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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

OREGON NATURAL DESERT ASSOCIATION,
and KLAMATH SISKIYOU WILDLANDS
CENTER,

Plaintiffs,

v.

DAVID SABO, District Ranger, Chemult Ranger
District, Fremont-Winema National Forests, and
U.S. FOREST SERVICE,

Defendants.

Case No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiffs challenge the Forest Service's annual authorizations to graze the Antelope Cattle and Horse Allotment ("Antelope Allotment") on the Chemult Ranger District of the Fremont-Winema National Forests since 2008, including its authorization this year to graze Round Meadow within that allotment, for violating the National Environmental Policy Act ("NEPA") and the National Forest Management Act ("NFMA").

2. The Antelope Allotment occurs in an area of central Oregon dominated by dry lodgepole pine forests. A unique, large complex of fens and wetlands occurs on the allotment in the midst of these surrounding dry forests. These riparian areas are an oasis for many sensitive plants and animals such as rare mosses and sedges, mollusks, and the Oregon spotted frog. Many of these sensitive plant and mollusk species have been discovered on these allotment wetlands just since 2005, with biologists documenting at least nine different sensitive species at more than seventy-nine sites on the allotment, with only a portion of the potential habitat surveyed.

3. Yet the United States Forest Service ("Forest Service") has continued to authorize grazing on the allotment each year without conducting any supplemental environmental analysis to assess this new information about sensitive species on the allotment and impacts of grazing on those species, in violation of NEPA. Furthermore, by authorizing grazing that its own experts acknowledge damages these sensitive wetlands and species, the Forest Service is acting inconsistently with direction in the Winema National Forest Land and Resource Management Plan ("Winema Forest Plan"), in violation of NFMA. The Forest Service will continue to violate these laws by authorizing grazing in 2011 and future years.

4. Round Meadow is one of the unique wetlands within the boundary of the

Antelope Allotment. The Forest Service acquired Round Meadow in 1998 as part of a land exchange with Crown Pacific Timber Company. After acquiring Round Meadow, the Forest Service never conducted any site-specific environmental analysis under NEPA to determine the suitability of grazing this meadow or assess the impacts of grazing on the many sensitive resources there. An enclosure fence separates Round Meadow from the rest of the Antelope allotment.

5. In 2003, the agency began a rehabilitation project in Round Meadow to restore the natural hydrology function in the meadow and re-establish its natural marshy condition. To allow this recovery to occur, the Forest Service excluded cows from Round Meadow in 2004-2009. In 2010, however, the Forest Service decided to authorize grazing on the meadow.

6. Rather than conducting the necessary environmental analysis under NEPA, the agency simply issued a decision authorizing construction of a temporary fence intended to restrict livestock access to a small portion of the meadow. In issuing this fence decision, the Forest Service completely ignored the effects of grazing the remainder of this unique area and the impacts to the wet soils and habitat for sensitive plants and animals found there, not to mention the setback that will occur to the restoration efforts in the meadow.

7. By authorizing grazing on Round Meadow in 2010 without conducting any site-specific environmental analysis, the Forest Service violated NEPA. Further, by authorizing grazing on Round Meadow that will harm soils, riparian areas, and sensitive plants and animals, without ever determining whether this meadow is even suitable for grazing, the Forest Service acted inconsistent with direction in the Winema Forest Plan and in violation of NFMA. The Forest Service will continue to violate these laws by authorizing grazing on Round Meadow in 2011 and future years.

8. Because the Forest Service is violating NEPA and NFMA, which is causing harm to sensitive resources that will now require restoration, Plaintiffs seek declaratory and injunctive relief from this Court.

JURISDICTION AND VENUE

9. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including NEPA, 42 U.S.C. § 4321 *et seq.*, NFMA, 16 U.S.C. § 1600 *et seq.*, the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* An actual, justiciable controversy exists between the parties, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

10. Venue is proper in this Court under 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, Plaintiffs and Defendants reside in this district, and the public lands and resources at issue are located in this district.

11. The federal government waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

PARTIES

12. Plaintiff OREGON NATURAL DESERT ASSOCIATION (“ONDA”) is an Oregon non-profit public interest organization of approximately 1,500 members. It has offices in Portland and Bend, Oregon. ONDA’s mission is to protect, defend, and restore forever, the health of Oregon’s native deserts. ONDA actively participates in Forest Service and Department of Agriculture proceedings and decisions concerning the management of public lands throughout Oregon. ONDA brings this action on its own behalf and on behalf of its members and staff,

many of whom regularly enjoy and will continue to enjoy the public lands that are the subject of the agency decision challenged in this action, for educational, recreational, spiritual, and scientific activities. Members of ONDA use the Antelope allotment and Round Meadow on the Fremont-Winema National Forests for nature study, hiking and other recreational and aesthetic pursuits. ONDA and its members have researched, studied, observed and sought protection for sensitive species and ecological systems on the Antelope allotment, and plan to continue to do so. They derive scientific, recreational, conservation, and aesthetic benefits from these rare species' existence in the wild. The degraded conditions of the Antelope allotment and Round Meadow and the authorization of grazing without compliance with statutory obligations adversely affect ONDA's goals of protection and restoration, and ONDA's members and staff continue to be injured by the mismanagement of the public lands and waters at issue in this action.

13. Plaintiff KLAMATH SISKIYOU WILDLANDS CENTER ("KS Wild") is a non-profit public interest conservation organization based in Williams, Oregon and Ashland, Oregon. KS Wild's organizational mission is to conserve the outstanding biological diversity of the Klamath-Siskiyou region in Southern Oregon and Northern California. KS Wild and its staff and members seek to protect the biological health and ecological resources of the region by protecting and preserving the native habitat and hydrologic health of the Klamath-Siskiyou ecoregion, including in the Fremont-Winema National Forest. KS Wild staff and members use and enjoy Round Meadow and the Antelope Allotment on the Fremont-Winema National Forest for recreational, aesthetic, conservation, scientific and educational purposes, and will continue to use this area for these purposes in the future. KS Wild has participated in management decisions concerning the Antelope allotment and sought protections for sensitive species located there, and

will continue to do so in the future. Livestock grazing on the allotment that degrades the resources and species there and conflicts with recreational use impairs the use and enjoyment of the Antelope Allotment by KS Wild staff and members.

14. Plaintiffs' interests have been and will continue to be directly harmed by Defendant's actions as challenged herein. Unless the relief prayed for herein is granted, Plaintiffs as well as the public will continue to suffer irreparable harm and injury to their interests.

15. Defendant DAVID SABO is sued solely in his official capacity as District Ranger, Chemult Ranger District, Fremont-Winema National Forests. The District Ranger is one of the officials legally responsible for administering NEPA and NFMA and has delegated authority for carrying out the Secretary's responsibilities under NEPA and NFMA. Mr. SABO signed the Decision Memo authorizing construction of a temporary fence and authorizing grazing on Round Meadow challenged in this action.

16. Defendant U.S. FOREST SERVICE is an agency or instrumentality of the United States, under the U.S. Department of Agriculture, and is statutorily charged with managing the National Forest lands at issue here.

STATEMENT OF FACTS

The Antelope Allotment

17. The Chemult Ranger District of the Fremont-Winema National Forests is located in central Oregon on the eastern slopes of the Cascade Mountains. The north end of the district is dominated by lodgepole pine forests, but within this dry forest type is an extremely rare wetland complex full of groundwater dependent ecosystems (meadows, fens, bogs, seeps, and springs) that are an oasis for many wildlife and plant species. The Antelope Allotment contains

over 500 acres of this unique habitat.

18. These wetlands include areas with surface water and wet soils that provide habitat for a variety of rare plants and animals, including mosses and sedges, mollusks, and the Oregon spotted frog. Many of these species are designated as Forest Service sensitive species, and the Oregon spotted frog is also warranted for listing under the Endangered Species Act (“ESA”).

19. Nearly this entire unique groundwater dependent ecosystem complex is within the Antelope Allotment. Because lodgepole pine forests contain little ground vegetation, much of the grazing occurs in the grassy meadows and wetlands on the allotment.

20. Grazing on wet soils has caused significant damage to the soils and vegetation and altered the hydrology of the wetland. Cattle walking on wet soils create depressions in the soil with their hooves. These depressions create an area of hummocks, where there are deep compacted depressions alternating with elevated pedestals of soil. Such a situation dries out the soil and creates less permeability for water infiltration, altering the hydrology of the entire wetland. In addition to damaging soils and diminishing the water table, cattle grazing and trampling these unique areas also damages the riparian plants and vegetation that exist there, as well as the wildlife that depends on this vegetation and water. The cycle of repeated hoof damage that starts the drying process leads to a shift in plant species composition that further exacerbates the drying process. This cycle of damage destroys the properties of the fen system.

21. Because of the scarcity of riparian areas in the dry central Oregon ecosystem, these areas are particularly valuable to many wildlife and plant species. The scarcity and uniqueness of these groundwater dependent ecosystems and the resource damage that has occurred to them is also why many dependent species are in decline and listed as Forest Service sensitive species or warranted for listing under the ESA.

22. Since 2005, the Forest Service has documented at least nine different sensitive species at more than seventy-nine sites on the Antelope Allotment, and only a portion of the potential habitat has been surveyed. Many of these sensitive species are plants and mollusks found in the unique groundwater dependent ecosystems on the allotment. In addition, two new species of mollusk found nowhere else in the world have been documented here. Forest Service biologists and botanists have raised concerns about damage to these unique wetlands and the species inhabiting them from livestock grazing on the allotment.

23. The Forest Service, however, has continued to authorize grazing throughout the Antelope Allotment, including on top of the wetlands, without protecting these unique habitats and species. For instance, many of these new and sensitive species sites were discovered on the allotment in 2005-2006, with even more discovered in 2008, 2009 and 2010, yet the Forest Service issued annual authorizations to graze the allotment every year up through 2010 without instituting any changes to protect these areas or species. Because the Forest Service has completed surveys on only a portion of the potential habitat, there are likely many more sensitive species sites on the allotment that are subjected to damage from yearly grazing.

24. Furthermore, the Forest Service has not conducted any analysis under NEPA to assess this new information. The last environmental analysis for the allotment occurred in 1995, and the Forest Service did not supplement that analysis when new information arose about these sensitive species sightings on the allotment. The Forest Service represented to this Court on May 11, 2009 that it was in the process of doing an analysis of the allotment, which was to be completed in early 2010. However, to this point it has not even issued a public scoping notice to initiate a new environmental analysis. Meanwhile, the agency continues to authorize grazing each year that harms these species and other potential habitat.

25. In 2010, the Forest Service also authorized further excavation of a natural spring (Rock Springs) on the Antelope Allotment to provide water for cattle, altering the hydrology of the wetland and making it unsuitable habitat for sensitive groundwater dependent species in the process. Again, this damage to the wetlands and habitat for sensitive species done to facilitate cattle grazing occurred without any environmental analysis under NEPA or evaluation of impacts to sensitive species.

26. In addition to sensitive plants and mollusks, a population of Oregon spotted frog also has habitat on the allotment. Spotted frogs currently occupy Jack Creek within the Antelope Allotment. This population, once considered thriving with more than 300 breeding females just ten years ago, has now dropped below 20 breeding females. Biologists on the Fremont-Winema National Forests have identified livestock grazing as a threat to this population, including from loss or alteration of wetland habitat, loss of hiding cover and prey habitat, trampling, degradation of water quality, redirection of streamflows into breeding habitats due to cattle trails, and degradation of overwinter habitat .

27. In response to a previous lawsuit filed in 2008, the Forest Service built a fence along part of Jack Creek and prohibited cows from grazing inside the fence in 2008 to protect the spotted frog. Fencing along Jack Creek protects about 3.4 miles of creek and 66 acres of off-channel occupied frog habitat on National Forest lands. However, grazing continues to occur within occupied habitat on 1.4 miles of creek and 43 acres of off-channel habitat on National Forest lands despite similar threats occurring in both areas and biologist recommendations to fence all spotted frog habitat on National Forest lands.

28. Up to this point, the Forest Service has not authorized any grazing inside the Jack Creek fence, but each year there have been numerous reports of cows trespassing into the

enclosure. Frog surveyors and others have reported cow manure, cow tracks, and sightings of cows inside the enclosure as many as 2-4 times per week in 2009 and 2010. Even after discussing with the permittee concerns about cows breaching the fence in 2009, further instances of trespass occurred in 2010.

29. The Forest Service is also allowing grazing of National Forest lands in lower Jamison Meadow along Jack Creek that contain occupied frog habitat. The Forest Service previously stated in the 2008 Jack Creek fence decision that these lands would not be grazed until a new allotment management plan was completed.

30. Oregon spotted frog numbers have continued to plummet in this population. Data collected by biologists from the U.S. Geological Service shows that the number of frogs and frog egg masses in Jack Creek have dramatically declined from 2008 to the present—even after the fence was built along Jack Creek to purportedly protect the population.

31. Despite the alarming downward spiral of this frog population, the Forest Service has failed to protect this species and maintain a viable population. The agency continues to authorize grazing that harms individual frogs and negatively impacts occupied habitat on portions of Jack Creek that are outside the Jack Creek fence. When numbers of breeding females are as low as in this population, even the loss of one individual female by trampling is devastating and diminishes the likelihood of restoring a viable frog population. Individual frogs and occupied habitat within the fenced area also continue to be threatened due to cows breaching the Jack Creek fence. The Forest Service is even considering authorizing grazing inside the Jack Creek fence. Moreover, the Forest has cancelled several proposed frog habitat restoration projects on Jack Creek that were scoped and analyzed in 2009, despite receiving money to assist with those projects—money which it will lose at the end of the year if the projects are not

authorized.

32. The Winema Forest Plan contains direction to protect various resources such as soils, riparian areas, fish and wildlife, and sensitive species. For instance, the Forest Plan includes the following goals, objectives, and standards:

- Maintain or enhance the characteristics of riparian areas, wildlife habitat, and fish habitat near or within riparian ecosystems;
- Manage habitat for the perpetuation and/or recovery of plants and animals listed as threatened, endangered, or sensitive;
- Continue to survey and develop biological evaluations for sensitive species. Develop individual species management guidelines for sensitive species;
- Improve riparian areas to provide enhanced habitat for wildlife and fish;
- The demand for livestock grazing will be met only when it does not conflict with other uses;
- Livestock stocking levels shall be determined by range analysis considerations, including forage condition, suitability, and availability;
- Coordination of grazing with other resource operations shall include threatened, endangered, and sensitive plant and animal species, riparian areas conflicts, livestock and wildlife conflicts;
- Water bodies, stream courses, and wetlands, their riparian vegetation, and the immediately adjacent upland areas will be managed to stabilize stream channels; prevent soil erosion; and maintain or improve water quality, fish habitat, recreation opportunities, and riparian/wetland habitat for dependent fish and wildlife species and dependent aquatic species;

- Long-term soil productivity will be maintained;
- Protect habitat and hydrologic values of wetlands and riparian areas and improve fish habitat in streams;
- Fish and wildlife habitat shall be managed to maintain viable populations of all existing native and desired non-native plant and animal species;
- Manage new-found habitat sites for wildlife or botanical resources individually as part of the environmental analysis process for specific management activities;
- All Forest Service projects, programs, and activities conducted, funded, or permitted shall be reviewed for possible effects on threatened, endangered, or sensitive species of animals and plants;
- Habitat use of the forest by threatened, endangered, or sensitive species shall be evaluated. Habitat requirements sufficient to maintain the species shall be provided;
- Land management activities shall be planned and conducted to maintain or improve soil productivity and stability;
- In riparian ecosystems, hydrologic conditions and riparian habitat shall be maintained or improved.

The Forest Service's grazing authorizations in 2008-2010 are not consistent with this direction.

33. Absent judicial relief, the Forest Service will continue to authorize grazing on the Antelope Allotment in 2011 and future years that violates NEPA and NFMA.

Round Meadow

34. Within the boundary of the Antelope Allotment is Round Meadow, a 300 acre meadow that the Forest Service acquired in a land exchange with timber company Crown Pacific in 1998. Much of this meadow was historically a natural marsh until it was ditched and drained

in the 1970s.

35. Because the Forest Service did not acquire Round Meadow until 1998, it had not assessed the impacts of grazing on this meadow in its 1995 environmental analysis for the Antelope Allotment. Subsequent to the land exchange, the Forest Service did **not** conduct a site-specific analysis to assess the impacts of grazing on Round Meadow.

36. In 2003, the Forest Service issued a decision to implement a wetland rehabilitation project in Round Meadow to restore its naturally marshy condition. The project called for installing plugs in the ditches to retain and store more water, and building a fence around the perimeter of the meadow to ensure that cows did not enter the meadow and damage the restoration efforts. The Forest Service spent more than \$50,000 on this project. The Pacific Northwest Region Riparian Assistance Team and Oregon Watershed Enhancement Board field representatives reviewed the meadow after the initial project was completed and recommended further restoration work as well as indefinite exclusion of cattle.

37. The restoration of Round Meadow has created a wetter environment with more saturated soils and standing water; and native marsh vegetation is beginning to return. The meadow contains several fen complexes, including large complexes in the middle of the meadow, the northwest corner, and the northeast corner. Wet soils are extensive across the meadow, creating habitat for numerous sensitive species, including plants, mollusks, and Oregon spotted frog. The Forest Service has documented sensitive plants and mollusk species at numerous sites in the meadow.

38. Cows did not graze Round Meadow from 2004-2009 due to the restoration going on there. In 2010, with no environmental analysis to assess impacts to sensitive species or the restoration efforts, the Forest Service decided to allow grazing on Round Meadow.

39. After the permittee first requested to graze the meadow in March 2010, the Forest Service denied the request in May, noting that it would have to complete a biological evaluation to assess impacts to sensitive species before it could authorize use, such as grazing, that might adversely affect the species, and it would not be able to conduct the required surveys and biological evaluations in time. The permittee appealed that decision.

40. The Forest Service then determined, in responding to the appeal, that the required surveys had been completed, and the only sites that needed protection were in the northwest corner of Round Meadow. The agency decided to build a temporary fence to protect this corner of the meadow from cows, and put out a scoping notice for this project.

41. The scoping notice included a map of the fence location, showing it surrounding two springs in the northwest corner of the meadow. The notice also explained that the Forest Service was categorically excluding this fencing project from any NEPA review because it involved implementation or modification of a minor management practice to improve allotment condition or livestock distribution.

42. The Forest Service completed botany and wildlife biological evaluations for this particular project, assessing impacts to sensitive plants and animals from the construction of the fence. The evaluations noted that only portions of the meadow had been surveyed in the past for sensitive species, and new surveys done for the project focused on the northwest corner of the meadow where the fence would be located.

43. The botany evaluation stated that the only “known” site of sensitive plants would be within the temporary fence, but acknowledged that habitat for 17 sensitive plant species existed in the area. It also noted that the middle of the meadow was the wettest area, and that there were two springs in the northwest corner.

44. The wildlife evaluation stated that one sensitive mollusk species occurred in the project area, and there was potential habitat for another mollusk and Oregon spotted frog. Both evaluations assessed effects to sensitive species only from constructing the fence, and did not discuss at all effects from grazing the meadow.

45. The final decision for the project again discussed only impacts from constructing the fence, and ignored completely impacts from grazing the meadow. The final decision included a map of the fence location, which had changed since the scoping notice and biological evaluations were completed. The fence now would enclose a strip of land across the north end of the meadow, and less area in the northwest corner. The location of springs in the meadow also changed between these two versions of the map, with only one spring showing in the northwest corner of the meadow in the final map. The biological evaluations were not amended to assess the new location of the fence.

46. The final decision stated that the fence would encompass occupied habitat for sensitive plant species, and building the fence would have no effect on any sensitive species or the wetland function of the meadow. In response to public comments that the agency had used an improper categorical exclusion for the project, the final decision changed the justification for why this project was categorically excluded from NEPA review, calling it a prohibition of grazing to provide short-term resource protection. The decision stated that grazing would occur in the meadow outside of the fence once the fence was built, but again did not discuss the impacts of this grazing.

47. Subsequent to the decision notice for the fence, Forest Service biologists and botanists documented sensitive plant species at sites in the meadow outside of the temporary fence. Forest Service data also shows sites of mollusk species outside of the fence on the

meadow. These species were found near the middle of the meadow, which is currently being grazed by cattle, in the fen complex habitat that had achieved significant restoration over the past seven years by storing more water in soils, creating wetter conditions that foster habitat for the sensitive plants and mollusks.

48. The Forest Service has never conducted any site-specific environmental analysis under NEPA assessing impacts of grazing this unique and sensitive meadow, and whether this meadow is even suitable for grazing in light of wet soils, habitat for sensitive species, and the restoration efforts that have occurred there. The 2010 decision to allow grazing on Round Meadow is adversely impacting soils, riparian conditions, and Forest Service sensitive species, contrary to direction in the Winema Forest Plan. Absent judicial relief, the Forest Service will continue to violate NEPA and NFMA by authorizing grazing on Round Meadow in 2011 and future years.

FIRST CLAIM FOR RELIEF

UNLAWFUL GRAZING AUTHORIZATIONS ON THE ANTELOPE CATTLE AND HORSE ALLOTMENT

49. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

50. This first claim for relief challenges the Forest Service's violations of the National Environmental Policy Act, 43 U.S.C. § 4321 et seq., and NEPA's implementing regulations, and the National Forest Management Act, 16 U.S.C. § 1600 et seq., and NFMA's implementing regulations, in authorizing grazing on the Antelope allotment in 2008-2010 and continuing to authorize such grazing in 2011 and future years.

51. NEPA requires supplemental analysis to address any significant new information relevant to environmental concerns that bear on the proposed action. 40 C.F.R. § 1502.9(C)(1)(ii). The Forest Service violated NEPA by authorizing grazing in 2008-2010

without conducting any environmental analysis to supplement its prior 1995 analysis for the Antelope Allotment. Such analysis is required to assess significant new information that arose since 2005 documenting nine sensitive plant and mollusk species at more than seventy-nine new sites on the allotment that are accessible to livestock, and the impacts of grazing on those species.

52. 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). It also must consider the best available science when authorizing activities on National Forest lands. 36 C.F.R. § 219.35(a). The Forest Service's violations of NFMA include, but are not limited to:

A. Acting inconsistently with direction in the Winema Forest Plan regarding protection of soils, riparian areas, fish and wildlife, and sensitive species by authorizing grazing that damages those resources on the Antelope Allotment in 2008-2010;

B. Acting inconsistently with direction in the Winema Forest Plan regarding protection of soils, riparian areas, fish and wildlife, and sensitive species by authorizing grazing on the Antelope Allotment in 2008-2010 without evaluating the effects of the authorized grazing on soils, riparian areas, fish and wildlife, and sensitive species;

C. Failing to consider the best available science when authorizing grazing on the Antelope Allotment in 2008-2010.

53. Absent judicial relief, such violations of NEPA and NFMA will continue to occur when the Forest Service authorizes grazing on the Antelope Allotment in 2011 and future years.

54. This claim is brought pursuant to the judicial review provision of the APA, 5 U.S.C. § 706(2).

55. These violations of NEPA and NFMA are arbitrary, capricious, an abuse of discretion, and not in accordance with law under the APA, which has caused or threatens serious prejudice and injury to Plaintiffs' right's and interests.

SECOND CLAIM FOR RELIEF

UNLAWFUL GRAZING AUTHORIZATION OF ROUND MEADOW

56. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

57. This second claim for relief challenges the Forest Service's violations of the National Environmental Policy Act, 43 U.S.C. § 4321 et seq., and NEPA's implementing regulations, and the National Forest Management Act, 16 U.S.C. § 1600 et seq., and NFMA's implementing regulations, in authorizing grazing and the construction of a temporary fence in Round Meadow in 2010, and continuing to authorize such grazing in 2011 and future years.

58. NEPA requires federal agencies to undertake a thorough and public analysis of the environmental consequences of proposed federal actions by completing an Environmental Impact Statement or Environmental Assessment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.9. An agency can exclude an activity from NEPA review only if it has determined that the activity falls within a category of actions which do not individually or cumulative have a significant effect on the environment. 40 C.F.R. §§ 1501.4, 1504.8. The Forest Service's violations of NEPA include, but are not limited to:

- A. Not conducting any site-specific environmental analysis of the impacts of grazing Round Meadow prior to authorizing grazing in 2010;
- B. Issuing a categorical exclusion decision for the fence project that relied on inaccurate and misleading information;
- C. Issuing a categorical exclusion for the fence project that is inapplicable to

the actions authorized and contains inappropriate and unsupported findings and analysis.

59. In addition to the requirements described under Claim One, NFMA also requires the Forest Service to determine the suitability of an area for grazing before authorizing grazing. 36 C.F.R. § 219.26. The Forest Service's violations of NFMA include, but are not limited to:

A. Acting inconsistently with direction in the Winema Forest Plan regarding protection of soils, riparian areas, fish and wildlife, and sensitive species by authorizing grazing on Round Meadow in 2010 that damages those resources;

B. Acting inconsistently with direction in the Winema Forest Plan regarding protection of soils, riparian areas, fish and wildlife, and sensitive species by authorizing grazing on Round Meadow in 2010 without evaluating the effects of the authorized grazing on soils, riparian areas, fish and wildlife, and sensitive species;

C. Not determining the suitability of grazing Round Meadow prior to authorizing grazing there in 2010;

D. Failing to consider the best available science when authorizing grazing on Round Meadow in 2010.

60. Absent judicial relief, such violations of NEPA and NFMA will continue to occur when the Forest Service authorizes grazing on Round Meadow in 2011 and future years.

61. This claim is brought pursuant to the judicial review provision of the APA, 5 U.S.C. § 706(2).

62. These violations of NEPA and NFMA are arbitrary, capricious, an abuse of discretion, and not in accordance with law under the APA, which has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests.

PRAYER FOR RELIEF

A. Adjudge and declare that the Forest Service's 2008-2010 grazing authorizations of the Antelope Allotment violated NEPA, NFMA, and/or their implementing regulations, and thus were arbitrary, capricious, an abuse of discretion, and/or contrary to law under the judicial review standards of the APA, 5 U.S.C. § 706(2);

B. Adjudge and declare that the Forest Service's 2010 grazing authorization of Round Meadow violated NEPA, NFMA, and/or their implementing regulations, and thus was arbitrary, capricious, an abuse of discretion, and/or contrary to law under the judicial review standards of the APA, 5 U.S.C. § 706(2);

C. Order the Forest Service to comply with the requirements of NEPA and NFMA before issuing further grazing authorizations for the Antelope Allotment and/or Round Meadow;

D. Enter such other declaratory relief, and temporary, preliminary, or permanent injunctive relief as may be prayed for hereafter by Plaintiffs;

E. Award Plaintiffs their reasonable costs, litigation expenses, and attorneys' fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 et seq. and/or all other applicable authorities; and

F. Grant such further relief as the Court deems just and proper in order to provide Plaintiffs with relief and protect the public interest.

Dated: October 4, 2010

Respectfully submitted,



Lauren M. Rule
Attorney for Plaintiffs