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

WESTERN WATERSHEDS PROJECT,)	
)	
Plaintiff,)	Case No. 08-cv-435-BLW
vs.)	
)	
KEN SALAZAR, Secretary,)	PLAINTIFF’S SEPARATE STATEMENT
DEPARTMENT OF THE INTERIOR, an)	OF UNDISPUTED MATERIAL FACT IN
agency of the United States, and BUREAU)	SUPPORT OF MOTION FOR PARTIAL
OF LAND MANAGEMENT,)	SUMMARY JUDGMENT
)	
_____ Defendants.)	

Greater Sage-Grouse

1. 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. Third Amended Complaint (Complaint), ¶ 32; Answer, ¶ 32. *See also* AR 9427 (2004 Conservation Assessment). Greater sage-grouse were once widely distributed across the western

U.S. and Canada, numbering in the millions. Complaint, ¶ 33; Answer, ¶ 33.

2. Sage-grouse typically inhabit large, interconnected expanses of sagebrush habitat, and thus are characterized as a landscape-scale species. AR 9463. Historically, the distribution of sage-grouse was closely tied to the distribution of the sagebrush biome, and greater sage-grouse once occupied parts of 12 states within the western United States and three Canadian provinces. AR 9364.

3. Sage-grouse are known to migrate between seasonal home ranges, with some research indicating that sage-grouse can move over 75 miles between seasonal habitats. AR 9430. *See also* Conservation Plan for the Greater Sage-Grouse in Idaho (2006) (Idaho Conservation Plan), at pp. 2-2, and Appendix D-5.¹ On an annual basis, migratory sage-grouse populations may occupy an area that exceeds 1,042 square miles. Idaho Conservation Plan, at p. 2-3. Many sage-grouse populations in Idaho are migratory. *Id.* at 2-2.

4. The abundance and distribution of Greater sage-grouse have declined dramatically in North America. AR 9821. The destruction, fragmentation, and degradation of sagebrush habitats over past decades – including through the effects of livestock grazing and grazing-related infrastructure, vegetation treatments, energy and oil and gas development and associated infrastructure, and other factors – have caused substantial declines in greater sage-grouse populations and range reduction of about 44% from their estimated historic range. AR 9533; 9614-655; Complaint, ¶ 36; Answer, ¶ 36.

5. Greater sage-grouse have been extirpated in Nebraska, Arizona, New Mexico, and

¹ BLM mistakenly only included excerpts of this document in the Administrative Record, *see* AR 10946-58. The entire document can be view at <http://fishandgame.idaho.gov/public/wildlife/sageGrouse/conservPlan.pdf> (last viewed on July 31, 2011).

significant parts of Oregon, Washington, North and South Dakota, and central eastern California. Complaint, ¶ 38; Answer, ¶ 38.

6. Livestock grazing is known to be deleterious to sage-grouse populations and habitat in many direct, indirect, and cumulative ways. Complaint, ¶ 39; Answer, ¶ 39; AR 9636-45. 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. *Id.* 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. *Id.* Livestock also cause destruction of riparian habitats, essential for sage-grouse survival and reproduction. *Id.* 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. *Id.* 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. *Id.*

7. The Idaho Conservation Plan identifies livestock as the fourth greatest threat to Greater sage-grouse populations across the state, after wildfire, infrastructure and invasive species. Idaho Conservation Plan at p. 4-3.

Great Basin Core Population of Greater Sage-Grouse

8. In 2004, leading scientific experts on Greater sage-grouse published the 2004 Conservation Assessment. AR 9335-9945. The Conservation Assessment identified the Great Basin “core” population of Greater sage-grouse as one of the five largest remaining core sage-grouse populations across the entire range of the species. AR 9592-94, Table 6.16.

9. The Great Basin core population is itself comprised of seven subpopulations of sage-grouse, including the North-Central Nevada/Southeast Oregon/Southwest Idaho population, and the Northeast Nevada/South-Central Idaho/Northwest Utah population. *Id.* See also AR 9595, Fig. 6.37 (identifying subpopulations and populations of Greater sage-grouse).

10. 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 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. Complaint, ¶47; Answer, ¶ 47. In fact, according to the Conservation Assessment, the North-Central Nevada/Southeast Oregon/Southwest Idaho subpopulation is "loosely connected" with the NE NV/S-Central ID/NW UT population, which is directly to the east. AR 9592, 9595.

11. Greater sage-grouse in the Great Basin core population have seen similar declines in population abundance as the larger Greater sage-grouse population. AR 9883, 9914-20. 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. AR 9883. Moreover, the population index for the Great Basin core population has decreased significantly between 1964 and 2004. *Id.* These same population and abundance trends apply to the seven subpopulations as well, as identified in detail in the Conservation Assessment. AR 9914-20.

Bruneau and Owyhee Field Offices

12. The Bruneau Field Office is located in southwestern Idaho's Owyhee County, and

it encompasses nearly 1.5 million acres of mostly public lands. AR 28563, 28566². The topography of the field office is gently rolling to mountainous, and the lands are dissected by several major stream and canyon systems. AR 28427. These predominant vegetation types within the Bruneau Field Office are the same big sagebrush and low sagebrush vegetation communities commonly referred to as the Sagebrush Sea, which includes a large 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 vegetation communities. *Id.*

13. The Owyhee Field Office is located immediately to the west of the Bruneau Field Office, and encompasses nearly 1.8 million acres of mostly public lands in southwestern Idaho's Owyhee County. AR 30744. The 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. *Id.* These public lands contain the northern extent of the Owyhee Mountain Range and lies within the Columbia Plateau, which is an elevated plateau with mountains separated by canyons draining to the Pacific Ocean via the Snake and Columbia Rivers. *Id.* The ecosystem of the Owyhee Field Office contains a large diversity in landform and vegetation types ranging from vast expanses of flat sagebrush covered plateaus to rugged mountains blanketed by juniper woodlands and grasslands. *Id.*

14. The public lands administered by the Bruneau and Owyhee Field Offices lie immediately adjacent to each other in the south-western corner of Idaho. AR 14 (map of Bruneau Field Office); 30737 (map of Owyhee Field Office). The Bruneau and Owyhee Field

² The Bruneau Resource Area used to include the Bruneau Planning Unit and the Kuna Planning Unit, and this area constituted 2,379,014 acres. AR 28565-66. Since adoption of the land use plan for the Bruneau, however, BLM has transferred the Kuna Planning Unit into the Fore Rivers Field Office, and now the Bruneau Field Office constitutes about 1.5 million acres.

Offices (previously called the Bruneau and Owyhee Resource Areas, respectively) are located 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, 820-21 (9th Cir. 2002).

15. These field offices are home to numerous BLM-designated sensitive species, including greater sage-grouse, pygmy rabbit, California bighorn sheep, redband trout, and Columbia spotted frog. Complaint, ¶ 64; Answer, ¶ 64. AR 30843-47 (Owyhee RMP). 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. *Id.*

16. 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. Complaint, ¶ 65; Answer, ¶ 65. *See also* AR 28547 (Draft Bruneau-Kuna Grazing EIS) (map of sage-grouse habitat).

17. The Bruneau Field Office remains a sage-grouse stronghold, and the Bruneau contains the largest unburned, intact sagebrush habitat remaining in Idaho. AR 11814. This area comprises over 1,525,000 acres of key sage-grouse habitat, and contains the largest area with a high density of leks in Idaho. *Id.*

18. Although BLM and Idaho Department of Fish and Game lack consistent lek data

within the Bruneau Field Office, there is no doubt that sage-grouse population levels in the Bruneau – as well as across the N-Central NV/SE OR/SW ID subpopulation of Great Basin Core sage-grouse – have declined significantly in the recent past. Complaint, ¶ 65; Answer, ¶ 65. *See also* Idaho Conservation Plan at 3-28; AR 9917 (Conservation Assessment).

19. Similarly, the Owyhee Field Office contains vast areas of sage-grouse habitat, much of which is considered “key” sage-grouse habitat. AR 30084-85; Idaho Conservation Plan at 3-28.

20. Both the Bruneau and Owyhee Field Offices fall within the so-called Owyhee Sage-Grouse Planning Area, under the Idaho Conservation Plan. *Id.* This area is approximately 2.6 million acres in size, and the BLM administers – through the Owyhee and Bruneau Field Offices – approximately 83% of the sage-grouse habitat within the planning area. Idaho Conservation Plan at 3-28. In 2006, nearly $\frac{3}{4}$ of the entire planning area was considered “key sage-grouse habitat.” *Id.*

Bruneau Grazing EIS and Management Framework Plan (MFP)

21. In 1982, BLM issued the Bruneau-Kuna Grazing Final Environmental Impact Statement, in which BLM proposed to implement “an improved rangeland management program” on the public lands within the Bruneau Resource Area. AR 28560-662, 28566. The purpose of BLM’s proposal was to “improve the soil, water, and vegetation resources within the area. *Id.* Improvement was necessary – according to BLM – because only “trace” acreage of public lands within the Bruneau were in excellent condition, and 14% was in good condition. AR 28571. Fully 73 percent of the public lands were in poor or fair condition. *Id.*

22. Under BLM’s proposed modifications to livestock grazing, BLM claimed that 70% of the area would improve in range condition, and BLM committed to improve “sage

grouse habitat to increase nesting, brood rearing and wintering areas.” AR 28568, 28578.

Overall, BLM predicted that “sage grouse population levels would increase.” AR 28568.

23. More specifically, BLM proposed to improve sage-grouse late brood-rearing habitat – i.e., upland seeps, springs, and wet meadows – by establishing rest or deferred grazing systems on these upland areas. AR 28586. Deferring grazing until after seed ripe in the uplands would also benefit the native vegetation communities, according to BLM, because allowing native plants to reach seed ripe is “necessary to improve maintenance of desired plant species, vigor and productivity.” AR 28599.

24. In 1983, BLM issued its Final Bruneau Management Framework Plan, which remains in effect today. AR 1-251; Complaint, ¶ 66; Answer, ¶ 66. The Bruneau MFP adopted the proposed action identified in the EIS, and it requires that BLM manage the public lands within the Bruneau Resource Area to rectify these degraded conditions. AR 1-251.

25. Under the MFP, BLM is required to manage the public lands to comply with a number of wildlife-specific objectives and management requirements, including:

- Manage 520,000 of sage-grouse range to improve nesting, brood rearing and winter habitats, AR 115;
- Adjust management of livestock or exclude grazing on sage grouse brood-rearing areas to improve habitat, AR 4;
- Manage sensitive species habitats to “maintain or increase” existing and potential populations, AR 6, 86;
- Manage upland game habitats – including habitat for the Greater sage-grouse – to increase populations, AR 8, 108;
- Manage springs, seeps, and meadows and adjacent upland areas as key wildlife habitat for Greater sage-grouse and other upland game species, and exclude livestock from these areas if conditions do not improve, AR 114, 49; and
- Adjust livestock season of use on spring and summer range to meet the minimum growth needs of preferred plants or forage species, including by deferring grazing

until after seed ripe, AR 58, 28599.

Owyhee Resource Management Plan

26. As a result of earlier litigation brought by Western Watersheds Project, in 1999 BLM issued its Owyhee Resource Management Plan. AR 30736-941 (RMP); AR 28702-30232 (FEIS). According to the Owyhee RMP and FEIS, the condition of native rangelands within the Owyhee Resource Area reflects serious degradation from human activities, especially livestock grazing. Less than 1% of the public lands were excellent condition, and only 11% were in good condition. AR 29863-870. The remaining 88% were either in poor condition (43%) or fair condition (43%), or had recently been treated due to fire or other disturbance (3%). *Id.*

27. In adopting the Owyhee RMP, BLM committed itself to managing the public lands within the Owyhee Resource Area to rectify these degraded conditions. AR 30736-941 (RMP). Indeed, 9 of 11 major components of the Owyhee RMP focused on improving degraded conditions to benefit the public lands, waters, wildlife populations and habitat and recreation, including: (1) manage land uses and activities to ensure properly functioning watersheds conditions; (2) manage vegetation to achieve healthy rangelands; (3) meet State of Idaho water quality standards; (4) provide habitat for species status plants and animals and habitat for a high diversity of wildlife; (5) provide habitat for wild horses; (6) manage forests communities to emphasize forest health; (7) recommend 163 miles for protection under the Wild and Scenic Rivers Act; (8) designate and manage over 350,000 acres as Areas of Critical Environmental Concerns and Wilderness Study Areas; and (9) protect over 1.3 million acres for unregulated off-highway vehicle use. AR 30740.

28. The Owyhee RMP further emphasized “improvement in ecological conditions and protection of most of the sensitive resources.” AR 28712. To meet these objectives, the Owyhee

RMP allows livestock grazing to continue only where it is both “compatible with meeting other resource objectives,” and helps ensure that the “goals for rangeland health are achieved.” AR 30767, 30740.

29. The Owyhee RMP also requires BLM to prioritize management of the public lands for “special status” species habitat above other uses. AR 30764. Prioritizing sensitive species habitat means that BLM is required to “protect and enhance habitat” for special status species, and “[m]anage special status species and habitat to increase or maintain populations at levels where their existence is not longer threatened and there is no need for listing under the Endangered Species Act.” *Id.*

30. The Owyhee RMP also specifically requires that BLM “protect and enhance key sage grouse habitats and populations.” AR 30765.

Final Grazing Decisions at Issue in this Motion

Owyhee Field Office

31. Since 2003, the Owyhee Field Office has reauthorized grazing on at least 36 allotments within the field office, including the Rockville, Silver City and Diamond Basin allotments. Complaint, ¶¶ 82(a)-(k); Answer, ¶¶ 82(a)-(k). These allotments encompass several hundred thousand acres of public lands, including vast areas of key sage-grouse habitat. *Id.* See also Declaration of Kenneth Cole, Exh. 1 (maps of Owyhee allotments) (filed herewith).

Rockville Allotment

32. The Rockville Allotment totals almost 14,000 acres of mostly public land, and is located along the Idaho-Oregon border in Owyhee County about 18 miles southwest of Marsing, Idaho. AR 23443 (allotment assessment). Elevations range from 4,000 to 4,800 feet, and the historic vegetation communities include Wyoming big sagebrush, Basin big sagebrush, and low

sagebrush with bluebunch wheatgrass as the dominant herbaceous understory. AR 23443-44.

33. The Rockville allotment is home to many imperiled wildlife species, including the Calliope hummingbird, Ferruginous hawk, Willow flycatcher, pygmy rabbit and the Greater sage-grouse, among others. AR 23489. Several imperiled plant species are also found in the allotment, including the Barren milkvetch, Malhuer prince's-plume, Smooth stickleaf, Cisick's pincushion and others. AR 23490.

34. Habitat for Greater sage-grouse is found throughout the allotment, including breeding habitat and early-brooding rearing habitats in the uplands, and some late brood-rearing habitat in the mesic areas in the north and central portions of the allotment. AR 23460-69.

35. BLM has carved the Rockville allotment into six separate pastures for livestock grazing purposes, and has erected many miles of fences within and around the allotment. AR 23443. BLM has also reduced the native vegetation community within some of these pastures by plowing or spraying the sagebrush and replanting with Crested wheatgrass, though native remnant sagebrush communities remain or have regenerated. AR 23443. *See also* AR 23785 (EA) (noting that uplands have "substantially recovered from past vegetation manipulation treatments").

36. BLM currently manages livestock on the Rockville allotment under the terms of a 1992 Stipulated Agreement between the BLM and the permittees on the allotment. AR 23444. In 1997, BLM issued a new permit for the Rockville allotment, which was reversed and remanded in earlier litigation. *See Idaho Watersheds Project v. Hahn*, 307 F.3d 815 (9th Cir. 2002).

37. Two permittees currently graze cows and sheep on the Rockville allotment, totaling 2,423 Animal Unit Months ("AUM") of permitted use. AR 23761. BLM allows grazing

to occur between April 1 and November 31 of each year, and actual use ranges from 1,241 to 2,222 AUMs – with sheep accounting for between 71 to 408 AUMs, and cow use accounting for the remainder. AR 23445, 23813 (actual use and season-of-use data). Since 1990, the average actual use on the Rockville allotment totals 1,914 AUMs, including both sheep and cow use. AR 23813. Between 1990 and 2003, BLM followed a four-year rest rotation grazing schedule, which rested pastures 1-4 once every four years. AR 23517.

38. In September 2004, BLM issued an allotment assessment for the Rockville allotment, which examined current conditions within the allotment and determined if livestock grazing was causing violations of the Fundamentals of Rangeland Health and/or the Idaho Rangeland Health Standards and Guidelines. AR 23440-530. In the assessment, BLM found indicators of soil erosion and loss of hydrologic function in each of the six pastures within the Rockville allotment, and these indicators showed a “moderate to extreme departure” from reference conditions on four of the six pastures. AR 23445-49.

39. The assessment also documented degraded habitat conditions for the Greater sage-grouse, mostly documenting a lack of available native grasses and forbs. AR 23459-69. For example, in Pasture 1 BLM documented unsuitable sage grouse habitat due to a lack of (1) grass and forb height, (2) perennial grass cover, (3) forb canopy cover, (4) and an overall lack of preferred forb abundance and diversity. AR 23459. BLM documented similar conditions across the remaining sage-grouse breeding habitat, concluding that native grasses and forbs were mostly lacking in Pastures 2, 3, 5, and 6. AR 23460-67.

40. BLM also found depaupered conditions in Greater sage-grouse late brood-rearing habitats – i.e., riparian habitats. In Pasture 2, BLM concluded that the riparian habitat supported “very limited herbaceous riparian habitat.” AR 23460. In Pasture 6, BLM concluded that the

riparian habitat similarly is not “adequately providing for the needs of dependant special status animals,” due, in part, to the lack of succulent forb availability in these wetland habitats. AR 23466-67.

41. Shortly after issuing its assessment, BLM issued its Determination under the Fundamentals of Rangeland Health, which confirmed the degraded conditions across the Rockville allotment, including within key sage-grouse habitat. AR 23531-43. Indeed, BLM documented that Standard 8 (threatened and endangered plants and animals) was not being met, and livestock grazing was a significant factors causing these violations. AR 23541-42. BLM concluded that the occurrence and vigor of desirable native bunchgrasses are “significantly reduced in pastures 1, 2 and 3 where it is contributing to unsatisfactory or marginal sage grouse breeding habitat ratings.” AR 23542.

42. Despite finding these violations of the minimum rangeland health standards, BLM waited nearly four years to issue an Environmental Assessment examining a modified grazing system, in violation of legal authority requiring changes to grazing by the next calendar year. *See* 43 C.F.R § 4180.2(c). *See also Idaho Watersheds Project v. Hahn*, 187 F.3d 1035, 1037 (9th Cir. 1999) (requiring BLM to issue new grazing decisions by the next grazing year when BLM concludes that current grazing is causing FRH violations).

43. In June 2008, BLM finally issued an Environmental Assessment examining the current conditions of the public lands and alternatives to the extant grazing scheme. AR 23753-825. The purpose of the EA was to address grazing permit renewal, and the need was to improve livestock grazing management practices on the Rockville allotment to achieve the standards for rangeland health. AR 23755.

44. In the EA, BLM looked at three alternatives, including (1) re-authorizing grazing

without modification (Alternative A), (2) allowing grazing to continue under a modified approach proposed by the permittees (Alternative B), and (3) modifying existing grazing to transition from a four-year rest rotation scheme to a seven-year rest rotation scheme, divide Pasture 5 into two pastures (5S and 5N), and make minor adjustments in grazing numbers and seasons of use (Alternative C). AR 23762 (outlining alternatives).

45. Under Alternative C, BLM proposed to allow 2,288 AUMs on the allotment – a 20% increase over average actual use, and reduce rest from once every four years on pastures 1-4 to once every seven years. *See* AR 23813 (actual use summary). *Compare* AR 23772 (seven-year rest rotation under Alternative C), *with* AR 23517 (four-year rest rotation under prior grazing scheme).

46. Alternative C also maintained the annual early season grazing use in Pasture 6, despite BLM's conclusion that this grazing scheme was resulting in "marginal" sage-grouse breeding habitat in this pasture. *See* AR 23772 (grazing in Pasture 6 under Alt. C); AR 23517 (grazing in Pasture 6 under prior system); AR 23542 (determination).

47. Alternative C also disposed with most of the mandatory terms and conditions attached to the prior grazing authorization on the Rockville allotment, including mandatory utilization, streambank trampling, and riparian stubble height requirements, and Alternative C included no mandatory terms and conditions to improve soil conditions, or the conditions on sage-grouse habitat across the allotment. AR 23770-74.

48. Instead of mandatory terms and conditions, BLM proposed so-called "Annual Grazing Use Indicators," which BLM admitted were neither "mandatory" nor "other terms and conditions" of the grazing permit. AR 23762 (identifying indicators); 24971, 24996-97 (final grazing decisions stating that indicators are not mandatory). The voluntary measures are

inadequately defined – *see, e.g.*, “streambank alteration attributable to livestock grazing . . . should be less than 10%” – and lack any enforcement criteria. AR 23768-69 (identifying indicators); 23774 (noting that indicators in Alt. C are same as in Alt. B).

49. Moreover, Alternative C removed the one annual indicator applicable to Greater sage-grouse habitat. *Compare* AR 23765 (indicator no. 5 under Alt. A), *with* AR 23768 (indicators under Alts. B and C).

50. In its review of the direct and indirect impacts of Alternative C, BLM claimed that Pastures 1-4 would be expected to make significant progress toward meeting Standard 1 (soils) and Standard 4 (native vegetation) under Alternative C because of the “rest rotation, AUM reduction, and adherence to Annual Grazing Use Indicators.” AR 23776, 23781. BLM did not conclude that it would make significant progress toward meeting Standard 1 in Pastures 5 and 6, however, and BLM claimed only that conditions would improve “in the long term.” AR 23776.

51. BLM then concluded that Alternative C would be “an improvement over the current system,” but BLM never determined whether its new grazing scheme would improve Greater sage-grouse nesting, breeding, and late-rearing habitat across the Rockville allotment. AR 23786. Indeed, BLM provided no analysis or examination of whether Alternative C will make significant progress toward achieving Standard 8, or the Owyhee RMP requirements for managing sensitive species habitat. AR 23786.

52. For its cumulative effects analysis, BLM choose an analysis area which includes the adjoining federal allotments and surrounding state and federal lands. AR 23794. In its three-sentence cumulative effects analysis for wildlife, BLM claims only that the effects of Alternative C and other actions would “eventually lead to improvements or maintaining habitat,” and

Alternative C “would allow for long term improvements in overall wildlife habitat for species such as sage grouse.” AR 23797-98.

53. On July 2, 2008, BLM issued its Finding of No Significant Impact (FONSI) determining to forego preparing an Environmental Impact Statement (EIS). AR 23826-28. In its FONSI, BLM never examines the impacts on Greater sage-grouse of Alternative C – which allows livestock grazing within key sage-grouse habitat during the critical spring timeframe – together with other past, present and future grazing decisions occurring on federal lands within the Owyhee and Bruneau Field Offices. *Id.*

54. On July 3, 2008, BLM issued its proposed grazing decisions on the Rockville allotment, which proposed to adopt the grazing scheme outlined as Alternative C in the EA. AR 23829-53.

55. On July 13, 2008, Western Watersheds submitted its protest to BLM’s proposed action, requesting that BLM undertake a more thorough examination of the impacts of BLM’s proposed grazing scheme on Greater sage-grouse populations and habitat. Indeed, Western Watersheds presented a series of unanswered questions regarding the impacts of Alternative C on the Greater sage-grouse, including:

What is the geographic area/delineation of the sage-grouse population here? What have changes been over time? What numbers of birds are necessary to maintain a viable population? How long do you expect the population will be viable under all alternatives? AR 23854-875, 23856.

56. Western Watersheds also protested BLM’s lack of enforceable terms and conditions, and BLM’s reliance on so-called Annual Grazing Use Indicators. AR 23854.

57. On August 26, 2008, BLM issued its Final Grazing Decisions on the Rockville allotment, at issue in this case. AR 24967-992 (Gammett decision); 24993-25018 (Mackenzie

decision).³ In the final decisions, BLM formally adopted Alternative C from the EA. AR 24982-88, 25008-13.

58. In response to Western Watersheds' request for additional information on sage-grouse populations in and around the Rockville allotment, BLM provided no additional information on sage-grouse populations, viability, or changes over time. AR 24981. Instead, BLM claimed only "this question is outside the scope of this EA." *Id.*

59. On September 25, 2008, Western Watersheds appealed these decisions, and filed a petition for stay, which the Office of Hearings and Appeals denied. AR 25061-73. Western Watersheds subsequently dismissed its appeal. AR 25088 (notice of dismissal), 25094 (order dismissing appeal).

Silver City and Diamond Basin Allotments

60. The Silver City and Diamond Basin allotments are located in Owyhee County, Idaho, and are bordered by the Silver City Range on the south, Sinker Creek on the east, the Snake River on the north, and Brian Creek on the northwest. AR 26467. Elevations in these allotments range from 2,250 feet along the Snake River to over 8,200 feet on Hayden Peak, and the landforms consist of fan terraces, foothills and structural benches, and mountains. AR 26467.

61. The Silver City allotment contains 51,577 acres of federal public land, and approximately 7,210 acres of state and private land for a total of 58,787 acres. AR 26463. The Diamond Basin allotment contains approximately 12,138 acres, of which 11,416 acres are federal public lands with the remainder mostly state land. AR 26463-64.

62. These allotments contain about 43 miles of stream channels and 140 acres of

³ These documents are identical in all material respects, save for the identification of permitted use authorized to each individual permittee.

associated lotic (flowing water) riparian areas associated with these streams. AR 26475. In addition, 41 springs occur in these allotments, mostly in Pastures 5A and 5B of the Silver City allotment. *Id.*

63. The Silver City and Diamond Basin allotments are home to a rich array of sensitive wildlife species, including the Greater sage-grouse, Northern harrier, Burrowing owl, Loggerhead shrike, and well as a number of imperiled bat species. AR 26600-01. These allotments contain key sage-grouse habitat, including nesting, breeding and late-brood rearing habitat. AR 26534, 26477-78.

64. The BLM has carved up the Silver City and Diamond Basin allotments into 6 different pastures each, which vary in size from 20,453 acres (Pasture 5A in Silver City) to 790 acres (Sugar Loaf pasture in Diamond Basin). AR 26423. BLM currently authorizes Joyce Livestock Co. (Joyce) to graze on the Diamond Basin and Silver City allotments, and BLM also authorizes the Edith Neddleton Estate (Neddleton) to graze the Silver City allotment, although this permit has been in nonuse since 1992. AR 26463-65.

65. On the Silver City allotment, Joyce enjoys 7,126 total permitted AUMs, with 1,673 in suspended use, and 5,453 in active use; and Neddleton has 1,583 AUMs of permitted use, 450 AUMs suspended use, and 1,133 AUMs of active use. AR 26464.

66. On the Diamond Basin allotment, Joyce has 2,239 AUMs of permitted use, with 776 AUMs in suspended use, for a total of 1,463 of active use AUMs. AR 26464.

67. Between 1993 and 2002, the average actual use of the Diamond Basin and Silver City allotments totals 3,437 and 697 AUMs, respectively. AR 26519, 26528, 26562.⁴

⁴ This average actual use figure for the Silver City allotment was derived by adding together the “Total AUMs” for each pasture of the Silver City allotment (No. 569) – including 569-1 (AR 26519); 569-2, 569-3, and 569-4 (AR 26528); and Pastures 5A-B (AR 26562), then dividing this

68. The Silver City and Diamond Basin are grazed in association with the Con Shea, Murphy Fenced Federal Range (FFR), and Joyce FFR allotments. AR 26463-66. In general, the Diamond Basin and Silver City allotments are grazed from April 1 through October 31, with the other allotments providing winter and early spring seasons-of use. AR 26465, Table 3.

69. More specifically, BLM manages these five allotments – i.e., the Silver City, Diamond Basin, Con Shea, and Murphy and Joyce FFRs – in a series of four regimes, including a Winter System (which allows grazing from November through February), March System, Spring System (which allows grazing from April 1 through May 31), and a Summer/Fall System (allowing grazing from June 1 through October 31). AR 26465.

70. Pastures 1-4 of the Diamond Basin allotment and Pasture 1 of the Silver City allotment make up the West Side of the Spring Use pastures, and Pastures 2-4 of the Silver City allotment constitute the East Side of the Spring Use pastures. AR 26465. The grazing scheme rotates spring use between these two systems, with each set of pastures rested every other year. AR 26465-66.

71. On the West Side of the Spring Use pastures, average actual use from 1993 through 2002 equals 561 AUMs per year. AR 26519.⁵ On the East Side of the Spring Use pastures, average actual use from 1993 through 2002 equals 570 AUMs.⁶

total use by the number of years of data (n=10). AR 26519, 26528, 26562. This process was then repeated for the Diamond Basin allotment. BLM miscalculated average actual use by eliminating several years from its average actual use calculation, thus artificially inflating average actual use. *Id.*

⁵ This average actual use figure for the West Side of the Spring Use Pastures was derived by adding together the “Total AUMs” for each pasture in the West Side of the Spring Use Pastures; and then dividing this total use by the number of years of data (n=10). AR 26519. BLM miscalculated average actual use in these pastures by eliminating several years from its average actual use calculation, thus artificially inflating average actual use. *Id.*

⁶ This average actual use figure was derived in the same manner as in FN 4, *supra*, except that WESTERN WATERSHEDS’ SEPARATE STATEMENT OF FACTS - 19

72. The Summer/Fall System includes Diamond Basin Pastures 5-6 and Silver City Pastures 5A and 5B, which are grazed every year. *Id.*

73. In June 2003, BLM issued an allotment assessment for the five allotments making up the grazing system described *supra*, including the Silver City and Diamond Basin allotments. AR 26460-643.

74. In general, BLM concluded that the pastures in the west side of the spring system are in poor condition, with erosion in the uplands leading to extensive flow patterns and pedestalling of grasses, extensive bare ground, and a loss of the perennial grass components in the uplands. AR 26496-515.

75. BLM similarly concluded that the conditions of the streams and riparian areas on the pastures in the spring system were in poor condition. In fact, none of the streams in the spring system were in Properly Functioning Condition; and all were in functioning at risk condition. AR 26509, 26613. BLM failed to collect any riparian data for five of the seven upland lentic areas (seeps, springs, wet meadows) in the spring system. AR 26510.

76. BLM found these same conditions persisted on the east side of the spring system, too, with too much invasive cheatgrass, too little native bunchgrass and more shrubs than reference conditions. AR 26520-25.

77. BLM concluded that these depaupered conditions were impacting habitat for the Greater sage-grouse. In general, BLM concluded that most of the pastures in the spring system lack tall perennial bunchgrasses and are dominated by cheatgrass, which makes these pastures unsuitable sage-grouse habitat. AR 26522.

78. BLM similarly determined that the some of the pastures in the summer system

data for the East Side of the Spring Use Pastures was used.

were in depaupered conditions, with extensive bare ground, altered plant communities, extensive erosional patterns, and pedestalled plants. AR 26535-69.

79. The riparian areas were showing similar signs of overuse, with only 8% of the streams in Pasture 5A of the Silver City allotment in PFC, and fully 92% in functioning at risk condition. AR 26544. Nearly 75% of the stream miles in Pasture 5B were functioning at risk, too, and only 24% of the stream miles were in PFC. AR 26545.

80. BLM failed to collect any data on many of the lentic areas in Pastures 5A and 5B of the Silver City allotment, and BLM inventoried only 10 of 29 lentic areas on these pastures. AR 26544-45. Of these 10 lentic areas, moreover, none were in properly functioning condition, nine were functioning at risk, and one was non-functional. AR 26544-45. Nor did BLM collect any data on the conditions of the upland riparian areas in Diamond Basin Pastures 5 and 6. AR 26546.

81. On June 16, 2003, BLM issued its Determination under the Fundamentals of Rangeland Health on the Silver City and Diamond Basin allotments. On the Silver City allotment, BLM concluded that livestock grazing was a significant factors in failing to achieve each and every applicable rangeland health standard, including Standard 1 (Watersheds), Standard 2 (Riparian Areas and Wetlands), Standard 3 (Stream Channel/Floodplain), Standard 4 (Native Plant Communities), Standard 7 (Water Quality), and Standard 8 (Threatened and Endangered Plants and Animals). AR 26440-59.

82. BLM concluded that current livestock grazing was causing violations on Standard 8 in Pastures 1, 2 and 3 because these pastures “lack tall perennial bunchgrasses for cover during the nesting season, cheatgrass is invading, and forbs for food are lacking.” AR 26456. On Pasture 4, BLM similarly concluded that the standard was not being met because the “reduction

in perennial bunchgrasses and forbs” made “cover and food for nesting grouse ... marginal.” AR 26456.

83. BLM concluded that Standard 8 was being met in Pastures 5A and 5B, despite failing to conduct any monitoring or inventory on many of the upland riparian areas in these pasture, and finding depaupered conditions on the lentic areas that BLM did monitor, as discussed *supra*. See ¶ 78, *supra*. See also AR 26544-45.

84. On this same day, BLM also issued a Determination on the Diamond Basin allotment. AR 26426-39. BLM similarly concluded that the lands were failing to meet the minimum rangeland health conditions for each and every applicable standard, including Standards 1, 2, 4, 5, and 8, with livestock being the significant factors in violations of Standards 1, 4 and 5. AR 26426-39.

85. Notably, BLM admitted that Pastures 1, 2, and 3 are unsuitable for sage-grouse breeding due to a lack of grasses and forbs, and BLM concluded that changes in grazing management will not improve these conditions. AR 26437. BLM similarly concluded that the Standard 8 is not being met in portions of Pastures 4 – mainly because of reduction in native grasses and forbs – but then claims that conditions “appear[] to be improving.” AR 26437.

86. In November 2003, BLM issued an Environmental Assessment purporting to examine a series of alternatives to the current grazing scheme on the Silver City and Diamond Basin allotments (and others). AR 26662-783. BLM admitted that it needed to modify current grazing to conform to the requirements of the Fundamentals of Rangeland Health. AR 26667.

87. The EA largely reiterated the conditions found in the allotment assessment and Determination, and proposed the following alternatives to current grazing: (1) existing management, AR 26669-73; (2) existing management with livestock numbers at average actual

use, AR 26673-78; (3) no grazing, AR 26678; (4) the proposed action, which called for increased grazing, additional fences, and some herding, AR 26679-87; and (5) an alternative that reduces grazing and shortens the season of use, AR 26687-91.

88. Under the proposed action, BLM proposed to combine the Silver City and Diamond Basin allotments, rename the pastures, continue largely the same springs system with the same pastures (while removing Diamond Basin Pasture 4 from the west side spring system), and setting the future stocking rate at the current stock rate. AR 26681, 26906-07 (maps of use areas in final grazing decision). This alternative also included a host of range developments, including fence construction, cattleguards, and other structures. AR 26684-86. Importantly, the preferred alternative also proposed eliminating the mandatory terms and conditions governing livestock grazing on these allotment – such as mandatory stubble heights, stream bank trampling, riparian browse standards, and utilization limits – and replacing these mandatory terms and conditions with unenforceable “management guidelines.” *Compare* AR 26671-72 (terms and conditions under existing management) *with* AR 26688-86 (terms and conditions under proposed alternative).

89. More specifically, on the West Side of the Spring Use Pastures, BLM renamed Silver City Pasture 1 and Diamond Basin Pastures 1, 2, 3, and 4 as the Briar, Rabbit Creek, Moore, Diamond Well and Points of Rock pastures, respectively. Under the new grazing system, Point of Rocks (i.e., Diamond Basin pasture 4 under the old scheme) was removed from the West Side of the Spring Use Area. AR 26681 (EA); 26632 (assessment); AR 26906-07 (final grazing decision)

90. BLM also renamed the pastures in the East Side of the Spring Use area, renaming Silver City pastures 2, 3, and 4 as pastures Striker, Diamond and Gerdie. AR 26632; 26682,

26906-07.

91. Under Alternative 4, in odd years, BLM proposed to allow 683 AUMs of grazing in four pastures – i.e., Briar, South Rabbit, Moore, and Diamond Well – from March 15 through April 15 or 30. AR 26681. By way of comparison, under the previous grazing scheme, average actual use on Silver City pasture 1 and Diamond Basin pastures 1, 2, and 3 from 1993 through 2002 totaled only 444 AUMs⁷. AR 26519. *See also* SOF ¶ 71. In other words, Alternative 4 proposes a nearly 54% increase in livestock grazing in these pastures during the spring.

92. Alternative 4 similarly calls for an increase in grazing in even years, too. Under Alternative 4, BLM proposes to allow 1,003 AUMs in the Striker, Diamond and Gerdie pastures. AR 26681. Under the previous grazing scheme, these pastures were Pastures 2, 3 and 4 of the Silver City allotment (which made up the east side of the spring system), and average actual use in these pastures totaled 570 AUMs. SOF ¶¶ 71, 90. In this spring use area – which includes important sage-grouse habitat, Alternative 4 proposes a 76% increase in livestock grazing in the spring use areas.

93. Overall, Alternative 4 proposes a level of livestock use of 4,932 AUMs for the now-combined Silver City and Diamond Basin allotment. AR 26680 (4,237AUMs + 695 AUMs = 4,932 AUMs). This figure is an increase over average actual use on these same allotments, which totaled only 4,134 AUMs since 1993 – or an increase of approximately 20%. *Compare* AR 26680, *with* AR 26519 (actual use on west side of spring system), 26528 (actual use on east side of spring system), and 26562 (actual use on summer system). *See also* SOF ¶¶ 67, 71.

94. In its EA, BLM never acknowledged this increase in grazing, and, instead, claimed that Alternative 4 would improve the conditions of the uplands, riparian areas, and sage-

⁷ Diamond Basin pasture 4 (i.e., 0579-4) is not included in this calculation because it is no longer in the spring use period during odd years, as noted above.

grouse habitat because of the alleged “shortening period of livestock use and improved timing of grazing.” AR 26696, 26705.

95. The EA never examines the direct and indirect impacts on Greater sage-grouse populations and habitat of increasing grazing during the critical spring months. *Id.*

96. In its Cumulative Impacts section, BLM also never takes a comprehensive look at the impacts of Alternative 4 – together with the impacts of other past, present and future grazing decisions, vegetation manipulation projects and other actions – on the population and habitat of Greater sage-grouse rangewide. AR 26724-26.

97. In November 2003, BLM issued its proposed grazing decision on these allotments, which proposed to adopt Alternative 4 from the EA. AR 26784-806 (Nettleton decision); 26807-29 (Joyce decision). Western Watersheds protested these decisions on November 28, 2003. AR 26830-47, 23877-24963.

98. On January 12, 2004, BLM issued final grazing decisions to the permittees on the now-combined Silver City allotment. AR 26861-84 (Nettleton decision), 26885-907 (Joyce decision). In these decisions, BLM formally adopted Alternative 4 as the final grazing scheme on the allotment. *Id.*

99. The final decisions also included a Finding of No Significant Impact, in which BLM determined to forego preparing an EIS examining in detail the ecological implications of the final decisions. *Id.* The FONSI did not include any further substantive analysis beyond the discussions in the earlier EA, and the FONSI did not examine the direct, indirect and cumulative impacts of increasing grazing during the spring on Greater sage-grouse populations and habitat. *Id.*

100. Western Watersheds appealed these decisions, and petitioned the Office of

Hearings and Appeals to stay these decisions, which OHA denied. AR 25074-87. Subsequently, Western Watersheds dismissed its appeal. AR 25088-89; 25094-95.

Forthcoming Decisions in the Owyhee Field Office

101. In addition to reauthorizing grazing on these 38 allotments, in early 2009 BLM agreed to prepare new environmental analyses and issue new final grazing decisions and grazing permits on fully 67 separate allotments in the Owyhee Field Office, including many allotments within the habitat for the Greater sage-grouse. *See Western Watersheds Project v. Dyer*, Case No. 97-519-S-BLW, Docket No. 451 (Stipulated Settlement Agreement). *See also id.* at Exh. A (stipulated schedule for issuing new grazing decisions); *id.* at Docket No. 455 (order approving settlement agreement).

102. As the maps attached to the Declaration of Kenneth Cole map further illustrates, these allotments are located across the Owyhee Field Office, and many include key habitat for the Great Basin Core population of sage-grouse. *See Cole Decl.*, Exhs. 1-4. *See also Idaho Conservation Plan* at 3-29 (map of key sage-grouse habitat).

BRUNEAU FIELD OFFICE

103. BLM has recently issued a series of new grazing authorizations in the Bruneau Field Office, too, including new grazing permits issued under a grazing rider, as well as new grazing decisions on the Battle Creek and East Castle Creek allotments. Complaint, ¶¶ 70(a)-(c); Answer, ¶¶ 70(a)-(c). *See also Cole Decl.*, Exh. 1 (map of Bruneau allotments).

Battle Creek Allotment

104. The Battle Creek allotment is located southeast of Grand View in Owyhee County, Idaho, and it is bordered by Shoefly Creek on the northwest, Little Jacks Creek on the east and Highway 78 on the north. AR 4446 (allotment assessment). The allotment includes

145,085 acres of BLM-administered public lands, and includes over 20,000 of state and private lands, too, and the allotment extends southwest nearly 35 miles into the Owyhee Mountains, and averages nearly 12 miles in width. AR 4446.

105. Elevations in the allotment range from 2,600 feet in the north to 6,600 feet at Bald Mountain, and the major landforms are alluvial hills and plateaus dissected by drainages in the lower elevation areas, and hills and mountains deeply dissected by drainages at higher elevations. AR 4446.

106. There are nearly 30 miles of streams located on the public lands in the Battle Creek allotment, with Battle Creek, Little Jacks Creek and Shoofly creeks being the major drainages. AR 5620 (1999 assessment). The Battle Creek allotment also contains 18 upland seeps, springs and wet meadows. AR 5632-33, 4459.

107. The Battle Creek allotment is home to a wide array of native wildlife species, including Greater sage-grouse, Yellow-billed cuckoo, Columbia spotted frog, pygmy rabbit, California bighorn sheep, Northern Goshawk, Interior redband trout, and a host of other desert-dependent species. AR 3683-85.

108. The higher elevation pastures within the Battle Creek allotment – i.e., all pastures except pastures 8-21 – contain Greater sage-grouse habitat, including nesting, summer brood-rearing, and winter habitats. AR 3616. *See also* 28547 (Draft Bruneau-Kuna EIS) (map of sage-grouse habitat in Bruneau). Fully 64,000 acres within the Battle Creek allotment are considered sage-grouse habitat. AR 5664. BLM wildlife biologists have identified 7 historic leks within the Battle Creek allotment, with four of these leks being active in 1996 and 1997. AR 5664-5.

109. Currently, the lower elevation pastures in the Battle Creek allotment no longer provide suitable sage-grouse habitat, however, because they lack adequate grasses and cover, are

dominated by cheatgrass, or have burned. AR 4210, 4234, 4451-52.

110. The BLM has divided the Battle Creek allotment into two use areas – i.e., the Battle Creek Use Area (comprising the northern and southwest portions of the allotment) and the Little Jacks Creek Use Area (comprising the southeast portion of the allotment); BLM further divides these areas into several pastures. AR 3525-26.

111. On July 19, 1999, BLM issued the Battle Creek Allotment Analysis, Interpretation, and Evaluation (1999 Assessment). AR 5531-768. The 1999 Assessment evaluated whether standards in the Bruneau MFP, the Fundamentals of Rangeland Health, and the Idaho Water Quality Standards were met. *Id.* It concluded that livestock grazing was causing widespread violations of these minimum rangeland health requirements across significant portions of the allotment. AR 5705-11.

112. In September 1999, BLM issued an Environmental Assessment examining various alternatives for grazing management. AR 5388-5530. BLM's proposed alternative including only minor changes in the grazing system, despite the widespread violations of the Fundamentals of Rangeland Health. *Id.* In September 1999, BLM issued Final Decisions to implement the proposed action in the EA. AR 5291-387.

113. Four permittees administratively appealed the 1999 decisions and requested that implementation of the decisions be stayed, which the Office of Hearings and Appeals denied. AR 4445-46. Thus, BLM implemented the 1999 final decisions from 2000–2003. *Id.*

114. Meanwhile, BLM and the permittee appellants entered settlement negotiations to resolve the appeals, and the parties reached a settlement on December 2, 2003, under which the permittees' appeals were dismissed, the 1999 Final Decisions were set aside, and a new grazing regime was instituted as provided in the settlement. AR 4446.

115. Later, BLM determined that additional analysis was needed prior to implementing the settlement, and BLM reverted to pre-1999 livestock management for the 2004–2007 grazing seasons – i.e., the precise management that BLM found in the 1999 Assessment to be violating the Fundamentals of Rangeland Health. AR 3526, 4446.

116. In January 2007, BLM issued its new allotment assessment for the Battle Creek allotment. AR 4443-4616. The assessment documented the conditions of the public lands and wildlife habitat throughout the allotment, including a statistically significant decline since 1999 in native plant populations, a decrease or (at best) static trend in native vegetation condition, and overall lack of native grasses and forbs in many areas on the allotment. AR 4466-75 (trend data), 4477-78 (noting many native grasses were “Not present” during collection of utilization data).

117. Since 1999, BLM had only conducted five sage-grouse habitat evaluations across the entire Battle Creek allotment, and four of these five evaluations showed suitable conditions for sage-grouse. AR 4486-87. BLM conducted no evaluations on any pasture grazed in the early spring/spring rotation, and BLM also collected no data on the conditions of sage-grouse late-brood rearing habitat. *Id.*

118. On June 8, 2007, BLM issued a Battle Creek Allotment Evaluation and Determination, which found that conditions on the Battle Creek allotment worsened between 1999 and 2007. AR 4210-39. Overall, the Determination concluded that Standards 2, 3, 7, and 8 and Guidelines 1, 3, 5, 6–9, 10, 12, and 17 were not met in the Battle Creek allotment due to current grazing. AR 4210-39.

119. On January 9, 2008, BLM issued an environmental assessment ostensibly examining the environmental impacts of reissuing grazing permits on the Battle Creek allotment,

as well as constructing multiple new range projects within the allotment. AR 3516-732. On the very next day, BLM issued a FONSI, finding that allowing grazing under the proposed action would have no significant impact on the environment. AR 3513-15.

120. Despite the degraded conditions of this allotment, BLM failed to examine any alternative that reduced grazing in the Battle Creek allotment, and each alternative maintained the same numbers of cattle currently permitted, as well as the 40-50% utilization guideline. AR 3531 (noting that the alternatives do not vary in numbers of AUMs or cattle), 3556.

121. BLM's preferred alternative was Alternative D, in which BLM proposed to install 11 new troughs, 11 new miles of pipeline, 3.5 miles of new fences, and 3 miles of relocated fences across this high desert landscape—in addition to the 41 troughs, 60 miles of pipeline, and 51 miles of fence already present on the allotment. AR 3532.

122. BLM itself admits in the EA that many resources conditions will not make significant progress toward meeting the Fundamentals of Rangeland Health under its preferred alternative. For example, BLM admits that “areas which currently are not fully meeting the watershed standard . . . could show slight progress towards meeting this standard over time.” AR 3564.

123. BLM also admits that upland vegetation will remain in “static” or “static or upwards” condition in the majority of pastures, as well as downwards in the areas surrounding the new proposed troughs. AR 3581-85. BLM also notes that the new pipelines and troughs would result in soil disturbance, weed invasion, and increased trampling. AR 3564-4. BLM similarly acknowledges that “[t]he small differences in dates for pasture changes between [Alt. D] and . . . current management would not cause measurable differences to wildlife habitat.” AR 3629.

124. In its Cumulative Impacts analysis, BLM never took a comprehensive look at the impacts of Alternative D – together with the impacts of other past, present and future grazing decisions, vegetation manipulation projects and other actions – on the population and habitat of Greater sage-grouse rangewide. AR 3672-73.

125. On January 10, 2008, BLM issued proposed decisions proposing to adopt Alternative D. AR 3733-849. On January 24, 2008, Western Watersheds and others filed a timely protest. AR 3487-93, 3471-77.

126. On February 19, 2008, BLM denied the protest in a letter from David Wolf, Acting Bruneau Field Office Manager, and approved the Final Decisions issuing six grazing permits and authorizing the range projects identified in the EA's Alternative D. AR 3332-3466.

127. On March 20, 2008, Western Watersheds timely filed an administrative appeal and petition for stay of the EA, FONSI, Assessment, and the six Final Decisions, which was denied on April 23, 2008. AR 3264-3326; 536-546. Thereafter, Western Watersheds dismissed its appeal. AR 508-510.

East Castle Creek Allotment

128. The East Castle Creek allotment is located southwest of Grand View in Owyhee County, Idaho. AR 13916 (allotment assessment). The allotment contains 96,578 acres of BLM-administered public lands, as well as over 16,500 acres of state and private lands, and it runs about 34 miles southwest into the Owyhee mountains. AR 13916-17. The East Castle Creek allotment is immediately adjacent to the west of the Battle Creek allotment. AR 3730 (Battle Creek EA) (map).

129. Elevations in the allotment run from 2,700 feet to over 7,000 feet and there are three major landforms: the Snake River Plain at the northern end of allotment, the mountain

landforms on the western portion, and the plateau landform at the southern end. AR 13916.

130. The allotment contains nearly 20 miles of streams in five major drainages, including Battle, Poison, Rock, Sheep and West Fork of Shoofly Creeks. AR 13948, 11774 (EA). There are also 41 upland springs located within the East Castle Creek allotment, 28 of which are undeveloped. AR 11780, 11914 (map of springs).

131. A host of sensitive wildlife species are found throughout the East Castle Creek allotment, including Greater sage-grouse, Columbia spotted frog, Pygmy rabbit, California bighorn sheep, Northern Goshawk and other desert-dependant species. AR 11882-84.

132. According to the Idaho Department of Fish and Game, the East Castle Creek allotment contains over 40,000 acres of key sage-grouse habitat, with the higher elevation pastures (i.e., 28, 28A, 29 A, B, C and D, and 31) providing nesting habitat, and Pastures 12, 29A, B, C, D, 2, and 28A providing critical late brood-rearing habitat. AR 11814. Pastures within the central portion of the allotment (i.e., pastures 11B, 44, 26, 27, and 28, among others) contains winter habitat for Greater sage-grouse. AR 11821.

133. About 10 miles to the southeast of the allotment lies the Grasmere block, which is a block of about 250,000 acres where the densest concentration of leks in the Bruneau Field Office are located. AR 11815. The population of sage-grouse in the Grasmere block has declined from 1,000 in 2004-05 to only 400 in 2008. AR 11815.

134. BLM has divided the East Castle Creek allotment into 29 pastures, and authorizes three separate permittees to graze livestock in winter, springs, and summer seasons. AR 13917, 14125 (map of allotment). Under the terms of the most recent grazing authorization, the total active preference on the allotment is 10,872 AUMs, with active use totaling 9,601 AUMs. AR 13918-19, Tables 2B & 3B. Between 1998 and 2006, actual use averaged 8,531 AUMs, with a

high of 10,201 AUMs in 2005 and a low of 7,309 AUMs in 2003. AR 14023.⁸

135. In 1997, BLM issued an Allotment Analysis, Interpretation and Evaluation (1997 Assessment) on the Castle Creek allotment, which found that livestock grazing was causing a decline in conditions and trends in native vegetation, watersheds, streams, watersheds, upland riparian areas, and wildlife habitat. AR 16387-613. To address these resource concerns, BLM proposed to reduce livestock grazing by over 25% on the East Castle Creek allotment. AR 16081-222 (EA); 15704-783 (final grazing decisions); AR 11700. These reductions were never implemented. AR 11700.

136. On February 1, 2008, BLM issued a new allotment assessment for the East Castle Creek allotment, which reviewed range and wildlife data, and described the conditions and trends across the allotment. AR 13911-14206.

137. BLM consistently rated the public lands on the winter allotments – i.e., pastures 5B and 5BEX – as in poor condition, and BLM concluded that recent grazing caused increased bare ground and decreased herbaceous vegetation. AR 13923, 13925 (“perennial grasses are scarce” at all trend monitoring sites), 13960 (departures from reference conditions mostly moderate to extreme, moderate and slight to moderate). BLM found similar results on the early spring, late spring and summer pastures, too, with increased bare ground, reduced herbaceous vegetation, and reduced soil stability and hydrologic function at nearly every site monitored. AR 13922, Table 4; AR 13922-48.

138. The allotment assessment found similar depaupered conditions of the streams and riparian areas, too. For example, BLM repeatedly documented severe overgrazing of riparian

⁸ This average actual use figure was derived by adding together the “AUMs accounted for” cell for each year from 1998 through 2006, and then dividing this by the number of years of data (n=9).

vegetation on Birch Creek and Poison Creek – utilization which at times reached 100% and 97% utilization. AR 13951-53. According to BLM, most of the wetlands were failing to achieve Proper Functioning Condition (PFC) – a requirement of the Bruneau MFP and the Fundamentals of Rangeland Health. AR 13955-57, Table 20. Indeed, only 11 of the 38 riparian areas monitored achieved PFC, and fully 71% (i.e., 27 of 38) were non-functioning or were functioning at risk. AR 13955-57.

139. BLM found these same poor conditions in sage-grouse habitat, too, where fully 74% of all late brood-rearing habitat was found to be unsuitable or marginal, and BLM concluded that the trend was downward. AR 13873, AR 14001-03, Table 60. Even the suitable sites lacked the forbs and grass when compared to reference sites, and bare ground was more than double expected levels in many areas. AR 14000.

140. On May 21, 2008, BLM issued its Determination under the Fundamentals of Rangeland Health, which confirmed the poor conditions found in the assessment. AR 13823-84. Indeed, BLM found that livestock grazing was causing violations of each and every rangeland health standard, including Standards 1 (Watersheds), 2 (Riparian Areas and Wetlands), 3 (Stream Channel and Floodplain), 4 (Native Plant Communities), 7 (Water Quality) and 8 (Special Status Animals). AR 13823-84. In its Determination, BLM concluded that the “[c]ause of the downward trend [in sage-grouse habitat] is heavy use by livestock, erosion and hoof-shearing of wet soils.” AR 13873, 13879 (summary table).

141. On December 22, 2008, BLM issued an environmental assessment proposing to re-authorize livestock grazing on the East Castle Creek allotment. AR 11693-914. The EA recounted BLM’s data showing violations of the Fundamentals of Rangeland Health, and BLM

stated that changes to grazing were necessary because each and every pasture examined⁹ were failing to meet the Fundamentals, significant progress in not occurring, and current livestock grazing is a significant factor contributing to current conditions. AR 11696. Two days later, BLM issued its FONSI, which claimed that the new grazing scheme would have no significant impacts on the environment. AR 11915-17.

142. BLM identified a series of alternatives, with Alternative D being BLM's proposed action alternative. AR 11705-743. In Alternative D, BLM proposed to increase grazing allotment-wide to 9,295 AUMs, which is a nine percent over average actual use under the prior grazing system, which totaled 8,531 AUMs. AR 11733. *See also* SOF ¶ 134, *supra*.

143. BLM's proposed alternative also included an increase in grazing on pasture 5B from 1,829 AUMs under the old system to 2,735 AUMs, increasing grazing nearly 50% in pasture 5B, despite BLM's own conclusion that this pasture is failing to meet the minimum rangeland health standards required under the Fundamentals. *Compare* AR 11733, Table 14 (proposing 2,725 AUMs), *and* AR 14023 (average actual use equals 1,829 AUMs).¹⁰ *See also* AR 13879 (finding pasture not meeting Standard 8); 13173 (noting high utilization under current grazing scheme).

144. Alternative D also proposed to increase grazing in the early spring pastures – i.e., pastures 8B, 8BI, 8BIII and 10B – and maintain the identical season of use. AR 11733, Table 14; AR 14023, 13916 (season of use). More specifically, BLM is allowing an increase in

⁹ BLM's Determination only looked at 10 of the 29 pastures within the East Castle Creek allotment, though these 10 pastures comprise the vast majority of public land acres within the allotment. AR 13823 (Determination) (noting that BLM examined only 10 pastures under FRH); 13917 (acreages for each pasture), 11698-9 (same).

¹⁰ Average actual use was again derived by adding actual use on Pasture 5B for each year, and dividing by number of years (n=9). AR 14023.

grazing on these pastures from an average actual use of 2,996 AUMs to 3,063 AUMs on these pastures. AR 14023¹¹, 11733.

145. Again, this increase in grazing – and identical season of use for grazing – is proposed despite BLM’s conclusions that the current livestock grazing is causing violations of the Fundamentals, including for Greater sage-grouse and other imperiled species, and that the current grazing scheme is resulting in “[h]eavy to severe utilization” on these pastures. AR 13823-84 (Determination), AR 13174.

146. The summer pastures do not fare better under Alternative D, where BLM proposed an increase of 27% in pastures 29A-D¹², and maintained the identical season of use every other year, and actually extended the season of use during alternate years. AR 11733 (season-of-use under Alt. D), 14023 (actual use), 11718 (season of use under prior scheme).

147. Under Alternative D, BLM proposed a similar grazing scheme on the remaining summer pastures, too. For example, in pastures 28 and 28A, BLM proposed to continue mid-summer use – with season of use between June 16th and August 6th – with the total AUMs reflecting a reduction of 15%. AR 11733, 13920, 14023.

148. Alternative D also removes existing terms and conditions requiring a minimum stubble height on herbaceous vegetation along Birch Creek in pastures 10B and 11B. *Compare* AR 11733-4, *with* AR 11719 (continuing to apply stubble height term and condition under

¹¹ Average actual use was derived by adding together actual use on pastures 8B, 8BI, 8BIII and 10B for each year, and then dividing by the number of years (n=9). AR 14023. In this case, data from 2004 was not used in calculating average actual use because the data was not reported separately for early and late spring grazing. *Id.* at n. 2.

¹² This figure was derived by comparing AUMs allowed on Pastures 29A-D under the new system (i.e., 624 AUMs), AR 11733, and the actual use on these same pastures under the prior system (i.e., 491 AUMs), AR 14023. Actual use under the prior system was determined by adding AUMs one each pasture for each year between 1998 and 2007, and dividing by the number of years of data (n=10).

Alternative A, which is the “current management”). Instead, Alternative D adopts so-called Annual Indicator Criteria, which BLM has previously admitted are not mandatory or enforceable. AR 11733-4, 24997.

149. Alternative D also includes the development and construction of 23 range projects, including the construction of a series of so-called exclosures (i.e., building fences around upland springs) within and immediately adjacent to important sage-grouse late brood-rearing habitat. AR 11737-41.

150. BLM admits that the direct negative impacts of livestock grazing on soil surfaces, riparian areas, and upland meadows would continue under the proposed alternative. AR 11756. BLM then claims that impacts in the spring pastures (i.e., pastures 8B, 8BI, 8BIII and 10B) would be reduced due to the “reduction in livestock numbers and AUMs in the spring pastures.” AR 11756, 11830.

151. As shown above, however, Alternative D is not calling for a decrease in actual use across these pastures, and, instead proposes a slight increase with the identical season of use as currently authorized. *See* ¶ 141, *supra*. BLM also admits that its proposed range developments could “amplify” or “create new areas” of livestock impact, and BLM never examines the impacts of Alternative D on the late brood-rearing habitat within pasture 10B, most of which is in unsuitable or marginal condition. AR 11756, 14001.

152. BLM also never examines the impacts of Alternative D on the late brood-rearing habitat in pastures 11B, 12, 15, 17, 44, 19, 28, 28A, 29A, and 29D. AR 11830-31, AR 14001-03. Instead, BLM claims only that under Alternative D, “nesting cover for sage grouse would remain in suitable condition” in the summer pastures. AR 11831. But, BLM never looks at the impacts of Alternative D on nesting habitat in the spring and early springs pastures – i.e., when cows are

actually in sage-grouse nesting habitat during the nesting season. *Id.*

153. BLM tiered its cumulative impacts analysis back to a 1982 agency analysis, claiming that this nearly 30-year-old document accurately reflects the current conditions on the public lands within the East Castle Creek allotment. AR 11857-58. BLM also limited its analysis to the East Castle Creek allotment and the areas immediately adjacent to the allotment, despite BLM's previously acknowledgement that the Great Basin population of Greater sage-grouse are a landscape-wide species and migrate across political boundaries, which are known to travel or migrate long distances. Complaint, ¶¶ 47-48; Answer, ¶¶ 47-48; AR 9430-32 (Conservation Assessment).

154. On December 24, 2008, BLM issued proposed decisions on the East Castle Creek allotment, which proposed to adopt Alternative D. AR 11946-12087. On this same day, BLM issued its Finding of No Significant Impact, thereby foregoing preparation of an EIS and claiming, instead, that the new grazing scheme will have no significant impact of the public lands and wildlife habitat in and around the East Castle Creek allotment. AR 11915-17.

155. Western Watersheds protested the proposed decisions in January 2009. AR 11581-93. On February 20, 2009, BLM issued its final grazing decisions on the East Castle Creek allotment. AR 11277-1416.

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Respectfully submitted,

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