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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

**OREGON NATURAL DESERT
ASSOCIATION and AUDUBON
SOCIETY OF PORTLAND,**

Plaintiffs,

No. 3:12-cv-596-__

COMPLAINT

v.

**KEN SALAZAR, Secretary of Interior, and
BUREAU OF LAND MANAGEMENT,**

Defendants.

INTRODUCTION

1. Plaintiffs Oregon Natural Desert Association and Portland Audubon Society challenge the decision by Defendant Interior Secretary Ken Salazar to approve a controversial industrial wind energy facility and high-capacity transmission line on Steens Mountain in southeastern Oregon. Steens Mountain is one of the crown jewels of the National Landscape Conservation System and a unique ecological treasure which Congress has protected from commercial and industrial development through the Steens Mountain Cooperative Management and Protection Act of 2000 (“Steens Act”), 16 U.S.C. §§ 460nnn *et seq.*

2. On December 28, 2011, Secretary Salazar signed a Record of Decision (“ROD”) approving the grant of rights-of-way over public lands administered by Defendant Bureau of Land Management (“BLM”) for the North Steens Transmission Line Project. The ROD approved selection of the “Preferred Alternative” from an October 2011 Final Environmental Impact Statement (“FEIS”), which was prepared by consultants for the project proponent and which presents a one-sided and incomplete portrait of the proposed project and its likely adverse environmental impacts.

3. As described in the FEIS and approved in the ROD, the North Steens transmission line would be a 230-kV line extending 46 miles from a new electrical substation on top of Steens Mountain to connect with an existing 115-kV line near Crane, Oregon, crossing 12.1 miles of public lands managed by the BLM. The transmission line is intended to carry electrical power from the proposed Echanis Wind Energy Project, an industrial-scale, 104-megawatt wind energy facility proposed as part of a larger Greater Echanis Project. The Echanis wind project would be built in a private inholding located next to the Steens Mountain Wilderness Area and surrounded on several sides by the Steens Mountain Cooperative Management and Protection Area

("CMPA") established by the Steens Act. As the FEIS and ROD acknowledge, the Echanis wind project could not be built if the transmission line across federal lands was not approved.

Therefore, the wind facility is a "connected action" to the federal Defendants' determination whether to approve rights-of-way for the transmission line and related access roads and support facilities across federal lands.

4. The Echanis wind project and associated transmission line will dominate the Steens Mountain skyline and industrialize a remarkable landscape preserved by Congress for native wildlife and traditional land uses. Wind turbines, whose blades would reach as high as the Statue of Liberty and whose lights will mar one of the West's darkest night skies, would be visible throughout much of the Steens Mountain area, towering above the ridges at many points along the popular Steens Mountain Loop Road, marring iconic wildland vistas including Kiger Gorge, Steens Summit, Mann Lake, and East Rim Overlook, and degrading the experience of recreational visitors as well as wilderness values.

5. The North Steens transmission line and Echanis wind project pose significant adverse harm to a wide array of sensitive and protected species – including bighorn sheep, golden eagles, peregrine and prairie falcons, greater sage-grouse, passerine birds, and numerous bat species – through direct, indirect, and cumulative impacts. Together, the transmission line and wind facility will directly convert over 140 acres of native vegetation to non-native vegetation. Indirectly, the ecological impact will reach much further, displacing sage-grouse from seasonal habitats, disturbing migratory corridors for big game and other species, and causing cumulative mortalities of eagles and other raptors, bats, and migrating birds. Federal Defendants have not addressed these impacts fully in their inadequate FEIS and ROD.

6. In approving the issuance of federal rights-of-way necessary for these projects, Secretary Salazar acknowledged that the Echanis wind project and North Steens transmission line will adversely impact the visual and ecological qualities that Congress recognized on Steens Mountain, yet the Secretary did not acknowledge, nor adhere to, his statutory duties and directives from Congress requiring these values to be protected. The ROD did not acknowledge that the purpose of the Steens Act requires the Secretary to protect the “long-term ecological integrity” within the Steens CMPA from the effects of industrial development on Steens Mountain, like the Echanis wind project and North Steens transmission line.

7. Instead of adhering to statutory duties imposed upon him under the Steens Act and the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701–1787, Secretary Salazar selectively relied upon his own agency’s internal policies seeking to promote renewable energy on public lands, while disregarding other policies calling for protection of sensitive species, including golden eagles and sage-grouse. By not following the applicable legal duties and requirements, Secretary Salazar acted in a manner that is arbitrary, capricious, an abuse of discretion, and contrary to law under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, requiring reversal and remand by this Court.

8. In addition, Secretary Salazar approved the ROD based on the FEIS’s inadequate and incomplete analysis of the likely impacts of the North Steens transmission line and Echanis wind project on sage-grouse, golden eagles, redband trout, bighorn sheep and other big game, and many other sensitive species of birds, bats, and wildlife that live in or migrate through the Steens Mountain area. Even though the FEIS acknowledged that other wind facilities within the region result in admitted mortality to raptors, passerine birds, and bats, the FEIS failed to address the likely direct, indirect, and cumulative impacts of the transmission line and wind facility on

these species and their habitats, in violation of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–61, again requiring reversal and remand.

9. One species of particular concern is the greater sage-grouse. The U.S. Fish and Wildlife Service (“Service”) has designated the sage-grouse as a “candidate” species for Endangered Species Act protection due to the threats facing its dwindling populations from habitat loss and fragmentation, including industrial wind energy developments and related transmission lines. *See* 12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered, 75 Fed. Reg. 13,910 (Mar. 23, 2010). The Service has further determined that BLM’s existing land use plans and other regulatory mechanisms are inadequate to conserve sage-grouse from these threats. *Id.* Even though in December 2011 BLM launched a new process to evaluate and amend its land use plans in order to adopt adequate regulatory mechanisms to protect sage-grouse, Secretary Salazar relied on BLM’s existing and inadequate land use plans for the area in asserting that the approved transmission line and wind facility will comply with FLPMA; and ignored recommendations of the Department of Interior’s Sage-grouse National Technical Team to avoid locating rights-of-way in priority sage-grouse areas, such as Steens Mountain.

10. By relying on existing regulatory mechanisms that are inadequate to conserve sage-grouse, and in approving industrial wind development of Steens Mountain that will contribute to sage-grouse population losses and habitat declines, the Secretary’s approval of the ROD is again arbitrary, capricious, an abuse of discretion, and contrary to law, requiring reversal and remand pursuant to the APA, 5 U.S.C. § 706.

11. Construction of the transmission line and wind project may commence in the spring or summer 2012, threatening immediate and irreparable harm to numerous sensitive

wildlife species and habitats, including golden eagles and greater sage-grouse, absent injunctive relief from this Court pending adjudication of the merits of Plaintiffs' claims.

JURISDICTION AND VENUE

12. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including FLPMA, NEPA, the Steens Act, the Administrative Procedure Act, 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. §§ 2201–2202 and 5 U.S.C. § 701–06.

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

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

PARTIES

15. Plaintiff OREGON NATURAL DESERT ASSOCIATION (“ONDA”) is an Oregon non-profit public interest conservation organization of more than 4,000 members and supporters. ONDA has offices in Portland, Ontario, and Bend, Oregon. ONDA’s mission is to protect, defend, and restore forever the health of Oregon’s native deserts. ONDA actively participates in BLM and Department of Interior proceedings and decisions concerning the management of public lands in eastern Oregon. ONDA brings this action on its own behalf and on behalf of its members, staff, and volunteers, many of whom regularly enjoy and will continue to enjoy the public lands that are the subject of the final agency decision challenged in this

action, for educational, recreational, spiritual, scientific and other activities and pursuits.

16. ONDA has long placed a priority on protecting the unique values of Steens Mountain and was instrumental in negotiating and securing enactment of the Steens Act in 2000.

17. Plaintiff AUDUBON SOCIETY OF PORTLAND (“Portland Audubon”) is an Oregon non-profit, public interest conservation organization with over 12,000 members. Portland Audubon’s mission to “promote the enjoyment, understanding and protection of native birds, other wildlife and their habitats.” Portland Audubon manages a statewide “Important Bird Area” (IBA) program which is part of an international effort to identify, protect and restore the most critical areas for bird breeding, wintering and stop-over habitats. Steens Mountain is a designated Important Bird Area. Portland Audubon and its members regularly visit the Malheur area on natural history related trips and Audubon has engaged with the BLM and Department of the Interior on efforts that led to the creation of the Steen Mountain CMPA. Portland Audubon brings this action on its own behalf and on behalf of its members, staff, and volunteers, many of whom regularly enjoy and will continue to enjoy the public lands that are the subject of the final agency decision challenged in this action, for educational, recreational, spiritual, scientific and other activities and pursuits.

18. Plaintiffs’ staff, members and volunteers use and enjoy the waters, public lands, and natural resources on and surrounding Steens Mountain for recreational, scientific, spiritual, educational, aesthetic, and other purposes. They enjoy fishing, hiking, camping, hunting, bird watching, wildlife viewing, study, contemplation, photography and other activities in and around the waters and public lands on Steens Mountain. Plaintiffs and their staff, members and volunteers also participate in natural resource restoration projects, information gathering and dissemination, education and public outreach, commenting upon proposed agency actions, and

other activities relating to BLM's management and administration of these public lands.

Plaintiffs have long been active in monitoring both ecological conditions and wilderness values on and around Steens Mountain.

19. Defendants' violations of federal laws and regulations, as alleged herein, directly harm the interests of Plaintiffs and their staff, members and volunteers, which have been and will continue to be injured and harmed by Defendants' actions as complained of herein. Unless the relief prayed for herein is granted, Plaintiffs and their staff, members and volunteers will continue to suffer ongoing and irreparable harm and injury to their interests.

20. Defendant KEN SALAZAR is Secretary of the U.S. Department of Interior, and has statutory authority and responsibility to comply with all federal laws in the management of the federal public lands at issue here, including NEPA, FLPMA, and the Steens Act. Contrary to the normal practice, wherein BLM officials make decisions on whether to issue grants of rights-of-way on the public lands under FLPMA, Secretary Salazar took the unusual course of personally signing the December 2011 ROD approving the North Steens transmission line and Echanis wind project. He is sued solely in his official capacity.

21. Defendant BUREAU OF LAND MANAGEMENT ("BLM") is an agency or instrumentality of the United States, within the Department of Interior, and is charged with managing the public lands and resources of the Steens Mountain area in accordance and compliance with federal laws and regulations. BLM was the lead agency that officially released the North Steens FEIS, although the Service, US Army Corps of Engineers, Oregon Department of Fish and Wildlife, and others acted as cooperating agencies.

LEGAL BACKGROUND

A. FLPMA Requirements

22. Enacted in 1976, FLPMA establishes basic legal mandates governing the administration and management of public lands at issue here, including issuance of rights-of-way over the public lands. 43 U.S.C. § 1701 *et seq.*

23. FLPMA and its implementing regulations provide that the Secretary of Interior must develop and regularly update land use plans (called Resource Management Plans, or RMPs) for the public lands under his control, and that all management activities shall be consistent with such plans. 43 U.S.C. § 1712; 43 C.F.R. § 1610.5-3(a).

24. FLPMA also requires that the public lands “shall” be managed “for multiple use and sustained yield.” 43 U.S.C. § 1732(a). FLPMA defines “sustained yield” as “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources consistent with multiple use.” 43 U.S.C. § 1702(b). FLPMA further mandates that the Secretary of Interior “shall” take any action necessary to prevent “unnecessary or undue degradation” of public lands. 43 U.S.C. § 1732(b).

25. Section 505 of FLPMA mandates that Defendant Salazar is obligated to ensure that any grant of right-of-way for the North Steens transmission line and associated Echanis wind project “will carry out the purposes” of FLPMA and “minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment.” *Id.* § 1765(a). The Secretary breached that statutory duty and abused his discretion in approving the North Steen transmission line ROD.

26. Section 505 also requires that the Secretary must select and impose those terms and conditions deemed necessary to, among other things, “protect Federal property and

economic interests,” efficiently manage the lands subject to the right-of-way “or are adjacent thereto,” locate the right-of-way “along a route that will cause least damage to the environment,” and “otherwise protect the public interest” in the right-of-way lands or lands “adjacent thereto.” *Id.* § 1765(b). Secretary Salazar has also breached that statutory duty and abused his discretion in approving the North Steen transmission line ROD.

B. The National Environmental Policy Act

27. NEPA, 42 U.S.C. § 4321 *et seq.*, is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). It serves two purposes: (1) “it ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts,” and (2) it “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

28. NEPA requires agencies to prepare an environmental impact statement (EIS) for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The EIS must “provide full and fair discussion of significant environmental impacts.” 40 C.F.R. § 1502.1. Agencies must consider every significant aspect of the environmental impact of a proposed action. This includes studying the direct, indirect, and cumulative impacts of the action. *See* 40 C.F.R. §§ 1508.7, 1508.8.

29. Cumulative impacts are impacts that “result [] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . undertakes such other actions.” 40 C.F.R. § 1508.7. Cumulative impacts “can result from individually minor but collectively significant actions taking place over a period of

time.” *Id.*

30. In analyzing the cumulative effects of a proposed action, an agency must do more than just catalogue “relevant past projects in the area”: it must also include a “useful analysis of the cumulative impacts of past, present and future projects.” *City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997). Agencies must provide “some quantified or detailed information” about cumulative impacts – “[g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” *Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 993 (9th Cir. 2004). When an EIS does not “sufficiently identify or discuss the incremental impacts” expected from successive projects, or “how those individual impacts might combine or synergistically interact with each other to affect the [] environment,” it does not satisfy NEPA. *Id.*

31. In addition, an agency must disclose and discuss any “responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency’s response to the issues raised.” 40 C.F.R. §1502.9(b). “This disclosure requirement obligates the agency to make available to the public high quality information, including accurate scientific analysis, expert agency comments and public scrutiny, before decisions are made and actions are taken.” *Ctr. for Biol. Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1167 (9th Cir. 2003).

32. Analysis prepared in order to satisfy NEPA must include consideration of a reasonable range of alternatives to a proposed action. 42 U.S.C. § 4332(2)(C)(iii); *see also* 40 C.F.R. § 1502.14 (alternatives including the proposed action).

33. The Secretary has breached his statutory duties and abused his discretion under NEPA by relying upon a one-sided and inadequate FEIS to approve the ROD for the North

Steens transmission line and associated Echanis wind project in multiple respects, as alleged herein.

STEENS MOUNTAIN: A SPECIAL PLACE

34. Steens Mountain, situated deep in southeast Oregon's high desert, is a spectacularly scenic area with a rich diversity of geological wonders, wildlife habitat, recreation opportunities, and wilderness values. The Steens is one of the crown jewels of BLM's National Landscape Conservation System, which was established to "conserve, protect and restore these nationally significant landscapes that have outstanding cultural, ecological, and scientific values."

35. Steens Mountain is a 60 mile-long mountain rising up to 9,700 feet in elevation. Its east-facing, mile-high escarpment overlooks the ancient Alvord Valley below. Less than a million years ago, alpine glaciers formed broad glacial valleys on top of the mountain and carved dramatic gorges up to 2,000 feet deep, such as the Kiger Gorge. Numerous raptors – golden eagles, prairie falcons and others – soar along the ridges and into the gorges of Steens Mountain as they hunt for ground squirrels and other prey below. Bighorn sheep inhabit the Steens Mountain crags and ridges as well.

36. Wet meadows, alpine shrub communities, and grasslands dot the landscape, but most of the area is sagebrush steppe habitat, interspersed with juniper woodlands, aspen groves, and relic fir stands. Wildflowers come alive in the spring, painting entire hillsides in shades of purple, yellow and red. Vitaly important riparian areas, wetlands, and desert streams breathe life into the area and provide habitat for hundreds of fish and wildlife species.

37. A wide range of wildlife species inhabit or migrate through Steens Mountain. In addition to resident bighorn sheep, they include large and small mammals such as pronghorn

antelope, mule deer, elk, badger, cougar, coyote, marmot, Preble's shrew, and eight species of special status species bats.

38. Dozens of species of resident and migratory birds use the Steens Mountain area, including special status species such as greater sage-grouse, golden eagles, and Swainson's hawk; sagebrush related species such as Brewer's sparrow, sage thrasher and sage sparrow; and a wide array of songbirds such as black rosy finches, yellow warblers, violet green swallows and western meadowlarks. In fact, bird surveys in the project area identified more than a dozen species of raptors, 42 species of waterbirds, and more than 100 species of songbirds. Steens Mountain has been designated as an Important Bird Area (IBA) by the Audubon Society. An IBA is a site that is part of a global network of sites that have been selected for their outstanding habitat value and the imperative roles they play in hosting birds, for breeding, migrating, or overwintering. Steens is one of 97 IBAs identified in Oregon.

39. Steens Mountain contains remarkable wilderness values. The Steens Mountain Wilderness Area was designated by Congress in 2000 covering about 170,000 acres. Moreover, BLM designated numerous Wilderness Study Areas ("WSAs"), encompassing an additional 120,000 acres on Steens Mountain, which include the Bridge Creek, Blitzen River, High Steens, Home Creek, Lower Stonehouse, South Fork Donner und Blitzen River, and Stonehouse WSAs. Eleven additional roadless areas, documented and proposed by citizens for further wilderness protection, cover yet another 81,000 acres of public land in the area as well.

40. Steens Mountain features world-class, non-motorized recreational opportunities that draw recreationists nationwide into economically depressed Harney County. Sightseers can marvel at the spectacular views offered along the Steens Mountain Loop Road and associated overlooks, such as at Kiger Gorge and Wildhorse Lake. Many hiking and equestrian trails offer

unmatched opportunities to engage in quiet, non-motorized recreation with little investment in infrastructure or maintenance. Looking up at the wild and untouched mile high and 50-mile-long east face of Steens Mountain from places like Mann Lake, where the eagles and raptors soar unhindered, is an amazing experience. The night skies of Steens Mountain are among the darkest in the nation, with no man-made lights to disrupt the brilliance of a starlit night.

41. The Malheur National Wildlife Refuge lies on the western base of Steens Mountain. The refuge is famous for its spectacular concentrations of wildlife, and is one of the premiere sites for birds and birding in the U.S. More than 130 species of birds nest on the refuge and others using the Pacific Flyway use the refuge as a stop on their migration.

THE STEENS ACT

42. Congress recognized and sought to protect these unique ecological, recreational and other values of the Steens Mountain when it adopted the Steens Act more than a decade ago. *See* 16 U.S.C. §§ 460nnnn *et seq.*

43. The Steens Act adopted a suite of special management designations to protect the ecological integrity and outstanding natural resources of the Steens Mountain area, including by: (a) establishing the 170,000-acre Steens Mountain Wilderness Area; (b) creating the half-million acre Steens Mountain Cooperative Protection and Management Area (“CMPA”); (c) withdrawing 1.1 million acres of public land from mining and geothermal development; (d) prohibiting off-road motorized travel; (e) adding 29 miles of streams to the Wild and Scenic River system; (f) creating the nation’s first redband trout reserve; and (g) establishing almost 100,000 acres of public lands free of livestock grazing. *Id.*

44. Of particular importance here is the CMPA, which the Steens Act designated for the stated purpose “to conserve, protect, and manage the long-term ecological integrity of Steens

Mountain for future and present generations.” 16 U.S.C. § 460nnn-12(a). The Steens Act defines “ecological integrity” as “a landscape where ecological processes are functioning to maintain the structure, composition, activity, and resilience of the landscape over time, including (A) a complex of plant communities, habitats and conditions representative of variable and sustainable successional conditions; and (B) the maintenance of biological diversity, soil fertility, and genetic interchange.” *Id.* § 460nnn(5).

45. To serve the Congressionally-determined purpose of the CMPA, the Steens Act further mandates that the Secretary of Interior

shall manage all Federal lands included in the [CMPA] pursuant to the Federal Land Policy and Management Act . . . and other applicable provisions of law, including this Act, in a manner that – (1) ensures the conservation, protection, and improved management of the ecological, social, and economic environment of the Cooperative Management and Protection Area, including geological, biological, wildlife, riparian, and scenic resources, North American Indian tribal and cultural and archeological resource sites, and additional cultural and historic sites. . . .

Id. § 460nnn-21(a)(1) (emphasis added).

46. The Steens Act further establishes, as a matter of congressional policy, that “[d]evelopment on public and private lands within the boundaries of the Cooperative Management and Protection Area which is different from the current character and uses of the lands is inconsistent with the purposes of this subchapter.” *Id.* § 460nnn-42(a) (emphasis added).

47. The Steens Act thus imposes strong mandates upon the Secretary of Interior to ensure that the ecological values of the CMPA are protected from industrial-scale development like that authorized by the Secretary in the challenged decision. Secretary Salazar never even acknowledged these duties, and certainly did not adhere to them, in approving the December 2011 ROD which allows the industrialization of Steens Mountain through the construction and operation of the Echanis wind project and associated North Steens transmission line.

THE IMPERILED GREATER SAGE-GROUSE

48. Steens Mountain is important habitat for greater sage-grouse. Once numbering more than a million birds across 16 western states and 3 Canadian provinces, sage-grouse numbers have declined severely over the last century. Sage-grouse are sagebrush obligates, meaning that they depend on sagebrush all year to provide roosting, cover and food.

49. Oregon sage-grouse populations and sagebrush habitats comprise nearly 20% of the range-wide distribution of the species. Management actions in Oregon have implications on a range-wide scale for the species. Sage-grouse population fluctuations and declines in Oregon during the past century are similar to those documented throughout the species' range. Because Oregon contains some of the largest expanses of relatively intact sagebrush habitat in North America, conservation and protection of sage-grouse in Oregon is important to the species' survival and recovery range-wide.

50. There are 15 known sage-grouse leks (breeding sites) or lek complexes within the CMPA on Steens Mountain. These generally are located in areas of low sagebrush. There likely are other historic leks yet to be discovered on Steens Mountain. The entire CMPA is yearlong sage-grouse habitat except for steep slopes in the gorges and along the east face of Steens Mountain. Nesting habitat extends from lower elevations up to about 6,500 feet on the west side of the mountain. The rearing of chicks, known as brood rearing, occurs from May through October all along the elevational gradient with most sage-grouse found at higher elevations of sagebrush, above 6,500 feet, until late fall to early winter as snow moves them into lower country.

51. Sage-grouse inhabit large, interconnected expanses of sagebrush habitat, and thus are characterized as a landscape-scale species. Historically, the distribution of sage-grouse was

closely tied to the distribution of the sagebrush biome.

52. The destruction, fragmentation, and degradation of sagebrush habitats over past decades – including through the effects of energy development – have caused substantial declines in sage-grouse populations and range reduction. The current population of sage-grouse is only a fraction of historic levels, and represents less than 10% of historic population levels, *i.e.*, sage-grouse populations have experienced a 90% or more decline from historic levels.

53. In March 2010, U.S. Fish and Wildlife Service (“Service”) determined that the greater sage-grouse is eligible for listing as an endangered or threatened species under the Endangered Species Act (“ESA”). 75 Fed. Reg. 13,910 (Mar. 23, 2010). Because the Service determined that further action on a proposed listing rule was precluded by other pending listing proposals, sage-grouse is now designated as a “candidate” species for ESA listing. 75 Fed. Reg. at 13,909.

54. The Service cited threats of habitat fragmentation and loss, as well as the inadequacy of existing regulatory mechanisms – particularly on BLM lands, which account for about half of remaining sage-grouse habitat – as reasons supporting its determination that sage-grouse “warrant” listing under the ESA. 75 Fed. Reg. at 13,962, 13,979–82. The Service provided extensive analysis of the loss of sage-grouse populations and habitats, and threats facing them – particularly from energy development and other land management actions – to conclude that sage-grouse face a serious threat of extinction within the foreseeable future, and hence qualify for protection under the ESA. *Id.*

55. As discussed by the Service, extensive science shows that energy development, including renewable energy (such as industrial wind projects), threatens fragmentation and degradation of sage-grouse habitat and adverse impacts to sage-grouse populations in various

ways. *Id.* at 13,951. Sage-grouse will avoid or abandon habitat around tall structures, such as wind turbines and transmission lines and towers, presumably to minimize risk of predation from predators (such as raptors) potentially perching on them. *Id.* at 13,927–929. Thus, structures such as wind turbines and powerlines effectively result in habitat loss for sage-grouse far beyond the actual habitat destruction associated with construction of these facilities. *Id.* Roads are harmful by facilitating spread of invasive weeds (which thrive in disturbed areas, and outcompete native species); allowing predators to move into previously unoccupied areas; and increasing human access, traffic, and noise, which the species avoid. *Id.* at 13,929–30. For these reasons, wind projects on or adjacent to sage-grouse habitat reduce and impair such habitat far beyond the collective footprint of the facilities and structures.

56. In July 2011, Secretary Salazar announced that the Department of Interior was embarking on a new sage-grouse initiative. Citing the Service’s March 2010 “warranted, but precluded” finding, Secretary Salazar indicated that the Department of Interior seeks to avoid a sage-grouse listing under the ESA in 2015 (when the Service is scheduled to next determine whether to list the species under the ESA), by adopting adequate regulatory mechanisms to conserve sage-grouse populations and habitats on public lands, particularly those managed by BLM.

57. Under this initiative, the Department of Interior convened a National Technical Team of sage-grouse and other experts to review the best available science and make recommendations for sage-grouse conservation measures necessary to ensure that sage-grouse do not require listing. On December 11, 2011, the Department of Interior’s Sage-grouse National Technical Team issued a “Report on National Greater Sage-grouse Conservation Measures.”

58. On December 9, 2011, BLM published a notice in the Federal Register

announcing a new NEPA processes to evaluate and amend all BLM land use plans across the range of sage-grouse, as necessary, to implement regulatory mechanisms to conserve sage-grouse habitat and populations on public lands. *See* 76 Fed. Reg. 77008 (Dec. 9, 2011).

59. On December 27, 2011, BLM Director Robert Abbey issued Instruction Memorandum No. 2012-044, which directs all BLM field offices to consider the sage-grouse conservation measures identified in the National Technical Team’s report through the new sage-grouse land use amendment process. These include strong recommendations to “Make priority sage-grouse habitat areas exclusion areas for new [right-of-way] permits” and to “Make general sage-grouse habitat areas ‘avoidance areas’ for new ROWs.”

60. Also on December 27, 2011, BLM Director Abbey issued Instruction Memorandum No. 2012-043, entitled “Greater Sage-grouse Interim Management Policies and Procedures.” This Instruction Memorandum directs BLM field offices to undertake conservation of sage-grouse habitats and populations in the interim period until the new sage-grouse land use plan amendment process is completed, providing “conservation policies and procedures . . . to be applied to ongoing and proposed authorizations and activities that affect the Greater Sage-Grouse and its habitat.” The purpose is to protect unfragmented habitats, minimize habitat loss and fragmentation, and maintain, enhance and restore conditions for the sage-grouse life history needs. The IM includes specific review and conservation guidelines for pending right-of-ways, including extensive requirements for ROWs that have more than “minor adverse impacts.”

61. On December 28, 2011 – literally the day after BLM issued its two national Instruction Memoranda on sage-grouse conservation – Secretary Salazar signed the ROD approving the North Steens transmission line and Echanis wind project, without even acknowledging his own July 2011 sage-grouse initiative, the Sage-grouse National Technical

Team report and recommendations, BLM's new sage-grouse land use plan amendment process, or the two BLM Instruction Memoranda on sage-grouse conservation.

WIND FACILITY IMPACTS ON BIRDS AND BATS

62. Wind energy turbines kill birds through collisions with turbine blades. Birds are also killed or injured by collisions with towers and transmission lines. This is a particular concern on Steens Mountain because of its location within an important avian migration corridor, its proliferation of raptors and status as an IBA, and the proximity of the world-renowned Malheur National Wildlife Refuge.

63. Transmission lines can decrease the available habitat base and/or effectiveness of habitat. Transmission lines and fences provide perches for raptors and increase the risk of collision mortalities. Avian mortality through collisions with the rotor blades on wind turbines is a chief impact wind facilities have on the environment. Large-scale wind projects have been documented to kill up to 900 birds per year, and up to 350 raptors per year. For example, a two-year survey of the Altamont Pass wind power site in California, which is being aggressively managed to reduce raptor kills, reported over 1,800 bird kills (705 raptors killed, along with 1,095 non-raptors).

64. Additionally, bats are uniquely vulnerable to the mortality from wind turbines. Large die-offs of bats have been documented at wind energy facilities. Bats are killed both by being struck by moving blades, and by a phenomenon known as "barotrauma." The dramatic change in air pressure that accompanies spinning turbine blades causes the blood vessels in bats' lungs to explode. The factors affecting mortality risks are not fully understood, and are likely the result of complex interactions among many factors.

65. Exacerbating the problem, research indicates that bats are *attracted* to wind

turbines. Bats appear to be attracted to insect concentrations near the turbines, or visual or sound cues from the turbines. They also may see the turbines as possible roosting sites. This attraction means wind facilities change the flight patterns of bats.

66. A large number of industrial wind facilities have been constructed in eastern Oregon and surrounding areas of the Columbia Gorge and Pacific Northwest in recent years; and even more industrial wind projects are pending or proposed in the area.

67. In 2010 alone, Oregon added more wind turbines than all but three other states, according to the American Wind Energy Association, installing 691 megawatts of wind power. Moreover, in addition to the 2,513 MW of installed generating capacity, the American Wind Energy Association reports that Oregon has an additional 9,361 MW of wind projects *in queue* and 640 MW under construction.

68. Studies at several of the wind power facilities in the region have confirmed avian and bat mortalities from the turbines and associated facilities; and the FEIS even cited the results from these wind facilities in the region in forecasting mortalities caused by the Echanis wind project. Yet the FEIS failed to examine the full scope of the likely adverse impacts of the Echanis wind project and North Steens transmission line, including the cumulative impacts of mortality to birds and bats that occupy or migrate through the region caused by the Echanis project and North Steens transmission line along with other existing and proposed industrial wind facilities and associated infrastructure.

APPROVAL OF STEENS WIND DEVELOPMENT

69. Beginning in or around 2007, a private wind developer, Columbia Energy Partners (“CEP”), began pursuing development of the Greater Echanis Project, a proposal consisting of four wind energy facilities on private land on Steens Mountain. The four proposed

components of the Greater Echanis Project are the Echanis Project, Riddle Mountain Wind Project, East Ridge Wind Project, and West Ridge Wind Project. The East and West Ridge Projects were proposed for private inholdings within the boundaries of the Steens CMPA; while Echanis and Riddle Mountain are proposed outside the boundaries.

70. The Echanis wind project would consist of 40 to 69 wind turbines on a private inholding, and would generate up to 104 megawatts of power. The wind turbines would be between 213–263 feet tall, and up to 415 feet tall when a rotor blade is vertical. The project also includes widening and upgrading 18.95 miles of access road, including within the CMPA; constructing over 17 miles of new service roads; and constructing an on-site substation and operations and maintenance building.

71. Power from the Echanis wind project will be exported to southern California through an arrangement between the applicant CEP, the Harney Electrical Cooperative (which will take over the project once it is constructed), and a southern California utility.

72. Because the private inholding for the Echanis wind project is largely surrounded by public land, a powerline crossing BLM land is a prerequisite for the construction and operation of the wind facility, as well as the other components of the Greater Echanis Project sought by CEP. Accordingly, CEP (through a wholly-owned subsidiary, Echanis LLC) applied to BLM for grant of rights-of-way over federal lands on Steens Mountain for construction and operation of the North Steens transmission line and associated facilities. The North Steens transmission line would cut the CMPA into two parts, bisecting an area that Congress sought to protect from this type of development. Almost six miles of transmission line under the preferred alternative would be located on private lands within the Steens Mountain CMPA.

73. Two other components of the Greater Echanis Project, the East and West Ridge

projects, were proposed on private inholdings on Steens Mountain just east of the Echanis wind project. *See* FEIS at 3.19-4 (map). They, too, would each consist of 40 to 69 wind turbines arrayed in several different strings. These two projects would also require the use of the North Steens transmission line to transmit their power. Although the FEIS asserted that applications for permits to build the East and West Ridge projects were withdrawn by the applicant in January 2009, that fact was not publicly announced at the time and the applicant continued to insist publicly that it intended to pursue these projects until late 2011. The FEIS acknowledged that the East and West Ridge projects remain foreseeable *potential* new wind developments on Steens Mountain by including them in its discussion of cumulative impacts. Even though the current developer has stated that it will not develop these areas in the CMPA, there is nothing to prevent this developer or any other developer from doing so. In approving the ROD with sufficient capacity to carry the power that might be generated from the East and West Ridge projects, Secretary Salazar has thus given the initial federal approval necessary to allow these Greater Echanis Project components to proceed in the future.

74. The Riddle Mountain project is proposed on state land about 15 miles northeast of the Echanis wind project. *See* FEIS at 3.19-4 (map). It would also consist of 40 to 69 wind turbines arrayed in multiple strings on two separate project sites, and likely miles of new access roads. It also would require connection to the North Steens transmission line to transmit power generated at the Riddle Mountain site.

75. Additionally, there are at least two other sites under consideration for industrial wind development near Steens Mountain: the Jackass Butte Wind Energy Testing and Monitoring Site north of Frenchglen; and a site south of Steens Mountain in the Pueblo Mountains.

76. In June 2010, BLM issued a Draft Environmental Impact Statement (“DEIS”) on the North Steens Transmission Line Project. This DEIS was drafted by CEP consultants, with little apparent involvement by BLM or other federal agency scientists. The bias of the consultants preparing the EIS in favor of allowing the proposed Greater Echanis Project to be developed is apparent throughout the document, including a narrow and applicant-focused statement of purpose and need; inadequate exploration of potential alternatives, including terms and conditions necessary to preserve wilderness, scenic, wildlife, and other values of the Steens CMPA and Steens Wilderness; refusal to discuss in detail the history, purposes, and language of the Steens Act, and the adverse impacts of wind development upon those values; failure to acknowledge the science demonstrating the widespread adverse impacts of such industrial wind energy development upon native vegetation, wildlife habitats, and sensitive species, including raptors and sage-grouse; and inadequate discussion of cumulative impacts.

77. In September 2010, Plaintiffs submitted extensive written comments highlighting the many scientific and legal deficiencies of the DEIS; and have further submitted additional information and comments since then. In addition to comments from Plaintiffs, BLM received numerous comments from agencies, other organizations, and concerned citizens advising that analysis of environmental impacts in the DEIS was inadequate in light of the multitude of sensitive resources highlighted by Congress when it passed the Steens Act, in addition to the science on adverse impacts of industrial wind energy development on wildlife and associated habitat.

78. In October 2011, BLM issued a FEIS, which again was prepared by consultants to the applicant and made only slight modifications to the DEIS. The FEIS analyzed a no-action alternative (Alternative A) and two action alternatives. Alternative B, the “West Route”

alternative, analyzed the Proposed Route submitted by the applicant, which routes the transmission line across the Malheur Wildlife Refuge; and included minor route variations as part of this alternative. Alternative C, the “North Route” alternative, routes the line north to the town of Princeton. *See* FEIS at 2-15 (map). BLM identified Alternative C as its preferred alternative. Under this alternative, the transmission line would be almost 46 miles long, with over 12 miles on public land managed by BLM.

79. Both action alternatives would construct a 230-kV transmission line. This type of large-capacity line is placed on 70- to 80-foot steel poles, with the ability to carry lines on each side of the poles. According to the FEIS, the line would be constructed in phases. In Phase I, a single circuit designed and built to a 230-kV standard would be installed on one side of each pole, but initially operated at 115-kV – reflecting the fact that only a 115-kV line would be required for energy from the Echanis wind project. In Phase II, a second circuit would be installed on the other side of each pole and operated at 230-kV. During phase III, the voltage of the first line would be increased to 230-kV. This type of phased construction is planned because “[t]he second circuit would be added in the future, if needed, to serve other wind energy projects developed in the area,” *i.e.*, the other components of the Greater Echanis Project.

80. Both action alternatives briefly mention the option of constructing a lower-capacity, 115-kV transmission line. However, the option merely consists of putting one line on the same high-capacity towers as the 230-kV line—making it easy to add additional power on the line later. BLM did not consider any alternative to build a lower-capacity line with a smaller footprint.

81. The FEIS acknowledged that, under NEPA, it must analyze the indirect environmental effects of the Echanis wind project at the same level of detail as the direct and

indirect environmental effects of the proposed transmission line. This is because the transmission line could not be built without crossing federal lands, and a ROW grant would be a Federal action that would enable the Echanis wind project to move forward.

82. The FEIS acknowledged that the project areas and surrounding areas contain sage-grouse habitat, and that infrastructure such as roads, powerlines, and renewable energy development degrade and fragment sage-grouse habitat. It also recognized that sage-grouse will behaviorally avoid powerlines.

83. However, when addressing the impacts of the Echanis wind project and associated transmission line, the FEIS did not analyze or disclose the impacts of the project on the sage-grouse from a landscape or population perspective. The FEIS did not follow the best available science in analyzing the full scope of impacts from the wind facility and transmission line upon sage-grouse habitats. The FEIS did not map sage-grouse seasonal habitats that may be impacted by the Echanis wind project and transmission line.

84. The FEIS included a section on cumulative impacts, which discloses the three other components of the Greater Echanis Project and the Jackass Butte proposal, but failed to disclose the impacts that further development of the massive 230-kV line will encourage in the region or the Pueblo Mountains wind site, and failed to address the cumulative impacts of these and other regional wind developments upon wide-ranging species such as eagles, raptors and bats. The FEIS also failed to discuss the cumulative impacts of existing actions, including livestock grazing, along with the transmission line and Echanis wind facility on wildlife including bighorn sheep and sage-grouse.

85. The cumulative impacts section further failed to analyze the true impacts of the Greater Echanis Project and other wind project proposals on native wildlife, failing for almost

every species to analyze how the cumulative mortalities and loss of habitat would affect the species' abundance and persistence in the area.

86. Big game impacts and migratory corridors are not adequately addressed in the wildlife or cumulative impacts sections. The FEIS concluded incorrectly that migratory populations of bighorn sheep, elk, mule deer, and pronghorn are not impacted by this project, despite citing studies that show avoidance behaviors exhibited by these species in the presence of energy and associated development. The ROD includes one dismissive sentence on big game, saying the project “will result in the loss of less than one percent of habitat,” which only takes into account the direct footprint of the turbine bases and roads, and does not address impacts to populations and migration. According to 2012 Oregon Department of Fish and Wildlife data, the Echanis wind project's turbines would cut a narrow band of bighorn sheep habitat in half, and the associated transmission lines and other turbines associated with the Greater Echanis Project would cut directly across elk and deer winter range.

87. For bats, the cumulative impacts analysis consisted solely of a chart estimating a range of how many bats would be killed from the CEP projects. It failed to discuss at all what impacts these number of deaths what have on bat populations in the region, much less the impacts upon any separate bat species.

88. For raptors and golden eagles, the cumulative impacts analysis consisted of the same simple chart as for bats, as well as one additional paragraph. The simplistic paragraph acknowledged, in an understatement, that “[i]f suitable habitat for special status raptor species . . . are present in the project areas, these species could experience disturbance or mortality as a result of construction and operation of the projects.” However, the FEIS failed to discuss what impacts these number of deaths what have on raptor populations in the region, much less the

impacts upon any separate bat species. Furthermore, the FEIS neglected to include additional information about golden eagles and a peregrine falcon that was collected by Raven Research, a BLM contractor. This data, which was submitted in ONDA's comments to the Draft EIS, shows nest sites and other data critical to determining impacts, making an educated decision for this project, and complying with the Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act. Also, important avian data for the other components of the Greater Echanis Project are not included.

89. The EIS fails to address serious risks to peregrine falcons (*Falco peregrinus anatum*) in the vicinity of the Echanis Wind Project. Peregrines were delisted from the federal Endangered Species Act in 1999 and from the Oregon Endangered Species Act in 2007. Southeastern Oregon is the one area of the state that peregrine nesting had not been documented at the time of state delisting. 2007 data revealed a potential active falcon nest in the area. However, the EIS fails to adequately consider the significance of this sighting in an area of Oregon where no nests had previously been documented since recovery.

90. For sage-grouse, there are ten leks within three miles of the other components of the Greater Echanis Project, yet the lek sites were not mapped in the FEIS. The cumulative impacts analysis acknowledged that the projects would lead to "displacement" of the birds, but failed to recognize that displacement often leads to mortality, since the species has great site fidelity. The FEIS calculated that the direct footprint of the projects would effectively convert 231 acres of sagebrush to developed land uses. However, this figure is almost meaningless for a species that avoids tall structures. The FEIS failed to calculate the much larger "avoidance area" that the turbines and power lines would cause, or how this large habitat loss would affect Steens Mountain, eastern Oregon, or regional sage-grouse populations. Nor did the FEIS discuss the

combined negative impacts from activities such as livestock grazing and vegetation treatments on sage-grouse, even though it admitted that vegetation treatments will reduce sage-grouse habitat in the short-term.

91. Water and fish resources of the Donner und Blitzen watershed will be impacted by the Echanis project and transmission line; yet the cumulative impacts section only summarized the tributaries where impacts may occur and briefly described them as increased run-off, erosion and sediment delivery without estimating the impacts on the fish, amphibians, and aquatic ecosystem.

92. On December 28, 2011, Secretary Salazar signed the ROD approving the grant by BLM of rights-of-way over federal lands on Steens Mountain for the North Steens transmission line and related access roads and facilities. The ROD acknowledged that the Echanis wind project and associated transmission line will cause adverse impacts to resources of the Steens Mountain Wilderness Area and the CMPA, including impacts to visual, recreational, and wildlife resources. Nevertheless, Secretary Salazar stated in his decision that he lacks jurisdiction over impacts of the Echanis wind project because it is located on private lands within the CMPA. This is a faulty legal determination because it is contrary to the language and intent of the Steens Act, which Secretary Salazar did not address in the ROD.

93. The ROD further approved the grant of rights-of-way over federal lands on Steens Mountain for the transmission line based on the assertion that the applicant will enter into an Avian and Bat Protection Plan, an Eagle Conservation Plan, and a Habitat Mitigation Plan in the future to mitigate the impacts of the transmission line and wind project upon sage-grouse habitat, by purportedly restoring other degraded habitat for use by sage-grouse. Because the plans were not in place at the time the Secretary approved the ROD, and because there is a lack of scientific

basis for asserting that degraded habitat can be restored for sage-grouse use at the present time, the ROD again is arbitrary, capricious, an abuse of discretion, and contrary to law.

FIRST CLAIM FOR RELIEF:
VIOLATIONS OF STEENS ACT AND FLPMA

94. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

95. This First Claim for Relief challenges Defendants' violations of the Steens Act and FLPMA, 43 U.S.C. § 1701 *et seq.*, and implementing regulations, in approving the ROD for the North Steens transmission line. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

96. In approving the ROD, Secretary Salazar acted in a manner that is arbitrary, capricious, an abuse of discretion, and contrary to law in numerous respects, including but not limited to the following:

a. Failing to address and adhere to the mandates and purposes of the Steens Act in approving new industrial development that will adversely affect visual, ecological and other values of the Steens Mountain CMPA, Steens Mountain Wilderness Area, and other public land resources of the Steens Mountain;

b. Asserting that the Secretary of Interior lacks jurisdiction to regulate (or deny) industrial wind developments that may be located on private lands within or adjacent to the Steens CMPA yet rely on federal lands and federal grants of rights-of-way; and/or

c. Selectively focusing upon policies of the Interior Department to promote renewable energy on the public lands, while ignoring or downplaying other statutory, regulatory, and policy requirements for the protection of public lands and sensitive

wildlife resources under the Steens Act, FLPMA, and its implementing regulations and policies; and

d. Allowing industrial wind development to occur on Steens Mountain causing adverse impacts to visual, recreational, ecological, and other resources that are to be protected from such impacts under the Steens Act and/or FLPMA.

97. Based on their violations of the Steens Act, FLPMA and implementing regulations and policies, Defendants' approval of the challenged ROD is arbitrary, capricious, an abuse of discretion, and not in accordance with law, and will allow serious ecological degradation as well as harm to the public and Plaintiffs' interests, unless reversed by this Court. Accordingly, the ROD must be reversed and set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF:
NEPA VIOLATIONS

98. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

99. This Second Claim for Relief challenges Defendants' violations of the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, and NEPA's implementing regulations in approving the ROD based on the faulty, incomplete, and inadequate FEIS. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

100. Defendants violated NEPA and implementing regulations in multiple respects through issuance of the challenged ROD based on the FEIS, including but not limited to:

a. Failing to take the requisite "hard look" at all of the significant and potential direct, indirect, and cumulative impacts of the proposed transmission line and related wind developments on Steens Mountain, including impacts to sage-grouse,

raptors, bats, big game, aquatic, visual and other resources; and without adequate baseline data;

b. Adopting the challenged FEIS and ROD without discussing responsible opposing views in the FEIS itself;

c. Failing to consider an adequate range of alternative courses of action, including a smaller-capacity line that cannot be upgraded to a high-capacity 230-kV line; and adequate terms and conditions or effective mitigation to ensure against adverse impacts on visual, recreational, and ecological resources of the Steens Mountain area.

d. Failing to consider the impact of additional wind generation sites that could be connected to the North Steens Transmission Line based on the approved 230-kV total line capacity.

101. Based on their violations of NEPA and implementing regulations, Defendants' approval of the challenged FEIS and ROD is arbitrary, capricious, an abuse of discretion, and not in accordance with law, and will allow serious ecological degradation as well as harm to the public and Plaintiffs' interests, unless reversed by this Court. Accordingly, the FEIS and ROD must be reversed and set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully requests that the Court grant the following relief:

A. Order, adjudge, and declare that the FEIS and ROD violate the Steens Act, FLPMA, and/or NEPA, in violation of the APA, 5 U.S.C. § 706(2);

B. Reverse, set aside, vacate, and remand the FEIS and ROD;

C. Enter temporary, preliminary, or permanent injunctive relief as hereinafter prayed for by Plaintiffs, including by enjoining Defendants from allowing construction to commence on

the North Steens transmission line and/or Echanis wind project through ground-clearing, site preparation, or other such actions until such time as Defendants have fully complied with law;

D. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's 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/or

E. Grant such further relief as Plaintiffs may pray for hereafter or as the Court deems necessary or appropriate to redress the Defendants' legal violations and protect the public lands and resources of the Steens Mountain from further degradation.

Dated this 5th day of March, 2012.

Respectfully Submitted,

s/ Kristin F. Ruether
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Attorney for Plaintiffs