



October 22, 2014

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C. Street NW
Washington, D.C. 20240

Re: BLM Grazing Permit Renewals In Greater Sage-Grouse Habitat

Dear Secretary Jewell,

I am writing on behalf of my client, Western Watersheds Project, concerning the Bureau of Land Management's use of the so-called "grazing rider" (i.e., P.L. 108-108, § 325 and its progeny¹) to authorize livestock grazing on important habitat for the Greater sage-grouse. Western Watersheds requests BLM abandon its practice of automatically renewing grazing permits within important sage-grouse habitat, and, instead, ensure that grazing fully complies with conservation measures necessary to protect and enhance sage-grouse populations *before* permitting grazing to begin in grazing year 2015 (commencing March 1, 2015). Western Watersheds further requests BLM adopt a robust timeframe for completing comprehensive analysis and reviews on all grazing permits issued under the grazing rider within sage-grouse habitat.

For over a decade, BLM has interpreted the grazing rider to "completely absolve[]" the BLM from following the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (NEPA) and the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 *et seq.* (FLPMA). *See W. Watersheds Project v. Jewell*, Case No. 08-0435-BLW, 2014 WL 4853121, *9 (D. Idaho September 29, 2014).

Indeed, since 2004, BLM has employed the grazing rider to systematically sidestep environmental laws in issuing grazing permits, including by automatically renewing grazing permits (i.e., issuing new permits without any environmental review whatsoever) on 55% of all grazing permits in Greater sage-grouse habitat between 2004-14 – and this percentage swells to 75% in Oregon, 71% in Nevada, and 64% in Wyoming. See BLM Grazing Authorizations in Greater Sage-Grouse Habitat (2004-2014)(attached hereto). In certain field offices, BLM has been even more aggressive in its use of the

¹ Congress has extended the application of § 325 of P.L. 108-108 through Fiscal Year 2015 via a series of subsequent legislative riders. *See* P.L. 113-76, § 411 (extending § 325 through FY 2015); P.L. 112-74, § 415 (extending § 325 through FY 2013); P.L. 112-10, §§ 1104(a)(4), 1104, and 1106 (extending § 325 through FY 2011); P.L. 111-88, § 1406 (extending § 325 through FY 2010); P.L. 111-08, § 426 (extending § 325 through FY 2009); P.L. 108-108, § 325 (rider applicable from fiscal years 2004-2008).

grazing rider. For example, in the Burley Field Office of south-central Idaho, BLM has invoked the grazing rider to ignore environmental review and compliance on 165 of 225 grazing permits (73%) since 2005, representing 83% of all livestock AUMs.

As you may be aware, on September 29, 2014, the District Court of Idaho again rejected the BLM's interpretation of the grazing rider as waiving FLPMA. *Jewell*, 2014 WL 4853121 at 9-11.² In reversing and vacating a series of BLM grazing permits issued under the grazing rider, the court held that "[w]hile § 325 tolls the BLM's obligation to proceed with environmental obligations imposed by laws like NEPA, it carves out an exception for FLPMA and requires a continuing obligation to follow that statute." *Id.* at 11. Under FLPMA's consistency requirement, of course, BLM must adhere to sage-grouse protective measures in governing Resource Management Plans, as well as BLM's Special Status Species Policy, Sage-Grouse Habitat Conservation Strategy, and other policies that BLM has adopted pursuant to FLPMA.

According to BLM's Rangeland Administration System database, 453 grazing permits within Sage-grouse Priority Areas for Conservation (PACs) are due to expire before the 2015 grazing year. Under the permits, BLM has previously authorized nearly 290,000 Animal Unit Months (AUMs) of use by over 120,000 head of livestock.

According to the U.S. Fish and Wildlife Service, these PACs are "key habitats for the conservation" of Greater sage-grouse. *See* Greater Sage-Grouse Conservations Objectives Team: Final Report, at p. 1. Yet, it has been at least 10 years since BLM prepared any analysis of sage-grouse habitat conditions on the allotments subject to these 453 grazing permits; in fact, on 175 of these permits, BLM has undertaken no analysis and review of the sage-grouse habitat conditions since the mid-1990s – i.e., almost 20 years. On these same 175 permits, BLM has never even evaluated compliance with the Fundamentals of Rangeland Health, although these regulations were adopted twenty years ago.

It is long past time for BLM to ensure that livestock grazing within the most important habitat for the Greater sage-grouse is compatible with protecting and enhancing sage-grouse populations and habitat, including adopting both seasonal and use restrictions. *See, e.g., W. Watersheds Project v. Salazar*, 843 F.Supp.2d 1105, 1115

² On three prior occasions, federal courts similarly rejected BLM's misconstruction of the grazing rider to permit a wholesale waiver of NEPA, FLPMA and other environmental laws. *See W. Watersheds Project v Salazar*, Case No. 08-0435-BLW, 2010 WL 375003 (D. Idaho Jan. 25, 2010) (rejecting BLM's argument that the grazing rider exempted compliance with FLPMA); *W. Watersheds Project v. Dyer*, No. 04-cv-00181-BLW, 2009 WL 484438, p. *23 (D. Idaho Feb. 26, 2009) (holding that grazing rider did not block FLPMA challenge to grazing); *W. Watersheds Project v. Bennett*, Case No. 04-181-BLW, 2008 WL 2003114, *7 (D. Idaho May 8, 2008) (holding that Section 325 does not "divest this Court of jurisdiction to apply FLPMA" to grazing permits).

Letter from T. Tucci to Secr. Jewell

October 22, 2014

Page 3 of 4

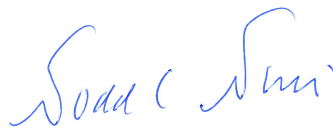
(D. Id. 2012) (noting that it is “well-established” that to “avoid conflicts with sage grouse nesting and late brood-rearing habitat grazing should be limited to mid-summer (June 20 to August 1), and to minimize impacts on herbaceous vegetation prior to the next nesting season it should be limited to late fall and winter months (November 15 to March 1)”). *See also Dyer*, 2009 WL 484438 at *21 (BLM must “ensure that use of herbaceous forage is limited to about 30% of annual production to improve vegetation to meet the habitat needs of sage grouse”).

Western Watersheds thus requests that BLM fully comply with FLPMA and the Fundamentals of Rangeland Health prior to issuing any new or renewed grazing permits and/or annual grazing authorizations within sage-grouse Priority Area for Conservation, and ensure that grazing is compatible with sage-grouse conservation.

Moreover, BLM must take immediate action to prioritize completing full environmental review on all grazing rider permits issued within sage-grouse Priority Areas for Conservation, and bringing these permits in conformance with sage-grouse conservation measures and the best available scientific information. Under the grazing rider, the Secretary has the “sole discretion” to determine the priority and timing for completing required environmental analysis of grazing allotments based on the environmental significance of the allotments, and BLM should complete this review and modification within two to three years. *See P.L. 108-108, § 325.*

Further, Western Watersheds requests a meeting to discuss this issue further, and I will be reaching out shortly to schedule a visit. In the interim, please feel free to contact me if you have any questions, and I can be reached at ttucci@advocateswest.org or 208.724.2142. I look forward to continuing this conversation.

Very truly yours,



Todd C. Tucci
Senior Attorney
Advocates for the West
PO Box 1612, Boise, ID 83702
1331 E St. SE, WDC 20003
(cell) 208.724.2142
ttucci@advocateswest.org

cc (via email):

Mike Boots, Acting Chair, Council on Environmental Quality (CEQ)
Jay Jensen, Associate Director for Land and Water Ecosystems, CEQ

Letter from T. Tucci to Secr. Jewell

October 22, 2014

Page 4 of 4

Hilary Tompkins, Solicitor, Department of the Interior (DOI)
Janice Schneider, Ass't Sec. for Land and Minerals, DOI
Rachel Jacobson, Acting Ass't Sec. for Fish, Wildlife, and Parks, DOI
Neil Kornze, Director, Bureau of Land Management
Dan Ashe, Director, U.S. Fish and Wildlife Service
Sarah Greenberger, Counselor to the Sec. of the Interior, DOI
Jim Lyons, Counselor to the Ass't Sec. for Land and Minerals, DOI
Michael Bean, Counselor to the Ass't Sec. for Fish, Wildlife and Parks, DOI
Jack Haugrud, Principal Dep't Solicitor, DOI
Bret Birdsong, Dep't Solicitor, DOI