeing, photography, horseback riding and other) purposes. Based thereon, the Black family members have a special interest in the protection and enhancement of the resources upon the public lands, including as the resources relate to soils, watersheds, vegetation, wildlife species, recreation, and opportunities for solitude.

It is on the basis of both our economic interests and our environmental interests that we comment to the Draft Resource Management Plan and EIS.

We make first a superseding request, and second both overall general comments and specific comments relative to the Draft Resource Management Plan and Environmental Impact Statement (hereinafter, "DRMP"), with the expectation that a revised DRMP will be submitted to the public for review prior to a Final RMP being published. We believe a revised DRMP is necessary due to the considerable shortfalls of the DRMP. We have primarily commented herein to "Chapter 2" as it is the "affected environment" section of the DRMP which presumably drives the development of the alternatives and the analysis of environmental consequences. However, we also provide limited comments to Chapter 3 and Chapter 4.

SUPERSEDING REQUEST:

We request that the RMP and Record of Decision include the recommendation to Congress to change the boundaries of the NCA so as to exclude (at least) the entirety of the Browns Gulch Allotment. To this extent, we support the Lands Alternative C, Map 6 at page Appendix-105 (A-105). If this is done, and Congress so acts, such action will render our comments herein irrelevant to the SNBP RMP and EIS, at least as these comments apply to the Browns Gulch Allotment.

We do so, because:

1. As stated above, a portion of the Allotment is presently within the boundary of the NCA, and a portion is outside the boundary of the NCA. This means that Black, BLM, and the public are faced with at least two different overriding land use laws (Taylor Grazing Act versus NCA designation legislation), and at least two different Land Use Plans (Bruneau or NCA RMP and Jarbidge RMP) that are potentially applicable to our one grazing allotment.
2. The management of the allotment is mandated by a stipulated agreement approved under a federal court order relative to the Jarbidge Field Office, who administers our livestock grazing.
3. The range conditions on our allotment apparently are not similar to the conditions within the remainder of the NCA area, wherein the DRMP characterizes burned areas as being dominated by Sandberg bluegrass and/or



cheatgrass. Nearly the entire Browns Gulch Allotment has had the overstory shrubs removed by past wildfire, but the areas have either been seeded to crested wheatgrass or where left "unrestored" are dominated almost entirely by a mosaic of Needle-and-Thread and Indian Ricegrass. While we do have some small acreages along roads that are dominated by cheatgrass, such areas by no means dominate the landscape in the Browns Gulch Allotment. This drastically departs from the conditions described in the DRMP Chapter 2, which are not applicable to the Browns Gulch Allotment.

4. Apparently unlike the remainder of the allotments described in the DRMP, we have not taken voluntary non-use, and have requested and been granted considerable temporary grazing authorization in the past ten years, and have been authorized a considerable increase in permitted use from the previous levels of authorized use. All of these increases in permitted use are the result of extensive forage and livestock monitoring that has been conducted over time, including adjustments according to climatological variables over time. These facts drastically depart from the conditions described within the DRMP for other allotments, which are not applicable to the Browns Gulch Allotment.
5. Browns Gulch Allotment has no riparian or streamside habitat, including any upland springs or seeps. It has no cliffs, no rock outcrops, and no trees. Therefore it has no significant nesting habitat as described at DRMP pp2-11 through 2-12.

We therefore believe the conditions and history of (at least) the Browns Gulch Allotment are so different from those which are described as existing within the NCA as to warrant our allotment being excluded from the NCA boundaries and the management prescribed by the SRBP DRMP.

GENERAL COMMENTS.

* Throughout, the DRMP lacks sufficient specificity so as to adequately inform Black and the public of the specific intentions of BLM relative to each of the resources (and particularly as it pertains to livestock management). The DRMP does not contain necessary site-specific analysis, but rather is generic in its discussion of management actions and in its assessment of impacts. The DRMP in large part fails to specify WHERE - i.e., which grazing Allotment(s) - the actions and impacts are expected to occur, and this lack of specificity deprives Black and the public of the opportunity to assess the accuracy of the "Purpose and Need" for the DRMP (Chapter 1), the purported Affected Environment (Chapter 2), the appropriateness of the Alternatives (Chapter 3), and the veracity of the purported Environmental Consequences (Chapter 4).

* The DRMP fails to specify a mechanism to determine changes in livestock permitted use if Standards and Guidelines are met on a grazing allotment, or determine changes in permitted use if the S&Gs are not met on such allotment. In other words, what method quantifies such change? Although the document claims that livestock stocking rates will be determined via the "S&G process", such process is not a process which can provide a quantification of livestock grazing capacity. This lack of specificity

Black Comments to SNBP NCA
DRMP Page - 3 of 14



results in a failure to inform and assess for the public the quantifiable changes in permitted livestock operation that may be predictable within the foreseeable future.

* The DRMP fails for the most part to reference the proposed and alternative actions to the maps and tables included within the document. For instance, only rarely does Chapter 3 (proposed action and alternatives) reference any maps which are meant to convey the information.

An example of this lack of specificity is that, although the alternatives propose to "restore" from 10,000 "targeted acres" to 130,000 "targeted acres", nowhere does the document identify where (i.e. in which allotments) these "targeted acres" occur. It seems logical to us that if BLM can specify 10,000 acres to 130,000 acres within a planning document, it has reasonable knowledge as to where it expects such acreage to occur, and it is incumbent upon BLM to report such knowledge in the DRMP document for public review and comment. The DRMP fails to do so.

Another example is that the DRMP fails to specify what "mosaics" of different seral states it anticipates as the Desired Future Condition within the NCA, but instead is driven by a generic "restoration" goal. For example, will the desired future condition be a mosaic of "1% PNC, 1% late-seral, 1% mid-seral, and 97% early-seral" or a mosaic of "97% PNC, 1% late-seral, 1% mid-seral, and 1% early-seral", or some other mosaic? This lack of specificity of the DRMP renders it impossible for Black and the public to provide adequate review and comment to the document.

* Throughout, the DRMP demonstrates an unsupportable, unscientific, and unfounded bias regarding, perhaps to the point of conferring a mythical status upon, "biological crust". Just one of many examples of this bias is found at page 2-46, wherein the DRMP states, "Native communities are most susceptible to mechanical damage because their native biological soil crusts have not as yet been compromised." However, this passage is one example among many where the DRMP is self-contradictory, because the passage follows a lengthy description of how the entire NCA has been severely disturbed by historic livestock grazing that forever altered the vegetative state and removed the desirable understory species, leaving only Sandberg bluegrass. BLM cannot have it both ways. Additionally, the document confers upon biological crusts properties and attributes that are speculative at best (for example, that it inhibits germination of cheatgrass seeds – but apparently not native grass seeds). Another mythical attribute is afforded "biological crust" at page 3-11, wherein the DRMP states "Degraded areas would be restored to shrub/bunchgrass habitat with a forb component and biological soil crust to provide additional habitat for small mammals, invertebrates, lizards, snakes, and birds." However, we know of no evidence that "biological crust" is a necessary, nor even beneficial, habitat requirement for any animal species.

* Ultimately, Alternatives C and D (and to a lesser extent A and B) are likely not economically or logistically feasible or attainable over the extent of the acreage targeted to be "restored". The DRMP admits at page 2-48 that "Few habitat restoration efforts have been attempted in the NCA. In addition, efforts to re-establish shrub cover have had

Black Comments to SNBP NCA
DRMP Page - 4 of 14



limited success primarily because of drought conditions." If BLM has had limited success on shrub establishment and has no experience in even small scale "restoration" efforts, then upon what rational basis can the public expect the expenditures of tax monies to result in the stated objectives, goals, and desired future conditions espoused under the grandiose plans of Alternatives C and D (and to a lesser extent Alternatives A and B)?

* While there may be an administrative need to consolidate into one document the management plan for the NCA, rather than taking "piecemeal" management from several RMPs, nevertheless as it pertains to maintaining and/or improving the habitat for birds of prey and their prey species, there exists no valid "Purpose and Need" to pursue the Resource Management Plan, or certainly anything other than the "no action" alternative, for the reasons stated herein below.

Specific Comments.

The DRMP identifies in a map at Appendix page 88 the "Livestock Grazing Allotments", though, as discussed above, the DRMP is void of any specific discussion of the "Alternatives" relative to the specific Allotments; is void of any specific description of the "Affected Environment" relative to the specific allotments; and is void of any specific analysis of the "Environmental Consequences" relative to the specific allotments. Of the allotments identified on the map, Black owns the "base property" supporting Grazing Preference and holds the associated Grazing Permit upon the Browns Gulch Allotment, which is in the southeast corner of the present NCA boundary.

Please note that in submitting these comments, we have referred to a specific location within the document. However, our review shows that the same comment applies to several locations within the document (for example, more than one alternative may contain the same language to which we comment). It is our intention that BLM apply our comments to every instance where similar or same language is used throughout the DRMP.

COMMENTS TO CHAPTER 2 – AFFECTED ENVIRONMENT.

SECTION 2.2.3 – Fish and Wildlife (pages 2-6 through 2-26).

Grassland (p. 2-10). The DRMP characterizes native grasslands as those shrub-grasslands that have been disturbed by fire, and states that native grasslands are dominated by Sandberg bluegrass. However, this is not a correct description of the native grasslands of the Browns Gulch Allotment. Nearly the entire Browns Gulch Allotment has had the overstory shrubs removed by past wildfire. Some areas have been seeded to crested wheatgrass. In addition, unseeded areas of the allotment are dominated almost entirely by a mosaic of Needle-and-Thread and Indian Ricegrass, with very little acreage dominated by Sandberg bluegrass. This drastically departs from the conditions described in the DRMP Chapter 2.

Black Comments to SNBP NCA
DRMP Page - 5 of 14



Raptors (p. 2-11 through 2-12). The DRMP describes nesting habitat as occurring in three distinct zones: the cliffs, the uplands above the Snake River Canyon, and the riparian areas adjacent to the Snake River. However, no such cliff or riparian habitat exists within the Browns Gulch Allotment, and the Browns Gulch Allotment is miles south of the Snake River Canyon.

Prairie Falcon (p. 2-12 through 2-15). The DRMP considers the Prairie Falcon and Golden Eagle as "important barometers of habitat conditions" (p. 2-12).

Black contends that the barometers of habitat conditions provide absolutely no basis to conclude a "Need" for landscape-scale "restoration", as prescribed by Alternatives B, C and D, for the following reasons:

As it relates to Prairie Falcons:

1. The DRMP itself states that there is no evidence of a decline in numbers of nesting prairie falcons, despite large declines in shrub overstory which purportedly occurred in the early 1980's and mid-1990's. In fact, the largest-ever number of nesting prairie falcon pairs was counted in 2002 (p. A-31). Therefore, no "purpose and need" for habitat "restoration" is demonstrated by this barometer.

2. The DRMP purports that there "may" be a downward trajectory in productivity (i.e. number of fledglings per pair), as reflected by Wildlife Figure 2.3. However, the data within the graph is first of all incorrectly graphed, and the "x" axis omits the years 1986, 1988, 1990, and others, which has the effect of "compressing" the "x" axis, thereby steepening the slope of the regression line. The same compression is accomplished by graphing 1997 and 2002 as though they represent equal time spans as depicted for the beginning of the "x" axis (i.e. every two years). Secondly, the R-Square value indicates that there exists an extremely weak linear correlation, if any, and any such decline is likewise extremely "shallow". Black contends that no long-term downward trend is demonstrated by a correct graphing of the existing data and proper regression analysis.

It is possible that number of fledged falcons is inversely related to numbers and density of the nesting pairs, and therefore direct competition between nesting pairs for the available forage prey. This possibility is supported by the fact that in 2002, nesting prairie falcon pairs were at their all-time highest count, which coincided with one of the lowest fledglings/pair years.

It is also extremely likely that the primary forage prey (Piute ground squirrels) exhibits a cyclical population "boom and bust" similar to blacktailed jackrabbits, or other cycling due to climatic conditions. Compare, for example, the cycling of fledgling prairie falcons demonstrated at wildlife figure 2.3 with the data for fledgling golden eagles at wildlife figure 2.5. The DRMP cites no research as to such possible cyclical population changes in Piute ground squirrels.

Black Comments to SNBP NCA
DRMP Page - 6 of 14



Furthermore, ultimately, the number of fledglings per pair is meaningful only if it adversely impacts the number of breeding pairs, which are not in any decline, according to the DRMP itself.

Therefore, the purported yearly "productivity" of this barometer species cannot be deemed to warrant the landscape-scale "restoration" "Need" expressed by the DRMP.

As it relates to Golden Eagle:

The DRMP (p. 2-15) reports that a decline in numbers of pairs occurred between 1977 and 1979, but that the numbers have been relatively steady since that time. The document does not state whether or not any wide-scale vegetation changes (reductions in shrub cover) occurred in the 1977-1979 time period, which "might" presumably be tied to decline in jackrabbit habitat.

However, it is clear that the species has not been negatively impacted in the long term by wildfires in the early 1980's and mid-1990's. Therefore, this barometer species, its habitat, and the habitat of its total prey base have apparently not been affected by a decline in the shrub overstory.

Further, if any changes in shrub overstory are significant to the prey base of golden eagle (primarily black-tailed jackrabbit, according to the DRMP), such changes and therefore any "restoration", are relevant only within approximately 2 miles of the nesting habitat, and do not warrant the unspecified, but landscape-scale, "restoration" of 130,000 acres (and further treatment of 100,000 acres) prescribed by Alternatives C and D.

Other Raptors (p. 2-17).

The DRMP does not demonstrate a "purpose and need" for landscape-scale "restoration" of shrub overstories and/or "restoration" of native or adapted perennial grass and shrub species on account of "upland nesters", because the DRMP reports that the "upland nesters have been relatively resilient to habitat changes."

Northern Harrier (p. 2-17).

The DRMP states (p. 2-17) that the northern harrier is "unaffected by wildfire..." However, the DRMP immediately refutes the conclusion within the very same sentence, continuing "... and nest in burned habitats significantly more often than expected. They also prefer to nest in patches of Russian thistle and stands of tumble mustard that have invaded disturbed areas."



Therefore, the species is NOT "unaffected" by wildfire, but is apparently beneficially impacted by wildfire that disturbs shrub overstory and the ecological condition of the range.

Key Raptor Prey Species (p. 2-20).

The DRMP purports that "survival" of Piute ground squirrel and density of black-tailed jackrabbit are both higher in sagebrush-dominated areas than in those without such cover. While this may be true, it must be noted that survival and density are also a function of predator success, and Black would submit that higher survival and density rates may mean only that predators are less successful at obtaining their forage prey within stands of shrub-covered vegetation than they are in adjacent non-shrub-dominated areas. Such "survival" and density figures are not "stand alone" information which justifies a conclusion that vast areas of purportedly "restored" rangeland will in any way benefit the raptors of the SNBP, and especially the prairie falcon and golden eagle.

Soil (p. 2-40).

The DRMP purports that "livestock grazing, . . . are major agents affecting soil stability, productivity, and watershed health." However, this should be restated to state that all of the agents "may affect" soil stability, etc., and should be modified to further state that such affects may be either negative or positive.

Soil Condition and Trends (p. 2-40)

The DRMP states that "in areas of the NCA where historic livestock grazing has degraded the watershed, an early- to mid-seral or disturbed vegetation condition now exists." However, we are unable to find any site-specific identification of any portion of any allotment which would permit substantive review and comment of this statement by the public.

The DRMP purports that "this trend is continuing throughout the NCA." This is a statement that is, so long as (at least) the Browns Gulch Allotment is considered part of the NCA area, categorically a false, misleading, inflammatory, and unsupported representation. Again, the DRMP lacks any specificity and any data to make such a broad conclusory statement.

The DRMP reports that "only four out of the last 11 years" received average or slightly above average annual precipitation. However, if 1993 is the beginning of the referenced 11 years, then the end year must be 2002. What of 2003, 2004, 2005, and 2006? Further, ultimately, this statement holds no relevance unless compared "to" something else. Did the vegetative trend decline in those years when the precipitation was below average? We know from the discussions regarding prairie falcon and golden eagle that the below-average precipitation years obviously had no impact on the "barometer" raptor species, so what is relevant about this statement?



The DRMP makes generic statements regarding "mechanical disturbance" resulting in "compaction and structural breakdown", and purports (p. 2-41) that several studies consider heavy livestock trampling to be more harmful to the watershed than excessive grazing. Notwithstanding whether the two cited studies (both of which share the same author) constitutes "several", the DRMP again lacks any specificity so as to identify where (which pastures or areas of which allotments, if any) such generalization of potential impacts has been documented as being fact rather than a "potential".

2.2.8 Upland Vegetation.

The entire section regarding upland vegetation needs to be re-written so as to come to grips with reality.

First and foremost, BLM is not mandated in any way, shape or form to manage for conditions that existed prior to European settlement, and the entire discussion of what was here before European settlement occurred is irrelevant.

Second, we could not find any mention within the DRMP of fires set by pre-European, Asian settlers (which the DRMP terms Native Americans), which fires were set for various purposes, including war upon another people, hunting, or "vegetation restoration" as they saw it. The DRMP also lacks any specificity as to the trampling and other impacts of herds of antelope, mule deer, elk, bison, or "Native American" horses prior to the settlement of the area by Europeans.

Third, the DRMP is wrong in its reporting of existing vegetation types within the NCA, an error no doubt caused by relying on "remote sensing" to produce Vegetation Table 2.1. These errors are at least to the following extent:

Nowhere does Vegetation Table 2.1 show any native perennial species (other than Sandberg bluegrass) to exist within the NCA. However, a substantial percentage of the Browns Gulch Allotment is dominated by Needle-and-thread and by Indian ricegrass.

DRMP Vegetation Map 2 incorrectly depicts the extent of sagebrush cover within the Browns Gulch Allotment, which cover is considerably less than depicted on Vegetation Map 2.

A comparison of Vegetation Map 2 to Vegetation Map 1 shows some areas that were dominated by big sagebrush in 1979 became dominated by winterfat in 2001. However, such transition is not possible due to the differences in ecological potential of the soils on which the two species are found.

Fourth, the DRMP is vague and non-specific at page 2-45 when it states that approximately "77% of the sagebrush communities have an understory that is dominated by Sandberg bluegrass and/or other native perennial bunchgrasses." Specifically, what other perennial bunchgrasses? The DRMP in this section claims that the only species left



IS Sandberg bluegrass, and yet admits that other perennial native bunchgrasses dominate the understory. The DRMP must be revised to be more specific as to which perennial understory grasses dominate the various areas of the numerous grazing allotments within the NCA. The lack of specificity precludes adequate comment by Black and the public.

Black contends that BLM's reliance upon remote sensing to determine and report to the public the existing vegetation conditions within the NCA is erroneous and has fatally flawed the development of the DRMP, including the "Affected Environment", the range of "Alternatives", and the determination of "Environmental Consequences".

BLM should, before publishing a revised Draft RMP, ground-truth its satellite imagery and conduct on-the-ground production and/or ecological condition sampling on the whole of the NCA so as to accurately portray existing vegetation conditions. BLM should then accurately report those findings as the "affected vegetation" in the revised DRMP, and revise the Purpose and Need, Affected Environment, Alternatives, and Environmental Consequences sections of the DRMP.

Lands (p. 2-61).

Black supports the DRMP's proposal to re-align the boundary of the NCA. Black supports the exclusion of (at least) the Browns Gulch Allotment. To this extent, we support the Lands Alternative C, Map 6 at page Appendix-105 (A-105).

2.2.14 Livestock Grazing.

The DRMP represents that many permittees have taken from 25%-50% voluntary non-use due to drought and invasion of exotic annuals (p. 2-63). However, the grazing management and vegetation condition of the Browns Gulch Allotment is such that our Permitted Use was raised by a recent BLM Final Grazing Decision, following several years of monitoring, a S&G determination, and NEPA documentation, from 1059 AUMs to 4300 AUMs. [Note. Black acknowledges that this increase was recently put into question as a product of a 2005 Federal Court Order issued by Judge Winnill, but only due to procedural technicalities, not due to the monitoring that demonstrated that the permitted use was available and consistent with applicable Standards.]

Please note that the above comment also applies to Appendix 9, p. A-35, wherein our Permitted Use is erroneously shown as 1,056 AUMs. It is 4,300 AUMs (subject to the Federal Court Order). Please also note that Appendix 9, p. A-35 incorrectly reports that no S&G determination has been conducted for the Browns Gulch Allotment. Appendix 9, p. A-35 reports correctly that our season of use is 3/1 to 2/28, but fails to note that we do not use the Allotment throughout the year, and that we rotate use of areas of the allotment through water manipulation (turning water troughs on and off).

