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

WESTERN WATERSHEDS PROJECT,)	
)	No. 09-cv-298
Plaintiff,)	
)	
v.)	COMPLAINT
)	
DAVID ROSENKRANCE, Field Manager,)))	
Challis Field Office; and BUREAU OF)	
LAND MANAGEMENT,)	
)	
Defendants.)	
_____)	

NATURE OF ACTION

1. This action challenges four Bureau of Land Management (“BLM”) grazing decisions and associated NEPA analysis on the Grouse Creek, Meadow Creek, Trail Creek, and Rock Creek allotments, in the Pahsimeroi River watershed.

2. The allotments stretch along the southwest side of the Pahsimeroi River valley. They comprise over 45,000 acres of important habitat for greater sage-grouse, pygmy rabbit, and many other species.

3. Livestock grazing is degrading these and other resource values, yet BLM has refused to modify grazing to address these degraded conditions. Instead, BLM reauthorized

status quo grazing, and has also failed to take a “hard look” at the environmental consequences of its actions.

4. Plaintiff Western Watersheds Project thus challenges the four final decisions, the environmental assessment (“EA”), and the findings of no significant impact (“FONSI”) on these allotments as violating the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1701 *et seq.* and its regulations; the governing Challis Resource Management Plan; and the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* and its regulations.

5. Plaintiff seeks declaratory and injunctive relief to remedy BLM’s violations of law, to correct ongoing irreparable harm, and to prevent further irreparable harm to sage-grouse populations and other natural resources resulting from BLM’s actions.

JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including FLPMA, NEPA, the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* An actual, justiciable controversy exists between the parties, and the requested relief is therefore proper under 28 U.S.C. §§ 2201–2202 and 5 U.S.C. §§ 701–06.

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

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

PARTIES

9. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) is a non-profit membership organization headquartered at the Greenfire Preserve in Custer County, Idaho, with offices and staff in Salmon, Hailey, McCall and Boise, Idaho; and also in Arizona, California, Montana, Wyoming, and Utah. WWP is dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP, as an organization and on behalf of its 1,200-plus 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 central Idaho. WWP is also active in monitoring ecological conditions in central Idaho, including the Challis Field Office and the challenged allotments in question; in reviewing and commenting upon agency grazing and other resource decisions, including those at issue here; and in publicizing the ecological effects of grazing in this region.

10. WWP’s members and staff work, live, hunt, and/or recreate throughout central Idaho, including the Challis Field Office and the challenged allotments specifically. WWP members and staff derive aesthetic, recreational, scientific, inspirational, educational, and other benefits by visiting this area on a regular and continuing basis and intend to do so frequently in the immediate future.

11. BLM’s violations of federal laws and regulations as alleged here directly injure the interests of WWP and its staff and members. Those interests have been and will continue to be injured and harmed by the BLM’s violations of law as complained of herein. Unless the relief prayed for herein is granted, Plaintiff and its members and staff will continue to suffer on-going and irreparable harm and injury to their interests.

12. Defendant DAVID ROSENKRANCE is the manager of the BLM's Challis Field Office, headquartered in Challis, Idaho, approved the final decisions and associated NEPA documents challenged herein. He is sued solely in his official capacity.

13. UNITED STATES BUREAU OF LAND MANAGEMENT ("BLM") is an agency or instrumentality of the United States, within the Department of Interior; and is charged with managing the public lands and resources of the Challis Field Office, including the allotments in question, in accordance and compliance with federal laws and regulations.

STATEMENT OF FACTS

Challis Resource Management Plan.

14. In 1999, BLM's Challis Field Office adopted the Challis Resource Management Plan ("Challis RMP"). The Challis RMP governs BLM's management of the Challis Field Office, including the challenged allotments. It contains many requirements designed to protect natural resource values.

15. FLPMA requires that all management decisions, including those challenged here, be consistent with the governing land use plan. 16 U.S.C. § 1732(a).

16. Among the Challis RMP's wildlife requirements, BLM is obligated to "[s]ustain diverse and abundant wildlife populations . . . by improving wildlife habitat currently in unsatisfactory condition, and maintaining habitat currently in satisfactory condition."

17. With respect to special status species, the Challis RMP requires BLM to "[m]aintain populations of special status species and/or their habitat over the range of natural distribution and habitat conditions" and "[e]liminate the need for listing of sensitive and candidate species and contribute to recovery of listed species by increasing the number or size of populations or by removing threats to species and their habitats." Special Status Species Goal 2. The RMP further notes that BLM policy is to manage special status species to "maintain viable

populations,” “in a manner that eliminates the need for listing under the Endangered Species Act,” and “for recovery.” BLM must “[i]nclude a site-specific field assessment” of special status species as part of the assessment of authorized actions.

18. With respect to livestock grazing management, the Challis RMP requires BLM to “[m]anage livestock grazing levels in line with the long term capacity of the land, considering multiple use and climatic variability, to maintain, improve, or make significant progress towards improving ecological condition.” Specifically, BLM must manage livestock grazing to ensure progress toward enumerated riparian and aquatic habitat conditions.

19. The Challis RMP further requires that BLM protect riparian habitats, including by requiring BLM to “[m]anage stream riparian areas to maintain or achieve proper functioning condition . . . to ensure desired functions, improve water quality, prevent and minimize flood and sediment damage, and establish conditions which support attainment of healthy and productive aquatic habitat.” Specifically, BLM must set stubble height requirements depending on condition and trend of streams, and depending on whether the stream is occupied habitat for special status fish species.

20. The Challis RMP also requires BLM to “[m]anage stream riparian areas to maintain or achieve proper functioning condition . . . to ensure desired functions, improve water quality, prevent and minimize flood and sediment damage, and establish conditions which support attainment of healthy and productive aquatic habitat.” Specifically, the RMP sets different grazing utilization and streambank shearing standards, depending on stream conditions and whether it is occupied fish habitat; and notes that degraded riparian areas may need complete rest from livestock grazing to initiate recovery.

The Challenged Allotments.

21. BLM analyzed together the renewal of the grazing permits for the Grouse Creek, Meadow Creek, Trail Creek, and Rock Creek allotments.

22. The Grouse Creek allotment encompasses 35,564 acres of important wildlife habitat. Nearly the entire allotment is identified as “key” sage-grouse habitat by IDFG; 4,800 acres is winter sage-grouse habitat; and there is an active lek in the northern part of the allotment. Sixteen areas of recent pygmy rabbit activity were recorded by IDFG on the allotment in 2006. There are also 700 acres of bighorn sheep winter habitat on the allotment, and 11,300 acres of crucial winter pronghorn antelope habitat. The allotment has historically been grazed by sheep and cattle, but because of the disease risk posed by domestic sheep to bighorn sheep, the domestic sheep portions of the permit have been in non-use since 2003 by agreement with the Foundation for North American Wild Sheep.

23. The Meadow Creek allotment encompasses 2,809 acres. The allotment is designated as “key” sage-grouse habitat by IDFG. A currently occupied lek is within 1.5 miles of the allotment, and a historical lek is within one mile. Pygmy rabbit habitat has been recorded within a mile of the allotment.

24. The Trail Creek allotment encompasses 5,327 acres. BLM states that the allotment is designated as “key” sage-grouse habitat by IDFG and that sage-grouse have been observed on the allotment.

25. The Rock Creek allotment encompasses 1,470 acres, most of which is inside the Burnt Creek WSA. Bull trout occupy the reach of the Pahsimeroi River that runs through the allotment. In the EA, BLM erroneously states that bull trout are not found within the Rock Creek allotment, but numerous agency documents, including the governing Biological Assessment and BLM’s own 2008 bull trout redd (nest) survey data, state otherwise. A historic sage-grouse lek

is less than two miles away. About 1,460 acres of bighorn sheep winter habitat and 740 acres of “crucial” bighorn winter habitat are designated on this allotment.

The Challenged Decisions.

26. BLM issued an EA, FONSI, and four proposed decisions for the challenged allotments on August 20, 2008. BLM subsequently deemed the proposed decisions to be its final decisions, as explained below.

27. The decisions maintain or increase the level of animal unit months (“AUMs”) that were authorized in recent years. In addition, the decisions do not include a number of “allowable use criteria” (such as upland utilization and streambank damage limits) as mandatory permit terms, contrary to BLM regulations.

28. The decisions authorize significant amounts of grazing during sage-grouse breeding and nesting periods. For example, grazing on the Grouse Creek allotment is authorized to begin on May 19th, despite the presence of an active lek on the allotment.

29. The decisions also authorize a significant number of new range developments, affecting key sage grouse, pygmy rabbit, and other sensitive wildlife habitat. The decisions for the Grouse Creek allotment include authorization of five new troughs, three miles of new pipeline, a new spring development and enclosure, and reconstruction of an existing spring development. The decisions for the Trail Creek allotment include authorization of three new troughs, 2.5 miles of new pipeline, and enlargement of a spring enclosure. The decision for the Meadow Creek allotment includes authorization of reconstruction of a spring development and associated pipelines, troughs, and enclosure fencing.

30. The decisions authorize the conversion of certain permitted AUMs from sheep to cows.

31. The EA analyzed three alternatives. Two alternatives would maintain or increase the level of AUMs authorized in recent years. A third, “no action” alternative would renew the previous permit as written, authorizing double the numbers of AUMs authorized in recent years. Despite the grazing degradation occurring on the allotments, no alternative considered resting the allotments or reducing livestock use.

32. BLM acknowledged in the EA that the project will have negative impacts on sage-grouse. The EA admits that the “placement of the proposed troughs” in the Grouse Creek allotment “likely will have a negative impact on greater sage-grouse.” First, it explains, the quantity of grasses around sagebrush in nesting season would be reduced. Second, the proposed grazing, “which is at the peak of the nesting/ early brood-rearing period,” could reduce forb availability for chicks. It makes similar admissions for the other allotments, including that the grazing season in the Trail and Meadow Creek allotments corresponds to sage-grouse nesting and reproductive seasons, and that due to a lek in close proximity, “the potential exists for negative effects from livestock grazing, i.e. disturbance of incubating birds” on the Meadow Creek allotment.

33. Despite these admissions, the EA’s analysis of sagebrush obligates species such as sage-grouse and pygmy rabbit and their habitat is extremely brief. It fails to discuss any data or impacts to the local population, subpopulation, or trend. This problem is compounded by a lack of baseline data. For example, for sage-grouse, BLM has not apparently conducted any sage-grouse habitat or trend assessments on the allotments, despite most of the project area being “key” sage-grouse habitat; nor has it evaluated impacts or trend of the Snake, Salmon, and Beaver sage-grouse population and the Little Lost subpopulation.

34. The EA also fails to analyze the cumulative impacts on sagebrush obligates from the grazing and rangeland projects in these and surrounding allotments, make any quantitative assessment of impacts to sagebrush obligates such as sage-grouse or pygmy rabbit, or discuss effects on the larger sub-populations or populations of sagebrush obligates. Instead, BLM brushes aside the acknowledged impacts to conclude that the project would “maintain or improve the current ecological condition of the vegetation.”

35. The EA fails to consider any direct, indirect, or cumulative impacts of livestock grazing upon federally-listed bull trout in the Rock Creek allotment, which contains occupied bull trout habitat (the Pahsimeroi River). Instead, it erroneously states that the Pahsimeroi River does not contain bull trout in the Rock Creek allotment.

36. In setting the amount of permitted use for permits converted from sheep to cows, the EA does not adequately consider that livestock will congregate in different areas than sheep, particularly around riparian areas.

37. WWP submitted administrative protests of the proposed decisions on September 12, 15, and 16, 2008. BLM determined that the protests were untimely, and stated that it converted the proposed decisions to final decisions on September 9, 2008. WWP submitted an administrative appeal and petition for stay on the four decisions on October 8, 2008. On November 4, 2008, the Office of Hearings and Appeals denied the petition for stay. WWP subsequently dismissed the appeal, and has exhausted all required administrative remedies before electing this forum to pursue its challenges to the decisions.

FIRST CLAIM FOR RELIEF:
VIOLATIONS OF NEPA AND APA

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

39. This claim challenges BLM’s violation of NEPA, 42 U.S.C. § 4321 *et seq.*, and NEPA’s implementing regulations, in failing to prepare an environmental impact statement prior to issuing the Grouse Creek, Meadow Creek, Rock Creek, and Trail Creek Allotments Authorization Renewal EA, FONSI, and final decisions; and in failing to undertake an objective assessment of the environmental impacts of the grazing and range projects implemented in the decisions. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

40. 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 significantly affecting the quality of the human environment. NEPA documents must analyze direct, indirect, and cumulative impacts of the likely environmental consequences of proposed actions. Such analysis must include consideration of a reasonable range of alternatives to a proposed action and means to mitigate adverse impacts.

41. BLM’s NEPA violations alleged here include, but are not limited to:

a. Not analyzing or taking a “hard look” at the direct, indirect, and cumulative impacts of livestock grazing and new range developments – together with climate change, vegetation treatments, wildfires, and other management actions on the allotments and nearby allotments – upon the public lands and wildlife resources on the allotments, particularly on sagebrush obligates (such as sage-grouse and pygmy rabbit) and bull trout, as well as failure to describe the environmental baseline;

b. Refusal to consider an adequate range of alternatives to the proposed action, including by only considering levels of grazing equal to or higher than current levels of authorized grazing; and

c. Not preparing an EIS addressing the proposed actions and alternatives to them.

42. The final decisions and associated EA and FONSI for the allotments are thus arbitrary, capricious, an abuse of discretion, and contrary to law, and must be reversed and remanded under the APA, 5 U.S.C. § 706 et seq.

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CLAIM FOR RELIEF:
VIOLATIONS OF FLPMA AND APA

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

44. This Claim for Relief challenges Defendants' violation of FLPMA, 43 U.S.C. § 1701 *et seq.*, and its implementing regulations, with respect to the Grouse Creek, Meadow Creek, Rock Creek, and Trail Creek Allotments Authorization Renewal EA, FONSI, and final decisions. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

45. FLPMA governs the management of BLM federal public lands. 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. *Id.* § 1732(a), 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.

46. BLM's FLPMA violations alleged here include, but are not limited to:

a. Violation of the Challis RMP, including its provisions (cited above) requiring improvement and maintenance of fish and wildlife habitat; management of special status species to maintain viable populations, maintain habitat over the range of natural distribution, and eliminate the need for listing; management of livestock grazing levels to maintain, improve, or

make significant progress towards improving ecological condition; and manage stream riparian areas to maintain or achieve proper functioning condition and establish conditions which support attainment of healthy and productive aquatic habitat—including by authorizing activities BLM admits will harm and degrade sage-grouse habitat;

b. Violating the BLM grazing regulations, adopted pursuant to FLPMA, which require that grazing permits must include terms and conditions “necessary to achieve management and resource objectives”, and “ensure conformance with subpart 4180 of this part.” 43 C.F.R. §§ 4130.3 & 4130.3-1(c); and

c. Further violating the regulations’ requirement that permitted livestock use be based upon the amount of forage available, 43 C.F.R. § 4110.2-2(a), including by failing to consider the impacts of converting sheep AUMs to cattle AUMs.

47. The Grouse Creek, Meadow Creek, Rock Creek, and Trail Creek EA, FONSI, and Final Decisions constitute final agency action judicially reviewable by this Court pursuant to 5 U.S.C. § 706(2), and must be reversed and remanded as being arbitrary, capricious, an abuse of discretion, and contrary to law for the reasons identified above.

PRAYER FOR RELIEF

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

A. Order, adjudge, and declare that the challenged decisions and associated EA and FONSI are arbitrary, capricious, and contrary to law;

B. Reverse and set aside the challenged decisions, EA and FONSI;

C. Remand the challenged decisions and order Defendants to issue legally valid decisions before authorizing further grazing or grazing-related projects on the allotments;

D. Enter such temporary, preliminary, and/or permanent injunctive relief as WWP may 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 19th day of June, 2009.

Respectfully submitted,

/s/ Kristin F. Ruether

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