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

COMMITTEE FOR THE HIGH)
DESERT, and WESTERN WATERSHEDS)
PROJECT,)
Plaintiffs,)
vs.)
)
ROBERT V. ABBEY, Nevada State)
Director; KATHLEEN CLARKE, Director,)
Bureau of Land Management; and BUREAU)
OF LAND MANAGEMENT, an agency of)
the United States,)
Defendants.)

Case No. _____

COMPLAINT

NATURE OF ACTION

1. This action seeks declaratory and injunctive relief requiring Defendants Bureau of Land Management et al. (“BLM”) to adhere to federal law in their management of the over 500,000 acres of public lands within the Soldier Meadows and Paiute Meadows Grazing Allotments in northwest Nevada, and to halt the ecological degradation which grazing and livestock management are causing upon those public lands – degradation that BLM has itself documented and acknowledged in detail, but which the agency refuses to address by adopting meaningful changes in grazing management.

2. Specifically, Plaintiffs challenge BLM’s failure or refusal to revise grazing management within Soldier and Paiute Meadows Allotments as required by the Federal Lands Policy and Management Act (“FLPMA”), 43 U.S.C. § 1701 et seq., and its implementing regulations including the Fundamentals of Rangeland Health (“FRH”), 43 C.F.R. subpart 4180, the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531 et seq., and the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq. Instead, Defendants continue to authorize and permit environmentally destructive livestock grazing over 500,000 acres of public lands, including the last remaining habitat of the Desert Dace, a rare fish species listed as “threatened” under the Endangered Species Act.

3. Accordingly, immediate injunctive and/or declaratory relief is required to ensure that Defendants adhere to the requirements of law in administering grazing within the Soldier Meadows and Paiute Meadows Allotments, and to prevent further and irreparable harm to Desert Dace, Lahontan cutthroat trout, designated critical habitat, riparian conditions, and other critical resource values resulting from Defendants’ unlawful actions.

JURISDICTION AND VENUE

4. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question) because this action arises under the laws of the United States, including the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 et seq., the Endangered Species Act, 16 U.S.C. §§ 1531 et seq., the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq. (“APA”); the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.; and the Equal Access to Justice Act, 28 U.S.C. §§ 2412 et seq.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 16 U.S.C. § 1540(g)(3)(A) because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, and Defendants and the affected public lands and resources are located in this judicial district.

6. Plaintiffs have provided Defendants with sixty days written notice of the violations alleged herein pursuant to 16 U.S.C. § 1540(g). Plaintiffs have demanded that Defendants correct the violations of the ESA alleged herein, but Defendants have failed to comply with these demands and continue to do so. An actual, justiciable controversy now exists between Plaintiffs and Defendants, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. § 701-06.

7. Plaintiffs have exhausted all administrative remedies required by the APA, 5 U.S.C. § 704, and BLM’s regulations prior to bringing this action.

8. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702 and 16 U.S.C. § 1540(g).

PARTIES

9. Plaintiff COMMITTEE FOR THE HIGH DESERT (“CHD”) is a non-profit membership organization, having about 200 members, which is dedicated to the protection, restoration, and wise use and enjoyment of public lands and high desert resources. CHD, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve the riparian areas, forests, water quality, fisheries, wildlife, and other natural resources and ecological values of the Black Rock desert and other high desert regions of Nevada, Idaho and Oregon. CHD recently changed its name from “Committee for Idaho’s High Desert,” to reflect its expanded mission to protect and preserve the Black Rock desert and other high deserts in the interior west.

10. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) is a non-profit membership organization, having over 1200 members, 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 improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West, including Nevada.

11. Members and staff of the Plaintiff organizations work, live and/or recreate throughout the high desert ecosystem of Nevada and the surrounding region, including within the Proposed Action area. Plaintiffs’ members and staff derive commercial, aesthetic, recreational, scientific, inspirational, educational, and other benefits from the Great Basin ecosystem, including from the Black Rock Desert and surrounding areas, on a regular and continuing basis and intend to do so frequently in the immediate future.

12. Members and staff of the Plaintiff organizations observe and study the Black Rock desert within the Proposed Action areas, as well as the larger high desert ecosystem, and derive recreational, aesthetic, scientific, inspirational, educational, and other benefits from these activities and have an interest in preserving the possibility of such activities in the future.

13. Implementation of Defendants' decision and actions as alleged herein, including Defendants failure or refusal to manage livestock grazing with the Soldier Meadows and Paiute Meadows Allotments in accordance with federal laws and regulations and in a manner which will preserve all natural resources and human uses of the area, will directly and adversely affect Plaintiffs' health, recreational, scientific, spiritual, aesthetic, educational, informational, and other interests. These are actual, concrete injuries to Plaintiffs, caused by Defendants' violations of FLPMA, NEPA, ESA and the APA, and the Fundamentals of Rangeland Health. The relief sought herein would redress these injuries. Plaintiffs have no adequate remedy at law.

14. Defendant ROBERT V. ABBEY is the Nevada State Director of the Bureau of Land Management, based in Reno, Nevada, and has supervisory authority over BLM's management decisions in Nevada, including the actions and final decision challenged herein. Defendant Abbey is sued solely in his official capacity.

15. Defendant KATHLEEN CLARKE is the Director of the Bureau of Land Management, based in Washington, D.C, and has supervisory authority over all of BLM's management decisions throughout the United States, including the actions and final decision challenged herein. Defendant Clarke is sued solely in her official capacity.

16. Defendant BUREAU OF LAND MANAGEMENT is an agency or instrumentality of the United States, within the U.S. Department of Interior; and is the federal agency charged by law with administering Soldier Meadows and Paiute Meadows allotments.

STATEMENT OF FACTS

17. The Black Rock Desert is an enormous playa surrounded by mountain ranges with elevations from 4,800 to 8,400 feet. The Black Rock Desert is a remnant of ancient Lake Lahontan and is one of the largest, flattest places on earth, over 25 miles long and, at its widest, 15 miles. The Playa has a silt base as much as 10,000 feet thick and is so barren that surface curvature is evident. The area represents the culmination of geological events beginning 15 million years ago.

18. The Black Rock Desert - High Rock Canyon Emigrant Trails National Conservation Area and 10 new wilderness areas were designated in 2000 to conserve, protect and enhance the unique and nationally important historical, cultural, paleontological, scenic, scientific, biological, educational, wildlife, riparian, wilderness, endangered species, and recreational values and resources associated with the Black Rock Desert and surrounding areas. Five (5) of the 10 wilderness areas designated in 2000 fall within the Soldier Meadows Allotment, totaling over 113,000 acres within the allotment, alone. Also, the Paiute Meadows Allotment contains three (3) new wilderness areas totaling nearly 75,000 acres of public lands.

19. The Soldier Meadows Allotment is located immediately adjacent to and within the Black Rock Desert in northwest Humboldt County, approximately 40 miles northwest of Gerlach, Nevada. Soldier Meadows Allotment consists of 327,739 acres of public lands and 10,518 acres of private land, and ranges from the valley floor of the Black Rock Desert to the higher terrain of the Calico and Black Rock ranges. The Paiute Meadows Allotment lies approximately 40 miles southwest of Denio, Nevada, and encompasses the east side of the Black Rock Range. Paiute Meadows consists of 177,096 acres of public lands and 5,170 acres of private land.

20. Vegetation within both the Soldier Meadows and Paiute Meadows Allotments ranges from greasewood and saltgrass sites on the lower, flat elevations to sagebrush, bitterbrush, mountain mahogany, and aspen sites in the higher elevations at 8,600 feet.

21. The Soldier Meadows Allotment—specifically, the “Hot Springs” pasture of the allotment—contains the only known habitat for the Desert Dace, a threatened species under the Endangered Species Act, 16 U.S.C. §§ 1501 et seq. In 1985, the Desert Dace was listed as threatened, and the U.S. Fish and Wildlife Service (“FWS”) contemporaneously designated critical habitat for this species, as required under the ESA.

22. Desert Dace are endemic to thermal springs and their outflow streams within the Hot Springs pasture of the Soldier Meadows Allotment, and occupy only 3.1 miles of outflow stream within an area of approximately 3,830 acres. Desert Dace occupied habitat includes areas in and/or around BLM lands on which BLM authorizes livestock grazing.

23. Within the Soldier Meadows and Paiute Meadows Allotments, several streams also provide occupied habitat for the threatened Lahontan cutthroat trout. The Lahontan cutthroat trout is an inland subspecies of cutthroat trout endemic to the Lahontan basin of northern Nevada, eastern California, and southern Oregon. Historically, Lahontan cutthroat trout were widespread throughout the Lahontan basin. It is estimated that in the late 1800’s, 400 to 600 fluvial Lahontan cutthroat trout populations inhabited more than 3,600 miles of streams.

24. Populations of this fish have declined dramatically in recent times. Today, fluvial Lahontan cutthroat trout are found in only about 10 percent of former stream habitat within its native range.

25. The Lahontan cutthroat trout was listed by FWS as endangered in 1970, and was subsequently reclassified as threatened in 1975 to facilitate management and allow regulated

angling. FWS issued a Recovery Plan for the Lahontan Cutthroat Trout in 1995. The FWS Recovery Plan identifies three Distinct Population Segments¹ (“DPS”) of the Lahontan cutthroat trout: (A) Western Lahontan basin, comprised of the Truckee, Carson, and Walker river basins; (B) Northwestern Lahontan basin, comprised of Quinn River, Black Rock Desert, and Coyote Lake basins; and (C) Humboldt River basin. Lahontan cutthroat trout within the Soldier Meadows and Paiute Meadows Allotments constitute portions of the Quinn River and Black Rock Desert DPS.

26. Within the Soldier Meadows Allotment, Lahontan cutthroat trout occupy portions of Mahogany, Summer Camp, and Snow creeks, including the areas in and/or around BLM lands on which BLM authorizes livestock grazing and/or associated private lands on which substantial livestock grazing occurs. Lahontan cutthroat trout also occupy Coleman Creek and the North Fork of Battle Creek within the Paiute Meadows Allotment.

27. As BLM has recognized, livestock grazing is known to negatively affect both Lahontan cutthroat trout and Desert Dace. In fact, livestock grazing is recognized as the greatest threat to the integrity of all riparian habitats across the western United States. Livestock grazing degrades aquatic habitat by removing riparian vegetation, destabilizing streambanks, widening stream channels, promoting incised channels and lowering water tables, reducing pool frequency, increased soil erosion, increased egg and fry mortality due to livestock trampling, and altering water quality. These effects increase summer water temperatures, reduce stream cover, promote

¹ A “distinct population segment” is a population that (1) is “discrete” (to some extent separated from the remainder of the species or subspecies), and (2) is “significant” (biologically and ecologically). See Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act, 61 Fed. Reg. 4721 (1996). The ESA considers “any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature” to be a species. 16 U.S.C. § 1532 (16). The ESA extends protection to a DPS in part to preserve genetic diversity important to the species’ survival. See id.

formation of anchor ice in winter, and increase sediment into Lahontan cutthroat trout and Desert Dace spawning and rearing habitats.

28. Further, reduced abundance of Lahontan cutthroat trout and Desert Dace has been attributed to extensive, long-term livestock grazing of riparian habitat. FWS has recently concluded that livestock grazing within the Soldier Meadows Allotment may adversely affect Lahontan cutthroat trout and Desert Dace by grazing riparian vegetation, trampling streambanks and wading into streams.

29. On June 30, 1982, BLM approved and adopted the Sonoma-Gerlach Management Framework Plan (“MFP”). Contemporaneous with drafting the Sonoma-Gerlach MFP, BLM issued a Final Environmental Impact Statement (“1982 EIS”) assessing the environmental impacts of implementing the Sonoma-Gerlach MFP. The 1982 EIS was the last substantive analysis of grazing, and its impacts on the natural environment, within the Soldier Meadows and Paiute Meadows allotments.

30. On April 12, 1993 (and further revised on July 12, 1995) BLM adopted a Final Multiple Use Decision (“1993 Land Use Plan”) directing all management within the Paiute Meadows Allotment. The 1993 Land Use Plan identified short-term and long-term management objectives for grazing within the Paiute Meadows Allotment, including: (1) utilization standards for streambank, riparian and upland plant species, (2) and improving range conditions across nearly 177,000 acres within the allotment. In issuing its Final Multiple Use Decision for the Paiute Meadows Allotment, BLM failed to conduct any NEPA analysis assessing the impacts of grazing on the environment and public resources.

31. In early to mid 1993, BLM issued a Proposed Multiple Use Decision addressing grazing and grazing management within the Soldier Meadows Allotment. The proposed grazing

regime called for a 2-year deferred/rest rotation system with six (6) pastures under a 4-year grazing cycle; the proposed schedule also called for a change in the season of use. On July 28, 1993, BLM formally submitted the Proposed Multiple Use Decision to FWS for consultation pursuant to Section 7 of the Endangered Species Act.

32. On December 2, 1993, FWS issued a Biological Opinion (“1993 BO”) pursuant to § 7 of the ESA for the BLM’s Proposed Multiple Use Decision for the Soldier Meadows Allotment. Although FWS determined that the proposed grazing schedule would, in fact, result in “take”² of Lahontan cutthroat trout and Desert Dace, FWS designated the expected level of take as “unquantifiable.” Instead of identifying a numeric threshold for allowable take, FWS included an Incidental Take Permit that required BLM to meet quantifiable terms and conditions to avoid the “take” prohibitions of Section 9 of the Endangered Species Act. Specifically, FWS required, *inter alia*, that (1) grasses along Mahogany, Summer Camp and Snow creeks shall have a minimum stubble height of 6 inches when livestock leave the pasture, (2) aspen and willow utilization shall not exceed 30 percent, and (3) a 4-inch stubble height for grass and grass-like plants shall apply for Coleman, Slumgullion and Donnelly creeks when livestock leave the pasture. FWS concluded that if these objectives were not met, the level of take would be exceeded, and BLM must reinitiate Section 7 consultation or risk violating Sections 7 and 9 of the Endangered Species Act.

33. On January 24, 1994, BLM adopted a Final Multiple Use Decision (“1994 Land Use Plan”) directing all management within the Soldier Meadows Allotment. The 1994 Land Use Plan identified “Allotment Wide Multiple Use Objectives” for (1) riparian/wet meadow, upland grass/dry meadow, and upland browse utilization; (2) water quality; and (3) vegetation, including riparian, sage grouse, and desired plant community objectives. In issuing its Final Multiple Use Decision for

the Paiute Meadows Allotment, BLM conducted no analysis under NEPA to analyze impacts on the environment and public resources due to BLM's management activities.

34. On February 12, 1997, acting pursuant to BLM's Fundamentals of Rangeland Health regulations, 43 C.F.R. subpart 4180, the Secretary of the Department of Interior approved BLM's Standard and Guidelines for Nevada, including the Standards and Guidelines for the Sierra Front-Northwestern Great Basin Area. These Standards and Guidelines govern grazing within the Soldier Meadows and Paiute Meadows Allotments.

35. The Sierra Front-Northwest Great Basin Area Standards and Guidelines require that (1) soil processes will be appropriate to soil types, climate and land form; (2) riparian/wetland systems are in properly functioning condition; (3) water quality criteria in Nevada shall be achieved or maintained, (4) populations and communities of native plant species and habitats for native animal species are healthy, productive, and diverse, and (5) habitat conditions meet the life cycle requirements of special status species.

36. On July 24, 2001, BLM issued a Final Allotment Evaluation ("2001 Evaluation") for the Soldier Meadows and Paiute Meadows Allotments. The 2001 Evaluation concluded that many of the objectives identified in the 1993 and 1994 Land Use Plans were not being met for the Soldier Meadows and Paiute Meadows Allotments. Specifically, BLM determined that the present grazing regime was violating the objectives for the Soldier Meadows Allotment, including the objectives for riparian/wet meadow, upland grass/dry meadow, and upland browse utilization. Also, in the 2001 Evaluation, BLM failed to determine whether any of the water quality objectives were met, due to "insufficient data."

² "Take" as used in ESA Section 9 "means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19).

37. The 2001 Evaluation also concluded that as a result of livestock grazing within Soldier Meadows and Paiute Meadows allotments, the Standards and Guidelines for (1) soil processes, (2) riparian wetland systems, and (3) native plant and animal habitat were being violated in both the Paiute Meadows and Soldier Meadows Allotments. As noted, the 2001 Evaluation concluded that BLM is unaware whether or not the water quality standards have been met because it failed to collect any water quality data throughout the Paiute Meadows or Soldier Meadows Allotments.

38. FLPMA and its implementing grazing regulations require that where, as here, BLM has found such violations, “no later than the start of the next grazing year” BLM “shall” revise grazing management on the affected public lands in a manner that “will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines.” 43 C.F.R. § 4180(c). See Idaho Watersheds Project v. Hahn, 187 F.3d 1035 (9th Cir. 1999).

39. Finally, the 2001 Evaluation found that the utilization levels were exceeded and stubble height requirements were not maintained on select sites associated with the Desert Dace and Lahontan cutthroat trout habitat. The exceedance of the utilization levels and stubble height requirements are causing “take” of Lahontan cutthroat trout and Desert Dace, exceeding the authorized “take” identified in the Incidental Take Permit in the 1993 BO.

40. In conjunction with the 2001 Evaluation, BLM proposed to implement a new, more intensive grazing regime within both Soldier Meadows and Paiute Meadows Allotment, including within designated Desert Dace critical habitat. Despite finding that grazing was causing violations of Standards and Guidelines (as well as violations of planning objectives), the preferred grazing alternative calls for *increasing* grazing levels within the Soldier Meadows Allotment over existing

actual use by nineteen percent (19%), thirty-eight percent (38%) and fifty-eight percent (58%) in coming years. Further, the preferred grazing alternative would extend the total time that livestock are on public lands within Soldier Meadows Allotment from 8.5 months under the current regime to 11 months.

41. Within the Paiute Meadows Allotment, BLM has proposed to increase permitted use by seventeen percent (17%) over existing actual use.

42. Also on July 24, 2001, BLM issued a Biological Assessment (“BA”) ostensibly assessing the potential impacts of a new grazing regime on the threatened Lahontan cutthroat trout and Desert Dace for purposes of consultation with U.S. Fish and Wildlife Service under § 7 of the ESA.

43. Despite being “interested publics” on both the Soldier Meadows and Paiute Meadows Allotments, BLM never notified Plaintiffs of the publication of the 2001 Evaluation and 2001 BA. Plaintiffs eventually received the 2001 Evaluation and BA in May 2002, nearly 10 months after publication, and nearly four (4) months after BLM personally informed ranching and livestock interests of the documents. Nevertheless, on June 20, 2002 Plaintiffs’ timely submitted an appeal, statement of reasons and petition for stay of the 2001 Evaluation and 2001 BA. To date, the Interior Board of Land Appeals has taken no action on Plaintiffs’ Petition for Stay. Pursuant to BLM’s grazing regulations, Plaintiffs’ Petition for Stay was deemed denied on or around August 1, 2002. See 43 C.F.R. § 4.21.

44. Despite having found that the current livestock schedule was violating the standards and guidelines, and the Fundamentals of Rangeland Health, on June 11, 2002 BLM issued a Final Grazing Decision authorizing and permitting livestock grazing throughout 2002 and into 2003 consistent with the current grazing regime (*i.e.* the grazing systems implemented in 1993 and 1994

for the Paiute Meadows and Soldier Meadows Allotments). This Final Grazing Decision did not adopt BLM's proposed management changes discussed *supra*, but instead authorized continued grazing at status quo levels under status quo management. Because such action violates the Fundamentals of Rangeland Health regulations, 43 C.F.R. subpart 4180, Plaintiffs appealed and petitioned for a stay of this final decision on July 01, 2002. To date, Interior Board of Land Appeals has taken no action on Plaintiffs' Petition for Stay. Pursuant to BLM's grazing regulations, Plaintiffs' Petition for Stay was deemed denied on or around August 16, 2002. See 43 C.F.R. § 4.21.

45. In response to the BLM's 2001 BA, the U.S. Fish and Wildlife Service has recently issued a final Biological Opinion under § 7 of the ESA purportedly assessing the impacts of the proposed grazing regime on the Lahontan cutthroat trout and Desert Dace. The 2002 BO found that increasing the AUMs (as proposed in the 2001 BA) "will . . . likely result in more extensive habitat damage and adversely affect desert dace and adversely modify designated critical habitat." Importantly, although the 2001 BA and 2002 BO assess the ecological impacts of the new, proposed grazing schedule, BLM continues to permit livestock grazing under the schedule discussed in the 1993 and 1994 Land Use Plans.

46. Immediate injunctive and/or declaratory relief is required to ensure that Defendants adhere to the requirements of law in administering grazing within the Soldier Meadows and Paiute Meadows Allotments, and to prevent further and irreparable harm to Desert Dace, Lahontan cutthroat trout, designated critical habitat, riparian conditions, and other critical resource values resulting from Defendants' unlawful actions. Plaintiffs have no adequate remedy at law for the Defendants' violations as alleged herein. Without immediate declaratory and injunctive relief ordering Defendants to comply with FLPMA, NEPA, ESA, the Fundamentals of Rangeland Health,

and APA, Plaintiffs will suffer irreparable harm. Accordingly, Plaintiffs pray for judicial relief as set forth below.

**FIRST CLAIM FOR RELIEF:
VIOLATIONS OF FRH AND APA**

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

48. This First Claim for Relief challenges Defendants' violation of the Fundamentals of Rangeland Health, 43 C.F.R. § 4180 et seq., with respect to issuance of the June 11, 2002 Final Grazing Decision. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

49. In the 2001 Evaluation, BLM formally determined that livestock grazing was causing violations of several Standards and Guidelines for Rangeland Health on the Soldier Meadows and Paiute Meadows allotments.

50. The Fundamentals of Rangeland Health, adopted under FLPMA, require that where, as here, BLM has found such violations, "no later than the start of the next grazing year" BLM "shall" revise grazing management on the affected public lands in a manner that "will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines." 43 C.F.R. § 4180(c); Idaho Watersheds Project v. Hahn, 187 F.3d 1035 (9th Cir. 1999).

51. The June 11, 2002 Final Grazing Decision fails to meet the requirements of the Fundamentals of Rangeland Health Regulations. Instead, the Final Grazing Decision authorizes continued grazing under the same levels and management as caused the violations of Standards and Guidelines. BLM failed to implement management changes in a timely manner, and the Final Grazing Decision perpetuates excessive livestock grazing and will cause continued violations of several of the Fundamentals of Rangeland Health.

52. Defendants' own monitoring and analysis of conditions within the Soldier Meadows and Paiute Meadows Allotments document that agency officials are well aware of the problems caused by past and present grazing abuses and mismanagement. Nevertheless, Defendants have failed and refused to adhere to their duties under law to correct these practices and begin to make significant progress toward restoring ecological health within the Soldier Meadows and Paiute Meadows Allotments, including by adopting and instituting grazing management changes to conform with existing land use plans and BLM's Fundamentals of Rangeland Health.

53. Defendants' failure or refusal to comply with the Fundamentals of Rangeland Health regulations is arbitrary, capricious, an abuse of discretion, not in accordance with law and/or constitutes agency action unlawfully withheld or unreasonably delayed under the APA, which has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**SECOND CLAIM FOR RELIEF:
VIOLATIONS OF FLPMA AND APA**

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

55. This Second Claim for Relief challenges Defendants' violation of the Federal Land Policy and Management Act, 43 U.S.C. § 1701 et seq., and its implementing regulations, with respect to the June 11, 2002 Final Grazing Decision. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

56. The Federal Land Policy and Management Act governs the management of the federal public lands by the Bureau of Land Management. Under FLPMA, BLM must develop land use plans for the public lands under its control. 43 U.S.C. § 1712. All resource management decisions made by BLM must conform to the approved land use plan. See 43 C.F.R. § 1610.5-3(a). To conform to a land use plan, a resource management decision "shall be specifically provided for

in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan.” 43 C.F.R. § 1601.0-5. Prior to carrying out a proposed action that is not clearly consistent with the land use plan, BLM must amend the plan, complying with NEPA and allowing for public participation. See 43 C.F.R. §§ 1610.5-3, 1610.5-5.

57. As stated previously, in 1993 and 1994 BLM adopted land use plans for the Paiute Meadows and Soldier Meadows Allotments, respectively. The 1993 Land Use Plans identified short-term and long-term management objectives for grazing within the Paiute Meadows Allotment, including: (1) utilization standards for streambank, riparian and upland plant species, and (2) improving range conditions across nearly 177,000 acres within the allotment. Further, the 1994 Land Use Plan identified “Allotment Wide Multiple Use Objectives” within the Soldier Meadows Allotment for (1) riparian/wet meadow, upland grass/dry meadow, and upland browse utilization; (2) water quality; and (3) vegetation, including riparian, sage grouse, and desired plant community objectives.

58. In the 2001 Evaluation, BLM concluded that livestock grazing within Soldier Meadows and Paiute Meadows allotments inhibited attainment of these goals and objectives, and violated the 1994 and 1993 Land Use Plans, respectively.

59. Despite so concluding, the June 11, 2002 Final Grazing Decision perpetuates these violations of the applicable land use plans, thus violating FLPMA and federal regulations. See 43 C.F.R. §§ 1601.0-5, 1610.5-3(a).

60. Defendants’ failure or refusal to comply with the Federal Land Policy and Management Act is arbitrary, capricious, an abuse of discretion, not in accordance with law and/or constitutes agency action unlawfully withheld or unreasonably delayed under the APA, which has caused or threatens serious prejudice and injury to Plaintiffs’ rights and interests.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**THIRD CLAIM FOR RELIEF:
VIOLATION OF NEPA AND APA**

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

62. This Third Claim for Relief challenges Defendants' violation of the National Environmental Policy Act, 42 U.S.C. §§ et seq., and NEPA's implementing regulations, in failing to undertake any substantive environmental review of its grazing regime on the Soldier Meadows and Paiute Meadows Allotments. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706(1).

63. NEPA requires all federal agencies to undertake a thorough and public analysis of the environmental consequences of proposed federal actions, including a detailed EIS for all major Federal actions significantly affecting the quality of the human environment; and site specific and cumulative impacts analysis of the likely environmental consequences of proposed actions including issuance of grazing permits. Such analysis must include consideration of a reasonable range of alternatives to a proposed action and means to mitigate adverse impacts.

64. NEPA further requires federal agencies to supplement NEPA analyses when "significant new circumstances" or information bearing on the environmental impacts of the federal action are revealed. Also, NEPA also requires that federal agencies carefully reexamine all environmental analyses that are more than five (5) years old to determine if the dated environmental review is still applicable.

65. As previously stated, in 1982 BLM completed the 1982 EIS assessing the environmental implications of continued, pervasive livestock grazing across northwestern Nevada, including the Soldier Meadows and Paiute Meadows Allotments. The 1982 EIS was the last

analysis of the environmental effects of grazing in Soldier Meadows and Paiute Meadows allotments.

66. Since 1982, Defendants have authorized scores of land use activities, including issuance of grazing permits for the Soldier Meadows and Paiute Meadows Allotments, without undertaking any substantive environmental review of the effects of these land use decisions on the environment, as required by the National Environmental Policy Act.

67. Since 1982, however, significant new circumstances and information have come to light concerning ecological conditions within Soldier Meadows and Paiute Meadows allotments, including: Desert Dace were listed as threatened under the Endangered Species Act; FWS has designated critical habitat for Desert Dace within the Soldier Meadows Allotment; wildfires have burned over 15,000 acres within Solider Meadows Allotment; over 113,000 and 73,000 acres have been designated as Wilderness within Soldier Meadows and Paiute Meadows allotments, respectively, and the 2001 Evaluation confirms that livestock grazing continues to inhibit the attainment of the ecological objectives for the allotments.

68. Defendants have failed to reinstate the NEPA process for all the livestock grazing permits, annual authorizations, and/or other ongoing authorizations of grazing on the Soldier Meadows and Paiute Meadows, despite the “significant new circumstances” bearing on environmental concerns and the impacts of grazing.

69. Defendants’ failure or refusal to comply with National Environmental Policy Act is arbitrary, capricious, an abuse of discretion, not in accordance with law and/or constitutes agency action unlawfully withheld or unreasonably delayed under the APA, which has caused or threatens serious prejudice and injury to Plaintiffs’ rights and interests.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**FOURTH CLAIM FOR RELIEF:
VIOLATION OF SECTION 7 AND 9 OF THE ESA**

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

71. This Fourth Claim for Relief challenges Defendants' failure to reinitiate consultation under Section 7 of the Endangered Species Act in light of new information revealing that Defendants are failing to meet the standards and guidelines, and allotment objectives, for the Soldier Meadows and Paiute Meadows allotments. This claim also challenges Defendants' violation of Section 9 of the ESA in causing take of Lahontan cutthroat trout and Desert Dace beyond that which is authorized under the Incidental Take Permit in the 1993 BO. This claim is brought pursuant to the citizen suit enforcement provision of the ESA, 16 U.S.C. § 1640(g).

72. Under the Endangered Species Act, Defendants shall reinitiate consultation (1) if the amount or extent of taking specified in the Incidental Take Permit is exceeded; (2) if new information reveal effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if 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 (4) if a new species is listed or critical habitat designated that may be affected by the identified action. See 50 C.F.R. 402.16.

73. As previously stated, the 1993 BO contained an Incidental Take Permit authorizing an "unquantifiable" level of take. Instead of identifying a numeric threshold of permissible take, FWS included an Incidental Take Permit that required BLM to meet quantifiable terms and conditions to avoid the "take" prohibitions of Section 9 of the Endangered Species Act. FWS concluded that if these terms and conditions were not met, the level of take would be exceeded, and BLM would be in violation of Sections 7 and 9 of the Endangered Species Act.

74. The 2001 Evaluation concluded that BLM was failing to meet the utilization levels and stubble height identified in the Incidental Take Statement of the 1993 BO. Specifically, the 2001 Evaluation concluded that sites within designated Desert Dace critical habitat and other sites along Mahogany, Summer Camp and Snow creeks (all occupied Lahontan cutthroat trout habitat) were in violation of the utilization and stubble height standards for key riparian trees and shrubs, grasses and grass-like plants, as well as other grasses and forbs. As such, BLM has been exceeding the extent of taking specified in the Incidental Take Permit, was required to reinitiate consultation under Section 7 of the ESA.

75. Defendants' failure or refusal to reinitiate consultation after exceeding the permissible take identified in the Incidental Take Permit of the 1993 BO violates the Endangered Species Act, and has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

A. Order, declare, and adjudge that BLM is violating FLPMA, the Fundamentals of Rangeland Health, ESA, NEPA, and the APA in their management of the Soldier Meadows and Paiute Meadows Allotments;

B. Reverse and remand the June 11, 2002 Final Grazing Decision;

C. Require BLM to immediately reinitiate consultation with FWS over the continuing impacts of livestock grazing on Lahontan cutthroat trout and Desert Dace;

D. Enter such temporary, preliminary and/or permanent injunctive relief as may be prayed for hereafter by Plaintiffs;

E. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. §§ 2412 et seq., the Endangered Species Act, 16 U.S.C. §§ 1531 et seq., and/or all other applicable authorities; and/or

F. Grant such further relief as the Court deems just and proper.

Dated this ____ day of November 2002.

Respectfully submitted,

Todd C. Tucci

Attorney for Plaintiffs Committee for the
High Desert and Western Watersheds
Project