

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

WESTERN WATERSHEDS PROJECT, )  
126 S. Main Street, Suite B )  
P.O. Box 1770 )  
Hailey, ID 83333, )

PUBLIC EMPLOYEES FOR ENVIRONMENTAL )  
RESPONSIBILITY, )  
962 Wayne Ave., Suite 610 )  
Silver Spring, MD 20910 )

Case No. 23-cv-2677

Plaintiffs, )

v. )

U.S. SECRETARY OF INTERIOR )  
DEBRA HAALAND, )  
1849 C Street N.W. )  
Washington, DC 20240, )

BLM DIRECTOR TRACY STONE- MANNING, )  
1849 C Street N.W. )  
Washington, DC 20240 )

U.S. BUREAU OF LAND MANAGEMENT, )  
1849 C Street N.W. )  
Washington, DC 20240 )

Defendants. )

**COMPLAINT**

**INTRODUCTION**

1. Plaintiffs Western Watersheds Project (“WWP”) and Public Employees for Environmental Responsibility (“PEER”) bring this case to challenge Federal Defendants’ failure to abide by the requirement in the Federal Land Policy and Management Act (“FLPMA”) to determine the prioritization and timing of environmental analyses for livestock grazing

allotments across the western United States. FLPMA mandates that the Secretary of Interior determine the priority and timing for completing environmental analyses for grazing allotments or permits based on the environmental significance of the allotment or permit and available funding. Federal Defendants failed to make the required determination setting the priority and schedule for National Environmental Policy Act (“NEPA”) review of allotments or permits, allowing it to sidestep NEPA analysis for allotments that contain significant environmental resources—sometimes for more than a decade—while still authorizing grazing to continue.

2. BLM’s own guidance documents and land management plans establish that greater sage-grouse, bighorn sheep, and species listed as threatened or endangered under the Endangered Species Act (“ESA”) are important resources on BLM land that demand special management, but which can be harmed by livestock grazing. Additionally, areas set aside by the President or Congress as National Monuments or National Conservation Areas were designated specifically to protect special resources in those areas. Rather than prioritizing allotments with these significant resources, BLM is avoiding conducting NEPA review for such allotments.

3. BLM Rangeland Administration System (“RAS”) data shows that over the last ten years, the percentage of BLM grazing permits issued without any NEPA analysis has increased, and the percentage of permits issued without NEPA is even higher for allotments with significant environmental resources. This result is in direct conflict with FLPMA’s mandate to prioritize these allotments. For instance, data from end of fiscal year 2022 (FY2022) shows that 63% of all current BLM grazing permits had been issued without any NEPA analysis, and the percentage of permits with no NEPA was even higher for allotments with special resources—75% for allotments that overlap National Monuments or National Conservation Areas, 76% for allotments that overlap ESA-designated critical habitat, 79% for allotments that overlap the highest priority

sage-grouse habitat, and 94% for domestic sheep allotments that overlap bighorn sheep occupied habitat.

4. Some BLM State Offices and Field Offices have more frequently and extensively de-prioritized NEPA for environmentally significant allotments than other offices have. Certain field offices in Oregon, Idaho, Nevada, and Wyoming rarely conduct NEPA for allotments that overlap sage-grouse focal area habitat (“SFA”), which is the most significant sage-grouse habitat according to BLM. Likewise, some field offices, particularly in Utah and Arizona, have avoided NEPA analysis for allotments that have ESA-designated critical habitat; and field offices in Colorado, Nevada, and California have completed almost no NEPA for domestic sheep allotments that overlap bighorn sheep occupied habitat. Many of these same offices have avoided NEPA analysis for allotments that overlap National Monuments or National Conservation Areas, which were specifically designated to protect their resources.

5. Not only is BLM failing to prioritize allotments with these significant resources, it is also failing to prioritize allotments that are not meeting Land Health Standards. For almost three-quarters of allotments that BLM determined were violating standards due at least in part to impacts from livestock grazing, BLM has not conducted NEPA analysis to evaluate the management changes necessary to improve resource conditions. In many instances, BLM has twice renewed ten-year grazing permits without conducting any NEPA analysis for environmentally important allotments or allotments failing Land Health Standards.

6. Because Federal Defendants failed to determine the priority and timing of environmental analysis for grazing permits or allotments, BLM has avoided NEPA analysis for environmentally significant allotments while conducting it for allotments with less significant resources, contrary to FLPMA’s direction. Accordingly, Plaintiffs seek declaratory relief that

Federal Defendants are violating FLPMA and the Administrative Procedure Act (APA) by: (1) failing to complete their mandatory duty to determine the priority and timing of environmental analyses for grazing allotments and permits, and (2) failing to complete NEPA analysis for allotments with high priority resources where NEPA has not been conducted for more than a decade. To remedy these violations of law, Plaintiffs seek orders that impose deadlines for Federal Defendants to complete the required prioritization and schedule determinations, as well as for completion of NEPA analysis on the identified allotments that have not had environmental review for more than a decade.

### **JURISDICTION AND VENUE**

7. 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 APA, 5 U.S.C. § 701 *et seq.*; FLPMA, 43 U.S.C. § 1701 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the Equal Access to Justice Act, 28 U.S.C. § 2214 *et seq.* An actual, justiciable controversy now exists between Plaintiffs and Defendants, and the requested relief is therefore proper under 5 U.S.C. §§ 701–06 and 28 U.S.C. §§ 2201–02.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Federal Defendants reside in this district.

9. The Federal Government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

### **PARTIES**

10. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) is a non-profit membership organization headquartered in Hailey, Idaho with over 14,000 members and supporters, which 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 members, is concerned with and active in seeking to protect and restore the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West.

11. Plaintiff PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY (“PEER”) is a non-profit public interest organization incorporated in Washington, D.C. and headquartered in Silver Spring, Maryland, with field offices in California, Colorado, and Massachusetts. Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning public lands and natural resource management. PEER clients and supporters include current and former BLM range specialists, biologists, botanists, and other employees whose careers and professional integrity have been compromised by the actions described in this complaint, as well as BLM’s failure to enforce rampant grazing trespass.

12. Plaintiffs, and their staff, members and supporters, have deep and long-standing interests in the preservation and protection of Western public lands, the fish and wildlife that inhabit those lands, and cultural sites found on those lands. These interests are directly harmed by the alleged violations of law challenged herein. Plaintiffs’ staff, members and supporters use and enjoy public lands across the western United States in order to observe, photograph, study, and enjoy native species, including sage-grouse, bighorn sheep, and other rare fish and wildlife species. Plaintiffs and their members derive recreational, scientific, aesthetic, spiritual, and commercial benefits from the existence in the wild of these species and resources through observation, study, photography, and other pursuits. Plaintiffs’ staff, members and supporters also enjoy visiting National Monuments and National Conservation Areas and derive

recreational, scientific, aesthetic, and spiritual benefits from viewing and experiencing the special biological and cultural resources these areas were designated to protect.

13. In particular, Plaintiffs' staff, members and supporters have visited all of the BLM field offices, National Monuments, and National Conservation Areas discussed in this lawsuit, including visits to and around the particular allotments identified in Claim Two of this complaint, for the pursuits listed above, and will continue to use these areas for these purposes in the future. Their enjoyment during these visits is reduced if livestock grazing has impaired fish and wildlife populations by degrading habitat, riparian areas, vegetation, soils and other important components of native ecosystems, and/or if grazing has harmed cultural sites.

14. Plaintiffs have been long-time advocates for environmentally responsible management of public lands, and have long-standing concerns about the threat to western public lands from poor management of livestock grazing. Plaintiffs have engaged in public outreach and education, advocacy with agencies, agency administrative processes, and litigation to promote responsible management of livestock grazing on BLM lands and protection of native fish and wildlife from livestock grazing impacts. Plaintiffs have repeatedly engaged with BLM over livestock impacts to sage-grouse, bighorn sheep, threatened and endangered species, and other significant resources on millions of acres of public lands, and the need to change management when livestock are damaging these resources.

15. Plaintiffs' interests in protecting and enjoying public lands, the native fish and wildlife that occur there, and cultural sites on those lands are being directly harmed by Defendants' inactions challenged in this lawsuit. Plaintiffs' above-described 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.

16. Defendant DEBRA HAALAND is the Secretary of Interior, who is responsible for managing the U.S. Department of Interior. Defendant Haaland can delegate responsibilities for managing Department of Interior agencies, including BLM, to officials within those agencies. Defendant Haaland is sued solely in her official capacity.

17. Defendant TRACY STONE-MANNING is the BLM Director, who is responsible for managing the BLM. Defendant Stone-Manning can delegate responsibilities for managing BLM to officials in BLM State Offices or Field Offices. Defendant Stone-Manning is sued solely in her official capacity.

18. Defendant BUREAU OF LAND MANAGEMENT (BLM) is an agency or instrumentality of the United States, within the Department of Interior. BLM is charged with managing the public lands and resources on those lands in accordance and compliance with federal laws and regulations.

## **LEGAL BACKGROUND**

### **History of Congressional Actions Delaying NEPA for Grazing Permit Renewals**

19. Under NEPA, federal agencies must consider the effects of every “major Federal action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C)(i). This requires an agency to take a “hard look” at all environmental impacts of an activity, and compare them to the impacts of alternative actions, before authorizing the activity. 40 C.F.R. § 1508.9.

20. Livestock grazing permits, which usually authorize a certain number of cattle or sheep to graze a particular allotment for ten years, are federal actions that normally require analysis under NEPA to assess the environmental effects of the proposed grazing before BLM issues or renews the permit. Based on the NEPA analysis, BLM may decide to change the terms

and conditions of the permit, such as the number of livestock, the season of use, required fencing, or required monitoring that may be needed to reduce impacts to resources.

21. Livestock grazing can adversely affect a variety of resources, including soils, plants, water quality, and water quantity, due to cattle and sheep eroding or compacting soils, eating vegetation, and trampling streambanks and wetlands. These impacts can degrade habitat for thousands of fish, wildlife, and plant species found on western public lands. Livestock can also damage cultural sites by trampling them, rubbing against them, or disturbing or desecrating the surrounding soil and vegetation. All of these impacts must be assessed in a NEPA analysis.

22. Beginning in 1999, Congress tolled completion of NEPA analysis for grazing permits whose ten-year terms had expired, or permits that were waived or transferred. Congress began providing this NEPA loophole due to a large number of expiring grazing permits and the agency's inability to complete NEPA on all of those permits before their terms ended.

23. To address the situation, Congress included language in a series of appropriations acts beginning in 1999 that required the Secretary of Interior to renew an expiring permit with the same terms and conditions as the prior permit until the Secretary could complete NEPA analysis, at which time the Secretary could cancel, suspend, or modify the permit to meet the requirements of the new analysis. Initially this provision occurred yearly in appropriations acts from 1999 to 2003. Pub. L. No. 105-277 § 124, 112 Stat. 2681, 2681-261 (1998); Pub. L. No. 106-113 § 123, 113 Stat. 1501, 1501A-159 (1999); Pub. L. No. 106-291 § 116, 114 Stat. 922, 943 (2000); Pub. L. No. 107-63 § 114, 115 Stat. 414, 438 (2001); Pub. L. No. 108-7 § 328, 117 Stat. 11, 276 (2003). Courts have referred to this postponement of NEPA analysis as a "limited grace period" or "temporary tolling" of the analysis for expiring permits.



24. The 2004 Appropriations Act applied to permits expiring between 2004 and 2008. Pub. L. No. 108-108 § 325, 117 Stat. 1241, 1307 (2003). In addition to repeating the language noted above, the 2004 Act required that “the Secretar[y] in [his] sole discretion determine the priority and timing for completing required environmental analysis of grazing allotments based on the environmental significance of the allotments and funding available to the Secretar[y] for this purpose.” It also directed the Secretary annually to report to Congress the extent to which BLM was completing NEPA analysis prior to the expiration of permits, and every two years to provide recommendations for legislative provisions necessary “to ensure all permit renewals are completed in a timely manner.”

25. Additional appropriations acts extended the provisions of the 2004 Act through FY2013. Pub. L. No. 111-08 § 426, 123 Stat. 524, 749 (2009); Pub. L. No. 111-88 § 416, 123 Stat. 2904, 2959 (2009); Pub. L. No. 112-10 §§ 1104 & 1106, 125 Stat. 38, 103 (2011); Pub. L. No. 112-74 § 415, 125 Stat. 786, 1043 (2012).

26. At the end of 2014, Congress adopted the 2015 National Defense Authorization Act (“NDAA”), which amended Section 402 of FLPMA by adding several provisions that mirrored the language from the ongoing appropriations acts regarding grazing permit renewals. Pub. L. No. 113-291 § 3023, 128 Stat. 3292, 3762-63 (2014). Those amendments provide, in relevant part, as follows:

(c)(2) Continuation of terms under new permit or lease

The terms and conditions in a grazing permit or lease that has expired, or was terminated due to a grazing preference transfer, shall be continued under a new permit or lease until the date on which the Secretary concerned completes any environmental analysis and documentation for the permit or lease required under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) and other applicable laws.

(c)(3) Completion of processing

As of the date on which the Secretary concerned completes the processing of a grazing permit or lease in accordance with paragraph (2), the permit or lease may be canceled, suspended, or modified, in whole or in part.

....

(i) Priority and timing for completion of environmental analysis

The Secretary concerned, in the sole discretion of the Secretary concerned, shall determine the priority and timing for completing each required environmental analysis with respect to a grazing allotment, permit, or lease based on-

- (1) the environmental significance of the grazing allotment, permit, or lease; and
- (2) the available funding for the environmental analysis.

43 U.S.C. § 1752(c)(2), (c)(3), (i) (2015).

**Administrative Procedure Act**

27. The Administrative Procedure Act (APA) confers a right of judicial review on any person that is adversely affected by a federal agency action, and allows for challenges of final agency actions where there is no other adequate remedy in court. 5 U.S.C. §§ 702, 704. The APA defines agency action to include a “failure to act.” 5 U.S.C. §§ 551(13), 701(b)(2). A reviewing court shall “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

**STATEMENT OF FACTS**

**I. Environmentally Significant Resources on BLM Lands**

28. BLM manages 245 million acres of land in this country—10% of the entire land base. Most of these public lands occur west of the Continental Divide and encompass habitat for a wide range of fish and wildlife species. In addition, a large portion of public lands are the ancestral lands of many Native peoples, and contain cultural sites and artifacts.

29. Some BLM lands have been specifically recognized for their special resources through designation, by the President or Congress, as National Monuments or National Conservation Areas. These lands are part of BLM’s National Conservation Lands System, which

was established under Public Law 111-11 (March 30, 2009), and represent “some of the West’s most spectacular landscapes” and contain “outstanding ecological and cultural resources” according to BLM’s website. The Presidential Proclamation or Congressional Act establishing each area describes the significant resource values found there, and BLM must manage these lands to “conserve, protect, and restore” those resources. The 28 National Monuments and 17 National Conservation Areas that BLM manages often contain habitat for imperiled fish, wildlife, and plant species as well as important cultural and paleontological resources. Protecting the significant resources on these lands takes precedence over managing them for other uses.

30. A large portion of BLM public land consists of the high desert sagebrush steppe ecosystem, and thus BLM manages a significant amount of land that is habitat for greater sage-grouse—a species that has been on the decline for decades and is currently at less than 10% of its historic population level. Sage-grouse habitat has been destroyed, fragmented, and degraded by energy and mineral development, agriculture, wildfires, invasive species, and livestock grazing. Livestock impair that habitat by grazing and trampling vegetation that sage-grouse use for food and cover, facilitating the conversion of native vegetation to non-native species like cheatgrass that are more prone to burn in wildfires, and creating the need for infrastructure like fences that serve as perches for sage-grouse predators or cause mortality of sage-grouse through collisions. Removal of herbaceous vegetation in nesting and brood-rearing habitat is one of the most detrimental impacts of grazing.

31. As early as 2004, the Western Association of Fish and Wildlife Agencies (WAFWA) documented the declining trends of sagebrush habitat and sage-grouse populations and the many threats facing the species. Shortly after, BLM adopted a sage-grouse habitat conservation strategy to conserve and restore sagebrush habitat and prevent further sage-grouse

declines. That guidance was followed by a 2006 WAFWA conservation strategy aimed at maintaining and enhancing populations and distribution of greater sage-grouse.

32. Despite these conservation strategies, sage-grouse continued to decline in number and range across the West. Due to the species' ongoing decline and the threat of it being listed as threatened under the Endangered Species Act (ESA), BLM began a process in 2011 to amend all of its land use plans that govern greater sage-grouse habitat to add conservation measures. A National Technical Team of experts issued a report (NTT Report) that emphasized protection of priority habitats, which consisted of breeding habitat, late brood-rearing habitat, winter concentration areas, and migration or connectivity corridors. U.S. Fish and Wildlife Service issued its own expert Conservation Objectives Team report ("COT Report") that likewise identified priority habitat areas.

33. BLM adopted plan amendments in 2015 that incorporated portions of the NTT and COT Reports' analyses and recommendations, including establishing sage-grouse priority habitat designations, which received heightened management protections. The highest value habitat was "Priority Habitat Management Areas" and within that category, the most important "stronghold" areas were designated as "Sagebrush Focal Areas" (SFAs). Other habitat occupied seasonally or year-round were designated as "General Habitat Management Areas," "Important Habitat Management Areas," or "Other Habitat Management Areas." Of the 78 million acres of sagebrush habitat managed by BLM, about 11 million were designated as SFA habitat, which U.S. Fish and Wildlife Service deemed essential for sage-grouse conservation and needing the strongest level of protection.

34. The protections afforded in these habitat areas under the 2015 plan amendments formed the basis for U.S. Fish and Wildlife Service determining in October 2015 that it did not

need to list sage-grouse as threatened or endangered under the ESA. The Service noted that the plan amendments limited impacts in the most important habitat, ensuring “that high-quality sage-grouse lands with substantial populations are minimally disturbed and sage-grouse within this habitat remain protected.” 80 Fed. Reg. 59,882.

35. Given the significance of sage-grouse habitat, BLM has issued various directives and instruction memorandum with guidelines for conducting habitat assessments and managing activities in sage-grouse habitat, with the strictest requirements for SFA habitat.

36. Despite the 2015 plans and other direction, greater sage-grouse continue to lose habitat and decline across the West, with many populations at high risk of extirpation in the next fifty years. BLM is now considering whether to make further changes to the land use plans to stem the ongoing decline of the species.

37. Greater sage-grouse is far from the only imperiled species inhabiting BLM land. Numerous fish, wildlife, and plant species listed as threatened or endangered under the ESA occur on lands managed by BLM. Gunnison sage-grouse—a relative of the greater sage-grouse found in Colorado and Utah—has declined to such low levels that it is listed as threatened under the ESA. Sonoran desert tortoise, Mohave desert tortoise, and Mexican spotted owl are other ESA-listed species occupying BLM land in the southwest.

38. Degradation of riparian areas has led to ESA listings for numerous bird and fish species found on BLM land. Yellow-billed cuckoo and southwestern willow flycatcher are ESA-listed birds that depend heavily on riparian areas. ESA-listed fish such as species of chub, sucker, and minnow occur on BLM land in the southwest, while bull trout, steelhead, and Lahontan cutthroat trout are found on BLM land farther north. Unique plants listed under the ESA, including slickspot peppergrass and multiple species of cacti, also occupy BLM lands.

39. BLM must provide substantial protection to these species and their habitat under the requirements of the ESA. Congress determined that agencies must ensure their actions do not jeopardize the survival or recovery of ESA-listed species, kill or injure individual members of those species, or destroy or adversely modify the species' critical habitat. 16 U.S.C. §§ 1536(a)(2), 1538. The Supreme Court has stated that Congress intended the ESA "to halt and reverse the trend toward species extinction, *whatever the cost*," and thus the Act reflects "a conscious decision by Congress to give endangered species *priority* over the 'primary missions' of federal agencies." *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 184, 185 (1978) (emphasis added). Because agencies must "afford first priority" to saving threatened and endangered species, *id.* at 185, these species and their habitat are significant environmental resources that BLM must protect.

40. Other native wildlife found on BLM land that have declined dramatically compared to historic levels are bighorn sheep. Bighorns, an icon of the American West, are important to Native Americans, hunters, and wildlife enthusiasts but many bighorn populations are a fraction of their historic size.

41. The primary threat to these animals is transmission of disease from domestic sheep, which carry a pathogen that does not affect domestics but can cause severe respiratory disease in bighorns. If the two species come in contact on the range, the pathogen is transmitted from the domestic sheep to the bighorn, and then can spread through the entire bighorn herd. The result is often 75-100% mortality in a bighorn population. Any ewes that survive the outbreak but carry the pathogen will transmit it to their lambs, causing very high lamb mortality in the population for years. Recurring disease outbreaks in a population can prevent the population from ever rebounding.

42. Given the high value of bighorn sheep and widely recognized risk of disease transmission from domestic sheep, WAFWA published “Recommendations for Domestic Sheep and Goat Management in Wild Sheep Habitat” in 2012. This document produced a unified set of recommendations for state and federal land management agencies to take appropriate steps to eliminate range overlap and thereby reduce opportunities for transmission of pathogens from domestic sheep and goats to wild sheep.

43. BLM itself recognized the importance of bighorn sheep, and the threat posed to them by domestic sheep, and issued its own guidance in 2016 for keeping the species separated in order to sustain wild sheep on BLM managed lands. The guidance provided direction for BLM to incorporate provisions in land use plans, implementation-level plans and land-use authorizations, including grazing permits, to achieve effective separation between domestic sheep and bighorn sheep on BLM lands in order to minimize the risk of contact between the species. The guidance specifically noted that BLM would consider management practices that could help achieve effective separation during NEPA analysis for grazing permits and incorporate them as terms and conditions in permits. On the rare occasions when BLM has conducted NEPA analysis for domestic sheep allotments that pose a high risk to bighorn sheep populations, it has fully or partially closed allotments to domestic sheep use.

## **II. BLM Land Health Evaluations**

44. When managing livestock grazing, BLM must comply with requirements in its grazing regulations. One component of those regulations is subpart 4180—“Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.” 43 C.F.R. Subpart

4180 (2005).<sup>1</sup> BLM added this subpart to the regulations in 1995 to address impacts of livestock grazing that were causing widespread ecological degradation of rangelands. The regulations first set forth goals for achieving healthy watersheds, ecological processes, water quality, and wildlife habitat on BLM rangelands. 43 C.F.R. § 4180.1 (2005). To achieve these goals, BLM State Offices were required to develop standards and guidelines for grazing administration that addressed objectives identified in the regulations for healthy vegetation, soils, riparian function, stream channels, water quality, and wildlife habitat. *Id.* § 4180.2(d),(e) (2005). BLM completed that requirement by issuing statewide standards and guidelines for each western state.

45. The regulations specified that, with regard to wildlife habitat, State guidelines must address restoring, maintaining, or enhancing habitats to assist in the recovery of threatened and endangered species; restoring, maintaining, or enhancing habitats of species proposed for listing under the ESA and other special status species to promote their conservation; and maintaining or promoting the physical and biological conditions to sustain native populations and communities. 43 C.F.R. § 4180(e)(8)-(10) (2005).

46. When conducting rangeland health evaluations, BLM must determine if lands are failing to achieve the standards or guidelines, and if so, whether livestock grazing is a significant factor in causing that failure. 43 C.F.R. § 4180.2(c) (2005). If grazing is a significant factor, BLM must “take appropriate action as soon as practicable but not later than the start of the next grazing year” that will result in significant progress toward fulfilling the standards and guidelines. *Id.* The Fundamentals of Rangeland Health standards and guidelines apply to grazing management plans, establishment of permit terms and conditions, and range improvements like fences and water developments. *Id.*

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<sup>1</sup> The Fundamentals of Rangeland Health regulations currently in print were enjoined permanently in 2007. The actual regulations BLM is following are found in the 2005 version.



47. The Fundamentals of Rangeland Health regulations became effective in 1995 and BLM began conducting rangeland health evaluations in 1997. In the first fifteen years, BLM conducted evaluations on numerous allotments but the pace of those evaluations slowed considerably over the next decade. Many current allotments have either never undergone evaluation or their most recent evaluation occurred more than ten years ago.

48. Plaintiff PEER gathered data from BLM on land health evaluations conducted between 1997 and 2019 for BLM's 21,000 grazing allotments. PEER's analysis of that data showed BLM had assessed approximately 109 million acres of grazed public lands but almost 41 million acres remained unevaluated, which constitute 27% of all BLM grazing allotment acres. For allotments that had been assessed, the data showed about 39 million acres—or 36% of the area assessed—were not meeting standards due at least in part to livestock grazing.

49. Some states have completed more land health evaluations than other states have. For instance, in Wyoming, Utah, Arizona, Idaho, New Mexico, and Nevada BLM had failed to complete evaluations on at least 20% of allotment acres in those states, with Nevada being the worst at 43% of acres unassessed—which totaled more than 18 million acres.

50. For allotments that BLM had assessed, the data showed more than 35% of acres had failed standards due to livestock in California, Colorado, Idaho, Nevada, and Wyoming—again with Nevada having the most at 63% of acres failing standards due to livestock, totaling more than 15 million acres. Livestock were by far the most prevalent cause of allotments not meeting rangeland health standards and guidelines.

51. Many allotments that either have never been evaluated or have failed standards due to livestock overlap one of the significant environmental resources discussed above. For example, BLM field offices in Idaho, Nevada, and Wyoming either have not evaluated or have

determined livestock contributed to violations of rangeland health standards on numerous allotments that overlap sage-grouse SFA habitat. Similarly, field offices in Utah, Colorado, and Oregon have not assessed or have found standards were not met due to livestock for many allotments that contain critical habitat for ESA threatened or endangered species. And similarly, BLM has not evaluated or has found livestock contributed to violations of rangeland health standards for numerous allotments in Utah, Colorado, Nevada, and Idaho that occur within a National Monument or National Conservation Area.

52. As discussed below, BLM has not taken action to address grazing practices that contributed to standards violations for many allotments because it has not conducted NEPA analysis for those allotments in order to consider and decide on changes to grazing permits.

### **III. BLM Guidance on NEPA for Grazing Allotments**

53. Since 2004, when Congress first directed BLM to determine the priority and timing of environmental analysis for renewed grazing permits, BLM's Washington D.C. Office has issued various Instruction Memoranda ("IM") that provided guidance on that direction. The agency has also issued IMs related to grazing management of areas with certain resources.

54. A 2009 IM emphasized prioritizing NEPA analysis for allotments where livestock grazing was documented as or expected to be a significant causal factor in not achieving land health standards, noting in particular the need to consider the condition of ESA critical habitat and conflicts with sage-grouse.

55. From 2012 to 2015, BLM issued multiple IMs related to grazing management. A 2012 IM laid out interim conservation measures to apply to activities that could affect greater sage-grouse and its habitat, including livestock grazing, until BLM incorporated long-term measures into land use plans. The IM included instructions for conducting and implementing

rangeland health evaluations and NEPA analysis on allotments with priority sage-grouse habitat to protect that habitat and minimize adverse effects to the bird. BLM also issued an IM in 2014 that set forth policy for managing activities in Gunnison sage-grouse habitat within Colorado and Utah that was similar to the policy for greater sage-grouse habitat in the 2012 IM.

56. Language in another 2012 IM pertained to conflicts between domestic sheep and bighorn sheep on BLM lands, explaining when BLM could modify or cancel a permit due to conflicts between domestic and bighorn sheep, voluntary closure of domestic sheep allotments to reduce conflicts, and voluntary relinquishment of a grazing permit where conflicts exist. It noted that BLM could prohibit or modify grazing where significant resource damage is imminently likely, and that the agency had used that authority to close an allotment in Idaho where continued domestic sheep grazing created a high risk of disease transmission to bighorn sheep.

57. With regard to permit renewals, BLM reiterated in 2012-2015 IMs that field offices should prioritize completing NEPA analysis for renewed permits by considering the environmental significance of the grazing allotment as well as funding and workload considerations. It noted the guidance from the 2009 IM as well as direction from the 2012 sage-grouse IM and specifically stated that if permit terms need to be changed to comply with the sage-grouse direction, processing of those permits should be initiated immediately.

58. In September 2015, BLM signed decisions amending numerous resource management plans (RMPs) that applied to BLM lands with greater sage-grouse habitat as part of its National Greater Sage-Grouse Conservation Strategy. These plans established requirements for assessing sage-grouse habitat as well as substantive protections from harmful activities. BLM subsequently issued several IMs that provided guidance on implementing these sage-grouse RMP amendments.

59. The following year, BLM issued a new IM that superseded previous policy on how to set priorities for grazing permit processing. It directed field offices to prioritize allotments with the highest habitat value for greater sage-grouse, consistent with the new RMP amendments. The highest value habitat was SFA habitat. It also identified other criteria to use to prioritize allotments for NEPA analysis, such as whether other imperiled species (i.e., threatened, endangered, or BLM sensitive species) have habitat on the allotment, special land designations (e.g., National Conservation Lands), whether a land health evaluation had been completed and its results, if other important resource conflicts exist, and how long ago the permit had last undergone NEPA analysis. Grazing permits that had been processed recently—i.e., within the last three to five years—were lower priority than permits processed five or more years ago. BLM recognized that this policy would slow processing of permits for allotments without these high priority resource conditions.

60. The 2016 IM ordered BLM field offices to develop an allotment priority list for grazing permits to determine the order of processing, which must include all allotments within each field office. The initial list was due February 1, 2017 and was to be updated annually by March 1. An example included columns for acres of sage-grouse habitats; presence of threatened, endangered, or sensitive species; special management designations; date of the last land health evaluation; and the priority group for the allotment.

61. In 2017, BLM offices in states with sage-grouse habitat completed their priority lists for permit processing. They used the example attached to the 2016 IM and placed allotments within each field office into priority groups based largely on the value of sage-grouse habitat, with SFA being first priority. The priority lists ranked the allotments systematically and also

often noted if allotments had threatened, endangered, or sensitive species habitat, special land designations, or other resource issues like conflicts between domestic and bighorn sheep.

62. In 2018, BLM issued a new directive on setting priorities for review and processing of grazing authorizations, which specifically superseded all prior policies on the prioritization of grazing permit processing. Under this 2018 IM, the highest priority areas for permit processing would “usually include” areas that had not undergone land health evaluations or were not achieving land health standards, areas with sensitive plant, wildlife, or cultural resources, or where particular issues had been identified. More specific criteria included allotments with high quality sage-grouse habitat where resource damage is known or may be occurring, areas with declining special status species populations, and areas where known threats are impairing habitat availability or suitability.

63. Because the 2018 IM superseded the 2016 IM and contained more general criteria for prioritizing grazing permit NEPA analysis, BLM abandoned the 2017 prioritization decisions it had created pursuant to the 2016 IM. BLM has not replaced those decisions with further determinations prioritizing allotments for NEPA analysis. The 2018 IM expired on September 30, 2021 and BLM has not issued a new IM to replace it.

64. In addition to the policy guidance in IMs, BLM also provides guidance in its Manual. Certain sections of the Manual are dedicated to “Specially Designated Conservation Areas and Wildlife” and cultural programs. Within these sections, BLM provides direction for management of specially designated areas such as National Monuments, National Conservation Areas, Wild and Scenic Rivers, and Wilderness Areas; guidance on management of fish and wildlife, including extensive direction for managing habitat of threatened, endangered, and BLM sensitive species; and direction for managing cultural resources.

#### **IV. BLM's Implementation of the 2014 Amendment to FLPMA**

65. Over the last decade, the rate of NEPA analysis for livestock allotments has declined significantly. Based on data in BLM's Rangeland Administration System (RAS), the percentage of allotments nationwide that BLM reauthorized for grazing without NEPA review rose from 28% in 2013 to 38% in 2017, and up to 54% in 2021. BLM has renewed many grazing permits two or more times without conducting any NEPA review, which means those permits have had no NEPA analysis for 15-20 years or more.

66. Due to this troubling trend, Plaintiff WWP conducted a Geographic Information Systems (GIS) analysis to determine if the lack of NEPA analysis for renewed grazing permits was consistent across states and field offices, and if certain criteria influenced BLM's completion of NEPA for grazing permits. The results of that analysis showed differences in the rate of NEPA processing completed between states, field offices, and when various resources were present. WWP presented its analysis to BLM Director Stone-Manning and BLM's Deputy Director of Policy and Programs in March 2022 and urged them to take steps to address the widespread problem of lack of NEPA for grazing allotments, including by issuing a new IM with guidance for prioritizing allotments for NEPA analysis, but Federal Defendants have not taken any action.

67. Based on RAS data from the end of FY2022, WWP analyzed data on 35,640 grazing permits that BLM administers across the West. Overall, of the currently active 35,640 permits, BLM had "fully processed" just 37% of them under NEPA.

68. When looking at individual states, BLM completed NEPA processing for grazing permits at particularly low levels in some states. For instance, BLM's rate of NEPA for current grazing permits is especially egregious in Nevada, Idaho, Oregon, Arizona, Utah, and Wyoming.

BLM has completed NEPA review on only 9% of current permits in Nevada, and rates are not much higher in other states: Idaho (12%), Oregon (15%), Arizona (24%), Utah (24%), and Wyoming (26%).

69. WWP also analyzed whether BLM was prioritizing NEPA review for permits that authorized grazing in areas with environmental resources BLM itself has recognized as important—habitat for sage-grouse, threatened and endangered species, and bighorn sheep, and National Monuments and National Conservation Areas. WWP obtained and mapped the following GIS data: sage-grouse habitat data from the 2015 RMP amendment process; U.S. Fish and Wildlife Service data on designated critical habitat for threatened and endangered species; state wildlife agency data on occupied bighorn sheep habitat; and data on boundaries of National Monuments and National Conservation Areas.

70. WWP then looked at permits for allotments that overlapped sage-grouse SFA habitat (the most important sage-grouse habitat), critical habitat for threatened or endangered species, occupied bighorn sheep habitat, and/or National Monuments or National Conservation Areas. The data showed that BLM conducted NEPA on permits for allotments that had such resources *at a lower rate* than for allotments that lacked those resources.

71. On a West-wide scale, BLM's RAS data at the end of FY2022 showed the following:

BLM had fully processed under NEPA 25% of permits for allotments that overlap National Monuments or National Conservation Areas, and fully processed 38% of permits for allotments that did not overlap such areas.

BLM had fully processed 24% of permits for allotments that overlap critical habitat for threatened or endangered species, and fully processed 37% of permits for allotments that did not overlap critical habitat.

BLM had fully processed 21% of permits for allotments that overlap sage-grouse SFA habitat, and fully processed 38% of permits for allotments that did not overlap SFA habitat.

BLM had fully processed 6% of domestic sheep allotments that overlap bighorn sheep occupied habitat, and fully processed 23% of domestic sheep allotments that did not overlap bighorn occupied habitat.

72. These comparisons indicate that, when BLM does conduct NEPA review, it is more often conducting that review for—i.e., prioritizing—allotments that do not have significant environmental resources.

73. BLM data also showed that for allotments that had failed to meet rangeland health standards due at least in part to livestock grazing (according to PEER's analysis), only 26% of permits had undergone NEPA review. Thus, for almost  $\frac{3}{4}$  of permits where grazing was contributing to violations of land health standards, BLM had not undertaken the NEPA analysis needed to change terms and conditions of the grazing permit that would result in significant progress toward achieving the standards.

74. Analyzing the FY2022 data further showed that certain states, and certain field offices within those states, had a very low rate of NEPA completion for grazing permits when one or more of the significant resources discussed in paragraph 70 were at issue.

75. In Oregon, the Malheur Resource Area in the southeast corner of the state manages numerous allotments with extensive SFA habitat, as well as several allotments with habitat for threatened bull trout or Lahontan cutthroat trout, and a couple of domestic sheep allotments that overlap or are adjacent to occupied bighorn sheep habitat. BLM has not completed NEPA for any current grazing permits on any of those allotments, but has completed NEPA for a handful of permits where those resource concerns are not present. In the Central Oregon Resource Area, many allotments contain critical habitat for threatened bull trout and/or



threatened steelhead. Between 2017 and 2022, BLM had processed just two permits under NEPA for allotments with critical habitat but had processed eight permits where no critical habitat was at issue.

76. In Idaho, BLM has prioritized NEPA for grazing allotments that contain sage-grouse SFA only when ordered to do so by a court order. WWP previously sued BLM over management of grazing allotments that have sage-grouse habitat in the Owyhee, Bruneau, and Jarbidge field offices. As a result of those lawsuits, BLM has completed or has a schedule to complete NEPA on many of those allotments. In contrast, field offices that are not under court order have completed little or no NEPA for allotments that have sage-grouse SFA, including the Burley, Challis, Shoshone, and Upper Snake Field Offices. The Challis Field Office also has numerous allotments that contain bull trout critical habitat, but it has neglected to do NEPA on almost all of those permits as well. All of these field offices have completed NEPA procedures for current permits where sage-grouse SFA and ESA critical habitat are not at issue.

77. Idaho BLM field offices responsible for managing Craters of the Moon National Monument and Snake River Birds of Prey National Conservation Area have not completed NEPA review on many current grazing permits for allotments that overlap those designations, some of which also include sage-grouse SFA within Craters of the Moon Monument and ESA critical habitat for slickspot peppergrass—a threatened endemic plant—within Birds of Prey National Conservation Area.

78. BLM lands in Wyoming also encompass extensive habitat for greater sage-grouse, with a large portion of SFA found there. Pinedale and Rock Springs field offices manage much of that SFA, but have conducted very little NEPA on permits for allotments that overlap SFA. In fact, those two field offices have done almost no NEPA at all in the last seven years for

any allotments, completing NEPA processing for just two permits since 2016 in both field offices combined. In contrast, the neighboring Rawlins Field Office has completed NEPA processing for a substantial portion of its permits, including processing 17 of 20 permits that overlap sage-grouse SFA since 2019.

79. Large expanses of sage-grouse SFA also occur in northern Nevada, largely in the Wells, Tuscarora, and Humboldt River field offices. Wells and Tuscarora field offices also have habitat for threatened Lahontan cutthroat trout. These three field offices have done little NEPA for current grazing permits overall, and almost none for allotments with SFA or Lahontan trout habitat. Numerous BLM field offices in Nevada also provide habitat for bighorn sheep. The following field offices have domestic sheep allotments that overlap or are adjacent to occupied bighorn sheep habitat: Tuscarora, Humboldt River, Mount Lewis, and Bristlecone. Of the more than thirty domestic sheep permits authorizing grazing on allotments that overlap occupied bighorn habitat within these four field offices, BLM has conducted NEPA review for just one permit. BLM also manages Black Rock Desert National Conservation Area, which has sage-grouse SFA habitat and Lahontan cutthroat trout habitat, and Basin and Range National Monument, which has occupied bighorn sheep habitat, but has done very little NEPA for any permits allowing grazing in these special areas.

80. Four BLM field offices in California authorize domestic sheep grazing on allotments that overlap bighorn sheep occupied habitat: Bishop, Ridgecrest, Eagle Lake, and Applegate. Like in Nevada, those four field offices have completed NEPA processing on very few permits for those allotments, and none since 2015. The Applegate Field Office also has allotments that overlap sage-grouse SFA or are within the Black Rock Desert National Conservation Area, but only one of twenty permits for those allotments has been processed under

NEPA and that was completed in 2015. The Bishop and Ridgecrest field offices have allotments with critical habitat for desert tortoise as well as several fish and plant species that are all listed as threatened or endangered under the ESA; and the Bishop Field Office also authorizes grazing on allotments with habitat for bi-state sage-grouse, a BLM sensitive species like greater sage-grouse. Neither of these offices has completed any NEPA review for grazing permits since 2014.

81. In Colorado, BLM has generally completed more NEPA for grazing permits than in other states, but some field offices have selectively avoided NEPA for allotments that overlap bighorn sheep habitat or threatened or endangered species habitat. The Colorado River Valley, Gunnison, Uncompahgre, and San Luis Valley field offices all have multiple domestic sheep allotments that overlap bighorn sheep occupied habitat, but these offices have completed *no* NEPA for current permits on any of those allotments despite doing NEPA for numerous other permits. Critical habitat for ESA-listed species, such as Gunnison sage-grouse and several listed fish and plant species, also occurs throughout BLM land in western Colorado, but the Grand Junction and Uncompahgre field offices have completed little NEPA for permits that authorize grazing in that habitat, choosing to complete NEPA for numerous other allotments instead.

82. Colorado BLM also manages the Gunnison Gorge and Dominguez-Escalante National Conservation Areas, each of which has critical habitat for Gunnison sage-grouse and bighorn sheep occupied habitat, and Canyon of the Ancients National Monument, which has significant cultural resources. BLM has completed very little NEPA for grazing permits in any of these conservation-oriented areas, even permits that would affect sage-grouse or bighorn sheep.

83. Numerous riparian dependent species found in the arid southwest are listed as threatened or endangered, and many of these species are found on BLM lands in Arizona. The Safford and Tucson field offices manage critical habitat for multiple ESA-listed species,

including yellow-billed cuckoo, southwestern willow flycatcher, Chiricahua leopard frog, Mexican spotted owl, jaguar, loach minnow, razorback sucker, little Colorado spinedace, Gila chub, and Acuna cactus. These two field offices have completed very little NEPA on current permits for allotments that overlap critical habitat for one or more of these species. They have completed NEPA processing for permits on other allotments without ESA critical habitat.

84. Many of these and other threatened and endangered species also occur on BLM lands in Utah, including in Bears Ears and Grand Staircase/Escalante National Monuments. Those two monuments have ESA critical habitat for southwestern willow flycatcher, Mexican spotted owl, Colorado pikeminnow, razorback sucker, bonytail, and humpback chub, and also have extensive cultural sites within their borders. BLM authorizes grazing on numerous allotments that are within one of those monuments but it has completed NEPA review on only one of the more than 100 current permits for all of those allotments.

85. Other Utah field offices, including the Price, Richfield, and Vernal offices, have critical habitat for some or all of the species listed above. In addition, five species of cactus listed as threatened or endangered occur on those three field offices. BLM has completed little or no NEPA review on permits for allotments where ESA species and/or their critical habitat exist within those field offices. The St. George Field Office in southwest Utah has multiple allotments that overlap Beaver Dam Wash and Red Cliffs National Conservation Areas. Threatened Mohave desert tortoise also occurs on all but one of those allotments, as well as on an additional allotment, but BLM has not completed NEPA for any of those allotments. Each of these field offices has completed NEPA for permits where no ESA critical habitat is at issue.

86. Most of the field offices discussed above completed the now-abandoned 2017 documents prioritizing allotments for NEPA review based on sage-grouse habitat as well as

factors like other threatened, endangered, or sensitive species or special land designations.<sup>2</sup>

Many of the allotments that the agency listed as high priority also did not meet rangeland health standards due to livestock or had not been evaluated. All of those field offices have failed to complete NEPA review for the allotments that had been listed as top priority, while most have completed NEPA processing for other allotments that were lower priority.

87. Some BLM field offices have completed almost no NEPA at all for current grazing permits. The FY2022 RAS data shows that more than a dozen field offices have conducted NEPA for less than 10% of current grazing permits:

- Malheur Resource Area (3.5%)
- Central Oregon Resource Area (4.7%)
- Challis Field Office (7.1%)
- Pinedale Field Office (8.7%)
- Rock Springs Field Office (2.2%)
- Bristlecone Field Office (3.5%)
- Bishop Field Office (0%)
- Ridgecrest Field Office (6.9%)
- Applegate Field Office (7.1%)
- Safford Field Office (7.7%)
- Price Field Office (5.1%)
- Grand Staircase/Escalante National Monument (0%)
- Basin and Range National Monument (0%)
- Dominguez Escalante National Conservation Area (0%)

88. In addition, field offices have renewed some permits multiple times without NEPA, meaning no analysis has occurred for more than a decade—sometimes more than twenty years. Such lengthy delays of NEPA have occurred even for allotments that have the significant resources discussed in this complaint.

89. Plaintiffs bring this lawsuit to rectify BLM's widespread delinquency in completing NEPA analysis for grazing allotments, particularly those that overlap significant

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<sup>2</sup> Some field offices that are not within the range of greater sage-grouse, such as those in eastern Utah and Arizona, did not create the 2017 prioritization spreadsheets.

environmental resources, which stems from Federal Defendants’ failure to issue decisions that determine the priority of allotments for NEPA analysis and set a schedule for those analyses based on that prioritization. By failing to conduct this required action, Federal Defendants are violating FLPMA by allowing allotments with significant environmental resources to escape NEPA review for years, sometimes decades.

**FIRST CLAIM FOR RELIEF**  
**VIOLATION OF FLPMA: FAILURE TO DETERMINE PRIORITY AND TIMING OF ENVIRONMENTAL ANALYSES FOR GRAZING ALLOTMENTS**

90. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

91. This first claim for relief challenges Federal Defendants’ violation of the Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.*, in failing to fulfill their mandatory duty to determine the priority and timing of environmental analyses for livestock grazing allotments, permits, and/or leases. Plaintiffs bring this claim pursuant to the judicial review provision of the APA, 5 U.S.C. § 706(1), which authorizes a court to “compel agency action unlawfully withheld or unreasonably delayed.”

92. As amended by the 2015 NDAA, FLPMA Section 402 directs the Secretary of Interior to renew expiring grazing permits under the same terms and conditions until she completes any environmental analysis and documentation required under NEPA. 43 U.S.C. § 1752(c)(2). FLPMA states that the Secretary of Interior *shall* determine the priority and timing for completing each required environmental analysis with respect to grazing allotments, permits, or leases. 43 U.S.C. § 1752(i). Making this determination is a mandatory, non-discretionary duty under FLPMA. The determination must be based in part on the environmental significance of the allotment. *Id.*

93. BLM’s national office has issued various IMs since 2009 providing guidance for

how field offices should prioritize allotments for environmental review. In 2017, most BLM field offices produced documents that implemented the 2016 IM by determining the priority group for each allotment in that field office. But a subsequent IM in 2018 superseded the 2016 IM, and BLM abandoned the 2017 prioritization decisions.

94. Since abandoning the 2017 prioritization decisions, Federal Defendants have not produced any new decisions that determine the priority and timing of environmental analyses for grazing permits. Nor have they issued any subsequent nationwide IM on how to prioritize environmental analysis for renewed permits despite the 2018 IM expiring in September 2021.

95. BLM continues to authorize grazing without any prioritization plan or schedule for analysis despite Congress initially requiring the prioritization and timing determination in 2004 and incorporating this requirement into FLPMA in 2014. The delay of this determination has allowed some field offices to forego virtually all NEPA analysis for grazing permits, while others have conducted some NEPA processing but have not prioritized allotments with significant environmental resources, as discussed above.

96. Because Federal Defendants have unlawfully withheld or unreasonably delayed the mandatory, non-discretionary duty to determine the priority and timing for completing each required environmental analysis with respect to a grazing allotment, permit, or lease, they have violated FLPMA. Such inaction is unlawful under the APA, 5 U.S.C. § 706(1).

WHEREFORE, Plaintiffs pray for relief as set forth below.

**SECOND CLAIM FOR RELIEF**  
**VIOLATION OF FLPMA: FAILURE TO CONDUCT NEPA ANALYSES FOR  
GRAZING PERMITS AND/OR ALLOTMENTS**

97. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

98. This second claim for relief challenges Federal Defendants' violations of the

Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.*, in failing to fulfill the mandatory duty to conduct NEPA analysis for grazing permits and/or allotments. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706(1).

99. Under the 2015 NDAA amendments to FLPMA, the Secretary of Interior must renew a grazing permit under the same terms and conditions as the prior permit until she completes NEPA analysis for the permit, and the priority and timing of that analysis must be based on the environmental significance of the allotment or permit and available funding for the analysis. 43 U.S.C. § 1752(c)(2), (i). This direction allows BLM to toll NEPA analysis for renewed grazing permits but does not allow it to completely avoid conducting that analysis—BLM still has a duty to complete NEPA.

100. In some instances, BLM has renewed a grazing permit multiple times without conducting NEPA analysis. This has led to permits authorizing grazing for more than a decade, sometimes for twenty years or more, without a new NEPA analysis. This lengthy delay in NEPA analysis is unreasonable for allotments with significant environmental resources, such as sage-grouse habitat, critical habitat for threatened or endangered species, occupied bighorn sheep habitat, and/or it occurs within a National Monument or National Conservation Area, particularly when BLM had determined livestock grazing was a significant factor in failing to achieve land health standards and guidelines on that allotment. Such a delay is especially unreasonable where BLM has completed NEPA processing of other permits for allotments that lack those resources.

101. The following allotments, which all have significant environmental resources, have permits that BLM has renewed more than once without completing NEPA analysis. In fact, BLM has not completed NEPA processing for these allotments for 15-20 years or more. For many of these allotments, BLM has either determined they failed rangeland health standards due



to livestock, or has not evaluated them.

Malheur Resource Area, OR: Whitehorse Butte (overlaps 127 square miles of sage-grouse SFA habitat and contains streams with threatened Lahontan cutthroat trout)

Challis Field Office, ID: Mountain Springs (overlaps 124 square miles of sage-grouse SFA habitat)

Rock Springs Field Office, WY: Pacific Creek (overlaps 242 square miles of sage-grouse SFA habitat)

Tuscarora Field Office, NV: YP (overlaps 150 square miles of sage-grouse SFA habitat)

Wells Field Office, NV: Salmon River (overlaps 428 square miles of sage-grouse SFA habitat)

Humboldt River Field Office, NV: Blue Wing/7 Troughs (overlaps/adjacent to occupied bighorn sheep habitat and Black Rock Desert National Conservation Area)<sup>3</sup>

Basin and Range National Monument, NV: Irish Mountain (overlaps/adjacent to occupied bighorn habitat and National Monument)

Applegate Field Office, CA: Home Camp (overlaps 180 square miles of sage-grouse PHMA habitat and Black Rock Desert National Conservation Area)

Gunnison Field Office, CO: Sapinero Mesa (overlaps occupied bighorn sheep habitat and Gunnison sage-grouse habitat)

Gunnison Gorge National Conservation Area, CO: Green Mountain (overlaps Gunnison sage-grouse habitat, occupied bighorn sheep habitat, and National Conservation Area)

St. George Field Office, UT: Beaver Dam Slope (overlaps 47 square miles of critical habitat for threatened desert tortoise and Beaver Dam Wash National Conservation Area)

Grand Staircase/Escalante National Monument, UT: Cottonwood (overlaps critical habitat for southwestern willow flycatcher and Mexican spotted owl, habitat for numerous sensitive plant species, and National Monument)

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<sup>3</sup> Allotments identified as overlapping occupied bighorn sheep habitat are domestic sheep allotments.

Bears Ears National Monument, UT: Indian Creek (numerous cultural resource sites present, overlaps critical habitat for multiple listed fish species, Mexican spotted owl, and National Monument)

Safford Field Office, AZ: Smuggler Peak (overlaps critical habitat for yellow-billed cuckoo, razorback sucker, loach minnow, and Gila Box National Conservation Area)

102. Accordingly, Federal Defendants have unlawfully withheld or unreasonably delayed performing their duty to conduct NEPA analysis for each allotment listed above, and this inaction is unlawful under APA § 706(1).

WHEREFORE, Plaintiffs pray for relief as set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that Federal Defendants have violated FLPMA by failing to determine the priority and timing of analyses for renewed grazing permits, and/or failing to complete NEPA analyses for the grazing permits/allotments identified above in Claim Two, which are unlawful failures to act under the judicial review standards of the APA, 5 U.S.C. § 706(1);
- B. Order Federal Defendants to issue a decision or decisions within 90 days determining the priority of grazing allotments for NEPA analysis, and establishing a schedule for completing such analysis for every grazing permit and/or allotment based on the prioritization determination;
- C. Order Federal Defendants to complete a NEPA analysis for each grazing permit/allotment identified above in Claim Two within two years;
- D. Enter such other declaratory relief, and temporary, preliminary, or permanent injunctive relief as may be prayed for hereafter by Plaintiffs;
- E. Award Plaintiffs their reasonable attorney fees, costs, and litigation expenses

under the Equal Access to Justice Act, and/or any other applicable provision of law; and

F. 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 Plaintiffs, the public, and the lands at issue.

Dated: September 13, 2023

Respectfully submitted,

/s/ Todd C. Tucci

Todd C. Tucci (D.C. Bar #ID0001)

Lauren M. Rule (OSB #015174)\*

Laurence J. Lucas (ISB #4733)\*

*\*pro hac vice applications forthcoming*

ADVOCATES FOR THE WEST

P.O. Box 1612

Boise, ID 83701

(208) 342-7024

[ttucci@advocateswest.org](mailto:ttucci@advocateswest.org)

[lrule@advocateswest.org](mailto:lrule@advocateswest.org)

[llucas@advocateswest.org](mailto:llucas@advocateswest.org)

Attorneys for Plaintiffs