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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT Plaintiff, v. AMY LUEDERS, BLM Nevada State Director, BUREAU OF LAND MANAGEMENT, an agency of the United States, and U.S. DEPARTMENT OF INTERIOR, an agency of the United States, Defendants,	)	No. 13-cv-0261 **COMPLAINT**

INTRODUCTION

1. This case is a companion to *W. Watersheds Project v. Salazar*, Case No. 08-516-BLW (D. Idaho) ("*Salazar*"), an ongoing lawsuit challenging the Bureau of Land Management's ("BLM") issuance of 16 Resource Management Plans ("RMPs") across the range of the Greater sage-grouse, including the Ely RMP in central Nevada. 2011 WL 4526746 (D. Idaho Sept. 28, 2011) (holding first set of RMPs unlawful under NEPA and FLPMA).

2. Despite this long-standing challenge to the Ely RMP, BLM continues to implement the Ely RMP, including through recently-adopted final decisions permitting the mowing, chopping, burning, and poisoning of sagebrush across over 146,000 acres of public lands (equaling 228 square miles) within the Ely District Office. BLM plans to implement these

sagebrush eradication efforts within what the Nevada Department of Wildlife ("NDOW") considers "essential, irreplaceable" sage-grouse habitat, and BLM itself considers "preliminary priority habitat." Indeed, BLM plans to literally mow Wyoming big sagebrush, Mountain big sagebrush, and Black sagebrush to "ground level," destroying this "essential, irreplaceable" habitat for a generation.

3. BLM's decisions further permit the construction or reconstruction of over 400 miles of fences, as well as constructing wells, reservoirs, pipelines, and livestock watering facilities, also within key sage-grouse habitat and in direct contradiction to BLM's own management guidelines, policies and other provisions designed to protect and enhance sage-grouse populations and habitat.

4. This companion case now challenges BLM's Cave Valley and Lake Valley Watersheds Restoration Plan, and associated Environmental Assessment and Finding of No Significant Impact, as violating the National Environmental Policy Act ("NEPA"), the Federal Land Policy and Management Act ("FLPMA"), and the Administrative Procedure Act. Western Watersheds seeks remand and vacatur of these decisions and environmental analysis, as well as declaratory and/or injunctive relief requiring BLM to comply with the environmental laws and ensure that BLM's management of sage-grouse habitat and public lands within this area does not contribute to further decline of the Greater sage-grouse populations and degradation of sage-grouse habitat.

JURISDICTION AND VENUE

5. 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 FLPMA, 43 U.S.C. §§ 1301 et seq.; NEPA, 42 U.S.C. § 4331 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. ("EAJA").

6. An actual, justiciable controversy now exists between Plaintiff and Defendants. The requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. § 701-06.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Plaintiff Western Watersheds Project resides in this judicial district.

8. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 701.

PARTY INFORMATION

9. Plaintiff WESTERN WATERSHEDS PROJECT ("Western Watersheds") is a regional, membership, not-for-profit conservation organization, dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. Western Watersheds has its headquarters in Blaine County, Idaho; and is supported by more than 1,400 members located throughout Idaho and the United States.

10. Western Watersheds, 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 within public lands in the Ely District Office. Western Watersheds is also active in monitoring ecological conditions across the Great Basin and sagebrush steppe ecosystem, including within the Ely District; in reviewing and commenting upon agency decisions; and in publicizing the adverse ecological effects of grazing in this region.

11. Western Watersheds, as an organization and on behalf of its staff, members and supporters, is also one of the leading conservation groups fighting to protect the Greater sage-

grouse as well as other sagebrush-obligate species, such as the pygmy rabbit. Through the efforts of its staff, members, and supporters, Western Watersheds advocates science-based management of public lands in Idaho, Nevada and other western states, with a focus on the sagebrush-steppe ecosystem, which forms the sole habitat of the Greater sage-grouse.

12. The decline of the sage-grouse across the Great Basin is of great concern to Western Watersheds' staff, members and supporters; and the preservation and recovery of sage-grouse and its sagebrush-steppe habitat are highly important to Western Watersheds and its staff, members and supporters.

13. Western Watersheds' members, supporters, and staff work, live and/or recreate throughout the sagebrush-steppe ecosystem of the Great Basin, including within the public lands of the Ely District, which are currently occupied by sage-grouse. Western Watersheds' members, supporters, and staff derive aesthetic, recreational, scientific, inspirational, educational, and other benefits from this ecosystem on a regular and continuing basis and intend to do so frequently in the immediate future, including within the Ely District.

14. Many of Western Watersheds' activities – including research and advocacy – have focused on preserving the remaining habitats of Greater sage-grouse in the western states, including areas within the Ely District, and in restoring those habitats to protect and recover Greater sage-grouse populations.

15. Western Watersheds has previously brought many cases before this Court seeking to protect Greater sage-grouse and its sagebrush-steppe habitat, including but not limited to the following: *W. Watersheds Project v. U.S. Fish and Wildlife Serv.*, 06-cv-277-BLW (sage-grouse listing litigation); *W. Watersheds Project v. Salazar*, 08-cv-516-BLW (challenges to BLM RMPs across sage-grouse range); *W. Watersheds Project v. Salazar*, 08-435-BLW (challenge to BLM

decisions within habitat for Great Basin core population of Greater sage-grouse); *W. Watersheds Project v. Dyer*, 04-cv-181-BLW (Jarbidge sage-grouse litigation); *W. Watersheds Project v. Tower*, 04-cv-372-BLW (challenge to Curlew National Grasslands management plan for failure to protect sage-grouse); *W. Watersheds Project v. Collinge*, 02-cv-172-BLW (challenge to sage-grouse predator-killing study).

16. Defendants' violations of NEPA and FLPMA in approving the mowing, chopping, burning, and poisoning of sagebrush across the Ely District, and the construction or reconstruction of over 400 miles of fences, as well as constructing wells, reservoirs, pipelines, and livestock watering facilities also within key sage-grouse habitat, as further identified below, adversely and irreparably injure the aesthetic, commercial, conservational, scientific, recreational, educational, wildlife preservation and other interests of Western Watersheds and its staff and members. These are actual, concrete injuries caused by Defendants' violations of law, for which judicial relief is required to remedy the harm caused to Plaintiff.

17. Defendant Amy Lueders is the Nevada State Director of the Bureau of Land Management. Defendant Lueders has management and supervisory authority over all BLM decisionmaking in the State of Nevada, including the Ely District and its Schell Field Office, and is responsible for ensuring that BLM's actions within the State of Nevada, the Ely District, and the Schell Field Office comply with all federal laws and regulations. Defendant Lueders was the BLM Nevada State Director at the time BLM signed the Decision Record and Finding of No Significant Impact at issue in this litigation. Defendant Lueders is sued solely in her official capacity.

18. 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 the public lands at issue in this case.

19. Defendant U.S. DEPARTMENT OF INTERIOR is an agency or instrumentality of the United States, also charged by law with administering the public lands at issue in this case.

FACTUAL ALLEGATIONS

I. Companion Case: *W. Watersheds Project v. Salazar*, Case No. 08-0516-BLW

20. In *W. Watersheds Project v. Salazar*, WWP challenged 16 Resource Management Plans in six states across the range of the Greater sage-grouse, alleging that BLM failed to examine the ecological impacts of these RMPs on sage-grouse populations and habitat.

21. WWP specifically challenged BLM's issuance of the Ely RMP and associated NEPA analysis, claiming that BLM violated NEPA, FLPMA, and the regulations, handbook, manual, and other implementing policies in adopting the new Ely RMP. *See* Complaint, ¶¶ 185-213 (Dkt. No. 3).

22. More specifically, WWP alleged that the Ely RMP's Final Environmental Impact Statement failed to "address the interrelated and cumulative impacts of grazing and other management actions approved in the Ely RMP, including the extensive 'vegetation treatments' [], as well as oil and gas leasing, energy transmission lines, coal-fired power plant development, and other energy-related developments that will further fragment the sagebrush-steppe ecosystem and contribute to decline of sage-grouse and other sagebrush-obligate species." *Id.* at ¶ 204.

23. WWP also highlighted "BLM plans to 'treat' 70% of the sagebrush vegetation community, and maintain only 30% of the current sagebrush vegetation undisturbed," as well as the "widespread destruction of sagebrush, including the planned conversion of 4,776,500 acres of sagebrush to a 'total herbaceous state (early, mid and late).'" *Id.* at 211. *See also id.* at ¶ 210 (describing BLM's plan to "undertake prescribed fire, plowing, chaining, spraying, and other

destruction of sagebrush, as well as seeding or planting non-native grass species in treated or burned areas" across the Ely District).

24. WWP noted that "BLM also misrepresents and downplays the impacts that vegetation treatments and post-fire recovery measures will have in adversely affecting sagebrush and sage-grouse populations both within the Ely District Office, and at a regional scale as well (since BLM is undertaking similar vegetation treatments and post-fire measures in other parts of Nevada, California and Utah as well, under other challenged RMPs as described below)." *Id.* at ¶ 209.

25. After the Court denied a BLM motion to sever and transfer the case to disparate courts across the western U.S., the parties agreed to a briefing schedule that called for litigating a series of "test case" RMPs, starting with Idaho's Craters of the Moon RMP and Wyoming's Pinedale RMP.

26. The parties subsequently filed summary judgment briefs on these initial test cases, and in September 2011, the Court granted WWP's motion for partial summary judgment, denied BLM's cross motions for partial summary judgment, and held that BLM violated NEPA and FLPMA in adopting the Craters of the Moon and Pinedale RMPs. Dkt. No. 131.

27. The Court then held a three-day evidentiary hearing on WWP's motion for remedies, and in November 2012, the Court issued a Memorandum Decision and Order. Dkt. No. 231. In its order, the Court granted in part and denied in part WWP's motion, and remanded the challenged RMPs back to BLM for new environmental review. *Id.* The Court also agreed with WWP to leave the new RMPs in effect during the interim time when BLM is preparing a subsequent analysis. *Id.*

28. The parties have subsequently agreed to litigate a second round of test case RMPs, this time focusing on the Ely RMP and three RMPs in Nevada/California. Dkt. Nos. 239 (case management report) (March 5, 2013), 240 (case management order) (March 7, 2013).

II. Greater Sage-Grouse and Key BLM Guidance Documents

A. Sage-Grouse Habitat and Its Threats

29. The Greater sage-grouse (*Centrocercus urophasianus*) – first described by Meriwether Lewis near the confluence of the Marias and Missouri rivers in Montana in 1805 – is a unique species of grouse found only in sagebrush-dominated habitats of western North America. Greater sage-grouse were once widely distributed across the western U.S. and Canada, numbering in the millions.

30. Sage-grouse typically inhabit large, interconnected expanses of sagebrush habitat, and thus are characterized as a landscape-scale species. Historically, the distribution of sage-grouse was closely tied to the distribution of the sagebrush biome, and sage-grouse once occupied parts of 12 states within the western United States and three Canadian provinces.

31. The sage-steppe ecosystem features sagebrush in the overstory; native grasses, forbs, and litter in the understory; and biological soil crusts filling interspaces between vegetation. In winter, Greater sage-grouse depend almost exclusively on sagebrush for food. In early March, sage-grouse move to breeding areas (or leks). In establishing leks, sage grouse prefer sites with extensive cover of low grasses, surrounded by taller sagebrush.

32. After mating, the female moves away from the lek to establish a nest. The nesting season last from early April to mid-June, with specific dates being location dependent. The nesting season is critical because the sage-grouse has one of the lowest reproductive rates of any

North American game bird, and its populations are not able to recover from low numbers as quickly as many other upland game bird species.

33. The nest is a shallow depression on the ground, usually under sagebrush. The nests established under sagebrush are more successful than nests under other shrub species, including rabbitbrush. The reason is that taller stands of sagebrush and grasses provide scent, visual and physical barriers to potential predators. Without this cover, predators can more easily locate the hen and her chicks as they leave the nest to seek food.

34. The hen and chicks require high quality forbs, which are herbaceous flowering plants, other than grasses. The forbs provide good nutrition for the hen, increasing her chances of successfully giving birth to, and raising, her chicks. Both the hen and her chicks also feed on insects and beetles. An herbaceous understory provides greater access to insects and forbs, both by the females before breeding and by chicks after hatching

35. Sage-grouse migrate between seasonal home ranges, with some research indicating that sage-grouse can move over 75 miles between seasonal habitats. On an annual basis, migratory sage-grouse populations may occupy an area that exceeds 1,042 square miles. Many sage-grouse populations are migratory

36. The abundance and distribution of Greater sage-grouse have declined dramatically in North America. The destruction, fragmentation, and degradation of sagebrush habitats over past decades – including through the effects of livestock grazing and grazing-related infrastructure, vegetation treatments, energy and oil and gas development and associated infrastructure, and other factors – have caused substantial declines in greater sage-grouse populations and range reduction of about 44% from their estimated historic range.

37. Greater sage-grouse have been extirpated in Nebraska, Arizona, New Mexico, and significant parts of Oregon, Washington, North and South Dakota, and central eastern California.

38. Livestock grazing is known to be deleterious to sage-grouse populations and habitat in many direct, indirect, and cumulative ways. Livestock grazing causes long-term changes in plant communities and reduces habitat components, such as biological soil crusts, which contribute to the health of sagebrush habitat. Grazing also reduces the residual height of grasses and forbs needed for successful sage-grouse nesting and reproduction, while battering and breaking sagebrush plants that are essential for cover, winter feeding, and other sage-grouse needs. Livestock cause destruction of riparian habitats, essential for sage-grouse survival and reproduction. Livestock promote invasion of cheatgrass and other exotic weed species, thus contributing to fire frequency and severity, which further reduces the extent and quality of sage-grouse habitats. In addition, pipelines, fences, and water developments constructed to facilitate livestock production further fragment habitat and become source areas for the spread of weeds; while fences also cause direct mortality of sage-grouse through collisions.

39. Leading sage-grouse experts and other scientists documented these trends and impacts in detail in the *Greater Sage-Grouse Conservation Assessment* (Connelly *et al.*, 2004), released by the Western Association of Fish and Wildlife Agencies in June 2004. This 2004 Sage-Grouse Conservation Assessment was acknowledged by the U.S. Fish and Wildlife Service as representing the best available scientific information about the status and trends of sage-grouse populations and habitats at the time it was released.

40. Among other passages, the 2004 Sage-Grouse Conservation Assessment spent 10 pages confirming the ongoing deleterious effects of livestock grazing upon Greater sage-grouse and sagebrush habitats. *See id., pp. 7-26 to 7-35.* The report described grazing as "the most

widespread . . . land use across the sagebrush biome," and noted that "most sagebrush habitats have been grazed in the past century." *Id.*, p. 7-29. It found that historic overgrazing, coupled with drought early in the 20th century, seriously depleted native forbs and grasses, and "[l]oss of protective vegetative cover in some communities resulted in extensive soil disturbance and erosion," while facilitating invasions by non-native species (including cheatgrass). *Id.*, pp. 7-26 to 7-28. Yet these effects have not been remedied, including because "plant communities still are not given rest from grazing," "distribution of livestock has changed because water developments have increased the area that could be grazed," and livestock fences and other infrastructure continue to affect sage-grouse and their habitats. *Id.*, pp. 7-29 to 7-34. And the report warned that these impacts will continue: "We cannot conclude that the effect of grazing has been reduced because even reduced numbers of livestock may still exert a larger influence on those habitats." *Id.*, p. 7-33.

B. BLM's National Sage-Grouse Habitat Conservation Strategy

41. In November 2004, BLM adopted a "National Sage-Grouse Habitat Conservation Strategy," which it submitted to U.S. Fish and Wildlife Service for consideration in the Service's determination of whether to list greater sage-grouse as a threatened or endangered species under the Endangered Species Act. BLM's National Sage-Grouse Habitat Conservation Strategy represents an official policy of BLM to help conserve and protect sage-grouse habitats and populations, thereby meeting its obligations under the Special Status Species Policy discussed *infra.*

42. In this document, BLM endorsed the goal of "maintain[ing] and enhanc[ing] populations and distribution of sage-grouse by protecting and improving sagebrush habitats and ecosystems that sustain these populations." In addition to placing emphasis on BLM's land use

planning process as a means to conserve sagebrush habitat, BLM's National Sage-Grouse Habitat Conservation Strategy also adopts specific, enforceable requirements to protect sagebrush habitat in on-going land management decisions.

43. Section 1.4.1 of the BLM National Sage-grouse Habitat Conservation Strategy is entitled "Guidance for the Management of Sagebrush Plant Communities for Sage-Grouse Conservation," and hence is directly applicable to the Cave Valley and Lake Valley final decisions discussed *infra*.

44. The Strategy includes a host of enforceable limitations and requirements on land management activities within key sage-grouse habitat, including, *inter alia*:

- "Avoid constructing livestock management facilities (i.e., corrals, tanks, troughs, pipelines, fences, etc.) next to leks";
- "Design and locate the placement of fences for livestock . . . so as not to disturb important sage-grouse habitat areas";
- "Consider seasonal closures to protect priority sage-grouse habitat if other alternatives will not achieve desired objectives";
- "Use grazing practices that promote the growth and persistence of native shrubs, grasses and forbs needed by sage-grouse for seasonal food and concealment. . . .Vegetation structure (height) should be managed so as to provide adequate cover for sage-grouse during the nesting period";
- "Maintain seeps, springs, wet meadows, and riparian vegetation in a functional and diverse condition for young sage-grouse"; and

- "Maintain sagebrush and understory diversity . . . adjacent to crucial season sage-grouse habitat unless removal is necessary to achieve sage-grouse habitat management objectives" and

C. BLM's Special Status Species Policy

45. BLM adopted a Special Status Species Policy in an effort to stem the decline of rare wildlife species across BLM-managed lands. A 2008 version of the policy was in effect during the consideration and adoption of all actions challenged herein.

46. The Special Status Species Policy was adopted by BLM pursuant to FLPMA's mandates, including the mandate for BLM to conserve wildlife resources on the public lands over the long-term; and pursuant to the Endangered Species Act, Sikes Act, and other wildlife laws.

47. Under the Special Status Species Policy, BLM State Directors may designate native species of concern as "sensitive species" for various reasons, including because "there is information that a species has recently undergone, is undergoing, or is predicted to undergo a downward trend such that the viability of the species or a distinct population segment of the species is at risk across all or a significant portion of the species range."

48. Greater sage-grouse is designated as a sensitive species by BLM in Nevada, which requires BLM to treat sage-grouse as a "candidate" species for ESA listing. This requires, among other things, that BLM "shall manage Bureau sensitive species and their habitats to minimize or eliminate threats affected the status of the species or to improve the condition of the species habitat."

D. Warranted But Precluded Finding

49. On March 23, 2010, the U.S. Fish and Wildlife Service ("the Service") determined that protecting the Greater sage-grouse under the Endangered Species Act was

"warranted," but the Service refused to do so at that time, finding it precluded by other priorities. 75 Fed. Reg. 13910 (March 23, 2010).

50. In this finding, the Service concluded that sage-grouse habitat is "becoming increasingly degraded and fragmented due to the impacts of multiple threats, including direct conversion, urbanization, infrastructure such as roads and powerlines built in support of several activities, wildfire and the chance in wildfire frequency, incursion of invasive plants, grazing and nonrenewable and renewable energy development." *Id.* at 13924.

51. The Service warned about the threats to sage-grouse from fire; indeed, the Service identified fire as a primary factor associated with Greater sage-grouse population declines. In nesting and winter habitat, the Service warned that fire causes the direct loss of habitat due to reduced cover and forage.

52. The Service was particularly skeptical regarding using prescribed fires to benefit sage-grouse, concluding that the "preponderance of evidence . . . suggests [that] these treatments are not beneficial to sage-grouse." *Id.* at 13933.

53. The Service was similarly skeptical about the efficacy of using vegetation treatments to enhance sage-grouse populations, finding any positive correlation "questionable." *Id.* According to the Service, the one "immediate and potentially long-term result" of vegetation treatments is "the loss of habitat." *Id.*

54. The Service specifically warned that "[m]echanical treatments in blocks greater than 100 ha (247 ac) . . . degrade sage-grouse habitat by altering the structure and composition of the vegetative community." *Id.* at 13940.

55. The Service also noted that "[c]hemical control of sagebrush has resulted in declines of sage-grouse breeding populations through the loss of live sagebrush cover. Herbicide

treatment also can result in sage-grouse emigration from affected areas, and has been documented to have a negative effect on nesting, brood carrying capacity, and winter shrub cover essential for food and thermal cover." *Id.* at 13940 (internal citations omitted).

56. The Service also concluded that the explosion of non-native, invasive weeds across the sagebrush-steppe ecosystem is a "serious rangewide threat" to sage-grouse populations and habitat. *Id.* at 13937. The Service noted that invasives – including cheatgrass – outcompete sagebrush and native grasses and forbs for water and soil nutrients, and remain free from any effective control methods.

E. National Technical Team Report

57. In response to the Service's "warranted but precluded" decision, BLM assembled a group of scientists to serve "as an independent, technical and science-based team to ensure the best information related to greater sage-grouse management is fully reviewed, evaluated and provided to the BLM for consideration in the land use planning process."

58. This BLM team issued A Report on National Greater Sage-Grouse Conservation Measures ("NTT Report") on December 11, 2011. BLM's stated goal in the NTT Report was to "[m]aintain and/or increase sage-grouse abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend . . . ." According to the NTT Report, the "overall objective is to protect priority sage-grouse habitats from anthropogenic disturbances that will reduce distribution or abundance of sage-grouse."

59. The NTT Team identified a series of conservation measures designed to achieve the population and habitat objectives in the NTT Report, including, among others:

a. Only permit vegetation treatments that conserve, enhance or restore sage-grouse habitat, which requires allowing no degradation of sage-grouse habitat;

b. Design any new structural range improvements to conserve, enhance, or restore sage-grouse habitat;

c. Evaluate existing structural range improvements to make sure they conserve, enhance or restore sage-grouse habitat;

d. Design and implement fuels treatments with an emphasis on protecting existing sagebrush ecosystems;

e. Allow no treatments in known winter range unless the treatments are designed to reduce wildfire risk around or in the winter range and will maintain winter range habitat quality; and

f. Do not burn sagebrush in less than 12-inch precipitation zones.

F. Subsequent Instruction Memoranda

60. Shortly after issuing its NTT Report, BLM issued Instruction Memorandum No. 2012-043, which incorporated many of the provisions of the NTT Report. This IM "provide[d] interim conservation policies and procedures to the Bureau of Land Management . . . to be applied to ongoing and proposed authorizations and activities that affect the Greater Sage-Grouse and its habitat."

61. This IM again iterated BLM policy regarding sage-grouse, which include the protection of unfragmented habitats, minimization of habitat loss and fragmentation, and management of habitats to maintain, enhance, or restore conditions that meet Greater sage-grouse life history needs.

62. This IM also adopted interim conservation policies and procedures for important sage-grouse habitat – including so-called preliminary priority habitat – including, among others:

a. Evaluate land treatments (including Greater sage-grouse habitat treatments) in a landscape-scale context to address habitat fragmentation, effective patch size, invasive species presence, and protection of intact sagebrush communities; and

b. Plan, design, and implement vegetation treatments to promote the maintenance of large intact sagebrush communities; limit the expansion or dominance of invasive species, including cheatgrass; maintain or improve soil site stability, hydrologic function, and biological integrity; and enhance the native plant community.

63. On the same day BLM issued IM 2012-043, BLM issued a second Instruction Memorandum, IM 2012-044, which focused on BLM's consideration of sage-grouse conservation measures in land use planning documents. This IM requires BLM to consider and analyze the conservation measures identified in the NTT Report in its land use planning.

III. Overview of the Ely District

64. BLM's Ely District Office manages approximately 11.5 million acres of public lands within central Nevada. The public lands managed by the Ely District Office measures approximately 230 miles (north-south) by 115 miles (east-west) in east/central Nevada.

65. The northern two-thirds of the Ely District, which lies within the Great Basin ecological system, historically featured sagebrush-steppe habitat, while the southern third lies in the more arid Mojave ecological region. That sagebrush habitat once supported abundant sage-grouse populations.

66. However, after a century of excessive grazing, construction of roads, fences, powerlines, and other infrastructure, and as well as effects of cheatgrass and other weed

invasions, fires, drought, and other pressures, much of that native sagebrush-steppe habitat has been lost and remaining habitats are now seriously degraded and fragmented. As a result, sage-grouse populations on the Ely District, along with other sagebrush-obligate species, including pygmy rabbit, have greatly declined.

67. Because the prior land use plans applicable to the Ely District were outdated, BLM began the process of revising the Ely RMP and released a draft EIS for the revised RMP in July 2005 for public comment.

68. WWP participated extensively in the revised Ely RMP process, including by submitting comments on the draft EIS as well as a protest of the proposed RMP, both of which underscored BLM's obligation to candidly address the adverse impacts of livestock grazing, to evaluate meaningful alternatives, and to adopt a new land use plan that would protect and conserve native habitats and wildlife species, including sage-grouse and pygmy rabbit.

69. BLM issued a Final Environmental Impact Statement ("FEIS") for the revised Ely RMP in November 2007, and approved a Record of Decision adopting the final revised Ely RMP in August 2008. The Ely RMP is now being implemented by BLM, including through issuance of numerous grazing authorizations. The companion case, *W. Watersheds Project v. Salazar*, challenges this final RMP and FEIS as unlawful under NEPA and FLPMA. *See* Case No. 08-cv-0516-BLW (D. Idaho) at Dkt. No. 3 (amended complaint). In a scheduling order dated March 7, 2013, the Court in *Salazar* ordered the parties to brief the validity of the Ely RMP and FEIS. *Id.* at Dkt No. 240.

V. Cave Valley and Lake Valley Watersheds

70. Cave Valley and Lake Valley are adjacent watersheds located south-southeast of Ely, Nevada, with Cave Valley lying west of Lake Valley. The watersheds consist of about

583,832 acres, of which BLM administers about 96% and 4% is in private ownership. Both watersheds are characterized by north to south trending mountains, gently to steeply sloping benches and alluvial fans, and valley bottoms characterized by alluvial flats. Cave Valley is bordered by the South Schell Creek Mountains on the east and the South Egan Mountains on the west. Lake Valley is flanked by the Fortification Mountains and Wilson Creek on the east and the South Schell Creek Mountains and Fairview Mountains on the west.

71. Elevation in the watersheds varies from about 5,900 feet in the valley bottoms to 11,735 feet on the South Schell Peal in the southern end of the Schell Creek Range. Annual precipitation ranges from approximately 6-12 inches on the valley bottoms, and 14-20 inches or more on top of the South Schell Creek Mountains. Precipitation in the northern portion of Cave Valley ranges from 8-12 inches annually. This area is experiencing a recurrent drought, and BLM expects increased drought and warmer than average temperatures to continue due to climate change.

72. The primary vegetation within the watersheds consists of sagebrush communities (62% and 70% in Lake Valley and Cave Valley, respectively) and established stands of singleleaf pinyon pine and Utah juniper (21% and 22%). In addition, there are small areas of aspen forests (1% of watersheds), mixed conifer forests (1%), ponderosa pine (<1%), limber pine (5%), and Mountain mahogany woodlands (5%).

73. Cave Valley and Lake Valley watersheds are consist of two major plant communities: sagebrush-steppe community and salt-desert shrub vegetation community. The sagebrush-steppe community is characterized by woody Artemesia (e.g., Wyoming big sagebrush, basin big sagebrush, low sagebrush, etc.) with an understory of fescues, bluegrasses, needlegrasses, squirreltail and other herbaceous species. In salt-desert shrub communities,

vegetation is generally sparse, and the primary species include shadscale, greasewood, winterfat, black sage and other shrubs, as well as cool-season grasses like Indian ricegrass, and Sandsberg bluegrass. The sagebrush-steppe and salt-desert shrub communities are susceptible to cheatgrass invasion - especially on poor condition range – and these areas can produce abundant cheatgrass in favorable climatic conditions.

74. The Cave Valley and Lake Valley watersheds provide important habitat for a variety of wildlife, including Rocky Mountain elk, mule deer, pronghorn antelope, and desert bighorn sheep. Migratory birds nesting and forage habitat is also located throughout the watersheds, including habitat for Brewer's sparrow, sage thrasher, sage sparrow, loggerhead shrike, gray flycatcher, and green-tailed towhee. In fact, BLM has documented the presence or habitat for fully 31 BLM sensitive species with Cave Valley and Lake Valley, including Bald Eagle, Ferruginous hawk, Northern goshawk, Golden eagle, pygmy rabbit, a series of bats, and many others.

75. The Cave Valley and Lake Valley watersheds also provide habitat for the Greater sage-grouse, including breeding, late-brood rearing, and winter habitat. There are 22 known leks within the watersheds, and BLM considers much of the sage-grouse habitat "preliminary priority habitat." The Nevada Department of Wildlife similarly considers much of the sage-grouse habitat in these watersheds as "essential, irreplaceable" habitat. BLM also considers much of the central portion of Cave Valley to be sage-grouse winter habitat.

76. Cave Valley includes 94,174 acres of sage-grouse nesting/early brood-rearing habitat, 195,515 acres of late brood-rearing habitat, 84,100 acres of winter habitat, and 109,989 acres of key yearlong habitat. Similarly, Lake Valley includes 156,819 acres of nesting/early

brood-rearing habitat, 201,850 acres of late brood-rearing habitat, 2,215 acres of winter habitat, and 206,352 acres of key yearlong habitat.

77. The Greater sage-grouse populations in this area – including the Cave and Lake Valley watersheds, together with the adjacent watersheds to the east (i.e., Hamlin Valley and South Spring Valley) – fall within the Southern Great Basin population of sage-grouse. Sage grouse within this population migrate between these watersheds depending on physiological and habitat needs. Recent studies show that this population of sage-grouse numbered as high as 18,310 males in 1970, but the population has been on a steady decline since then, with recent estimates as low as 2,000 males.

78. The sage-grouse habitat qualities and characteristics of the Cave Valley and Lake Valley are illustrated below. Figure 1 illustrates BLM's sage-grouse habitat delineations within the Cave Valley and Lake Valley watersheds, with Preliminary Priority Habitat in green and Preliminary General Habitat in yellow. Figure 2 illustrates NDOW's sage-grouse habitat delineations with these watersheds, with essential/irreplaceable habitat in green, important habitat in yellow, habitat of moderate importance in orange, and habitat of low value in blue.

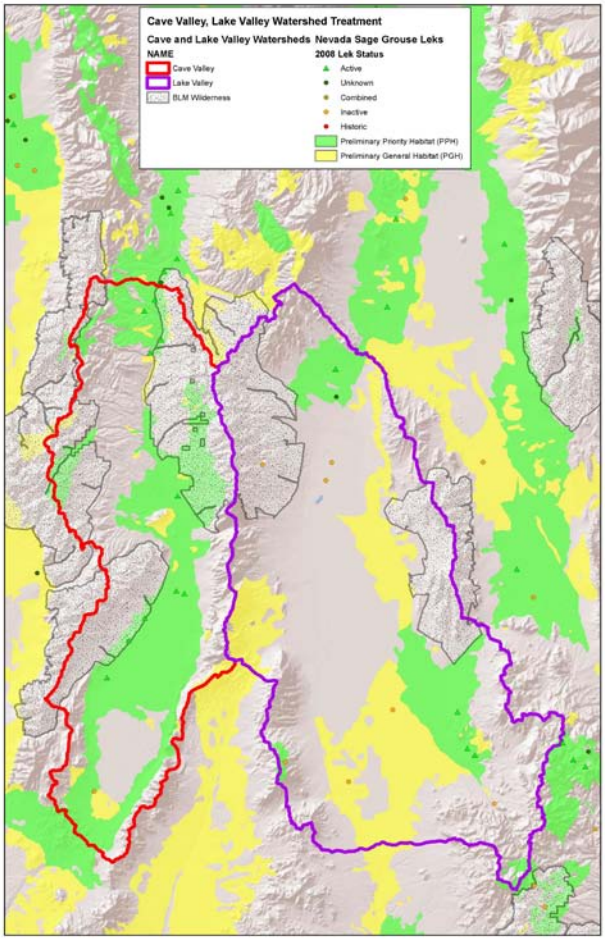

Fig. 1 – BLM's sage-grouse habitat delineations within Cave Valley and Lake Valley watersheds

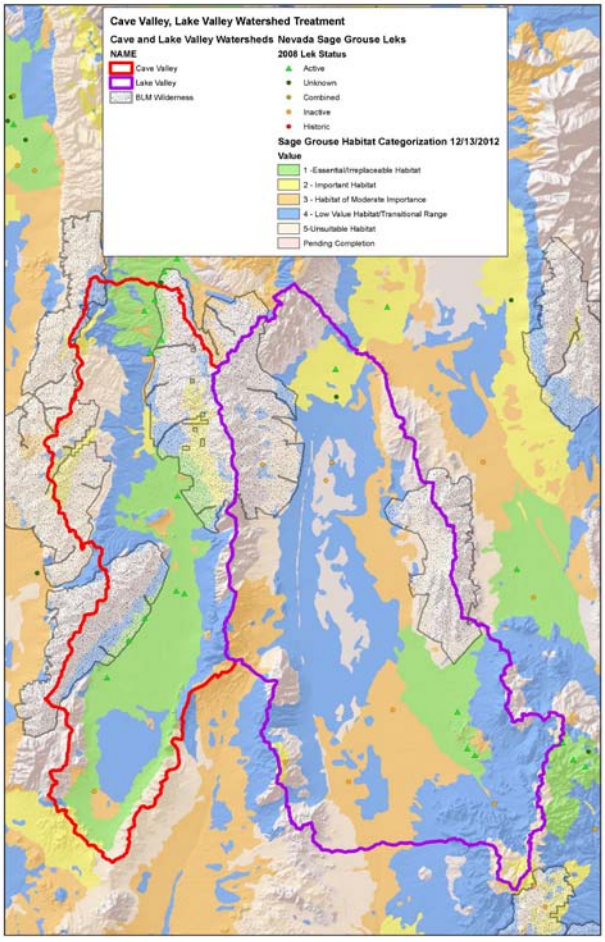

Fig. 2 – NDOW's sage-grouse habitat delineations within Cave Valley and Lake Valley watersheds

79. BLM has carved these watersheds up into 12 separate allotments to facilitate livestock grazing, including the Cattle Camp/Cave Valley allotment in the northeast of the Cave Valley watershed and Geyser Ranch allotment in the northwest portion of the Lake Valley watershed. BLM has constructed an extensive array of infrastructure within the allotments, including over 400 miles of fences, 37 troughs, 40 wells, 10 spring developments, eight reservoirs, and dozens of miles of pipelines.

80. These watersheds also include all or portions of four Wilderness areas, including the Mount Grafton, South Egan, Far South Egan and Fortification Range Wilderness areas.

Portions of the Cave Valley and Lake Valley watersheds also include 14 separate Lands with Wilderness Characteristics ("LWC"), which are areas that have outstanding opportunities for solitude or primitive recreation, and encompass at least 5,000 acres of contiguous, roadless federal lands.

VI. Conditions Within Cave Valley and Lake Valley Watersheds

81. In August 2008, BLM issued a Cave Valley Watersheds Evaluation Report, which documented the poor conditions of the uplands, riparian areas, and wildlife habitat throughout the Cave Valley watershed.

82. BLM acknowledged that the public lands in the Cave Lake watershed were violating each of the four Standards for Rangeland Health. More specifically, BLM concluded that the lack of grasses and forbs, the lack of biological soil crusts, and the "very high percentage" of cheatgrass across the watersheds was causing violations of the standard for soils. For many of these same reasons, BLM concluded that conditions within the watershed were not meeting the standard for uplands and riparian areas, too.

83. BLM concluded that upland seeps, springs, and wet meadows were similarly degraded, with only 8 of 25 (32%) meeting the standard of proper functioning condition. Fully 44% were functioning at risk with a downward trend, and 20% were non-functional. BLM noted that "[m]ost of the springs have been nearly or completely denuded from overgrazing as they are probably being targeted by livestock and wildlife in landscapes largely devoid of upland forage."

84. BLM also found that the standard for wildlife habitat was not being met, because "[m]any sagebrush habitats exhibit minimal herbaceous understory," and due to the prevalence of cheatgrass throughout the watershed.

85. BLM documented similar conditions within the Lake Valley watershed, in a report entitled the Lake Valley Watersheds Evaluation Report. In this report, BLM concluded that the standards for soils, uplands and riparian areas, and wildlife habitat were not being met. BLM again pointed to the lack of diverse, native herbaceous grasses and forbs, prevalence of cheatgrass, among other conclusions.

86. Like in Cave Valley, BLM's assessment of the condition of upland seeps, springs and wet meadows in Lake Valley – which provide critical late brood-rearing habitat for Greater sage-grouse – demonstrated that these areas were in poor condition. For example, only 7 of 39 (18%) assessed areas were in properly functioning condition, and fully 51% were functioning-at-risk with a downward trend and 18% were nonfunctional.

VII. Cave Valley and Lake Valley Watershed Restoration Plans

87. On April 1, 2011, BLM issued a public scoping notice alerting the public to BLM's completion of its Cave Valley and Lake Valley analysis and evaluation, and concluding that "BLM has determined that actions need to be taken to enhance the health of various aspects of the watersheds, potentially including such topics as vegetation treatments to reduce fire fuel load or improve habitat, riparian areas treatments, travel management, riparian area treatments, and more." Western Watersheds and other submitted scoping comments.

88. On August 24, 2011, Western Watersheds attended a BLM-planned site visit of the Cave Valley and Lake Valley watersheds.

89. BLM issued its final Cave Valley and Lake Valley Watersheds Restoration Plan Environmental Assessment ("EA") on November 5, 2012. In the EA, BLM purported to examine the ecological impacts of its plan to implement a landscape-scale sagebrush and juniper

eradication program, together with the construction or reconstruction of hundreds of miles of new fences, pipelines, troughs, and reservoirs.

90. BLM's so-called restoration plan has two elements: a landscape-scale vegetation plan to mow, chop, burn, burn, and poison sagebrush expanses and juniper woodlands in 21 treatment areas covering 199,000 of public lands; and a range development plan to construct or reconstruct about 400 miles of fences, eight reservoirs, and one well, as well as develop or extend existing pipelines at 17 upland springs.

91. BLM's vegetation plan proposes five different methods of sagebrush eradication: Dixie harrow, Roller chopper, mowing, Tebuthiuron poisoning, and prescribed fire.

a. The Dixie harrow is a large spike tooth harrow (a heavy frame set with teeth or tines) pulled cross-country by a four-wheel drive tractor. When pulled, it crushes and knocks over sagebrush plants, killing them. The degree of sagebrush mortality can be controlled by the addition (or subtraction) of spike-toothed tines – the more tines the greater the sagebrush mortality. The resulting crushed sagebrush is left to dry and decay on site;

b. A Roller chopper is a large steel cylindrical drum, equipped with several blades protruding 12-14 inches along the entire width. It is towed behind a crawler-type tractor to crush and chop sagebrush and other mature vegetation. The crushed and chopped sagebrush and other vegetation is left to dry and decay on site;

c. Mowing sagebrush involves the use of a mowing deck pulled behind a tractor. BLM's plan calls for a mower to reduce target sagebrush communities to between ground level up to 12-15 inches. The mowed vegetation is left behind to dry and decay on site;

d. Tebuthiuron poisioning involves the broadcast application of a broad-spectrum herbicide across sagebrush communities. BLM's preferred application time is during the fall, prior to the first snow. Tebuthiuron is a nonselective, soil activated herbicide that acts by inhibiting photosynthesis. It is used to kill broadleaf and woody plants, grasses, and brush. Tebuthiuron application has a great risk of groundwater contamination, because it is highly water soluble, has a low adsorption to soils, and has a high persistence (a 1-year half life). The Environmental Protection Agency ("EPA") has found that tebuthiuron "[t]ransport to ground water through leaching and to surface water through run-off area is likely," and thus, "[a]pplication of tebuthiuron to rangeland . . . exceeds the Agency's high level of concern for nontarget terrestrial and aquatic plants"; and

e. BLM also plans to ignite prescribed fires to eradicate sagebrush communities. To inhibit the spread of cheatgrass and other non-native, invasive species, BLM will only burn where there is a healthy and diverse understory of native perennial species and a lack of non-native invasive plants .

92. BLM's vegetation plan also calls for the chaining, mastication, hand-cutting, and poisoning of trees in extensive areas within the Cave Valley and Lake Valley watersheds.

a. Chaining involves the dragging between two bulldozers of a Navy ship anchor chain with 40-120 pound links and an 18-inch railroad iron welded perpendicular to the chain. The bulldozers would pass once (one-way chaining) or twice (two-way chaining) across the landscape, ripping up trees, sagebrush and other vegetation, and BLM will leave the biomass on site to dry and decay on site;

b. Mastication involves the cutting, chopping and sometimes chipping of pinyon pine and juniper trees using a light duty skid up to a larger machine. Resulting downed biomass may be chipped and scattered, cut and piled, or removed from the area;

c. Hand-cutting involves the use of crews to hand-cut trees, which will be lopped and scattered across the area or piled;

d. The poisoning of trees would also use tebuthiuron, at a stronger concentration than used for sagebrush poisoning. Following the poisoning of trees, a near-100% mortality of sagebrush and pinyon pine is expected.

93. BLM proposes to employ these sagebrush and tree eradication measures across 199,000 acres of public lands in the Cave Valley and Lake Valley watersheds, as shown below. These treatments include within sage grouse preliminary priority habitat, "essential, irreplaceable habitat," as well as within designated Wilderness areas. Figure 3 illustrates the proposed vegetation treatments, overlaid on the sage-grouse habitat types illustrated in Figure 1, with tan cross-hatching indicating aspen treatment areas, red cross-hatching indicating areas subject to prescribed fires, green stripes indicating sagebrush areas subject to mechanical treatment, blue cross-hatching indicating woodland treatment areas, and purple coloring indicating where BLM plans to apply Tebutriuron. Figure 4 illustrates this same information overlaying NDOW's sage-grouse habitat delineations identified in Figure 2.

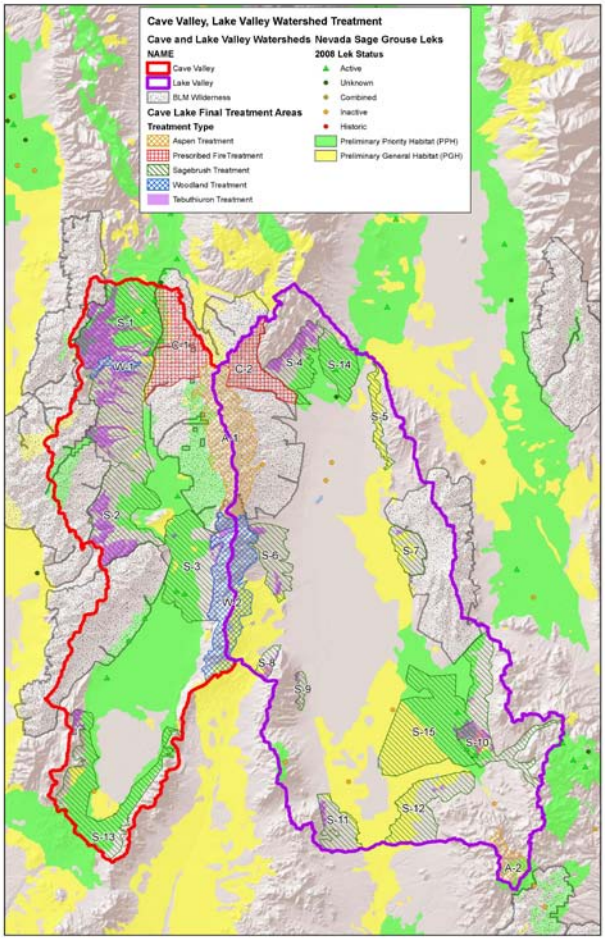

Fig. 3 – Vegetation treatments overlaid with BLM's sage-grouse habitat delineations

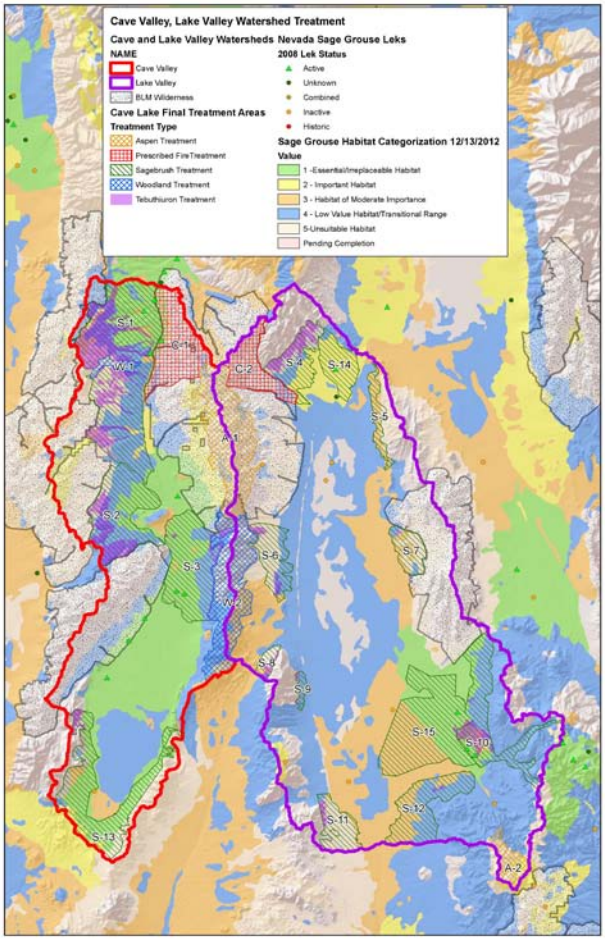

Fig. 4 – Vegetation treatments overlaid with NDOW's sage-grouse habitat delineations

94. In its EA, BLM also proposed to construct or reconstruct a series of rangeland developments, as further discussed below:

a. BLM proposes to construct or reconstruct approximately 400 miles of fences within the Cave Valley and Lake Valley watersheds, including allotment fences and pasture fences. BLM does not identify the fences to be constructed or reconstructed, and notes that some unidentified fences may need to be removed, rerouted or flagged to meet sage-grouse habitat requirements;

b. BLM plans to reconstruct eight reservoirs and one new well;

c. BLM also proposes to redevelop 12 upland springs and construct or reconstruct the associated pipelines. Many of these spring development and pipelines are within "essential, irreplaceable" sage grouse habitat.

95. Despite the breadth and complexities of BLM's proposed sagebrush and tree eradication plans, and construction of rangeland developments, BLM's final EA largely ignores, overlooks or downplays the ecological impacts of these treatments on sage grouse populations and habitat, soils, Wilderness, and other important ecological values in the Cave Valley and Lake Valley watersheds.

96. For example, BLM ignores the potential impacts on sage-grouse populations and habitat of applying tebuthiuron within preliminary priority habitat, preliminary general habitat, and "essential, irreplaceable" habitat. Most importantly, BLM never discussed the significant risk of mortality of non-target grass and forb species – the grass and forbs that are critical to sage-grouse brood survival – from BLM's application of tebuthiuron, and the impacts of this mortality of sage-grouse populations and habitat.

97. BLM acknowledges that its chaining, mastication, mowing, harrowing, and chopping of native vegetation across the 147,333 acres of public lands will disturb soils by directly compacting and displacing surface and subsurface soil horizons. BLM admits, too, that this disturbance could lead to increased risk of wind and water erosion. But BLM never attempts to quantify or assess the breadth of these impacts.

98. BLM also never examines the impacts on soils of its proposed application of tebuthiuron across vast areas of the public lands. Again, tebuthiuron is a nonselective, pre- and post-emergent total herbicidal control method for woody species, grasses and forbs, alike. BLM plans to poison vast areas of pinyon juniper forest, and admits that "[f]ollowing application of

herbicide in does sufficient to control juniper, it would be expected to have near 100% mortality of sagebrush and pinyon pine." Instead of examining potential impacts of soil contamination and resulting impacts on wildlife, BLM claims only that "[u]se of chemicals to affect vegetation would not directly affect soils."

99. BLM never examined the impacts of these treatments on the spread of cheatgrass and other weeds across the watersheds. Cheatgrass is already found throughout the Cave Valley and Lake Valley watersheds, and BLM admits that the treatments could further spread noxious and invasive weeds, including cheatgrass. Instead of examining the likelihood of further cheatgrass invasion, BLM claims only that "by using cheatgrass suppression options, desirable species should establish." But, BLM never discloses what these so-called "cheatgrass suppression options" consist of, and BLM's proposed action certainly does not include any cheatgrass suppression options.

100. The EA also overlooks many of the potentially harmful impacts of these treatments on sage-grouse populations and habitat – adverse impacts that are well documented in the scientific literature. As noted, in its final listing rule finding that protecting Greater sage-grouse was warranted, the U.S. Fish and Wildlife Service warned against future vegetation treatment projects designed to improve sage-grouse habitat. 75 Fed. Reg. at 13938 (noting that "[w]e are not aware of any study documenting a direct correlation between these treatments and increased greater sage-grouse productivity"). In fact, the Service warned against any mechanical treatment over 247 acres, concluding that these treatments "degrade sage-grouse habitat by altering the structure and composition of the vegetative community.") *Id.* *See also id.* at 13940 ("Chemical control of sagebrush has resulted in declines of sage-grouse breeding populations through the loss of live sagebrush cover").

101. Instead of openly reviewing the ecological impacts of these treatments on sage-grouse populations and habitat, BLM's EA states only that "[u]nder the Proposed Action, impacts to Special Status Species would be minimal with implementation of Best Management Practices, timing stipulations, and design features of the treatments."

102. But BLM's so-called "Treatment Restrictions" are inconsistent with current scientific knowledge regarding necessary protections for sage-grouse habitat and populations, and the ecological health of the high desert vegetation communicates in the Cave Valley and Lake Valley watersheds more generally, and BLM is not even adhering to these restrictions across many of these treatments. For example,

a. In the EA, BLM purported to adopt a "restriction" prohibiting all treatments in known sage-grouse winter range, unless the treatment would strategically reduce wildfire risk and "maintain winter range habitat quality." But BLM's proposed action in Treatment Units S-1, S-3, and S-13 targets over 60,000 acres of important sage-grouse winter habitat for sagebrush eradication, and BLM never explains whether or how such treatments would reduce wildfire risk or maintain habitat quality;

b. BLM adopts a woefully inadequate buffer around active sage grouse leks –only restricting vegetation treatments within ¼ mile of active leks unless a BLM wildlife biologist approves the treatment. Existing scientific literature, including BLM's own documents, demonstrate that this restriction is inadequate to protect sage-grouse populations and habitat;

c. BLM also claims that prescribed fire would only be allowed in areas "with a sufficient understory," thereby permitting the burned area to recover. Yet, BLM's

own information demonstrates that the native vegetation understory on Treatment Areas C-1 and C-2 only contains 4% native grass cover, a small fraction of the estimated 65% potential grass cover understory in this area. Thus, burning this area will undermine its ability to resist invasion of cheatgrass and otherwise recover from the harmful impacts of BLM's planned fire;

d. Similarly, BLM claims that it will restrict use of tebuthiuron to areas that have a healthy understory of native vegetation which are "resilient to the herbicide." Here again, BLM's own data shows that the areas subject to BLM's poisoning treatments lack a sufficiently healthy understory. Moreover, as noted above, tebuthiuron is a non-selective, broad-spectrum herbicide, and BLM has failed to demonstrate that *any* native grasses and forbs are somehow "resilient" to this herbicide.

103. In light of BLM's refusal to adhere to its own so-called Treatment Restrictions, BLM failed to examine the direct, indirect and cumulative impacts of its proposed sagebrush treatments.

104. BLM's examination of the ecological impacts of its range development plan is equally flawed. In fact, BLM never even examined the impacts of its construction or reconstruction of range developments on soils, upland riparian areas, native vegetation communities, invasive species, or sage-grouse populations and habitat. This last omission is particularly striking because many of the new or reconstructed reservoirs, fences, spring developments and pipelines are squarely within BLM-defined preliminary priority habitat and NDOW's own "essential, irreplaceable" habitat.

105. Indeed, BLM simply ignores the well-developed scientific data – including its own habitat management requirements in the NTT Report, National Sage-Grouse Habitat Conservation Strategy, and instruction memoranda – documenting the adverse impacts of range improvements on sage-grouse populations and habitat.

106. In its EA, BLM adopts a Cumulative Effects Study Area that includes the Cave Valley and Lake Valley watersheds, together with several surrounding watersheds (including South Steptoe Valley, White River Central Fox-Gap Mountain, Dry Lake Valley, Patterson Wash, Spring Valley South West, Hamblin Valley, and South Spring Valley).

107. In preparing its cumulative impacts analysis, however, BLM limited its review to only rangeland vegetation, recreation, Lands with Wilderness Characteristics, and fuels and fire management. BLM never examined the cumulative impacts on sage-grouse populations and habitat. This omission is troublesome because in addition to the serious impacts of this project, BLM has conducted extensive sagebrush eradication efforts in the recent past, including a large, 10,000-acre project partially within Cave Valley and Lake Valley, and another eradication project in the neighboring South Spring Valley, discussed in more detail below. Further, BLM has numerous other such eradication projects planned for the future, including in Hamlin Valley and South Spring Valley, also discussed in more detail below. In fact, BLM did little more than provide a list of other activities, and BLM failed to provide any quantified or detailed information and analysis of the cumulative impacts of these actions on soils, vegetation, fuels, fire, watersheds, or sage-grouse populations and habitat.

108. On November 5, 2012, BLM issued its Finding of No Significant Impact, which is the culmination of BLM's NEPA process.

109. On this same day, BLM also issued two Decision Records, one for its vegetation plan and one for its range development plan.

110. WWP timely appealed these decisions, and sought to stay implementation of the treatments and range developments. The Department of Interior's Office of Hearings and Appeals denied the petitions, and WWP dismissed its administrative appeals. WWP has thus exhausted all required administrative remedies.

IV. Recent Past and Proposed Sagebrush Eradication Plans

111. The Cave Valley and Lake Valley Watersheds Restoration plans, as discussed in detail above, are not the first time that BLM has authorized landscape-level sagebrush eradication in this area of central Nevada. For example, in 2008 BLM adopted the Lincoln County Sage Grouse Habitat Restoration Project, which authorized the chaining, chopping, and poisoning of sagebrush across almost 10,000 acres of sage-grouse habitat in Cave Valley, Lake Valley, and surrounding watersheds. The public lands and wildlife habitat subject to the Lincoln County eradication treatments are located within some of the same areas subject to the Cave Valley and Lake Valley actions challenged here.

112. In its NEPA analysis for the Lincoln County project, BLM claimed that these treatments "would improve sagebrush community health which would benefit future populations" of sage-grouse and other imperiled wildlife species.

113. Western Watersheds staff visited one of the Lincoln County treatment sites located within Cave Valley before, during, and after the treatments. The photographs below illustrate the impacts of these treatments on the site's sagebrush habitats.

Fig. 5 – Cave Valley Treatment Area, 2009, Pre-treatment

Fig. 6 – Cave Valley Treatment Area, 2009, During treatment

Fig. 7 – Cave Valley Treatment Area, 2009 Immediately post-treatment

Fig. 8 – Cave Valley Treatment Area, 2009 Immediately post-treatment

114. Western Watersheds staff returned to this same site in 2011, and observed a near complete absence of sagebrush, and a lack of native vegetation important for sage-grouse nesting and early brood-rearing. As the picture below demonstrates, there was no lack of livestock forage on the treatment areas.

Fig. 9 – Cave Valley Treatment Area, August 2011

115. BLM has also recently completed another sagebrush treatment project in the neighboring South Spring Valley allotment, entitled the South Spring Valley Sage-Grouse Habitat Restoration Project. In this project, BLM treated over 4,000 acres of sage-grouse habitat.

116. BLM has also proposed additional sagebrush eradication treatments in the Hamlin Valley and South Spring Valley watersheds immediately adjacent and to the east of Lake Valley. In March 2012 – i.e., nearly nine months before BLM approved the Cave Valley and Lake Valley Watersheds Restoration Plan – BLM issued a Scoping Notice alerting the public to BLM's proposed plans to eradicate sagebrush and pinyon-juniper forests across vast areas within the Hamlin Valley and South Spring Valley watersheds. According to BLM,

> Treatment units within the South Spring Valley and Hamlin Valley Watersheds have been selected based on the purpose and need and additional unit-specific objectives. Treatment methods would be selected based conditions at the time of treatment and other limitations including topography and wilderness limitations. Treatment methods may include, but are not limited to, chaining, mastication, hand cutting, mowing, roller chopper, other mechanical methods, chemical treatments, prescribed fire, fire for resource benefit, fencing, or seeding.

117. As the maps below illustrate, many of BLM's proposed treatment areas in the Hamlin and South Spring Valleys are adjacent to – or in the same vicinity as – BLM's treatment

areas in the Cave Valley and Lake Valley restoration plans. Figure 10 shows BLM's planned and past treatment projects in the Cave Valley, Lake Valley, South Spring Valley and Hamlin Valleys overlaid with BLM's preliminary priority habitat in green and preliminary general habitat in yellow. Figure 11 illustrates this same information overlaid with NDOW's essential/irreplaceable habitat in green, important habitat in yellow, habitat of moderate importance in tan, and low value habitat and unsuitable habitat in blue and white, respectively.

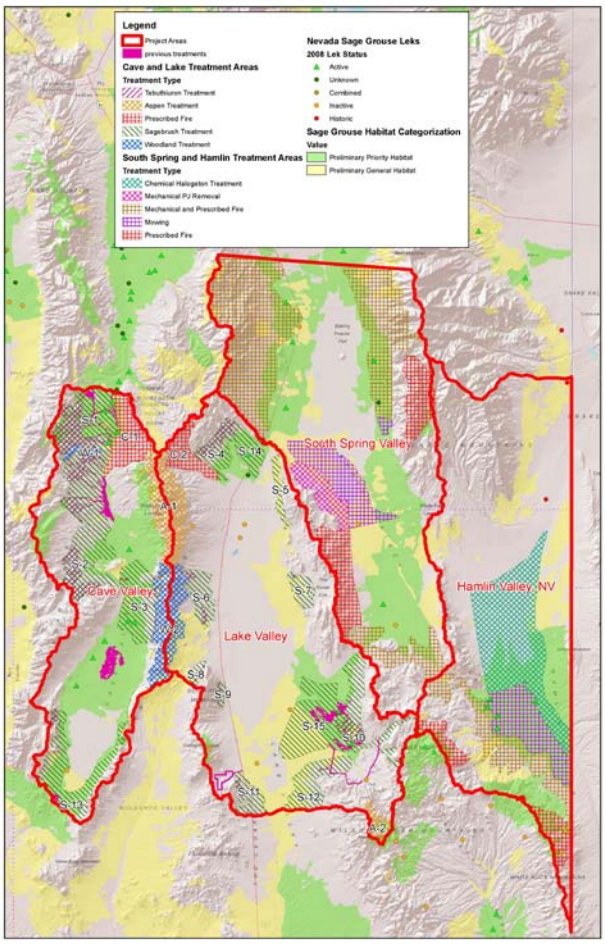

Fig. 10 – Vegetation treatments in adjacent watersheds overlaid with BLM's sage-grouse habitat delineations

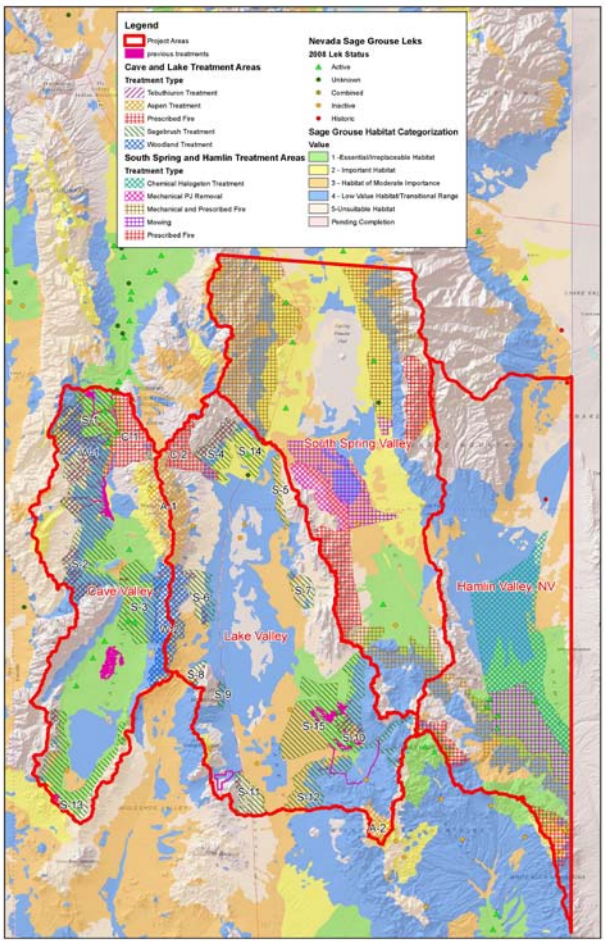

Fig. 11 – Vegetation treatments in adjacent watersheds overlaid with NDOW's sage-grouse habitat delineations

FIRST CLAIM FOR RELIEF:
BLM VIOLATED NEPA AND APA

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

119. This First Claim for Relief challenges BLM's violation of the National Environmental Policy Act, 42 U.S.C. §§ et seq., and NEPA's implementing regulations, in failing to prepare an Environmental Impact Statement prior to approving the Cave Valley and Lake Valley final decisions permitting the vegetation treatment projects and range development projects discussed above, and in failing to undertake a thorough and objective assessment of the environmental implications of these final decisions. This claim is brought pursuant to the judicial review provision of the APA, 5 U.S.C. § 706(1).

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

121. 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.

122. BLM's authorization of the vegetation treatment and range development projects violate NEPA and the APA in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

a. Defendants failed to prepare an Environmental Impact Statement;

b. Defendants failed to take a "hard look" at the direct, indirect, and cumulative impacts of the vegetation treatment and range development projects – together with climate change, livestock infrastructure, livestock grazing, drought, invasive weeds, wildfires, and other management actions authorized on the Cave Valley watershed, Lake Valley watershed and surrounding watersheds – upon the public lands and wildlife resources, particularly on sagebrush habitats and sage-grouse populations; and

c. Defendants did not consider a reasonable range of alternatives to the final decisions.

123. BLM's preparation and approval of the final decisions and underlying NEPA analysis is arbitrary, capricious, an abuse of discretion, not in accordance with law under NEPA and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiff and its members and staff.

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CLAIM FOR RELIEF:
BLM VIOLATED FLPMA AND APA

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

125. This Second Claim for Relief challenges BLM's violation of the FLPMA, 43 U.S.C. § 1701 *et seq*., the Administrative Procedure Act, 5 U.S.C. § 706, and BLM's

implementing regulations, handbook, manual and policies, through BLM's unlawful adoption of the Cave Valley and Lake Valley Watershed Restoration Plans. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706(1).

126. Pursuant to these and other statutory authorities, BLM has adopted various regulations, handbooks, manuals, conservation strategies, and other policies relating to its management of the public lands, including the National Sage-Grouse Habitat Conservation Strategy, the Special Status Species Policy, and BLM's recent Instructional Memoranda, as discussed above.

127. BLM's approval of the Cave Valley and Lake Valley Watershed Restoration Plans violate FLPMA, and its implementing regulations, handbooks, policies, and guidance – including the National Sage-Grouse Habitat Conservation Strategy, the Special Status Species Policy, and BLM's recent Instructional Memoranda – and otherwise arbitrarily and capriciously permit the mowing, chopping, burning and poisoning of sagebrush and woodlands across over 145,000 of public lands within the Ely District Office, including within "essential, irreplaceable" sage-grouse habitat. BLM's approval of the construction and/or reconstruction of over 400 miles of fences, as well as constructing wells, reservoirs, pipelines, and livestock watering facilities also within key sage-grouse habitat, is also in direct opposition to its own management guidelines, policies and other provisions designed to protect and enhance sage-grouse populations and habitat.

128. Based on such violations of FLPMA and implementing regulations and policies, BLM's approvals of the Cave Valley and Lake Valley Watersheds Restoration Plans are arbitrary, capricious, an abuse of discretion, and not in accordance with law under FLPMA and

the APA, and will allow serious ecological degradation as well as harm to the public and Plaintiff's interests, unless reversed by this Court.

PRAYER FOR RELIEF

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

A. Order, adjudge, and declare Defendants violated NEPA, FLPMA, the implementing regulations and policies, and/or the Administrative Procedure Act in approving the Cave Valley and Lake Valley Watersheds Restoration Plans and the associated environmental analysis;

B. Reverse and set aside Cave Valley and Lake Valley Watersheds Restoration Plans and the associated environmental analysis;

C. Enter declaratory and/or injunctive relief requiring Defendants to undertake comprehensive and legally valid NEPA analysis prior to adopting new watersheds restoration plans or other similar decisions in the Cave Valley and Lake Valley watersheds;

D. Enter such other declaratory and/or injunctive relief as WWP may specifically request hereafter;

E. Award Plaintiff its reasonable costs, litigation expenses, and attorney's fees associated with this litigation and the related administrative proceedings pursuant to the Equal Access to Justice Act, 28 U.S.C. §§ 2412 et seq., and/or all other applicable authorities; and/or

F. Grant such further relief as the Court deems necessary or appropriate in order to remedy Defendants' violations of law, vindicate the interests of WWP and the public, and preserve and protect the public lands and resources at issue.

Dated this 14th day of June, 2013.

Respectfully submitted,

/s/ Todd C. Tucci

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