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

WESTERN WATERSHEDS PROJECT,	)	
	)	
Plaintiff,	)	No. 09-CV-365
	)	
v.	)	COMPLAINT
	)	
	)	
DAVID ROSENKRANCE, Field Manager,	)	
Challis Field Office; and BUREAU OF	)	
LAND MANAGEMENT,	)	
	)	
Defendants.	)	
_____	)	

NATURE OF ACTION

1. This action challenges a Bureau of Land Management (“BLM”) grazing decision and associated environmental analysis on the Burnt Creek allotment, which has been subject to previous litigation in *Western Watersheds Project v. Snyder*, CV-03-314-E-BLW.

2. The challenged grazing decision reissued a ten-year livestock grazing permit for the Burnt Creek allotment, which is within a Wilderness Study Area (“WSA”) and comprises almost 5,000 acres of important habitat for sage-grouse, bull trout, and many other species.

Livestock grazing has degraded this habitat and other resource values, yet BLM has refused to meaningfully modify grazing to address these degraded conditions. Instead, BLM has reauthorized status quo grazing and additional “range projects” for livestock, contrary to multiple provisions in its governing land use plan as well as governing direction on Wilderness Study Areas, and has refused to take a “hard look” at the environmental consequences of its actions.

3. Plaintiff Western Watersheds Project thus challenges the Burnt Creek allotment final decision, environmental assessment, and finding of no significant impact as violating the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1701 *et seq.*, and its implementing regulations; the governing Challis Resource Management Plan; BLM’s own “Interim Management Policy and Guidelines for Lands Under Wilderness Review”; and the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, and its implementing regulations.

4. Plaintiff seeks declaratory and injunctive relief to remedy BLM’s violations of law, to correct ongoing irreparable harm, and to prevent further irreparable harm to sage-grouse populations and other natural resources resulting from BLM’s actions.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including FLPMA, NEPA, the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, 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.* An actual, justiciable controversy exists between the parties, and the requested relief is therefore proper under 28 U.S.C. §§ 2201–2202 and 5 U.S.C. §§ 701–06.

6. Venue is proper in this Court under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial

district, Plaintiff resides in this district, and the public lands and resources and agency records in question are located in this district.

7. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

PARTIES

8. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) is a non-profit membership organization headquartered at the Greenfire Preserve in Custer County, Idaho, with offices and staff in Boise, Hailey, McCall, and Salmon, Idaho; and also in Arizona, California, Montana, Wyoming, and Utah. WWP 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 1,200-plus 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 central Idaho. WWP is also active in monitoring ecological conditions in central Idaho, including the Challis Field Office and the Burnt Creek allotment; in reviewing and commenting upon agency grazing and other resource decisions, including those at issue here; and in publicizing the ecological effects of grazing in this region.

9. WWP’s members and staff work, live, hunt, and/or recreate throughout central Idaho, including the Challis Field Office and the Burnt Creek allotment specifically. WWP members and staff derive aesthetic, recreational, scientific, inspirational, educational, and other benefits by visiting the Burnt Creek allotment on a regular and continuing basis and intend to do so frequently in the immediate future.

10. BLM’s violations of federal laws and regulations as alleged here directly injure the interests of WWP and its staff and members. Those interests have been and will continue to

be injured and harmed by the BLM's violations of law as complained of herein. Unless the relief prayed for herein is granted, Plaintiff and its members and staff will continue to suffer on-going and irreparable harm and injury to their interests.

11. Defendant DAVID ROSENKRANCE is the Field Manager of the BLM's Challis Field Office, headquartered in Challis, Idaho; and has legal authority for managing the Burnt Creek allotment in conformance with federal laws, regulations, and the Challis Resource Management Plan. He is sued solely in his official capacity.

12. UNITED STATES BUREAU OF LAND MANAGEMENT ("BLM") is an agency or instrumentality of the United States, within the Department of Interior; and is charged with managing the public lands and resources of the Challis Field Office, in accordance and compliance with federal laws and regulations.

STATEMENT OF FACTS

Overview of the Burnt Creek Allotment.

13. The Burnt Creek allotment encompasses 4,884 acres of BLM land, entirely within the Burnt Creek WSA save for a road. The allotment is located in the Upper Pahsimeroi valley in central Idaho, and contains important habitat for numerous wildlife species. Part of Idaho's Sagebrush Sea, the allotment contains extensive sagebrush habitat utilized by sage-grouse and other sage-grouse obligate species; and there are several sage-grouse leks (strutting and breeding grounds) within the area, including one about a mile from the allotment. Nearly the entire allotment, 4,800 acres, is bighorn sheep winter range, with 625 acres of elk winter range. Elk have knocked over fences to access Burnt Creek and its riparian area.

14. Bull trout, a species protected as threatened under the Endangered Species Act, spawn in the portion of Burnt Creek within the allotment. Burnt Creek is also historic habitat for

threatened Chinook salmon and steelhead trout, and is designated critical habitat for those species.

15. Past and current livestock grazing on the Burnt Creek allotment have degraded and altered the characteristics and quality of its natural resources, including Burnt Creek and its tributaries and springs. Livestock grazing is harmful to sage-grouse populations and habitat in many direct, indirect, and cumulative ways. Livestock grazing causes long-term changes in plant communities; reduces habitat components such as grasses that sage-grouse need; and degrades the riparian habitats essential for sage-grouse survival and reproduction. Livestock grazing is also harmful to bull trout populations because livestock can directly step on redds (nests), remove riparian vegetation, destabilize stream banks, widen stream channels, reduce pool frequency, increase soil erosion, and degrade water quality.

16. Due to these impacts, in an attempt to protect the mainstem creek from direct livestock disturbance, a fenced exclosure surrounds much of the creek. The fence was initiated in 1985 and has been expanded multiple times. However, livestock repeatedly trespass inside of the exclosure and are also periodically permitted to cross the creek within the exclosure. In addition, several tributaries and springs that contribute flows to Burnt Creek are not excluded from livestock. The fencing serves to intensify and concentrate livestock use in these remaining unfenced areas. The fencing also serves as a major barrier to recreation, since much of it is electric fencing with a one-foot gap at the bottom, forcing recreationalists to perform a belly-crawl under the electrified wires.

FLPMA and the Challis Resource Management Plan.

17. FLPMA governs the management of BLM federal public lands. In 1995, the U.S. Department of the Interior adopted BLM grazing regulations pursuant to FLPMA. These regulations included the Federal Rangeland Health (“FRH”) regulations, which establish

fundamental ecological criteria for the management of livestock grazing on BLM public lands. The FRH regulations require BLM to assess ecological conditions on the public lands and determine whether specific rangeland health standards are being met. If standards are not being met, and existing grazing management or levels of grazing use are significant causal factors for the failure, the regulations expressly require BLM to implement grazing management changes on those lands no later than the start of the next grazing season. The FRH regulations establish four “Fundamentals of Rangeland Health,” which grazing allotments must meet or show significant progress toward meeting. These relate to water quality, riparian habitat, watershed conditions, and species habitat. *See* 43 C.F.R. § 4180 *et seq.* The FRH regulations further provide for evaluation of whether those criteria are met, through application of FRH Standards and Guidelines, which BLM has developed on a state-by-state basis.

18. The BLM grazing regulations require that grazing permits incorporate terms and conditions “necessary to achieve management and resource objectives”, and “that ensure conformance with subpart 4180 of this part [the FRH regulations].” 43 C.F.R. §§ 4130.3 & 4130.3-1(c).

19. The BLM grazing regulations also require that “authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment,” 43 C.F.R. § 4130.3–1, and that permitted use “be based upon the amount of forage available” 43 C.F.R. § 4110.2-2(a).

20. 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. *Id.* § 1732(a), 43 C.F.R. § 1610.5-3(a).

21. In 1999, BLM’s Challis Field Office adopted the Challis Resource Management Plan (“Challis RMP”). The Challis RMP governs BLM’s management of the Challis Field

Office, including the Burnt Creek allotment. It contains many requirements designed to protect natural resource values.

22. Among the Challis RMP's wildlife requirements, BLM is obligated to "[s]ustain diverse and abundant wildlife populations . . . by improving wildlife habitat currently in unsatisfactory condition, and maintaining habitat currently in satisfactory condition."

23. With respect to special status species, the Challis RMP requires BLM to "[m]aintain populations of special status species and/or their habitat over the range of natural distribution and habitat conditions" and "[e]liminate the need for listing of sensitive and candidate species and contribute to recovery of listed species by increasing the number or size of populations or by removing threats to species and their habitats." The RMP further notes that BLM policy is to manage special status species to "maintain viable populations," "in a manner that eliminates the need for listing under the Endangered Species Act," and "for recovery." BLM must "[i]nclude a site-specific field assessment" of special status species as part of the assessment of authorized actions.

24. With respect to livestock grazing management, the Challis RMP requires BLM to "[m]anage livestock grazing levels in line with the long term capacity of the land, considering multiple use and climatic variability, to maintain, improve, or make significant progress towards improving ecological condition." Specifically, BLM must manage livestock grazing to ensure progress toward enumerated riparian and aquatic habitat conditions. Additionally, livestock are not allowed in a pasture until range improvements are functional and properly maintained.

25. The Challis RMP requires BLM to "[m]anage stream riparian areas to maintain or achieve proper functioning condition . . . to ensure desired functions, improve water quality, prevent and minimize flood and sediment damage, and establish conditions which support

attainment of healthy and productive aquatic habitat.” Specifically, the RMP sets different grazing utilization and streambank shearing standards, depending on stream conditions and whether it is occupied fish habitat; and notes that degraded riparian areas may need complete rest from livestock grazing to initiate recovery.

26. The Challis RMP also specifically adopts BLM’s Interim Management Policy For Lands Under Wilderness Review for management of Wilderness Study Areas, as discussed further below.

Burnt Creek Wilderness Study Area.

27. The entirety of the Burnt Creek allotment, save for a road, lies within the 24,980-acre Burnt Creek WSA.

28. Pursuant to FLPMA and the Wilderness Act, BLM designated the Burnt Creek WSA as suitable for wilderness protection, because it is a roadless area that was found by the BLM to have outstanding wilderness characteristics, including because: (1) the lands are affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticed; (2) it offers outstanding opportunities for solitude or primitive and unconfined recreation; and (3) it contains important ecological, geological or other scientific, educational, scenic or historic values.

29. Specifically, the 1991 Idaho Wilderness Study Report stated that wilderness values in the Burnt Creek WSA included outstanding wilderness quality; outstanding opportunities for solitude and primitive, unconfined recreation; and outstanding naturalness. It noted that “[t]he primitive nature of the recommended area adds a spectacular example of sagebrush- and grass-covered hills with pockets of timber giving way to awesome rugged mountains,” including Borah Peak, the highest point in Idaho.

30. Under FLPMA and BLM's Interim Management Policy For Lands Under Wilderness Review ("IMP"), BLM is required to manage the Burnt Creek WSA to protect these wilderness characteristics, "in a manner so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c).

31. The IMP, which was adopted by the Challis RMP, forbids BLM to authorize any action that will cause impairment to a WSA. According to the IMP, the

overriding consideration . . . must be that the preservation of wilderness values within a WSA is paramount and should be the primary consideration when evaluating any proposed action or use that may conflict with or be adverse to those wilderness values.

IMP at 8 (emphasis in original). Thus,

wilderness resource management objectives within a WSA should take precedence over all other resource management program objectives. In other words, the wilderness resource will be dominant in all management decisions when a choice must be made between preservation of wilderness suitability and other competing uses.

Id.

32. For an activity to satisfy FLPMA's non-impairment mandate, and thus be permitted to proceed in a WSA, two criteria must be met. First, the activity must be "temporary" and "not create surface disturbance" or "involve permanent placement of facilities." IMP at 9. "'Surface disturbance' is any new disruption of the soil or vegetation, *including vegetative trampling*, which would necessitate reclamation." *Id.* (emphasis added).

33. Second, after the activity ends, "the wilderness values must not have been degraded so far as to significantly constrain the Congress's prerogative regarding the area's suitability for preservation as wilderness." *Id.* The non-impairment test is not an "either/or" test; rather, a proposed activity must satisfy *both* criteria in order to be permitted to take place.

34. With respect to livestock developments, the IMP specifically states that new, temporary livestock developments may only be approved if “they truly enhance wilderness values, and satisfy the nonimpairment criteria.” IMP at 41 (emphasis in original). New, permanent livestock developments may only be approved if “they truly enhance wilderness values, and the developments are substantially unnoticeable.” *Id.* at 42.

35. The IMP contains detailed procedural requirements regarding how BLM must determine whether the nonimpairment criteria have been met and whether a proposed action enhances wilderness values. BLM must describe the baseline wilderness characteristics as documented in the original Wilderness Study Report; consider whether the project’s impacts, had they existed at the time of the inventory, would have disqualified the area from being a WSA; and discuss the project’s impacts—individually and cumulatively—on the area’s wilderness characteristics. BLM must provide written documentation as to whether the proposed action will meet the nonimpairment standard.

36. At the end of the analysis, if the proposed action would result in a negative change or an unacceptable additional *increment* of impact on wilderness values, it must not be allowed.

Allotment History.

37. BLM generally issues grazing permits for ten-year terms, and can renew those permits for an additional ten years upon completion of new environmental analyses conducted in compliance with NEPA.

38. In 2001, BLM issued a final decision for a ten-year livestock grazing permit on the Burnt Creek allotment. This decision was based upon a 1999 EA encompassing 24 allotments in the Pahsimeroi watershed. Later in 2001, livestock grazing on the allotment was

found to be exceeding several relevant rangeland health standards and in violation of the terms of the grazing permit, including by trespassing within the enclosure.

39. In 2002, BLM issued a new decision to renew the Burnt Creek allotment grazing permit for ten years, along with an environmental assessment (“EA”). WWP challenged that decision in the District of Idaho. In 2004, Chief Judge B. Lynn Winmill held that BLM violated NEPA in issuing its EA.

40. The Court noted that NEPA requires the agency to consider and assess the environmental impacts of a reasonable range of alternative actions, but in the 2002 EA, “the only alternative to the permittee’s proposal was to maintain the status quo,” rendering the EA a “foreordained formality.” *Western Watersheds Project v. Snyder*, CV-03-314-E-BLW, slip op. at 6–7 (D. Id. Sept. 22, 2004) (citing *City of Carmel-By-The-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997)). BLM failed to consider any alternatives that would reduce or eliminate grazing on the allotment, despite acknowledging that grazing had degraded the resources on the allotment. Due to BLM’s violation of NEPA, the Court reversed BLM’s grazing decision.

41. Subsequent to this ruling, from 2004–2008, the allotment was largely rested (except for approximately two weeks of authorized use in 2006). However, recovery from damage caused by livestock did not progress nearly as fast as BLM had hoped. Instead, monitoring results continued to find highly degraded conditions during this time. For example, several riparian areas continued to be rated as “functioning at risk” with no trend. This degradation was due in part to repeated trespass from livestock permitted to graze the adjoining Dry Creek allotment.

42. After the Court threw out the 2002 EA, BLM prepared new draft Burnt Creek allotment EAs in 2006 and early 2007, and issued a new proposed decision and EA reauthorizing grazing on the Burnt Creek allotment on June 8, 2007. WWP administratively protested the decision.

43. BLM issued its final version of the Burnt Creek allotment EA on October 22, 2007.

44. In 2007, a severe trespass incident occurred involving sixty cows from the Dry Creek allotment trespassing onto the Burnt Creek allotment for several days. In response, BLM issued a decision imposing, among other penalties, a significant suspension of grazing on the Dry Creek allotment for five years (later overturned in a settlement agreement).

45. The permittee on the Dry Creek allotment appealed BLM's suspension; and as part of its response to the permittee's argument, BLM explained that the Dry Creek permittee's trespass "has kept the neighboring Burnt Creek Allotment from meeting the fundamentals [of] rangeland health, specifically Standard 2 (riparian areas and wetlands) and Standard 3 (stream channel/floodplain)." BLM warned that if the suspension was overturned (as it was), that "livestock use would be expected to continue without controls and at levels that have resulted in conditions not making significant progress toward meeting the standards for rangeland health."

46. BLM issued a final decision and finding of no significant impact ("FONSI") on the Burnt Creek allotment permit reissuance on September 8, 2008.

47. WWP filed an administrative appeal and petition for stay of the Burnt Creek allotment final decision before the Office of Hearings and Appeals ("OHA") on October 9, 2008. BLM did not file a response brief. On November 21, 2008, OHA denied the petition for stay.

WWP subsequently dismissed the appeal, and has exhausted all required administrative remedies before electing this forum to pursue its challenges to the Burnt Creek allotment final decision.

Content of the Challenged Decision and Its Implementation.

48. BLM's final EA analyzes five alternatives. Three alternatives propose authorizing grazing for 858 animal unit months¹ ("AUMs"), one proposes 670 AUMs, and one proposes 362 AUMs. BLM characterizes 670 AUMs as a grazing reduction; however, BLM elsewhere admits it is actually the average grazing use that occurred on the allotment between 1986 and 2001 (a level which caused repeated violation of rangeland health standards, some of which still persist after several years' rest). Despite the past degradation caused by livestock grazing on the allotment, the repeated trespass, and the fact that the allotment is within a WSA, BLM did not analyze resting the allotment from grazing. Nor did BLM assess carrying capacity, or how much land within the allotment was actually suitable for livestock grazing, in light of the large riparian enclosure. The alternatives also analyzed constructing various numbers of new livestock projects (fencing and water troughs).

49. The EA admits that conditions throughout the allotment are degraded—despite it being largely rested for the past several years. For example, the EA admits that riparian areas of the East Fork, West Fork, and East Tributary of Burnt Creek are all functioning at risk (with no trend identified). Bank stability on several stream reaches remains far below acceptable levels. Several other wetland areas are also functioning at risk with no apparent trend. Further, it admits that the livestock grazing "allowable use indicators" (such as stubble height and bank alteration) were exceeded in 2001, 2002, and 2003. Grazing in those years occurred at about the same level

¹ An animal unit month is "the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month." 43 C.F.R. § 4100.0–5.

of use now authorized under the challenged decision. Thus, BLM is authorizing the same amount of grazing that regularly caused violations of the use indicators.

50. The EA fails to adequately describe the baseline conditions on the allotment of habitat for sagebrush obligate species such as sage-grouse. For example, despite the facts that: (1) there are several sage-grouse leks within the area, including one within roughly one mile from the allotment, (2) sage-grouse are known to range several miles from leks and have been sighted near the allotment, (3) the allotment is sagebrush habitat, and (4) BLM admits elsewhere in the EA that “[a]ll the riparian and upland spring areas that are accessible to livestock have the potential to support [sage-grouse] brood-rearing,” the Affected Environment section brushes aside sage-grouse, implying the allotment does not provide habitat. BLM has apparently not conducted any sage-grouse habitat condition or trend assessment on the allotment.

51. The EA also fails to mention whatsoever the larger sage-grouse populations encompassing the allotment. According to the “Conservation Plan for the Greater Sage-Grouse in Idaho,” the Burnt Creek allotment falls within the “Snake, Salmon, and Beaver population” and the Little Lost subpopulation of sage-grouse. Both the population and the subpopulation have experienced declines in recent decades.

52. The EA fails to adequately analyze the action’s *impacts* on sagebrush obligate species such as sage-grouse. For example, the discussion of the selected alternative’s impacts on sage-grouse is extremely brief. It fails to discuss or quantify the impacts of livestock grazing on sage-grouse populations or sage-grouse habitat, instead implying that the action will improve conditions for sage-grouse due to the alleged reduction in livestock numbers. It fails to discuss or quantify the impacts to the local subpopulation, population, or population trends.

53. The EA fails to analyze the cumulative impacts on sagebrush obligates from the grazing and rangeland projects in these and surrounding allotments. The EA does not make any quantitative assessment of impacts to the habitat of these species, or discuss effects on the larger sub-populations or populations of sagebrush obligates, from the cumulative effects of grazing and range projects on the Burnt Creek allotment in addition to the other BLM allotments that are within the range of these populations and sub-populations. Instead, BLM brushes aside all adverse impacts to summarily conclude that grazing in this allotment and adjoining allotments is allowing for the “enhancement of the natural ecological conditions of the vegetation, the visual conditions of the lands and waters, . . . and [the improvement] of wildlife and fish habitats.”

54. Finally, the EA fails to analyze the impact of the action on the Burnt Creek WSA: BLM wholly fails to conduct the analysis spelled out by the IMP. It fails to describe the baseline wilderness characteristics as documented in the original Wilderness Study Report; fails to consider whether the project’s impacts, had they existed at the time of the inventory, would have disqualified the area from being a WSA; and fails to discuss the project’s impacts—individually and cumulatively—on the area’s wilderness characteristics. The failure is particularly acute with respect to cumulative impacts, in light of the many miles of fencing that BLM has constructed in the Burnt Creek WSA in recent years, some without the required NEPA analysis. For example, there is no analysis on the impact of the new electric fencing—added on top of the existing fencing—on the WSA’s “outstanding opportunities for solitude and primitive, unconfined recreation.” BLM fails to provide written documentation as to why the proposed action will meet the nonimpairment standard. The little information that is present in the EA indicates that the proposal’s livestock projects will violate the nonimpairment mandate, as do field reviews by

Plaintiff. BLM makes the unsupported conclusion that “[n]o significant direct, indirect, or cumulative impacts are expected as a result of the proposed action or any of the alternatives.”

55. BLM’s final decision selects a modified version of the EA’s Alternative 3. The final decision authorizes a permitted grazing use of 670 AUMs.

56. The decision authorizes several new range projects inside the WSA: a new trough and pipeline, an exclosure of a spring, about half a mile of new electric fencing, and an expansion of the Burnt Creek riparian exclosure by relocating a mile of the fence higher onto an upland bench. The decision does not specify whether all of these projects are considered temporary or permanent.

57. The final decision does not designate the governing “allowable use criteria” (such as stubble height and bank alteration limits) as mandatory permit terms and conditions.

58. BLM issued a 2009 grazing bill for the Burnt Creek allotment on June 23, 2009. The bill permits Jack Whitworth, a sublessee of Burnt Creek permittee Scott Whitworth, to turn out 120 cows (and their calves) from June 25 – August 26, 2009, for a total of 239 AUMs. The turnout letter fails to include any allowable use criteria.

59. BLM permitted livestock turnout to occur in 2009 before it completed several of the range projects required under the Burnt Creek decision, including the trough and the spring exclosure. BLM also installed a metal headbox in a spring complex, despite making no mention of this in the EA or final decision. BLM also incorrectly placed the trough in a streambed, instead of in a dry area as designed, thus thwarting the stated purpose of drawing livestock away from the wet area.

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FIRST CLAIM FOR RELIEF:
FLPMA VIOLATIONS

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

61. This Claim for Relief challenges Defendants' violation of FLPMA, 43 U.S.C. § 1701 *et seq.*, and its implementing regulations, with respect to the Burnt Creek Allotment EA, FONSI, and final decision. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

62. BLM's FLPMA violations alleged here include, but are not limited to:

a. Violation of the Challis RMP, including its provisions (cited above) requiring improvement and maintenance of fish and wildlife habitat; management of special status species to maintain viable populations, maintain habitat over the range of natural distribution, and eliminate the need for listing; management of livestock grazing levels to maintain, improve, or make significant progress towards improving ecological condition; and manage stream riparian areas to maintain or achieve proper functioning condition and establish conditions which support attainment of healthy and productive aquatic habitat—including by authorizing similar levels of grazing that caused documented degradation and violations of standards in the past, and activities that are known to harm and degrade sage-grouse habitat;

b. Violation of the BLM grazing regulations, which require that grazing permits must include terms and conditions "necessary to achieve management and resource objectives", and "that ensure conformance with subpart 4180 of this part," by failing to include such terms and conditions. 43 C.F.R. §§ 4130.3 & 4130.3-1(c);

c. Violation of the BLM grazing regulations, which require that "authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment," 43 C.F.R. § 4130.3-1, and that permitted use "be based upon the amount of forage available"

43 C.F.R. § 4110.2-2(a), by not adjusting the levels of grazing use in light of the construction and expansions of the Burnt Creek riparian enclosure.

d. Violation of FLPMA’s nonimpairment mandate and the Interim Management Policy for WSAs, as adopted by the Challis RMP, including by failing to analyze the project’s impacts—individually and cumulatively—on the area’s wilderness characteristics, failing to provide written documentation as to why the proposed action will meet the nonimpairment standard, and authorizing and installing livestock projects in the Burnt Creek WSA that are not temporary, cause surface disturbance, and do not enhance wilderness characteristics.

63. The Burnt Creek Allotment EA, FONSI, and final decision constitute final agency action judicially reviewable by this Court pursuant to 5 U.S.C. § 706(2), and must be reversed and remanded as being arbitrary, capricious, an abuse of discretion, and contrary to law for the reasons identified above.

SECOND CLAIM FOR RELIEF:
NEPA VIOLATIONS

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

65. This claim challenges BLM’s violation of NEPA, 42 U.S.C. § 4321 *et seq.*, and NEPA’s implementing regulations, in failing to undertake an objective assessment of the environmental impacts of the grazing and range projects implemented in the decision. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

66. NEPA requires all federal agencies to undertake a thorough and public analysis of the environmental consequences of proposed federal actions. NEPA documents must analyze direct, indirect, and cumulative impacts 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.

67. Such NEPA violations include, but are not limited to:

- a. Violation of NEPA's requirement to assess adequately the environmental baseline and the direct, indirect, and cumulative impacts of livestock grazing and new range developments – together with effects from chronic trespass, climate change, vegetation treatments, wildfires, and other management actions on the Burnt Creek allotment and nearby allotments – upon the public lands and wildlife resources on the allotment, and particularly sagebrush obligate species such as sage-grouse, sagebrush habitats, and bull trout populations;
- b. Violation of NEPA's requirement to assess adequately the direct, indirect, and cumulative impacts of the authorized livestock projects on the wilderness characteristics of the Burnt Creek WSA;
- c. Violation of NEPA's requirement to disclose and analyze the impacts of installing a metal spring headbox in a spring in the WSA; and
- d. Violation of NEPA's requirement to consider an adequate range of alternatives to the proposed action, including by not considering eliminating removing livestock grazing on the allotment.

68. The Burnt Creek EA, FONSI, and final decision constitute final agency action judicially reviewable by this Court pursuant to 5 U.S.C. § 706(2), and must be reversed and remanded as being arbitrary, capricious, an abuse of discretion, and contrary to law for the reasons identified above.

PRAYER FOR RELIEF

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

- A. Order, adjudge, and declare that the challenged decision and associated EA and FONSI are arbitrary, capricious, and contrary to law;
- B. Reverse and set aside the challenged final decision, EA and FONSI;

C. Remand the challenged decision and order Defendants to issue a legally valid decision before authorizing further grazing or grazing-related projects on the allotment;

D. Enter such temporary, preliminary, and/or permanent injunctive relief as WWP may request hereafter, including removal and reclamation of range projects;

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 28th day of July, 2009.

Respectfully submitted,

/s/ Kristin F. Ruether

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Attorney for Plaintiff