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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, Plaintiff, vs. SALLY JEWELL[1], Secretary, DEPARTMENT OF THE INTERIOR, an agency of the United States, and BUREAU OF LAND MANAGEMENT, Defendants. J.R. SIMPLOT CO., *et. al*, Defendants-Intervenors.	)	Case No. 08-cv-435-BLW **PLAINTIFF'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACT IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

Greater Sage-Grouse

1. The greater sage-grouse (*Centrocercus urophasianus*) is a unique species of grouse found only in sagebrush-dominated habitats of western North America. Third

[1] S.M.R. Jewell has been substituted for Ken L. Salazar pursuant to Fed. R. Civ. P. 25(d).

Amended Complaint (Complaint), ¶ 32; Answer, ¶ 32. *See also* AR[2] 9427 (2004 Conservation Assessment). Greater sage-grouse were once widely distributed across the western U.S. and Canada, numbering in the millions. Complaint, ¶ 33; Answer, ¶ 33.

2. Sage-grouse typically inhabit large, interconnected expanses of sagebrush habitat, and thus are characterized as a landscape-scale species. AR 9463. Historically, the distribution of sage-grouse was closely tied to the distribution of the sagebrush biome, and greater sage-grouse once occupied parts of 12 states within the western United States and three Canadian provinces. AR 9364.

3. Sage-grouse are known to migrate between seasonal home ranges, with some research indicating that sage-grouse can move over 75 miles between seasonal habitats. AR 9430. *See also* Conservation Plan for the Greater Sage-Grouse in Idaho (2006) (Idaho Conservation Plan), at pp. 2-2, and Appendix D-5.[3] On an annual basis, migratory sage-grouse populations may occupy an area that exceeds 1,042 square miles. Idaho Conservation Plan, at p. 2-3. Many sage-grouse populations in Idaho are migratory. *Id.* at 2-2.

4. The abundance and distribution of Greater sage-grouse have declined dramatically in North America. AR 9821. The destruction, fragmentation, and

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[2] "AR" refers to the Administrative Record documents BLM filed during the first round of summary judgment motions, *see* Dkt. Nos. 132 (noting the filing of the AR), 144 (noting filing of supplements to AR). "SAR" or "Supplemental Administrative Record" refers to the Administrative Record documents BLM filed during this second round of summary judgment motions, *see* Dkt. No. 224 (noting the filing of the SAR).

[3] BLM mistakenly only included excerpts of this document in the Administrative Record, *see* AR 10946-58. The entire document can be viewed at http://fishandgame.idaho.gov/public/wildlife/sageGrouse/conservPlan.pdf (last viewed on August, 19, 2013).

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. AR 9533; 9614-655; Complaint, ¶ 36; Answer, ¶ 36.

5. 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. Complaint, ¶ 38; Answer, ¶ 38.

6. Livestock grazing is known to be deleterious to sage-grouse populations and habitat in many direct, indirect, and cumulative ways. Complaint, ¶ 39; Answer, ¶ 39; AR 9636-45. 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. *Id.* Grazing also reduces the residual grass height and forbs needed for successful sage-grouse nesting and reproduction; while livestock also batter and break sagebrush plants that are essential for cover, winter feeding, and other sage-grouse needs. *Id.* Livestock also cause destruction of riparian habitats, essential for sage-grouse survival and reproduction. *Id.* Livestock promote invasion of cheatgrass and other exotic weed species, thus contributing to fire frequency and severity, as noted above, which further reduces the extent and quality of sage-grouse habitats. *Id.* In addition, pipelines, fences, and water developments constructed to accommodate 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. *Id.*

7. The Idaho Conservation Plan identifies livestock as the fourth greatest threat to Greater sage-grouse populations across the state, after wildfire, infrastructure and invasive species. Idaho Conservation Plan at p. 4-3.

Great Basin Core Population of Greater Sage-Grouse

8. In 2004, leading scientific experts on Greater sage-grouse published the 2004 Conservation Assessment. AR 9335-9945. The Conservation Assessment identified the Great Basin "core" population of Greater sage-grouse as one of the five largest remaining core sage-grouse populations across the entire range of the species. AR 9592-94, Table 6.16.

9. The Great Basin core population is itself comprised of seven subpopulations of sage-grouse, including the North-Central Nevada/Southeast Oregon/Southwest Idaho (Southwest Idaho) subpopulation, and the Northeast Nevada/South-Central Idaho/Northwest Utah (South-Central Idaho) subpopulation. *Id*. *See also* AR 9595, Fig. 6.37 (subpopulations and populations of Greater sage-grouse).

10. Birds within the Southwest Idaho subpopulation of the Great Basin core population migrate within and between the public lands managed by BLM's Owyhee and Bruneau Field Offices in Idaho, and the Elko and Winnemucca Districts in Nevada. Complaint, ¶47; Answer, ¶ 47. In fact, according to the Conservation Assessment, the Southwest Idaho subpopulation is "loosely connected" with the South-Central Idaho subpopulation, which is directly to the east. AR 9592, 9595.

11. Greater sage-grouse in the Great Basin core population have seen similar declines in population abundance as the larger Greater sage-grouse population. AR 9883, 9914-20. For example, the 2004 Conservation Assessment concluded that every

major metric in sage-grouse population abundance has decreased since 1965-69 in the Great Basin core population, including (1) percent active leks, (2) average males per lek, (3) median males per lek, (4) average males per active lek, and (4) median males per active lek. AR 9883. Moreover, the population index for the Great Basin core population has decreased significantly between 1964 and 2004. *Id.* These same population and abundance trends apply to the seven subpopulations as well, as identified in detail in the Conservation Assessment. AR 9914-20.

Cassia Resource Management Plan Land Area

12. The Cassia Resource Management Plan (RMP) area encompasses 1,629,472 acres located in south-central Idaho, and is located mostly in Cassia County. SAR 6850. The area is bordered on the north by the Snake River; on the west by Twin Falls County and the South Hills Division of the Sawtooth National Forest; on the south by Nevada and Utah; and on the east by Power and Oneida Counties and the Sublett Division of the Sawtooth National Forest. *Id.* Of the 1,629,472 acres, 29 percent is public land administered by BLM, 44 percent is privately owned, 21 percent is administered by the U.S. Forest Service, five percent is state land, and one percent is administered by other federal agencies. *Id.* The Cassia RMP governs the management of the BLM lands, which are administered by the Burley Field Office.

13. Elevation varies from 4,100 feet in the valley bottoms where the topography is flat or gently rolling to 8,048 feet in the mountain areas which are characterized by steep slopes and narrow canyons. SAR 6850. Yearly precipitation varies from 9 inches in the valleys to 24 inches in the higher elevations.

14. Sagebrush dominates the vegetation of the lower elevations, with shadscale, greasewood, native perennial grasses, and rabbitbrush found throughout the area. SAR 7074. Juniper is also common. *Id.*

15. Cottonwood, willow and rose and other species are found in wetland/riparian zones along the Snake River and other perennial and ephemeral streams and lentic areas. *Id.* Riparian areas constitute only one percent of the area, totaling approximately 189 acres. SAR 7078. BLM considers these riparian areas "the most environmentally sensitive" areas within the entire field office. *Id.*

16. These lands provides habitat for mule deer, pronghorn antelope, and a number of imperiled wildlife species, including kit fox, river otter, lynx, bobcat, spotted bat, osprey, bald eagle, peregrine falcon among others. SAR 7080-85. This area also provides important habitat for the Greater sage-grouse. SAR 7082. BLM acknowledges that "[s]age grouse were once the most widely distributed and abundant game bird in the area. They are still scattered throughout, although their numbers have declined due to loss of habitat through conversion of sagebrush lands to cropland and/or grassland and the impact of livestock grazing on crucial nesting/brood-rearing areas associated with wetland/riparian sites." *Id.*

17. BLM has carved the public lands within the Cassia RMP area into approximately 152 separate allotments AR 7085. For management purposes, BLM created 14 separate Management Areas within the Cassia RMP area. SAR 7037-43 (describing management areas). Management Area 10 (MA 10) is called the Jim Sage MA, and it consists of 76,667 acres of the Jim Sage Mountains and surrounding area. SAR 7041 (MA profile). MA 10 contains five separate grazing allotments, including the Jim Sage (66,417 acres), Cassia Creek (3,902 acres), Almo-Womack (4,195 acres),

Chokecherry (737 acres) and the Keogh (1,046) allotments. SAR 7175 (appx. B)(listing allotments within MA 10); SAR 7192 (Appx. G) (same).

18. MA 10 contains approximately 5,730 acres of sage grouse winter habitat; 1,201 acres of nesting/brood-rearing habitat, and 58,894 acres of sage grouse general habitat. *Id*.

Cassia Resource Management Plan and Environmental Impact Statement

19. In September 1983, BLM issued a Draft Environmental Impact Statement and Draft Cassia Resource Management Plan (Draft EIS). SAR 6995-7214. In the Draft EIS, BLM documented the abysmal conditions of the public lands within the Burley Field Office. *Id*. For example, BLM concluded that fully 70% of all public lands were in fair to poor condition, with the remaining 30% in good to excellent condition. SAR 7101. BLM found that the trend in rangeland conditions was problematic, too, with only 16 percent in an upward (or improving) trend, and fully 81 percent in a static or downward trend. SAR 7101-02.

20. BLM found these same depauperate conditions across MA 10. In fact, BLM concluded only 2 percent was in excellent condition, with the remainder in poor (4%), fair (25%), or good (30%) condition. SAR 7198 (Appx. H) (under Alternative A). BLM similarly found that only 5,313 acres of the 76,297 acres comprising MA 10 (7%) were in an improving or upward trend, with 93 percent in a downward or static trend. SAR 7192 (Appx. G) (under Alternative A).

21. BLM attributed this poor condition and worsening trend of the public lands in part to the prevalence of livestock grazing. For example, BLM noted that livestock grazing affects three major soil parameters: soil compaction, erosion and productivity. SAR 7075. According to BLM, "soils in the RMP area have already been

affected by past [grazing] use. Intense grazing practices have affected density and decreased pore space, thereby increasing soil compaction and decreasing infiltration rates. Decreased infiltration rates result in increased runoff, which increases the potential for soil erosion." *Id.*

22. BLM further concluded that "[a]reas of heavy livestock use presently occur around existing water troughs, riparian areas, salt licks, valley flats, and shady areas. These areas have been heavily grazed, highly compacted and moderately eroded, which has resulted in soils with lower productivity. These areas of decreased vegetation and litter cover are also more susceptible to erosion and increased runoff." SAR 7076.

23. BLM reached similar conclusion regarding the adverse impacts of livestock grazing on riparian areas across the Cassia RMP area, which, as noted above, BLM considers the "most environmentally sensitive" areas. AR 7078. In the Draft EIS, BLM concluded that "livestock have had a pronounced adverse effect on much of the wetland/riparian zones through heavy utilization of vegetation, trampling of wet soils, and bacterial contamination of the water source." *Id.*

24. BLM found that the existing livestock grazing was adversely impacting sage grouse populations and habitat, too. In examining the current grazing scheme, BLM found that "[e]ffects on sage grouse deserve special attention since this species would be affected the most. Livestock grazing would not allow sage grouse habitat and populations to improve. A rapid removal of forbs by livestock on spring and summer ranges would have an adverse impact on juvenile sage grouse, especially those areas where forbs are scarce." SAR 7112.

25. In its Draft EIS, BLM identified a series of alternatives designed to improve the conditions of the public lands, and meet its legal obligation to manage the public lands under the principles of multiple use and sustained yield. SAR 7001.

26. Alternative C was BLM's preferred alternative, and it represented BLM's belief that the adverse impacts associated with continuing livestock grazing, vegetation treatments and timber extraction could be reduced by adopting certain terms and conditions and mitigation measures. SAR 7004-7006, 7053-57, 7064-67.

27. In Alternative C, BLM proposed to increase grazing by 7 percent over past actual use, and increase vegetation treatments to provide additional forage for livestock. SAR 7004. Despite this increased use, BLM claimed that "30 percent of rangeland in good to excellent condition would increase to 67 percent while the 16 percent in upward trend would improve to 66 percent." SAR 7004-05.

28. BLM also claimed that Alternative C would have a "positive" effect on wildlife, including by "improving" 24 percent of sage grouse habitat through increased forb production and better habitat dispersion. SAR 7005.

29. BLM maintained that these same improvements in ecological health would be seen across MA 10, too. For example, BLM found that implementation of Alternative C would "maintain or improve" 5,730 acres of sage grouse winter habitat, and 1,201 acres of sage grouse brood-rearing habitat. SAR 7055. In fact, BLM claimed that this alternative would "[i]mprove 51,978 acres of poor and fair condition rangeland to good." *Id*.

30. BLM similarly concluded that its preferred approach would improve range conditions dramatically in MA 10. *Compare* SAR 7103, Table 4-4 (under Alternative A) (showing current range conditions of 2 percent excellent, 30 percent good, 25 percent

fair and 43 percent poor), *with id*. (under Alternative C) (showing resulting range conditions of 38 percent excellent, 49 percent good, 0 percent fair and 13 percent poor).

31. BLM also concluded that implementation of Alternative C would dramatically alter the trends across MA 10, from seven percent increasing trend, 60 percent static trend, and 33 percent decreasing trend, *see* SAR 7104 (under Alternative A), to 90 percent increasing trend, and 10 percent static trend. *Id*. (under Alternative C). BLM projected similar improvements for each allotment within MA 10. SAR 7198.

32. Again, BLM based this expected improvement in wildlife habitat and range conditions on mandatory terms, conditions, guidelines and mitigation measures inherent in its management of the public lands. For example, BLM highlighted a series of mandatory measures designed to ensure that these improvements would be realized, including:

a. "Streams and wetlands will be managed to restore, protect, and enhance the quality and quantity of the aquatic habitat on public lands," SAR 7025

b. "Rangeland management grazing systems will be implemented to protect or improve riparian/wetland areas," *id*;

c. BLM will "[t]ake necessary measures to eliminate conflict or land uses that will jeopardize threatened, endangered, or sensitive species," SAR 7026;

d. "Where conflicts between wildlife and other land uses occur, conflicts will be resolved in favor of wildlife," *id*.; and

e. "Public lands will be managed to maintain or improve wildlife habitat," SAR 7033.

33. Sometime prior to January 1985, BLM issued the Final Cassia RMP Environmental Impact Statement. SAR 7215-7266. The Final EIS largely iterated

BLM's analysis in the Draft EIS, revised some mistakes in the Draft EIS, and responded to public comments on the Draft EIS. *Id.*

34. On January 24, 1985, BLM approved the Cassia Resource Management Plan. SAR 6845-6976. The RMP implements Alternative C from the Draft EIS and Final EIS, and adopted the mandatory measures, conditions, guidelines and other elements of Alternative C. *Id.*

35. In the approved RMP, BLM assigned each Management Area a so-called "multiple-use class." SAR 6858. BLM assigned MA 10 a "Moderate Use Class," which means that BLM allowed some consumptive uses "while maintaining or enhancing natural systems." SAR 6859. In other words, the Cassia RMP permits grazing, timber, recreation and other uses insofar as these used do not interfere with BLM's obligation to "maintain[] or enhance[]" sage grouse and other wildlife habitat, riparian areas, uplands, and other natural resources with the management area. *Id. See also* SAR 6946 (under the adopted approach, "[m]anagement attention would be directed toward improving rangeland conditions; expanding livestock grazing opportunities; increasing forage production for mule deer and antelope; maintaining or improving upland and non-game wildlife habitat; [and] providing a variety of recreation opportunities.").

36. Under the Cassia RMP, each allotment in MA 10 is classified as an "I" (shorthand for "improve") allotment, which means the allotments were in unsatisfactory condition or had significant resource conflicts with good potential for improvement. SAR 6927, 6945.

37. The Cassia RMP requires BLM to "[i]mprove 51,978 acres of poor and fair condition rangeland to good," "[m]aintain or improve . . . 5,730 acres of sage grouse winter habitat and 1,201 acres of sage grouse brood-rearing habitat." SAR 6886. The

RMP also requires BLM to "protect/improve" crucial sage-grouse habitat, including all strutting, brood-rearing, and winter use areas. SAR 6899.

38. BLM is also required to "[p]rotect meadow seeps and springs to provide for needed production of water, forbs, and insects within upland game ranges. SAR 6920.

Jim Sage Allotment

39. The Jim Sage allotment as currently organized is a result of the combining of six previously-separate allotments: Jim Sage Canyon, Elba, Red Rock, Chokecherry Canyon, Halogeton Flats, and Sheep Mountain allotments. SAR 2073. The Jim Sage allotment now contains over 66,000 acres, and is located due east of Elba and Alamo, Idaho, in the central portion of the Burley Field Office. SAR 772, 7198. Elevations range from 4,250 to over 8,000 feet, and historic vegetation communities in the allotment include mountain big sagebrush, Wyoming big sagebrush, black sagebrush, and low sagebrush, with an understory of native grasses and forbs, including Sandberg's bluegrass, Thurber's needlegrass, bottlebrush squirreltail, and bluebunch wheatgrass. SAR 772-74.

40. The Jim Sage allotment contains a 27,250-acre area known as the Jim Sage Natural Area, which is an area above 6,600 feet designated for remoteness and natural protection. SAR 773, 6970 (map). Included in the Jim Sage Natural Area is a 620-acre Research Natural Area/Area of Critical Environmental Concern. *Id.* *See also* SAR 2055 (Jim Sage Canyon ACEC inspection report), 2066 (discussing ACEC), 2080 (identifying ACEC), 2082, Table 1 (listing ACEC as "present").

41. Greater sage-grouse also use vast areas within the allotments, including for winter, breeding, and late brood-rearing habitat. *Id.* at 774-75. Historically, the

allotment contained eight leks, though some may now be inactive. *Id*. at 775. *See also* SAR 2153. Other imperiled species on the allotment include Bald eagle, ferruginous hawk, Brewer's sparrow, sage sparrow, loggerhead shrike, and other sagebrush dependent species. SAR 774.

42. According to the Idaho Department of Fish and Game's (IDFG) data on sage-grouse habitat, vast areas within the central and eastern portions of the Jim Sage allotment are considered "key" sage-grouse habitat, with other large portions of the allotment considered by IDFG as "perennial native and non-native grasslands with high restoration potential." *See* Declaration of Kenneth Cole, Exh. 1 (filed herewith) (Cole Decl.).

43. The Jim Sage allotment is divided into four use areas (with permitted grazing season of use in parentheses): West (5/1 to 6/15), East (4/1 to 6/10, and 9/16 to 11/22), North (6/1 to 9/8) and South (5/1 to 10/15). SAR 771, 825, 1938.

44. Average actual use on the allotment totals 3,517 AUMs, and 15 separate livestock permittees are authorized to graze within the allotment. SAR 7-8, 771, 779.

45. In 1999, when several grazing permits on the Jim Sage allotment were due to expire, BLM issued a four-page Environmental Assessment extending these permits for another 10 years. SAR 2079-2082. This EA authorized status quo livestock grazing on the Jim Sage allotment, even though BLM admitted that the public lands were suffering under the current grazing regime. *Id*. For example, BLM acknowledged that "[s]ensitive species riparian habitats are not in acceptable condition and need improved livestock grazing management to make significant progress toward [Properly Functioning Condition] and habitat management objectives. SAR 2085. *See also id*.

(noting that "[a]ny significant habitat deficiencies will be corrected in Standards and Guidelines assessment process.").

46. BLM also noted during its review that "applicable [Land Use Plan] objectives are not being met in the [Jim Sage] allotment." SAR 2093. BLM similarly noted that a host of "major new issues involving" the Jim Sage allotment – including riparian, sage grouse cover and understory condition, and stubble height – were not adequately addressed in the dated Cassia RMP and Final EIS. *Id.* In fact, the rangeland management specialist and wildlife biologist handling the review admitted that changes to the permit terms and conditions were "needed." SAR 2095, 2097.

47. Despite these warnings, BLM issued new grazing permits allowing status quo livestock grazing on the Jim Sage allotment. AR 2079-2097.

48. Four years later, in 2003, BLM issued its Jim Sage allotment Rangeland Health Evaluation. SAR 3, 771-827 (undated). This evaluation documented the same depauperate conditions BLM found on the allotment 20 years earlier in the 1983 Draft EIS, and BLM concluded that little had changed. SAR 771-827. For example, BLM found largely marginal sage-grouse habitat due to an overabundance of non-native vegetation, a lack of deep-rooted native grasses and a near absence of desirable forbs, especially in lower elevation areas. SAR 781-816.

49. BLM admitted that it failed to meet the Cassia RMP requirement to improve 46,672 acres of lands in fair and poor conditions to good condition. SAR 817. In fact, BLM found that since it adopted the Cassia RMP in 1985, it had improved only 3,000 acres of public lands. *Id.*

50. BLM similarly concluded that it failed to meet its RMP requirement to improve 5,730 acres of sage-grouse winter habitat and 1,201 acres of sage-grouse brood

rearing habitat. SAR 818. Instead, BLM found that "[s]age grouse winter habitat overall has decreased." *Id.* BLM also stated, "[i]n general, lower elevation sagebrush uplands, where sagebrush is still a component, due to their poor ecological conditions (poor habitat structure/diversity) are not providing adequate habitat for sage-grouse nesting or brood rearing." SAR 821.

51. BLM made similar findings regarding riparian areas and wetlands. SAR 819-820. Although the Cassia RMP required BLM to "restore, protect, and enhance the quality and quantity of the aquatic habitat on public lands," and "protect or improve riparian/wetland areas," BLM concluded that only three of 15 sites (20%) were functioning properly. SAR 7025 (Cassia RMP requirements); SAR 819-20. BLM concluded that "[r]iparian areas that are currently in less than proper functioning condition are in this condition as a result of influences associated with livestock management." SAR 820.

52. BLM had no difficulty meeting the Cassia RMP objectives regarding increasing grazing and building rangeland infrastructure, however. SAR 817. For instance, BLM permitted 3,517 AUMs of grazing on the Jim Sage allotment since adoption of the Cassia RMP, which is just 296 AUMs short of the RMP's "primary objective"; and the cause for any shortfall resulted from the conversion of AUMs from sheep to cattle and not any reduction in grazing. *Id.* BLM also had no difficulty completing the range developments – i.e., pasture fences, water developments, springs developments, troughs, etc. – designed to support continued livestock grazing on the Jim Sage allotment. *Id.*

53. On August 29, 2003, IDFG submitted comments on BLM's Rangeland Health evaluation. SAR 3275-77. IDFG recommended that BLM design a grazing

scheme that lowered livestock utilization in native habits, protected native grasses and forbs by eliminating grazing during the growing season, protected wetlands, and met the needs of sage-grouse populations. *Id.*

54. On November 19, 2003, BLM issued its formal Determination required under the Fundamentals of Rangeland Health. SAR 765-770. In it, BLM concluded that it was violating 6 of the 7 applicable rangeland health standards, including those for riparian areas and wetlands, stream channel/floodplains, native plant communities, seedings, water quality, and wildlife habitat for threatened, endangered and sensitive species. *Id*. *See also* SAR 3-4. BLM admitted that current livestock grazing practices were causing the violations of the standards for riparian areas and wetlands, stream channel/floodplain, water quality, and wildlife habitat. *Id*. at 765-770.

55. On December 23, 2002, the Idaho Department of Environmental Quality ("DEQ") submitted comments on BLM's Determination. SAR 3286. DEQ noted that "[a]fter visiting several springs, creeks, and canyons in the Jim Sage Allotment we agree with the BLM that grazing practices have played a large rol[e] in their degradation. Streambanks were trampled and bare of vegetation, riparian plants were either absent or heavily grazed and stream channels in many areas were severely entrenched." *Id.*

56. On November 17, 2004, BLM issued an eight-page environmental assessment proposing to reissue the grazing permits on the Jim Sage allotment. SAR 847-856. Despite the violations of the Cassia RMP and the Fundamentals of Rangeland Health, BLM proposed to reissue the permits "at the same AUM preference level, season of use, and with substantially the same terms and conditions in effect upon permit expiration." SAR 848.

57. On November 24, 2004, BLM issued a series of proposed decisions authorizing the reissuance of the permits at status quo levels on the Jim Sage allotment. SAR 857-910. On December 19 and December 25, 2004, Western Watersheds submitted detailed protests of the proposed decisions. SAR 911-982.[4] BLM never issued final grazing decisions or a Finding of No Significant Impact, or otherwise implemented the proposed decisions. *See* SAR 2 (noting that BLM choose to "refocus" away from finalizing these proposed decisions).

Cassia Creek Allotment

58. The Cassia Creek allotment totals 3,615 acres and is located immediately adjacent and north of the Jim Sage allotment. SAR 726, 728, 1938 (map). Large areas of the allotment were converted to an exotic grass seeding in the 1950s; though sagebrush and native species are returning, and sagebrush is found across the remaining area. SAR 726.

59. The allotment provides habitat for a host of imperiled wildlife species, including the Greater sage-grouse, ferruginous hawk, Swainson's hawk, golden eagle, California bighorn sheet, long-billed curlew and other wildlife. SAR 727. Sage-grouse have been observed in this allotment from September through March, and the allotment contains one lek. *Id*.

60. According to IDFG, nearly 2/3 of the allotment is considered "key" sage-grouse habitat, with the remaining portions considered "perennial native and non-native grasslands with high restoration potential." *See* Cole Decl., Exh. 2.

[4] It does not appear that BLM included Western Watersheds' protest as submitted, and instead included BLM's characterization of Western Watersheds' protest together with BLM's responses. SAR 912-982.

61. BLM has divided this allotment into three pastures, and the allotment is grazed between May 1-June 15, with a few AUMs designated for fall use. SAR 725. BLM permits 697 AUMs of active use. *Id*. *See also* SAR 1909 (1990 Cooperative Rangeland Management Agreement). Since 1996, the average actual use on this allotment has been 413 AUMs annually. *Id*. at 60[5]

62. In 2001, BLM employees began collecting rangeland health assessment data on this allotment, and this data shows that BLM failed to adhere to standardized collection and reporting methodologies. SAR 2514-2617. The information that BLM did collect and record showed that the allotment was providing unsuitable sage-grouse habitat. *See*, *e.g.*, SAR 2514, 2545, 2555, 2563. *See also* SAR 2513 (map showing monitoring locations).

63. BLM noted the return of sagebrush into historic non-native seedings. SAR 2597 (noting lack of seeded, crested wheatgrass ("AGCR"), and replacement by native grass ("pose") and sagebrush); SAR 2612 (same). In response, BLM suggested burning or poisoning the area to permit non-native crested wheatgrass to recover. SAR 2614. BLM warned that "if nothing [is] done, the site will be [a sagebrush site with native grass understory]" – *i.e.*, ideal sage-grouse habitat. *Id*.

64. In 2003, BLM compiled this information and issued a Cassia Creek Allotment Rangeland Health Assessment. SAR 725-43 (undated). *See also* SAR 3 (noting dates of assessment). BLM noted that utilization approximated 50 to 55% in the East Pasture, 41 to 55% in the West Pasture, and 61-73% in the Center Pasture. SAR 731-32.

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[5] Average actual use was derived by adding together actual use AUMs for each year from 1996 through 2007, and then dividing this total use by the number of years of data (n=12). SAR 60, Table 1.

65. BLM collected trend data at only one site in the allotment, which showed a significant decrease in non-native crested wheatgrass, an increase in shallow-rooted, native Sandberg bluegrass, and a "dramatic increase" in sagebrush canopy from 1987 to 2002. SAR 733.

66. BLM classified the West and Center pastures as suitable winter habitat for Greater sage-grouse, but found the East pasture was unsuitable. SAR 735-36. Overall, BLM concluded that "current sage-grouse nesting and late brood-rearing habitat in the Cassia Creek allotment is of low value due to low forb cover and diversity in all pastures and low big sagebrush canopy cover in the East Pasture." *Id.* at 738.

67. On May 23, 2003, BLM issued its formal Determination on the allotment, in which BLM concluded that the only standards that applied were Standard 1 (Watersheds), Standard 5 (Seedings), and Standard 8 (Sensitive Species). SAR 720-724. BLM found that Standards 1 and 8 were being met, but that excessive livestock grazing was causing violations of Standard 5. *Id.*

Chokecherry Allotment

68. The Chokecherry allotment is a small allotment in the center of the Jim Sage allotment, and it contains 1,057 acres of non-native seedings and native sagebrush vegetation. SAR 750, 1938 (map). Approximately 1.75 miles of Cottonwood Creek flows through the northern portion of the allotment, half of which is perennial. *Id.* at 750.

69. Several imperiled species occupy this allotment, including Greater sage-grouse, ferruginous hawk, Swainson's hawk, golden eagle, and others. *Id.*

70. BLM has divided the allotment into two grazing pastures, and BLM permits grazing in the late spring/early summer. SAR 749, 761-63 (maps), 1932. In 1987, BLM entered into a Cooperative Rangeland Management Agreement with the two

permittees on the allotment, allowing for the combined use of 307 AUMs by 90 head of cows annually. SAR 1932-33. Actual use has been a fraction of permitted use, however. SAR 754.

71. According to IDFG, about one-half of the Chokecherry allotment contains "key" sage-grouse habitat, with the other half considered as "perennial native and non-native grasslands with high restoration potential." *See* Cole Decl., Exh. 3.

72. In 2003, BLM issued a Rangeland Health Assessment for the Chokecherry allotment. SAR 3, 749-64 (undated). The assessment showed "heavy" utilization on some areas within the allotment, with most areas experiencing moderate or light use. *Id*. at 755. BLM also documented degraded conditions along Cottonwood Creek, with canopy cover and all vegetation being "low"; undesirable species common; and bare ground, streambank alteration and lack of deep binding rootmass "common." SAR 756-57.

73. BLM conducted two sage-grouse habitat assessments on the allotment. SAR 757. BLM found one upland site unsuitable for nesting, late brood-rearing, and winter habitat; and one riparian site marginal due to the presence of xeric vegetation along the riparian greenline and limited distribution of forbs. *Id*. at 757-58.

74. BLM also concluded that it was overstocking the allotment, and that the carrying capacity of the Chokecherry allotment was far below permitted levels. SAR 758 (noting that "there does not appear to be 169 AUMs available on the Chokecherry allotment)."

75. On May 23, 2003, BLM issued its Rangeland Health Determination, in which BLM concluded that the allotment was failing to meeting the minimum rangeland health standards for four of the six applicable standards: Riparian Areas and Wetlands

(Standard 2), Stream Channel/Floodplains (Standard 3), Water Quality (Standard 7), and Threatened and Endangered Species (Standard 8). SAR 744-48. Current livestock grazing caused three of these violations, with heavy utilization, bare ground, bank trampling, and lack of native vegetation as significant factors. *Id*.

Almo Womack Allotment

76. The Almo Womack allotment runs north to south, and is immediately west of the Jim Sage allotment. SAR 1938 (map). The allotment contains 4,194 acres of public lands, and it consists of 3,032 acres of non-native seedings and 1,163 acres of native range. *Id*. at 708. Native vegetation has begun to repopulate these old seedings, however, with the most common habitat on the allotment being a mosaic of sagebrush, followed by crested wheatgrass seedings and dense sagebrush canopy cover. *Id*. at 710. *See also id*. at 712-713 (identifying native vegetation components of current vegetation community, including sagebrush, bluebunch wheatgrass, Sandberg's bluegrass, and a series of native flox).

77. Several imperiled species occupy this allotment, including Greater sage-grouse, ferruginous hawk, Swainson's hawk, bald eagle and golden eagle. SAR 709. Although the nearest sage-grouse leks are approximately 10 miles away, BLM has documented observations of sage-grouse across the allotment. *Id*. at 710.

78. BLM has carved this allotment into three pastures, and permits 769 AUMs of livestock grazing between May 1-June 15 and October 16 to November 15. SAR 707, 717 (map). *See also* SAR 1862-64 (Cooperative Rangeland Management Agreement).

79. According to IDFG, the southern portion of the North Pasture, nearly the entire South Pasture, and large areas of the Center Pasture are considered "key" sage-

grouse habitat, with other large portions of the allotment considered "perennial native and non-native grasslands with high restoration potential." *See* Cole Decl., Exh. 4.

80. In 2002, BLM issued a Rangeland Health Assessment on the Almo Womack allotment. SAR 3, 707-719. The assessment found that the allotment provided unsuitable sage-grouse habitat across all three pastures, including within IDFG key sage-grouse habitat. *Id*. at 712-15. BLM concluded this was because they were seeded to non-native vegetation in the 1950s, but BLM ignored its own data showing that these 60-year-old seedings were being repopulated with sagebrush and other native vegetation. *Id*. BLM failed to separately evaluate whether the 1,163 acres of native range provided suitable sage-grouse habitat. *Id*.

81. On December 19, 2002, BLM issued its Rangeland Health Determination for the Almo Womack allotment. SAR 703-06. BLM claimed that five of the eight standards did not apply, including the standard for native plant communities, but BLM again failed to consider the 1,163 acres of native range. *Id*. *See also* SAR 708 (noting 1,163 acres of native range within allotment).

82. BLM's Determination found that it was violating Standard 8 (Threatened and Endangered Species habitat), but BLM did not attribute this violation to current livestock grazing. SAR 705. Instead, BLM implied that the seedings caused these violations, but again, failed to consider the condition of the native range. *Id*.

Current Decisionmaking Process

83. In early 2005, after abandoning its prior EA and proposed grazing decisions on the Jim Sage allotment, BLM resumed another process to reauthorize livestock grazing on the Jim Sage, Cassia Creek, Chokecherry and Almo Womack allotments. SAR 983-84 (meeting notes on permit renewal). From the outset, the so-

called Interdisciplinary Team (or "ID Team") noted that "all alternatives should be similar and reflect the overall grazing pattern" for the allotments. SAR 989. In fact, the ID Team noted that the "P[roposed] A[ction]" will be "what the permittees requested." SAR 988. *See also* SAR 989 ("PA→What the permittee proposed").

84. After meeting only six times over three years, on November 6, 2007, BLM issued a draft EA. SAR 1142-1217. *See also* SAR 983-84 (2/15/05 meeting notes), 985-86 (1/4/06 meeting notes), 987-89 (2/18/06 meeting notes), 1005-06 (4/2/07 meeting notes), 1030-35 (5/24/07 meeting notes), 1056 (7/25/07 meeting notes). On November 16, 2007, BLM issued proposed grazing decisions proposing to authorize status quo livestock grazing on these allotments. SAR 1317-1604.

85. Western Watersheds submitted detailed comments and protests on the draft EA and proposed decisions. SAR 1613-1674. For example, Western Watersheds protested BLM's failure to assess the cumulative impacts of cattle grazing and vegetation manipulation projects carried out throughout the regions, including within the Jim Sage hills area. SAR 1167. Western Watersheds similarly protested BLM's refusal to adopt specific, enforceable terms and conditions on livestock grazing, and, instead, identifying only vague "Resource Management Objectives" and "Annual Indicator Criteria." *Id.* IDFG and Western Watersheds also submitted comments asking BLM to explore a wider range of alternatives, including alternatives designed to provide greater protections for sage-grouse. SAR 995-998. *See also* SAR 3275-3277 (earlier IDFG comments).

86. On March 6, 2008, BLM issued its final EA, final grazing decisions, and Findings of No Significant Impact authorizing status quo permit renewal on the Jim Sage allotments. SAR 1-86 (EA), SAR 89-648 (final grazing decisions and Findings of

No Significant Impact). The EA looked at three alternatives, all of which were nearly identical to the current situation and to one another, in terms of AUMs, seasons-of-use, and current grazing patterns. *Id.* at 7-17 (describing Proposed Action, Alt. 1 and Alt. 2).

87. For example, under Alternative 2 (the alternative ultimately adopted by BLM in the final grazing decisions), "permitted AUMs . . . would remain the same as described in the proposed action [alternative]." *Id.* at 14. Permitted AUMs in the proposed action alternative "reflect what is currently allocated and will not change." *Id.* at 8, Table 3. And, under Alternative 1, "[p]ermits would be issued at the current AUM level." *Id.* at 13. Thus, all three alternatives proposed identical AUM levels.

88. All three alternatives also considered nearly identical season-of-use for grazing. For example, the proposed action alternative proposed an identical season-of-use as under the prior grazing scheme for 17 of 20 permittees allowed to graze these allotments, and only minor adjustments for the remaining three permittees. SAR 7, Table 3. Under Alternative 1, BLM proposed to continue "current season of use for each allotment as described in the proposed action (see Table 3)." *Id.* at 13. And, Alternative 2 similarly proposes that "management in these areas [i.e., the now combined Jim Sage allotment with Cassia Creek, Almo Womack and Chokecherry management areas] would continue as described in the proposed action alternative." *Id.* at 15.

89. BLM did not consider a "no grazing alternative" because, according to BLM, its implementation would not meet the underling purpose and need for the action to renew/modify grazing permits authorizing livestock grazing. SAR 18.

90. BLM also did not consider any alternative that reduced livestock grazing across the four allotments, or otherwise increased protections for sage-grouse habitat, riparian areas, and other important resources, even though BLM's own Determinations

documented the adverse impacts that livestock grazing was causing to the natural resources on these allotments. *See, e.g.*, SAR 744-48 (Chokecherry Determination showing current grazing causing violations of standards for riparian areas and wetlands, stream channel/floodplains, water quality, and threatened and endangered species habitat); 765-770 (Jim Sage Determination showing grazing causing violations of standards for riparian areas and wetlands, stream channel/floodplains, water quality, and threatened and endangered species habitat).

91. BLM also did not examine the impacts of its proposed grazing schemes on the Jim Sage Research Natural Area/Area of Critical Environmental Concern. SAR 20. Instead, BLM claimed – without analysis or discussion – that the ACEC is "not affected by the proposed action or alternatives and will receive no further consideration." *Id.*

92. In its review of the direct and indirect impacts of status-quo livestock grazing on Greater sage-grouse habitat and population, BLM concluded that "[u]nder the proposed action overall habitat would continue to improve." SAR 34. BLM never examined the ecological impacts of permitting livestock grazing within "key sage-grouse habitat" during the critical spring season-of-use across the four allotments, however. *Id.* at 34-37.

93. Nor did BLM examine the impacts of permitting livestock grazing in important late brood-rearing habitat (i.e., upland seeps, springs and wet meadows) during the same timeframe these areas are used by sage grouse. *Id.* Indeed, in its examination of the impacts of its proposed grazing scheme on riparian areas, BLM never even mentions sage-grouse late brood-rearing issues. *Id.*

94. For its cumulative impacts analysis, BLM adopted a cumulative impacts area it called the Raft River Cumulative Effects Analysis Area (RRCEAU). SAR 43. *See*

also SAR 1234 (map); Cole Decl., Exh. 6 (map). According to BLM, it adopted this cumulative impacts area based on "shared watershed boundaries and common resources," including sage-grouse habitat, pygmy rabbit habitat, migration corridors for mule deer, and other resources. SAR 43. Despite the admitted connectivity in sage-grouse populations and habitat throughout the RRCEAU, BLM never examined the cumulative impacts of its grazing decisions on the Jim Sage, Cassia Creek, Chokecherry and Almo-Womack allotments, together with other past, present and reasonably foreseeable grazing decisions in the RRCEAU. *Id*. at 47-48. The EA contains no discussions of the conditions of sage-grouse breeding, late brood-rearing, or winter habitat in these surrounding allotments, and the EA provides no quantitative information on current or future grazing decisions, vegetation treatment decisions, sage-grouse leks, lek counts or sage-grouse populations within the RRCEAU. *Id*.

95. In its Cumulative Impacts analysis, BLM never took a comprehensive look at the impacts of Alternative 2 – together with the impacts of other past, present and future grazing decisions, vegetation manipulation projects and other actions within the RRCEAU – on the population and habitat of Greater sage-grouse. SAR 43-50.

96. On April 3, 2008, Western Watersheds appealed and petitioned to stay the new grazing decisions. SAR 1699-1737. Western Watersheds claimed that the EA, FONSI and new grazing decisions violated NEPA because BLM failed to take a hard look at the direct, indirect and cumulative impacts of the decisions, failed to examine an adequate range of alternatives, and inappropriately relied on an EA instead of preparing an EIS. *Id*. Western Watersheds also argued that these decisions violated the Federal Land Policy and Management Act ("FLPMA") and the Cassia RMP, including by failing

to adhere to measures designed to protect and preserve wildlife habitat, riparian areas and wildlife habitat. *Id.*

97. On May 22, 2008, the Office of Hearings and Appeals denied Western Watersheds' petition for stay. SAR 1798-1814. The Office of Hearings and Appeals dismissed Western Watersheds appeal by order dated August 5, 2008. *Id.* at 1815-16.

Grazing Rider Permits

98. Since 2005, the Burley Field Office of the BLM has issued 225 grazing permits across 200 grazing allotments that permit grazing of 142,704 Animal Unit Months (AUMs). Cole Decl., ¶ 23. *See also* Cole Decl., Exhs. 5, 6 (maps of allotments in the Burley Field Office subject to grazing rider permits). Of these 225 grazing permits, BLM issued 165 under the auspices of Section 325 of P.L. 108-108 (grazing rider), totaling 118,230 AUMs. *Id.* at ¶ 25. Accordingly, 73% of all grazing permits issued by the Burley Field Office since 2005 have been issued under the auspices of the grazing rider; and fully 83% of the total AUMs authorized on the Burley Field Office since 2005 have been permitted under the grazing rider. *Id.*

99. Moreover, these 225 new grazing permits authorize grazing on 200 separate grazing allotments. Of these 200 grazing allotments with new permits, 168 allotments (excluding the Jim Sage allotment) have grazing authorized under a Section 325 grazing rider permit, and 31 allotments (excluding the Jim Sage allotment) have grazing authorized under other processes. Cole Decl., ¶ 26. Thus, looked at another way, BLM has authorized grazing on 84% of the allotments in the Burley Field Office via a Section 325 grazing rider. *Id.*

100. One of the permittees on the Highway Common allotment is Robert D. Bronson, DBA Bronson Sheep ("Bronson"). SAR 7526. On April 28, 1998, Bronson

received a permit with authorization number 112031, which permitted Bronson to graze sheep and cattle on this allotment. *Id*. at 7522-23. This grazing permit was for a period of 12/29/97-2/28/07. *Id*. On September 19, 2006, BLM received an application from Bronson for a new 10-year grazing permit. *Id*. at 7524-25. BLM issued Bronson a new grazing permit on November 8, 2006, and the permit was for a period of 10-years. *Id*. at 7526-28. Prior to issuing a new permit, BLM determined that Bronson met the mandatory qualifications for holding a grazing permit under 43 C.F.R. § 4110.1. *Id*. at 7526. Before issuing the grazing permit, BLM (1) prepared no NEPA analysis or review, (2) never alerted or consulted with the public concerning the application for a grazing permit, (3) never insured that the new grazing permit complied with the Cassia RMP, the Fundamentals of Rangeland Health, section 402 of FLPMA, 43 U.S.C. § 1752, and other applicable laws and regulations. *Id*. Instead, BLM invoked Section 325 of P.L. 108-108 (aka the so-called "grazing rider") to justify its issuance of this new grazing permit. *Id*.

101. The terms and conditions of Bronson's new grazing permit differ from the expiring permit. *Compare* SAR 7522-23, *with* 7526-28. For example, the new permit increased AUMs by nearly 10% in one area (i.e., increased grazing from 197 AUMs to 224 AUMs), extended the season of use from 4/01-4/22 to 4/01-5/04 in one area, eliminated or weakened the livestock use buffer around important riparian areas, otherwise modified the terms and conditions governing fence and rangeland projects, and added a series of Standard Terms and Conditions that were not included in the prior permit. *Id*.

102. One of the permittees on the Western Stockgrowers is Raymond and Esther Butler ("Butler"). SAR 7526. In May 1994, Butler received a permit with

authorization number 112137, which permitted Butler to graze cattle on this allotment and others. *Id*. at 7533-34. This grazing permit was for a period of 3/1/94-2/28/1995. *Id*. at 7522-23. Butler received subsequent grazing permits allowing grazing on these same allotments, the last of which expired on February 28, 2006. *Id* at 7535-38. On December 1, 2005, BLM received from Butler a signed grazing permit, which BLM approved on December 19, 2005. *Id*. at 7539-41. This grazing permit was for a period of 3/1/2006-2/28/1015. *Id*. Prior to issuing this new permit, BLM determined that Butler met the mandatory qualifications for holding a grazing permit under 43 C.F.R. § 4110.1. *Id*. at 7539. Before issuing the grazing permit, BLM (1) prepared no NEPA analysis or review, (2) never alerted or consulted with the public concerning the application for a grazing permit, (3) never insured that the new grazing permit complied with the Cassia RMP, the Fundamentals of Rangeland Health, section 402 of FLPMA, 43 U.S.C. § 1752, and other applicable laws and regulations. *Id*. Instead, BLM invoked Section 325 of P.L. 108-108 (aka the so-called "grazing rider") to justify its issuance of this new grazing permit. *Id*.

103. The terms and conditions of Butler's new grazing permit differ from Butler's expiring permit. *Compare* SAR 7537-38, *with* 7539-41. For example, the new permit increased AUMs from 191 to 214 AUMs (12%), extended the season of use from 4/26-5/20 to 4/23-5/20, eliminated or weakened the livestock use buffer around important riparian areas, otherwise modified the terms and conditions governing fence and rangeland projects, and added a series of Standard Terms and Conditions that were not included under the prior permit. *Id*.

104. The permittee on the Land Creek allotment is Karl Clayville ("Clayville"). SAR 7542. On October 27, 1999, Clayville received a permit with authorization number

112019, which permitted Clayville to graze cattle on this allotment. *Id*. at 7542-43. This grazing permit was for a period of 10/21/1999-2/28/2009. *Id*. On March 19, 2008, BLM received an application from Clayville for a new 10-year grazing permit. *Id*. at 7544-45. On April 7, 2008, BLM issued Clayville a new 10-year grazing permit. *Id*. at 7547-49. Prior to issuing a new permit, BLM determined that Clayville met the mandatory qualifications for holding a grazing permit under 43 C.F.R. § 4110.1. *Id*. at 7547. Before issuing the grazing permit, BLM (1) prepared no NEPA analysis or review, (2) never alerted or consulted with the public concerning the application for a grazing permit, (3) never insured that the new grazing permit complied with the Cassia RMP, the Fundamentals of Rangeland Health, section 402 of FLPMA, 43 U.S.C. § 1752, and other applicable laws and regulations. *Id*. Instead, BLM invoked Section 325 of P.L. 108-108 (aka the so-called "grazing rider") to justify its issuance of this new grazing permit. *Id*.

105. The terms and conditions of Clayville's new grazing permit differ from his expiring permit in that BLM eliminated or weakened the livestock use buffer around important riparian areas and added a series of Standard Terms and Conditions that were not included under the prior permit. *Compare* SAR 7542 *with* SAR 7547.

106. Holmgren Land and Livestock Company ("Holmgren) is a permittee on the Strevell allotment. SAR 7554-56. On September 15, 1999, Holmgren received a 10-year grazing permit to graze the Strevell allotment. *Id*. at 7550-51. On April 10, 2008, BLM received an application from Holmgren for a new 10-year grazing permit. *Id*. at 7552-53. On June 4, 2008, BLM issued Holmgren a new 10-year grazing permit. *Id*. at 7554-56. Prior to issuing a new permit, BLM determined that Holmgren met the mandatory qualifications for holding a grazing permit under 43 C.F.R. § 4110.1. *Id*. at

7554. Before issuing the grazing permit, BLM (1) prepared no NEPA analysis or review, (2) never alerted or consulted with the public concerning the application for a grazing permit, (3) never insured that the new grazing permit complied with the Cassia RMP, the Fundamentals of Rangeland Health, section 402 of FLPMA, 43 U.S.C. § 1752, and other applicable laws and regulations. *Id*. Instead, BLM invoked Section 325 of P.L. 108-108 (aka the so-called "grazing rider") to justify its issuance of this new grazing permit. *Id*.

107. The terms and conditions of Holmgren's new grazing permit differ from Holmgren's expiring permit. *Compare* SAR 7550-51, *with* 7554-56. For example, the new permit eliminated or weakened the livestock use buffer around important riparian areas, modified the terms and conditions governing fence and rangeland projects, and added a series of Standard Terms and Conditions that were not included under the prior permit. *Id*.

108. Point Ranch, Inc. ("Point Ranch") is a permittee on the Point Ranch allotment. SAR 7557-58, 7574-76. On January 10, 2001, Point Ranch received a 10-year grazing permit to graze the Point Ranch allotment. *Id*. at 7557-58. On September 26, 2006, BLM received an application from Point Ranch for a new 10-year grazing permit. *Id*. at 7572-73. On November 9, 2006, BLM issued Point Ranch a new 10-year grazing permit. *Id*. at 7574-76. Prior to issuing a new permit, BLM determined that Holmgren met the mandatory qualifications for holding a grazing permit under 43 C.F.R. § 4110.1. *Id*. at 7574. Before issuing the grazing permit, BLM (1) prepared no NEPA analysis or review, (2) never alerted or consulted with the public concerning the application for a grazing permit, (3) never insured that the new grazing permit complied with the Cassia RMP, the Fundamentals of Rangeland Health, section 402 of FLPMA, 43 U.S.C. § 1752,

and other applicable laws and regulations. *Id*. Instead, BLM invoked Section 325 of P.L. 108-108 (aka the so-called "grazing rider") to justify its issuance of this new grazing permit. *Id*. at 7574.

109. The terms and conditions of Point Ranch's new grazing permit differ from its expiring permit. *Compare* SAR 7557-58, *with* 7574-76. For example, the new permit eliminated or weakened the livestock use buffer around important riparian areas and added a series of Standard Terms and Conditions that were not included under the prior permit. *Id*.

110. Lynn Schodde ("Schodde") is a permittee on the Highway Common allotment. SAR 7596-97, 7601-02. On September 13, 1999, Schodde received a 10-year grazing permit to graze the Highway Common allotment. *Id*. at 7596-97. On March 27, 2008, BLM received an application from Schodde for a new 10-year grazing permit. *Id*. at 7598-600. On May 15, 2008, BLM issued Schodde a new 10-year grazing permit. *Id*. at 7601-03. Prior to issuing a new permit, BLM determined that Schodde met the mandatory qualifications for holding a grazing permit under 43 C.F.R. § 4110.1. *Id*. at 7601. Before issuing the grazing permit, BLM (1) prepared no NEPA analysis or review, (2) never alerted or consulted with the public concerning the application for a grazing permit, (3) never insured that the new grazing permit complied with the Cassia RMP, the Fundamentals of Rangeland Health, section 402 of FLPMA, 43 U.S.C. § 1752, and other applicable laws and regulations. *Id*. Instead, BLM invoked Section 325 of P.L. 108-108 (aka the so-called "grazing rider") to justify its issuance of this new grazing permit. *Id*. at 7601.

111. The terms and conditions of Schodde's new grazing permit differ from its expiring permit. *Compare* SAR 7596-97, *with* 7601-03. For example, the new permit

eliminated or weakened the livestock use buffer around important riparian areas, modified the terms covering fences and other range projects, and added a series of Standard Terms and Conditions that were not included under the prior permit. *Id.*

112. Kevin Tracy ("Tracy") is a permittee on the Point Springs and Meadow Creek allotments. SAR 7604-05, 7609-11. On September 28, 1999, Tracy received a 10-year grazing permit to graze the Point Springs and Meadow Creek allotments. *Id.* at 7604-05. On March 21, 2008, BLM received an application from Tracy for a new 10-year grazing permit. *Id.* at 7606-08. On May 2, 2008, BLM issued Tracy a new 10-year grazing permit. *Id.* at 7609-11. Prior to issuing a new permit, BLM determined that Tracy met the mandatory qualifications for holding a grazing permit under 43 C.F.R. § 4110.1. *Id.* at 7609. Before issuing the grazing permit, BLM (1) prepared no NEPA analysis or review, (2) never alerted or consulted with the public concerning the application for a grazing permit, (3) never insured that the new grazing permit complied with the Cassia RMP, the Fundamentals of Rangeland Health, section 402 of FLPMA, 43 U.S.C. § 1752, and other applicable laws and regulations. *Id.* Instead, BLM invoked Section 325 of P.L. 108-108 (aka the so-called "grazing rider") to justify its issuance of this new grazing permit. *Id.* at 7609-10.

113. The terms and conditions of Tracy's new grazing permit differ from its expiring permit, including by eliminating or weakening the livestock use buffer around important riparian areas, and adding a series of Standard Terms and Conditions that were not included under the prior permit. *Compare* SAR 7604-05 *with* 7609-11.

114. W.T. Williams, Inc. ("Williams Inc.") is a permittee on the Western Stockgrowers, Squaw Joe and other allotments. SAR 7612-7613, 7619-21. On May 7, 1996, Williams Inc. received a 10-year grazing permit to graze the Western Stockgrowers

and other allotments. *Id.* at 7612-13. On October 14, 2005, BLM issued Williams Inc. a new 10-year grazing permit, running from March 1, 2006 through February 28, 2015. *Id.* at 7619-21. Prior to issuing a new permit, BLM determined that Williams Inc. met the mandatory qualifications for holding a grazing permit under 43 C.F.R. § 4110.1. *Id.* at 7619. Before issuing the grazing permit, BLM (1) prepared no NEPA analysis or review, (2) never alerted or consulted with the public concerning the application for a grazing permit, (3) never insured that the new grazing permit complied with the Cassia RMP, the Fundamentals of Rangeland Health, section 402 of FLPMA, 43 U.S.C. § 1752, and other applicable laws and regulations. *Id.* Instead, BLM invoked Section 325 of P.L. 108-108 (aka the so-called "grazing rider") to justify its issuance of this new grazing permit. *Id.* at 7620.

115. The terms and conditions of Williams Inc.'s new grazing permit differ from its expiring permit, including by increasing the number of livestock permitted on the Western Stockgrowers allotment from 300 to 333 (a 10% increase), changing the AUMs and season of use on this same allotment, eliminating or weakening the livestock use buffer around important riparian areas, and adding a series of Standard Terms and Conditions that were not included under the prior permit. *Compare* SAR 7612-13 *with* 7619-21.

116. W.J. Williams and Thomas Williams ("Williams") are permittees on the Western Stockgrowers and Hub Butte-Western Stockgrowers allotments. SAR 7622-23, 7627-29. On March 11, 2005, BLM received an application for a new grazing permit from Williams. *Id.* at 7624-26. On August 23, 2005, Williams received a 10-year grazing permit to graze the Western Stockgrowers and other allotments, running from March 1, 2006 through February 28, 2015. *Id.* at 7627-29. Prior to issuing a new

permit, BLM determined that Williams met the mandatory qualifications for holding a grazing permit under 43 C.F.R. § 4110.1. *Id*. at 7627. Before issuing the grazing permit, BLM (1) prepared no NEPA analysis or review, (2) never alerted or consulted with the public concerning the application for a grazing permit, (3) never insured that the new grazing permit complied with the Cassia RMP, the Fundamentals of Rangeland Health, section 402 of FLPMA, 43 U.S.C. § 1752, and other applicable laws and regulations. *Id*. Instead, BLM invoked Section 325 of P.L. 108-108 (aka the so-called "grazing rider") to justify its issuance of this new grazing permit. *Id*. at 7627-28.

117. The terms and conditions of Williams' new grazing permit differ from its expiring permit, including by eliminating or weakening the livestock use buffer around important riparian areas, and adding a series of Standard Terms and Conditions that were not included under the prior permit. *Compare* SAR 7622-23 *with* 7627-29.

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Respectfully submitted,

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