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

WESTERN WATERSHEDS PROJECT,	)	
	)	No. 09-cv-532
Plaintiff,	)	
	)	
v.	)	
	)	<b>COMPLAINT</b>
DAVID ROSENKRANCE, BLM Challis Field	)	
Office Manager, and BUREAU OF LAND	)	
MANAGEMENT; WILLIAM WOOD, Salmon-	)	
Challis National Forest Supervisor, and UNITED	)	
STATES FOREST SERVICE; JEFFERY FOSS,	)	
U.S. Fish and Wildlife Service Snake River Office	)	
Field Supervisor, and U.S. FISH AND WILDLIFE	)	
SERVICE; and DAVID MABE, NOAA Fisheries	)	
Idaho State Habitat Office Supervisor, and	)	
NOAA FISHERIES,	)	
	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

1. The Pahsimeroi watershed in eastern Idaho historically was an important and productive watershed for salmon, steelhead, and bull trout; but these species have declined dramatically in this watershed and throughout the Upper Salmon River basin. Plaintiff Western

Watersheds Project brings this case to challenge Defendants' violations of the Endangered Species Act ("ESA") by not properly managing for and recovering these species of fish in the Pahsimeroi watershed.

2. Much of the land in the Pahsimeroi watershed is federal land managed by either the Forest Service or Bureau of Land Management ("BLM"). In 1999, the Forest Service and BLM consulted under the ESA with NOAA Fisheries and U.S. Fish and Wildlife Service ("FWS") over the impacts to salmon, steelhead, and bull trout from livestock grazing and other public land management activities throughout the watershed, but the consultation for most allotments is now over ten years old. The agencies have never updated this watershed consultation, despite newly designated critical habitat for steelhead, changed circumstances such as the failure to conduct required monitoring or comply with grazing standards, and new information about the activities in the watershed, the status of the fish species, and impacts to those species, all of which warrant reinitiation of consultation for salmon, steelhead, and bull trout.

3. FWS had particular concerns over BLM's Upper Pahsimeroi allotment during the original consultation because of livestock grazing impacts to bull trout, and thus required a more thorough analysis and more stringent requirements on future grazing for that allotment. This analysis is now over nine years old and needs to be updated with new information. Furthermore, some of the requirements set forth for the allotment are not being followed, which likewise mandates reinitiation of consultation.

4. Meanwhile, the Forest Service and BLM continue to authorize livestock grazing that adversely affects salmon, steelhead, bull trout, and their habitat throughout the Pahsimeroi watershed. Grazing in riparian areas and trampling of spawning gravels harms the listed fish and

degrades their habitat. Until the agencies complete new consultations, they must prevent adverse effects and injury to salmon, steelhead, bull trout, and designated critical habitat.

5. Western Watersheds Project thus seeks judicial review and relief ordering Defendants to reinstate consultation for activities in the Pahsimeroi watershed, including livestock grazing on the allotments that may affect listed fish species; and further declaratory and injunctive relief to prevent the Forest Service and BLM from violating the ESA's substantive requirements to protect and recover these species of fish.

### **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 the ESA, 16 U.S.C. § 1531 et seq. and the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq. An actual, justiciable controversy now exists between Plaintiff and Defendants, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and 16 U.S.C. § 1540(g).

7. Venue is properly vested in this Court under 16 U.S.C. § 1540(g)(3)(A) because the violations occurred in this judicial district.

8. As required by the ESA, Western Watersheds Project provided sixty days notice of its intent to bring this action.

9. The federal government has waived sovereign immunity in this action pursuant to 16 U.S.C. § 1540(g)(1).

### **PARTIES**

10. Plaintiff WESTERN WATERSHEDS PROJECT is a regional, membership, not-for-profit conservation organization, dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP is headquartered at the Greenfire

Preserve in Custer County, Idaho, and also has staff and offices in Salmon, Hailey, Boise, and McCall, Idaho, as well as in other western states. Through agency proceedings, public education, scientific studies, and legal advocacy conducted by its staff, members, volunteers, and supporters, WWP is actively engaged in protecting and improving riparian areas, water quality, fisheries, wildlife habitat, and other natural resources and ecological values of western watersheds, including the Pahsimeroi watershed.

11. Western Watersheds Project has participated and participates in decision-making processes for livestock grazing on Forest Service and BLM lands throughout the west, including in the Pahsimeroi watershed. WWP staff, members, and supporters regularly visit, use, and enjoy the public lands, fish and wildlife, and natural resources on federal lands in the Pahsimeroi watershed for many health, recreational, scientific, spiritual, educational, aesthetic, and other purposes. WWP staff, members, and supporters pursue activities such as hiking, fishing, hunting, photography, scientific study, wildlife viewing, and spiritual renewal on Forest Service and BLM lands in the Pahsimeroi watershed. Livestock grazing, water diversions, and other activities that degrade these lands, waters, fish, and other natural resources impair the use and enjoyment of these lands by WWP staff, members, and supporters.

12. WWP staff, members, and supporters plan to continue to visit and use these public lands in the Pahsimeroi watershed in the near future. WWP's interests, both organizationally and on behalf of its staff, members, and supporters, in the preservation and protection of the Pahsimeroi watershed and its resources are being directly harmed by Defendants' actions challenged herein. WWP's above-described aesthetic, conservation, recreational, scientific, and other interests have been, are being, and unless the relief prayed for is granted, will continue to be adversely affected and irreparably injured by Defendants'

violations of law. WWP has no adequate remedy at law, and thus the requested relief is appropriate.

13. Defendant DAVID ROSENKRANCE is an employee of the BLM, who serves as Field Office Manager for the BLM's Challis Field Office, based in Challis, Idaho. As the Challis Field Office Manager, Defendant Rosenkrance has management and supervisory authority over livestock grazing authorizations as well as other activities on lands managed by the BLM's Challis Field Office, including in the Pahsimeroi River watershed; and is responsible for ensuring that those activities comply with all federal laws and regulations, including the ESA. Defendant Rosenkrance is sued solely in his official capacity.

14. Defendant BUREAU OF LAND MANAGEMENT is an agency or instrumentality of the United States, and is charged with managing the public lands and resources of the Challis Field Office, in accordance and compliance with federal laws and regulations.

15. Defendant WILLIAM WOOD is an employee of the U.S. Forest Service, who serves as Supervisor for the Salmon-Challis National Forest, based in Salmon, Idaho. As Forest Supervisor, Defendant Wood has management and supervisory authority over livestock grazing authorizations as well as other activities on the Salmon-Challis National Forest, including in the Pahsimeroi River watershed; and is responsible for ensuring that those activities comply with all federal laws and regulations, including the ESA. Defendant Wood is sued solely in his official capacity.

16. Defendant U.S. FOREST SERVICE is an agency or instrumentality of the United States, and is charged with managing the public lands and resources of the Salmon-Challis National Forest, in accordance and compliance with federal laws and regulations.

17. Defendant JEFFERY FOSS is an employee of the U.S. Fish and Wildlife Service, who currently serves as Field Supervisor of the Snake River Field Office, based in Boise, Idaho. As the Snake River Field Office Supervisor, Defendant Foss is responsible for administering the provisions of the ESA for the Snake River region, which encompasses the Salmon-Challis National Forest and Challis BLM Field Office. Defendant Foss is sued solely in his official capacity.

18. Defendant U.S. FISH AND WILDLIFE SERVICE is an agency or instrumentality of the United States, and is responsible for administering the provisions of the ESA with regard to threatened and endangered terrestrial and freshwater aquatic species, including threatened Columbia River bull trout.

19. Defendant DAVID MABE is an employee of NOAA Fisheries, who currently serves as Supervisor of the Idaho State Habitat Office, based in Boise, Idaho. As the Idaho Habitat Office Supervisor, Defendant Mabe is responsible for administering the provisions of the ESA for the State of Idaho, which encompasses the Salmon-Challis National Forest and BLM Challis Field Office. Defendant Mabe is sued solely in his official capacity.

20. Defendant NOAA FISHERIES is an agency or instrumentality of the United States, and is responsible for administering the provisions of the ESA with regard to threatened and endangered marine species, including Snake River spring/summer Chinook salmon and Snake River Basin steelhead.

### **ENDANGERED SPECIES ACT**

21. Under the ESA, U.S. Fish and Wildlife Service or NOAA Fisheries (the “Services”) must list a species as endangered if it is in danger of going extinct throughout all or a significant portion of its range, and must list it as threatened if it is likely to become endangered

in the foreseeable future. 16 U.S.C. §§ 1532(6),(20); 1533(a)(1).<sup>1</sup> The Services may also list sub-species or distinct populations of fish or wildlife as threatened or endangered under the ESA. *Id.* § 1532(16).

22. Once species are listed as threatened or endangered, the Services must designate their critical habitat, which is occupied or unoccupied habitat that contains physical or biological features essential to the conservation of the species and which may require special management considerations or protection. *Id.* §§ 1532(5); 1533(a)(3). The intent of the ESA is to conserve ecosystems upon which threatened and endangered species depend, and recover listed species to the point at which they no longer need the protections of the Act. *Id.* §§ 1531(b); 1532(3).

23. A federal agency that authorizes an activity that may affect a listed species or critical habitat must consult with the Services over the impacts of that activity to ensure that it does not jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(a)(2). Jeopardize means to reduce appreciably the likelihood of both the survival and recovery of the species in the wild by reducing the reproduction, numbers, or distribution of the species. 50 C.F.R. § 402.02.

24. During the ESA consultation process, if the action agency concludes in a “biological assessment” (BA) that the activity is not likely to adversely affect the listed species or adversely modify its critical habitat, and the Service concurs with that conclusion in a Letter of Concurrence (LOC), then the consultation is complete. *Id.* §§ 402.12, 402.14(b). If, however, the action agency or the Service determines that the activity is likely to adversely affect the listed species or its critical habitat, then the Service completes a “biological opinion” (BiOp) to

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<sup>1</sup> U.S. Fish and Wildlife Service is responsible for consultations involving freshwater aquatic species, such as bull trout, while NOAA Fisheries is responsible for consultations involving marine species, such as salmon and steelhead.

determine whether the activity will jeopardize the species or result in destruction or adverse modification of critical habitat. *Id.* § 402.14. If the Service determines that the action will jeopardize the species or adversely modify critical habitat, it may propose one or more reasonable and prudent alternative actions that would avoid such results. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(g)(5).

25. In addition to the substantive duty under ESA Section 7(a)(2) to avoid jeopardizing a species or adversely modifying critical habitat, the action agencies also have a duty to avoid making any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures that would avoid jeopardizing the species or adversely modifying critical habitat while the consultation process is occurring. 16 U.S.C. § 1536(d).

26. The ESA and its regulations also prohibit “take” of listed species, where take includes harassing, harming, wounding, or killing the species. 16 U.S.C. §§ 1538; 1533(d); 1532(19). Harm is further defined to include significant habitat modification or degradation that injures a listed species by significantly impairing its breeding, feeding, or sheltering behaviors, while harassment is an act that creates the likelihood of injury by annoying a species to the extent that it significantly disrupts breeding, feeding, or sheltering behaviors. 50 C.F.R. § 17.3.

27. The Services, however, can authorize take of a listed species through an “Incidental Take Statement” that accompanies a BiOp if the taking is incidental to an otherwise lawful activity and does not cause jeopardy to the species or adverse modification of critical habitat. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i). Any taking that conforms to the terms and conditions within an Incidental Take Statement is not prohibited under Section 9 of the ESA.



16 U.S.C. § 1536(o)(2); 50 C.F.R. § 402.14(i)(5).

28. Once the consultation is complete, the agencies have a duty to insure that it remains valid. Reinitiation of consultation is required and shall be requested by the action agency or the Services if: (a) the amount or extent of taking specified in the incidental take statement is exceeded; (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) a new species is listed or critical habitat designated that may be affected by the identified action. 50 C.F.R. § 402.16.

## **STATEMENT OF FACTS**

### **I. Overview of the Pahsimeroi Watershed**

29. The Pahsimeroi River watershed is located in rugged central Idaho, and the Pahsimeroi River flows northwest for about 50 miles before joining the Salmon River. The Pahsimeroi River valley is bounded by the Lost River Range to the southwest (which includes Mount Borah, the highest point in Idaho at 12,662 feet) and the Lemhi Range to the northeast.

30. The watershed contains about 537,210 acres, with about 42% administered by BLM and 46% administered by the Forest Service. The watershed contains private land that occurs mostly along the floodplain in the valley bottom, BLM land in the upper parts of the valley and lower elevation foothills, and Forest Service land in the higher elevations. Most of the private land is used for agriculture to grow feed for livestock and is irrigated from water diverted from the Pahsimeroi River and its tributaries. Various activities occur on BLM and Forest Service land, including recreation, mining, and timber sales, but the dominant activity by far is livestock grazing.

31. The watershed contains about 325 miles of perennial streams, which provide habitat for three species of threatened fish: Snake River spring/summer Chinook salmon, Snake River Basin steelhead, and Columbia River bull trout. Additionally, endangered sockeye salmon migrate past the mouth of the Pahsimeroi River in the Salmon River on their way between their spawning grounds in headwater lakes of the Salmon River and the ocean.

32. According to BLM, much of the water of the Pahsimeroi watershed is diverted for crop production from about May through October. The dewatering has created a situation in which much of the designated critical habitat for salmon and steelhead in the watershed is either dry or so dewatered that fish cannot migrate upstream. Likewise, the diversions preclude connectivity between tributaries and the main Pahsimeroi River for bull trout, eliminating migratory paths for this species as well.

## **II. ESA Listed Fish in the Pahsimeroi Watershed**

33. The Services have listed numerous populations of salmon, steelhead, and bull trout as threatened or endangered under the ESA because of significantly declining populations. These fish require clean, cold water to survive and reproduce. Water having elevated levels of sediment, high temperature, or other pollutants impairs the survival of the fish by hindering their biological functions, and sediment also impairs reproduction by covering spawning gravels where the fish lay eggs, which suffocates the eggs and young fry that emerge. The fish also require cover in the form of undercut banks and overhanging vegetation, large woody debris, and deep pools that allow them to hide from predators and rest outside of the current.

34. Salmon and steelhead are anadromous species, meaning they are born in inland streams, migrate to the ocean as juveniles, and return to their natal streams several years later as adult fish to spawn. Bull trout are not anadromous and do not migrate to the ocean. Some bull

trout, however, migrate from smaller streams to larger rivers or lakes to overwinter before returning to the smaller streams to spawn. Others remain residents in individual streams.

35. Columbia River bull trout was listed as threatened in 1998. Bull trout are still found in the upper Pahsimeroi River and several tributaries, but at significantly reduced numbers. Many streams in this watershed are cut off from the main Pahsimeroi River due to water diversions that obstruct and/or dewater the streams, cutting off migration paths that used to occur. No critical habitat for bull trout was designated in the Pahsimeroi watershed in the final bull trout critical habitat rule, but FWS is currently redoing its bull trout critical habitat designation due to political interference with the final rule (the proposed rule had designated significantly more critical habitat, the majority of which was removed in the final rule).

36. Bull trout require colder water than salmon or steelhead, rarely occurring in water above 59-64° F. These fish spawn from mid-August through October and fry emerge in the spring. The 2008 FWS bull trout status review ranked the Pahsimeroi River core area as having “substantial, imminent” threats, and categorized it as being “at risk,” meaning “very limited and/or declining numbers, range, and/or habitat, making the bull trout in this core area vulnerable to extirpation.” Thus, the species remains listed as threatened.

37. Snake River spring/summer Chinook salmon was listed as threatened in 1992. Historically, the Pahsimeroi River and its tributaries were a significant Chinook salmon production area in the Upper Salmon River basin for natural populations of spring/summer Chinook salmon. Its numbers and range within the Pahsimeroi drainage have declined significantly, due to irrigation withdrawals, water quality problems caused in part by livestock, and other factors, and the species is now absent from many upper areas of the drainage. Currently, the species is found only in the main Pahsimeroi River and a few tributaries, and

many of the fish are hatchery fish. However, numerous other tributaries are unoccupied, designated critical habitat for Chinook salmon.

38. Chinook salmon spawn in the Pahsimeroi watershed from mid-August through September, and fry emerge from January through June. A 2005 NOAA Fisheries status review for the species concluded that it was still below abundance levels necessary for recovery and remained at risk of becoming endangered in the foreseeable future. A NOAA Fisheries Draft Recovery Plan found the Pahsimeroi River population to be at high risk for both “abundance/productivity” and “spatial structure and diversity,” concluding it does not meet criteria to be a viable population. It noted that threats include livestock grazing, which it depicts as “moderate” or “heavy” throughout much of the public lands in the watershed, and livestock-related water quality problems such as excessive nutrients.

39. Snake River Basin steelhead was listed as threatened in 1997. Historically, the Pahsimeroi River and its tributaries were a significant, productive steelhead reproduction area. This species, too, is substantially depressed compared to historic levels, and currently only spawns in the lower Pahsimeroi River and a few tributaries. Steelhead critical habitat was designated in 2005 and includes only the lowest reach of the Pahsimeroi River and portions of one tributary, Patterson Creek.

40. Steelhead migrate to the watershed in fall, overwinter there, and spawn from mid-March to mid-June, with fry emerging from June through October. A NOAA Fisheries 2006 status review concluded that the species remains at risk of becoming endangered in the foreseeable future, with population abundance well below recovery targets. A NOAA Fisheries Draft Recovery Plan found the Pahsimeroi River population to be at high risk for both “abundance/productivity” and “spatial structure and diversity,” concluding it does not meet

criteria to be a viable population. It noted that threats include livestock grazing, which it depicts as “moderate” or “heavy” throughout much of the public lands in the watershed, and livestock-related water quality problems such as excessive nutrients.

### **III. PACFISH and INFISH**

41. Beginning in the mid-1990’s, the Forest Service and BLM developed strategies designed to protect salmon, steelhead, and bull trout habitat on federal land when it became clear that these species had substantially declined across their ranges and significant changes to habitat management were necessary. PACFISH aimed to protect salmon and steelhead habitat on federal land in Eastern Oregon and Washington, Idaho, and portions of California, while INFISH was adopted to protect native resident fish like bull trout in those same areas.

42. These strategies applied to all Forest Service and BLM lands in the areas they covered. These agencies modified their land management plans with PACFISH and INFISH direction. The Forest Service formally amended their land and resource management plans with the strategies, while BLM applied the strategies to their land management plans through agency instructional memoranda.

43. PACFISH and INFISH were intended to be interim strategies until the agencies could develop long-term habitat protection plans that were incorporated into revised land management plans. However, not all forests or BLM districts have completed land management plan revisions, and thus many still must comply with PACFISH and INFISH, including the Salmon-Challis National Forest. BLM’s Challis Field Office issued a revised Resource Management Plan (RMP) in 1999, which adopted portions of PACFISH and INFISH.

44. PACFISH contained numerous provisions to protect and restore salmon and steelhead habitat, including: (a) setting riparian management goals; (b) establishing riparian

management objectives (RMOs), which are quantitative targets for the important fish habitat components of water temperature, pool frequency, large woody debris, bank stability, lower bank angle, and width to depth ratio; (c) requiring delineation of riparian habitat conservation areas (RHCAs); (d) setting standards and guidelines for activities occurring within RHCAs, such as grazing; and (e) requiring monitoring for implementation of standards and guidelines and their effectiveness at meeting RMOs.

45. PACFISH also includes several standards that apply to livestock grazing. Standard GM-1 requires the Forest Service and BLM to modify grazing practices that retard or prevent attainment of RMOs or are likely to adversely affect anadromous fish, and to suspend grazing if modifications are not effective in meeting RMOs or avoiding adverse effects to the fish. The standards also limit livestock trailing, bedding, and watering to those areas and times that would not retard or prevent attainment of RMOs or adversely affect anadromous fish.

46. INFISH contained almost identical provisions to PACFISH, including the same grazing standards. It also included the same RMOs except that the target for water temperature was slightly lower in INFISH due to bull trout needing colder water.

47. The Forest Service and BLM consulted with the Services over the implementation of PACFISH and INFISH direction, resulting in several biological opinions. The earliest opinions from NOAA Fisheries considered the short-term use of PACFISH and its impacts on listed salmon species. A subsequent opinion in 1998 assessed the long-term use of PACFISH within existing land management plans and its impacts on salmon and steelhead, once steelhead were listed and it became apparent that revision of most plans was not imminent.

48. The PACFISH biological opinions contained additional requirements beyond those in PACFISH itself. These requirements included adding sediment as an RMO and

increasing the streambank stability RMO to 90%; annually conducting implementation, effectiveness, validation, and photopoint monitoring to assess compliance with RMOs and continuing impacts to listed fish; developing stream restoration plans and projects; conducting subbasin or watershed analyses; and conducting programmatic biannual reviews of projects to update the environmental baseline conditions in the watershed and assess impacts of new events and activities on a watershed basis.

49. A separate 1998 biological opinion by FWS considered the impacts to bull trout from long-term use of INFISH and PACFISH in land management plans. Like the 1998 NOAA Fisheries biological opinion, this opinion incorporated additional requirements beyond those in INFISH and PACFISH, including commitments for watershed analyses and restoration projects that emphasize recovery of bull trout, improved monitoring that is commensurate with on-the-ground activities, and developing grazing plans in areas of known or suspected spawning to minimize trampling of redds and other forms of take of bull trout. It also required completion of consultation over federal projects at a watershed scale to facilitate evaluation of individual and cumulative effects of projects and accurately assess the impacts to bull trout populations, and updating the environmental baseline at the watershed scale to include proposed actions once the original consultation was concluded.

50. These two 1998 biological opinions, referred to as the “LRMP BiOps,” still govern the amendment of land and resource management plans with PACFISH and INFISH for the Salmon-Challis National Forest and BLM Challis Field Office.

#### **IV. ESA Consultation History For The Pahsimeroi Watershed**

51. Authorization of livestock grazing on federal land is a federal action that requires ESA consultation because it may pose adverse effects to listed fish. Livestock prefer grazing in

riparian areas because of the water, shade, and lush vegetation present there. This use causes removal of riparian vegetation as well as trampling and shearing of streambanks, which in turn reduces stream shading, increases sediment input into streams, and alters the floodplain and stream channel. These effects lead to warmer waters with higher levels of sediment and fewer protected areas for fish in the form of undercut banks and deep pools. Warmer water temperatures and sediment affect not only the streams in the immediate vicinity of the livestock but also downstream fish habitat.

52. Livestock also walk in streams, which can trample spawning gravels and destroy redds (nests) of bull trout, steelhead, and salmon, as well as contributing further sedimentation and nutrient pollution with their wastes.

53. Grazing in uplands affects fish habitat, too. Livestock trample soils and destroy biological soil crusts, causing soil erosion that leads to more overland transport of sediment that is deposited in streams and degrades fish habitat. Cattle also compact soil, which reduces water infiltration and lowers the water table.

54. To draw livestock away from riparian areas, the agencies often “develop” upland seeps and springs by piping water from these wetland areas into troughs for cattle to drink. But such water developments impair the ability of wildlife to access riparian areas, alter the hydrology of the watershed, and reduce groundwater that contributes to streamflows later in the summer. Agencies also often construct barbed-wire fencing along riparian areas to protect riparian streams, but livestock are known to frequently trespass into such enclosures, and the fencing is harmful to the passage of other wildlife.

55. The first Pahsimeroi watershed consultation occurred in 1992–93, following the protection of Chinook salmon under the ESA, and addressed Chinook salmon only.



56. In 1997, following the protection of steelhead under the ESA, BLM and the Forest Service jointly submitted a Biological Assessment regarding the effects of federal activities in the Pahsimeroi watershed, including livestock grazing, on steelhead and Chinook salmon, finding these activities not likely to adversely affect either species. NOAA Fisheries issued a corresponding Letter of Concurrence on October 3, 1997.

57. To account for the protection of bull trout under the ESA, as well as the adoption of PACFISH and INFISH, BLM and the Forest Service prepared a revised watershed BA in 1999. This BA encompassed ongoing BLM and Forest Service activities and proposed actions that may affect bull trout, steelhead, and Chinook salmon, including 26 livestock grazing allotments wholly or partially within the watershed.

58. For the grazing allotments analyzed, the joint BA included a description of the grazing that occurred on the allotments, noted whether listed fish or their habitat was present, and summarized expected grazing effects on listed fish by allotment. The “expected effects” section admitted that grazing was having serious adverse effects on listed fish. For example, it noted that many streams showed the effects of extreme and prolonged livestock use and suffered from excessive bank trampling, vegetative community alteration, and heavy sedimentation.

59. To mitigate these effects, the BA required that PACFISH and INFISH Standards and Guidelines, as well as any recommendations resulting from the BA, be applied.

60. The grazing mitigation measures in the BA included:

- Installation of photo points, to be photographed two times per year;
- Stubble height standards ranging from 3–6 inches, depending upon the status and trend of the stream;
- Bank shearing standards ranging from 10–20%;

- Woody use limited to less than 50%;
- Upland utilization standards ranging from 40–60%;
- Specific mitigation measures and recommendations for each allotment, which are to become part of the grazing permits as Terms and Conditions until the appropriate planning documents are updated; and
- Maintenance of range structures in good working condition before livestock can be placed on any portion of an allotment.

61. An example of the allotment-specific mitigation measures are those for the Forest Service Upper Pahsimeroi allotment: 40% early- and 50% late-season upland use; 10% bank shearing; 4-inch early- and 6-inch late-season stubble heights; and establishment of photo points and key areas along the East and West Forks of the Pahsimeroi River.

62. BLM and the Forest Service promised to conduct various types of monitoring in the BA, and to summarize such monitoring in yearly consultation compliance reports. The BA stated that management changes and use standards will be evaluated annually for compliance and effectiveness, and that an effectiveness monitoring report will be submitted annually to NOAA Fisheries and FWS as part of the annual consultation compliance reports. At a minimum, all streams discussed in the BA will be visited and photographed at least twice per year, and operational grazing use standards (bank shearing, stubble height) will be monitored at least once during the year. Effectiveness monitoring is on a three to five year cycle. Allotment evaluations were to be completed each year and incorporated into the yearly consultation compliance reports.

63. Finally, the BA contained site-specific conclusions for every allotment. Every allotment was deemed “not likely to adversely affect either critical habitats or listed species,” and the rationale for most was “based on current management and monitoring results.”

64. Later in 1999, NOAA Fisheries issued a Letter of Concurrence, concluding that grazing activities on all allotments addressed in the 1999 BA were not likely to adversely affect steelhead and Chinook salmon or Chinook salmon critical habitat. The LOC contained an express expiration date of January 15, 2003.

65. In a letter dated May 22, 2003, the Forest Service requested that NOAA Fisheries eliminate the January 15, 2003 expiration date on four watershed BAs in the Upper Salmon region, including the 1999 Pahsimeroi Watershed BA. The reasons given were that the actions presented in the 1999 BA are ongoing; Forest Service monitoring has shown that no new information has occurred; and the Forest Service purportedly had a schedule to review, update, and complete all Section 7 Watershed BAs.

66. In January 2005, NOAA Fisheries eliminated the expiration date and the agencies have not made apparent progress since on updating the watershed consultations.

67. As to bull trout, on July 19, 1999, FWS issued a Letter of Concurrence for most of the bull trout grazing allotments, save for four. FWS stated that additional information was needed on the remaining four. The LOC concluded that the analyzed actions were not likely to adversely affect bull trout.

68. FWS based its determination on several general assumptions, including that the action agencies would implement PACFISH/INFISH standards and RMOs. FWS also relied on allotment-specific mitigation measures. For example, for the Forest Service Upper Pahsimeroi allotment, FWS made its determination contingent upon compliance with specific use criteria (10% streambank shearing, 40%–50% upland use, and 6" stubble height) and submission of annual monitoring reports. The reports were to contain results of utilization monitoring of key areas, actual livestock on and off dates and incidence of stragglers, condition of fences and range

improvements completed, and a summary of overall vegetation conditions.

69. The bull trout LOC concluded that the action agencies should contact FWS to verify that the determination and concurrence is still valid if any of the projects are changed or new information reveals effects of the action to a listed species or critical habitat to an extent not considered in the BA, if the objective of the cattle exclosure fences (elimination of use and promotion of riparian restoration) is not being met due to cattle getting into the exclosures and fences not being maintained, or if a new species is listed or critical habitat is designated that may be affected by the project.

70. On October 27, 1999, FWS issued a second LOC for three of the four allotments left out of the prior LOC: the Burnt Creek, Donkey Hills, and Pines/Elkhorn allotments. The LOC concluded that the three allotments were not likely to adversely affect bull trout. FWS again relied upon allotment-specific mitigation measures for each allotment and submission of annual monitoring reports.

71. FWS determined that grazing on the remaining allotment—BLM's Upper Pahsimeroi allotment—was *likely* to adversely impact bull trout, and issued a BiOp for this allotment on May 17, 2000. In the BLM Upper Pahsimeroi Allotment BiOp, FWS explained that livestock caused serious impacts to bull trout habitat in 1999, and that two field tours revealed that conditions on the ground were significantly different from those described in the 1999 BA.

72. The BiOp's discussion of the environmental baseline stated that historic and recent grazing on the allotment has created adverse impacts on riparian and aquatic habitats along many reaches of the Pahsimeroi River and the tributaries Mahogany and Burnt Creeks. It stated that in general, those reaches not armored by woody vegetation displayed extensive bank shearing, bank trampling, or riparian vegetative community alteration—leading to indirect

effects of increased sedimentation, reduced shading, increased water temperatures, and altered stream and channel morphology. Specifically, monitoring on Burnt and Mahogany Creeks indicated excessive historic livestock use of riparian habitats, with bank stability, pools/mile, width:depth ratios, and sedimentation exceeding acceptable limits.

73. FWS stated that the expected direct effects of this grazing on the allotment included redd trampling and harassment of fish. Indirect effects included loss of habitat complexity that provides hiding cover, localized reductions in habitat quality, destabilized streambanks, mobilization of sediment, major vegetation changes, and others.

74. As to grazing standards, FWS noted that four to six inches of residual stubble height is recommended, but that more than six inches may be required for protection of critical fisheries or easily eroded streambanks and riparian ecosystem function. It cited literature recommending 30–40% use, but noted that areas in poor condition or grazed during the active growth season should receive lower utilization levels.

75. As to cumulative effects, FWS noted that stream diversions have isolated bull trout populations, making them more vulnerable to adverse habitat conditions and limiting the amount of gene flow between local populations.

76. FWS concluded that grazing on the BLM Upper Pahsimeroi allotment was not likely to jeopardize the continued existence of bull trout. It based its determination on:

- implementation of the BiOp's proposed grazing strategies, including monitoring;
- completion of 7 miles of fencing on the Pahsimeroi River;
- installation of screens, collector and pipeline system on the Mahogany Ditch;
- closure of three water gaps on the Pahsimeroi River; and
- the idea that effects of livestock grazing on the allotment are relatively small

when analyzed in context with the entire Columbia River Basin DPS.

FWS noted that survival and recovery rate of upland and riparian habitat is likely slower than the rate would be if no livestock were grazing on the allotment.

77. Along with the BiOp, FWS issued an Incidental Take Statement that applied to the BLM Upper Pahsimeroi allotment. Importantly, the ITS stated that BLM must make its measures binding conditions of any permit issued to an applicant in order for the take exemption to apply.

78. The ITS stated that livestock grazing in the riparian areas of the allotment is likely to result in incidental take of bull trout because of detrimental effects on parameters such as suspended sediment levels, substrate quality, bank stability, and water temperature, all of which directly and indirectly affect bull trout life history. It stated that these effects are largely unquantifiable in the short-term and may only be measurable as long-term effects on the species' habitat or population levels. However, FWS selected two surrogate measures of take, stating that take would be exceeded if any use standards and objectives from the Challis RMP or the PACFISH/INFISH Standards and Guidelines are exceeded. Challis RMP standards include: 6" stubble height during the scheduled grazing period for streams in functional-at-risk condition with a static or downward trend; 10% streambank shearing for occupied habitat for special status fish species; specific pools per mile standards depending on the width of the stream; >90% streambank stability; >75% of streams undercut; and water temperature not to exceed 53.6°F (during June, July, and August) and 48°F (during September and October).

79. To minimize take, the ITS set forth reasonable and prudent measures. These measures were: to minimize adverse impacts of grazing to aquatic and riparian habitats; to implement actions that contribute to or provide for essential habitat features and biological

components necessary for the conservation of bull trout and their habitats; and to revise the annual operating plan (AOP) utilizing supporting documents such as monitoring reports and standards and guidelines assessments to reflect the new grazing strategy.

80. The ITS also contained nondiscretionary terms and conditions which must be undertaken by BLM or be made a binding condition of any permit issued to an applicant. The terms and conditions included the following:

- Develop, review and update the AOP to incorporate changes as reflected in the revised BA and this Opinion;
- Install screen facilities on Mahogany Ditch and close the three water gaps on the Pahsimeroi River;
- Ensure allotment use guidelines and management objectives in the March 2, 1999 BA (i.e., utilization levels, stubble height, prescribed grazing systems) and AOPs are adhered to and successfully met;
- Assure consistent implementation of grazing-related measures and standards in PACFISH and INFISH as indicated in FWS's 1998 LRMP BiOp;
- Monitor the riparian area impacted by unauthorized use in 1999 with an emphasis on stream bank condition by establishing photo points. Provide monitoring results in the end-of-year monitoring report;
- Monitor key representative areas (generally those areas most impacted and/or most sensitive to impacts) within the riparian area impacted by unauthorized use in 1999 for the designated allowable use requirements as stated in the March 2, 1999 BA and current AOP to ensure the terms and conditions of this Opinion are met using the following protocol: (a) Monitor the affected area on a weekly basis

during the grazing season to determine livestock presence; (b) Annually monitor end of growing season utilization to ensure compliance with the AOP;

- Ensure that cattle do not congregate in riparian areas or other sensitive areas for excessive periods of time (habitat quality shall not be affected by cattle use in designated sensitive areas);
- Ensure trailing occurs outside of riparian areas and wet meadows to the extent possible; and
- Submit a report of cattle activities, including those deviating from normal or authorized use, allowable use monitoring and end-of-season monitoring, and resource effects of implementing the grazing strategy with particular attention to sensitive areas outlined in the AOP, to FWS by January 31 of each year.

81. The ITS concluded that if any of the factors provided in 50 C.F.R. § 402.16 were triggered, reinitiation of formal consultation is required. Additionally, it stated that reinitiation is required if the agency cannot meet the general and site specific resource objectives described in the reasonable and prudent measures and terms and conditions of this Opinion.

82. The agencies have never updated the 1999 watershed consultation for any species. Instead, the agencies have taken a piecemeal approach to consultation in the Pahsimeroi watershed, preparing various allotment-specific and project-specific consultations.

#### **IV. Events Subsequent to These Consultations**

83. Since the 1999 Pahsimeroi watershed consultation, circumstances have changed and new information has arisen, warranting reinitiation for each of the species.

84. First, there is a new critical habitat designation. In 2005, NOAA Fisheries designated critical habitat for Snake River Basin steelhead, including the lower reach of the



Pahsimeroi River and reaches of a tributary, Patterson Creek. The agencies have never reinitiated consultation to assess the impacts of activities on the newly designated steelhead critical habitat.

85. Second, BLM and the Forest Service have not been procedurally or substantively conforming with the requirements of the 1999 BA, Letters of Concurrence, and BLM Upper Pahsimeroi Allotment BiOp; and thus the assumptions that FWS and NMFS relied upon for their conclusions are no longer valid.

86. Specifically, the Forest Service and BLM have failed to meet several important requirements of the Pahsimeroi watershed BA and Letters of Concurrence regarding the allotments addressed in those documents. The BA includes general standards such as: 3–6” stubble height, depending on the status and trend of streams, 10–20% bank shearing, <50% woody use, and 40–60% upland use. Allotment-specific standards include, for example: 40% early- and 50% late-season upland use; 10% bank shearing; 4-inch early- and 6-inch late-season stubble heights; and establishment of photo points and key areas, for the Forest Service Upper Pahsimeroi allotment. The BA also stated that the agencies must comply with PACFISH/INFISH Standards and Guidelines (such as Standard GM-1). In turn, the Letters of Concurrence rely upon the agencies complying with these provisions.

87. The agencies, however, have not monitored for compliance with these standards on a regular basis in the Pahsimeroi watershed, even for allotments that have streams with listed fish. The only yearly monitoring the agencies conduct on a regular basis is stubble height, with occasional qualitative “Proper Functioning Condition” (PFC) assessments.

88. There is little evidence that the agencies have undertaken other riparian monitoring, including for pools, bank shearing, streambank stability, undercut banks, woody use,

and temperature, in the Pahsimeroi watershed. And, importantly, the agencies have conducted little to no effectiveness monitoring in the ten years since consultation has been completed, despite the BA stating that it will occur on a three to five year cycle.

89. Moreover, the limited monitoring that has been conducted shows that grazing has violated standards on many allotments, and grazing practices throughout the watershed continue to retard and prevent attainment of RMOs and adversely affect the listed fish. One example is the Forest Service's Upper Pahsimeroi allotment, where severe livestock grazing has for years been allowed to take place during bull trout spawning, without restrictions to keep cattle from trampling bull trout redds and the streambanks. The grazing has resulted in violations of standards and RMOs on allotment streams such as the West Fork Pahsimeroi River.

90. Also, the agencies have failed to meet the BA's mandate to make the substantive utilization and protective standards enforceable "terms and conditions" of grazing permits.

91. On some allotments, BLM and the Forest Service have imposed blanket 4-inch riparian stubble height standards, in violation of the BA's mandate to adjust riparian stubble height standards depending on factors including stream condition.

92. BLM has failed to meet several important requirements of the BiOp and its ITS regarding the BLM Upper Pahsimeroi allotment. In addition to complying with the terms of the BA, BLM must manage its Upper Pahsimeroi allotment in compliance with the binding terms of the Upper Pahsimeroi Allotment BiOp, including the Terms and Conditions and the ITS.

93. One of the BiOp's binding terms and conditions requires BLM to ensure that the above-listed standards in the BA are met. Another requires BLM to assure that grazing-related measures and standards in INFISH are met, including Standard GM-1 and the requirement to conduct regular monitoring, particularly effectiveness monitoring, to ensure the quantitative

RMOs are being attained.

94. The ITS also requires BLM to meet all standards from the Challis RMP and PACFISH/INFISH standards and guidelines. As noted, Challis RMP standards include: 10% streambank shearing, a specific number of pools per mile, >90% streambank stability, >75% of undercut streams, and specific water temperatures. The ITS also requires that BLM make the ITS's requirements binding conditions of the grazing permit.

95. BLM, however, has not performed all required monitoring on a regular basis in the BLM Upper Pahsimeroi allotment. Since 1999, to the best of Plaintiff's knowledge, the only monitoring the agency has conducted on a regular basis is stubble height monitoring and stream temperature, with the occasional qualitative PFC determinations.

96. There is little evidence of other required monitoring, including for pools, bank shearing, streambank stability, undercut banks, and woody use, on this allotment. And, importantly, the agencies have conducted little to no effectiveness monitoring in the ten years since consultation has been completed, despite the BA stating that it will occur on a three to five year cycle.

97. Moreover, the limited monitoring that has been conducted shows that standards are being violated. First, the amount and extent of take specified in the ITS has been exceeded, because use standards and objectives from the Challis RMP and the PACFISH/INFISH Standards and Guidelines are not consistently met, and yet BLM has not effectively modified grazing practices or suspended grazing. For example, BLM monitoring admits many instances where riparian stubble heights have exceeded standards; temperature standards regularly exceed the RMP limits; several stream reaches and springs are "functioning at risk" with no trend towards improvement; and cows trespass into riparian exclosures virtually every year. Recent

monitoring notes contain statements such as “heavy damage to banks by cattle,” indicating that ongoing damage continues to adversely impact listed fish and its habitat.

98. By not complying with the monitoring and other requirements from the watershed BA, the Letters of Concurrence, and the BLM Upper Pahsimeroi allotment BiOp, as well as PACFISH, INFISH, and the LMRP BiOps, the Forest Service and BLM are not fulfilling their responsibilities as NOAA Fisheries and Fish and Wildlife Service assumed they would. Thus the Services’ conclusions in the Letters of Concurrence and the BLM Upper Pahsimeroi allotment BiOp are no longer valid, requiring reinitiation of consultation.

99. Further, changed circumstances and new information concerning activities and impacts to fish in the watershed have occurred since the 1999 consultation. Over the last decade, several wildfires and multiple years of drought have occurred in the drainage, each of which can impact fish habitat and alter livestock grazing pressure. Global warming is becoming an increasing threat in the West, and new science on climate change shows that it is creating higher temperatures and drier conditions as well as altering the hydrology of watersheds and timing of peak streamflows, all of which impact fish.

100. Numerous human-induced changes in the Pahsimeroi watershed have occurred over the last five to ten years as well. For instance, numerous water developments have been built, removing water from seeps, springs, and streams and piping it to upland troughs, but the agencies have never comprehensively assessed the impacts of these developments on water quality, water quantity, or upland conditions.

101. Other changes in the watershed have occurred on private and federal land, such as changes to water diversions and irrigation systems; road and culvert work; changes to livestock grazing allotments or management; stream channelization and bank armoring; timber harvest

projects; increased use of herbicides on weeds; and threats from whirling disease and aquatic exotic species.

102. All of these changes to the watershed impact fish, but the agencies have not updated their watershed consultations in the past ten years to consider these new events and activities, as required by the ESA and the PACFISH/INFISH LRMP BiOps.

103. Meanwhile, the Forest Service and BLM continue to authorize grazing throughout the Pahsimeroi watershed, much of which allows cattle to directly access riparian areas, causing direct adverse impacts to streams that contain bull trout, steelhead or critical habitat for Chinook salmon, and indirect adverse impacts to downstream habitat for the fish. In some instances, this authorized grazing occurs during spawning periods, when the fish and their eggs are extremely vulnerable to the effects from grazing.

104. By failing to reinitiate consultation for salmon, steelhead, and bull trout over ongoing activities throughout the entire Pahsimeroi watershed, Defendants are violating the consultation requirements of the ESA. Further, by continuing to authorize activities that adversely impact listed fish species and their habitat, the agencies are violating their substantive duties under the ESA to prevent jeopardy, adverse modification of critical habitat, and take of these species and promote their recovery. Such violations of law are causing, and will continue to cause, irreparable harm to the listed fish species and their habitat, as well as to Plaintiff, its staff and members, and to the public. Plaintiff therefore requests declaratory and injunctive relief from this Court to remedy these violations of law.

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**FIRST CLAIM FOR RELIEF**  
**PAHSIMEROI WATERSHED: BULL TROUT CONSULTATION**

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

106. Defendants have violated, and continue to violate, Sections 7 and 9 of the ESA and their implementing regulations with regard to the actions they authorize, fund, and/or carry out with respect to Columbia River bull trout in the Pahsimeroi River watershed. These violations include, but are not limited to, the following:

A. Defendants' violation of their duty to reinitiate consultation over ongoing activities on federal land in the Pahsimeroi watershed in light of new information concerning impacts to bull trout and changed circumstances in the watershed, including new events and activities that have occurred since the prior consultation as well as the failure to comply with the Biological Assessment and Letters of Concurrence, in violation of 50 C.F.R. § 402.16;

B. Forest Service's and BLM's violation of their ESA duty to insure that their actions, including authorization of livestock grazing, are not likely to jeopardize the continued existence of bull trout, in violation of 16 U.S.C. § 1536(a)(2);

C. Forest Service's and BLM's violation of the ESA's prohibition of unlawful "take" of Columbia River bull trout by authorizing activities, including livestock grazing, that kill, injure, harm, harass or otherwise "take" threatened bull trout without any valid incidental take statement, in violation of 16 U.S.C. § 1538.

107. This claim is brought pursuant to the judicial review provision of the ESA, 16 U.S.C. 1540(g).

108. These violations of the ESA have caused substantial prejudice to Plaintiff's interests and allowed further harm to threatened bull trout.

WHEREFORE, Plaintiff prays for relief as set forth below.

**SECOND CLAIM FOR RELIEF**  
**PAHSIMEROI WATERSHED: STEELHEAD AND CHINOOK SALMON  
CONSULTATION**

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

110. Defendants have violated, and are continuing to violate, Sections 7 and 9 of the ESA and their implementing regulations with regard to the actions they authorize, fund, and/or carry out with respect to Snake River steelhead and spring/summer Chinook salmon in the Pahsimeroi River watershed. These violations include, but are not limited to, the following:

A. Defendants' violation of their duty to reinitiate consultation over ongoing activities on federal land in the Pahsimeroi watershed in light of newly designated steelhead critical habitat, new information concerning impacts to steelhead and Chinook salmon, and changed circumstances in the watershed, including new events and activities that have occurred since the prior consultation as well as the failure to comply with the Biological Assessment and Letter of Concurrence, in violation of 50 C.F.R. § 402.16;

B. Forest Service's and BLM's violation of their ESA duty to insure that their actions, including authorization of livestock grazing, are not likely to jeopardize the continued existence of Snake River steelhead and spring/summer Chinook salmon or adversely modify their critical habitats, in violation of 16 U.S.C. § 1536(a)(2);

C. Forest Service's and BLM's violation of the ESA prohibition of unlawful "take" of Snake River steelhead and spring/summer Chinook salmon by authorizing activities, including livestock grazing, that kill, injure, harm, harass or otherwise "take" threatened steelhead and salmon without any valid incidental take statement, in violation of 16 U.S.C. § 1538.

111. This claim is brought pursuant to the judicial review provision of the ESA, 16 U.S.C. 1540(g).

112. These violations of the ESA have caused substantial prejudice to Plaintiff's interests and allowed further harm to threatened and endangered salmon and steelhead and their critical habitat.

WHEREFORE, Plaintiff prays for relief as set forth below.

**THIRD CLAIM FOR RELIEF**  
**BLM UPPER PAHSIMEROI ALLOTMENT: BULL TROUT CONSULTATION**

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

114. Defendants have violated, and are continuing to violate, Sections 7 and 9 of the ESA and their implementing regulations with regard to the actions they fund, authorize and/or carry out affecting Columbia River bull trout on the BLM Upper Pahsimeroi allotment. These violations include, but are not limited to, the following:

A. BLM and the Fish and Wildlife Service's violation of their duty to reinstate consultation over grazing on the BLM Upper Pahsimeroi allotment in light of noncompliance with the requirements of the existing biological opinion and terms and conditions of the incidental take statement, as well as new information and changed circumstances concerning impacts to bull trout on the allotment that have arisen since issuance of the 1999 biological opinion, in violation of 50 C.F.R. § 402.16;

B. BLM's violation of its ESA duty to insure that the authorization of livestock grazing on the BLM Upper Pahsimeroi allotment is not likely to jeopardize the continued existence of bull trout, in violation of 16 U.S.C. § 1536(a)(2);

C. BLM's violation of the ESA's prohibition of unlawful "take" of Columbia River bull trout by authorizing livestock grazing on the Upper Pahsimeroi allotment that violates the terms and conditions of the incidental take statement and kill, injures, harms, harasses or otherwise "takes" threatened bull trout, in violation of 16 U.S.C. § 1538.



115. This claim is brought pursuant to the judicial review provision of the ESA, 16 U.S.C. 1540(g).

116. These violations of the ESA have caused substantial prejudice to Plaintiff's interests and allowed further harm to threatened bull trout.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Adjudge and declare that Defendants are in violation of law under the ESA, including by:

(1) violating their procedural duties under ESA Section 7(a)(2), including by not reinitiating ESA consultation over impacts to Chinook salmon, steelhead, and bull trout from ongoing authorized activities in the Pahsimeroi River watershed, and from authorization of livestock grazing on the BLM Upper Pahsimeroi allotment;

(2) violating their substantive duties under ESA Section 7(a)(2), including by not insuring that their ongoing authorized actions in the Pahsimeroi River watershed, including authorization of grazing on the BLM Upper Pahsimeroi allotment, will not jeopardize Chinook salmon, steelhead, or bull trout or adversely modify their designated critical habitat in the Pahsimeroi River watershed;

(3) causing unlawful take of Chinook salmon, steelhead, and/or bull trout in the Pahsimeroi River watershed through their ongoing authorized activities, including authorization of grazing on the BLM Upper Pahsimeroi allotment.

B. Order Defendants to comply with the requirements of the ESA by promptly completing new, lawful consultation(s) and fulfilling their substantive duties under ESA Sections 7 and 9 to protect and recover threatened and endangered species.

C. Issue such temporary, preliminary, and/or permanent injunctive relief as may specifically be requested hereafter by Plaintiff.

D. Award Plaintiff its reasonable attorney fees, costs, and litigation expenses under the ESA, 16 U.S.C. § 1540(g), the Equal Access to Justice Act, and/or any other applicable provision of law.

E. Grant such further and additional relief as the Court deems just and proper in order to remedy the violations of law alleged herein and to protect the interests of Plaintiff, the public, and the affected fish species.

Dated: October 16, 2009

Respectfully submitted,

s/Kristin F. Ruether  
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