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

WESTERN WATERSHEDS PROJECT,)	
)	
Plaintiff,)	Case No. 08-cv-435
vs.)	
)	
DIRK KEMPTHORNE, Secretary,)	FIRST AMENDED COMPLAINT
DEPARTMENT OF THE INTERIOR, an)	
agency of the United States, and BUREAU)	
OF LAND MANAGEMENT,)	
)	
Defendants.)	

INTRODUCTION

1. Plaintiff Western Watersheds Project brings this First Amended Complaint to challenge the recent decisions of Defendants Dirk Kempthorne *et al.*, which authorize livestock grazing, sagebrush removal, energy development and other harmful actions across public lands within the habitat of the Great Basin core population of greater sage-grouse in violation of the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA) and its implementing regulations, and the Clean Water Act.

2. The Great Basin region, as defined by defendant Bureau of Land Management (BLM), covers a five state region of southern Idaho, northern Nevada, southern Oregon, eastern California, and western Utah. The sage-steppe ecosystem of the Great Basin was historically home to abundant populations of greater sage-grouse; and the Great Basin “core” population remains one of the most important populations across the entire sage-grouse range. Yet the Great Basin core sage-grouse population is suffering steep declines due largely to fragmentation and degradation of its habitat – habitat losses that are caused wildfires and weed invasions, as well as livestock grazing, infrastructure development and other human actions.

3. Defendants manage the public lands which comprise most of the habitat for the Great Basin core sage-grouse population, and have even launched a “Great Basin Restoration Initiative” ostensibly aimed at protecting and restoring the sage-steppe ecosystem of the region. Yet they refuse to acknowledge that their grazing, vegetation treatment, energy development and other management actions are, in fact, contributing to the loss and fragmentation of greater sage-grouse populations and habitat across the Great Basin.

4. As identified below, Defendants have recently authorized a wide array of livestock grazing permits, vegetation treatments, energy development and other actions across the public lands of the Great Basin core sage-grouse population in Idaho and other states, which will individually and cumulatively harm sage-grouse habitat and populations in ways that Defendants have not assessed, as required by NEPA. Moreover, Defendants’ approval of these decisions also violates procedural and substantive requirements of FLPMA and its implementing regulations, as well as the Clean Water Act. Western Watersheds thus seeks declaratory and/or injunctive relief to require Defendants to comply with these laws, and ensure that their

management of the public lands does not contribute to further decline of the Great Basin core sage-grouse population.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question) because this action arises under the laws of the United States, including FLPMA, 43 U.S.C. §§ 1301 et seq.; NEPA, 42 U.S.C. § 4331 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Administrative Procedure Act, 5 U.S.C. § 701 et seq. (APA); 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. (EAJA).

6. An actual, justiciable controversy now exists between Plaintiff and Defendants. The requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. § 701-06.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Plaintiff Western Watersheds Project resides in this judicial district; Defendants have offices and manage public lands in question within this district; and a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district.

8. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 701.

PARTY INFORMATION

9. Plaintiff WESTERN WATERSHEDS PROJECT (WWP) is a regional, membership, not-for-profit conservation organization, dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP has its headquarters in Custer County, Idaho; and is supported by more than 1,400 members located throughout Idaho and the United States.

10. WWP, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West, including the Great Basin ecosystem where the affected public lands are located. WWP is also active in monitoring ecological conditions in the Great Basin and sagebrush steppe ecosystem; in reviewing and commenting upon agency decisions; and in publicizing the adverse ecological effects of grazing in this region.

11. WWP, as an organization and on behalf of its staff, members and supporters, is also one of the leading conservation groups fighting to protect the greater sage-grouse as well as other sagebrush-obligate species, such as the pygmy rabbit. Through the efforts of its staff, members, and supporters, Western Watersheds advocates science-based management of public lands in Idaho and other western states, with a focus on the sagebrush-steppe ecosystem, which forms the sole habitat of the greater sage-grouse and pygmy rabbit.

12. The decline of the sage-grouse across the Great Basin is of great concern to WWP's staff, members and supporters; and the preservation and recovery of sage-grouse and its sagebrush-steppe habitat are highly important to Western Watersheds and its staff, members and supporters.

13. WWP members, supporters, and staff work, live and/or recreate throughout the sagebrush-steppe ecosystem of the Great Basin, which are currently occupied by sage-grouse. Plaintiff's members, supporters, and staff derive aesthetic, recreational, scientific, inspirational, educational, and other benefits from this ecosystem on a regular and continuing basis and intend to do so frequently in the immediate future, including within the habitat for the Great Basin core population of greater sage-grouse.

14. Many of WWP's activities – including research and advocacy – have focused on preserving the remaining habitats of greater sage-grouse in the western states, including the areas occupied by the Great Basin core population of greater sage-grouse, and in restoring those habitats to protect and recover greater sage-grouse populations.

15. WWP has previously brought many cases before this Court seeking to protect Greater sage-grouse and its sagebrush-steppe habitat, including but not limited to the following: *WWP v. FWS*, 06-cv-277-BLW (sage-grouse listing litigation); *WWP v. Kempthorne*, 08-cv-516-BLW (challenges to BLM RMPs across sage-grouse range); *WWP v. Dyer*, 04-cv-181-BLW (Jarbidge sage-grouse litigation); *IWF, WWP & NWF v. Tower*, 04-cv-372-BLW (challenge to Curlew National Grasslands management plan for failure to protect sage-grouse); *CHD & WWP v. Collinge*, 02-cv-172-BLW (challenging “sage grouse predators” study which violated NEPA).

16. Defendants' violations of NEPA and other laws in adopting the Challenged Decisions, as identified below, adversely and irreparably injure the aesthetic, commercial, conservational, scientific, recreational, educational, wildlife preservation and other interests of Plaintiff and its staff and members. These are actual, concrete injuries caused by Defendants' violations of law, for which judicial relief is required to remedy the harm caused to Plaintiff.

17. Defendant DIRK KEMPTHORNE, at the time of the filing of the original complaint herein, was Secretary of the U.S. Department of Interior, who has ultimate statutory authority and responsibility to comply with federal law in the management of the federal public lands at issue in this litigation. He is sued solely in his official capacity; and will apparently be replaced soon by recently-nominated Ken Salazar as Secretary of Interior.

18. Defendant U.S. DEPARTMENT OF INTERIOR (“Interior”) is an agency or instrumentality of the United States, charged by law with administering the public lands at issue in this litigation.

19. Defendant BUREAU OF LAND MANAGEMENT (“BLM”) is an agency or instrumentality of the United States, within the U.S. Department of Interior; and is the federal agency charged by law with administering the public lands at issue in this case.

FACTUAL ALLEGATIONS

I. The Great Basin.

20. The Great Basin spans about 900 miles at its longest point and is about 570 miles wide from east to west. The Great Basin lies between the Sierra Nevada Mountains on the west and the Wasatch branch of the Rocky Mountains on the east, and the Snake River to the north. Its southern boundary cuts across the lower tip of Nevada and the southwestern corner of Utah, where land takes on the characteristics of the Mojave and Sonora deserts.

21. The Great Basin reaches from 10,000 foot mountain ranges down to sandy plains and dry lakebeds on desert floors, and features a variety of vegetation. The three major plant communities in the Great Basin are sagebrush, salt desert shrub, and pinyon-juniper woodlands. Temperature and moisture dictate where each is found. Salt desert shrub usually grows in low, dry elevations, while sagebrush needs more moist surroundings with sandy and slightly alkaline soils. Pinyon-juniper woodlands skirt the flanks of mountains, while forests of pine, spruce, fir and aspen blanket the high peaks. The sagebrush community, consisting of a mix of shrubs, perennial grasses and forbs, is the most common vegetation community in the Great Basin.

22. The Great Basin is home to about hundreds of bird, 70 mammal, and 23 amphibian and reptile species, including imperiled wildlife species like the greater sage-grouse,

pygmy rabbit, as well as antelope, elk, mountain sheep, mule deer, wild horses, horned lizards, black-tailed jackrabbits, and many others. It is also home to many plants, some of which are threatened or endangered.

23. The vegetation and ecology of the Great Basin are undergoing a downward spiral. Three of the dominant factors leading to these changes within the Great Basin and sage-steppe biome are wildfire, invasion of non-native species, and livestock grazing, and leading experts have acknowledged that these three threats work synergistically.

24. According to the leading scientific publications, especially the *Greater Sage-Grouse Conservation Assessment* (Connelly *et al.*, 2004), released by the Western Association of Fish and Wildlife Agencies in June 2004, fire regimes have changed across the Great Basin resulting in significant changes in plant composition and structure. In this area, fires are occurring more frequently, and the size and intensity of these fires are increasing, too.

25. These fires eliminate or reduce shrubs, disturb soils and microbiotic crusts, and release nutrients that allow cheatgrass and other exotic annual weeds to replace the native shrub and herbaceous layers. The end result of these changes across the Great Basin is an absence of shrub cover, a shortened season for available green plant material, a scarcity of high quality perennial forbs, and a lengthened fire season.

26. The invasion of cheatgrass (*bromus tectorum*) is also one of the primary reasons for the alteration of the native vegetation communities and ecology in the Great Basin, as well as the increase in fire frequency and severity. Because cheatgrass germinates and dries-up early, it readily outcompetes native plant species for water and nutrients, which can lead to altered fire regimes, nutrient loss, altered microclimate, and increased erosion.

27. The 2004 Sage Grouse Conservation Assessment identified 80% of the lands in

the Great Basin as susceptible to displacement by cheatgrass. BLM has noted that cheatgrass is already the dominant vegetation community on about 25 million acres of the Great Basin (roughly one-third of the land area in the Great Basin), and BLM estimates that cheatgrass invades an additional 4,000 acres a day. BLM has even created a “Great Basin Restoration Initiative,” which is managed out of its Idaho State Office in Boise, as an ostensible effort to address and combat these weed and fire threats facing the Great Basin in the five state area of Idaho, Nevada, Utah, Oregon, and California.

28. Livestock grazing is also pervasive across the Great Basin. Domestic livestock are exotic or alien species to this landscape, and have exacted a terrible toll on the ecological health of the Great Basin. Bred for the cooler and moister conditions of northern Europe, domestic livestock are poorly adapted for the hot dry summers and long cold winters of the Great Basin. Livestock thus tend to congregate around water sources and shady areas during hot periods, causing severe damage to streams, springs, seeps, and wet meadows – habitats that are critical for survival and reproduction of many native wildlife species, including sage-grouse.

29. Domestic livestock also feed preferentially on many native grasses and forbs, thus reducing or eliminating these native plants that are again vital habitats and food sources for wildlife species, including sage-grouse. Decades of livestock grazing have caused depletion of native grasses and forbs on a widespread basis across the sagebrush biome, thus harming sage-grouse by eliminating or reducing food sources, nesting habitats, cover from predators, and other effects.

30. Because they are so widely scattered across the western landscape, domestic livestock have also caused or contributed to large-scale destruction and loss of soil crusts, and the disturbance, compaction, and erosion of soils. Livestock also help promote invasion of alien

or exotic plant species, notably cheatgrass and noxious weeds, through these disturbance effects and by acting as “vectors” that carry and distribute weed seeds into native habitats. Both these effects have again contributed to ecological degradation across the public lands in question here.

31. These impacts are particularly pronounced around water troughs, spring developments, supplemental feeding areas, pasture or allotment fences, and other areas where livestock congregate. Yet BLM and other land managers have aggressively promoted the construction, maintenance, and continued use of these range infrastructures, and continue to do so through the challenged decisions here, without acknowledging the ecological costs they cause in terms of destroying or fragmenting native habitats and promoting weed invasions.

II. Greater Sage-Grouse Populations and Habitat.

32. The greater sage-grouse (*Centrocercus urophasianus*) – first described by Meriwether Lewis near the confluence of the Marias and Missouri rivers in Montana in 1805 – is a unique species of grouse found only in sagebrush-dominated habitats of western North America. This species is the largest grouse in North America, and the second largest grouse in the world.

33. Greater sage-grouse were once widely distributed across the western U.S and Canada, numbering in the millions. In the late 1800s, huge flocks of sage-grouse were reported to “blacken the sky.”

34. Sage-grouse typically 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, and greater sage-grouse once occupied parts of 13 states within the western United States and 3 Canadian provinces.

35. Sage-grouse are known to migrate between seasonal home ranges, with some

research indicating that sage-grouse can move over 100 miles between seasonal habitats.

36. The destruction, fragmentation, and degradation of sagebrush habitats over past decades – including through the effects of livestock grazing and grazing-related infrastructure, vegetation treatments, and energy and oil and gas development and associated infrastructure – have caused substantial declines in greater sage-grouse populations and range reduction of about 44% from their estimated historic range.

37. The current population of greater 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.

38. Sage-grouse have been extirpated in Nebraska, Arizona, New Mexico, and significant parts of Oregon, Washington, North and South Dakota, and central eastern California. Moreover, according to Dr. Clait Braun (one of the world’s leading sage-grouse experts), “all studied populations of sage-grouse have been in decline for at least 40-50 years,” and sage-grouse experts are unaware of any “sage-grouse range expansion anywhere, ever.”

39. Livestock grazing is known to be deleterious to sage-grouse populations and habitat in many direct, indirect, and cumulative ways. Livestock grazing causes long-term changes in plant communities and reduces habitat components, such as biological soil crusts, which contribute to the health of sagebrush habitat. Grazing also reduces the residual grass height and forbs needed for successful sage-grouse nesting and reproduction; while livestock also batter and break sagebrush plants that are essential for cover, winter feeding, and other sage-grouse needs. Livestock also cause destruction of riparian habitats, essential for sage-grouse survival and reproduction. Livestock promote invasion of cheatgrass and other exotic weed species, thus contributing to fire frequency and severity, as noted above, which further reduces

the extent and quality of sage-grouse habitats. In addition, pipelines, fences, and water developments constructed to accommodate livestock production further fragment habitat and become source areas for the spread of weeds; while fences also cause direct mortality of sage-grouse through collisions.

40. Habitat fragmentation resulting from oil and gas development, and associated infrastructure (e.g., powerlines, drill pads, compressor stations, roads, fences, etc.) is also a significant factor contributing to the ongoing degradation of sagebrush habitat and sage-grouse populations. Sage-grouse also suffer mortality or injury from collisions with fences and other infrastructure; and will abandon breeding and nesting areas after powerlines or fences are constructed, since they provide perches for predators.

41. Leading sage-grouse experts and other scientists documented these trends and impacts in some detail in the *Greater Sage-Grouse Conservation Assessment*. This 2004 Sage-Grouse Conservation Assessment was acknowledged by the U.S. Fish and Wildlife Service as representing the best available scientific information about the status and trends of sage-grouse populations and habitats at the time it was released.

42. Among other passages, the 2004 Sage-Grouse Conservation Assessment spent 10 pages confirming the ongoing deleterious effects of livestock grazing upon Greater sage-grouse and sagebrush habitats. *See id.*, pp. 7-26 to 7-35. The report described grazing as “the most widespread . . . land use across the sagebrush biome,” and noted that “most sagebrush habitats have been grazed in the past century.” *Id.*, p. 7-29. It found that historic overgrazing, coupled with drought early in the 20th century, seriously depleted native forbs and grasses, and “[l]oss of protective vegetative cover in some communities resulted in extensive soil disturbance and erosion,” while facilitating invasions by non-native species (including cheatgrass). *Id.*, pp. 7-26

to 7-28. Yet these effects have not been remedied, including because “plant communities still are not given rest from grazing,” “distribution of livestock has changed because water developments have increased the area that could be grazed,” and livestock fences and other infrastructure continue to affect sage-grouse and their habitats. *Id.*, pp. 7-29 to 7-34. And the report warned that these impacts will continue: “We cannot conclude that the effect of grazing has been reduced because even reduced numbers of livestock may still exert a larger influence on those habitats.” *Id.*, p. 7-33.

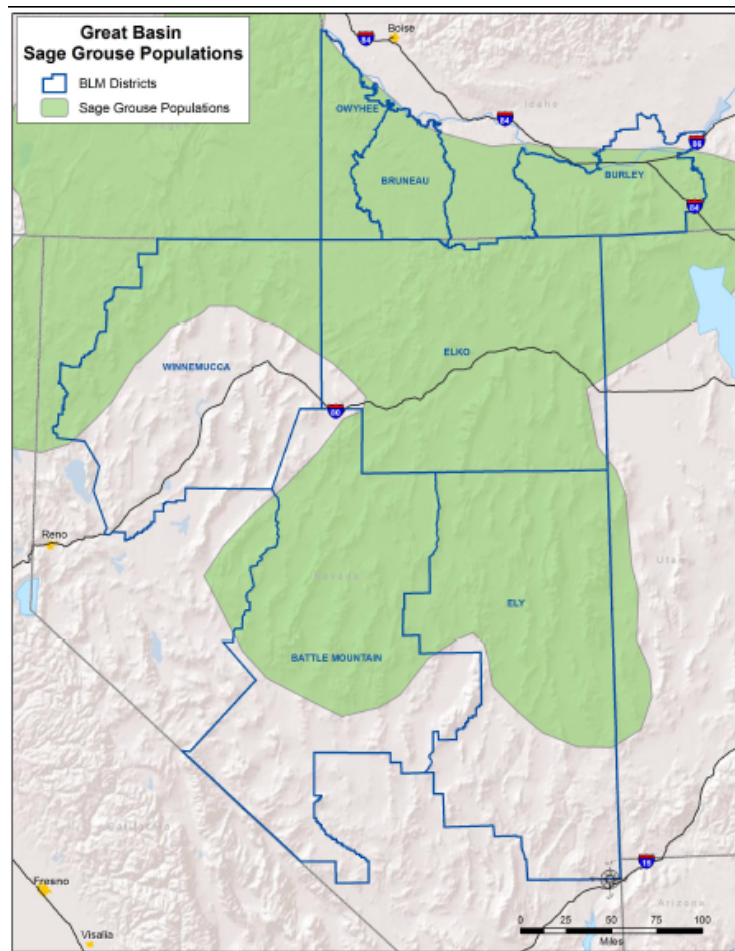
43. The 2004 Sage-Grouse Conservation Assessment also documented in detail the direct and indirect impacts of oil and gas development within Greater sage-grouse habitat. The assessment discussed the direct loss of habitat for oil and gas infrastructure (e.g., well pads, pipelines, roads, etc.), as well as indirect effects including creating perches and nesting platforms for raptors and corvids, which prey on sage-grouse, as well as soil surface disturbance promoting non-native weed invasion.

44. The 2004 Sage-Grouse Conservation Assessment is well known to Defendants, and confirms that livestock grazing and energy development and infrastructure not only caused historical loss and degradation of sagebrush and sage-grouse populations, but that those effects continue today. The long-term degradation of the sagebrush-steppe ecosystem caused by livestock grazing has rendered the public lands at issue here degraded and depleted; and those lands need to be “rested” by exclusion of livestock grazing in order to recover and return toward potential natural conditions. Yet Defendants have refused to give serious consideration to that management option in their adoption of the challenged actions, as detailed below.

III. Great Basin Core Sage-Grouse Population.

45. The 2004 Sage-Grouse Conservation Assessment identified the Great Basin

“core” population of greater sage-grouse as one of the five largest and most important remaining core sage-grouse populations across the entire range of the species. The majority of the habitat for the Great Basin Core population is located on federal public lands managed by the Bureau of Land Management, including the Bruneau, Owyhee and Burley Field Offices in Idaho; and the Elko, Ely, Battle Mountain and Winnemucca districts in Nevada, among others. Map 1 illustrates portions of the range of the Great Basin core population.



Map 1: Great Basin Core Population of Greater Sage Grouse

46. According to the 2004 Sage-Grouse Conservation Assessment, the Great Basin core population is itself comprised of seven subpopulations of sage-grouse, which are located in (1) Central Nevada; (2) East-Central Oregon; (3) Lake Area Oregon/Northeast

California/Northwest Nevada; (4) North-Central Nevada/Southeast Oregon/Southwest Idaho; (5) Northeast Nevada/South-Central Idaho/Northwest Utah; (6) South-Central Oregon/North-Central Nevada; and (7) Southeast Nevada/Southwest Utah.

47. Based on the movement patterns of greater sage-grouse, birds within the North-Central Nevada/Southeast Oregon/Southwest Idaho subpopulation of the Great Basin core population likely migrate within and between the public lands managed by BLM's Owyhee and Bruneau Field Offices in Idaho, and the Elko and Winnemucca districts in Nevada.

48. Similarly, the birds within the Northeast Nevada/South-Central Idaho/Northwest Utah subpopulation likely move within and between the public lands managed by BLM's Burley Field Office in Idaho south to the Elko district in Nevada; and the birds in the Central Nevada subpopulation likely move between the public lands managed by the Elko and Ely districts in Nevada.

49. Greater sage-grouse in the Great Basin core population have seen similar declines in population abundance as the larger population. For example, the 2004 Conservation Assessment concluded that every major metric in sage-grouse population abundance has decreased since 1965-69 in the Great Basin core population, including (1) percent active leks, (2) average males per lek, (3) median males per lek, (4) average males per active lek, and (4) median males per active lek. Moreover, the change in the population abundance of the Great Basin core population has decreased significantly between 1964 and 2004.

50. These same population and abundance trends apply to the seven subpopulations as well, as identified in detail in the Conservation Assessment. More recent information indicates that population declines have continued, if not accelerated, across the seven subpopulations and the Great Basin core population in the years since that Conservation

Assessment was prepared.

IV. BLM Special Status Species Policy.

51. BLM adopted its Special Status Species Policy to comply with its obligations to manage declining populations of imperiled wildlife and plant species. BLM adopted the policy pursuant to FLPMA's mandates, including BLM's obligations to conserve wildlife resources on the public lands over the long-term; and pursuant to the Endangered Species Act, Sikes Act, and other wildlife laws.

52. BLM incorporated the Special Status Species Policy into the BLM Manual, and the 2001 version of the Special Status Species Policy was in effect during the consideration and adoption of all the Challenged Decisions at issue here. *See* BLM Manual, Section 6840 (2001).

53. Under the Special Status Species Policy, BLM State Directors may designate "sensitive" species that are native species of concern for various reasons, including because they "could become endangered or extirpated from a state, or within a significant portion of its distribution in the foreseeable future"; are "under status review" by U.S. Fish and Wildlife Service; or are "undergoing significant current or predicted downwards trends in population or density. . . ." *See* BLM Manual 6840.06.E.

54. BLM designated greater sage-grouse as a "sensitive" species in all the states at issue in this case; and the U.S. Fish and Wildlife Service is currently preparing a status review to determine if the species should be listed under the Endangered Species Act.

55. Upon designation of sage-grouse as a BLM "sensitive" species, BLM is required to treat sage-grouse as if it were a "candidate" species for ESA listing. This requires, among other things, that BLM "shall ensure that actions authorized, funded or carried out by the BLM do not contribute to the need for the species to become listed." *See* BLM Manual 6841.06C.

56. In meeting this requirement, BLM must analyze the effects of its actions on a range-wide basis for sage-grouse. Doing so further requires BLM to analyze how its actions may or may not contribute to the need for sage-grouse to be listed under the ESA because of impacts on the remaining Core or isolated populations.

V. BLM National Sage-Grouse Habitat Conservation Strategy.

57. In November 2004, BLM adopted a “National Sage-Grouse Habitat Conservation Strategy,” which it submitted to U.S. Fish and Wildlife Service for consideration in the Service’s determination of whether to list greater sage-grouse as a threatened or endangered species under the Endangered Species Act.

58. BLM’s National Sage-Grouse Habitat Conservation Strategy represents an official policy of BLM to help conserve and protect sage-grouse habitats and populations, thereby meeting its obligations under the Special Status Species Policy discussed *supra*.

59. In addition to placing emphasis on BLM’s land use planning process as a means to conserve sagebrush habitat, BLM’s National Sage-Grouse Habitat Conservation Strategy also adopts specific, enforceable requirements to protect sagebrush habitat in permits for grazing, recreation, mining, and oil and gas activities.

60. Section 1.4.1 of the BLM National Sage-grouse Habitat Conservation Strategy is entitled “Guidance for the Management of Sagebrush Plant Communities for Sage-Grouse Conservation,” and hence is directly applicable to the Challenged Decisions discussed *infra*.

61. The Strategy includes a host of enforceable limitations and requirements on livestock grazing to protect sagebrush habitats, and to maintain, enhance or restore sagebrush habitat, including, *inter alia*:

- “Avoid constructing livestock management facilities (i.e., corrals, tanks, troughs, pipelines, fences, etc.) next to leks”;

- “Design and locate the placement of fences for livestock . . . so as not to disturb important sage-grouse habitat areas”;
- “Consider seasonal closures to protect priority sage-grouse habitat if other alternatives will not achieve desired objectives”;
- “Use grazing practices that promote the growth and persistence of native shrubs, grasses and forbs needed by sage-grouse for seasonal food and concealment. . . .Vegetation structure (height) should be managed so as to provide adequate cover for sage-grouse during the nesting period”;
- “Maintain seeps, springs, wet meadows, and riparian vegetation in a functional and diverse condition for young sage-grouse”;
- “Maintain sagebrush and understory diversity . . . adjacent to crucial season sage-grouse habitat unless removal is necessary to achieve sage-grouse habitat management objectives” and
- “Where other grazing management options are not achieving, or cannot achieve, the desired objectives, a short-term option may be livestock exclusion.”

62. The Strategy also contains limitations on oil and gas and geothermal development in sagebrush habitats, and requires that all development comply with the following enforceable requirements and conditions:

- “Avoid the impact of construction and operations by not placing mines, oil and gas and geothermal drilling sites and facilities, roads, and mineral material disposal sites in or next to sensitive habitats such as sage-grouse leks, nesting, early brood-rearing, breeding and wintering habitat”;
- “Whenever feasible and environmentally preferred, avoid surface occupancy by roads, . . . powerlines, fences, or other structures adjacent to occupied leks”;
- “Consider seasonal closures to protect priority sage-grouse habitat if other alternatives will not achieve desired objectives”; and
- “Maintain seeps, springs, wet meadows, and riparian vegetation in a functional and diverse condition for young sage-grouse. . . .”

VI. BLM Management Guidelines for Sage-grouse and Sagebrush Ecosystems in Nevada

63. In October 2000, the BLM Nevada State Office adopted Management Guidelines for Sage Grouse and Sagebrush Ecosystems in Nevada (“Nevada Sage Grouse Guidelines”), which are specific sage-grouse habitat management guidelines applicable on all BLM lands in Nevada, which BLM stated will be implemented through the decision-making process.

64. The Nevada Sage Grouse Guidelines largely mirror Guidelines for Management of Sage Grouse Populations and Habitats prepared by Dr. Braun and others, especially relating to the management requirements for livestock grazing. For example, the Nevada Sage Grouse Guidelines require that BLM manage grazing to ensure that leks are adequately protected, and late season brood-rearing habitats achieve optimal condition.

65. These guidelines also include stringent requirements on energy and mineral leasing activities in sage-grouse habitat. More specifically, the Nevada Sage Grouse Guidelines prohibit all oil and gas activities, as well as geothermal activities – including leasing, exploration, exploratory drilling, field development and production, field abandonment and remediation – in known sage-grouse habitat. These guidelines do allow for some energy and mineral activities in known sage-grouse habitat if a complete prohibition is not practicable, in which case the guidelines require the adoption of mitigation requirements, such as implementing time-of-year and/or time-of-day restrictions.

VII. The Challenged Decisions.

A. Bruneau Field Office, Idaho

66. The Bruneau Field Office (previously called the Bruneau Resource Area) lies within southwestern Idaho’s “ruggedly beautiful” Owyhee region, an area “[s]tartling in its ecological diversity, from arid sagebrush desert to lush juniper woodlands,” where the rivers

“have sculpted spectacular and wild canyonlands out of the Owyhee’s volcanic rock formations.” *Idaho Watersheds Project v. Hahn*, 307 F.3d 815, 821 (9th Cir. 2002).

67. The area is home to numerous BLM-designated sensitive species, including greater sage-grouse, pygmy rabbit, California bighorn sheep, redband trout, and Columbia spotted frog. Other wildlife in the area include elk, pronghorn antelope, mule deer, black-collared lizard, bald eagle, northern goshawk, mountain quail, prairie falcon, golden eagle, ferruginous hawk, great horned owl, red-tailed hawk, Swainson’s hawk, loggerhead shrike, Brewer’s sparrow, and scores of species of nongame birds and mammals, many of which fulfill an important ecological niche as prey species for avian and mammalian predators.

68. The Bruneau Field Office historically offered abundant suitable habitat for sage-grouse breeding, nesting, rearing, overwintering and other essential biological functions; and historically numbers of sage-grouse were abundant in the area year-round. It is still considered one of the last remaining strongholds for sage-grouse in Idaho, as well as the population in Idaho with the lowest risk of extirpation, due in part to connectivity with populations in Nevada and Oregon as part of the Great Basin core population. However, it is a stronghold at risk. According to BLM, Idaho Dept. of Fish and Game, and other sources, sage-grouse populations have been steadily declining for years and are at historic lows throughout most of their range including southwestern Idaho.

69. In 1983, BLM adopted the Bruneau Management Framework Plan (“MFP”) as the land use plan for the Bruneau Field Office as required under FLPMA, which was based on a 1981 Environmental Impact Statement called the “Bruneau-Kuna Grazing EIS.” The Bruneau MFP remains in effect today, and governs BLM’s management of the Bruneau Field Office; and BLM has never prepared any more up-to-date EIS assessing grazing impacts or other

management actions on the Bruneau Field Office since the MFP was adopted. The Bruneau MFP and its accompanying Bruneau-Kuna Grazing EIS were based on data and information from the late 1970s and early 1980s.

70. At the time BLM prepared the Bruneau-Kuna Grazing EIS, only one percent of the entire Bruneau area was in excellent condition, 14% was in good condition, and 19% was in fair condition. More than half of the area, 54%, was in poor condition, and conditions were improving on only 18% of the entire area.

71. The Bruneau MFP requires that BLM manage the public lands within the Bruneau Field Office to rectify these degraded conditions. The MFP includes a number of wildlife-specific objectives and management requirements, including (but not limited to) the following provisions:

a. “Manage sensitive species habitats in the [area] to maintain or increase existing and potential populations.”

b. “Manage upland game and waterfowl habitats in the [area] to increase populations of these highly desired species.”

c. “Manage springs, seeps and meadows and adjacent upland areas as key wildlife habitats for upland game.”

d. “Manage 520,000 acres of sage grouse range in the [area] to improve nesting, brood rearing and winter habitats,” and specifically “[t]o improve the quality of sage grouse nesting and brood rearing habitats, all poor and fair big sagebrush, meadow, and riparian ecological sites should be improved and managed for good ecological condition.”

e. “To enhance wildlife diversity and abundance, riparian and meadow habitats will be managed to attain and/or maintain a good ecological condition class . . . or reasonable equivalent.”

To achieve this, BLM shall “[e]mploy livestock management systems/ practices/ improvements including exclusion of grazing where necessary.”

f. “Livestock rest or deferment systems would be established on critical sage grouse brood rearing areas. If grazing systems do not improve habitat conditions, large meadow complexes may be fenced and excluded from grazing or have special grazing management applied (e.g. use only after seed ripe).”

g. Improve water quality for waters in poor or fair condition and maintain water quality for waters in good condition, giving special priority to improving habitat of redband trout. “Do not cause any reduction in water quality.”

72. Western Watersheds is an “interested public” on all grazing allotments in the Bruneau Field Office.

73. BLM has issued the following decisions in the Bruneau Field Office in violation of NEPA, FLPMA, the Fundamentals of Rangeland Health, the Bruneau MFP and the Clean Water Act as further described below:

a. Battle Creek Allotment Grazing Decision – The Battle Creek allotment spans over 145,000 acres of federal public land southwest of the Snake River’s C.J. Strike Reservoir. The northern part of the Battle Creek allotment encompasses portions of the Shoofly Creek and Little Jacks Creek watersheds, which are tributaries to the Snake River; and the southern part of the allotment is in the Battle Creek watershed, a tributary to the Owyhee River. The allotment contains remarkable wilderness values, and it encompasses 43,600 acres of the Little Jack’s Creek Wilderness Study Area. Accordingly to BLM, the Battle Creek allotment provides key habitat for the greater sage-grouse, although livestock grazing has caused the lower elevation pastures to become unsuitable sage-grouse habitat due to the lack adequate grasses and cover,

domination by cheatgrass, or the proliferation of wildfires has eliminated sage-grouse habitat in vast areas. The higher elevation pastures still offer suitable habitats, although many sites in those pastures, particularly those near livestock troughs, are considered “marginal.” There are currently four active leks on the allotment. In 2005, BLM issued an Assessment and Determination under the Fundamentals of Rangeland Health, which concluded that conditions on the allotment worsened between 1999 and 2007, and that livestock grazing was causing violations of these minimum rangeland health standards. In February 2008, BLM issued a final grazing decision, Environmental Assessment, and Finding of No Significant Impact authorizing the same level of livestock grazing on the allotment, and authorizing the construction of a host of new rangeland developments – even though BLM admitted that conditions would not improve under its final decision. Western Watersheds administratively appealed and petitioned to stay this decision, which the Office of Hearings and Appeals denied in April 2008. Western Watersheds subsequently dismissed its appeal, and filed the initial complaint in this action to challenge the Battle Creek decision.

b. East Castle Creek Allotment Grazing Decision – The East Castle Creek allotment includes nearly 100,000 acres of public lands, and is located immediately adjacent to the Battle Creek allotment in Owyhee County, Idaho. Nearly the entire allotment provides habitat for sage-grouse within the Great Basin core population, with almost one-half of the allotment identified by BLM as key sage-grouse habitat. BLM recently prepared Determinations under the Fundamentals of Rangeland Health, which concluded that current livestock was causing violations of every applicable rangeland health standard, including the standard for endangered, threatened and sensitive species. On December 24, 2008, BLM issued a grazing decision, Environmental Assessment and Finding of No Significant Impact that allows livestock grazing in

sage-grouse nesting and brood-rearing habitat throughout the spring and summer, and authorizes the construction of dozens of rangeland developments in important sage-grouse brood-rearing habitat. Although BLM admits that these actions will adversely impact sage-grouse habitat, BLM issued a Finding of No Significant Impact on December 24, 2008.

c. Bruneau Field Office Grazing Rider Permits (Alzola, Sheep Creek SE, Blackleg/Bull Creek Trap West Blackleg, Scotts Table, Center, China Creek, N. Sheep Creek Seeding, Antelope Field, Bennett Private, Table Butte, Trout Creek, Louse Creek Indiv., Wickahoney, and Bruneau Canyon allotments) – These allotments total tens of thousands of acres of important habitat for greater sage-grouse in the Bruneau Field Office. BLM has issued new 10-year grazing permits on these allotments without issuing any public notice, proposed or final grazing decisions, or environmental analysis whatsoever; and BLM never shared these new decisions or permits with Western Watersheds Project. Instead, BLM invoked Section 325 of P.L. 108-108 (i.e., the “grazing rider”) to insulate these decisions from all public review.

B. Owyhee Field Office, Idaho.

74. The Owyhee Field Office (previously called the Owyhee Resource Area) is located in southwestern Idaho, and encompasses 1,779,492 acres, including 1,320,032 acres of federal public lands.

75. This area is bounded on the west by Oregon, on the south by Nevada, on the north by the Snake River, and on the east by Castle Creek, Deep Creek, the Owyhee River, and the Duck Valley Indian Reservation. The Owyhee Field Office contains the northern extent of the Owyhee Mountain Range.

76. The Owyhee Field Office largely features the sage-steppe ecosystem, and includes a diversity of landforms and vegetation types ranging from vast expanses of sagebrush-

covered plateaus to rugged mountains blanketed with juniper woodlands and desert low sagebrush and native grass and forb vegetation communities.

77. The public lands in the Owyhee Field Office are in the heart of the range for the Great Basin greater sage-grouse population, and BLM has acknowledged that this area is among the most important sage-grouse habitat in Idaho.

78. BLM administers livestock grazing on 154 separate grazing allotments, with grazing allowed on 1,314,470 acres of public lands or 99.6% of the federal public lands within the Owyhee Field Office.

79. In 1999, as a result of earlier litigation brought by Western Watersheds, BLM issued a final Owyhee Resource Management Plan (RMP), Record of Decision (ROD), and Final Environmental Impact Statement (FEIS). According to the Owyhee RMP and FEIS, the condition of native rangelands within the Owyhee Field Office reflects serious degradation from human activities, especially livestock grazing. For example, less than 1 percent of all public lands were in the equivalent of excellent condition, only 11 percent were in good condition, and 43 percent were in fair condition. Fully 44 percent of all public lands were in the equivalent of poor condition, according to the Owyhee RMP and FEIS.

80. More specifically, BLM found that much of the lower elevation Owyhee Foothills were in at-risk or unsatisfactory watersheds condition, with pedestalling of native bunchgrasses, increased erosional patterns, and rill erosion and litter movement after storm events far above expected levels. The advanced sheet erosion problems were consistent with BLM's conclusion that 44% of all public lands in the resource area are classified as high erosion hazard rating.

81. BLM also found that native microbiotic soil crusts – which play an important role in watershed and erosion protection, including by preventing weed invasions, resisting fire, and

promoting soil stability and regeneration – have been severely impacted by livestock grazing and other impacts.

82. BLM concluded that the conditions of the riparian areas were similarly degraded from livestock grazing. For example, according to BLM, 85 percent of all inventoried streams were in unsatisfactory condition.

83. The Owyhee RMP and Final EIS provided that BLM will manage the public lands within the Owyhee Field Office to rectify these degraded conditions. Among other requirements, the Owyhee RMP requires that BLM shall manage the public lands to: (1) improve or maintain streambank channel stability; (2) limit livestock streambank trampling to 10%; (3) limit all soil disturbing activities on soils sensitive to compaction or susceptible to high erosion potential; (4) implement grazing practices to protect riparian areas; (5) implement grazing practices that improve or maintain native vegetation communities; (6) identify, protect and enhance Great Basin Core sage-grouse populations and habitats; (7) protect and enhance key Columbia spotted frog habitats and populations; (8) manage wilderness study areas so as not to impair the suitability for potential wilderness designation.

84. Western Watersheds is an “interested public” on all grazing allotments in the Owyhee Field Office.

85. BLM has issued the following decisions on specific allotments in the Owyhee Field Office in violation of NEPA, FLPMA, the Owyhee RMP, the Fundamentals of Rangeland Health, and the Clean Water Act as further described below:

a. Hardtrigger Allotment Grazing Decisions – The Hardtrigger allotment is located approximately 10 miles south of Marsing, Idaho, and includes 21,588 acres of federal public lands administered by BLM. The Hardtrigger allotment lies wholly within the habitat of the

Great Basin core population of greater sage-grouse. In December 2007, BLM issued final grazing decisions, an Environmental Assessment, and Findings of No Significant Impact authorizing livestock grazing on the Hardtrigger allotment. Western Watersheds administratively appealed these decisions, and has now dismissed its appeal and affirmatively chosen this forum to redress its grievances.

b. Rockville Allotment Grazing Decisions – The Rockville allotment is located in Owyhee County, Idaho, approximately 18 miles southwest of Marsing, Idaho, and on the Idaho-Oregon border. The allotment contains approximately 13,218 acres of federal public lands, and three livestock permittees enjoy the privilege of grazing 2,423 AUMs of livestock (both sheep and cattle). On August 26, 2008, BLM issued final grazing decisions – supported by an EA and FONSI – which extends the seasons of use of sheep and cattle grazing into important sage-grouse habitat during early mating and nesting season, and allows “twice over” sheep grazing to occur in the spring and fall in sage-grouse habitat. Western Watersheds administratively appealed this decision, and the Office of Hearings and Appeals denied Western Watershed’s petition for stay. Western Watersheds dismissed its appeal.

c. Red Mountain Allotments Grazing Decisions (Red Mountain, Bridge Creek, Boone Peak, Quicksilver FFR and Stahle FFR) – The Red Mountain allotments are located in Owyhee County, Idaho near the towns of Oreana, Triangle and Silver City; and the allotments contain approximately 28,000 acres of federal public lands. These allotments lie wholly within the habitat of the Great Basin core population of greater sage-grouse. In July 2003, BLM issued Fundamentals of Rangeland Health Determinations on these allotments, which found that livestock grazing was causing violations of the minimum rangeland health conditions for sage-grouse habitat. In December 2003, BLM issued final grazing decisions on the Red Mountain

allotments. After Western Watersheds appealed these decisions, BLM stipulated to vacate and remand these decisions and issue new grazing decisions and environmental analysis. To date, BLM has failed to issue new decisions, and continues to allow grazing under the grazing scheme which caused the violations of the Fundamentals of Rangeland Health.

d. Pleasant Valley Allotments Stipulated Grazing Scheme (Pleasant Valley and Pleasant Valley FFR) – The Pleasant Valley allotments are located in southwestern Owyhee County, Idaho, approximately 30 miles southwest of Jordan Valley, Oregon. These allotments include approximately 14,000 acres of public lands, and they lie wholly within the habitat of the Great Basin core population of greater sage-grouse. Following the same unlawful process which led to earlier litigation in *Western Watersheds Project v. Secrist*, No. CV-04-0167-S-BLW (D. Idaho 2004), BLM issued a final grazing decision on these allotments in April 2002, which was subsequently appealed by the livestock permittees (but not WWP). In March 2003, BLM and the permittees entered into a stipulation (without notifying WWP) that increased grazing during critical sage-grouse mating and nesting season, doubled the number of livestock on the allotments through the summer months, and authorized the construction of new range developments in the allotment. BLM never notified Western Watersheds of these changes, and never completed any NEPA analysis. BLM continues to authorize livestock grazing under this unlawful stipulated settlement agreement.

e. Shares Basin Allotments Stipulated Grazing Scheme (Shares Basin, French John, and Walker FFR) – The Shares Basin allotments are located in Owyhee County, Idaho, and lie approximately 10 miles south of Marsing, Idaho. The allotments total nearly 15,000 acres of federal public lands, and BLM has permitted roughly 3,450 AUMs on the allotments. The Shares Basin allotments lie wholly within the habitat of the Great Basin core population of

greater sage-grouse. In March 2003, BLM issued final grazing decisions on these allotments, which the permittees (but not WWP) appealed. Similar to the Pleasant Valley allotments above (and like in *Secrist*), BLM quickly entered into settlement with the permittees, and in this case BLM agreed to inflate the livestock use on the allotment by counting certain livestock as only .75 AUM for grazing purposes, instead of a full AUM as required under law and regulation. The decision also modified the season of use and livestock numbers across the allotment, and increased grazing within sage-grouse habitat. In May 2006, BLM proposed to modify grazing on the allotments to meet its requirements under the Fundamentals of Rangeland Health, and BLM issued a new Environmental Assessment. Since then, however, BLM has failed to take “appropriate action” required under the FRH, and continues to authorize grazing under the previous grazing scheme.

f. Gusman Allotment Grazing Decision – The Gusman allotment is located approximately two miles east of Jordan Valley, Oregon in western Owyhee County, Idaho. The allotment includes almost 16,000 acres of federal public lands, and elevations in the allotment range from approximately 4,500 feet in the northwest portion of the allotment to over 5,800 feet in the north. The vegetation in the allotment is dominated by mountain big sagebrush and low sagebrush communities, which provide important habitat for greater sage-grouse, pygmy rabbit, and many other imperiled wildlife species. On March 29, 2007, BLM issued a final grazing decision on the Gusman allotment authorizing livestock to graze without first preparing an EA, EIS or any other environmental analysis whatsoever. In the decision, BLM allowed livestock grazing to continue largely unchanged despite BLM’s own data which shows that grazing is adversely affecting nesting and brood-rearing habitat from sage-grouse through the removal of desirable grasses and forbs, and also adversely impacting seeps, springs, and other riparian areas.

Western Watersheds timely appealed this decision and filed a petition for stay, which the Office of Hearings and Appeals denied. In November 2007, Western Watersheds dismissed its appeal.

g. Louse Creek Allotments Grazing Decisions (Louse Creek, Louse Creek FFR, and Goose Creek) – The Louse Creek allotments are located in Owyhee County, Idaho, and lie approximately 10 miles east of Jordan Valley, Oregon. The Louse Creek allotments total approximately 22,500 acres of federal public lands, and BLM has historically permitted approximately 3,350 AUMs on these allotments combined. The Louse Creek allotments lie wholly within the habitat of the Great Basin core population of greater sage-grouse. In February 2004, BLM issued new final grazing decisions, an EA, and FONSI authorizing continued livestock grazing on these allotments. Western Watersheds administratively appealed these decisions, and on April 18, 2006, the Office of Hearings and Appeals dismissed Western Watersheds' appeal.

h. Flint Creek Allotments Grazing Decisions (Flint Creek, Old Man, Upper Deer Creek, Lower Deer Creek, Long Valley, Kershner FFR, Bahem FFR and Quintana FFR) – The Flint Creek Allotments lie on Owyhee County, Idaho, between 16 and 50 miles southeast of Jordan Valley, Oregon; BLM has previously permitted approximately 4,404 AUMs on these allotments combined. The Flint Creek allotments lie wholly within the habitat of the Great Basin core population of greater sage-grouse. In November 2003, BLM issued final grazing decision, with an accompanying EA and FONSI permitted continued livestock grazing on these allotments; Western Watersheds appealed these decisions, and the Office of Hearings and Appeals dismissed these appeals on March 28, 2006.

i. Silver City and Diamond Basin Allotments Grazing Decision – The Silver City and Diamond Basin allotments surround and are adjacent to the towns of Silver City and Murphy

in Owyhee County, Idaho. These allotments total approximately 63,000 acres of public lands, and BLM has in the past permitted approximately 8,000 AUMs on these two allotments. The Silver City and Diamond Basin allotments lie wholly within the habitat of the Great Basin core population of greater sage-grouse. In January 2004, BLM issued new final grazing decisions, an EA and a FONSI authorizing livestock grazing on these allotments; Western Watersheds appealed these decisions, and the Office of Hearings and Appeals dismissed these appeals on September 13, 2006.

j. Corta Allotment Grazing Decision – The Corta allotment lies approximately 20 miles south of Jordan Valley, Oregon, with large portions of the roughly 10,000 acres of public lands lying in Owyhee County, Idaho and the small remainder crosses the Idaho-Oregon border. The Corta allotment lies wholly within the habitat of the Great Basin core population of greater sage-grouse. In December 2003, BLM issued a final grazing decision, EA and FONSI permitting status-quo livestock grazing on this allotment through 2014, despite the BLM's own conclusions that grazing is causing violations of the Fundamentals of Rangeland Health. Western Watersheds appealed this decision, and on August 1, 2006, the Office of Hearings and Appeals dismissed this appeal.

k. Owyhee Field Office Grazing Rider Permits (Miller FFR, West Antelope, Red Mountain, Quicksilver, Boone Peak, Bridge Creek, Reynolds Creek, Tyson FFR, Tent Creek, Bass FFR, and Stahle Allotments) – These allotments total thousands of acres of important habitat for greater sage-grouse in the Owyhee Field Office. BLM has issued new 10-year grazing permits on these allotments without issuing any public notice, proposed or final grazing decisions, or environmental analysis whatsoever; and BLM never shared these new decisions or permits with Western Watersheds Project. Instead, BLM invoked Section 325 of P.L. 108-108

to insulate its grazing permits from any and all public review.

C. Burley Field Office, Idaho.

86. The Burley Field Office (previously called the Burley Resource Area) includes nearly 1.7 million acres located primarily in Cassia County, Idaho. The Field Office is bordered on the north by the Snake River; on the west by Twin Falls County and the Sawtooth National Forest; on the south by the Idaho-Nevada border and the Elko Field Office, and the Salt Lake Field Office; and on the east by Oneida and Power counties.

87. Elevation in this area varies from 4,100 feet in the valley bottoms to over 8,000 feet in the mountains. The public lands in the Burley Field Office include typical sagebrush-steppe vegetation communities, including sagebrush, native grasses, and some pinyon juniper forests. In addition, portions of the Burley Field Office have been reseeded to crested wheatgrass monocultures.

88. BLM adopted the Cassia Resource Management Plan in 1985, and the Cassia RMP continues to direct management of the public lands in the Burley field office today. The Cassia RMP adopts management direction and minimum standards for managing the public resource in the Burley Field Office. BLM has never prepared a more up-to-date EIS to address grazing management in the Burley Field Office since the RMP was adopted.

89. The Cassia RMP divides the public lands into 14 separate management areas for the purpose of managing the public lands. The Jim Sage Area – a separate management area under the Cassia RMP – includes approximately 77,000 acres of public lands – including over 50,000 acres of nesting, brood-rearing, winter and year-round habitat for the Great Basin core population of sage-grouse. The area also includes many seeps, springs and wet meadows, and nearly 10 miles of perennial streams.

90. According to the Cassia RMP, nearly 52,000 acres in this management area were in poor or fair condition, and the RMP requires that BLM improve these acres to good condition.

91. Western Watersheds is an “interested public” on all grazing allotments in the Burley Field Office.

92. BLM has issued the following decisions on specific allotments in the Burley Field Office in violation of NEPA, FLPMA, and the Fundamentals of Rangeland Health, as further described below:

a. Jim Sage Mountain Area Allotments Grazing Decisions (Jim Sage, Cassia Creek, Almo-Womack and Chokecherry Allotments) – The Jim Sage Mountain Area allotments are located due east of Elba and Almo, Idaho, and comprise 75,521 acres of federal public lands. Elevations range from 4,600 feet on the eastern edge of the area to over 8,000 feet on the highest mountain peak; and the dominant vegetation in sagebrush, native grasses, with some juniper and crested wheatgrass seedings. The Jim Sage area provides important habitat for the greater sage-grouse, including nesting, late brood-rearing, and winter habitat, as well as eight separate leks or mating areas. The Jim Sage area also lies within the Raft River-Curlew Valley Important Bird Area, which provides globally important nesting habitat for the imperiled ferruginous hawk. BLM prepared a Determination under the Fundamentals of Rangeland Health, and concluded that current livestock grazing was causing violations of Standard 2 (riparian areas and wetlands), 3 (stream channel/floodplain), 4 (native plant communities), 5 (seeding), 7 (water quality) and 8 (threatened and endangered plants and animals). In March 2008, BLM issued new grazing decisions to each of the 20 permittees on the Jim Sage allotments, which authorized the same number of livestock for the same period of time for exactly the same total permitted use. In April 2008, Western Watersheds appealed and petitioned to stay this new decision alleging

violations of NEPA, FLPMA, and the Cassia RMP; the Office of Hearings and Appeals denied the petition to stay, and BLM is currently implementing this final decision. Western Watersheds dismissed its appeal in this matter.

b. Burley Field Office Grazing Rider Permits (198 allotments) – These allotments total thousands of acres of important habitat for greater sage-grouse in the Burley Field Office. BLM has issued new 10-year grazing permits on these allotments without issuing any public notice, proposed or final grazing decisions, or environmental analysis whatsoever; and BLM never shared these new decisions or permits with Western Watersheds Project. Instead, BLM invoked Section 325 of P.L. 108-108 to insulate its grazing permits from all judicial and public review.

D. Elko District, Nevada.

93. The Elko district comprises over 7.5 millions acres of federal public lands in northeastern Nevada. Elevations in the Elko district range from 4,000 to over 10,000 feet, and the topography is typical of the Great Basin with broad valleys separated by mountain ranges. Vegetation types range from salt desert shrub communities to sagebrush and perennial grasses, to pinion-juniper woodlands and mixed conifer stands.

94. The Elko district contains some of the most important sage-grouse habitat in all of Nevada, including critical winter, nesting and brood-rearing habitat. There are approximately 251 leks in Elko County, and researchers have documented decreases in the number of males counted on leks in Elko County for nine of the last thirteen years.

95. Wildfire, habitat fragmentation and livestock grazing are considered the greatest threats to Greater sage-grouse populations and habitat in the Elko district. Unprecedented

wildfires have raged through the Elko district in recent years; for example, in 2006 alone, 132 wildfires scorched 707,285 acres of public lands in the Elko district.

96. The public lands within the Elko district are subject to one of two separate land use plans. In March 1987, BLM issued the Elko Resource Management Plan (“Elko RMP”), which directs management in the western portion of the Elko district

97. The Elko RMP was designed to maintain and improve the condition of sage-grouse and other wildlife habitat, as well as improve the condition of the public lands to enhance the productivity for all rangeland values, and the Elko RMP strictly prohibits all “[a]ctivities that could adversely affect threatened, endangered, or sensitive species habitat.” The Elko RMP requires that all “[a]ctions in threatened, endangered, or sensitive species habitat will be designed to benefit these species” Under the Elko RMP, BLM is required to modify or abandon any action that will adversely impact sage-grouse or other sensitive species.

98. Under the RMP, BLM has also adopted a Rangeland Program Summary (“RPS”), which requires BLM to improve the condition of the public lands and sage-grouse habitat by (1) managing rangeland to protect or enhance crucial sage-grouse strutting or nesting habitat; and (2) improving and maintaining meadow and riparian areas for sage-grouse. BLM is required to comply with both the Elko RMP and the RPS in managing the public lands in the eastern portion of the district.

99. In 1985, BLM adopted the Wells Resource Management Plan, which directs management in the western portion of the Elko district. One of the primary objectives of the Wells RMP is to “conserve and/or enhance wildlife habitat to the maximum extent possible.” The Wells RMP also requires BLM to “protect, maintain, and improve the rangeland resources through sound land use and grazing management decisions.”

100. Western Watersheds is an “interested public” on all grazing allotments in the Elko District.

101. BLM has issued the following decisions on specific allotments in the Elko District in violation of NEPA, FLPMA, the Elko or Wells Resource Management Plans, and the Fundamentals of Rangeland Health as further described below:

a. Elko MUD Allotments Grazing Decisions (Owyhee, Big Springs, and Sheep Complex allotments) – BLM manages 1.3 million acres of federal public lands within the Owyhee, Big Springs and Sheep Complex Allotments in north-central Nevada. The public lands within these allotments provide important habitat for over 250 species, including the Great Basin Core population of Greater sage-grouse. The Owyhee Allotment alone contains 12 leks, and another 12 are immediately adjacent to the allotment boundaries; the Big Springs allotment has 15 leks; and the Sheep Complex includes important winter range, summer range and two leks. In 2001-02, BLM issued grazing decisions and environmental assessments or other NEPA documents for these three allotments, which increased grazing by nearly 60% above past use – despite BLM’s own conclusion that livestock grazing was causing violations of the Fundamentals of Rangeland Health. In August 2004, a federal court in Nevada held that BLM violated NEPA when it failed to examine the impacts of its new grazing scheme on sage-grouse and other sensitive species, and ordered BLM to undertake a comprehensive EIS and issue new decisions. In October 2006, BLM issued final grazing decisions, a Final Environmental Impact Statement, and a Record of Decision authorizing livestock grazing in critical sage-grouse habitat. The EIS largely repackaged the same information compiled in the prior NEPA analysis, and BLM again increased grazing over past use – including within important habitat for the Greater

sage-grouse. Western Watersheds appealed and petitioned to stay these decisions, which the Office of Hearings and Appeals denied. Western Watersheds subsequently dismissed its appeal.

b. Squaw Valley Allotments Grazing Authorizations (Squaw Valley, Spanish Ranch, and 11-Mile Flat) – The Squaw Valley allotments total nearly 300,000 acres of federal public lands in the heart of Greater sage-grouse habitat. There are more than 44 sage-grouse leks on these allotments, and the public lands also provide habitat for peregrine falcon, bald eagle, and at least 15 other Nevada BLM-sensitive mammals and birds, as well as habitat for three sensitive plant species. These allotments provide some of the most valuable stream and riparian habitat in the Elko district, which provides late-brood rearing habitat for greater sage-grouse. In June 30, 2004, BLM issued grazing decisions on these allotments, which Western Watersheds appealed before the Department of Interior’s Office of Hearings and Appeals. After a 10-day administrative hearing – which included 10 witness and over three hundred exhibits – an administrative law judge ruled for Western Watersheds, and reversed and remanded the final decisions as violating NEPA and FLPMA. Since that time, however, BLM has failed to issue new grazing decisions or NEPA analysis, yet BLM continues to allow livestock grazing to occur on the Squaw Valley, Spanish Ranch and 11-Mile Flat allotment even without a valid permit.

c. Esmeralda Fire Re-opening (Tuscarora/Quarter Circle S, Squaw Valley, 25 Allotment) – In 2005, the Esmeralda Fire burned through large portions of the Squaw Valley, Tuscarora/Quarter Circle S and 25 allotments in the Elko district, including through important year-round habitat for the Great Basin core population of greater sage-grouse. The fire burned 28 leks, including an area with the highest documented sage-grouse population densities in Nevada. After the fire, BLM temporarily closed pastures within these allotments affected by fire until some modest rehabilitation objectives were met, although BLM did not include any

objective targeting sagebrush recovery or rehabilitation. In February 2008, BLM proposed to re-open to grazing the areas burned in the Esmeralda Fire, but moved to vacate and remand the decision after WWP appealed. The Office of Hearings and Appeals granted the motion and vacated and remanded the decision. In August 2008, BLM issued a new decision re-opening the closed areas, this time without first informing the interested public and Western Watersheds of its decision.

d. Elko District Grazing Rider Permits – Upon information and belief, BLM has invoked Section 325 of P.L. 108-108 in issuing grazing permits on allotments in the Elko District. Upon information and belief, BLM has issued new 10-year grazing permits in the Elko District without issuing any public notice, proposed or final grazing decisions, or environmental analysis whatsoever; and BLM never shared these new decisions or permits with Western Watersheds Project.

e. Elko District Oil & Gas Leasing – In September 2005, the Elko District issued a decision, EA and FONSI authorizing the leasing of 222 parcels of federal public lands – comprising approximately 250,000 acres of public lands – for oil and gas development. Many of these parcels and surrounding areas include sage-grouse leks, brood rearing and crucial winter habitat for the Great Basin core population of sage-grouse. Prior to the authorization, the U.S. Fish and Wildlife Service (the Service) expressed “particular concern about the impacts of the proposed oil and gas leasing activity” on sage-grouse, and the Service requested BLM to examine “all potential impacts” from the oil and gas leasing in the Environmental Assessment. In the EA, BLM refused to examine the direct, indirect and cumulative effects of its leasing activities – as well as the grazing decisions and geothermal authorizations discussed *supra* and *infra* – on the populations and habitat of the Great Basin core population of greater sage-grouse.

Instead, on September 20, 2005, BLM issued a Finding of No Significant Impact and Decision Record that failed to even mention – no less examine – Greater sage-grouse. Western Watersheds appealed this decision before the Interior Board of Land Appeals, which denied the appeal. Western Watersheds subsequently dismissed its appeal.

f. Elko District Geothermal Development – In July 2006, the Elko District similarly authorized the sale of noncompetitive geothermal leases on 10 parcels (each of which was specifically requested by the energy industry) of federal public lands totally nearly 11,000 acres in the heart of habitat for the Great Basin core population of greater sage-grouse, relying on an EA and FONSI. In the EA, BLM acknowledged that each and every parcel contained important sage-grouse habitat – including leks, breeding, nesting, brood-rearing or winter habitat. Yet, BLM never took a hard look at the ecological consequences of leasing and developing these geothermal resources, and BLM never considered the direct, indirect and cumulative impacts of its proposal in light of other BLM-approved actions in the Elko District. In fact, BLM even acknowledged the paucity of its cumulative impacts analysis, and claimed that “[a] more specific analysis of the cumulative impacts would require examination of past, present and reasonably foreseeable future actions in the vicinity of each parcel.” BLM refused to undertake this analysis, however, and instead relied on a cursory Finding of No Significant Impact.

E. Ely District, Nevada.

102. BLM’s Ely District measures approximately 230 miles (north-south) by 115 miles (east-west) in east/central Nevada. The Ely Field Office encompasses approximately 11.5 million acres of federal public lands.

103. This vast area historically featured sagebrush-steppe habitat across the northern two-thirds of the Ely Field Office which lies within the Great Basin ecological system, while the

southern third lies in the more arid Mojave ecological region. The sagebrush habitat here supported what were once abundant sage-grouse populations; and much of the Great Basin core sage-grouse population were once located in this region.

104. However, after a century of excessive grazing as well as construction of roads, fences, powerlines, and other infrastructure, and because of effects of cheatgrass and other weed invasions, fires, drought, and other pressures, much native sagebrush-steppe habitat has been lost and remaining habitats are now degraded and fragmented. As a result, sage-grouse populations along with other sagebrush-obligate species, including pygmy rabbit, have suffered and continue to decline.

105. Western Watersheds is an “interested public” on all grazing allotments in the Ely District.

106. BLM has issued the following decisions on specific allotments in the Ely District in violation of NEPA, FLPMA, and the Fundamentals of Rangeland Health, as further described below:

a. Duckwater and Currant Ranch Allotments Grazing Decisions – The Broom Canyon/South Railroad Valley and Red Mountain Use Areas of the Duckwater allotment encompass nearly 142,000 acres of public lands, and are located in Railroad Valley in Nye County, Nevada. The Currant Ranch allotment encompasses approximately 10,000 of federal public lands, and is also located in Railroad Valley, Nevada. According to the Nevada Department of Wildlife, these allotments lie within brood-rearing range for the Great Basin core population of greater sage-grouse. In April 2007, BLM issued a Fundamentals of Rangeland Health Determination on these allotments, which concluded that two of the three applicable standards of rangeland health were not met (the ecosystem standard, and habitat and biota

standard). Yet, in November 2007, BLM issued new final grazing decisions which reauthorize status quo livestock grazing, and BLM refused to make any meaningful changes to grazing. Western Watersheds appealed and petitioned to stay this new decision alleging violations of NEPA, FLPMA, and the Ely RMP; the Office of Hearings and Appeals denied the petition to stay, and BLM is currently implementing this final decision. Western Watersheds dismissed its appeal in this matter.

b. Geyser Ranch Allotment Grazing Decision – The Geysers Ranch allotment encompasses 539,941 acres of federal public lands in White Pine and Lincoln counties, and has been divided into 16 pastures. The allotment is located within the Antelope Sage Grouse Population Management Unit, and provides nesting, early brood rearing, late summer and winter habitat for sage-grouse. In March 2007, BLM conducted an allotment assessment and determination under the Fundamentals of Rangeland Health, which claimed that all applicable standards and guidelines were being met. In November 2007, BLM issued a final decision authorizing status-quo livestock grazing on the allotment – i.e., BLM permitted the same number of AUMs during the same season of use in the allotment. Western Watersheds appealed and petitioned to stay the decision, which was denied by the Office of Hearings and Appeals in February 2008. Western Watersheds dismissed its appeal thereafter.

c. Huesser Mountain Allotment Grazing Decision – The Huesser allotment is located in White Pine County, Nevada approximately 10 miles north of Ely, Nevada. The allotment encompasses almost 34,000 acres of federal public lands, and is year-round habitat for the Great Basin core population of greater sage-grouse, and the allotment includes several leks. Over one-quarter of the allotment is within the Bristlecone Wilderness Area. In September 2007, BLM issued a determination under the Fundamentals of Rangeland Health concluding that

livestock grazing was causing violations of the standard for wildlife habitat, and that livestock grazing was a significant causal factor. In February 2008, BLM issued a final decision authorizing status-quo livestock grazing on the allotment – i.e., BLM permitted the same number of AUMs during the same season of use in the allotment. Western Watersheds appealed and petitioned to stay the decision, which was denied by the Office of Hearings and Appeals on May 1, 2008. Western Watersheds dismissed its appeal thereafter.

d. North Chokecherry Allotment Grazing Decision – The North Chokecherry allotment encompasses 8,700 acres of federal public lands, and is predominantly located in the Snake Valley in White Pine County, Nevada, with the eastern boundary located in western Utah. According to the Nevada Department of Wildlife, the entire allotment is year-long habitat for the Great Basin core population of sage-grouse, and the southeastern portion of the allotment is also sage-grouse nesting habitat. In January 2007, BLM issued a determination under the Fundamentals of Rangeland Health, which claimed that all applicable standards and guidelines were being met. In November 2007, BLM issued a final decision authorizing status-quo livestock grazing on the allotment – i.e., BLM permitted the same number of AUMs during the same season of use in the allotment. Western Watersheds appealed and petitioned to stay the decision, which was denied by the Office of Hearings and Appeals, and Western Watersheds subsequently dismissed its appeal.

e. Tom Plain and McQueen Flat Allotments Grazing Decisions – The Tom Plain allotment encompasses nearly 72,000 acres of public lands in White Pine County, Nevada, and is located in the central portion of the Ely district. Sage-steppe perennial grass communities dominant the tablelands and higher elevations sites, and salt desert shrub communities are more prevalent in the lower, drier sites. The McQueen Flat allotment is just south of the Tom Plain

allotment, and encompasses over 10,000 of public lands. The Tom Plain allotment contains extensive nesting, brooding, and lek habitat; and sage grouse are known to use the allotment year-round. BLM has believes that the McQueen allotment also contains sage-grouse nesting and brood-rearing habitat. In February 2007, BLM issued a Determination under the Fundamentals of Rangeland Health that concluded that current livestock grazing was causing violations of the standards for riparian and wetlands sites, as well as the habitat standard for Greater sage-grouse and other wildlife species. In November 2007, BLM issued a final decision reauthorizing grazing on the allotment, which allowed an increase in livestock compared to past use, and continued to allow grazing in important sage grouse habitat during mating, nesting and brood-rearing seasons. Western Watersheds appealed the decision, and filed a petition for stay; the Office of Hearings and Appeals denied the stay in February, 2008. Western Watersheds subsequently dismissed its appeal.

f. Ely District Grazing Rider Permits – Upon information and belief, BLM has invoked Section 325 of P.L. 108-108 in issuing grazing permits on allotments in the Ely District. Upon information and belief, BLM has issued new 10-year grazing permits in the Ely District without issuing any public notice, proposed or final grazing decisions, or environmental analysis whatsoever; and BLM never shared these new decisions or permits with Western Watersheds Project.

F. Battle Mountain District, Nevada.

107. The Battle Mountain District totals nearly 11 million acres of federal public lands in north-central Nevada, and includes the Tonopah Field Office in the south, and the Mount Lewis Field Office in the north. The Mount Lewis Field Office includes roughly 4.5 million acres, most of which is federal public lands managed by the BLM. In 1984, BLM adopted the Shoshone-Eureka

Resource Management Plan, which guides all actions on the public lands in the Mount Lewis Field Office.

108. The public lands in the northern portion of the Battle Mountain District include some of the most spectacular wildlife habitat in Nevada, and include habitat for the Great Basin Core population of greater sage-grouse, golden eagle, ferruginous hawk, western burrowing owl, pygmy rabbits and a host of other imperiled wildlife species.

109. Western Watersheds is an “interested public” on all grazing allotments in the Battle Mountain District.

110. BLM has issued the following decisions in the Battle Mountain District in violation of NEPA and FLPMA as further described below:

a. 2006 Battle Mountain Oil & Gas Leasing – In 2006, BLM issued an Environmental Assessment, Finding of No Significant Impact and Decision Notice permitting the lease of a 2.5 million acre area in the eastern portion of the Shoshone-Eureka planning area, which includes the Seven Mile allotment (described below). BLM acknowledged that greater sage-grouse inhabit most of the 2.5 million acres for breeding, nesting, brood-rearing and wintering habitat, although BLM lacked any recent information on the population abundance, locations of breeding areas, or condition of the habitat. BLM even admitted that mining and mineral exploration is one of the leading causes of the long-term declines in sage-grouse population and habitat, and thus BLM adopted a policy which requires it to avoid oil and gas leasing activities in known sage-grouse habitat. Despite this policy, BLM authorized this oil and gas leasing decision, and refused to take a “hard look” at the ecological impacts of its decision to lease this area on sage-grouse habitat and populations, and also refused to examine the direct, indirect and cumulative impacts of its decision to lease 2.5 million acres of public lands for oil

and gas development. Western Watersheds appealed and petitioned to stay this decision, and IBLA dismissed the appeal.

b. 2008 Battle Mountain Oil & Gas Leasing – Two years after BLM issued its decision referenced above, BLM again issued a new Environmental Assessment, Finding of No Significant Impact and Decision Notice permitting the lease of a 1.7 million acre area in the western portion of the Shoshone-Eureka planning area – an area immediately adjacent to and west of the area leased in 2006. As in its earlier EA, BLM acknowledged that greater sage-grouse inhabit most of the 1.7 million acres for breeding, nesting, brood-rearing and wintering habitat, yet BLM again lacked even the most basic information about sage-grouse populations and habitat within the lease area. Again, BLM admitted that mining and mineral exploration is one of the leading causes of the long-term declines in sage-grouse population and habitat. The 2008 EA regurgitated – word for word in many cases – the same inadequate discussion of sage-grouse and sensitive species contained in the 2006 EA. In the 2008 EA, BLM again failed to take a “hard look” at the ecological impacts of its decision to lease this area on sage-grouse habitat and populations, and also refused to examine the direct, indirect and cumulative impacts of its decision to lease 1.7 million acres of public lands for oil and gas development. Western Watersheds appealed and petitioned to stay this decision; after it was denied, Western Watersheds dismissed its appeal.

c. Seven Mile Allotment Hazardous Fuels Reduction Project, Phase II – The Seven Mile allotment encompasses approximately 88,000 acres of federal public lands, and is located in the southeast portion of the Battle Mountain District in Nye County, Nevada. The allotment is situated between the Monitor and Antelope mountain ranges, and elevations in the allotment range from 6,430 feet in the valley floor to approximately 10,200 feet on the Nine Mile Peak.

Most of the allotment is year-long sage-grouse habitat, and the southern portion also includes important nesting habitat. In August 2007, BLM issued an EA, FONSI and Decision Record authorizing the burning of nearly 70,000 acres of sage-grouse habitat within the Seven Mile allotment and surrounding areas. In the EA, BLM noted that sage-grouse populations are declining as a “result of cumulative, long term impacts including drought and habitat loss and conversion.” BLM lacked any specific information on local sage-grouse populations or the quality of the local habitat, however – though BLM did previously conclude that livestock grazing was causing violations of the minimum rangeland health requirements for wildlife habitat for sage-grouse and other species. In its EA, BLM again failed to take a “hard look” at the ecological impacts of its decision to burn nearly 70,000 acres in this area on sage-grouse habitat and populations, and also refused to examine the direct, indirect and cumulative impacts of its decision. Western Watersheds appealed and petitioned to stay this decision, but the IBLA dismissed WWP’s appeal and petition.

G. Winnemucca District, Nevada.

111. The Winnemucca District is located in north-central Nevada, and encompasses approximately 7.2 million acres of federal public lands. BLM manages the public lands in the Winnemucca Field Office under the Sonoma-Gerlach Management Framework Plan (MFP) and the Paradise-Denio MFP, both of which BLM issued in 1982.

112. The public lands managed by the Winnemucca Field Office are typical of the lands in the Great Basin region – i.e., the extremes of climate, elevation, exposure and soil type combine to produce a diverse growth environment varying from salt-desert shrubs and grasses and sage-brush steppe shrubs and grasses in the valley bottoms up to juniper, mountain mahogany, and pine in the highest mountain ranges.

113. These public lands support a wealth of diverse wildlife, including the Great Basin core population of greater sage-grouse, pygmy rabbit, antelope, mule deer, and a host of other raptors, mammals and songbirds. Unfortunately, sage-grouse populations and habitat are steadily declining, and the deterioration of habitat due to overgrazing by domestic livestock is the single greatest factor leading to this decline.

114. Western Watersheds is an “interested public” on all grazing allotments in the Winnemucca District.

115. BLM has issued the following decisions on specific allotments in the Winnemucca District in violation of NEPA, FLPMA, and the Paradise-Denio Resource Management Plan, and the Fundamentals of Rangeland Health as further described below:

a. Williams Stock Allotment Grazing Decision – The Williams Stock allotment encompasses almost 67,000 acres of mostly federal public lands, and is located in northeast of Paradise Valley in north-central Nevada. The allotments ranges in elevation from 5,200 to 6,800 feet, and the primary vegetation is big sagebrush and low sagebrush communities. The greater sage-grouse is a priority species for management on the allotment, and the allotment contain important sage-grouse breeding, nesting, brood-rearing and winter habitat. Under the Paradise-Denio RMP, BLM is required to manage this allotment to improve or maintain suitable sage-grouse habitat to achieve good condition. In April 2008, BLM issued a final grazing decision – relying on an earlier EA and FONSI – allowing grazing to occur on the allotment without any modification, which included grazing in prime sage-grouse nesting habitat during the nesting season, and a 50% use level on native grasses in sage-grouse nesting habitat. BLM lacked any specific information on local sage-grouse populations or the quality of the local habitat, and in its EA and FONSI, BLM failed to take a “hard look” at the ecological impacts of its decision on

sage-grouse habitat and populations, and also refused to examine the direct, indirect and cumulative impacts of its decision. Western Watersheds appealed and petitioned to stay this decision, which the Office of Hearings and Appeals granted in part, and denied in part. OHA did not stay implementation of the grazing system, however, and the elements of the decision stayed have subsequently been remanded back to BLM. Accordingly, BLM is currently implementing the challenged decisions as modified on the Williams Stock allotment.

b. Winnemucca Oil and Gas Leasing – In 2005, BLM authorized the leasing of 1.3 million acres of public lands for oil and gas development in the Winnemucca Field Office based on an Environmental Assessment and Finding of No Significant Impact. The lands subject to oil and gas leasing and development include some of the most important sage-grouse nesting, winter and summer habitats in north-central Nevada, despite BLM's own policy which requires it to avoid oil and gas leasing activities in known sage-grouse habitat. BLM admitted that mining and mineral exploration is one of the leading causes of the long-term declines in sage-grouse population and habitat, yet BLM lacked even the most basic information about sage-grouse populations and habitat within the lease area. In the EA, BLM again failed to take a "hard look" at the ecological impacts of its decision to lease this area on sage-grouse habitat and populations, and also refused to examine the direct, indirect and cumulative impacts of its decision to lease 1.3 million acres of public lands for oil and gas development. Western Watersheds appealed and petitioned to stay this decision. BLM rejected the appeal in July 2007.

FIRST CLAIM FOR RELIEF:
ALL CHALLENGED DECISIONS
VIOLATE NEPA AND APA

116. Plaintiff realleges and incorporates by reference all preceding paragraphs.

117. This First Claim for Relief challenges BLM's violation of NEPA in refusing to examine the direct, indirect and cumulative impacts of the Challenged Decisions on the Great Basin Core population of the greater sage-grouse. This case is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

118. NEPA requires all federal agencies to undertake a thorough and public analysis of the environmental consequences of proposed federal actions, including by preparing a detailed EIS for all major federal actions that "may significantly affect the quality of the human environment." 42 U.S.C. § 4332(2)(C). When several actions may have cumulative or synergistic environmental impacts, BLM must consider these actions together and prepare a comprehensive environmental analysis

119. The Challenged Actions will individually and collectively affect the population and habitat of the Great Basin core population of greater sage-grouse, yet BLM has refused to analyze the cumulative impacts of the Challenged Decisions or prepare a comprehensive environmental review as required by NEPA.

120. BLM's Challenged Decisions are thus arbitrary, capricious, an abuse of discretion, and not in accordance with law under NEPA and its implementing regulations; and hence must be reversed and set aside pursuant to the APA, 5 U.S.C. § 706.

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CLAIM FOR RELIEF:
ALL CHALLENGED DECISIONS
VIOLATE FLPMA AND APA

121. Plaintiff realleges and incorporates by reference all preceding paragraphs.

122. This Second Claim for Relief challenges Defendants' violations of FLPMA, 43 U.S.C. § 1701 et seq., and the implementing regulations, handbook, manual, and policies adopted by

Defendants under FLPMA, in approving the Challenged Decisions as identified *supra*, both collectively and individually. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

123. FLPMA imposes procedural and substantive statutory requirements upon Defendants' management of the public lands in question here, including multiple use/sustained yield, and preventing unnecessary or undue degradation of the public lands and resources. Pursuant to these and other statutory authorities, Defendants have adopted various regulations, handbooks, manuals, conservation strategies, and other policies relating to its management of the public lands, including BLM's grazing regulations, 43 C.F.R. Part 4100; BLM's Fundamentals of Rangeland Health regulations, 43 C.F.R. 4180 et seq; the Special Status Species Policy, Section 6840 of the BLM Manual (2001); and the National Sage-Grouse Habitat Conservation Strategy.

124. The Special Status Species Policy requires that BLM "shall ensure that actions authorized, funded or carried out by the BLM do not contribute to the need for the species to become listed." *See* BLM Manual 6841.06C.

125. As also noted above, the National Sage-Grouse Habitat Conservation Strategy adopts specific, enforceable management requirements on grazing, oil and gas, and geothermal decisions, and requires that BLM maintain, enhance or restore sagebrush habitats.

126. Defendants' approval of the Challenged Decisions as identified *supra*, individually and collectively, violates the National Sage-Grouse Habitat Conservation Strategy, the Special Status Species Policy, as well as FLPMA's mandates, by authorizing livestock grazing and other management actions that will further destroy, fragment, and degrade sagebrush habitats across many millions of acres of greater sage-grouse range on BLM lands, causing further sage-grouse population

losses and fragmentation, and contributing to the accelerating decline of the species and the need for its listing under the ESA.

127. Based on such violations of FLPMA and implementing regulations and policies, Defendants' approval of the Challenged Decisions, individually and collectively, is arbitrary, capricious, an abuse of discretion, and not in accordance with law under FLPMA and the APA, and will allow serious ecological degradation as well as harm to the public and Plaintiff's interests, unless reversed by this Court.

WHEREFORE, Plaintiff prays for relief as set forth below.

THIRD CLAIM FOR RELIEF:
ALL GRAZING PERMITS ISSUED UNDER
SECTION 325 OF PUBLIC LAW 108-108 VIOLATE FLPMA

128. Plaintiff realleges and incorporates by reference all preceding paragraphs.

129. This Third Claim for Relief challenges Defendants' violations of FLPMA and BLM's implementing regulations, handbook, manual, and policies, through BLM's unlawful issuance of all the grazing permits identified under the auspices of Section 325 of Public Law 108-108. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

130. FLPMA governs the management of the federal public lands by the Bureau of Land Management. Under FLPMA, BLM must develop land use plans for the public lands under its control. 43 U.S.C. § 1712. All resource management decisions made by BLM must conform to the approved land use plan. 43 C.F.R. § 1610.5-3(a). To conform to a land use plan, a resource management decision "shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan." 43 C.F.R. § 1601.0-5. Prior to carrying out a proposed action that is not clearly consistent with the land use

plan, BLM must amend the plan, complying with NEPA and allowing for public participation. 43 C.F.R. §§ 1610.5-3, 1610.5-5.

131. FLPMA and BLM's implementing regulations also contain procedural requirements prior to authorizing use or occupancy of the public lands, including: (1) consulting, cooperating, and coordinating with the "interested public" prior to issuing or renewing grazing permits, 43 C.F.R. § 4130.2(b); (2) informing the public of BLM's proposed grazing decisions and allowing for a public protest period consistent with 43 C.F.R. § 4160.2; and (3) informing the public of BLM's final grazing decisions and allowing for a public appeal period consistent with 43 C.F.R. § 4160.3.

132. In issuing the challenged grazing permits under Section 325 of Public Law 108-108 identified *supra*, BLM violated these procedural requirements to consult, cooperate, and coordinate with the interested public, including Western Watersheds, and similarly failed to issue proposed or final grazing decisions and afford the interested public, including Western Watersheds, an opportunity to inform these decisions through a public protest and appeal period, as required under BLM's own grazing regulations.

133. These decisions also fail to conform to the applicable land use plans, and thus violate FLPMA's substantive "consistency" requirements.

134. Based on such violations of FLPMA and implementing regulations and policies, BLM's issuance of the challenged grazing permits is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of FLPMA and the APA, and will allow serious ecological degradation as well as harm to the public and Plaintiff's interests, unless reversed by this Court.

WHEREFORE, Plaintiff prays for relief as set forth below.

FOURTH CLAIM FOR RELIEF:
OIL, GAS AND GEOTHERMAL LEASING
DECISIONS VIOLATE NEPA, FLPMA AND APA

135. Plaintiff realleges and incorporates by reference all preceding paragraphs.

136. This Fourth Claim for Relief challenges Defendants' violations of FLPMA, NEPA, the APA, and BLM's implementing regulations, handbook, manual, and policies, through BLM's authorization of oil, gas and geothermal leasing in the Elko, Battle Mountain and Winnemucca Districts in Nevada, as identified above. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

137. Consistent with its mandatory obligations under FLPMA, the Nevada State Office of the BLM adopted guidelines and policies for management of sage-grouse habitat and sagebrush ecosystems in Nevada to promote the conservation and restoration of sage-grouse and the sagebrush habitat in Nevada.

138. These guidelines specifically prohibit allowing oil and gas and geothermal activities in known sage-grouse habitat.

139. In authorizing the lease of oil and gas and geothermal rights on public lands in known sage-grouse habitat in the Elko, Battle Mountain and Winnemucca districts, BLM has violated its own management policy and guidelines, and thereby violated FLPMA. These decisions also fail to conform to the applicable land use plan, and thus violate FLPMA's substantive requirements.

140. Defendants' decisions also violates NEPA in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. Defendants failed to take a "hard look" at the direct, indirect, and cumulative impacts of the leasing decisions – together with livestock grazing, climate change,

infrastructure, vegetation treatments, wildfires, and other management actions allowed on the areas subject to these decisions and surrounding public lands – upon the public lands and wildlife resources across the public lands within the districts identified above, particularly on sagebrush habitats and sage-grouse populations;

- b. Defendants further violated NEPA's requirements of using high quality data and accurate scientific information in the challenged leasing decisions, including by misrepresenting the nature of the effect of the proposed leasing decisions on the public lands and wildlife across the districts and surrounding areas, and by using inaccurate or misleading information on sage-grouse population and habitat needs, and in other ways;
- c. Defendants did not consider a reasonable range of alternatives to the leasing decisions; and
- d. Defendants' oil, gas and geothermal leasing decisions fail to conform to the applicable land use plan, and thus violate FLPMA's substantive requirements.

141. Defendants' leasing decisions violate FLPMA, the National Sage-Grouse Habitat Conservation Strategy, the Nevada Sage Grouse Guidelines, and the Special Status Species Policy, by authorizing oil and gas and geothermal leasing activities that will further destroy, fragment, and degrade sagebrush habitats for the Great Basin core population of greater sage-grouse, causing further sage-grouse population losses and fragmentation, and contributing significantly to the accelerating decline of the species and the need for its listing under the ESA.

142. Based on such violations of NEPA, FLPMA and implementing regulations and policies, BLM's oil, gas and geothermal leasing decisions are arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of these laws and the APA, and will allow

serious ecological degradation as well as harm to the public and Plaintiff's interests, unless reversed by this Court.

FIFTH CLAIM FOR RELIEF:
BATTLE CREEK GRAZING DECISIONS
VIOLATE NEPA, FLPMA, CLEAN WATER ACT, THE FRH AND APA

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

144. This Fifth Claim for Relief challenges BLM's grazing decisions and NEPA analysis on the Battle Creek allotment in the Bruneau Field Office as described *supra* as violating NEPA, FLPMA, the Clean Water Act, the Fundamentals of Rangeland Health, and the APA. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

145. Defendants' authorization of livestock grazing on the Battle Creek Allotment violates NEPA, FLPMA, the Clean Water Act, and the Fundamentals of Rangeland Health in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. Defendants failed to take a "hard look" at the direct, indirect, and cumulative impacts of livestock grazing – together with climate change, infrastructure, vegetation treatments, wildfires, and other management actions allowed on the allotments and nearby allotments – upon the public lands and wildlife resources in the Battle Creek and surrounding areas, particularly on sagebrush habitats and sage-grouse populations;
- b. Defendants further violated NEPA's requirements of using high quality data and accurate scientific information in the challenged decisions and permits, as well as underlying Fundamentals of Rangeland Health Determinations and Assessment, including by misrepresenting the nature of the effect of current livestock grazing on the public lands and wildlife on the Battle Creek allotment and surrounding areas,

and by using inaccurate or misleading information on sage-grouse population and habitat needs, and in other ways;

- c. Defendants did not consider a reasonable range of alternatives to the grazing scheme adopted in the grazing decisions on the Battle Creek allotment;
- d. Defendants' grazing decisions and permits violate FLPMA, the National Sage-Grouse Habitat Conservation Strategy, and the Special Status Species Policy, by authorizing livestock grazing and other management actions in the Battle Creek allotment that will further destroy, fragment, and degrade sagebrush habitats for the Great Basin core population of greater sage-grouse, causing further sage-grouse population losses and fragmentation, and contributing significantly to the accelerating decline of the species and the need for its listing under the ESA;
- e. Defendants' decision fails to conform to the Bruneau Management Framework Plan, and thus violate FLPMA's substantive requirements; and
- f. Defendants' decisions also violate Section 313 of the Clean Water Act by adopting a grazing scheme that will continue to cause violations of the State of Idaho's water quality standards and antidegradation policy.

146. Defendants' preparation and approval of the grazing decision and underlying NEPA analysis on the Battle Creek allotment in the Bruneau Field Office is arbitrary, capricious, an abuse of discretion, not in accordance with law under FLPMA, NEPA, the Fundamentals of Rangeland Health, the Clean Water Act and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiff and its members and staff.

WHEREFORE, Plaintiff prays for relief as set forth below.

SIXTH CLAIM FOR RELIEF:
EAST CASTLE CREEK ALLOTMENT GRAZING
DECISION VIOLATES NEPA, FLPMA, THE FRH AND APA

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

148. This Sixth Claim for Relief challenges BLM's grazing decisions and NEPA analysis on the East Castle Creek allotment in the Bruneau Field Office as described *supra* as violating NEPA, FLPMA, the Clean Water Act, the Fundamentals of Rangeland Health, and the APA. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

149. Defendants' authorization of livestock grazing on the East Castle Creek Allotment violates NEPA, FLPMA, the Clean Water Act, and the Fundamentals of Rangeland Health in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. Defendants failed to take a "hard look" at the direct, indirect, and cumulative impacts of livestock grazing – together with climate change, infrastructure, vegetation treatments, wildfires, and other management actions allowed on the allotments and nearby allotments – upon the public lands and wildlife resources in the East Castle Creek and surrounding areas, particularly on sagebrush habitats and sage-grouse populations;
- b. Defendants further violated NEPA's requirements of using high quality data and accurate scientific information in the challenged decisions and permits, as well as underlying Fundamentals of Rangeland Health Determinations and Assessment, including by misrepresenting the nature of the effect of current livestock grazing on the public lands and wildlife on the East Castle Creek allotment and surrounding areas, and by using inaccurate or misleading information on sage-grouse population and habitat needs, and in other ways;

- c. Defendants did not consider a reasonable range of alternatives to the grazing scheme adopted in the grazing decision on the East Castle Creek allotment;
- d. Defendants' grazing decisions and permits violate FLPMA, the National Sage-Grouse Habitat Conservation Strategy, and the Special Status Species Policy, by authorizing livestock grazing and other management actions in the East Castle Creek allotment that will further destroy, fragment, and degrade sagebrush habitats for the Great Basin core population of greater sage-grouse, causing further sage-grouse population losses and fragmentation, and contributing significantly to the accelerating decline of the species and the need for its listing under the ESA; and
- e. Defendants' grazing decision also fails to conform to the Bruneau Management Framework Plan, and thus violate FLPMA's substantive requirements.

150. Defendants' preparation and approval of the grazing decision and underlying NEPA analysis on the Battle Creek allotment in the Bruneau Field Office is arbitrary, capricious, an abuse of discretion, not in accordance with law under FLPMA, NEPA, the Fundamentals of Rangeland Health, and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiff and its members and staff.

WHEREFORE, Plaintiff prays for relief as set forth below.

SEVENTH CLAIM FOR RELIEF:
OWYHEE FIELD OFFICE DECISIONS VIOLATE
NEPA, FLPMA, CLEAN WATER ACT, THE FRH AND APA

151. Plaintiff realleges and incorporates by reference all preceding paragraphs.

152. This Seventh Claim for Relief challenges BLM's grazing decisions and permits issued in the Owyhee Field Office as described *supra* as violating NEPA, FLPMA, the Clean Water

Act, the Fundamentals of Rangeland Health, and the APA. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

153. Defendants' authorization of livestock grazing in the Owyhee Field Office violates NEPA, FLPMA, the Clean Water Act, and the Fundamentals of Rangeland Health in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. Defendants failed to take a "hard look" at the direct, indirect, and cumulative impacts of livestock grazing – together with climate change, infrastructure, vegetation treatments, wildfires, and other management actions allowed on the allotments and nearby allotments – upon the public lands and wildlife resources in the allotments identified *supra*, particularly on sagebrush habitats and sage-grouse populations;
- b. Defendants further violated NEPA's requirements of using high quality data and accurate scientific information in the challenged decisions and permits, as well as underlying Fundamentals of Rangeland Health Determinations and Assessment, including by misrepresenting the nature of the effect of current livestock grazing on the public lands and wildlife on the allotments in question and surrounding areas, and by using inaccurate or misleading information on sage-grouse population and habitat needs, and in other ways;
- c. Defendants did not consider a reasonable range of alternatives to the final decisions;
- d. Defendants' grazing authorizations violate FLPMA, the National Sage-Grouse Habitat Conservation Strategy, and the Special Status Species Policy, by authorizing livestock grazing and other management actions that will further destroy, fragment, and degrade sagebrush habitats for the Great Basin core population of greater sage-grouse, causing further sage-grouse population losses and fragmentation, and

contributing significantly to the accelerating decline of the species and the need for its listing under the ESA;

- e. Defendants have violated the Fundamentals of Rangeland Health by failing to take “appropriate action” after concluding that livestock grazing is causing violations of the minimum rangeland health requirements in the Fundamentals, and, instead, continuing to authorize grazing under the same grazing scheme that led to these violations;
- f. Defendants have violated FLPMA, NEPA and BLM’s own grazing regulations by entering into a secret settlement agreement with the permittees governing livestock grazing on these allotments without any first notifying Western Watersheds and the interested public, without issuing proposed and final decisions required under 43 C.F.R. § 4160, and without undertaking any supplemental NEPA analysis examining the ecological implications of the new grazing scheme on the fragile high desert resources in the affected allotments;
- g. Defendants’ grazing decisions also fail to conform to the Owyhee Resource Management Plan, and thus violate FLPMA’s substantive requirements; and
- h. Defendants have violated Section 313 of the Clean Water Act and the State of Idaho’s water quality standards, including the State’s antidegradation policy.

154. Defendants’ preparation and approval of the Challenged Decisions and underlying NEPA analysis in the Owyhee Field Office is arbitrary, capricious, an abuse of discretion, not in accordance with law under NEPA and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiff and its members and staff.

WHEREFORE, Plaintiff prays for relief as set forth below.

EIGHTH CLAIM FOR RELIEF:
JIM SAGE ALLOTMENTS GRAZING DECISIONS
VIOLATE NEPA, FLPMA, THE FRH AND APA

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

156. This Eighth Claim for Relief challenges BLM's grazing authorizations on the Jim Sage allotments as described *supra* as violating NEPA, FLPMA, the Fundamentals of Rangeland Health, and the APA. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

157. Defendant's grazing decisions and grazing permits issued on the Jim Sage allotments violate NEPA, FLPMA, and the Fundamentals of Rangeland Health in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. Defendants failed to take a "hard look" at the direct, indirect, and cumulative impacts of livestock grazing – together with climate change, infrastructure, vegetation treatments, wildfires, and other management actions allowed on the allotments and nearby allotments – upon the public lands and wildlife resources in the allotments identified *supra*, particularly on sagebrush habitats and sage-grouse populations;
- b. Defendants further violated NEPA's requirements of using high quality data and accurate scientific information in the challenged decisions and permits, as well as underlying Fundamentals of Rangeland Health Determinations and Assessment, including by misrepresenting the nature of the effect of current livestock grazing on the public lands and wildlife on the allotments in question and surrounding areas, and by using inaccurate or misleading information on sage-grouse population and habitat needs, and in other ways;

- c. Defendants did not consider a reasonable range of alternatives to the grazing scheme adopted in the decisions;
- d. Defendants' grazing authorizations violate FLPMA, the National Sage-Grouse Habitat Conservation Strategy, and the Special Status Species Policy, by authorizing livestock grazing and other management actions that will further destroy, fragment, and degrade sagebrush habitats for the Great Basin core population of greater sage-grouse, causing further sage-grouse population losses and fragmentation, and contributing significantly to the accelerating decline of the species and the need for its listing under the ESA; and
- e. BLM's grazing decisions on the Jim Sage allotments fail to conform to the applicable land use plan, and thus violate FLPMA's substantive requirements.

158. Defendants' preparation and approval of the Jim Sage grazing decisions and underlying NEPA analysis is arbitrary, capricious, an abuse of discretion, not in accordance with law under NEPA and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiff and its members and staff.

WHEREFORE, Plaintiff prays for relief as set forth below.

NINTH CLAIM FOR RELIEF:
ELKO DISTRICT DECISIONS
VIOLATE NEPA, FLPMA, THE FRH AND APA

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

160. This Ninth Claim for Relief challenges BLM's decisions issued in the Elko District as described *supra* as violating NEPA, FLPMA, the Fundamentals of Rangeland Health, and the APA. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

161. Defendant's decisions violate NEPA, FLPMA, and the Fundamentals of Rangeland Health in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. Defendants failed to take a "hard look" at the direct, indirect, and cumulative impacts of livestock grazing – together with climate change, infrastructure, vegetation treatments, wildfires, and other management actions allowed on the allotments and nearby allotments – upon the public lands and wildlife resources in the allotments identified above, particularly on sagebrush habitats and sage-grouse populations;
- b. Defendants further violated NEPA's requirements of using high quality data and accurate scientific information in the challenged decisions and permits, as well as underlying Fundamentals of Rangeland Health Determinations and Assessment, including by misrepresenting the nature of the effect of current livestock grazing on the public lands and wildlife on the allotments in question and surrounding areas, and by using inaccurate or misleading information on sage-grouse population and habitat needs, and in other ways;
- c. Defendants did not consider a reasonable range of alternatives in the Challenged Decisions;
- d. Defendants' grazing authorizations and post-fire re-opening decision violates FLPMA, the National Sage-Grouse Habitat Conservation Strategy, and the Special Status Species Policy, by authorizing livestock grazing and other management actions that will further destroy, fragment, and degrade sagebrush habitats for the Great Basin core population of greater sage-grouse, causing further sage-grouse population losses and fragmentation, and contributing significantly to the accelerating decline of the species and the need for its listing under the ESA; and

- e. Defendants have violated the Fundamentals of Rangeland Health by failing to take “appropriate action” after concluding that livestock grazing is causing violations of the minimum rangeland health requirements in the Fundamentals, and, instead, continuing to authorize grazing under the same grazing scheme that led to these violations;
- f. Defendants have violated FLPMA procedural requirements by issuing grazing authorizations and otherwise re-opening closed portions of the public lands without consulting, cooperating, and coordinating with the interested public, including Western Watersheds, and similarly failed to issue proposed or final grazing decisions and afford the interested public, including Western Watersheds, an opportunity to inform these decisions through a public protest and appeal period, as required under BLM’s own grazing regulations; and
- g. Defendants’ decisions also fail to conform to the Elko and/or Wells RMPs, and thus violate FLPMA’s substantive requirements.

162. Defendants’ preparation and approval of the Challenged Decisions and underlying NEPA analysis is arbitrary, capricious, an abuse of discretion, not in accordance with law under NEPA and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiff and its members and staff.

WHEREFORE, Plaintiff prays for relief as set forth below.

NINTH CLAIM FOR RELIEF:
ELY DISTRICT GRAZING DECISIONS
VIOLATE NEPA, FLPMA, THE FRH AND APA

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

164. This Ninth Claim for Relief challenges BLM's grazing authorizations issued in the Ely Field Office as described *supra* as violating NEPA, FLPMA, the Fundamentals of Rangeland Health, and the APA. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

165. Defendants' grazing authorizations issued in the Ely Field Office violate NEPA, FLPMA, and the Fundamentals of Rangeland Health in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. Defendants failed to take a "hard look" at the direct, indirect, and cumulative impacts of livestock grazing – together with climate change, infrastructure, vegetation treatments, wildfires, and other management actions allowed on the allotments and nearby allotments – upon the public lands and wildlife resources in the allotments identified above, particularly on sagebrush habitats and sage-grouse populations;
- b. Defendants further violated NEPA's requirements of using high quality data and accurate scientific information in the challenged decisions and permits, as well as underlying Fundamentals of Rangeland Health Determinations and Assessment, including by misrepresenting the nature of the effect of current livestock grazing on the public lands and wildlife on the allotments in question and surrounding areas, and by using inaccurate or misleading information on sage-grouse population and habitat needs, and in other ways;
- c. Defendants did not consider a reasonable range of alternatives in the Challenged Decisions;
- d. Defendants' grazing authorizations violate FLPMA, the National Sage-Grouse Habitat Conservation Strategy, and the Special Status Species Policy, by authorizing

livestock grazing and other management actions that will further destroy, fragment, and degrade sagebrush habitats for the Great Basin core population of greater sage-grouse, causing further sage-grouse population losses and fragmentation, and contributing significantly to the accelerating decline of the species and the need for its listing under the ESA; and

- e. Defendants' decisions also fail to conform to the applicable land use plans, and thus violate FLPMA's substantive requirements.

166. Defendants' preparation and approval of the Challenged Decisions and underlying NEPA analysis is arbitrary, capricious, an abuse of discretion, not in accordance with law under NEPA and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiff and its members and staff.

WHEREFORE, Plaintiff prays for relief as set forth below.

TENTH CLAIM FOR RELIEF:
SEVEN MILE FUELS PROJECT
VIOLATES NEPA, FLPMA, AND APA

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

168. This Tenth Claim for Relief challenges BLM's Seven Mile Fuels Project in the Battle Mountain Field Office as described *supra* as violating NEPA, FLPMA, and the APA. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

169. Defendant's authorizations of the Seven Mile Fuels Project violates NEPA and FLPMA in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. Defendants failed to take a "hard look" at the direct, indirect, and cumulative impacts of the fuels project – together with livestock grazing, climate change, infrastructure, vegetation treatments, wildfires, and other management actions allowed on the

allotments and nearby allotments – upon the public lands and wildlife resources in the allotments identified above, particularly on sagebrush habitats and sage-grouse populations;

- b. Defendants further violated NEPA's requirements of using high quality data and accurate scientific information in the challenged decisions and permits, including by misrepresenting the nature of the effect of the fuels project on the public lands and wildlife on the allotments in question and surrounding areas, and by using inaccurate or misleading information on sage-grouse population and habitat needs, and in other ways;
- c. Defendants did not consider a reasonable range of alternatives in the Challenged Decisions;
- d. Defendants' decision also violates FLPMA, the National Sage-Grouse Habitat Conservation Strategy, and the Special Status Species Policy, by authorizing actions that will further destroy, fragment, and degrade sagebrush habitats for the Great Basin core population of greater sage-grouse, causing further sage-grouse population losses and fragmentation, and contributing significantly to the accelerating decline of the species and the need for its listing under the ESA; and
- e. Defendants' decisions also fail to conform to the applicable land use plan, and thus violate FLPMA's substantive requirements.

170. Defendants' preparation and approval of the Seven Mile Fuels Decision and underlying NEPA analysis is arbitrary, capricious, an abuse of discretion, not in accordance with law under NEPA, FLPMA and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiff and its members and staff.

WHEREFORE, Plaintiff prays for relief as set forth below.

ELEVENTH CLAIM FOR RELIEF:
WILLIAMS STOCK ALLOTMENT GRAZING
DECISION VIOLATES NEPA, FLPMA, THE FRH AND APA

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

172. This Eleventh Claim for Relief challenges BLM's grazing authorizations issued in the Winnemucca Field Office as described *supra* as violating NEPA, FLPMA, the Fundamentals of Rangeland Health, and the APA. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

173. Defendant's grazing authorizations issued in the Winnemucca Field Office violate NEPA, FLPMA, and the Fundamentals of Rangeland Health in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. Defendants failed to take a "hard look" at the direct, indirect, and cumulative impacts of livestock grazing – together with climate change, infrastructure, vegetation treatments, wildfires, and other management actions allowed on the allotments and nearby allotments – upon the public lands and wildlife resources in the allotments identified above, particularly on sagebrush habitats and sage-grouse populations;
- b. Defendants further violated NEPA's requirements of using high quality data and accurate scientific information in the challenged decisions and permits, as well as underlying Fundamentals of Rangeland Health Determinations and Assessment, including by misrepresenting the nature of the effect of current livestock grazing on the public lands and wildlife on the allotments in question and surrounding areas, and by using inaccurate or misleading information on sage-grouse population and habitat needs, and in other ways;

- c. Defendants did not consider a reasonable range of alternatives in the Challenged Decisions;
- d. Defendants' grazing authorizations violate FLPMA, the National Sage-Grouse Habitat Conservation Strategy, and the Special Status Species Policy, by authorizing livestock grazing and other management actions that will further destroy, fragment, and degrade sagebrush habitats for the Great Basin core population of greater sage-grouse, causing further sage-grouse population losses and fragmentation, and contributing significantly to the accelerating decline of the species and the need for its listing under the ESA; and
- e. Defendants' decision on the Williams Stock allotment also fails to conform to the Paradise-Denio Resource Management Plan, and thus violate FLPMA's substantive requirements.

174. Defendants' preparation and approval of the Challenged Decisions and underlying NEPA analysis is arbitrary, capricious, an abuse of discretion, not in accordance with law under NEPA and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiff and its members and staff.

WHEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

A. Order, adjudge, and declare Defendants violated NEPA, FLPMA, their implementing regulations and policies, the Clean Water Act, and/or the Administrative Procedure Act in preparing and adopting each and all of the Challenged Decisions and/or underlying NEPA analysis, as identified *supra*;

B. Reverse and set aside each and all of the Challenged Decisions and NEPA analysis identified *supra*;

C. Enter declaratory and/or injunctive relief requiring Defendants to undertake comprehensive and legally valid NEPA analysis and adoption of new grazing decisions, vegetation treatments, and oil and gas and geothermal leasing decisions (if appropriate) that will conserve sagebrush habitat and sage-grouse populations across the BLM lands within the range of the Great Basin core population of greater sage-grouse;

D. Enter such other declaratory and/or injunctive relief as WWP may specifically request hereafter;

E. Award Plaintiff its reasonable costs, litigation expenses, and attorney's fees associated with this litigation and the related administrative proceedings pursuant to the Equal Access to Justice Act, 28 U.S.C. §§ 2412 et seq., and/or all other applicable authorities; and/or

F. Grant such further relief as the Court deems necessary or appropriate in order to remedy Defendants' violations of law, vindicate the interests of WWP and the public, and preserve and protect the public lands and resources at issue.

Dated this 23rd day of January, 2009.

Respectfully submitted,

 /s/ Todd C. Tucci
Todd C. Tucci

Attorney for Plaintiff
Western Watersheds Project