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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

WESTERN WATERSHEDS PROJECT,)	
)	No.
Plaintiff,)	
)	
v.)	COMPLAINT
)	
U.S. FOREST SERVICE,)	
)	
Defendant.)	
_____)	

INTRODUCTION

1. This case challenges the U.S. Forest Service’s (Forest Service) authorization of livestock grazing on the Sawtooth National Forest’s Upper East Fork and Lower East Fork grazing allotments, through term grazing permits and Annual Operating Instructions (AOIs), in the face of repeated, flagrant violations of grazing standards and restrictions as well as widespread noncompliance with land-use standards. These allotments fall within the acclaimed Sawtooth National Recreation Area (SNRA) and overlap the new White Cloud Wilderness, and

grazing continues to harm the resources in these special places.

2. Due to the unique and fragile resources on these two allotments, and a history of mismanagement by the Forest Service, the Upper and Lower East Fork allotments were the subject of two prior cases before this Court that resulted in new analyses and stricter livestock management intended to protect the many imperiled species, rare ecosystems, and valuable recreation sites in this area. *Western Watersheds Project v. Sawtooth National Forest*, No. 01-cv-389-E-BLW (D. Idaho 2001); *Western Watersheds Project v. Baldwin*, No. 4-cv-301-E-BLW (D. Idaho 2004). Yet grazing has continued to degrade these resources, and the agency has made few management changes to address the problems.

3. The Forest Service recognized more than ten years ago the damage that grazing was causing to riparian areas and fragile alpine habitats within these allotments, impairing populations of threatened and sensitive fish and plants as well as popular recreation sites all of which was inconsistent with direction in the newly revised Sawtooth Forest Plan as well as the SNRA Organic Act. The agency made changes to the allotment boundaries and imposed restrictions on grazing to reduce use of alpine areas and allow recovery of riparian habitat, which were instituted through a 2003 grazing decision and Endangered Species Act consultation for the two allotments.

4. Since then, permittees have repeatedly violated livestock use standards and allowed cattle to graze in unauthorized areas, perpetuating degraded conditions and preventing recovery of imperiled species. Forest Service staff has expressed concerns about grazing impacts in the Lower East Fork allotment for years, but problems persist, such as cattle repeatedly observed in unauthorized areas, grazing at unauthorized times, and routinely exceeding use standards. Similar problems have occurred on the Upper East Fork allotment, with trespass and

violations of use standards documented repeatedly over the last ten years, and becoming increasingly severe from 2012 to the present.

5. Despite the flagrant violations of grazing standards and restrictions on these allotments, which prevent compliance with the Forest Plan, SNRA Organic Act, grazing permits, and ESA consultations, the Forest Service continues to authorize grazing each year. It renewed the term grazing permits for all of the permittees in 2012 and 2013, and has issued AOIs to the permittees every year with minimal changes that have not alleviated the known problems.

6. In light of the well-documented non-compliance and harm to resources that continues to occur on the Upper and Lower East Fork allotments, the issuance of new term grazing permits in 2012 and 2013 and issuance of AOIs in 2012-2016 was arbitrary, capricious and contrary to the National Forest Management Act, the SNRA Organic Act, the Federal Land Policy and Management Act, and Forest Service grazing regulations. In accordance with the Administrative Procedure Act, these decisions must be held unlawful and set aside.

7. Plaintiff therefore requests that this Court issue declaratory and injunctive relief to remedy these violations of law.

JURISDICTION AND VENUE

8. Jurisdiction is proper in the Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*; the SNRA Organic Act, 16 U.S.C. § 460aa *et seq.*; the National Forest Management Act, 16 U.S.C. § 1600 *et seq.*; the Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the Equal Access to Justice Act, 28 U.S.C. § 2214 *et seq.* An actual, justiciable controversy now exists between Plaintiff and Defendant, and the requested relief is therefore proper under 5 U.S.C. §§

701–06; and 28 U.S.C. §§ 2201–02.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, Defendant and Plaintiff reside in this district, and the public lands and resources in question are located in this district.

10. The Federal Government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

PARTIES

11. Plaintiff WESTERN WATERSHEDS PROJECT (WWP) is a regional, membership, not-for-profit conservation organization with over 1,500 members, dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP is headquartered in Hailey, Idaho, and also has staff in Boise, as well as in other western states.

12. Through agency proceedings, public education, scientific studies, and legal advocacy conducted by its staff, members, volunteers, and supporters, WWP is actively engaged in protecting and improving riparian areas, water quality, fisheries, wildlife habitat, and other natural resources and ecological values of western watersheds, including the East Fork Salmon River and upper Salmon River watersheds. WWP has extensively participated in decision-making processes for livestock grazing on Forest Service and BLM lands throughout the west, including the Sawtooth National Forest. WWP has a long-standing interest in the Upper and Lower East Fork allotments in particular and has been actively engaged in decision-making for these allotments for many years, including participating in administrative and legal processes

concerning the 2003 Record of Decision for these two allotments. *See Western Watersheds Project v. Baldwin*, No. 4-cv-301-E-BLW (D. Idaho 2004).

13. WWP staff, members, and supporters regularly use and enjoy the fish and wildlife, public lands, and natural resources on federal lands in the East Fork Salmon River watershed and along other tributaries of the upper Salmon River, including the Upper and Lower East Fork allotments, for many recreational, scientific, spiritual, educational, aesthetic, and other purposes. WWP staff and members pursue activities such as hiking, fishing, hunting, wildlife viewing, photography, scientific monitoring, and spiritual renewal on these lands. Livestock grazing degrades the lands, waters, fish habitat, wildlife habitat, aesthetics, and other natural resources, and impairs WWP's use and enjoyment of the East Fork Salmon River watershed, near-by tributaries to the upper Salmon River, and the specific allotments at issue.

14. Western Watersheds Project staff, members, and supporters intend to continue to visit and use the public lands in and around the specific allotments at issue in the near future, including this summer and fall and in 2017. WWP's interests, organizationally, and on behalf of its staff, members, and supporters, in the preservation and protection of the East Fork Salmon River watershed, other tributaries to the upper Salmon River, and the specific allotments at issue, are being directly harmed by Defendant's actions. WWP's above-described interests have been, are being, and unless the relief prayed for is granted, will continue to be adversely affected and irreparably injured by Defendant's violations of law.

15. Defendant U.S. FOREST SERVICE is an agency or instrumentality of the United States, and is charged with managing the public lands and resources of the Sawtooth National Forest in accordance and compliance with federal laws and regulations.

LEGAL STANDARDS

16. Livestock grazing on National Forest lands is regulated under numerous laws. The Federal Land Policy and Management Act (FLPMA) states that permits issued to graze National Forest lands shall be for a term of ten years subject to such terms and conditions the Forest Service deems appropriate and consistent with the governing law. 43 C.F.R. § 1752(a); *see also* 36 C.F.R. § 222.1(b)(5). The Forest Service has authority to cancel, suspend, or modify a permit pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit for any violation of any term or condition of such permit. 43 U.S.C. § 1752(a); 36 C.F.R. § 222.4(a)(4). The holder of an expiring permit shall be given first priority for receipt of a new permit only if they are in compliance with the terms and conditions in the expiring permit and accept the terms and conditions included in the new permit. 43 U.S.C. § 1752(c); 36 C.F.R. § 222.3(c)(1)(ii).

17. The Forest Service may develop an allotment management plan (AMP) for a grazing allotment, which is incorporated as part of the grazing permit. 43 U.S.C. § 1752(d). An AMP must be consistent with Forest Service land management plans (Forest Plans). 36 C.F.R. § 222.2(c).

18. The Forest Service issues annual operating instructions that become part of the grazing permit and dictate the specific terms and conditions for grazing that particular year. *Oregon Nat. Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977, 980 (9th Cir. 2006). As instruments for the use of National Forest lands, AOIs must be consistent with the applicable Forest Plan. 16 U.S.C. § 1604(i); *Native Ecosystems Council v. Tidwell*, 599 F.3d 926, 934 (9th Cir. 2010). The applicable Forest Plan here is the 2003 Sawtooth Forest Plan, which was amended in 2012.

19. Grazing permits are agency actions that require consultation under the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2). Pursuant to the ESA, the Forest Service must consult with U.S. Fish and Wildlife Service (FWS) over the effects of the authorized grazing on endangered and threatened terrestrial species and their designated critical habitat, and with NOAA Fisheries over the effects on endangered and threatened marine species, including salmon and steelhead, and their designated critical habitat. *Id.*; 50 C.F.R. § 402.01. If the Forest Service determines that the grazing is not likely to adversely affect any endangered or threatened species or critical habitat and FWS and NOAA concur, then consultation is complete. 50 C.F.R. §§ 402.12(k), 402.13. If any of the agencies determine that grazing is likely to adversely affect an endangered or threatened species or critical habitat, then FWS and/or NOAA must complete a biological opinion. *See* 50 C.F.R. § 402.14.

20. Once consultation is completed, the agencies must reinitiate consultation if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, if the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered, or if critical habitat is designated that may be affected by the action. 50 C.F.R. § 402.16.

21. The Upper and Lower East Fork Allotments occur within the Sawtooth National Recreation Area. Under the SNRA Organic Act, lands within the SNRA must be administered in a manner that will best provide for the protection and conservation of salmon and other fisheries, and the conservation and development of scenic, natural, historic, pastoral, wildlife, and other values, contributing to and available for public recreation and enjoyment. 16 U.S.C. § 460aa-1. Use of the SNRA for resource extraction activities such as grazing can proceed only if that use

does not substantially impair the purposes for which the SNRA was established. *Id.*; 36 C.F.R. § 292.17(a).

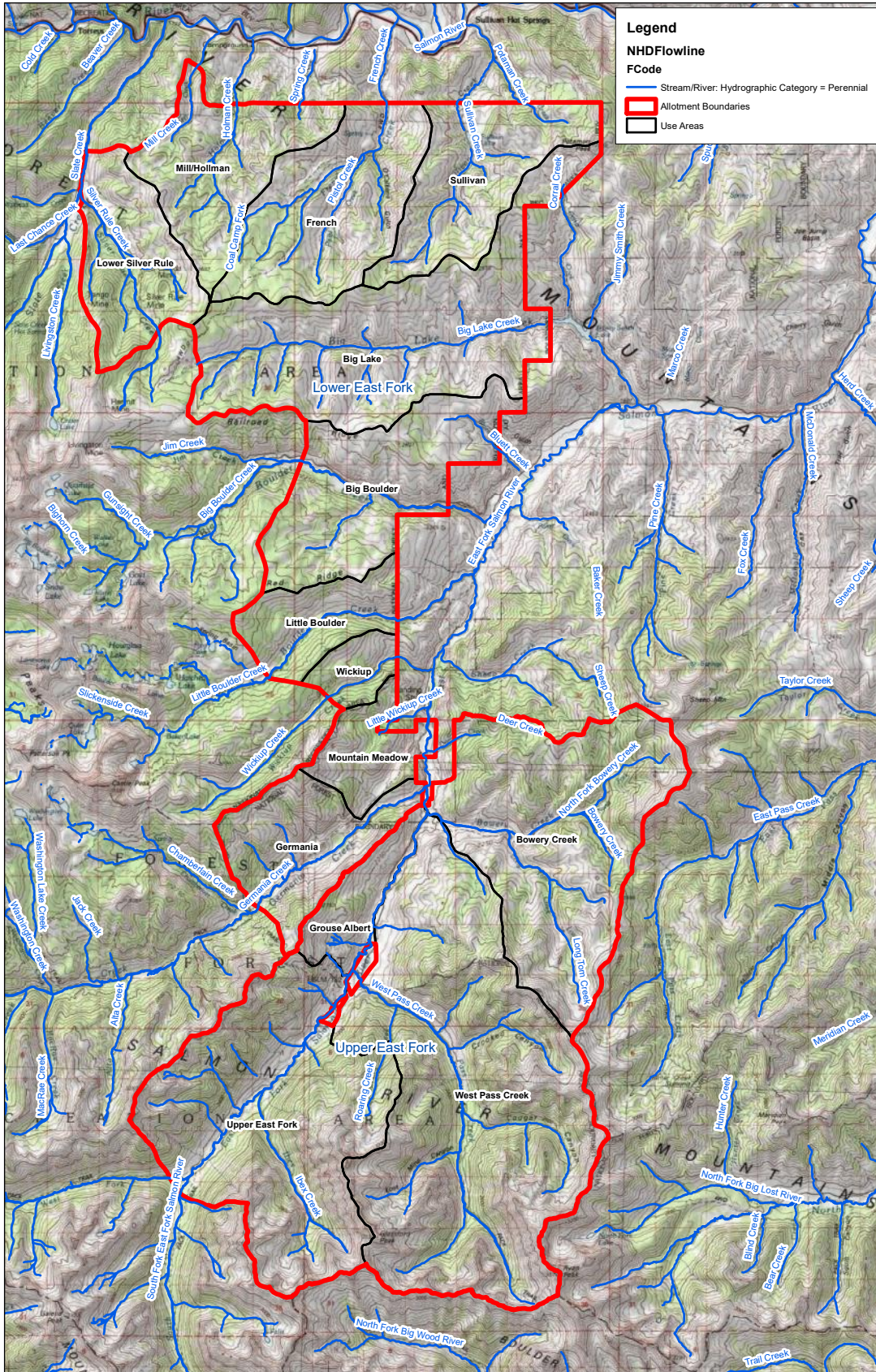
STATEMENT OF FACTS

I. Resources on the Upper and Lower East Fork Allotments

22. The Upper and Lower East Fork allotments contain extraordinary natural, scenic, and recreation resources and lie within the boundaries of the SNRA as well as within and adjacent to the new White Cloud Wilderness. These allotments mostly fall within the upper East Fork Salmon River watershed, which then flows through the East Fork valley before emptying into the upper Salmon River. The Upper East Fork allotment contains about ten miles of the upper East Fork River as well as tributaries West Pass Creek and Bowery Creek, while the Lower East Fork allotment contains East Fork tributaries Big Lake Creek, Big Boulder Creek, Little Boulder Creek, Wickiup Creek and Germania Creek. Streams on the north end of the Lower East Fork allotment, including Slate Creek, Silver Rule Creek, Mill Creek, Holman Creek, French Creek, Pistol Creek, and Sullivan Creek, drain north into the Salmon River.

23. These allotments are popular recreation destinations, containing miles of trails that lead into remote high lake basins in the Wilderness. The Boulder-White Cloud Mountains are known for their stunning high peaks, alpine lakes, and extensive trail system that is heavily used in summer by hikers, backpackers, horseback riders, and mountain bike riders.

24. These allotments also contain a diverse array of fish, wildlife, and plants, many of which are imperiled and fragile. The East Fork River, West Pass Creek, Bowery Creek, Big Boulder Creek, Little Boulder Creek, Germania Creek, and Slate Creek contain Snake River spring/summer Chinook salmon, Snake River steelhead, and/or Columbia River bull trout, all protected as “threatened” under the ESA. Forest Service Region 4 sensitive species westslope



cutthroat trout are also found within many streams on the two allotments, including streams that do not have threatened or endangered fish species.

25. The steep ridges and upper basins of these drainages have elevations greater than 8000 feet, with alpine and subalpine vegetation communities that often contain rare and sensitive plant species. Railroad Ridge, within the Lower East Fork allotment, supports some of the most unique and diverse alpine plant communities in Idaho. These alpine areas also contain whitebark pine trees, which are a candidate to be listed as a threatened species under the ESA. In addition, lower elevation areas support sensitive plants such as White Cloud milkvetch and northern sagewort, as well as riparian species willow, aspen, and cottonwood.

26. Habitat for a variety of wildlife occurs on these allotments. The Lower East Fork allotment contains habitat for Region 4 sensitive species greater sage-grouse and bighorn sheep, while both allotments have habitat for wolves, Canada lynx, mountain goats, elk, moose, wolverine, fisher, goshawks, and many other birds.

II. Sawtooth Forest Plan

27. The Sawtooth Forest Plan contains direction to protect the resources on the forest. Forest-wide direction for Soil, Water, Riparian, and Aquatic Resources includes goals to maintain or restore soil productivity and ecological processes, and provide for stream channel integrity, channel processes, and the sediment regime under which the riparian and aquatic ecosystem evolved. Sawtooth Forest Plan p. III-19.¹ With regard to aquatic species, goals include providing riparian and aquatic habitat capable of supporting viable populations of native and desired non-native aquatic species; managing human-caused disturbances to avoid or reduce degrading effects to aquatic populations, particularly during critical life stages; and providing

¹ Unless otherwise noted, citations to the Forest Plan refer to the 2012 Amended Plan.

habitat that will help keep aquatic Region 4 sensitive species from becoming listed under the ESA. *Id.* One of the hydrology standards requires that management actions will neither degrade nor retard attainment of properly functioning soil, water, riparian, and aquatic desired conditions except where outweighed by demonstrable benefits to watershed conditions or where the Forest Service has limited authority. *Id.*

28. The Forest Plan also provides direction specific to the East Fork Salmon River/White Cloud Management Area, an area that includes the Upper and Lower East Fork allotments. Sawtooth Forest Plan p. III-133. The Forest Plan notes that the Wickiup-Sheep, Big Boulder Creek, Upper East Fork Salmon, Germania Creek, Holman-Mill, and Slate Creek subwatersheds are identified as important to the recovery of listed fish species, and as high-priority areas for restoration. *Id.* p. III-136. It also states that livestock grazing impacts on recreation use are an issue in Bowery Creek, East Fork Salmon River, West Pass Creek, Big Boulder Creek, Little Boulder Creek, Frog Lake, Little Redfish Lake, Germania Creek, Railroad Ridge, and Warm Springs Meadow. *Id.* p. III-139.

29. In this management area, the Forest Service must manage lands to ensure preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the associated recreational values in accordance with the SNRA Organic Act. Sawtooth Forest Plan p. III-140. Grazing shall be allowed only if it does not substantially impair achievement of SNRA Act purposes. *Id.*

30. Objectives for Soil, Water, Riparian, and Aquatic Resources include:

- Reduce adverse grazing effects to fish habitat and water quality from livestock grazing within the tributaries of the East Fork Salmon River, Slate Creek, French-Spring, and Sullivan-Clayton subwatersheds. The Upper East Fork Salmon and French-Spring subwatersheds are the priorities.
- Maintain spawning and rearing areas during critical spawning and incubation

periods, with the Upper East Fork Salmon watershed one of the priorities.

- Initiate restoration of watershed conditions and fish habitat within East Fork Salmon River to help strengthen bull trout populations.
- Improve stream channel width/depth ratios, bank stability and water tables in riparian areas that are currently not functioning appropriately. Drainages of emphasis are in the East Fork Salmon River, Big Boulder Creek, Little Boulder Creek, West Pass Creek, Big Lake Creek, Sullivan Creek and French Creek.

Sawtooth Forest Plan p. III-143-44.

31. Objectives for Vegetation and Botanical Resources include:

- Maintain and restore cottonwood regeneration and age class diversity in East Fork Salmon River, French Creek, Sullivan Creek, Big Boulder Creek, Germania Creek, and West Pass Creek.
- Restore the Montane Shrub and Mountain Big Sage vegetation groups in the lower elevations of the East Fork Salmon River, Sullivan Creek, French Creek, Big Boulder Creek, Little Boulder Creek, and Big Lake Creek drainages, where these groups have been altered by livestock use.
- Restore willow composition, structure, and density, and hydric forbs and grasses in riparian areas in East Fork Salmon River, Big Boulder Creek, Little Boulder Creek, West Pass Creek, Big Lake Creek, Sullivan Creek, and French Creek drainages by reducing impacts from livestock grazing.
- Maintain or restore aspen stands.
- Maintain or restore populations and occupied habitats of threatened, endangered, proposed, candidate and sensitive plant species to contribute to their long-term viability.

Sawtooth Forest Plan p. III-145.

32. For Rangeland Resources, one of the Objectives is to maintain or restore soil, water, aquatic, and recreation resources in the Bowery, Big Lake, Sullivan, French Creek, Little Boulder, Big Boulder, Big Lake Creeks, and Upper East Fork drainages through improved management and adjustments to livestock grazing capacities as necessary. A key standard is that forage utilization for riparian areas will not exceed 30% use of most palatable forage species, or

must retain a minimum 6-inch stubble height of hydric greenline species. Sawtooth Forest Plan p. III-149.

33. The management area direction listed above was also in the July 2003 Sawtooth Forest Plan. Sawtooth Forest Plan pp. III-131, 134, 135, 136, 139, 140 (2003).

III. 2003 Record of Decision and ESA Consultation for the Allotments

A. 2003 NEPA Analysis and Record of Decision

34. Livestock grazing has conflicted with recreation use and impaired the natural resources of the Upper and Lower East Fork allotments for years. In September 2003, the Forest Service issued an Environmental Impact Statement under NEPA (2003 EIS) and Record of Decision (2003 ROD) adopting new grazing management for the two allotments.²

35. The 2003 EIS acknowledged that livestock grazing had caused serious degradation to the public lands, streams, fish, wildlife, plants, soil, and recreation values on the allotments, in violation of the Sawtooth Forest Plan and the SNRA Organic Act. The EIS stated that the current grazing scheme did not comply with Forest Plan “direction for recreation, listed species, soil, water and aquatic resources, wildlife and botanical resources The current grazing system needs to be changed to comply with the Sawtooth and Challis [land use plans] and to meet the intent of [the SNRA Organic Act].” 2003 EIS p. I-6. The EIS explained in detail that many resources were being adversely affected by livestock grazing, including special status plants, riparian vegetation, fish and wildlife habitat and populations, and recreation values.

36. Likewise, the 2003 ROD noted that “[a]nalysis of the current condition of the two allotments has found that SNRA primary values are being impacted. Impacts from livestock to

² The 2003 EIS was issued to comply with this Court’s Order in *Western Watersheds Project v. Sawtooth National Forest* directing the Forest Service to complete NEPA analysis and SNRA Organic Act review for these allotments by September 30, 2003. No. 01-cv-389-E-BLW, Dkt. No. 118.

fisheries, wildlife, vegetation, and conflicts with recreationists are occurring, indicating a need for change in current livestock management practices.” 2003 ROD p. 1. It stated that the AMPs needed to be updated to comply with the Sawtooth Forest Plan, the intent of the SNRA Organic Act, and to bring livestock grazing into balance with other resource values on the allotments. *Id.*

37. The Forest Service admitted that the degraded conditions within the allotments existed despite the agency’s efforts over ten years to modify grazing practices, including through partial non-use, intensive herding, and additional fences and water developments. 2003 EIS p. III-6. It concluded that further efforts to modify grazing practices in many sensitive areas would not be successful and that it therefore must immediately reduce allowable grazing use and close certain areas to grazing altogether.

38. Specifically, the Forest Service imposed the following standards for both allotments: forage utilization for riparian areas cannot exceed 30% utilization or must retain a minimum 6” stubble height, whichever occurs first; forage utilization for upland communities cannot exceed 40% utilization for early season or season long pastures and 50% for late season pastures; bluebunch wheatgrass utilization cannot exceed 30% at any time during the grazing season on bighorn sheep winter range; utilization of woody riparian species such as willows, aspen and cottonwood cannot exceed 30% use of current year’s growth; and most areas above 9,000 feet elevation were closed to grazing to protect alpine habitats. 2003 ROD p. 2.

39. In the Upper East Fork allotment, the Bowery Creek pasture was closed until three conditions were met: (1) plant vigor for hydric grasses exceeds annual leaf growth of 8” along Bowery and Long Tom Creeks; (2) woody species such as willow or aspen maintain or develop variations in age classes with at least 10% in sprouts, seedlings, and saplings; and (3) bank stability improves to at least 90% of natural conditions. 2003 ROD p. 4. The ROD

anticipated that it would take at least five years to achieve those conditions.

40. The 2003 ROD eliminated 11,700 acres of high elevation area from the Upper East Fork allotment to reduce livestock/recreation conflicts, livestock straying beyond allotment boundaries, and livestock grazing in fragile environments. 2003 ROD p. 4. This was accomplished by changing the allotment boundary to exclude portions of the allotment above the South and West Forks of the East Fork Salmon River. The ROD required construction of fences ½ mile up the South Fork East Fork and ½ mile up the West Fork East Fork Rivers to prevent cattle use outside the new allotment boundary. *Id.*

41. For the Lower East Fork allotment, elimination of areas above 9,000 feet elevation in Germania, Wickiup, Little Boulder, Big Boulder, Big Lake, and Silver Rule drainages removed about 24,000 acres from the allotment to address resource concerns and recreation use conflicts in these high elevation areas. Where topographic barriers were absent, the ROD required construction of fences along the allotment boundary. 2003 ROD p. 5. In addition, about 1,900 acres in the western edge of Railroad Ridge, upper portion of Silver Rule Creek and upper portion of Jim Creek were removed from the allotment to protect fragile alpine plants and seeps and springs near Railroad Ridge. *Id.*

42. The 2003 ROD also closed the entire Boulder Creek pasture (consisting of Big Boulder Creek, Little Boulder Creek, Wickiup Creek, and Germania Creek drainages) “until such time that fencing is constructed to restrict cattle from high use recreational areas and until such time that all resource recovery requirements have been met.” 2003 ROD at p. 5. These requirements were: (1) plant vigor for hydric grasses exceeds annual leaf growth of 8” along each of the four creeks; (2) woody species such as willow or aspen maintain or develop variations in age classes with at least 10% in sprouts, seedlings, and saplings; (3) bank stability

improves to at least 90% of natural conditions; and (4) adequate regeneration of cottonwood seedlings are established along Big Boulder Creek and Germania Creek. 2003 ROD pp. 5-6. It was again anticipated that it would take at least five years to achieve these conditions.

43. Finally, the Sullivan and Potaman Creek drainages were closed to allow for resource condition improvement until such time as resource recovery requirements were met. Those requirements were the same as for the Bowery Creek pasture on the Upper East Fork allotment. 2003 ROD p. 6.

44. Appendix D of the 2003 ROD contained a monitoring plan for the Upper and Lower East Fork allotments. It noted that annual riparian monitoring would occur at Designated Monitoring Areas (DMAs), and would include monitoring for the following standards: forage use does not exceed 30% utilization or 6" stubble height; woody species use does not exceed 30% utilization, streambank alteration does not exceed 10%, and soil disturbance does not exceed 15%. 2003 ROD App. D pp. 1-2. The plan also discussed monitoring for plant species of concern. *Id.* pp. 3-4.

B. 2003 ESA Consultation

45. Also in 2003, the Forest Service consulted with FWS over impacts of the new grazing management on threatened bull trout and with NOAA Fisheries over impacts on threatened Chinook salmon and steelhead.

46. The Forest Service's biological assessment (BA) listed the new allowable use standards that applied to both allotments, including that forage utilization for riparian areas would not exceed 30% use of most palatable forage species, or must retain a minimum of 6" stubble height of hydric greenline species, and utilization of woody species such as willow and aspen would not exceed 30% use of current year's growth. The BA noted that use standards are

measured at DMAs, and monitoring of standards would be conducted *shortly following the removal of livestock from the pasture rather than at the end of the growing season.*

47. It also discussed the closure of the Boulder Creek pasture and the Sullivan and Potaman drainages on the Lower East Fork allotment until resource recovery requirements are met, and the same for the Bowery Creek pasture on the Upper East Fork allotment.

48. It explained that to protect spawning and incubation periods for listed fish, livestock grazing would be restricted to certain dates. On the Lower East Fork allotment, cattle would not enter the Slate Creek/Silver Rule pasture or the Boulder Creek pasture (if it was re-opened) until after July 15, and would be removed before August 15, to protect steelhead and bull trout. In the Germania Creek unit of the Boulder Creek pasture, cattle would be removed before August 1 to protect Chinook salmon. On the Upper East Fork allotment, cattle would not enter the West Pass pasture until after July 15 and would be removed before August 1, would be removed before August 1 from the East Fork pasture, and would be removed before August 15 from the Bowery drainage to protect all three listed fish species.

49. The 2003 BA concluded that, with the new grazing standards, resting of pastures, and timing restrictions, livestock grazing on the Upper and Lower East Fork allotments was not likely to adversely affect any of the listed fish species.

50. NOAA Fisheries sent a letter concurring with the “not likely to adversely affect” determination. It relied upon and reiterated the utilization standards identified in the BA and the areas that would be rested until resource recovery requirements are met. NOAA assumed that the annual monitoring would ensure compliance with the Forest Plan standards and specific requirements for the allotments, which was expected to facilitate maintenance and recovery of riparian areas and stream functions that are important habitat components for listed salmon and

steelhead. NOAA concurred with the “not likely to adversely affect” determination based on the “best available information and successful implementation of conservation measures described in the BA.” Sept. 4, 2003 NOAA Letter of Concurrence p. 2.

51. Likewise, FWS sent a letter of concurrence in response to the Forest Service’s BA. That letter likewise described and relied upon the new grazing management and monitoring to ensure compliance with standards and requirements that would lead to recovery of riparian areas and stream functions important for bull trout. FWS concurred with the “not likely to adversely affect” determination for bull trout because “[g]razing standards, when consistently achieved, would maintain properly functioning habitats, and provide a net annual improvement in degraded habitats within the local populations. The letter also relied upon the fact that the proposed action included an “‘off date’ (August 15) to protect known spawning sites for bull trout.” Sept. 24, 2003 FWS Letter of Concurrence p. 2.

52. The two letters of concurrence completed the 2003 ESA consultation for the Upper and Lower East Fork allotments.

C. Allotment Management Plans

53. The Forest Service wrote AMPs for the Upper and Lower East Fork allotments to implement the new grazing direction from the 2003 ROD. Each AMP, dated March 16, 2006, stated that it implemented direction from the July 2003 Forest Plan and the September 2003 ROD, and was made part of the term grazing permits for the allotments.

54. The AMPs stated that they implemented an adaptive management approach whereby “carefully focused project monitoring” would be used to make adjustments in management in order to achieve site-specific desired conditions. They then set forth the applicable forest-wide and management area Forest Plan Goals and Objectives, including the

objectives listed in paragraphs 30-32 above.

55. Each AMP also identified specific allotment objectives.

- By 2008, soil, water, and aquatic conditions in allotment drainages should be maintained or restored;
- By 2008, willow composition, structure, and density and hydric forbs and grasses in riparian areas of the East Fork, West Pass, Big Boulder, Little Boulder, Big Lake, Sullivan and French Creek drainages should be trending toward restoration;
- By 2008, monitoring at DMAs should show that all riparian areas are trending toward their desired condition. By 2014, they should all be improved to 90% of their desired condition;
- By 2014, adverse grazing effects to fish habitat and water quality from livestock grazing within tributaries of the East Fork Salmon River, such as exceeding riparian and browse use standards, exceeding streambank alteration standards, and cattle present in areas not authorized, will be reduced;
- By 2014, stream channel width/depth ratios, bank stability, and water tables in riparian areas that are not functioning appropriately will be improved to proper functioning, with emphasis on Big Boulder, Little Boulder, Big Lake, Sullivan, and French Creeks;
- By 2014, all mesic riparian areas should be improved to 90% of potential;
- By 2008, upland sagebrush areas should be trending toward desired condition, and by 2014, they should all be improved to 60% of their desired condition;
- By 2008, aspen stands should be trending toward desired condition and by 2014, all aspen stands should be improved to 90% of their desired condition;
- By 2008, all threatened, endangered, proposed, and candidate alpine plant species should be trending toward desired condition and by 2014, all should be improved to 90% of their desired condition.

March 16, 2006 AMPs, pp. 9-10.

56. The AMPs then discussed the desired conditions for riparian areas, upland mesic riparian areas (seeps, springs, stringer meadows), sagebrush and non-forested uplands, aspen stands, and alpine areas. These desired conditions related to streambank stability, plant

composition and cover in riparian and upland areas, regeneration of aspen, and soil and plant composition in alpine areas.

57. Each AMP identified the grazing changes made in the 2003 ROD and the applicable use standards as well as the timing restrictions imposed in the ESA consultation.³ For example, the Lower East Fork AMP noted that the Boulder Creek unit would stay in non-use status until fencing is constructed to restrict cattle from high use recreational areas and until all resource recovery requirements have been met. The Upper East Fork AMP noted the requirement to build fences on the South Fork East Fork and West Fork East Fork rivers to define the new allotment boundary.

58. Finally, each AMP discussed required monitoring. Annual implementation monitoring would assess compliance with annual grazing standards, including presence of livestock outside the permitted area or season. Effectiveness monitoring would assess condition and trend of riparian areas, upland sagebrush/grass areas, and aspen stands, and would be conducted at three- to five-year intervals.

IV. Subsequent Management of the Allotments

A. Upper East Fork Allotment

59. Despite the changes to grazing promised in the 2003 ROD and ESA consultation, unauthorized use and noncompliance with grazing standards continued to occur on the Upper East Fork allotment, and increased in recent years.

60. The Upper East Fork allotment is divided into five pastures: East Fork, West Pass, Bowery, Grouse/Albert, and Fisher-Narrow Canyon. The permittee is Syd Dowton.

³ The AMPs incorrectly identified the riparian utilization standard by listing a 4" stubble height standard on certain creeks when the Forest Plan and ESA consultation both stated that all creeks would have a 6" stubble height standard. *Compare* 2006 AMPs p. 17, *with* 2003 Sawtooth Forest Plan III-140, 2003 BA pp. BOLD-3, UEF-3.

1. 2005-2011

61. In 2006, the Forest Service assessed the Bowery pasture and determined that it met the recovery requirements and could be re-opened to grazing even though it had not received the expected five years of rest. The Forest's fisheries biologist expressed concerns about re-opening the pasture because the assessment was done low in the drainage, while most of the degraded reaches and livestock impacts occurred in the upper drainage. Nevertheless, the Forest Service authorized grazing in the Bowery pasture in 2007, and expected to graze it every third year.

62. In 2009, the Forest Service evaluated the Bowery pasture for aspen regeneration, finding that two of six stands did not meet the objective. The report concluded that 33% of aspen stands in the pasture were not meeting desired conditions, and riding should be required to keep cattle from spending time in aspen stands.

63. In the years following the 2003 ROD and ESA consultation, annual monitoring of allotment pastures did not comply with direction in those documents. The Forest Service failed to conduct monitoring on all pastures each year to assess compliance with annual standards, including pastures with listed fish. It failed to monitor the West Pass pasture in 2007, 2008, and 2011; the East Fork pasture in 2007 and 2011; the Grouse/Albert pasture in 2005, 2006, 2007, and 2011; and the Narrow Canyon pasture in 2005, 2006, 2007, 2008, and 2011.⁴

64. Moreover, contrary to what the 2003 ESA consultation required, the agency monitored annual stubble heights by measuring them at the end of the growing season rather than shortly after the cows left the pasture, thus allowing regrowth of vegetation to mask damage incurred during the grazing season. For instance, DMA sites in the East Fork and West Pass

⁴ The permittee took non-use in 2009 so no monitoring was required that year.

pastures were deemed in compliance with the 6 inch standard in 2005 and 2006 when stubble heights were recorded as 6 inches at the end of the growing season (mid-October) even though stubble heights were well below the 6 inch standard in late August shortly after the cows were removed. Similarly, the agency admitted heavy use along the East Fork Salmon River in the East Fork pasture in July 2008, with some areas exceeding the stubble height standard, but allowed for re-growth before monitoring and finding the site met the standard.

65. Unauthorized use was also a repeat problem during this period, with cattle found in unauthorized areas in 2006, 2008, 2010, and 2011. For example, in fall 2008, cattle were seen in the Bowery Creek drainage, at the mouth of Germania Creek, and at the Bowery Guard Station along the East Fork Salmon River even though none of those areas was authorized for use in 2008, and cattle were supposed to be completely off the allotment by August 15. In late August 2010, the Forest Service documented cattle on three pastures of the Upper East Fork allotment—Bowery, West Pass, and Grouse/Albert—two weeks after all cattle should have been removed from the allotment. Almost all of the unauthorized use occurred in pastures where there were salmon, steelhead, or bull trout.

66. In 2010, the Forest Service and NOAA Fisheries consulted over grazing impacts to newly designated steelhead critical habitat on the Upper and Lower East Fork allotments. NOAA Fisheries concurred with the Forest Service's determination that grazing was not likely to adversely affect steelhead critical habitat. NOAA's letter of concurrence (2010 LOC) identified and relied upon the applicable grazing standards, including the 6" stubble height standard for all riparian areas, the restriction on grazing seasons to protect spawning and incubating salmon, steelhead, and bull trout, and the expectation that the Upper East Fork permittee would ride the allotment an average of four days per week to check on cattle and frequently check high stringer

meadows in the Bowery pasture when that pasture is grazed.

67. NOAA stated that its “not likely to adversely affect” conclusion was based on successful implementation of the conservation measures and the monitoring results from the past six years. The 2010 LOC claimed that pastures with anadromous fish habitat met all annual standards, and that the demonstrated ability to meet stubble height, woody use, and bank alteration requirements suggested the ongoing grazing was not resulting in measurable impacts to water quality, streambanks, or riparian vegetation. However, the LOC ignored that pastures were not monitored each year, and compliance with the standards occurred only after re-growth of vegetation. Furthermore, it stated that regular riding would help minimize cattle presence and potential impacts along streams and in riparian areas, despite the history of cattle grazing in unauthorized locations or at unauthorized times near streams with listed fish.

2. 2012-2016

68. After the Upper East Fork allotment grazing permit expired at the end of 2011, the Forest Service issued a new ten-year permit in April 2012 to the same permittee. The permit noted that the permittee had not yet constructed the South Fork East Fork and West Fork East Fork fences required by the 2003 ROD even though supplies for the fences were on-site. It also noted requirements for the permittee to maintain other fences on the allotment, including the fence around the Bowery Guard Station.

69. The permit included standards and guidelines for riparian area stubble height, upland utilization, woody species use (30%), and bank alteration (10%), as well as the timing restrictions for grazing in pastures with listed fish. It incorrectly showed a 4” stubble height standard for some creeks on the allotment, and the agency later modified the permit in 2016 to incorporate the proper standard of 6” stubble height for all creeks, as required by the Forest Plan.

70. The Forest Service also revised the Upper East Fork Allotment AMP, which stated that it was incorporated into the 2012 permit. The 2012 AMP identified the same desired conditions and objectives that were in the 2006 AMP regarding vegetation, riparian resources, and rangeland resources. *See supra* ¶¶ 55-56.

71. The AMP noted that, within the West Pass and East Fork drainages on the allotment, about forty miles of streams were open to grazing and generally accessible to cattle, and eight miles were not moving toward Forest Plan vegetation objectives. It stated that the 2003 ROD removed the majority of the South and West Forks of the East Fork Salmon River from the allotment and required construction of fences near the lower end of those creeks to define the new boundary. As noted above, those fences had not yet been built.

72. The AMP also stated that about twenty-seven miles of streams in the Bowery drainage were open and accessible to cattle, and 5.5 miles were not moving toward Forest Plan vegetation objectives, mostly in the upper reaches and headwater areas. It asserted that seasonal timing restrictions would protect habitat for salmon, steelhead, and bull trout across the allotment. It also recognized that conflicts between recreation and grazing use within the allotment have been persistent at popular backcountry destinations.

73. Finally, the 2012 AMP discussed the annual use standards as well as the need for long-term condition and trend monitoring in both upland and riparian areas to assess whether progress is being made toward meeting the resource objectives. It stated that condition and trend monitoring sites would be revisited every three years and a trend report completed and added to the AMP.

74. Immediately after issuance of the new permit, problems on the allotment escalated. In 2012, cattle were repeatedly observed grazing in places or at times not authorized.

Many instances of cattle trespassing in pastures with listed fish outside of the restricted dates occurred in 2012, including in the West Pass pasture before July 15 and after August 15, in the East Fork pasture after August 1, and in unauthorized areas such as the South Fork East Fork River and the East Fork River within the Bowery Guard Station enclosure.

75. The Forest's fish biologist expressed concerns about cattle use along the South Fork East Fork and heavy use downstream along the East Fork, which was similar to use he observed the previous year. The Forest's recreation planner also noted heavy cattle use in the headwaters of the South Fork East Fork, above 9,000 feet in elevation and well outside the allotment boundary. Other reports documented cattle crossing West Pass Creek before the authorized season of use, creating impacts to the stream during steelhead incubation, and use along the East Fork River after August 1 during salmon and bull trout spawning.

76. Forest Service employees noted the permittee's lack of concern about cattle being in the wrong units at the wrong times. The agency stated that there were numerous reports of cattle observed throughout the allotment and throughout the year, including after the off-date; and there was little, if any, sign of the permittee attempting to keep cattle in the correct grazing areas.

77. The uncontrolled grazing led to violations of use standards. The Forest Service monitored three DMA sites, and all of them violated the annual standards of 6" stubble height and 10% bank alteration. The East Fork site had 4.3" stubble height and 33% bank alteration, the West Pass site had 2.5" stubble height and 16% bank alteration, and the Fisher Creek site had 4.1" stubble height and 24% bank alteration. The Forest Service concluded that the permittee had not complied with the direction in the 2012 AOI due to the rampant unauthorized use that year and violations of annual standards, and sent the permittee a notice of non-compliance in

April 2013.

78. Also in early 2013, the Forest Service consulted with NOAA Fisheries and FWS over the renewed grazing permit for the Upper East Fork allotment. Despite the many problems documented in 2012, both NOAA Fisheries and FWS concurred with the Forest Service that grazing on the allotment was not likely to adversely affect listed fish. The BA and LOCs identified the stubble height, woody use, and bank alteration standards, and claimed that these standards, as well as the seasonal timing restrictions for the West Pass, East Fork and Bowery pastures, would adequately protect the fish and their habitat. They dismissed the problems from 2012 as being an infrequent occurrence that would be remedied by an adaptive management approach to prevent future violations.

79. The NOAA LOC stated that monitoring annual use standards is critical to the adaptive management approach and its successful execution will ensure habitat-related impacts are minor and insignificant. Monitoring must occur for at least one annual indicator *on each grazed pasture each year*. The Forest Service may need to reinstate consultation if the monitoring fails to occur as described. The LOC also stated that as part of the adaptive management process, the permittee would be issued a notice of non-compliance if the Forest Service documented *any* violations of annual use standards, and a history of exceeding standards would suggest that non-use may be warranted, possibly for multiple years.

80. Similar problems arose again in 2013. Use outside of the restricted dates occurred in the West Pass and Bowery pastures. The East Fork pasture was supposed to be rested that year, but heavy use occurred all along the East Fork River from the Bowery Guard Station to the South Fork East Fork and up the South Fork; and the use continued past the August 1 off-date. Due to violations early in the season, the Forest Service sent a suspension letter to the permittee

reducing his authorized use by 25% for 2013 and 2014, but then withdrew that decision shortly thereafter.

81. Monitoring in 2013 documented more violations of standards. The Forest Service monitored two of the five DMA sites—Fisher Creek and Bowery Creek—and both failed to meet the stubble height and bank alteration standards. Bowery Creek was severely overgrazed, with just 1.1” stubble height and 97% bank alteration. An ocular estimate during a visit to the West Pass DMA site at the end of the season also indicated that site did not meet standards.

82. Due to continual unauthorized use in 2013 and the overuse of Bowery Creek, the Forest Service sent another suspension letter to the permittee at the end of the 2013 season reducing his authorized use by 50% for 2014 and 2015. However, after negotiating with the permittee, the Forest Service decreased the penalty to just a 10% reduction in authorized use for 2014. In the 2014 AOI, the Forest Service noted that stubble height standards were not met in 2013 at Fisher Creek, East Fork, and West Pass DMA sites, pasture rotations were not followed according to the AOI, cows were found on the East Fork Salmon River after August 1, and that the Bowery Guard Station fence needed to be maintained to good working order prior to cows entering the East Fork pasture.

83. In 2014 and 2015, unauthorized use occurred once again in the Bowery Guard Station enclosure due to poor fence maintenance, and cattle were documented in pastures that were supposed to be rested or at times not authorized. Monitoring occurred at just two of the five DMAs in 2014 and 2015—the Fisher Creek and East Fork sites—and both had violations each year. The Forest Service did not send a notice of non-compliance in 2014. In 2015, it sent a notice of non-compliance due to the permittee’s failure to maintain the fence around the Bowery Guard Station, allowing cattle access to the East Fork River within the enclosure.

84. Although violations on the Upper East Fork allotment continued in 2014 and 2015, the Forest Service did not further reduce use in the 2015 or 2016 AOIs. Despite the numerous violations in the East Fork pasture in 2013-2015, the agency authorized grazing there again in 2016, and heavy use occurred near the East Fork River once again. The Forest Service also has not reinitiated consultation with NOAA Fisheries or FWS despite finding unauthorized use and violations of standards each year from 2012-2015, failing to monitor each DMA site each year, failing to issue a notice of non-compliance in 2014, and failing to make adaptive management changes to grazing in 2015 and 2016.

85. Since 2012, the Forest Service's monitoring has not shown that riparian areas, stream channels, aspen stands, and threatened fish populations are moving toward desired conditions. The Forest Service has not assessed its upland monitoring data to determine if trends are moving toward desired conditions for sagebrush. Nor has the Forest Service adequately conducted monitoring of mesic riparian areas, imperiled plants, white bark pine, cottonwood regeneration, and alpine habitats to determine if they are moving toward desired conditions and objectives.

B. Lower East Fork Allotment

86. The Lower East Fork allotment is divided into three pastures: French Creek, Big Lake, and Boulder Creek. The French Creek pasture is divided into four units: Lower Silver Rule, Mill/Holman, French/Pistol, and Sullivan/Potaman, and the Boulder Creek pasture is also divided into four units: Big Boulder, Little Boulder, Wickiup, and Germania. Three permittees graze the allotment: Wayne Baker, Eddie Baker Jr., and Richard Baker.

1. 2005-2011

87. Like the Upper East Fork allotment, the Lower East Fork allotment has a history

of problems with unauthorized use and violations of grazing standards. Cattle have routinely trespassed outside the allotment boundary in high elevation meadows along Big Boulder and Little Boulder Creeks, at popular recreation lakes such as Frog Lake and Little Redfish Lake, and in alpine areas on Railroad Ridge and Red Ridge.

88. For instance, in 2008 and 2009, evidence of cattle use was documented at Little Redfish Lake, and a Forest Service employee observed trespass cows on Red Ridge almost every year from 2005-2013. Trespass cattle use in the closed Boulder Creek pasture occurred in 2005, 2006, 2008, 2010, and 2011. Unauthorized use in the French Creek pasture's Sullivan Creek unit was documented in 2005, 2006, and 2011. The Sullivan Creek unit was closed to grazing under the 2003 ROD, but the Forest Service authorized cattle to trail through that unit beginning in 2007 to access other units in the French Creek pasture. Trailing was supposed to be limited to two days each year, but excessive use of Sullivan Creek has been a chronic problem.

89. Annual monitoring showed that violations of standards occurred in the French Creek pasture in 2005, 2006, 2007, 2010 and 2011, and that monitoring occurred *after* regrowth of vegetation despite the requirement in the ESA consultation to monitor as soon as cattle were removed from the pasture. In 2005, French Creek violated the stubble height standard, and French Creek, Holman Creek, and Pistol Creek all violated the bank alteration standard; in 2006, Pistol Creek and French Creek exceeded the utilization standard; in 2007, Mill Creek violated the stubble height standard and Sullivan Creek violated the bank alteration standard; end of season monitoring did not occur in 2009; in 2010, Pistol Creek and French Creek violated the stubble height, woody use, and bank alteration standards and Holman Creek violated the bank alteration standard; and in 2011, Pistol Creek and French Creek again violated all three standards while Sullivan Creek violated the stubble height and bank alteration standards.

90. The Big Lake pasture violated the woody use and bank alteration standards in 2010, and was not monitored at all in 2008, 2009, and 2011.

91. In 2010, the Forest Service evaluated whether the units in the rested Boulder Creek pasture or the Sullivan unit could be re-opened to grazing. It determined that none of those units could be re-opened yet. The fisheries biologist noted that the majority of Sullivan Creek surveyed did not meet desired conditions for bank stability or channel type, while Big Boulder and Germania creeks were still in the process of recovering from past grazing and did not meet bank stability desired conditions. He recommended that all three creeks continue to be rested. The wildlife biologist found that many aspen stands in the Sullivan Creek, Big Boulder Creek, Little Boulder Creek, and Wickiup Creek units were not meeting desired conditions either and should be avoided by cattle.

92. After field review of the Sullivan unit in 2010 showed poor streambank stabilities, increased width/depth ratios, and excessive soil compaction and use of riparian vegetation, the 2011 AOI authorized only half of Wayne Baker's herd to trail through the Sullivan unit, with trailing to occur on the ridge between Big Lake Creek and Sullivan Creek, and the remainder of the herd had to be trucked to the Mill/Holman unit.

93. When significant overuse and violations of standards occurred again in 2011 in Sullivan Creek, French Creek and Pistol Creek, the Forest Service sent a notice of non-compliance but made minimal changes to grazing, again allowing Wayne Baker to trail half of his herd along the ridge between Big Lake Creek and Sullivan Creek.

94. Based on data from 2005-2011, a Forest Service report discussed concerns about the French Creek pasture, noting that Holman, French, Mill, and Pistol creeks consistently did not meet annual standards and were not achieving desired conditions for streambank stability or

stream channel conditions. It stated that grazing was still causing excessive trampling and streambank alteration in some areas, was increasing fine sediment to reaches downstream, and was not allowing for full recovery of habitats damaged by past grazing. It also discussed concerns about impacts to the lower reach of Silver Rule Creek, which showed continued excessive browse, low stubble heights, and high streambank alteration. This portion of Silver Rule Creek has westslope cutthroat trout, and is designated as steelhead and bull trout critical habitat.

95. The report concluded that standards in the French Creek pasture had been exceeded frequently enough to constitute an ongoing concern, and “[c]learly riparian objectives described in the ROD and 2003 BA are not being achieved.” It also stated that “[r]iparian and stream conditions in French, Holman, and Sullivan Creeks have experienced more intense grazing and greater impacts than the ROD or 2003 BA anticipated,” which was likely impairing fish habitat in each drainage and reducing the habitat’s ability to support larger fish populations.

2. 2012-2016

96. Two of the Lower East Fork Allotment grazing permits expired at the end of 2011. The Forest Service issued one-year temporary permits in 2012 to those two permittees. The third Lower East Fork permit expired at the end of 2012. In 2013, the Forest Service issued ten-year term permits to all three permittees.

97. The permits included the standards for riparian area stubble height, woody species use, bank alteration, upland utilization, and bluebunch wheatgrass utilization in bighorn sheep range, as well as the timing restrictions for grazing in units with listed fish. They incorrectly showed a 4” stubble height standard for some creeks on the allotment, and the agency later modified the permits in 2016 to incorporate the proper standard of 6” stubble height for all

creeks, as required by the Forest Plan. Each of the permits specified the total head months authorized for that permittee, and noted that the use would increase a certain amount if resource conditions on the Boulder Creek pasture met objectives and the required boundary fence was built, allowing for that pasture to re-open as specified in the 2003 ROD.

98. The Forest Service began the ESA consultation process for the new Lower East Fork Allotment grazing permits at the same time it began the process for the Upper East Fork allotment, but then abandoned the Lower East Fork consultation. Thus, the 2003 consultation is still the governing consultation for this allotment.

99. Problems with unauthorized use and violations of standards continued in 2012-2015. In 2012, cattle were found in the closed Boulder Creek pasture several times, and the Forest Service noted that Wayne Baker had not followed his AOI pasture rotation that year—and in fact had not followed his AOI direction *for several years*. In addition, Silver Rule Creek violated stubble height and bank alteration standards.

100. A Forest Service fish biologist stated in May 2012 that he was very concerned about the trends in French, Sullivan, Holman and lower Silver Rule creeks, and wanted to assist with efforts to develop alternative grazing strategies. At the end of the 2012 season, he noted again long-term signs of excessive use on lower Silver Rule Creek and suggested that a shorter grazing duration be considered in future years. No significant changes were made to the 2013 AOIs to address these problems.

101. Significant problems occurred again in 2013. Unauthorized use was documented within the French Creek pasture at Holman campground, on Silver Rule Creek, and on Sullivan Creek. Cattle repeatedly trespassed in meadows along Little Boulder Creek, at Frog Lake, and on Red Ridge—all areas that were closed to grazing. The forest's recreation planner expressed

serious concerns about numerous cattle that belonged to Eddie Baker Jr. at Frog Lake and Little Boulder Meadows, noting that permittee's history of trespass at Frog Lake and Little Redfish Lake over the years.

102. Monitoring in 2013 occurred at Sullivan Creek and Big Lake Creek DMA sites. Each site violated the stubble height and bank alteration standards by a wide margin, having less than 4" stubble height and more than 30% bank alteration. The notes from Big Lake Creek DMA site stated that cattle trails ran through the stream in many places.

103. The Forest Service drafted a notice of noncompliance due to the trespass at Frog Lake, Little Boulder Meadows, and Sullivan Creek, but never sent it. Although the agency's 2014 AOI slightly reduced authorized use compared to 2013, it still authorized use in the French Creek and Big Lake Creek pastures with no additional restrictions, and allowed for $\frac{3}{4}$ of Wayne Baker's herd and $\frac{3}{4}$ of Richard Baker's herds to trail through the Sullivan unit along the ridge.

104. In 2014 and 2015, problems continued. Cattle were documented trespassing at Sullivan Lake in 2014 and on Railroad Ridge in 2014 and 2015. Two DMA sites were monitored in 2014—Sullivan Creek and Mid Big Lake Creek. Sullivan Creek once again severely violated standards (2.7" stubble height and 37% bank alteration), while Big Lake Creek violated all three standards (4.7" stubble height, 35% woody use, and 76% bank alteration). Inspection notes also documented heavy utilization in the Mill Creek unit, with lots of hummocks around Mill Creek.

105. In 2015, the Forest Service monitored the Mill Creek DMA site and found 3.5" stubble height and 45% bank alteration, both significant violations of the standards. It gave Wayne Baker a notice of non-compliance for exceeding the bank alteration standard at Mill Creek.

106. Despite the continuing unauthorized use and violations of standards, the Forest Service issued AOIs in 2015 and 2016. It more than doubled use of the French Creek pasture in 2015 compared to 2014, but prohibited trailing through the Sullivan unit. Then in 2016, it reduced use by about 20% in the French Creek pasture but allowed the full herd to trail through the Sullivan unit.

107. In the 2015 AOI for Eddie Baker Jr., the Forest Service re-opened the Boulder Creek pasture, and authorized use there again in the 2016 AOI. The Forest Service did not conduct another assessment like the one done in 2010 to determine if the pasture's units met the resource recovery requirements specified in the 2003 ROD, nor was the required boundary fence ever built even though the agency noted in the permit and other places that both conditions were required to re-open the pasture. The Forest Service authorized grazing of Big Boulder Creek and Jim Creek, which are both in the Big Boulder Creek unit, in the 2015 AOI, and authorized use of Big Boulder Creek again in 2016.

108. Since 2012, the Forest Service's monitoring has not shown that riparian areas, stream channels, and fish populations are moving toward desired conditions. The Forest Service has not assessed its upland monitoring data to determine if trends are moving toward desired conditions for sagebrush. Nor has the Forest Service adequately conducted monitoring of mesic riparian areas, aspen, cottonwood regeneration, bluebunch wheatgrass utilization within bighorn sheep range, imperiled plants, white bark pine, and alpine habitats to determine if they are moving toward the desired conditions and objectives.

FIRST CLAIM FOR RELIEF
VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT

109. Plaintiff realleges and incorporates by reference the preceding paragraphs.

110. This first claim for relief challenges the Forest Service's violations of the National

Forest Management Act, 16 U.S.C. § 1600 *et seq.*, and NFMA's implementing regulations, in authorizing grazing on the Upper and Lower East Fork allotments in 2012-2016. Plaintiff brings this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

111. Under NFMA, the Forest Service must act consistently with direction in the applicable land management plan when authorizing any project or activity. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15. The Forest Service has violated NFMA by acting inconsistently with direction in the Sawtooth Forest Plan regarding protection of riparian and aquatic resources, fish and wildlife populations, vegetation and botanical resources, recreation opportunities, and rangeland resources in the following ways:

- A. Issuing AOIs in 2012-2016 despite repeated violations of livestock use standards and grazing restrictions that caused continued damage to the riparian, aquatic, vegetation, botanical, and recreation resources on the Upper and Lower East Fork allotments;
- B. Issuing AOIs in 2015-2016 for the Lower East Fork allotment that authorized use in the Boulder Creek pasture without ensuring that all resource recovery requirements were met and a boundary fence was built to prevent trespass into high use recreation areas, as the 2003 ROD and 2013 grazing permits stated must occur before re-opening that pasture;
- C. Issuing AOIs in 2012-2016 that continued to authorize grazing on the Upper and Lower East Fork allotments despite the Forest Service's failure to comply with required monitoring identified in the 2003 ROD, grazing permits, and AMPs to ensure resources are moving toward desired conditions needed to achieve Forest Plan direction.

112. Accordingly, the Forest Service's 2012-2016 AOIs are arbitrary, capricious, an abuse of discretion, and not in accordance with NFMA, and therefore are unlawful and must be set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF
VIOLATIONS OF THE SNRA ORGANIC ACT

113. Plaintiff realleges and incorporates by reference the preceding paragraphs.

114. This second claim for relief challenges the Forest Service's violations of the SNRA Organic Act, 16 U.S.C. § 460aa-1, and its implementing regulations, in authorizing grazing on the Upper and Lower East Fork allotments in 2012-2016. Plaintiff brings this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

115. Under the SNRA Organic Act, the Forest Service must administer its lands in a manner that will best provide the protection and conservation of salmon and other fisheries, and the conservation and development of scenic, natural, historic, pastoral, wildlife, and other values, contributing to and available for public recreation and enjoyment. 16 U.S.C. § 460aa-1. Use of the SNRA for grazing can proceed only if that use does not substantially impair the purposes for which the SNRA was established. *Id.*; 36 C.F.R. § 292.17(a). The Forest Service has violated the SNRA Organic Act by authorizing grazing in 2012-2016 that substantially impairs the public lands, streams, fish, wildlife, plants, soil, and recreation values on the Upper and Lower East Fork allotments.

116. Accordingly, the Forest Service's 2012-2016 AOIs are arbitrary, capricious, an abuse of discretion, and not in accordance with the SNRA Organic Act, and therefore are unlawful and must be set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

THIRD CLAIM FOR RELIEF
**VIOLATIONS OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT AND
FOREST SERVICE GRAZING REGULATIONS**

117. Plaintiff realleges and incorporates by reference the preceding paragraphs.

118. This third claim for relief challenges the Forest Service's violations of the Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.*, and the Forest Service's grazing regulations that implement FLPMA, in authorizing grazing on the Upper and Lower East Fork allotments in 2012-2016. Plaintiff brings this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

119. Under FLPMA and the Forest Service's grazing regulations, the Forest Service has authority to cancel, suspend, or modify a grazing permit pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit for any violation of any term or condition of such permit. 43 U.S.C. § 1752(a); 36 C.F.R. § 222.4(a)(4). The holder of an expiring permit shall be given first priority for receipt of a new permit only if they are in compliance with the terms and conditions in the expiring permit. 43 U.S.C. § 1752(c); 36 C.F.R. § 222.3(c)(1)(ii). AMPs and AOIs are incorporated as part of grazing permits.

120. The Forest Service acted arbitrarily and capriciously and contrary to FLPMA and its grazing regulations in the following ways:

- A. Issuing new grazing permits in 2012 and 2013 on the Upper and Lower East Fork allotments to the same permittees when those permittees had repeatedly violated the terms and conditions imposed for these allotments in the 2003 ROD and ESA consultation, including the requirements to comply with livestock use standards, restrictions on where and when livestock could graze, and construction and maintenance of boundary and pasture fences;

- B. Issuing AOIs in 2012-2016 that continued to authorize grazing on the Upper and Lower East Fork allotments without cancellation, suspension, or modification of use to address adequately the regular and severe violations of livestock use standards, restrictions on location and timing of grazing, and fence construction and maintenance requirements identified as terms and conditions for these allotments in the 2003 ROD, ESA consultations, and grazing permits.

121. Accordingly, the Forest Service's 2012 and 2013 grazing permits and 2012-2016 AOIs are arbitrary, capricious, an abuse of discretion, and not in accordance with FLPMA and the Forest Service's grazing regulations, and therefore are unlawful and must be set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Declare that the Forest Service's 2012-2016 AOIs for the Upper and Lower East Fork allotments were arbitrary, capricious, an abuse of discretion, and/or violated NFMA, the SNRA Organic Act, FLPMA, and the Forest Service's grazing regulations, and thus were unlawful under the judicial review standards of the APA, 5 U.S.C. § 706(2)(A);

B. Declare that the Forest Service's 2012 and 2013 grazing permits for the Upper and Lower East Fork allotments were arbitrary, capricious, an abuse of discretion, and/or contrary to FLPMA and the Forest Service's grazing regulations, and thus were unlawful under the judicial review standards of the APA, 5 U.S.C. § 706(2)(A);

C. Vacate and set aside the 2012 and 2013 grazing permits for the Upper and Lower East Fork allotments;

D. Order the Forest Service to ensure that future grazing permits and AOIs for the

Upper and Lower East Fork allotments comply with NFMA, the SNRA Organic Act, FLPMA, and the Forest Service's grazing regulations;

E. Issue such temporary, preliminary, and/or permanent injunctive relief as may specifically be requested hereafter by Plaintiff;

F. Award Plaintiff its reasonable attorney fees, costs, and litigation expenses under the Equal Access to Justice Act, and/or any other applicable provision of law; and

G. Grant such further and additional relief as the Court deems just and proper in order to remedy the violations of law alleged herein and to protect the interests of Plaintiff, the public, and the lands at issue.

Dated: October 12, 2016

Respectfully submitted,

s/ Lauren M. Rule

Lauren M. Rule
Attorney for Plaintiff