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Attorneys for Plaintiff

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

WESTERN WATERSHEDS PROJECT	)	
	)	No. 08-cv-516-BLW
Plaintiff,	)	
v.	)	<b>AMENDED COMPLAINT</b>
	)	
DIRK KEMPTHORNE, Secretary, and	)	
U.S. DEPARTMENT OF INTERIOR,	)	
	)	
<u>Defendants.</u>	)	

**INTRODUCTION**

1. Plaintiff WESTERN WATERSHEDS PROJECT brings this action to challenge Defendants’ recent decisions approving Resource Management Plans (RMPs) for Bureau of Land Management (BLM) public lands across the range of the greater sage-grouse in Idaho and other states, which violate the statutory mandates of the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and other requirements of law.

2. Defendants have recently adopted RMPs covering more than 25 million acres of current and historic sage-grouse habitat, which will determine long-term management of BLM lands with key sage-grouse populations. These include the Upper Salmon “core” population in Idaho; the Great Basin “core” population in Idaho, Nevada, and northeastern California; and the Wyoming Basin “core” population in southeastern Idaho, northern Utah and Colorado, and most of Wyoming. The challenged RMPs also affect smaller, more isolated sage-grouse populations in Utah and Montana.

3. Preserving these populations across the sage-grouse range is essential to arresting the decline of sage-grouse toward extinction and Endangered Species Act listing; and doing so requires protecting remaining sagebrush habitats plus restoring degraded habitats on these BLM lands. Developing the new RMPs to replace BLM’s badly-outdated existing plans (developed mostly in the early 1980’s) offered Defendants a unique opportunity to thoroughly analyze management options across the sagebrush biome, and chart a course toward a sustainable future that could achieve these goals.

4. Yet continuing the long pattern of unlawful conduct seen under the current Bush Administration with respect to environmental and natural resource decision-making, Defendants refused to seize that opportunity. Instead, they made long-term management decisions that favor livestock and other industries at the expense of conserving and restoring the increasingly fragmented sagebrush-steppe ecosystem. In doing so, Defendants violated their statutory duties under NEPA and FLPMA.

5. In particular, even though BLM adopted a National Sage-Grouse Habitat Conservation Strategy in 2004 as part of an avowed effort to ensure that sage-grouse populations and habitats are conserved and recovered across the sage-grouse range, the

challenged RMPs do not undertake the analysis or management measures required by that Strategy. The challenged RMPs instead approve continued harmful livestock grazing as well as destructive vegetation treatments, widespread energy development, and other degradation across tens of millions of acres of sage-grouse habitats, thus ensuring continued decline of sage-grouse populations, without ever acknowledging these facts.

6. Defendants also adopted a consistent pattern of refusing to take a “hard look” at the adverse environmental effects of livestock grazing, particularly direct, indirect, and cumulative harms to sage-grouse populations and habitats. They further violated NEPA by refusing to consider real alternatives to existing grazing regimes, or alternatives that would maximize conservation of sagebrush habitats, as expressly required by the National Sage-Grouse Habitat Conservation Strategy.

7. These NEPA violations are compounded by Defendants’ refusal to examine the cumulative adverse impacts that global climate change threatens for sage-grouse and their habitats under the long-term management plans challenged here. As the U.N. Inter-Governmental Panel on Climate Change and other leading scientists have reported, this region of the West will generally face hotter and drier conditions in coming decades, causing more extensive fires, weed invasions, and loss of native habitats – all of which will compound the harms that livestock grazing and other management practices authorized under the challenged RMPs will cause for sage-grouse and other imperiled species and their habitats.

8. Despite being well aware of these threats, Defendants refused to examine these interrelated and cumulative impacts in their NEPA analyses; and refused to adopt the management practices – including both active and passive restoration of native

sagebrush habitats – which are urgently needed to conserve sagebrush habitats and ensure that sage-grouse and other sagebrush-obligate species will be able to survive on the affected public lands into the future with these climatic changes underway.

9. Accordingly, Plaintiff seeks declaratory and/or injunctive relief to reverse the challenged RMPs and their associated NEPA documents; and to require Defendants to conduct valid NEPA processes and to adopt valid land use plans for the federal public lands at issue here.

### **JURISDICTION AND VENUE**

10. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Federal Land Policy and Management Act, 43 U.S.C. §§ 1301 et seq. (“FLPMA”), the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (“NEPA”); other federal land laws and the Presidential Proclamation identified below; the Administrative Procedure Act, 5 U.S.C. § 701 et seq. (“APA”); the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; and the Equal Access to Justice Act, 28 U.S.C. § 2412 et seq. (“EAJA”).

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

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Plaintiff Western Watersheds Project resides in this district; a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district; and Defendants have offices and manage public lands at issue within this district.

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

**PARTIES**

14. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) is a regional, membership, not-for-profit conservation organization, dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP has its headquarters at the Greenfire Preserve in Custer County, Idaho; and is supported by more than 1,400 members located throughout Idaho and the United States.

15. WWP also has staff located in Idaho, Wyoming, Utah, Arizona, Montana, and California. Through these staff, and with the assistance of numerous unpaid members and supporters, WWP is deeply involved in seeking to improve management on federal and state public lands, including on the federal lands at issue in this case.

16. WWP, as an organization and on behalf of its members, is particularly concerned with and active in seeking to protect and improve the sagebrush-steppe ecosystem, which is at issue in this case. WWP is also active in monitoring ecological conditions in the sagebrush-steppe ecosystem, including the public lands in question here; in reviewing and commenting upon agency decisions, including decisions challenged here; and in publicizing the adverse ecological effects of grazing and other management practices in this region.

17. WWP, as an organization and on behalf of its staff, members and supporters, is also one of the leading conservation groups fighting to protect the greater sage-grouse as well as other sagebrush-obligate species, such as the pygmy rabbit. The decline of sage-grouse in Idaho and other states is of great concern to WWP’s staff, members and

supporters; and the preservation and recovery of greater sage-grouse, and its sagebrush-steppe habitat, are highly important to WWP and its staff, members and supporters.

18. WWP members, supporters, and staff work, live and/or recreate throughout the sagebrush-steppe ecosystem of Idaho and surrounding states, which were historically or are currently occupied by greater sage-grouse; and they regularly visit and use the public lands and resources in question here. Plaintiff's members, supporters, and staff derive aesthetic, recreational, scientific, inspirational, educational, and other benefits from this ecosystem on a regular and continuing basis and intend to do so frequently in the immediate future, including on the public lands at issue here.

19. WWP has previously brought many cases before this Court seeking to protect greater sage-grouse, including but not limited to the following: *WWP v. FWS*, 06-cv-277-BLW (sage grouse listing litigation); *WWP v. Dyer*, 04-cv-181-BLW (Jarbidge sage grouse litigation); *IWF, WWP & NWF v. Tower*, 04-cv-372-BLW (challenge to Curlew National Grasslands management plan, for failure to protect sage grouse); *CHD & WWP v. Collinge*, 02-cv-172-BLW (challenging "sage grouse predators" study proposal which violated NEPA).

20. Defendants' violations of NEPA and FLPMA in adopting the challenged RMPs have injured the aesthetic, commercial, conservational, scientific, recreational, educational, wildlife preservation and other interests of Plaintiff and its staff, members, and supporters. These are actual, concrete injuries caused by Defendants' violations of law, for which judicial relief is required to remedy those harms.

21. Defendant DIRK KEMPTHORNE is Secretary of the U.S. Department of Interior, and has ultimate statutory authority and responsibility to comply with all federal

laws in the management of the federal public lands at issue here, including NEPA and FLPMA. Secretary Kempthorne is a long-time Idaho resident who previously served as Mayor of the City of Boise; U.S. Senator from Idaho; and Governor of Idaho. He is sued solely in his official capacity.

22. Defendant U.S. DEPARTMENT OF INTERIOR (“Interior”) is an agency or instrumentality of the United States, charged by law with administering the public lands at issue in this case, which it does by acting principally through the Bureau of Land Management. BLM is primarily responsible for preparing the challenged RMPs and their associated NEPA documents that are at issue in this case.

### **FACTUAL ALLEGATIONS**

#### **I. SAGE-GROUSE AND THE SAGEBRUSH SEA.**

##### **The Sagebrush-Steppe Ecosystem.**

23. The sagebrush-steppe represents a vast ecosystem that once occupied some 155 million acres of the United States and Canada, dominated by various species of sagebrush (along with other native shrubs) in the overstory, and with native grasses, forbs, and biologic soil crusts in the understory. At the time of European settlement, the miles and miles of sagebrush stretching across the western landscape truly resembled a “Sagebrush Sea.”

24. Although this region typically experiences low or little precipitation – and hence is often referred to as a “high desert” – native sagebrush plant communities successfully evolved under those conditions. With long tap roots, healthy sagebrush can withstand dry periods; and sagebrush help promote the maintenance and growth of other plants and animals by bringing moisture closer to the surface, providing shade and cover,

and other roles. Likewise, the presence of native grasses, forbs, and soil crusts promotes the retention of moisture and regeneration of native seeds, while resisting soil erosion, the spread of wildfires, and the invasion of weeds.

25. These sagebrush habitats were also historically occupied by a wide variety of resident and migratory birds, mammals, reptiles, and other wildlife. Many of these are “sagebrush-obligate” species, meaning they depend on the sagebrush habitats for most or all of their biological and habitat needs. Greater sage-grouse is the best known of these species, but others include pygmy rabbit, sage thrasher, and sage sparrow.

**Degradation and Destruction of Sagebrush Habitats.**

26. For many decades following European settlement, however, these sagebrush habitats were typically viewed as a “wasteland,” of little economic or social value. Management regimes for most of the past century have not sought to preserve and protect the ecological values of this region.

27. To the contrary, management – particularly by the BLM and its predecessor agencies – has emphasized the authorization of livestock grazing and other industrial uses across the sagebrush biome, as well as the destruction and degradation of many millions of acres of sagebrush through chaining, plowing, bulldozing, prescribed fire, herbicide spraying, and other so-called “vegetation treatments.” Most of these efforts were aimed at replacing former native habitats with crested wheatgrass or other exotic grass species in order to boost forage for domestic livestock grazing.

28. As explained below, BLM to this day continues to pursue vegetation treatments aimed at improving livestock forage rather than restoring large, interconnected sagebrush expanses that sage-grouse and other species need for survival. Indeed,

Defendants have used the challenged RMPs as means of authorizing widespread vegetation treatments that will destroy or degrade millions of more acres of sagebrush habitats across the sage-grouse range.

29. Domestic livestock are exotic or alien species to this landscape, and have exacted a terrible toll on the ecological health of the sagebrush-steppe. Bred for the cooler and moister conditions of northern Europe, domestic livestock are poorly adapted for the hot dry summers and long cold winters of the Sagebrush Sea. Livestock thus tend to congregate around water sources and shady areas during hot periods, causing severe damage to streams, springs, seeps, and wet meadows – habitats that are critical for survival and reproduction of many native wildlife species, including greater sage-grouse.

30. Domestic livestock also feed preferentially on many native grasses and forbs, thus reducing or eliminating these native plants that are again vital habitats and food sources for wildlife species, including sage-grouse. Decades of livestock grazing have caused depletion of native grasses and forbs on a widespread basis across the sagebrush biome, thus harming sage-grouse by eliminating or reducing food sources, nesting habitats, cover from predators, and other effects.

31. Because they are so widely scattered across the western landscape, domestic livestock have also caused or contributed to large-scale destruction and loss of soil crusts, and the disturbance, compaction, and erosion of soils. Livestock also help promote invasion of alien or exotic plant species, notably cheatgrass and noxious weeds, through these disturbance effects and by acting as “vectors” that carry and distribute weed seeds into native habitats. Both these effects have again contributed to ecological degradation across the public lands in question here.

32. These impacts are particularly pronounced around water troughs, spring developments, supplemental feeding areas, pasture or allotment fences, and other areas where livestock congregate. Yet BLM and other land managers have aggressively promoted the construction, maintenance, and continued use of these range infrastructures, and continue to do so through the challenged RMPs here, without acknowledging the ecological costs they cause in terms of destroying or fragmenting native habitats and promoting weed invasions.

33. Only a tiny fraction of public lands managed by the BLM in the Sagebrush Sea has been excluded from domestic livestock grazing, under the BLM's land use and management plans – even though those livestock are contributing significantly to decline of native habitats and loss of sage-grouse and other species' populations, as described further below. Yet through the challenged RMPs, BLM continues to designate nearly all public lands as being open or available to livestock grazing, with only tiny “exclosures” or other areas from which livestock are excluded.

34. BLM has also consistently refused to assess the current capability and suitability of the public lands for continued livestock grazing – including the lands at issue here – even as mounting scientific evidence shows that grazing should be excluded from large areas that do not contain the physical characteristics needed to sustain livestock grazing without experiencing soil erosion, loss of soil crusts, degradation of native vegetation, weed invasions, and other long-term adverse effects.

35. In addition to the impacts caused by livestock grazing and grazing-related infrastructure and vegetation treatment projects, the native sagebrush-steppe ecosystem has been further degraded and lost due to other human-caused impacts, including energy

development (such as oil and gas drilling, or coalbed methane production); off-road vehicles; construction of powerlines, roads, canals, and other infrastructure; conversion to agricultural lands; and a variety of other actions. All of these contribute direct, indirect, and cumulative impacts that are the reason why so much of the Sagebrush Sea has been lost or degraded already; and why the remaining native sagebrush habitats are now so deeply imperiled.

36. Abundant and growing scientific evidence – including from Defendants’ own scientists – confirms that livestock grazing and these other management actions have caused substantial loss and degradation of sagebrush habitats; and that those trends are in fact accelerating. The Interior Columbia Basin Ecosystem Management Project (ICBMP), for example, involved extensive scientific review by BLM and Forest Service scientists of the condition of sagebrush habitats in much of Idaho as well as other states in the Columbia and Great Basin regions; and documented the loss and degradation of the sagebrush-steppe over the last century. *See also* S. Knick et al., “Teetering on the Edge or Too Late? Conservation and Research Issues for Avifauna of Sagebrush Habitats,” *The Condor*, 105:611-34 (2003) (noting that “[s]agebrush habitats are among the most imperiled ecosystems in North America,” and that the “increasingly rapid and widespread degradation, fragmentation, or total loss of sagebrush ecosystems throughout western North America presents a grave challenge to natural-resource agencies”).

37. The Bush Administration’s aggressive promotion of energy development and other industrial activities on the public lands has quickly accelerated the decline of sagebrush habitats and harmed remaining sage-grouse populations, thus contributing to the sage-grouse’s slide toward extinction as a viable species. Yet Defendants refused to

acknowledge or explore these impacts in approving the challenged RMPs, in violation of NEPA and FLPMA, as alleged further below.

**Weeds, Fires, And Global Warming Threats.**

38. On top of these human-caused actions, cheatgrass and other weed invasions have swept across many parts of the Sagebrush Sea, particularly within areas of Idaho as well as Nevada, California, Utah, and other states as well.

39. Cheatgrass typically becomes established after some soil disturbance event, which can include construction activities (such as road blading or drill pad clearing) as well as disturbance caused by livestock impacts on soils and soil crusts, as noted above.

40. Indeed, domestic livestock grazing is one of the principal vectors by which cheatgrass has spread to different parts of Idaho, Nevada, and other states in the westerly portion of the Sagebrush Sea where cheatgrass has invaded in past decades.

41. The increased pace of energy development pushed by the current Administration, along with continued livestock grazing across all or a majority of the same areas, has similarly contributed to the increasing presence of cheatgrass in parts of Wyoming and other locations in the eastern portions of the Sagebrush Sea, where cheatgrass previously was not considered a major problem. This is a major risk of weed invasions that again the Defendants have refused to address as required by NEPA in their adoption of the challenged RMPs.

42. Because cheatgrass can out-compete native grasses following fires, areas that burn often become dominated by cheatgrass. Yet because cheatgrass typically dries out earlier than native grasses and burns hotter and more rapidly, areas in which

cheatgrass takes hold tend to burn more frequently and severely, and spread to neighboring intact sagebrush communities – thus causing further loss of sagebrush habitat. As a result, cheatgrass becomes an almost self-propelling force across the landscape, severely threatening the ecological integrity of the formerly native habitat areas that it invades.

43. Much of the Sagebrush Sea has experienced increasingly larger, more frequent, and more severe wildfires in recent decades, due in significant part to effects of cheatgrass invasions as well as drier climatic conditions. These fires have burned literally millions of acres of former sagebrush habitat in Idaho, Nevada, Utah and other states within the last few years alone.

44. The result is likely to be long-term loss of these areas as native habitats, because the current Administration has failed to take steps necessary to restore native habitats on these burned public lands, including by undertaking both active restoration (*i.e.*, replanting sagebrush seedlings) and passive restoration (*i.e.*, eliminating deleterious grazing), which are both needed in order to achieve restoration of sagebrush communities, as discussed further below.

45. As noted above, the U.N Inter-Governmental Panel On Climate Change and other leading climate change scientists predict that, with global climate change, the Interior West will generally become hotter and drier over coming decades.

46. Under this scenario – which evidence suggests is already well underway – much of the Sagebrush Sea can expect to see increasingly hotter summer temperatures and drier conditions for a longer period of time, which will help promote more numerous, larger, and more intense wildfires. Cheatgrass or other weeds will in turn tend to invade

the burned areas, eliminating their habitat values for the foreseeable future. These drier conditions will also reduce surface and ground water levels, which will adversely affect riparian habitats as well as fish and wildlife populations.

47. However, some areas may experience increased precipitation, often in the form of rain-on-snow events or major storms, which will threaten increased “flash” runoff and flooding. As a result, these areas may experience lower surface and ground water levels because the increased precipitation simply runs off quickly (causing soil erosion), rather than being retained in ground or surface water supplies.

48. These threats of global warming underscore the vital importance of protecting water sources and riparian areas in order to combat the effects of increased temperatures and lower precipitation, and thereby ensure adequate water remains for human communities as well as wildlife and other non-human native communities that depend on the Sagebrush Sea for their survival and prosperity.

49. As noted above, however, domestic livestock grazing causes adverse effects to soils, water sources, and native plant and wildlife communities in the Sagebrush Sea in many ways, which effects will continue and be exacerbated by the impacts of global warming and of fire and weed invasions. It is imperative that Defendants closely study and acknowledge these interrelated impacts that grazing and climate change pose for water supplies and native habitats in the Sagebrush Sea – a task they have refused to undertake.

50. Defendants’ refusal to acknowledge the deleterious effects of livestock grazing in their adoption of the challenged RMPs here cripples their ability to manage the public lands effectively to deal with the future of climate change in the Interior West.

Defendants cannot control the weather, and it is extremely difficult to control weeds or prevent fires. By contrast, the elimination (or substantial reduction) of livestock grazing on federal public lands is one of the few – and one of the most immediately effective – tools that federal land managers have available to provide for recovery and long-term sustained health of this ecosystem.

51. Defendants are well aware of the facts and the abundant science underlying the allegations set forth above. Yet throughout the land use management processes challenged in this action, Defendants have willfully refused to consider these facts in their NEPA analysis and RMP decision-making. As a result, they have determined to allow deleterious livestock grazing to continue without change from past practices. This violates their legal duties, and ensures that grazing and grazing-related activities on public lands will not only continue to degrade sagebrush habitats and harm sage-grouse populations; but that these harms will intensify as global climate change has more pronounced effects on the public lands.

**The Imperiled Sage-Grouse.**

52. The greater sage-grouse (*Centrocercus urophasianus*) – first described by Meriwether Lewis near the confluence of the Marias and Missouri rivers in Montana in 1805 – is a unique species of grouse found only in sagebrush-dominated habitats of western North America. This species is the largest grouse in North America, and the second largest grouse in the world.

53. Greater sage-grouse were once widely distributed across the western U.S and Canada, numbering in the millions. In the late 1800s, huge flocks of sage-grouse were reported to “blacken the sky.”

54. Sage-grouse typically inhabit large, interconnected expanses of sagebrush habitat, and thus are characterized as a landscape-scale species. Historically, the distribution of sage-grouse was closely tied to the distribution of the sagebrush biome, and greater sage-grouse once occupied parts of 13 states within the western United States and 3 Canadian provinces.

55. The destruction, fragmentation, and degradation of sagebrush habitats over past decades – including through the effects of livestock grazing and grazing-related infrastructure and vegetation treatments, as described above – have caused substantial declines in sage-grouse populations and range reduction of about 44% from their estimated historic range.

55. The current population of sage-grouse is only a fraction of historic levels, and represents less than 10% of historic population levels, *i.e.*, sage-grouse populations have experienced a 90% or more decline from historic levels.

56. Sage-grouse have been extirpated in Nebraska, Arizona, New Mexico, and significant parts of Oregon, Washington, North and South Dakota, and central eastern California. Moreover, according to Dr. Clait Braun (one of the world's leading sage-grouse experts), "all studied populations of sage grouse have been in decline for at least 40-50 years," and sage-grouse experts are unaware of any "sage-grouse range expansion anywhere, ever."

57. Livestock grazing is known to be deleterious to sage-grouse populations and habitat in many direct, indirect, and cumulative ways. As noted above, grazing causes long-term changes in plant communities and reduces habitat components, such as biological soil crusts, which contribute to the health of sagebrush habitat. Grazing also

reduces the residual 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. Livestock also cause destruction of riparian habitats, essential for sage-grouse survival and reproduction. Livestock promote invasion of cheatgrass and other exotic weed species, thus contributing to fire frequency and severity, as noted above, which further reduces the extent and quality of sage-grouse habitats. 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.

58. Habitat fragmentation resulting from oil and gas development, and associated infrastructure (e.g., powerlines, drill pads, compressor stations, roads, fences, etc.) is also a significant factor contributing to the ongoing degradation of sagebrush habitat and sage-grouse populations. Sage-grouse also suffer mortality or injury from collisions with fences and other infrastructure; and will abandon breeding and nesting areas after powerlines or fences are constructed, since they provide perches for predators.

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

60. Among other passages, the 2004 Sage-Grouse Conservation Assessment spent 10 pages confirming the ongoing deleterious effects of livestock grazing upon greater sage-grouse and sagebrush habitats. *See id.*, pp. 7-26 to 7-35. The report described grazing as “the most widespread . . . land use across the sagebrush biome,” and noted that “most sagebrush habitats have been grazed in the past century.” *Id.*, p. 7-29. It found that historic overgrazing, coupled with drought early in the 20<sup>th</sup> century, seriously depleted native forbs and grasses, and “[l]oss of protective vegetative cover in some communities resulted in extensive soil disturbance and erosion,” while facilitating invasions by non-native species (including cheatgrass). *Id.*, pp. 7-26 to 7-28. Yet these effects have not been remedied, including because “plant communities still are not given rest from grazing,” “distribution of livestock has changed because water developments have increased the area that could be grazed,” and livestock fences and other infrastructure continue to affect sage-grouse and their habitats. *Id.*, pp. 7-29 to 7-34. And the report warned that these impacts will continue: “We cannot conclude that the effect of grazing has been reduced because even reduced numbers of livestock may still exert a larger influence on those habitats.” *Id.*, p. 7-33.

61. The 2004 Sage-Grouse Conservation Assessment is well known to Defendants – and confirms that livestock grazing not only caused historical loss and degradation of sagebrush and sage-grouse populations, but that those effects continue today. The long-term degradation of the sagebrush-steppe ecosystem caused by livestock grazing has rendered the public lands at issue here degraded and depleted; and those lands need to be “rested” by exclusion of livestock grazing in order to recover and return toward potential natural conditions. Yet Defendants have willfully refused to even give

serious consideration to that management option in their adoption of the challenged RMPs, as detailed below.

**Remaining Sage-Grouse Populations.**

62. Based on the then-available data, the 2004 Sage-Grouse Conservation Assessment identified and assessed current sage-grouse populations remaining across the historic sage-grouse range. It identified five remaining “core” populations, which are comprised of several related sub-populations; as well as about three dozen smaller populations that are more isolated from each other, particularly around the edges of the historic range.

63. The two largest and most important of the remaining sage-grouse populations, according to the 2004 Sage-Grouse Conservation Assessment, are the Wyoming Basin and Great Basin core populations, respectively. The other remaining core populations are the Upper Salmon population in Idaho (called the Snake/Salmon/Beaverhead population in the Conservation Assessment); a Northern Montana population; and a Yellowstone watershed population. *See* Conservation Assessment, Table 6.16.

64. The Great Basin core population stretches across several state boundaries, includes subpopulations of sage-grouse that range from south/central and southwestern Idaho across most of Nevada as well as parts of northeastern California and southeastern Oregon. *Id.*

65. The challenged RMPs in this case affect a substantial part of the BLM public lands across the range of the Great Basin core population in Idaho as well as Nevada and California, totaling nearly 15 million acres, as alleged in detail below.

66. The Wyoming Basin core population is the largest remaining sage-grouse stronghold, and also stretches across several state boundaries. It includes a substantial subpopulation that is located in southeastern Idaho, southwestern Wyoming, northeastern Utah, and northernwestern Colorado. Other large subpopulations in the Wyoming Basin core population reach across most of Wyoming and into Montana and Colorado. *Id.*

67. Again, the challenged RMPs in this case affect a substantial part of the BLM public lands across the range of the Wyoming Basin core sage-grouse population in Idaho as well as Utah and Wyoming, totaling about 10 million acres of sage-grouse habitat, as alleged in detail below.

68. In addition, the challenged RMPs in this case also affect many of the smaller, more isolated remaining sage-grouse populations, as identified in the 2004 Sage-Grouse Conservation Assessment. As detailed below, these include the last remaining sage-grouse populations that are now scattered across central and southern Utah, and in southwestern Montana.

69. Since the 2004 Sage-Grouse Conservation Assessment was released, substantial additional science has revealed that these remaining core and isolated sage-grouse populations have declined further due to impacts of energy development, fires and weeds, livestock grazing, West Nile virus, and other factors.

70. In particular, growing scientific evidence demonstrates that the rapid acceleration of energy development authorized by the current Administration – most of it through the BLM – has already caused substantial losses of habitat and sage-grouse populations in key strongholds, particularly affecting the Wyoming Basin core population.

71. In addition, millions of acres of public lands have burned in Idaho, Nevada, and Oregon in recent years, causing substantial loss of habitat – and apparent population declines – across much of the range of the Great Basin core population. Fires have also apparently harmed smaller sage-grouse populations in Utah.

72. Recent studies also indicate that West Nile virus has extended across most of the sage-grouse range and adversely affected many sage-grouse populations, including both core and isolated populations. State wildlife agencies have limited or closed sage-grouse hunting in several locations because of West Nile losses, including in the southwestern region of Idaho.

73. In summary, sage-grouse face a deeply imperiled future as the sagebrush biome is further destroyed, fragmented, and degraded from livestock grazing, energy development, infrastructure construction, weed invasions, fires, West Nile virus, and many other forces. And the threats associated with global climate change compound these factors, such that the future survival of greater sage-grouse as a viable species in the wild is now very much in doubt.

**Need For Protection And Restoration Of Sagebrush Habitats.**

74. Leading sage-grouse scientists and other experts agree that conserving sage-grouse as a viable species requires both the protection of remaining sagebrush habitats plus restoration of habitats that have been degraded or lost, so that existing sage-grouse populations do not suffer from further habitat losses and can become reestablished in portions of the historic sage-grouse range where they do not currently persist.

75. Because sage-grouse are a landscape-scale species that rely on large, interconnected expanses of sagebrush, the survival of sage-grouse makes it vital that all

remaining sagebrush habitats be preserved from further loss, degradation, or fragmentation. In addition, sagebrush must be restored into areas where it has been eliminated, and sagebrush habitats must become re-connected, in order to provide the habitat necessary to sustain viable sage-grouse populations.

76. Leading scientists – including scientists in the Department of Interior – recognize that conserving sagebrush for sage-grouse requires both “active” and “passive” measures. As noted above, “active” restoration includes steps like seeding and planting sagebrush after fires, as well as weed eradication or similar steps. “Passive” restoration refers to eliminating or reducing factors that contribute to loss or degradation of sagebrush habitat needed by sage-grouse, such as deleterious livestock grazing.

77. The importance of combining both active and passive restoration is underscored by recent studies conducted by federal scientists, including with BLM. For example, scientists associated with the ICBMP process conducted modeling studies which found that “passive” restoration – in the form of a 100% reduction in “deleterious grazing” – plus a six-fold increase in “active” restoration across sage-grouse habitats on BLM and Forest Service lands in the Interior Columbia Basin would be needed to substantially improve sage-grouse habitats in comparison to current management. *See M. Hemstrom et al., Sagebrush-Steppe Vegetation Dynamics and Restoration Potential in the Interior Columbia Basin, U.S.A., 16 Cons. Biol. #5 (Oct. 2002), pp. 1243-55; M. Wisdom et al., Modeled Effects of Sagebrush-Steppe restoration on Greater Sage-Grouse in the Interior Columbia Basin, U.S.A., 16 Cons. Biol. #5 (Oct. 2002), pp. 1223-31.* This and other science is again well known to Defendants – and indeed, is underscored by BLM’s own National Sage-Grouse Habitat Conservation Strategy, which is discussed in

detailed below; yet Defendants refused to acknowledge these scientific principles and requirements for the conservation of sage-grouse in their adoption of the challenged RMPs at issue in this case.

## **II. BLM's LAND USE PLANNING REQUIREMENTS.**

78. The BLM land use planning process offers Defendants numerous legal authorities and requirements to protect and restore sagebrush habitats and to conserve sage-grouse and other sagebrush-obligate species. Yet just as they ignored the scientific principles discussed above, Defendants consistently misrepresented, misapplied or ignored these legal authorities and requirements in preparing the challenged RMPs here.

79. As explained below, these authorities and requirements include FLPMA's statutory mandates as well as BLM's implementing regulations and policies, which allow the exclusion or reduction of livestock grazing to protect sensitive habitats and wildlife species such as sage-grouse in many different ways – including through designating public lands as “unavailable” for grazing, establishing Areas of Critical Environmental Concern that place a priority on sage-grouse or other resource conservation, and imposing management limitations and requirements for grazing at the land use planning level.

80. These authorities also allow BLM to use the land use planning process to establish sagebrush habitat protection and restoration objectives that other management authorizations must respect, including energy and infrastructure development; and to adopt post-fire restoration requirements to maximize sagebrush restoration.

81. Yet despite these authorities, and despite the science addressed above that underscores the need for both active and passive restoration measures to address the

decline in sagebrush habitats and sage-grouse populations, Defendants willfully avoided even examining their ability to adopt such measures in the challenged RMPs here.

**FLPMA's Multiple Use/Sustained Yield Mandate.**

82. FLPMA governs the public lands at issue in this case. Among other requirements, it provides that the Secretary of Interior must develop land use plans for the public lands under his control, 43 U.S.C. § 1712(a); and that such public lands “shall” be managed “for multiple use and sustained yield.” 43 U.S.C. § 1732(a). FLPMA further mandates that the Secretary of Interior “shall” take any action necessary to prevent “unnecessary or undue degradation” of public lands. 43 U.S.C. § 1732(b).

83. These statutory mandates underscore Defendants’ obligation to look at the long-term future of the BLM lands in question, and to ensure protection of wildlife and other resource values over that long-term – duties which they have violated here.

84. FLPMA’s definitions further confirm this reading. Specifically, FLPMA defines “sustained yield” as “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources consistent with multiple use.” 43 U.S.C. § 1702(b). “Multiple use” is defined *inter alia* as “the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; . . . a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity

of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” 43 U.S.C. § 1701(c).

**Authority To Exclude Harmful Uses.**

85. As these statutory definitions reveal, Defendants are not obligated to continue any particular use of the public lands – such as livestock grazing – irrespective of the harm it may cause to the long-term productivity of soils, vegetation, water, or wildlife resources. Instead, if a particular use is incompatible with other multiple uses and sustained yield, or is causing undue or unnecessary harm, Defendants are statutorily authorized and indeed required to limit or exclude such use.

86. BLM’s land use planning regulations reflect this basic FLMPA mandate in making clear that RMPs must decide which uses and management tools are to be approved to ensure long-term sustainable uses of the public lands, stating:

Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).

43 C.F.R. § 4100.0-8.

87. FLPMA elsewhere confirms that Defendants may implement land use plans that exclude one or more of the principal or major uses of the public lands; but FLPMA requires that Congress be notified if major uses are excluded for two or more years on tracts of land that are 100,000 acres or larger. *See* 43 U.S.C. § 1712(e)(2). Congress may then choose to override that decision, according to FLPMA – again

demonstrating that the Secretary of Interior is statutorily empowered to limit grazing from large parts of the public lands, subject to potential review by Congress.

88. Yet Defendants have consistently ignored or misread these provisions in asserting that FLPMA requires the perpetuation of livestock grazing across the public lands at issue in the challenged RMPs here; or that it would take new Congressional authorization to limit or exclude grazing on large areas of the public lands. As noted below, most of the EISs here categorically rejected considering any “no grazing” or substantially reduced livestock grazing alternatives, on grounds that FLPMA would not permit it and Congress would have to adopt new legislation to allow such a management choice. That reading is incorrect as a matter of law, and hence requires reversal and remand of the challenged RMPs on that ground alone.

**Limiting Lands Available To Grazing.**

89. Consistent with these FLPMA mandates, BLM also has authority to exclude livestock grazing from public lands by determining whether lands can sustain their productivity of soils, vegetation, water, and wildlife resources despite livestock grazing. Where grazing cannot be sustained, but will cause erosion or impairment of these resources, BLM has authority to deem the land not “available” for grazing. This determination is often called a “capability” or “suitability” determination in range management science and agency management procedures.

90. BLM’s land use planning regulations and Handbook make clear that BLM has both authority and duty in its land use planning processes to determine whether grazing will be allowed on public lands, based on these kinds of capability or suitability

considerations. *See* 43 C.F.R. Subpart 1601; BLM Land Use Planning Handbook, H-1601-1 (2005).

91. Indeed, the Land Use Planning Handbook specifically directs BLM to “[i]dentify lands available or not available for livestock grazing considering the following factors: 1. Other uses of the land; 2. terrain characteristics; 3. soil, vegetation and watershed characteristics; 4. the presence of undesirable vegetation, including significant invasive weed infestations; and 5. the presence of other resources that may require special management or protection, such as special status species . . . or ACECs.” *Id.*, Appendix C, p. 14. Again, these enumerated characteristics reflect the factors identified by range science and agency managers as relevant to “capability” or “suitability” determinations about what lands should be available for livestock grazing.

92. Rather than heed these requirements, however, Defendants refused to even consider whether the public lands in question are capable of sustaining livestock grazing without long-term impairment; or whether livestock grazing remains a suitable use of the public lands in any of the challenged RMPs here. Instead they designated nearly 100% of all public lands as being available for grazing, irrespective of the facts that large portions of the public lands at issue have highly erodible soils, exotic weed invasions, and other factors rendering them incapable or unsuitable for grazing. Because BLM violated the applicable legal authorities and scientific principles in making these decisions, the challenged RMPs must also be reversed and remanded on this ground as well.

**Areas of Critical Environmental Concern.**

93. In addition, FLPMA separately authorizes Defendants to further limit uses of public lands – such as by exclusion of livestock grazing – to protect sensitive wildlife

or other resources from damage, through designation of Areas of Critical Environmental Concern (ACECs).

94. FLPMA defines ACECs as including “areas within the public lands where special management attention is required . . . to protect and prevent irreparable damage to important . . . fish and wildlife resources or other natural systems or processes. . . .” 43 U.S.C. § 1702(a). This definition certainly includes key sage-grouse populations and habitats that are facing eradication through the impacts of grazing, energy development, fires, weed invasions, and other forces as discussed above.

95. Indeed, FLPMA mandates that protection of these areas is to be given priority in land use plans, stating that the Secretary of Interior “**shall . . . give priority to the designation and protection of areas of critical environmental concern**” in land use planning and development. 43 U.S.C. § 1712(c)(3) (emphasis added).

96. Rather than heed this statutory command by placing a priority on protecting sage-grouse or other imperiled wildlife species through designation of ACECs, however, Defendants consistently rejected requests by WWP and many others to designate ACECs in the challenged RMPs that would protect and conserve sensitive wildlife populations and habitats. They also refused even to analyze alternatives in their NEPA documents that would include designation of substantial ACECs for such purposes. In short, rather than place a priority on the protection of sensitive resources through ACEC designation as required by FLPMA, Defendants instead treated ACECs as unwanted and unneeded management tools – another legal error that requires reversal and remand of the challenged RMPs.

**BLM's Special Status Species Policy.**

97. Yet another legal tool and obligation that Defendants ignored and violated in their adoption of the challenged RMPs is BLM's Special Status Species Policy, which is included as part of the BLM Manual. *See* BLM Manual, Section 6840 (2001). The 2001 version of the Special Status Species Policy was in effect during the consideration and adoption of all the challenged RMPs at issue here, and thus governs the Court's judicial review despite Defendants' effort to weaken that policy as the Bush Administration is leaving office.

98. The Special Status Species Policy was adopted by BLM pursuant to FLPMA's mandates, as discussed above, including that Defendants are to conserve wildlife resources on the public lands over the long-term; and pursuant to the Endangered Species Act, Sikes Act, and other wildlife laws.

99. Under the Special Status Species Policy, BLM State Directors may designate "sensitive" species that are native species of concern for various reasons, including because they "could become endangered or extirpated from a state, or within a significant portion of its distribution in the foreseeable future"; are "under status review" by U.S. Fish and Wildlife Service; or are "undergoing significant current or predicted downwards trends in population or density. . . ." *See* BLM Manual 6840.06.E.

100. Greater sage-grouse is designated as a "sensitive" species by BLM for all the areas at issue in this case; and is undergoing status review by the U.S. Fish and Wildlife Service to determine if the species should be listed under the Endangered Species Act.

101. In fact, this Court previously ruled that the Service violated the ESA and acted in an arbitrary, capricious, and unlawful manner when it determined in January

2005 not to propose ESA listing of the greater sage-grouse. *See WWP v. U.S. Fish and Wildlife Service*, 535 F. Supp. 2d 1173 (D. Idaho 2007). This unlawful decision, the Court ruled, was due in part to improper political interference by officials in the Department of Interior in the listing determination. *Id.*

102. Had the Service not acted unlawfully, and instead proposed listing sage-grouse as threatened or endangered, sage-grouse would have enjoyed more legal protection under the ESA during the land use planning processes challenged here. The desire to avoid having the ESA apply to the public lands was evidently a key motivating factor in the Service's unlawful January 2005 "not warranted" finding.

103. Nevertheless, the designation of sage-grouse as a BLM "sensitive" species requires the BLM to treat sage-grouse as if it were a "candidate" species for ESA listing. This requires, among other things, that BLM "**shall implement management plans that conserve candidate species and their habitats,**" and that BLM "**shall ensure that actions authorized, funded or carried out by the BLM do not contribute to the need for the species to become listed.**" *See* BLM Manual 6841.06C (emphasis added).

104. In requiring that BLM must ensure that its actions do not contribute to the need for sensitive species to become listed under the ESA, the Special Status Species Policy necessarily requires that BLM must analyze the effects of its actions on a range-wide basis for sage-grouse. Doing so further requires BLM to analyze how its actions may or may not contribute to the need for sage-grouse to be listed under the ESA because of impacts on the remaining core or isolated populations.

105. However, BLM never undertook such analysis with respect to the challenged RMPs as identified below. It never assessed impacts of the challenged RMPs

for their range-wide effects on sage-grouse populations or habitats; or for their effects on remaining core or isolated populations. This refusal to follow the Special Status Species Policy with respect to effects on sage-grouse is even more surprising considering that many of the challenged RMPs affect the same core populations and were adopted in the same timeframe, as explained below.

106. Without analyzing the challenged RMPs for their effects on sage-grouse on a range-wide basis, or for their effects on the remaining core and isolated sage-grouse populations, BLM obviously has not ensured that its approval of the new land use plans will not contribute to the need for ESA listing of sage-grouse. In fact, Defendants paid little or no attention to the BLM Special Status Species Policy in their development and approval of the challenged RMPs – even while claiming that other “policies” require them to perpetuate harmful livestock grazing across remaining sage-grouse habitats.

107. Moreover, as alleged below, the challenged RMPs, individually and cumulatively, will certainly drive sage-grouse closer toward extinction and the need for ESA listing, by approving deleterious livestock grazing along with energy development, vegetation treatments, and many other actions that will further destroy and degrade sagebrush habitats and harm the remaining sage-grouse populations. BLM has thus violated its own Special Status Species Policy in approving the challenged RMPs.

**BLM’s National Sage-Grouse Habitat Conservation Strategy.**

108. Not only have Defendants violated the BLM Special Status Species Policy, but they have also acted in shocking disregard of the specific sage-grouse conservation strategy that BLM itself adopted, pursuant to FLPMA and the Special Status

Species Policy, for the avowed purpose of avoiding further decline of sage-grouse populations and habitats and the need for ESA listing.

109. Specifically, BLM adopted a “National Sage-Grouse Habitat Conservation Strategy” in November 2004, which it submitted to U.S. Fish and Wildlife Service for consideration in the Service’s determination of whether to list greater sage-grouse as a threatened or endangered species under the Endangered Species Act.

110. According to Administrative Record materials filed with this Court in the sage-grouse listing litigation, *WWP v. FWS*, 06-cv-277-BLW, BLM advised the Service that this National Sage-Grouse Habitat Conservation Strategy represented an official policy of BLM that would help conserve and protect sage-grouse habitats and populations, thereby avoiding the need for ESA listing.

111. BLM has further stipulated, in the Jarbidge sage-grouse litigation before this Court, that it will follow the National Sage-Grouse Habitat Conservation Strategy in revising the Jarbidge Resource Management Plan, pursuant to the parties’ 2005 Stipulated Settlement Agreement in *WWP v. Bennett*, 04-cv-181-BLW.

112. The National Sage-Grouse Habitat Conservation Strategy places a particular emphasis on using BLM’s land use planning process to conserve sagebrush habitats as a means of preventing further sage-grouse declines. Section 1.3.1 of the BLM National Sage-grouse Habitat Conservation Strategy is entitled “Guidance for Addressing Sagebrush Habitat Conservation in BLM Land Use Plans,” and hence is directly applicable the challenged RMPs here – which were all approved after the Strategy was adopted by BLM.

113. In adopting the Strategy with this emphasis on land use planning, BLM thus again acknowledged that ensuring the viability of sage-grouse requires it to address the habitat needs of sage-grouse on a range-wide basis through its land use planning. Yet BLM wholly failed and refused to address range-wide sage-grouse populations or habitats in its NEPA analyses for the challenged RMPs here.

114. In addition, the Strategy emphasizes the importance of considering regional sage-grouse habitats and populations in the land use planning process. Section 1.3.1 directs that, in preparing land use plans, BLM is to address the “importance of the planning area to habitat for sagebrush-obligate species **from a regional perspective.**” *Id.*, p. 4 (emphasis added).

115. However, BLM again has refused to heed this direction of the National Sage-Grouse Habitat Conservation Strategy, never addressing sage-grouse populations and habitats on a regional basis in adopting the challenged RMPs here – even though, as explained below in detail, BLM has adopted numerous RMPs all affecting the same core or isolated sage-grouse populations.

116. Section 1.3.1 further provides direction for NEPA alternatives that BLM must consider in land use planning, which again include the EISs that BLM prepared for all the challenged RMPs at issue here. Section 1.3.1 requires that BLM must “[d]escribe and **analyze at least one alternative that maximizes conservation of sagebrush habitat** (emphasizing special status species habitat) through objectives, land use plan decisions and management direction.” *Id.* (emphasis added). As alleged in detail below, BLM has completely failed to follow this directive to analyze a “maximize conservation of sagebrush habitat” alternative in the challenged RMP EISs at issue here.

117. Section 1.3.1 further directs BLM to develop “Goals and Objectives” for consideration in the analysis of alternatives and adoption in land use plans, including by developing “planning goals for **protection/maintenance and restoration/rehabilitation of sagebrush habitat**. Write objectives for each alternative that will attain the goals to different degrees.” *Id.*, p. 5 (emphasis added). These twin requirements – protecting as well as restoring sagebrush habitat – are fully consistent with the science, discussed above, which emphasizes that it will require land managers to both protect and restore sage-grouse habitats if the species is to survive into the future.

117a. Among the “recommended goals” for the protection and maintenance of sagebrush habitat, Section 1.3.1 further identifies the following goal:

**“Sustain the integrity of the sagebrush biome to provide the amount, continuity and quality of habitat that is necessary to maintain sustainable populations of sage-grouse and other species by achieving the following results:**

1. **Maintain large patches of high quality sagebrush habitats**, with emphasis on patches occupied by sage-grouse;
2. **Maintain connections between sagebrush habitats**, with emphasis on connections between habitats occupied by sage-grouse.”

*Id.*, pp. 5-6 (emphasis added).

118. These provisions again are consistent with the science, as discussed above, that underscores the importance of protecting remaining sagebrush habitats from further destruction or fragmentation. Yet again, Defendants refused to comply with these directives in the challenged RMPs at issue here; and instead approved damaging livestock grazing, vegetation treatments, energy development, and other actions that will further

fragment and degrade remaining sagebrush habitats and further isolate remaining sage-grouse populations.

119. With respect to restoration and rehabilitation of sagebrush habitat, Section 1.3.1 also provides the following goal:

**“Identify the amount of habitat that should undergo restoration and/or rehabilitation during the life of the plan and initiate restoration and/or rehabilitation to achieve the following results:**

1. **Reconnect large patches of sagebrush habitat** with emphasis on reconnecting patches utilized by stronghold and isolated populations of sage-grouse;
2. **Enlarge the size of patches of sagebrush habitats** with emphasis on patches occupied by sage-grouse.”

*Id.*, p. 6 (emphasis added). Again, this goal is consistent with the “active” and “passive” restoration that science shows are both needed to conserve sage-grouse habitats, as discussed above; yet again BLM refused to adhere to this directive in its approval of the challenged RMPs here.

120. In addition, Section 1.3.1 directs that BLM is to “[s]et forth allowable uses and management actions in the plan to accomplish the objectives,” including that BLM must “[i]dentify actions for protection/maintenance and restoration/rehabilitation to conserve sagebrush habitat with an emphasis on habitat for sage-grouse and other sagebrush-obligate species.” *Id.* Again, BLM has not followed this requirement in the challenged RMPs here.

121. Section 1.3.1 further directs BLM to “Estimate the Effects of Alternatives” in its land use planning analysis, including the following specific directions which BLM has again avoided doing in the challenged RMPs and their associated EISs:

- **“Describe the direct, indirect, and cumulative impacts to sagebrush habitat and associated sage-grouse habitat** (current occupied habitat and potential restoration/rehabilitation areas,”
- **“Describe also impacts to populations of sage-grouse** and other significant sagebrush-obligate species (if applicable),” and
- **“Quantify the impacts** to the extent possible. . . .”

*Id.*, p. 6 (emphasis added). Again, BLM largely ignored these requirements in its NEPA analyses for the challenged RMPs, typically paying only scant attention to the current status and trends affecting sage-grouse populations in the areas at issue, and certainly never analyzing and quantifying impacts of grazing and other approved management actions.

122. These and other provisions of the BLM National Sage-grouse Habitat Conservation Strategy thus reflect Defendants’ own awareness of the plight of sage-grouse, and of the need to conserve and restore native sagebrush habitats in order to prevent sage-grouse from heading downward toward ESA listing and extinction.

123. However, despite that knowledge, Defendants have undertaken revisions of land use plans affecting many millions of acres of sage-grouse habitat across Idaho and other states in the period since the National Sage-Grouse Conservation Strategy was adopted; yet they have failed and refused to undertake the analysis called for in that Strategy, including of the effects of the proposed management plans on sagebrush habitats and remaining sage-grouse populations, or of real management alternatives that would take steps needed to conserve and restore those populations and habitats.

124. Instead of adopting sound land use management plans that will achieve the necessary conservation and restoration of sagebrush habitats and of the imperiled species like sage-grouse that depend on those habitats, Defendants have approved the challenged RMPs as long-term management plans that authorize grazing as well as other human uses of the lands that are certain to cause continued loss and fragmentation of native habitats, thus contributing to further population declines and losses of sage-grouse and other wildlife species. In doing so, Defendants have not only breached their legal duties under NEPA and FLPMA, but also their moral obligations to the American public.

### **III. THE CHALLENGED RMPS.**

#### **A. Overview of Challenged RMPs.**

125. The following RMPs are challenged together in this action because they determine long-term management on more than 25 million acres of federal public lands having current or historic sage-grouse habitat; and because, individually and cumulatively, they will result in further widespread loss and degradation of remaining sagebrush habitats and declines in remaining sage-grouse populations across the range of sage-grouse, all based on the same legal defects.

126. The Craters of the Moon RMP, as discussed in detail below, was the first of the current wave of RMPs approved by BLM since the National Sage-Grouse Habitat Conservation Strategy was adopted; and it appears to have provided the template that the other RMPs have followed – including by refusing to address the true impacts of livestock grazing on sage-grouse habitat and populations, and refusing to analyze meaningful alternatives to protect sage-grouse from grazing and other adverse impacts.

127. As noted above, BLM has ignored analyzing the range-wide or regional impacts of this recent wave of RMPs that are challenged here, even though BLM has approved many RMPs that affect the same core or isolated sage-grouse populations. Grouped according to the sage-grouse populations identified in the 2004 Sage-Grouse Conservation Assessment, the challenged RMPs are as follows:

- A. Upper Salmon core sage-grouse population: Craters of the Moon Monument RMP (Idaho); Dillon RMP (Montana, now isolated population once part of Upper Salmon core population);
- B. Great Basin core sage-grouse population: Snake River Birds of Prey RMP (Idaho); Ely RMP (Nevada); Surprise, Eagle Lake, and Alturas RMPs (“coordinated” RMPs in Nevada and California);
- C. Wyoming Basin core sage-grouse population: Pocatello RMP (Idaho); Kemmerer, Pinedale, Rawlins and Casper RMPs (Wyoming); and Vernal RMP (Utah);
- D. Utah isolated sage-grouse populations: Moab, Price, Richfield, Kanab, and Monticello RMPs (Utah).

128. As indicated in the discussion above, all these challenged RMPs share several common legal defects, based on policy choices made by the current Administration that defy the requirements of NEPA, FLPMA and BLM’s own regulations, Handbook and Manual. These common legal defects include:

- (a) misconstruing Defendants’ legal authorities under FLPMA and other laws as supposedly precluding BLM from eliminating or substantially reducing livestock grazing as a tool to protect and restore sagebrush habitats and sage-grouse populations;

(b) refusing to take a “hard look” at the direct, indirect, and cumulative impacts of livestock grazing and its associated infrastructure and habitat fragmentation on sagebrush-steppe habitats and sensitive species, particularly sage-grouse, in violation of NEPA, the Special Status Species Policy, and BLM’s National Sage-Grouse Habitat Conservation Strategy;

(c) Also refusing to analyze meaningful alternatives to protect and restore sagebrush habitat and sage-grouse populations, as required by BLM’s National Sage-Grouse Habitat Conservation Strategy, the Special Species Management Policy, and other requirements of FLPMA and NEPA; and

(d) Adopting RMPs which will ensure further destruction of sagebrush habitat and decline of sage-grouse and other imperiled sagebrush-obligate species, in violation of FLPMA, the Special Status Species Policy, and the National Sage-Grouse Conservation Strategy.

129. In addition to the challenged RMPs discussed below, BLM is in the process of revising other land use plans within the sage-grouse range. These include revisions underway affecting the Great Basin core sage-grouse population in Idaho, Nevada, and Oregon; the Wyoming Basin core sage-grouse population in Idaho, Wyoming, Utah, and Colorado; as well as others.

130. Unless this Court issues declaratory and/or injunctive relief with respect to the challenged RMPs here, Defendants are likely to continue with their flawed land use planning processes for these areas, resulting in plans that also violate NEPA and FLPMA – and an enormous waste of agency and public resources. Entry of declaratory and/or injunctive relief in this case is thus appropriate in light of the upcoming additional RMPs.

131. Many other BLM Field Offices in Idaho and surrounding states within the sage-grouse range still have Management Framework Plans (MFPs) or RMPs that were adopted in the late 1970's or 1980's, and which are now badly outdated as a result of changing ecological conditions and scientific knowledge, including the factors discussed above; and which far pre-date the adoption of the National Sage-Grouse Habitat Conservation Strategy.

132. One example is the Bruneau-Kuna MFP that still governs BLM's management of livestock grazing and other actions on the Bruneau Field Office of southern Idaho, which has key sage-grouse habitat and is occupied by sage-grouse that form part of the Great Basin "core" population. There are many other similar examples in Idaho as well as Nevada and other states.

133. BLM will be revising these land use plans in the future – and indeed has unreasonably delayed in not doing so before now – so the Court's resolution of the challenges presented in this case will help ensure that BLM complies with NEPA and FLPMA with respect to these land use plan revisions as well. These considerations further support entry of declaratory and/or injunctive relief in this case to ensure that BLM does not waste more time and resources on unlawful planning processes.

134. Certain other land use plans have also been adopted by BLM in recent years within the sage-grouse range, including in Oregon, but are not included in this case because of separate litigation over those plans. Entry of the requested declaratory and/or injunctive relief by the Court in this case, however, may inform the resolution of litigation over those plans.

**B. Idaho RMPs Affecting “Core” Sage-Grouse Populations.**

**Craters of the Moon RMP.**

135. The Craters of the Moon National Monument was established on May 2, 1924 by Presidential Proclamation 1694.

136. On November 7, 2000, President Clinton signed Presidential Proclamation 7373, which expanded the Craters of the Moon National Monument substantially from roughly 54,000 acres to approximately 753,000 acres, including 738,000 acres of federal lands. *See* 65 Fed. Reg. 69221 (11/15/2000). Under Proclamation 7373, the National Park Service manages the areas that are primarily composed of recent lava fields and formations; while the BLM manages the areas that contain sagebrush-steppe habitat, including the Laidlaw Park and other kipukas as described below.

137. Proclamation 7373 was adopted in order to “assure protection of . . . all objects of scientific interest” within the expanded monument boundary. These include “kipukas,” which are isolated islands of older terrain surrounded by newer lava. Proclamation 7373 included protection of these kipukas as an important objective of the monument expansion because of the scientific and other values of their native sagebrush steppe habitat and to protect sensitive sage-grouse populations, stating:

The kipukas provide a window on vegetative communities of the past that have been erased from most of the Snake River plain. In many instances, the expanse of rugged lava surrounding the small pocket of soils has protected the kipukas from people, animals, and even exotic plants. As a result, these kipukas represent some of the last nearly pristine and undisturbed vegetation in the Snake River Plain, including 700 year old juniper trees and relict stands of sagebrush that are essential habitat for sensitive sage grouse populations. These tracts of relict vegetation are remarkable benchmarks that aid in the scientific study of changes to vegetative communities from recent human activity as well as the role of natural fire in the sagebrush steppe ecosystem.

65 Fed. Reg. at 69222.

138. Through Proclamation 7373, the Defendants were ordered to manage the Monument lands in a manner that fulfills these stated purposes: “The Secretary of Interior shall manage the area being added to the monument through the Bureau of Land Management and the National Park Service, pursuant to legal authorities, to implement the purposes of this proclamation.” 65 Fed. Reg. at 69223.

139. Among the areas added to the Craters of the Moon Monument through Presidential Proclamation 7373 is the world’s largest kipuka, known as Laidlaw Park. Historically and continuing to today, Laidlaw Park is recognized as offering key sage-grouse habitat that is vital for sage-grouse populations remaining in southern-central Idaho. However, Laidlaw Park has experienced growing degradation – including loss of sagebrush habitat and weed invasions – caused in substantial part by grazing of domestic livestock that BLM has authorized.

140. In 2002, BLM and the National Park Service began to develop new land use plans for the Craters of the Moon Monument under their respective management, which included public “scoping” and BLM’s issuance of a draft Environmental Impact Statement for a proposed Craters of the Moon Monument Resource Management Plan (“Craters RMP”).

141. WWP participated extensively in these processes, and provided comments to BLM underscoring the importance of remnant sagebrush-steppe habitats and sage-grouse populations in the expanded Monument lands, including in Laidlaw Park. WWP also asked BLM to fully study the effects of livestock grazing and grazing-related actions (such as range infrastructure construction and maintenance) upon the native habitats and their dependent wildlife values, including for sage-grouse; and to evaluate a full range of

alternatives, including a variety of “no grazing” and limited grazing alternatives, as well as designation of ACECs and other special protection areas for the benefit of native vegetation and wildlife, including sage-grouse.

142. In July 2005, BLM issued a Final Environmental Impact Statement for the Craters of the Moon Monument RMP (“Craters FEIS”), which violated NEPA in failing to take a “hard look” at grazing impacts and alternatives, among other defects. As noted above, the Craters FEIS was the first of the recent wave of BLM land use plan revisions across the sage-grouse range that are challenged here; and it reflected the “policy” determinations of the current Administration that are seen throughout the rest of the challenged RMPs – particularly in avoiding addressing grazing impacts and alternatives, and refusing to take the management steps needed to conserve sage-grouse and their habitats from grazing and other impacts authorized under these land use plans.

143. Specifically, the Craters FEIS briefly acknowledged that livestock grazing has had negative impacts on Monument resources and values, including sagebrush-steppe habitat and ecological processes; but the FEIS failed and refused to address those effects in detail or to recognize that livestock grazing must be substantially changed or eliminated if these adverse effects are to be avoided or reduced in future management of the Monument during the life of the RMP.

144. In addition, the FEIS refused to evaluate any grazing alternatives, in violation of NEPA. Although the FEIS purported to evaluate four management alternatives for the RMP, none of these involved grazing alternatives whatsoever. Instead every alternative in the FEIS provided that existing grazing levels would continue unchanged; and BLM simply assumed that livestock grazing in the future would satisfy

applicable Standards and Guidelines of Rangeland Health, which is an unreasonable assumption not supported by the record.

145. In fact, BLM has previously documented that livestock grazing has caused widespread violations of the Idaho Standards and Guidelines for Rangeland Health in areas that are now included in the Craters of the Moon Monument, including southern portions of Laidlaw Park where grazing has historically been authorized. BLM has not undertaken the steps necessary to ensure that grazing management is revised in order to comply with the Fundamentals of Rangeland Health requirements, 43 C.F.R. 4180 et seq.

146. This refusal to consider any meaningful grazing alternatives in the FEIS reflects the same policy decisions of the current Administration to ignore the adverse effects of livestock grazing as seen in other cases previously adjudicated before this Court, including *Western Watersheds Project v. Kraayenbrink*, 538 F. Supp. 2d 1302 (D. Idaho 2008) (holding that BLM's 2006 grazing regulation revisions violated ESA, NEPA and FLPMA).

147. Although the Craters FEIS did consider certain restoration of sagebrush habitat goals, it failed to follow the directives of Section 1.3.1 in the National Sage-grouse Habitat Conservation Strategy, as identified above, particularly in not considering and analyzing a reasonable range of alternatives to protect and restore sagebrush habitats and sage-grouse populations in the planning area and regionally. The FEIS did not consider any "maximize conservation of sagebrush habitat" alternative, and neither did it articulate differing alternatives aimed at meeting the protection and restoration goals identified in Section 1.3.1 of the Strategy.

148. The Craters FEIS further failed to analyze direct, indirect and cumulative impacts of grazing, vegetation treatments, and other authorized actions to the area's sagebrush habitat or impacts to populations of sage-grouse and other sagebrush-obligate species (such as pygmy rabbit); and neither did the FEIS provide quantitative analysis of cumulative impacts as required by law.

149. The Crater FEIS further violated NEPA and BLM's National Sage-Grouse Habitat Conservation Strategy, by failing to analyze the regional importance of sage-grouse populations in the Monument.

150. According to the 2004 Sage-Grouse Conservation Assessment, the sage-grouse populations in the expanded Craters of the Moon Monument form part of the "North Side Snake" and/or "Big Lost" subpopulations, which are located generally along the southern edge of the Upper Salmon core sage-grouse population. Historically, these provided a linkage between the Upper Salmon core population and the Great Basin core sage-grouse population located in southern Idaho and Nevada.

151. The disconnection of these two core sage-grouse populations is a major threat to sage-grouse from a range-wide basis; and maintaining and restoring sagebrush habitat is critical to preserving and restoring these two major sage-grouse populations – and critical to ensure range-wide viability of sage-grouse. Yet BLM never even acknowledged these factors, much less analyzed them in the Craters FEIS, thus violating NEPA.

152. Based on the flawed and unlawful Craters FEIS, a Record of Decision for the Craters of the Moon Resource Management Plan ("Craters RMP ROD") was signed by acting Idaho BLM State Director Bud Cribley on September 7, 2006, for the BLM;

and by Regional Director Jonathan Jarvis for the National Park Service on September 12, 2006.

153. Plaintiff WWP timely protested the proposed Craters RMP, which protest was denied. The Craters RMP is now in effect and being implemented, including by BLM's authorization of livestock grazing and related actions in Laidlaw Park and other areas that offer habitat for sage-grouse and other sagebrush-obligate species.

**Snake River Birds of Prey RMP.**

154. The Snake River Birds of Prey National Conservation Area (NCA) was established on August 4, 1993 by Public Law 103-64, for the "conservation, protection and enhancement of the natural and environmental resources and values associated with the area, including raptor populations and habitats." The authorizing legislation defines raptor habitat to be protected as including the habitat of raptor prey species.

155. The Snake River Birds of Prey NCA contains about 484,000 acres of federal public lands located along 81 miles of the Snake River in Idaho, managed by BLM; and includes lands previously managed as part of BLM's Jarbidge, Bruneau, Owyhee, and Four Rivers Field Offices in southwestern Idaho.

156. The NCA encompasses what were once large extents of sagebrush and native grass habitats that provided the prey base for raptor populations, including ground squirrels, jackrabbits, cottontails, and other species that depend on sagebrush-steppe habitat.

157. The NCA also historically supported sage-grouse populations that formed part of what is now called the Great Basin "core" population, along the southern side of the Snake River. Similar to the Craters of the Moon, this area represents a linkage area

between the Great Basin and Upper Salmon core populations, for which restoration of sagebrush habitat is critical for potential reconnection of these populations.

158. As a result of over-grazing and related fire and weed impacts, along with impacts from military training activities, off-road vehicles, urbanization impacts, and others, the Snake River Birds of Prey NCA has experienced a sharp decline in extent and quality of sagebrush and native grass habitats, causing related declines and losses of sage-grouse as well as raptor prey species and slickspot peppergrass.

159. In 2001, BLM published a “scoping” notice announcing its intent to develop a new Resource Management Plan for the Snake River Birds of Prey NCA, to replace the prior 1996 Snake River Birds of Prey Management Plan.

160. However, BLM did not issue a draft Environmental Impact Statement until 2006 for public comment; and it published a Final Environmental Impact Statement (FEIS) along with a proposed RMP in February 2008. WWP participated extensively in these proceedings, and submitted a timely protest of the proposed RMP in accordance with BLM’s required procedures, which was denied.

161. On December 5, 2008, BLM published notice in the Federal Register of its approval of the final Record of Decision for the new Snake River Birds of Prey NCA RMP. *See* 73 Fed. Reg. 74518. The new RMP is expected to provide management direction on the NCA for at least twenty years. *Id.*

162. The approved RMP adopts Alternative D from the FEIS, with certain changes that BLM describes as minor. These changes include allowing the reopening to livestock grazing of Pasture 8B in the Battle Creek allotment – which was previously

closed to grazing – for the purported purposes of “weed reduction, hazardous fuels management, and ecological improvement.” *Id.*

163. BLM has authorized the reopening of this pasture for grazing despite acknowledging in the FEIS that livestock operators refused to participate in a BLM proposal to utilize livestock grazing on other parts of the NCA for purported purposes of reducing or controlling weeds and fire risks. The fact that livestock operators refused to participate in that proposal helps underscore the reality – which is supported by scientific literature known to BLM – that grazing is not an effective tool to control weeds or reduce fire risks in most circumstances.

164. Under the adopted Alternative D, BLM has determined to continue authorizing livestock grazing across the Snake River Bird of Prey NCA using the levels and conditions that BLM previously authorized in the area, while also opening the previously-closed Pasture 8B on the Battle Creek allotment to grazing. BLM selected Alternative D even though the direct, indirect and cumulative impacts of grazing are closely related to the loss and degradation of sagebrush and native grass communities that provide habitats for sage-grouse and raptor prey species, which the NCA authorizing legislation requires BLM to protect.

165. The FEIS failed to address these relationships between livestock grazing and the loss or degradation of native habitats in the NCA, even though it acknowledged that the ongoing loss of habitat presents a major threat to the prey species and the raptor populations which the NCA was established to protect.

166. In particular, BLM did not undertake any assessment of the capability and suitability of the public lands for livestock grazing; nor did it assess the likely impacts of

grazing under the chosen alternative. Instead, BLM simply assumed that grazing will meet all applicable Standards and Guidelines of Rangeland Health going forward in the future; and based on that assumption – which is unreasonable – BLM ignored or downplayed the actual adverse impacts that livestock grazing in the area has had and will continue to have under the selected alternative.

167. For example, the cumulative effects section of the FEIS acknowledged that extensive loss of sagebrush habitat has occurred in the region, but ignored or downplayed any causal relationship to livestock grazing. Neither did the FEIS take a “hard look” at the science of global climate change, which further underscores the major threats facing sagebrush and native grass habitats in the NCA, and the many species that depend on those habitats.

168. By approving the RMP based on the FEIS and its Alternative D, BLM has violated NEPA as well as FLPMA and Public Law 103-64, because the chosen alternative will not eliminate the adverse effects of livestock grazing and protect the resources for which the Snake River Birds of Prey NCA was established.

169. In approving the Snake River Birds of Prey RMP, BLM also has violated NEPA and FLPMA in failing to maximize conservation of sagebrush habitat, not only for raptor prey species but also for sage-grouse. Although BLM contends that sage-grouse no longer occupy the area, unquestionably sage-grouse could become reestablished here from neighboring populations, including from the south where subpopulations form part of the Great Basin core population.

170. Assuring that sagebrush habitat is protected and restored is vital for recovery of sage-grouse; yet BLM never even attempted to examine alternatives and

management steps needed to bring sage-grouse back to the Snake River Birds of Prey NCA, and thereby help ensure that sage-grouse remains a viable species in the region and across its range. Accordingly, BLM has violated the National Sage-Grouse Habitat Conservation Strategy as well as NEPA and FLPMA in its approval of the Snake River Birds of Prey RMP based on the unlawful FEIS.

**Pocatello RMP.**

171. The Pocatello Field Office encompasses 5.14 million acres in southeastern Idaho, of which BLM manages some 614,000 acres. The BLM lands include sagebrush-steppe habitats occupied by sage-grouse as well as other species of concern, including Columbian sharp-tailed grouse.

172. In 2001, BLM published a Federal Register notice to begin the process of revising prior land management plans, *i.e.*, the 1981 Malad Management Framework Plan and the 1988 Pocatello RMP. BLM cited changes in “ecological, socioeconomic, institutional, and regulatory conditions” as among the reasons for revising the Pocatello RMP; and specifically noted that management direction is needed for special status species, including sage-grouse.

173. BLM thereafter conducted public scoping and issued a draft Environmental Impact Statement. WWP provided extensive comments during these processes, requesting that BLM analyze grazing impacts and alternatives to protect sage-grouse and many other resource values.

174. Through these processes, BLM has identified one of the major issues to be addressed in the revised Pocatello RMP as the following: “Sagebrush Ecosystems: What

effects will future management of sagebrush ecosystems have on greater sage-grouse and sagebrush-obligate species?”

175. Contrary to BLM’s past practice in preparing many RMPs in Idaho and other states, and contrary to the requirements of NEPA and of FLPMA discussed above, BLM summarily rejected analyzing any “no grazing” alternative in the revised Pocatello RMP process.

176. In addition, all four alternatives considered in the draft EIS for the revised Pocatello RMP barely vary in their proposed authorization of livestock grazing. Three of the alternatives (including the “no action” Alternative A, which continues current management) provide for grazing to be authorized on 555,000 to 560,000 acres of BLM lands in the Pocatello Field Office, while the fourth alternative (Alternative D) authorizes grazing on 527,800 acres – a lower figure which is the result of BLM’s proposal to sell off or exchange more federal lands under this alternative.

177. Likewise, the “no action” Alternative called for authorizing 87,200 AUMs of livestock grazing, while Alternatives B and C called for authorizing 87,800 AUMs and 87,000 AUMs. Alternative D (with the larger amount of land to be disposed from federal ownership) called for authorizing 82,500 AUMs.

178. BLM has not evaluated the capability or suitability of livestock grazing on public lands in the Pocatello Field Office, even though this analysis is critical to ensure that grazing does not cause undue resource damage. Neither did BLM evaluate meaningful grazing alternatives for the revised Pocatello RMP, nor has it evaluated any “maximize conservation of sagebrush habitat” alternative as required by the National Sage-Grouse Habitat Conservation Strategy.

179. BLM further refused and failed to evaluate the status, trends, and factors affecting sage-grouse populations within the Pocatello Field Office, and the surrounding region, as required by NEPA and by the National Sage-Grouse Habitat Conservation Strategy, as noted above.

180. For example, BLM has not addressed the regional importance of sage-grouse populations and habitats, or analyzed the cumulative effects of livestock grazing, energy development and other authorizations being made by BLM in other Field Offices within the Wyoming Basin core sage-grouse population – which include the Kemmerer, Pinedale, Rawlins, Casper and Vernal RMPs addressed below, as well as the Little Snake RMP (now underway in northwestern Colorado).

181. Neither has BLM taken a “hard look” at the direct, indirect, and cumulative effects of livestock grazing and other management authorizations (including phosphate mineral leasing, off-road vehicle routes, and land disposals) upon sage-grouse and sagebrush habitats in the Pocatello Field Office.

182. BLM has advised the public that a final Environmental Impact Statement has been prepared and is expected to be released in January 2009, with a final Record of Decision issued by September 2009.

183. Because that final decision is imminent, and WWP is informed and believes, and alleges thereon, that it will reflect the same flaws as set forth in the Draft EIS, WWP includes it in this case, and seeks judicial review of the final decision on the grounds set forth herein.

184. Moreover, to prevent further waste of agency and public resources on a revised RMP process that is flawed and violates NEPA, declaratory and/or injunctive

relief is appropriate under the circumstances to order Defendants to comply with their legal mandates by issuing a legally adequate Final Environmental Impact Statement for the revised Pocatello RMP.

**C. Other Great Basin Core Population RMPs.**

**Ely RMP.**

185. BLM's Ely Field Office measures approximately 230 miles (north-south) by 115 miles (east-west) in east/central Nevada. The Ely Field Office encompasses approximately 13.9 million acres, of which about 11.5 million acres are public lands.

186. This vast area historically featured sagebrush-steppe habitat across the northern two-thirds of the Ely Field Office, which lies within the Great Basin ecological system, while the southern third lies in the more arid Mojave ecological region. The sagebrush habitat here once supported abundant sage-grouse populations; and much of the Great Basin core sage-grouse population is located in this region.

187. However, after a century of excessive grazing as well as construction of roads, fences, powerlines, and other infrastructure, and because of effects of cheatgrass and other weed invasions, fires, drought, and other pressures, much native sagebrush-steppe habitat has been lost and remaining habitats are now seriously degraded and fragmented. As a result, sage-grouse populations along with other sagebrush-obligate species, including pygmy rabbit, have suffered and continue to decline.

188. BLM has recognized these effects in various ways, including by launching a "Great Basin Restoration Initiative" in 1999, which is ostensibly aimed at protecting and restoring native sagebrush-steppe habitats in the Ely Field Office and other lands in Nevada and southern Idaho. BLM's Great Basin Restoration Initiative is based out of

BLM's Idaho State Office in Boise. Instead of addressing the deleterious effects of grazing and other management practices on sagebrush habitats, however, the Great Basin Restoration Initiative appears mainly concerned with improving forage conditions for livestock.

189. Because the prior land use plans applicable to the Ely Field Office (including the former Caliente Resource Area, which has now been consolidated in the Ely Field Office) were admittedly outdated, BLM began the process of revising the Ely RMP and released a draft EIS in July 2005 for public comment.

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

191. BLM issued a Final Environmental Impact Statement ("Ely FEIS") for the revised Ely RMP in November 2007, and approved a Record of Decision adopting the final revised Ely RMP in August 2008. The Ely RMP is now being implemented by BLM, including through issuance of numerous grazing authorizations.

192. As approved, the revised Ely RMP authorizes livestock grazing on 11,278,000 acres, closing just 221,000 acres to grazing. Notably, BLM has closed these areas mainly to protect the desert tortoise in the southern part of the Ely Field Office from grazing impacts. Yet BLM has refused to similarly protect sage-grouse or other

imperiled sagebrush-obligate species in the Ely Field Office by similar closures of their key habitats to grazing.

193. The Ely RMP authorizes 424,602 AUMs of grazing on 8.4 million acres that the FEIS asserts comply with the applicable Standards and Guidelines of Rangeland Health; while 120,665 AUMs are authorized on 3.2 million additional acres “pending their evaluation for meeting rangeland health standards.” *See* Ely FEIS, p. ES-xviii.

194. In truth, the lands that the FEIS asserts are meeting rangeland health standards are not, in fact, satisfying the requirements of 43 C.F.R. 4180 et seq.; and the assertion that rangeland health standards are being satisfied on 8.4 million acres of the Ely Field Office is contrary to the facts and record.

195. For example, the “Affected Environment” chapter of the Ely FEIS itself admits the serious degradation that livestock grazing has caused, or contributed to, across the Ely Field Office. Among other things, this chapter states:

- “In recent years, land management direction, long-term climatic shifts, and the introduction and spread of noxious weeds and exotic species have resulted in substantial alterations of wildlife habitats and degraded rangeland within the Great Basin and Mojave Desert ecological systems.” Ely FEIS, p. 3.6-11.

- “Because of altered fire regimes and poor grazing management within sagebrush communities, the overall trends have been loss or reduction of important grass and forb species for wildlife consumption and a reduction in overall habitat quality for wildlife that depend on these resources.” *Id.*

- “Native perennial bunchgrasses . . . historically were associated with the interspaces between sagebrush plants. In many areas today, the perennial bunchgrasses

have been replaced by a variety of invasive annual species such as halogeton and cheatgrass, as a result of fires, lack of fires, poor grazing practices or various soil disturbances.” *Id.*, p. 3.5-6.

- The “reduction of overall habitat quality in the sagebrush communities in the planning area” has been “paralleled” by a “substantial downward trend in both numbers and distribution” of sage-grouse populations and habitat losses. *Id.*, p. 3.7-18.

196. Despite these admissions that grazing and other factors have caused serious degradation of the sagebrush-steppe and sage-grouse populations in the Ely Field Office, BLM refused to explore in meaningful detail the ways in which domestic livestock grazing has contributed to these degradation conditions, or ways to rectify the situation. Instead of candidly assessing the impacts that livestock have, BLM has also blamed wild horses as supposedly causing rangeland degradation, even though domestic livestock vastly outnumber wild horses in the Ely Field Office.

197. BLM also refused to evaluate the capability or suitability of the public lands in determining what public lands would be available for livestock grazing. Remarkably, BLM stated that grazing suitability “is a decision addressed in previous land use plans” and hence need not be evaluated again in the FIES, *see* Ely FEIS, p. 4.16-1, without acknowledging that the prior land use plans are badly outdated in light of all the ecological changes that have occurred, and hence BLM was obligated to determine afresh what lands are suitable for grazing now.

198. The Ely EIS evaluated five management alternatives, one of which was the “no action” alternative (under which BLM proposed to continue existing

management); and another of which was BLM's "preferred alternative," that BLM ended up adopting.

199. Unlike all the other RMP EISs addressed in this case, the Ely FEIS did identify one alternative under which no grazing and no other "permitted, discretionary uses" would be authorized on the public lands, such as mineral leasing, rights-of-way, and recreation permits. But this "no permitted actions" alternative did not call for BLM to undertake active restoration of lands degraded by weed invasions or fires; and BLM made clear that it did not believe a "no grazing" alternative is consistent with existing law and policy – a reading that is erroneous as a matter of law, as noted above.

200. In addition, based on the lack of active restoration efforts called for under this alternative, BLM deemed that it would not meet objectives for management of the public lands. In short, this alternative was not seriously considered by BLM.

201. As with the other EISs addressed in this case, BLM failed to consider a "maximize conservation of sagebrush habitat" alternative or other similar alternative that would focus on preserving and restoring sagebrush habitats, as required by the BLM's National Sage-Grouse Habitat Conservation Strategy and NEPA. And BLM refused to consider any alternative would combine "active" and "passive" restoration of sagebrush to protect and restore sage-grouse populations, including by removing deleterious livestock grazing as part of the needed sagebrush restoration efforts.

202. Moreover, despite the abundant science addressing the extent of habitat loss and degradation in the Great Basin region, the role played by livestock grazing in causing those losses, and the further risks that climatic changes pose in terms of causing

harmful cumulative effects with grazing and other management actions, the Ely FEIS pays virtually no attention to these interrelated issues or their cumulative impacts.

203. In particular, the Ely FEIS did not acknowledge the science indicating that global climate change may cause hotter and drier conditions, more fires, more cheatgrass and other exotic species invasions, reduced water supplies, and other conditions that are already degraded by livestock grazing and grazing-related infrastructure in the region covered by the Ely Field Office.

204. Neither did the Ely FEIS address the interrelated and cumulative impacts of grazing and other management actions approved in the Ely RMP, including the extensive “vegetation treatments” discussed below, as well as oil and gas leasing, energy transmission lines, coal-fired power plant development, and other energy-related developments that will further fragment the sagebrush-steppe ecosystem and contribute to decline of sage-grouse and other sagebrush-obligate species.

205. The Ely FEIS further failed to evaluate the sage-grouse issues and alternatives as required by the National Sage-Grouse Habitat Restoration Strategy, as discussed above. In particular, the Ely FEIS failed to address the regional importance of sage-grouse populations and habitats, or to analyze the cumulative effects posed by livestock grazing, energy development and other authorizations being made by BLM in other Field Offices for the Great Basin core sage-grouse population. This is despite the fact that BLM simultaneously approved the Surprise, Eagle Lake, and Alturas RMPs, addressed below, which similarly affect large parts of the public lands within the range of the Great Basin core population.

206. Not only did the Ely FEIS ignore regional sage-grouse issues, but it also made significant errors concerning sage-grouse populations and habitats remaining in the Ely Field Office. These include understating and misidentifying the amount and location of sage-grouse winter habitat, for which the figures and maps reported in the Ely FEIS are not consistent with other agency and independent information, including from the Nevada Division of Wildlife.

207. At the same time, the Ely RMP greatly increases the total acres open to oil and gas or other energy development, up to 10,039,800 acres, Ely ROD at 95; and designates numerous utility corridors that apparently total several hundred miles, affecting existing sagebrush habitat that is vital to sage-grouse, pygmy rabbit and other sensitive species. Ely ROD at 70-71 & ROD Map 12.

208. By misrepresenting the scope and extent of sage-grouse habitat, particularly winter habitat, BLM has made it easier to authorize oil and gas development, powerline construction, and other industrial activities without study and disclosure to the public, even though these actions will further fragment and destroy key sage-grouse habitats on the Ely Field Office, including winter habitats. Misrepresenting the facts and ignoring the actual effects these authorizations will have violates NEPA's basic requirements of "hard look" and scientific integrity.

209. BLM also misrepresents and downplays the impacts that vegetation treatments and post-fire recovery measures will have in adversely affecting sagebrush and sage-grouse populations both within the Ely Field Office, and at a regional scale as well (since BLM is undertaking similar vegetation treatments and post-fire measures in

other parts of Nevada, California and Utah as well, under other challenged RMPs as described below).

210. Although BLM describes its vegetation treatment and post-fire recovery measures as intended to promote restoration of native habitat, in fact BLM is proposing across the Great Basin and elsewhere to undertake prescribed fire, plowing, chaining, spraying, and other destruction of sagebrush, as well as seeding or planting non-native grass species in treated or burned areas. Sometimes BLM claims these measures are needed to “treat” what it calls “decadent” stands of sagebrush, or to “thin” sagebrush to supposedly promote sage-grouse breeding, or to supposedly reduce fire risks.

211. Despite the terminology, the Ely RMP approves widespread destruction of sagebrush, including the planned conversion of 4,776,500 acres of sagebrush to a “total herbaceous state (early, mid and late).” Ely RMP ROD at 30. BLM plans to “treat” 70% of the sagebrush vegetation community, and maintain only 30% of the current sagebrush vegetation undisturbed.

212. In truth, ecological principles and scientific literature demonstrate that these types of sagebrush manipulation and destruction will not actually improve sage-grouse habitat, and instead will further degrade, fragment and destroy the native sagebrush habitat that is critical to sage-grouse survival and recovery.

213. The Ely FEIS and RMP do not acknowledge these scientific facts, nor do they disclose to the public the actual adverse impacts that these treatments will have, both directly and cumulatively, in further degrading sage-grouse habitats and populations. BLM has thus violated NEPA, as well as FLPMA, the Special Status Species Policy, and the National Sage-Grouse Habitat Conservation Plan in adopting the Ely RMP.

**Surprise, Eagle Lake, and Alturas RMPs.**

214. Together, BLM's Surprise, Eagle Lake, and Alturas Field Offices encompass about 11.5 million acres in northern Nevada and California. Of these, the Surprise Field Office has 2.43 million acres in Nevada and California, of which 1.22 million acres are managed by BLM. The Eagle Lake Field Office encompasses 4.9 million acres in Nevada and California, of which BLM manages just over 1 million acres of public lands. The Alturas Field Office encompasses 4.1 million acres in northeastern California, of which BLM manages 503,000 acres of federal public lands.

215. BLM undertook what it calls "coordinated development" of revised Resource Management Plans for the Surprise, Eagle Lake, and Alturas Field Offices together, in order to provide "a consistent framework for managing public lands and resource uses in northwestern Nevada and northeastern California."

216. Through this coordinated process, BLM adopted revised RMPs for the Surprise, Eagle Lake, and Alturas Field Offices at the same time, using the same public scoping and comment processes, and following the same analysis in the NEPA documentation for all three Field Offices. All three of the RMPs and their associated NEPA documents thus suffer the same defects, as outlined below.

217. This region of northwestern Nevada and northeastern California historically featured substantial sagebrush-steppe habitat occupied by sage-grouse, as part of the Great Basin core population. However, the loss and fragmentation of sagebrush habitats here from grazing impacts, weed invasions, and other forces has caused substantial declines in local sage-grouse populations, such that very few sage-grouse now remain in the California portion of these Field Offices.

218. In undertaking revision of these RMPs, BLM expressly recognized that “[v]egetation communities continue to be threatened by . . . the invasion of exotic annual grasses and noxious weeds,” and “the decline of sage-grouse populations in the western U.S. has triggered BLM national, state and local strategies with new guidance to address habitat requirements of the species.” *See, e.g.,* Alturas FEIS, p. 1-2.

219. Yet as with the other challenged RMPs here, BLM has not undertaken the analysis and management decisions in the land use plans for these three Field Offices necessary to ensure viable sage-grouse populations. And while the EISs for these challenged RMPs mention local sage-grouse conservation strategies, they do not address BLM’s National Sage-Grouse Habitat Conservation Strategy itself.

220. After conducting public scoping, BLM issued draft EISs for the three Field Offices in 2006. WWP provided extensive comments which underscored to BLM that it needed to evaluate the full effects of livestock grazing authorizations, and alternatives to protect and restore sage-grouse and their habitats in this large region.

221. In each of the three draft EISs, BLM identified four management alternatives, including a “no action” alternative (*i.e.*, no change from current management). Because BLM then proceeded to adopt the “preferred” alternative from the draft EISs, with only minor changes, it did not repeat the alternatives in the final EISs that BLM issued in 2008 for the three Field Offices.

222. Of the four alternatives considered for the revised Surprise, Eagle Lake, and Alturas RMPs, BLM identified Alternative 2 in each EIS as the so-called “Ecosystem” alternative, which supposedly presented an alternative that most emphasized maintaining ecological functions and recovery.

223. However, this “Ecosystem” Alternative 2 in each of the EISs did not propose to eliminate livestock grazing across these three Field Offices; and in fact that alternative would perpetuate historic grazing with little or no change.

224. For the Alturas Field Office, for example, the Alturas EIS reports that the “current management situation” has 457,519 acres of BLM lands open to grazing with 27,000 AUMs authorized for actual use. Yet Alternative 2 proposed making 448,719 acres available for grazing and authorizing 18,294 AUMs for actual use.

225. In other words, BLM’s so-called “Ecosystem” alternative proposed to close less than 2% of all BLM lands in the Alturas Field Office to grazing, and only examined a reduction in active grazing by about one-third based on partial “rest” of grazed areas – rather than examining any alternative that would eliminate grazing in order to protect and restore the native habitats that grazing has damaged and continues to damage there.

226. Likewise, BLM’s “preferred” alternative for the revised Alturas RMP – which was adopted as the final RMP – approves keeping 454,649 acres of BLM lands open to grazing and authorizes 27,000 AUMs of actual use. In other words, the revised management plan that BLM has chosen will perpetuate the exact same livestock grazing regime as was previously in place, despite the fact that grazing has caused direct, indirect and cumulative impacts harming the native sagebrush-steppe habitats there and populations of sage-grouse and other sensitive species.

227. The Surprise and Eagle Lake EISs are virtually identical to the Alturas EIS in their format and “analysis,” and they likewise fail to examine any meaningful alternative to the existing livestock regimes there. They too end up adopting a

“preferred” alternative that perpetuates the grazing regime that is causing widespread damage to native sagebrush habitats and sage-grouse populations in this large area.

228. Specifically, on the Surprise Field Office, the “current management situation” authorizes grazing on 1,445,443 acres of BLM lands with 92,465 AUMs of livestock grazing. Every alternative examined in the Surprise EIS proposed to authorize grazing on the exact same acreage and the same AUMs, including the “preferred” alternative; with the exception of the “Ecosystem” alternative (Alternative 2) which left the same acreage open for grazing but projected that 40,685 AUMs would be authorized because allotments would be rested 2 out of every 3 years.

229. Although BLM acknowledged that this reduced level of grazing would be environmentally preferable, it did not choose this alternative; and neither did it examine any “no grazing” alternative, or any alternative to permanently exclude grazing over remaining sage-grouse habitats, or any alternative that would maximize restoration of sagebrush and sage-grouse populations.

230. Likewise, the Eagle Lake EIS reported that 987,779 acres of BLM lands are currently open to livestock grazing, while 20,160 acres are closed to grazing; and that 52,500 AUMs are currently authorized for domestic livestock grazing. Under the “preferred” alternative adopted by BLM, the exact same acreage remains open to grazing with the exact same levels of AUMs. Under the “Ecosystem” alternative (Alternative 2), BLM evaluated closing just 10,078 more acres to grazing, and projected authorizing between 15,675 - 52,500 AUMs for grazing, based on resting allotments 2 out of 3 years.

231. Again, BLM acknowledged that this reduced level of grazing would be environmentally preferable, but it did not choose this alternative. Neither did it examine

any “no grazing” alternative; any alternative to permanently exclude grazing over remaining sage-grouse habitats; or any alternative that would offer maximum conservation of sagebrush habitat and sage-grouse populations.

232. The EISs for the revised Surprise, Eagle Lake, and Alturas RMPs further failed to take a “hard look” at the direct, indirect, and cumulative effects of the authorized livestock grazing, along with other authorized actions (including extensive vegetation treatments and fire management activities proposed by BLM, along with minerals leasing, and recreational vehicle uses) upon the native sagebrush-steppe habitat and populations of sensitive species, including sage-grouse.

233. Neither did the EISs evaluate the sage-grouse issues and alternatives as required by the National Sage-Grouse Habitat Restoration Strategy, as discussed above. In particular, the EISs failed to address the regional importance of sage-grouse populations and habitats, or to analyze the cumulative effects of livestock grazing, energy development and other authorizations being made by BLM in other Field Offices within the Great Basin core sage-grouse population (such as the Ely RMP addressed herein, as well as the pending Jarbidge RMP underway in southern Idaho).

234. Similar to the Ely RMP, these three RMPs approve extensive vegetation treatments and post-fire recovery measures that ostensibly are intended to aid sage-grouse, but in fact will result in further destruction, degradation and fragmentation of sagebrush. The true intent of these treatments is to maintain and increase livestock grazing, as the EISs make clear in asserting that increased forage may be available in the future as a result of these treatments.

235. In failing to disclose the actual adverse impacts that the vegetation treatments will have for sagebrush and sage-grouse, the EISs thus violate NEPA's "hard look" and scientific integrity requirements.

236. BLM approved Records of Decision for the revised Surprise, Eagle Lake, and Alturas RMPs in April 2008, and BLM has proceeded to implement the revised RMPs through grazing authorizations and other actions.

237. Also in April 2008, the BLM and the Forest Service issued a joint programmatic "Sage Steppe Ecosystem Restoration Strategy" Final Environmental Impact Statement that would facilitate treatment of up to 30,000 acres of sage-steppe each year in a project area that includes the BLM Alturas, Surprise, and Eagle Lake Field Offices, as well as the Modoc National Forest.

238. The strategy relies overwhelmingly on manipulation of vegetation with primary emphasis on use of prescribed fire on 78% of the treated land, and little or no use of active restoration (such as replanting sagebrush seedlings) and no use of passive restoration (such as eliminating deleterious livestock grazing). Despite the risks of prescribed burns exacerbating the problem of invasive weeds and grasses, the absence of an active sagebrush restoration program, and failure to consider any permanent reductions in livestock use in the treatment areas, according to the FEIS the BLM will amend each of the three RMPs here to incorporate this strategy.

239. In fact, each RMP assumes that the proposed "Sage Steppe Ecosystem Restoration Strategy" will increase forage for livestock. "Additional AUMs may be available in the future as vegetation treatments are accelerated under the sagebrush steppe restoration strategy." *See* Alturas RMP at 2-39. *See also* Surprise RMP at 2-38

(“Successful treatment of these areas would significantly improve land health and will also provide maintenance of (or potentially an increase of) forage production of native grasses, forbs, and shrubs”); Eagle Lake RMP at 2-42 (vegetation treatment efforts would focus on reducing invasive juniper in sagebrush-steppe ecosystems, and treating closed-canopy big sagebrush and cheatgrass-dominated communities....and will also provide maintenance of (or potentially an increase of) forage production”).

240. WWP has separately appealed this Sage Steppe Ecosystem Restoration Strategy as adopted by the Forest Service for the Modoc National Forest, on grounds that it would significantly degrade and harm the very sagebrush ecosystem values it is ostensibly designed to protect and improve; and because it violates NEPA in many respects. The strategy premises the vegetation treatments – particularly prescribed fire in sagebrush communities – on misrepresentation of historic fire intervals, while ignoring the impacts that livestock grazing has in degrading those habitats and promoting weed invasions.

241. Because this strategy will actually result in more burning and other destruction of sagebrush, while ignoring the root cause of sage-grouse habitat losses, it will not ensure viability of sage-grouse on the affected areas; and violates NEPA as well as the National Sage-Grouse Habitat Conservation Strategy. Because BLM has announced its determination to amend the Surprise, Eagle Lake, and Alturas RMPs to incorporate this strategy, WWP challenges such amendments in this litigation based on the NEPA and FLPMA violations addressed above.

**D. Other Wyoming Basin Core Population RMPs.**

**Kemmerer RMP.**

242. BLM's Kemmerer Field Office encompasses 1,424,005 acres of public land and 1,575,363 acres of federal mineral estate in southwestern Wyoming, just across the Idaho state line from the Pocatello Field Office. It contains portions of the Green River watershed, the Snake River watershed, and the Bear River basin.

243. Sagebrush covering 1,049,350 acres in the Kemmerer Field Office provides habitat for sage-grouse in the area, which are part of the same large subpopulation located primarily in southwestern Wyoming but that also includes the Pocatello Field Office and other parts of southeastern Idaho, as well as parts of northeastern Utah and northwestern Colorado, according to the 2004 Sage-Grouse Conservation Assessment. This southwest Wyoming population itself is part of the Wyoming Basin core sage-grouse population, which is the largest sage-grouse population remaining.

244. BLM administers grazing on 224 allotments in the Kemmerer Field Office totaling 157,249 AUMS.

245. BLM initiated a process in 2003 to develop a new RMP and EIS for the Kemmerer Field Office. BLM thereafter conducted public "scoping" and issued a draft Environmental Impact Statement for a proposed new Kemmerer RMP.

246. WWP provided comments to BLM calling its attention to the impacts of grazing on native vegetation and fire regimes and urging it to take a "hard look" at the science concerning stocking rates and the impacts of grazing. WWP also asked BLM to consider the science illustrating the effects of livestock grazing upon sage-grouse and

their habitat. In addition, WWP requested BLM to evaluate a full range of alternatives, including a “no grazing” and significantly reduced grazing alternative.

247. On August 22, 2008, BLM issued a Proposed Resource Management Plan and Final Environmental Impact Statement for the Kemmerer Field Office (“Kemmerer FEIS”) which violates NEPA for failing to take a “hard look” at grazing impacts and alternatives, among other defects.

248. The Kemmerer FEIS acknowledged that grazing adversely impacts vegetation communities, promotes the invasion of nonnative weeds, Kemmerer FEIS at 4-2, compacts soil, Kemmerer FEIS at 4-64, increases erosion, and degrades soil nutrients, Kemmerer FEIS at 4-62; but it made no attempt to analyze or quantify these impacts.

249. Rather, as with the Craters RMP and others addressed in this case, the Kemmerer FEIS simply assumed that BLM will adhere to applicable Standards and Guidelines for Rangeland Health, which would be sufficient to limit any adverse grazing impacts, Kemmerer FEIS at 4-4 – an unreasonable assumption not supported by the facts, science, or record of BLM’s grazing management here or elsewhere. In refusing to recognize that livestock grazing must be substantially changed or eliminated if its adverse effects are to be avoided or reduced, the Kemmerer FEIS thus failed to take the required “hard look” at grazing impacts as required under NEPA.

250. Furthermore, the Kemmerer FEIS refused to analyze the extent to which any of its proposed alternatives will contribute to climate change. The Kemmerer FEIS recognized that climate change will significantly affect the environment and acknowledged that the oil and gas development activities authorized on the Kemmerer

Field Office will produce greenhouse gases. Kemmerer FEIS at 4-7 – 4-8. However, the Kemmerer FEIS then blatantly side-stepped BLM’s responsibility to analyze these impacts, claiming that there is still too much uncertainty surrounding climate change to even attempt any such analysis.

251. In addition, BLM refused to evaluate any grazing alternatives in the Kemmerer FEIS, again in violation of NEPA. Although the Kemmerer FEIS purported to evaluate four management alternatives for the RMP, none of these alternatives mandated a meaningful reduction in the area open to grazing or any reduction in permitted AUMS whatsoever. The BLM summarily rejected analysis of a no grazing alternative, as well as potential alternatives that would have limited the areas available for grazing. Kemmerer FEIS at 2-5.

252. The Kemmerer FEIS did not consider or analyze a reasonable range of alternatives to protect and restore sagebrush habitats and sage-grouse populations in the planning area and regionally. Although each of the four proposed alternatives included conservation measures ostensibly designed to protect sage-grouse, Kemmerer FEIS at 2-64, none of them can be considered the “maximize conservation of sagebrush habitat” alternative required by the National Sage-Grouse Habitat Conservation Strategy.

253. The Kemmerer FEIS also failed to take a “hard look” at the environmental impacts of proposed vegetation treatments. All of the alternatives considered in the Kemmerer FEIS would permit BLM to conduct vegetation treatments using biological agents, and the Kemmerer RMP permits the BLM to use chemical treatments, mechanical treatments, and prescribed fire as well. Kemmerer FEIS at 2-56. The Kemmerer FEIS acknowledged that vegetation treatments can adversely affect the environment by

increasing sedimentation, Kemmerer FEIS at 4-23, degrading and fragmenting habitat, Kemmerer FEIS at 4-55, increasing the potential for establishment of invasive weeds, and increasing erosion. Kemmerer FEIS at 4-203. Yet, the Pinedale FEIS made no attempt to analyze or quantify the impacts that would result from the vegetation treatments proposed under its alternatives, particularly the further loss or fragmentation of sagebrush.

254. The Kemmerer FEIS also failed to conduct analysis of direct, indirect or cumulative impacts to sagebrush, sage-grouse habitat, and sagebrush obligate species as required by Section 1.3.1 of the National Sage-Grouse Habitat Conservation Strategy.

255. The Kemmerer FEIS did acknowledge that the loss and degradation of sage-grouse habitat is the primary cause of the sage-grouse's decline; and that both grazing and oil and gas development contribute to the degradation of sage-grouse habitat by reducing herbaceous cover and creating surface disturbances. Kemmerer FEIS at 3-85, 4-135. Yet, the Kemmerer FEIS failed to describe or quantify the extent to which the grazing and oil and gas developments proposed in the various alternatives will impact sage-grouse.

256. The Kemmerer Field Office has previously approved oil and gas development within sagebrush habitat occupied year-round by sage-grouse, particularly through the Moxa Arch project, for which BLM is now in the process of approving a major expansion into additional occupied sage-grouse habitat.

257. Yet the Kemmerer RMP FEIS did not address or quantify the interrelated and cumulative effects that livestock grazing plus this energy development (with its

associated construction of road, drill pads, fences, and other facilities) will have upon the local sage-grouse.

258. Neither did the Kemmerer FEIS address the effects of these interrelated grazing and energy activities upon sage-grouse populations and habitat from a regional perspective, as called for by the National Sage-Grouse Habitat Conservation Plan.

259. This omission is particularly important, because BLM is simultaneously authorizing energy development in neighboring areas that are also causing direct, indirect and cumulative adverse impacts to sage-grouse and their habitats, within one of the historically most abundant and important sage-grouse populations anywhere. In particular, BLM is authorizing large-scale energy developments in the neighboring Pinedale Field Office (discussed below), as well as other parts of Wyoming within the Wyoming Basin core sage-grouse population, including the Casper and Rawlins Field Offices (also addressed below).

260. Further loss of these sage-grouse as a result of current and planned energy development, along with grazing and other impacts approved under the Kemmerer RMP, will certainly contribute to the need to list sage-grouse under the ESA. BLM's refusal to address either the regional or range-wide importance of its Kemmerer RMP for sage-grouse, along with other RMPs that it is approving affecting the same sage-grouse resources, thus violates both the National Sage-Grouse Habitat Conservation Strategy as well as the Special Status Species Policy, NEPA, and FLPMA.

261. BLM has approved a final Record of Decision for the Kemmerer RMP as presented in the Kemmerer FEIS, or will do so imminently. Accordingly, the Kemmerer RMP and FEIS are properly subject to judicial review in this case. In addition, entry of

declaratory and/or injunctive relief is also appropriate under the circumstance and in light of Defendants' legal violations as discussed above.

**Pinedale RMP.**

262. BLM's Pinedale Field Office is located north and east of the Kemmerer Field Office. It encompasses 922,880 acres of public land and 1,199,280 acres of federal mineral estate in western Wyoming, approximately 100 miles south of Yellowstone National Park. The majority of the land is located in the Upper Green River and New Fork River watersheds.

263. Over three-quarters (approximately 744,353 acres) of the Pinedale Field Office is dominated by the sage-steppe ecosystem. Historically, it offered abundant habitat for sage grouse; and was once one of the most productive sage-grouse populations anywhere. The sage-grouse population here is part of the Wyoming Basin core sage-grouse population.

264. As a result of extensive energy development in recent years, however, as well as impacts from grazing and other forces, the once thriving sage-grouse population here is now declining rapidly.

265. BLM administers grazing on 213 of the 219 allotments in the Pinedale Field Office. 197 of the allotments are devoted solely to cattle grazing. The permits currently in effect authorize 107,536 AUMs of livestock grazing. Livestock are turned out onto allotments with lower elevations between May 1 and June 1 where they remain for 4-6 weeks before moving to allotments with higher elevations. Fall grazing occurs on twelve allotments.

266. The Pinedale Field Office contains 492 water developments, 45 spring developments, 113 wells, 308 reservoirs, and 26 other types of water developments.

267. Oil and gas production in the Pinedale Field Office has substantially increased since 1988, a trend that is likely to continue over the next twenty years. Currently, 3,722 mineral wells are located within the Pinedale Field Office, of which 2,970 are oil and gas wells. The Pinedale Field Office also contains 9 coalbed natural gas wells that are between 3,400 and 4,100 feet deep. 41% of all wells within the planning area have been abandoned.

268. BLM initiated a scoping process in 2003 to develop a new Resource Management Plan for the Pinedale Field Office (“Pinedale RMP”). BLM thereafter conducted public “scoping” and issued a draft Environmental Impact Statement for the proposed RMP.

269. In August 2008, BLM issued a Proposed Resource Management Plan and Final Environmental Impact Statement for the Pinedale Resource Management Plan (“Pinedale FEIS”), which violates NEPA in failing to take a “hard look” at grazing impacts and alternatives, among other defects.

270. WWP participated in these processes, and provided comments asking BLM to fully study the effects of livestock grazing and grazing-related actions (such as range infrastructure construction and maintenance) upon the native habitats and their dependent wildlife values, including for sage-grouse. WWP also urged BLM to evaluate a full range of alternatives, including a variety of “no grazing” and limited grazing alternatives, as well as designation of ACECs or other special protection areas for the benefit of native vegetation and wildlife, including sage-grouse.

271. The Pinedale FEIS failed to take a hard look at the impacts of grazing and energy development under NEPA. The FEIS acknowledged that grazing has a wide variety of impacts on resources and values of the Pinedale Field Office, including those of riparian areas and sagebrush ecosystems. The FEIS also acknowledged that oil and gas development impacts sage-grouse and has contributed to the declining number of active leks. Nevertheless, the Pinedale FEIS did not address the cumulative impacts of grazing along with oil and gas and other energy development on the sagebrush-steppe ecosystem or on sage-grouse populations in and around the Pinedale Field Office.

272. In addition, the Pinedale FEIS refused to evaluate any meaningful grazing alternatives. Although the Pinedale FEIS purported to evaluate four management alternatives for the RMP, BLM summarily refused to analyze any “no grazing” alternative.

273. The Pinedale FEIS did not consider or analyze a reasonable range of alternatives to protect and restore sagebrush habitats and sage-grouse populations in the planning area and regionally. Although the alternatives considered in the Pinedale FEIS do contain management goals and objectives to sustain sagebrush ecosystems, the FEIS did not consider any “maximize conservation of sagebrush habitat” alternative, and neither did it articulate differing alternatives aimed at meeting the protection and restoration goals identified in Section 1.3.1 of BLM’s National Sage-Grouse Conservation Strategy.

273. The Pinedale FEIS also failed to take a “hard look” at the environmental impacts of proposed vegetation treatments. All of the alternatives considered in the Pinedale FEIS would permit BLM to use prescribed fire, biological treatments, and

mechanical to treatments to manipulate vegetation. Pinedale FEIS at 2-156. The Pinedale FEIS acknowledged that vegetation treatments can adversely affect the environment by removing vegetation, changing plant community structure, Pinedale FEIS at 4-181, promoting the invasion of exotic weeds, Pinedale FEIS at 4-184, and destroying sage-grouse nesting habitat. Pinedale FEIS at 4-234. Yet, the Pinedale FEIS made no attempt to analyze or quantify the impacts that would result from the vegetation treatments proposed under its various alternatives, particularly impacts on sagebrush habitats.

274. In addition, the Pinedale FEIS failed to conduct analysis of direct, indirect and cumulative impacts to sagebrush, sage-grouse habitat, sagebrush obligate species as required by Section 1.3.1 of BLM's National Sage-Grouse Conservation Strategy. Nor did it provide any quantitative analysis of such impacts.

275. The Pinedale FEIS further violated NEPA and and BLM's National Sage-Grouse Habitat Conservation Strategy by failing to address the regional importance of sage-grouse populations and habitats, or to analyze the cumulative effects of livestock grazing, energy development and other authorizations being made by BLM in other Field Offices within the Wyoming Basin core sage-grouse population (such as the Pocatello, Kemmerer, Rawlins, Caspar, and Vernal RMPs addressed herein, as well as the Little Snake RMP underway in northwestern Colorado).

276. On November 25, 2008, BLM rejected WWP's protest of the proposed Pinedale RMP; and BLM either has approved a final Record of Decision for the Pinedale RMP, or will imminently approve the Pinedale RMP as presented in the FEIS.

Accordingly, the Pinedale RMP and FEIS are properly subject to judicial review in this

case. In addition, entry of declaratory and/or injunctive relief is also appropriate under the circumstance and in light of Defendants' legal violations as discussed above.

**Rawlins RMP.**

277. BLM's Rawlins Field Office encompasses approximately 11.2 million acres in southern-central and eastern Wyoming, of which BLM manages approximately 3.5 million acres of public lands and 4.6 million acres of federal mineral estate.

278. The Rawlins Field Office contains extensive sagebrush-steppe habitat and was historically home to abundant sage-grouse populations. Although not addressed by BLM, these apparently include the south-central Wyoming/north-central Colorado sage-grouse subpopulation identified in the 2004 Sage- Grouse Conservation Assessment; and that subpopulation itself forms part of the larger Wyoming Basin core population.

279. Livestock grazing, agriculture, energy development, infrastructure, and other factors have caused loss and degradation of sagebrush habitats here, causing substantial declines in sage-grouse populations, according to the 2004 Sage-Grouse Conservation Assessment.

280. The prior land use management plan for the Rawlins Field Office was the Great Divide RMP, which BLM adopted in 1990. After determining that the Great Divide RMP was deficient in many ways – including because of increasing demands for energy development and its inadequate protection of sensitive resources – BLM began the process of preparing the Rawlins RMP in 2002.

281. Issues or conflicts that BLM identified as needing resolution in the Rawlins RMP include energy development and related transportation conflicts with wildlife habitat and sensitive vegetation; as well as conflicts between “consumptive” uses

of vegetation from livestock grazing and others, versus “nonconsumptive” use of vegetation for wildlife habitat, watershed protection and soil stabilization.

282. After conducting public “scoping” in 2003, BLM issued a draft Environmental Impact Statement for the proposed Rawlins RMP in 2004. WWP provided comments urging BLM to examine the direct, indirect, and cumulative impacts of livestock grazing along with energy development and other factors affecting the public lands, waters, and wildlife resources of the area; and to consider alternatives that would protect declining sagebrush habitats, sage-grouse and other values from these impacts.

283. BLM issued a Proposed Resource Management Plan and Final Environmental Impact Statement for the Rawlins Field Office in August 2008 (“Rawlins FEIS”), which violated NEPA by refusing to take a “hard look” at grazing impacts and alternatives, among other defects.

284. The Rawlins FEIS examined four alternatives, including a “no action” alternative that would continue existing management under the admittedly-deficient and outdated Great Divide RMP.

285. Other alternatives in the Rawlins FEIS were identified as “Development of Resources” (Alternative 2), “Protection of Resources” (Alternative 3), and “Conservation Alternative-Proposed Plan” (Alternative 4).

286. In considering these alternatives, BLM expressly limited its analysis of management options to maintain what it called “valid existing” oil and gas leases and other energy development authorizations. BLM did not consider any alternative to restrict, rescind or otherwise limit these energy developments to prevent further degradation of native habitats and wildlife populations.

287. The so-called “Conservation Alternative-Proposed Plan” (Alternative 4) was identified by BLM as providing “a balance for opportunities to use and develop resources while ensuring environmental conservation.” Rawlins FEIS, p. ES-3 (emphasis added).

288. In fact, this labeling and description is false and misleading. This adopted Alternative 4 certainly does not “ensure environmental conservation,” but instead authorizes expanded energy development, construction of infrastructure, continued damaging livestock grazing, and other industrial and human uses of the public lands that will individually and cumulatively spell the death and destruction of much wildlife habitat and populations, including (but hardly limited to) sage-grouse.

289. BLM summarily rejected evaluating a “no grazing” alternative for the Rawlins RMP, because it “concluded that eliminating all grazing from public lands continues not to be a viable or necessary management option.” Rawlins FEIS, p. 2-8.

290. BLM also rejected analyzing a separate detailed conservation alternative in the Rawlins FEIS, which would provide much greater protection for a variety of important resources in the Rawlins Field Office than BLM identified in its so-called “Protection of Resources” alternative or its chosen Alternative 4. BLM rejected analyzing this suggested alternative in the FEIS on grounds it supposedly “failed” to consider all the “environmental laws, policy statements, regulations, and procedures that govern day-to-day management of the public lands.” Rawlins FEIS, p. 2-10.

291. Remarkably, even while it rejected analysis of this proposed alternative based on this faulty legal rationale, BLM failed to adhere to its own Special Status Species Policy or National Sage-Grouse Habitat Conservation Strategy in the Rawlins

FEIS and RMP. Neither did BLM bother to explain how its rejection of the proposed alternative would be consistent with BLM's own Special Status Species Policy and the National Sage-Grouse Conservation Strategy, when that alternative would certainly provide much more protection for sage-grouse and sagebrush habitats than any of the alternatives in the FEIS.

292. With respect to livestock grazing, all four of the alternatives considered in the Rawlins FEIS were identical. All four alternatives – even the so-called “Protection of Resources” alternative – provided that the entire Rawlins Field Office would be available for livestock grazing, without considering the capability or suitability of the public lands for grazing; and that “the current amounts, kinds and season of use of livestock grazing would be authorized” at least until monitoring indicated changes might be needed. *See* Rawlins FEIS, p. 2-32.

293. The only difference, with respect to grazing, between the “Protection of Resources” alternative and the “no action” and “proposed action” alternatives is that BLM indicated that “grazing systems and range improvements would be implemented to enhance wildlife, watershed, and riparian values while reducing livestock conflicts with other resources” under Alternative 3; while Alternatives 1 and 4 simply said that “grazing systems and range improvements would be designed to achieve the management goals for livestock grazing, and to achieve and maintain healthy rangelands.” *Id.*, p. 2-33 (emphasis added). Apparently, BLM distinguishes between “designing” and “implementing” grazing systems; but in truth this is a distinction without a difference, leaving these alternatives virtually identical with respect to grazing impacts.

294. In addition, the Rawlins FEIS did not consider or analyze a reasonable range of alternatives to protect and restore sagebrush habitats and sage-grouse populations in the planning area and regionally. The FEIS did not analyze any “maximize conservation of sagebrush habitat” alternative, and neither did it articulate differing alternatives aimed at meeting the protection and restoration goals identified in Section 1.3.1 of BLM’s National Sage-Grouse Habitat Conservation Strategy.

295. The Rawlins FEIS also failed to conduct analysis of direct, indirect and cumulative impacts to sagebrush, sage-grouse habitat, sagebrush obligate species as required by Section 1.3.1 of BLM’s National Sage-Grouse Conservation Strategy. Nor did it provide any quantitative analysis of such impacts.

296. The Rawlins FEIS further violated NEPA and and BLM’s National Sage-Grouse Habitat Conservation Strategy by failing to address the regional importance of sage-grouse populations and habitats, or to analyze the cumulative effects of livestock grazing, energy development and other authorizations being made by BLM in the Rawlins Field Office.

297. Likewise, the Rawlins FEIS did not analyze the regional impacts or importance of the management actions approved under the Rawlins RMP with the effects of the other RMPs adopted by BLM at the same time for other Field Offices within the range of the Wyoming Basin core sage-grouse population (such as the Pocatello, Kemmerer, Pinedale, Casper, and Vernal RMPs addressed herein, as well as the Little Snake RMP underway in northwestern Colorado).

298. BLM has approved a final Record of Decision for the Rawlins RMP, or will imminently approve the Rawlins RMP as presented in the FEIS. Accordingly, the

Rawlins RMP and FEIS are properly subject to judicial review in this case. In addition, entry of declaratory and/or injunctive relief is also appropriate under the circumstance and in light of Defendants' legal violations as discussed above.

**Casper RMP.**

299. BLM's Casper Field Office is located north of the Rawlins Field Office; and encompasses 1,361,577 acres of public land and 4,657,172 acres of federal mineral estate in eastern central Wyoming on the intersection of the Interior Plains and the Rocky Mountain System.

300. Sagebrush habitat covering 630,183 acres form the most common type of vegetation community in the Casper Field Office. The area contains approximately 200 sage-grouse leks, as well as large areas of fairly contiguous sagebrush-steppe, making it invaluable habitat for sage-grouse.

301. Although not addressed by BLM, the sage-grouse populations here form part of the larger Wyoming Basin core sage-grouse population, as defined in the 2004 Sage-Grouse Conservation Assessment.

302. BLM administers grazing on 1.4 million surface acres of public land divided into 514 allotments. Allotments range in size from 12 to 116,538 acres. 335, or 72 percent, of the existing 462 grazing leases authorize year-round grazing. 353 of the leases, or 76 percent, authorize cattle grazing only.

303. Oil and gas leases currently cover approximately 1.74 million acres in the Caspar Field Office. It contains 170 oil and gas fields, 119 of which are currently producing. As of 2005, there were 8017 wells in the Caspar Field Office, 221 of which were active.

304. BLM initiated a scoping process in 2003 to develop a new RMP and EIS for the Casper Field Office. BLM thereafter conducted public “scoping” and issued a draft Environmental Impact Statement for a proposed new Casper RMP.

305. In June 2007, BLM issued a Proposed Resource Management Plan and Final Environmental Impact Statement for the Casper Field Office (“Casper FEIS”), which violates NEPA in failing to take a “hard look” at grazing impacts and alternatives, among other defects.

306. The Casper FEIS acknowledged that grazing has adversely impacted the Casper Field Office public lands and resources, resulting in violations of the Wyoming Standards of Rangeland Health on nearly half of the allotments that have been assessed. Casper FEIS 3-105. It further acknowledged that grazing is a surface-disturbing activity that adversely impacts shrubland vegetation communities. Casper FEIS at 4-69. Yet, the Casper FEIS failed and refused to recognize that livestock grazing must be substantially changed or eliminated if its adverse effects are to be avoided or reduced.

307. The Casper FEIS also refused to analyze the extent to which any of its proposed alternatives will contribute to climate change. In fact, the Casper FEIS failed even to acknowledge the existence of climate change; neither of the phrases “climate change” or “global warming” appear anywhere in its 1,282 pages.

308. In addition, BLM refused to evaluate any grazing alternatives in the Casper FEIS, also in violation of NEPA. Although the Casper FEIS purported to evaluate five management alternatives for the RMP, none of these alternatives mandate any reduction in the area open to grazing or the permitted number of AUMS. Casper FEIS at 2-77 to 2-78.

309. In addition, all of the alternatives provide for the construction of new water developments. Casper FEIS 2-56. The purpose of these new developments is to promote and facilitate livestock grazing into areas that previously had less grazing impacts because their distance from water – even though this expanded range of livestock impacts would further degrade and fragment key sage-grouse habitat. Yet the FEIS never acknowledged these impacts.

310. The Casper FEIS also did not consider or analyze a reasonable range of alternatives to protect and restore sagebrush habitats and sage-grouse populations in the planning area and regionally. Although each of the five proposed alternatives includes conservation measures ostensibly designed to protect sage-grouse, Casper FEIS at 2-64, none of them can be considered the “maximize conservation of sagebrush habitat” alternative required by the National Sage-Grouse Habitat Conservation Strategy.

311. The Casper FEIS also failed to take a “hard look” at the environmental impacts of proposed vegetation treatments. All of the alternatives considered in the Casper FEIS would permit BLM to utilize chemical treatments and prescribed burns to manage vegetation in the Casper Field Office. Casper FEIS at 2-44. The Casper FEIS acknowledged that vegetation treatments can adversely affect the environment by creating surface disturbances, resulting in erosion, sedimentation, Casper FEIS at 4-20, compaction, changes in hydrology, Casper FEIS at 4-71, and habitat fragmentation. Casper FEIS at 4-60. Yet, the Casper FEIS made no attempt to analyze or quantify the impacts that would result from the vegetation treatments proposed under its various alternatives.

312. The Casper FEIS also failed to conduct analysis of direct, indirect or cumulative impacts to sagebrush, sage-grouse habitat, and sagebrush obligate species as required by Section 1.3.1 of BLM's National Sage-Grouse Habitat Conservation Strategy. The Casper FEIS acknowledged that the loss and degradation of sage-grouse habitat is the primary cause of the sage-grouse's decline. Casper FEIS at 3-73. The Casper FEIS also recognized that both grazing and oil and gas development contribute to the degradation of sage-grouse habitat by reducing herbaceous cover and creating surface disturbances. Casper FEIS at 4-150 to 4-151. Yet, the Casper FEIS failed to describe or quantify the extent to which the grazing and oil and gas developments proposed in the various alternatives will impact sage-grouse, both individually and cumulatively.

313. The Caspar FEIS further violated NEPA and and BLM's National Sage-Grouse Habitat Conservation Strategy by failing to address the regional importance of sage-grouse populations and habitats, or to analyze the cumulative effects of livestock grazing, energy development and other authorizations being made by BLM in other Field Offices within the Wyoming Basin core sage-grouse population (such as the Pocatello, Kemmerer, Pinedale, Rawlins, and Vernal RMPs addressed herein, as well as the Little Snake RMP underway in northwestern Colorado).

314. Based on the flawed and unlawful Casper FEIS, Wyoming BLM State Director signed and issued a Record of Decision and Approved Casper Resource Management Plan in December, 2007. BLM has proceeded to implement the Casper RMP, including through livestock grazing authorizations.

**Vernal RMP.**

315. BLM's Vernal Field Office lies south of the Kemmerer Field Office, and encompasses 1,725,512 acres of public land in the Uinta/Piceance Basin in northeastern Utah. It is bounded on the north by the Wyoming-Utah state line, by the Tavaputs Plateau and the Book Cliffs on the south, by the Douglas Creek Arch on the east, and by the Wasatch Mountains on the west.

316. Sagebrush-steppe vegetation covers approximately 57% of the Vernal Field Office, and provides essential habitat for sage-grouse. One of the strongest remaining subpopulations of sage-grouse is found on Diamond Mountain in the Vernal Field Office. The sage-grouse populations here form part of the larger Wyoming Basin core population, as defined in the 2004 Sage-Grouse Conservation Assessment.

317. Previously, 1,691,116 acres of the Vernal Field Office were open to livestock grazing; and BLM permits authorize 137,897 AUMs of grazing. The Vernal Field Office contains 65 miles of fencing, 35 miles of pipeline, and 775 water projects. The total area affected by these so-called range improvements comes to 40,390 acres.

318. Approximately 2,800 active oil and gas wells are located in the Vernal Field Office. It is anticipated that there will be intense oil and gas exploration during the next twenty years and approximately 2,055 new oil wells, 4,345 new gas wells, and 130 new coal bed natural gas wells will be drilled.

319. BLM initiated a scoping process in 2001 to develop a new RMP and EIS for the Vernal Field Office. BLM thereafter issued a draft Environmental Impact Statement for a proposed new Vernal RMP.

320. WWP provided comments to BLM calling its attention to the impacts of grazing on native vegetation and fire regimes and urging it to take a “hard look” at the science concerning stocking rates and the impacts of grazing. WWP also asked BLM to consider the science illustrating the effects of livestock grazing upon sage-grouse and their habitat. In addition, WWP repeatedly requested BLM to evaluate a full range of alternatives, including a “no grazing” and significantly reduced grazing alternative.

321. In August 2008, BLM issued a Proposed Resource Management Plan and Final Environmental Impact Statement for the Vernal Field Office (“Vernal FEIS”), which violated NEPA by failing to take a “hard look” at grazing impacts and alternatives, among other defects.

322. The Vernal FEIS acknowledged that grazing directly impacts vegetation through loss of vegetative cover, loss of biomass, trampling, increases in noxious weeds and reductions in plant productivity. Vernal FEIS at 4-482. It further acknowledged that the construction of new water projects would necessarily have long-term, adverse impacts on vegetation, but made no attempt whatsoever to evaluate or quantify these impacts, let alone reduce or avoid them. Vernal FEIS at 4-495 to 4-496.

323. The Vernal FEIS did not assess the capability or suitability of the public lands for livestock grazing. In addition, BLM refused to evaluate any grazing alternatives in the Vernal FEIS, in violation of NEPA.

324. Although the Vernal FEIS purported to evaluate five management alternatives for the RMP, none of these alternatives would have reduced grazing in a meaningful way. All of the proposed alternatives would perpetuate grazing at a high utilization level of either 50 or 60 percent, which is inconsistent with the habitat needs of

sage-grouse. BLM summarily rejected analyzing a no grazing alternative, as well as potential alternatives that would have adjusted the number of permitted AUMS, livestock management practices, or the type of livestock authorized to graze in particular allotments. Vernal FEIS at 2-4 to 2-5.

325. Moreover, all of the proposed alternatives provided for increasing the number of water projects, as well as the number of miles fenced. Vernal FEIS at 4-495.

326. The Vernal FEIS did not consider or analyze a reasonable range of alternatives to protect and restore sagebrush habitats and sage grouse populations in the planning area and regionally. Although Alternative C purported to “minimize human activities,” Vernal FEIS at 4-1, none of the alternatives considered in the Vernal FEIS can be considered the “maximize conservation of sagebrush habitat” alternative required by the National Sage-Grouse Habitat Conservation Strategy.

327. The Vernal FEIS also failed to take a “hard look” at the environmental impacts of proposed vegetation treatments. All of the alternatives considered in the Vernal FEIS would permit BLM to conduct vegetation treatments on up to 200,000 acres of sagebrush-steppe using chemical, biological, and mechanical treatment methods as well as prescribed fire. Vernal FEIS at 4-181. While the Vernal FEIS acknowledged that vegetation treatments may have short-term, adverse effects on the environment, Vernal FEIS at 4-495, it failed to identify, analyze, or quantify these impacts. It also failed to address the direct and cumulative impacts that further loss and fragmentation of sagebrush habitats through the vegetation treatments would have on remaining sage-grouse habitats and populations.

328. Indeed, the Vernal FEIS generally failed to conduct analysis of direct, indirect or cumulative impacts to sagebrush, sage-grouse habitat, and sagebrush obligate species as required by Section 1.3.1 of BLM's National Sage-Grouse Conservation Strategy. The Vernal FEIS acknowledged that habitat loss and fragmentation due to human activities, including mineral exploration and grazing, is the primary cause for the decline in sage-grouse. Vernal FEIS at 4-458. It also recognized that, under any of its proposed alternatives, large stretches of sage-grouse habitat would be open to oil and gas leasing. Vernal FEIS at 4-449. However, the Vernal FEIS neither analyzed nor attempted to quantify the direct, indirect, and cumulative impacts of grazing or oil and gas exploration on sage-grouse.

330. The Vernal FEIS further violated NEPA and BLM's National Sage-Grouse Habitat Conservation Strategy by failing to address the regional importance of sage-grouse populations and habitats, or to analyze the cumulative effects of livestock grazing, energy development and other authorizations being made by BLM in other Field Offices within the Wyoming Basin core sage-grouse population (such as the Pocatello, Kemmerer, Pinedale, Rawlins, and Casper RMPs addressed herein, as well as the Little Snake RMP underway in northwestern Colorado).

331. Based on the flawed and unlawful Vernal FEIS, a Record of Decision and Approved Resource Management Plan for the Vernal Field Office ("VFO ROD and RMP") was signed by Utah BLM State Director Selma Sierra in October 2008; and BLM is proceeding to implement the unlawful Vernal RMP.

**E. RMPs Affecting Other Utah Sage-Grouse Populations.**

332. BLM has also recently adopted RMPs for five other Field Offices located in Utah, including the Price and Moab Field Offices that border the Vernal Field Office to the south; and the Richfield, Monticello and Kanab Field Office in southern Utah.

333. As explained below, four of these Field Offices still have smaller, isolated greater sage-grouse populations according to the 2004 Sage-Grouse Conservation Assessment; and all five historically did have sage-grouse, such that restoration of sagebrush habitat could offer an opportunity to restore sage-grouse there.

334. In addition, one or more of the Field Offices may still have Gunnison sage-grouse, a related species that is also experiencing population declines due to loss and fragmentation of sage-steppe habitat.

335. Even though BLM adopted RMPs for each of these Field Offices within the same timeframe, it did not analyze them collectively from the perspective of sagebrush habitat and sage-grouse populations, thus violating NEPA and the National Sage-Grouse Habitat Restoration Strategy.

**Price RMP.**

336. BLM's Price Field Office is comprised of approximately 2.5 million acres of public land on the Colorado Plateau in south-central Utah, just south of the Vernal Field Office. It is bounded on the north by the Carbon-Duchesne county line, by Manti-La Sal National Forest on the west, and by the Green River on the east.

337. Sagebrush-steppe covers 285,100 acres of the Price Field Office which provides sage-grouse habitat; and 50 acres are designated as sage-grouse leks. The Price Field Office also contains 13,300 acres of "crucial value nesting/brood rearing" habitat,

42,200 acres of high value winter habitat, and 37,200 acres of high-value yearlong habitat for sage-grouse.

338. In 2002, sage-grouse were introduced in the Gordon Creek area of the Price Field Office. Sagebrush vegetation communities in the Price Field Office are declining and the planning area contains a die-off area of 15,380 areas.

339. BLM administers grazing on 178 allotments on the Price Field Office. The permits currently in effect authorize the consumption of 99,520 AUMs.

340. The Price Field Office contains 19 oil and gas fields, 9 of which are active. As of June 2005, there were 1,728 oil and gas wells, 865 of which were producing oil and gas. Existing oil and gas developments create disturbance on 3,200 acres

341. In August 2008, following scoping and the issuance of a draft Environmental Impact Statement, BLM issued a Proposed Resource Management Plan and Final Environmental Impact Statement for the Price Field Office ("Price FEIS").

342. The Price FEIS violated NEPA in failing to take a "hard look" at the environmental impacts of grazing. It acknowledged that grazing adversely affects the environment by compacting soils, eroding soils, increasing runoff, Price FEIS at 4-11, and increasing siltation, FEIS at 4-17, but made no attempt to analyze or quantify the impacts that would result from grazing under its proposed alternatives. Neither did it assess the capability or suitability of the public lands for continued livestock grazing. Rather, the Price FEIS simply assumed that BLM will properly apply the Utah Standards of Rangeland Health and thereby limit or prevent grazing impacts, which is an unreasonable assumption. Price FEIS at 4-22.

343. In addition, the Price FEIS failed to take a “hard look” at the environmental impacts of the proposed vegetation treatments. All the alternatives considered in the Price FEIS proposed the application of vegetation treatments and manipulation. Price FEIS at 2-2, 2-5, 2-6, 2-8, 2-10. The Price FEIS acknowledged that vegetation treatments can adversely affect the environment by increasing erosion, reducing water quality, Price FEIS at 4-10, creating surface disturbances, and increasing sedimentation rates, Price FEIS at 4-19; but made no attempt to analyze or quantify the impacts that would result from the vegetation treatments proposed under its various alternatives. Rather, the Price FEIS assumed that vegetation treatments will positively impact vegetation in the long-term, which again is an unreasonable assumption and disregards the potential for error, misapplication, and unforeseen consequences. Price FEIS at -21. The Price FEIS did not assess how the vegetation treatments would further destroy and fragment sagebrush habitats or affect sage-grouse populations.

344. The Price FEIS also failed to take a “hard look” at the relationship between the activities authorized in the proposed RMP and climate change. Although the Price FEIS recognized climate change may be occurring and acknowledged that oil and gas development in the Price Field Office contributes to climate change, Price FEIS at 3-3, it failed to analyze either the elimination or reduction of grazing or oil and gas development.

345. BLM further violated NEPA in the Price FEIS by refusing to evaluate any grazing alternatives. Although the Price FEIS purported to evaluate five management alternatives for the RMP, none of these alternatives would have reduced grazing in the Price Field Office to a meaningful extent. While some of the alternatives did propose

eliminating grazing from select areas, none of them would have reduced the number of permitted AUMs, mandated widespread adjustments to livestock management practices, or altered the type of livestock authorized to graze in particular allotments. BLM summarily rejected potential alternatives that would have made any of these adjustments, as it did the analysis of a no grazing alternative. Price FEIS at 2-13 - 2-14.

346. The Price FEIS also failed to consider alternatives called for by the National Sage-Grouse Habitat Conservation Strategy. Although the alternatives proposed some management prescriptions designed to protect sage-grouse, none of them can be considered a “maximize conservation of sagebrush habitat” alternative required by the National Sage-Grouse Habitat Conservation Strategy.

347. Instead of explicitly considering the factors and alternatives called for in the National Sage-Grouse Habitat Conservation Strategy, the Price FEIS assumed that BLM would comply with that Strategy “throughout the implementation of the RMP,” resulting in adequate consideration and protection for the sage-grouse. Price FEIS at 4-95. This again is an unreasonable assumption, and BLM cannot avoid its duties under NEPA and FLPMA by postponing analysis and adoption of adequate sage-grouse protection measures into the future in this way, instead of adopting adequate measures in the land use plan.

348. In addition, the Price FEIS failed to conduct analysis of direct, indirect or cumulative impacts to sagebrush, sage-grouse habitat, and sagebrush obligate species as required by Section 1.3.1 of the National Sage-Grouse Conservation Strategy. The Price FEIS recognized that grazing threatens sage-grouse by trampling their nests, disturbing

their activities, and destroying their habitat, Price FEIS at 3-46, 4-96, but it neither analyzed nor attempted to quantify the impacts of grazing on sage-grouse.

349. BLM further violated NEPA and FLPMA by failing to prioritize management of ACECs. Although a total of 23 areas were proposed for designation as ACECs, Price FEIS at 4-18, BLM designated only 13 in the new Price RMP. Price FEIS at 3-10.

350. The FEIS also failed to assess the regional significance of sagebrush habitat for sage-grouse, in connection with the other RMPs in southern Utah that BLM adopted at the same time, thus violating the National Sage-Grouse Habitat Conservation Strategy and NEPA.

351. Based on the flawed and unlawful Price FEIS, a Record of Decision and Approved Resource Management Plan for the Price Field Office (“Price ROD and RMP”) was signed by Utah BLM State Director Selma Sierra in October 2008. The Price RMP is now in effect and being implemented by BLM.

**Moab RMP.**

352. BLM’s Moab Field Office encompasses 1,822,562 acres of public land and 29,680 acres of federal mineral estate on the Colorado Plateau in southeastern Utah, next to the Price Field Office. BLM’s Moab Field Office also manages leasable minerals on 141,250 acres under U.S. Forest Service lands. The Moab Field Office is bounded on the north by the Book Cliffs, by the Colorado state line on the east, by Lisbon Valley on the south, and by the Green River on the West. The Colorado River, the Dolores River, and the Green River flow through the area.

353. Sagebrush-steppe habitat, the home of the imperiled greater sage-grouse, comprises the dominant plant community in the Moab Field office, which also contains 32,800 acres of riparian habitat and wetlands.

354. BLM currently authorizes 107, 931 AUMs of livestock grazing on the Moab Field Office.

355. The Moab Field Office contains a total of 34 oil and gas fields, 20 of which are active. As of December 31, 2003, the number of active oil and gas wells came to 564. Since 2005, the number of new oil and gas wells drilled in the Moab Field Office each year has increased considerably.

356. BLM initiated a scoping process in June 2003 to develop a new Moab Resource Management Plan. BLM thereafter conducted public “scoping” and issued a draft Environmental Impact Statement for the proposed RMP.

357. In August 2008, BLM issued a Moab Proposed Resource Management Plan and Final Environmental Impact Statement (“Moab FEIS”), which violated NEPA by failing to adequately study grazing impacts and alternatives, among other defects.

358. The Moab FEIS failed to take a hard look at the impacts of grazing and oil and gas development under NEPA. The Moab FEIS acknowledged that habitat loss and fragmentation caused by human activities such as grazing are “the primary threats to the greater sage grouse.” Moab FEIS at 3-159. It also acknowledged that oil and gas development in the Moab Field Office contributes to climate change, as well as the impacts climate change may have on the environment. Moab FEIS at 3-8. Yet the FEIS failed to contemplate either the elimination or the reduction of grazing or oil and gas

development; and neither did it analyze their cumulative effects, particularly for sage-grouse.

359. In addition, the FEIS refused to evaluate any grazing alternatives, also in violation of NEPA. Although the Moab FEIS purported to evaluate four management alternatives for the RMP, none of these alternatives would have eliminated or meaningfully reduced grazing. The alternative that proposed the greatest reductions in livestock grazing, the Proposed Plan alternative, reduced number of permitted AUMs by less than one percent and the number of acres available for grazing by less than one half of one percent.

360. Likewise, every alternative in the FEIS simply assumed that grazing will satisfy the Utah Standards and Guidelines for Rangeland Health, as a way of avoiding addressing the actual adverse harms that continued grazing will cause to native habitats and wildlife populations, including sage-grouse. BLM refused to assess the capability and suitability of the public lands for livestock grazing as well.

361. The Moab FEIS also failed to take a “hard look” at the environmental impacts of proposed vegetation treatments. All of the alternatives considered in the Moab FEIS would permit BLM to maintain existing vegetation treatments in the Moab Field Office using prescribed fire, chemical treatments, and mechanical treatments. Moab FEIS at 2-14. The four alternatives would have also permitted BLM to conduct new vegetation treatments in particular circumstances. Moab FEIS at 2-14. The Moab FEIS acknowledged that vegetation treatments can adversely affect the environment by increasing erosion, Moab FEIS at 4-289, trampling and removing vegetation, Moab FEIS at 4-370, and displacing sagebrush obligate species, Moab FEIS at 4-369, but made no

attempt to analyze or quantify the impacts that would result from the vegetation treatments proposed under its various alternatives. Neither did the FEIS address the loss and fragmentation of sagebrush habitat and impacts this might have for sage-grouse populations as a result of the vegetation treatments.

362. The Moab FEIS did not consider or analyze a reasonable range of alternatives to protect and restore sagebrush habitats and sage-grouse populations in the planning area and regionally. Although the Moab FEIS indicates that “special conservation measures” for sage-grouse would be instituted under all alternatives, Moab FEIS at 2-5, the FEIS does not consider any “maximize conservation of sagebrush habitat” alternative.”

363. The Moab FEIS also failed to conduct analysis of direct, indirect and cumulative impacts to sagebrush, sage-grouse habitat, sagebrush obligate species as required by Section 1.3.1 of BLM’s National Sage-Grouse Habitat Conservation Strategy. The FEIS also failed to assess the regional significance of sagebrush habitat for sage-grouse, in connection with the other RMPs in southern Utah that BLM adopted at the same time.

364. Based on the flawed and unlawful Moab FEIS, a Record of Decision and Approved Resource Management Plan for the Moab Field Office (“Moab RMP ROD”) was signed by Utah BLM State Director Selma Sierra in October 2008, and BLM is proceeding to implement the Moab RMP.

**Richfield RMP.**

365. BLM’s Richfield Field Office encompasses 2.1 million acres of public land and 95,000 acres of federal mineral estate in south-central Utah. BLM also manages

2,082,865 acres of mineral estate lying under land managed by other federal agencies.

The Richfield Field Office lies almost entirely on the Colorado Plateau and in the Colorado-Plateau Basin. The eastern portion is drained by the Green and Colorado Rivers. The western portion is primarily drained by the Sevier River.

366. Sagebrush-steppe vegetation communities covering 337,000 acres provide valuable habitat for sage-grouse in the Richfield Field Office. The largest population of sage-grouse in Utah occurs here. The Richfield Field Office is also home to the imperiled pygmy rabbit, although only 1% of the area currently provides suitable habitat.

367. BLM administers grazing on 194 allotments in the Richfield Field Office, as well as several allotments on the Price Field Office through an inter-district agreement. The permits currently in effect authorize 110,194 AUMs of livestock grazing.

368. As of April 2007, there were 223 oil and gas leases in the Richfield Field Office. BLM predicts that an additional 360 wells will be drilled over the next fifteen years. Four coalbed natural gas holes have been drilled in the Richfield Field Office. It is reasonably foreseeable that at least 70 new exploration wells and 20 new development wells will be drilled within the next 50 years.

369. BLM initiated a scoping process in 2001 to develop a new RMP and EIS for the Richfield Field Office. BLM thereafter conducted public “scoping” and issued a draft Environmental Impact Statement for the proposed RMP.

370. WWP provided comments to BLM calling its attention to the degradation that has been wrought by livestock grazing in the Richfield Field Office and urging it to take a “hard look” at the science concerning stocking rates, forage consumption rates, and the impacts of grazing. WWP also asked BLM to fully study the effects of livestock

grazing and grazing-related actions (such as range infrastructure construction and maintenance) upon the native habitats and their dependent wildlife values, including for sage-grouse.

371. In October 2007, BLM issued a Proposed Resource Management Plan and Final Environmental Impact Statement for the Richfield Field Office (“Richfield FEIS”), which violated NEPA in failing to take a “hard look” at grazing impacts and alternatives, among other defects.

372. Specifically, the Richfield EIS acknowledged that grazing impacts the environment by compacting soil, accelerating erosion rates, trampling plants, introducing noxious weeds, and reducing plant vigor; but the FEIS made no attempt to analyze or quantify these diverse impacts. BLM refused to assess the capability and suitability of the public lands for livestock grazing as well.

373. As with other EISs discussed above, BLM again simply assumed that adherence to the Utah Standards of Rangeland Health will limit adverse grazing impacts, even though that assumption is unreasonable and contrary to the facts and the record.

374. In failing and refusing to recognize that livestock grazing must be substantially changed or eliminated if its adverse effects are to be avoided or reduced, the Richfield FEIS thus failed to take the required “hard look” at grazing impacts as required under NEPA.

375. Although the Richfield FEIS recognized that climate change may have adverse effects, and acknowledged that oil and gas development in the Field Office contributes to climate change, Richfield FEIS at 3-4, it failed to take a “hard look” at the interrelated and cumulative impacts of grazing, oil and gas development, and climate

change on the resources of the Richfield Field Office, include sagebrush-steppe habitats or sage-grouse populations.

376. In addition, the Richfield FEIS refused to evaluate any grazing alternatives, also in violation of NEPA. Although the Richfield FEIS purported to evaluate five management alternatives for the RMP, none of these involved grazing alternatives whatsoever. The Richfield FEIS summarily rejected a no grazing alternative, as well as potential alternatives that would have adjusted the number of permitted AUMS, livestock management practices, or the type of livestock authorized to graze in particular allotments. Apart from these summary rejections, the Richfield FEIS does not even mention grazing in its comparison of proposed alternatives.

377. The Richfield FEIS did not consider or analyze a reasonable range of alternatives to protect and restore sagebrush habitats and sage-grouse populations in the planning area and regionally. Although all of the proposed alternatives contain protections for sage-grouse, none of them can be considered the “maximize conservation of sagebrush habitat” alternative required by the National Sage-Grouse Habitat Conservation Strategy.

378. The Richfield FEIS also failed to take a “hard look” at the environmental impacts of proposed vegetation treatments. All of the alternatives considered in the Richfield FEIS would permit BLM to conduct vegetation treatments using biological agents, and the Richfield RMP permits the BLM to use chemical treatments, mechanical treatments, manual treatments, and prescribed fire as well. Richfield FEIS at 2-12 – 2-13. The Richfield FEIS acknowledged that vegetation treatments can adversely affect the environment by changing vegetation structure, increasing erosion, increasing

sedimentation rates, Richfield FEIS at 4-22, promoting the invasion of exotic weeds, and decreasing water availability. Richfield FEIS at 4-55. Yet, the Richfield FIES made no attempt to analyze or quantify the impacts that would result from the vegetation treatments proposed under its various alternatives.

379. The Richfield FEIS also failed to conduct analysis of direct, indirect or cumulative impacts to sagebrush, sage-grouse habitat, and sagebrush obligate species as required by Section 1.3.1 of BLM's National Sage-Grouse Conservation Strategy.

Although the Richfield FEIS acknowledged that grazing could displace sage-grouse and disrupt important behaviors, Richfield FEIS at 4-148, it fails to describe or quantify the nature or extent of these impacts.

380. Similarly, while the Richfield FEIS acknowledged that oil and gas development could adversely affect sage-grouse, it made no attempt to analyze or quantify the nature and extent of these impacts.

381. Based on the flawed and unlawful Richfield FEIS, a Record of Decision and Approved Resource Management Plan for the Richfield Field Office ("Richfield RMP ROD") was signed by Utah BLM State Director Selma Sierra in October 2008; and BLM has proceeded to implement the unlawful Richfield RMP.

**Kanab RMP.**

382. BLM's Kanab Field Office encompasses 554,000 acres of public land and 167,000 acres of federal mineral estate on the Colorado Plateau in southwestern Utah. The southern and eastern parts of the Kanab Field Office are located on the Colorado Plateau and the northwestern part is located in the Wasatch and Uinta Mountains. The

Field Office contains portions of the Lower Colorado, Virgin River, and Sevier River Basins.

383. Sagebrush-steppe vegetation communities covering 145,900 acres provide both brooding and winter habitat for sage-grouse. The Kanab Field Office is also home to the imperiled pygmy rabbit and contains two areas of unique, relict plant communities.

384. BLM administers grazing on 434,713 acres of the Kanab Field Office, and currently authorizes 18,241 AUMs of livestock grazing.

385. There is one medium-sized oil field in the Kanab Field Office. As of 2005, there were 23 oil and gas leases covering 65,535 acres. 4 coalbed natural gas holes have been drilled. It is reasonably foreseeable that at least 70 new exploration wells and 20 new development wells will be drilled within the next 50 years.

386. BLM initiated scoping in 2004 to develop a new RMP and EIS for the Kanab Field Office. BLM thereafter conducted public “scoping” and issued a draft Environmental Impact Statement for the proposed RMP.

387. WWP provided comments to BLM calling its attention to the degradation that has been wrought by livestock grazing and urging it to take a “hard look” at the science concerning stocking rates, forage consumption rates, and the impacts of grazing. WWP also asked BLM to fully study the effects of livestock grazing and grazing-related actions, such as the construction and maintenance of fences and water developments, upon wildlife. In addition, WWP repeatedly requested that BLM evaluate a full range of alternatives, including a “no grazing” and significantly reduced grazing alternative.

388. In July, 2007, BLM issued a Proposed Resource Management Plan and Final Environmental Impact Statement for the KFO (“Kanab FEIS”), which violated

NEPA in failing to take a “hard look” at grazing impacts and alternatives, among other defects.

389. Specifically, the Kanab FEIS acknowledged that grazing results in soil compaction, vegetation trampling, lower infiltration rates, the removal of plant cover, the alteration of vegetation structure, and the spread of invasive weeds. Yet, the Kanab FEIS made no attempt to analyze or quantify the diverse impacts of grazing; nor did BLM address the capability or suitability of the public lands for grazing.

390. Rather, as with other EISs challenged in this case, BLM simply assumed that compliance with applicable standards of rangeland health will eliminate the impacts of grazing in the long term, Kanab FEIS at 4-14, 4-18, 4-22, which is unreasonable assumption not supported by the facts or record. In refusing to recognize that livestock grazing must be substantially changed or eliminated if these adverse effects are to be avoided or reduced, the Kanab FEIS thus failed to take the required “hard look” at grazing impacts as required under NEPA.

391. In addition, the Kanab FEIS refused to evaluate any grazing alternatives, also in violation of NEPA. Although the Kanab FEIS purported to evaluate four management alternatives for the RMP, none of these alternatives would have eliminated or reduced grazing to any meaningful extent. BLM summarily refused to consider closing the Kanab Field Office to livestock grazing; and the alternative that proposed the greatest reductions in livestock grazing, Alternative C, would have done so by a mere 88 AUMs, or less than one half of one percent of the AUMs currently permitted.

392. Likewise, every alternative in the FEIS simply assumed that grazing will satisfy the Utah Standards and Guidelines for Rangeland Health, as a way of avoiding

addressing the actual adverse harms that continued grazing will cause to native habitats and wildlife populations, including sage-grouse.

393. The Kanab FEIS also failed to take a “hard look” at the environmental impacts of proposed vegetation treatments. All of the alternatives considered in the Kanab FEIS would permit BLM to conduct vegetation treatments on as much as 22,300 acres every year using chemical, biological, and mechanical treatment methods as well as prescribed fire. Kanab FEIS at 2-42. The Kanab FEIS acknowledged that vegetation treatments can adversely affect the environment by increasing surface runoff, increasing erosion, Kanab FEIS at 4-14, and displacing special status species, Kanab FEIS at 4-34, but made no attempt to analyze or quantify the impacts that would result from the vegetation treatments proposed under its various alternatives.

394. The Kanab FEIS did not consider or analyze a reasonable range of alternatives to protect and restore sagebrush habitats and sage-grouse populations in the planning area and regionally. Although Alternative C would have provided more protections for sage-grouse than the other proposed alternatives, none of the alternatives considered in the Kanab FEIS can be considered the “maximize conservation of sagebrush habitat” alternative required by the National Sage-Grouse Habitat Conservation Strategy.

395. The Kanab FEIS also failed to conduct analysis of direct, indirect or cumulative impacts to sagebrush, sage-grouse habitat, or sagebrush-obligate species as required by Section 1.3.1 of BLM’s National Sage-Grouse Habitat Conservation Strategy. The Kanab FEIS acknowledged that the loss of habitat caused by the spread of invasive weeds, the conversion of vegetation to lower seral stages, and “human activities”

is “one of the greatest threats to sage-grouse,” Kanab FEIS at 3-45. Yet, the Kanab FEIS made no mention whatsoever of the effects of grazing on sensitive species such as sage-grouse. Kanab FEIS 4-93.

396. While the Kanab RMP did acknowledge that “long-term loss of sage-grouse habitat due to oil and gas development and other mineral activity could result in the displacement and/or loss of localized sage-grouse populations,” Kanab FEIS at 4-39, it neither analyzed nor attempted to quantify these impacts; and it did not assess the impacts of these activities upon sage-grouse at a regional scale.

397. The Kanab FEIS thus violated not only BLM’s own National Sage-Grouse Habitat Conservation Strategy, including the provisions identified above, but also NEPA’s requirements that BLM must take a “hard look” at direct, indirect, and cumulative impacts as well as evaluate a reasonable range of alternatives.

398. Based on the flawed and unlawful Kanab FEIS, a Record of Decision and Approved Resource Management Plan for the Kanab Field Office (“Kanab RMP ROD”) was signed by Utah BLM State Director Selma Sierra in October 2008; and BLM is proceeding to implement the unlawful Kanab RMP.

**Monticello RMP.**

399. BLM’s Monticello Field Office encompasses nearly 1.8 million acres of public land and approximately 2.5 million subsurface acres on the Colorado Plateau in southeastern Utah. It is bounded on the north by Canyonlands National Park, by Glen Canyon National Recreation Area on the west, by the Colorado state line on the east, and by the Arizona state line to the south.

400. Sagebrush-steppe vegetation currently covers approximately 170,000 acres in the Monticello Field office. Historically, these areas provided habitat for greater sage-grouse; but those populations have now apparently been eliminated due to habitat degradation. However, a related species, the Gunnison sage-grouse, continues to inhabit the Monticello Field Office, and is also undergoing review for Endangered Species Act listing. Protecting the remaining Gunnison sage-grouse and restoring greater sage-grouse to the Monticello Field Office is thus important to conserving both these species.

401. BLM authorizes grazing on 1,633,253 acres, which is 99 percent of the Monticello Field Office. Monticello FEIS at 4-534. BLM has determined that over 70 percent of the grazing allotments are in mid-seral or early seral condition, which is a key reason why greater sage-grouse are no longer present and Gunnison sage-grouse are declining. The permits currently in effect authorize 78,796 AUMs of livestock grazing.

402. The Monticello Field Office contains 78 oil and gas fields. The 1,135 active wells create surface disturbance on 15,504 acres. On average, 13 new wells are drilled each year. BLM anticipates that this trend will continue, resulting in disturbances on an additional 1,872 acres over the life of the newly-adopted RMP.

403. In August 2008, following scoping and the issuance of a draft Environmental Impact Statement, BLM issued a Proposed Resource Management Plan and Final Environmental Impact Statement for the MFO (“Monticello FEIS”).

404. The Monticello FEIS violates NEPA in failing to take a “hard look” at the environmental impacts of grazing. It acknowledged that grazing impacts the environment through trampling, reduction of forage, damage to riparian habitat, and disruption of ecosystem functions, Monticello FEIS at 4-534, but made no attempt to analyze or

quantify the impacts that would result from grazing under its proposed alternatives.

Rather, the Monticello FEIS assumed that BLM will properly apply the Standards of Rangeland Health and the grazing regulations and thereby limit or prevent grazing impacts, which is an unreasonable assumption. Monticello FEIS at 4-196, 4-403, 4-458.

405. The Monticello FEIS also failed to take a “hard look” at the environmental impacts of proposed vegetation treatments. All of the alternatives considered in the Monticello FEIS proposed to maintain existing vegetation treatments. Monticello FEIS at 4-271. The Monticello FEIS acknowledged that vegetation treatments can adversely affect the environment by increasing runoff and sedimentation, Monticello FEIS at 4-415, increasing surface water temperature, increasing erosion, Monticello FEIS at 4-477, creating human disturbance, and trampling, but made no attempt to analyze or quantify the impacts that would result from the vegetation treatments proposed under its various alternatives.

406. BLM further violated NEPA in the Monticello FEIS by refusing to evaluate any grazing alternatives. Although the Monticello FEIS purported to evaluate six management alternatives for the RMP, none of these alternatives would have reduced grazing in a meaningful way. While the alternatives did propose removing select areas from livestock grazing, these closures would have removed less than 0.5% of the area currently available from grazing. BLM summarily rejected the possibility of a no grazing alternative, as well as potential alternatives that would have adjusted the number of permitted AUMS, livestock management practices, or the type of livestock authorized to graze in particular allotments. Monticello FEIS at 2-193, 2-195.

407. The Monticello FEIS also failed to consider a “maximize conservation of sagebrush habitat” alternative as required by BLM’s National Sage-Grouse Habitat Conservation Strategy. Although Alternatives B-D proposed to close select areas to grazing in order to protect sage-grouse (presumably, the Gunnison sage-grouse), the FEIS acknowledged that these closures would have been so minimal as to have a “negligible” effect on grazing. Monticello FEIS at 4-97, 4-100, 4-102.

408. In addition, the Monticello FEIS failed to conduct analysis of direct, indirect or cumulative impacts to sagebrush, sage-grouse habitat, and sagebrush obligate species as required by Section 1.3.1 of the National Sage-Grouse Habitat Conservation Strategy. The Monticello FEIS not only failed to assess the impacts of its various alternatives on prospects for recovery of the for greater sage-grouse, it did not even acknowledge that the Monticello Field Office contains potential habitat for this imperiled bird, which could provide areas for reestablishment of sage-grouse to aid in the species’ recovery.

409. BLM further violated NEPA and FLPMA by failing to prioritize designation of ACECs needed to protect sensitive wildlife populations and habitats. Although the public proposed 17 areas for designation as ACECs, BLM considered only 13 in the Monticello FEIS and designated only 7 in the new Monticello RMP.

410. Based on the flawed and unlawful Monticello FEIS, a Record of Decision and Approved Resource Management Plan for the MFO (“Monticello ROD and RMP”) was signed by Utah BLM State Director Selma Sierra in November 2008. The Monticello RMP is now in effect, and being implemented by BLM.

**F. Other Sage-Grouse Populations: Montana.**

**Dillon RMP.**

411. BLM's Dillon Field Office encompasses 901,000 acres of public land and 1.3 million acres of federal mineral estate, located in southwestern Montana. Big sagebrush habitat types are the dominant vegetation communities on the majority of the public lands in the area.

412. This sagebrush-steppe habitat was home to once-abundant sage-grouse populations, which were related to what is here called the Upper Salmon core population (or called the Snake/Salmon/Beaverhead core population in the 2004 Sage-Grouse Conservation Assessment), which now reaches from central Idaho up to the Beaverhead Mountains. BLM acknowledges that sage-grouse in the Dillon Field Office are interrelated, at least to some extent, with sage-grouse populations across the state line in Idaho. *See* Dillon FEIS, p. 177.

413. However, the effects of livestock grazing, vegetation treatments (including aerial spraying of sagebrush in the 1960's and 1970's as well as prescribed burnings), range infrastructure, and other factors have destroyed, fragmented, and degraded sagebrush habitats in the Dillon Field Office. *Id.*, pp. 172-73. These habitat losses have caused sage-grouse populations in the Dillon Field Office to decline, and become more isolated from this Upper Salmon core population as defined in the 2004 Sage-Grouse Conservation Assessment.

414. These isolated, remnant populations in the Dillon Field Office apparently include the Bannack, Red Rock, and Wisdom populations, according to the 2004 Sage-Grouse Conservation Assessment. All of these populations are declining, that

Assessment reports. BLM reports that the largest remaining population in the Dillon Field Office is located in an area centering on Reservoir Creek/Badger Gulch, southwest of Bannack. *Id.*, p. 177.

415. The Dillon Field Office also contains several “blue ribbon” fisheries streams that drain from mountains in the region, including the Big Hole, Beaverhead, and Madison Rivers, as well as smaller streams. Its fisheries resources include the Montana fluvial arctic grayling (the last remaining population of fluvial arctic grayling in the lower 48 states), westslope cutthroat trout, and others.

416. These fisheries resources have been adversely affected by livestock grazing and grazing-related practices, including irrigation withdrawals for livestock feed production. Because of the adverse effects that livestock grazing has on riparian areas that are important habitats for sage-grouse, this degradation has impacted sage-grouse as well as fisheries resources.

417. The prior land use plan for the Dillon Field Office was a Management Framework Plan (MFP) adopted in 1979. Acknowledging that the prior MFP was outdated, BLM initiated a scoping process to adopt a new Resource Management Plan. BLM identified one of eight key “issues” to address in the new plan as the following: “How should sage grouse and westslope cutthroat trout conservation strategies be applied in the planning area, and how would they affect other public land uses?”

418. WWP participated in BLM’s land use planning process for the Dillon Field Office, including by submitting comments on BLM’s draft Environmental Impact Statement. WWP emphasized that BLM needed to protect both sage-grouse as well as fisheries and resource values in its new plan from the adverse effects of livestock grazing,

and requested that BLM analyze alternatives to eliminate or substantially reduce grazing as part of the methods of achieving such protection.

419. In 2005, BLM issued a Proposed Resource Management Plan and Final Environmental Impact Statement for the Dillon Field Office (“Dillon FEIS”), which violated NEPA in failing to take a “hard look” at grazing impacts and alternatives, among other defects.

420. The Dillon FEIS evaluated four management alternatives for the RMP, including a “no action” alternative that would continue current management (Alternative A); a “proposed action” alternative, that BLM described as providing a “moderate level of protection, use, restoration and enhancement of resources and services” (Alternative B); Alternative C, which BLM described as emphasizing “active measures to enhance fish and wildlife resources”; and Alternative D, which emphasized “active management to produce food, fiber, minerals and services.”

421. BLM summarily refused to analyze any “no grazing” alternative in the Dillon FEIS; and it also rejected analyzing a proposed alternative that would defer livestock grazing until July 1 each year across the Field Office to protect wildlife and fish habitats and populations.

422. The Dillon FEIS also refused to consider any meaningful alternatives to perpetuating existing livestock management on the Field Office. Under the existing situation (Alternative A), 854,757 acres are designated as available for livestock grazing; and Alternative D proposed retaining that same exact acreage as available for grazing. BLM’s preferred alternative (Alternative B), which was adopted as the RMP, designates 852,778 acres as available for grazing – just 1,979 acres less than the current situation.

Yet even these areas would be available for grazing on a “temporary, non-renewable basis,” according to BLM, so in fact are not closed to grazing under the new Dillon RMP. *See* Dillon FEIS, p. 50. Even the supposedly most environmentally protective alternative addressed in the FEIS, Alternative C, proposed designating 835,115 acres as available for grazing – just 19,642 acres or 2.2% less than the acres currently available.

423. All of the alternatives addressed in the Dillon FEIS also simply assumed that grazing would meet the Western Montana Standards for Rangeland Health, which is an unreasonable assumption not supported by the facts or record.

424. With respect to energy development, the Dillon RMP designates over 1.2 million acres of federal mineral estate as available for fluid mineral (oil and gas) leasing, which is just 14,000 acres less than the current situation. Alternative C did consider making 268,141 available for leasing, particularly by excluding leases from key sage-grouse and other wildlife areas – but of course, BLM did not adopt that alternative. Its chosen alternative (Alternative B) provides insufficient protection for sage-grouse, including a ¼ mile “no surface occupancy” lease stipulation around sage-grouse leks, which has been documented to be grossly inadequate – and which BLM has routinely waived in other areas.

425. The Dillon FEIS did not consider or analyze a reasonable range of alternatives to protect and restore sagebrush habitats and sage-grouse populations in the planning area and regionally. The FEIS did not consider any “maximize conservation of sagebrush habitat” alternative, and neither did it articulate differing alternatives aimed at meeting the protection and restoration goals identified in Section 1.3.1 of BLM’s National Sage-Grouse Habitat Conservation Strategy.

426. In addition, the Dillon FEIS failed to conduct analysis of direct, indirect and cumulative impacts to sagebrush, sage-grouse habitat, sagebrush obligate species as required by Section 1.3.1 of BLM's National Sage-Grouse Habitat Conservation Strategy. Nor did it provide any quantitative analysis of such impacts.

427. The Dillon FEIS further violated NEPA and BLM's National Sage-Grouse Habitat Conservation Strategy by failing to address the regional importance of sage-grouse populations and habitats, or to analyze the cumulative effects of livestock grazing, energy development and other authorizations being made by BLM in other Field Offices.

428. In fact, the Dillon FEIS does not even cite the National Sage-Grouse Habitat Conservation Strategy as one of the relevant laws or policies relating to sage-grouse. *See* FEIS, pp. 172 & 187. The final RMP, however, cites that Strategy as part of the "consideration of other BLM plans and policies" that supposedly supported adopting Alternative B of the FEIS as the approved RMP. *See* Dillon RMP ROD, p. 13. BLM does not explain how the RMP could be deemed to comply with the Strategy, when the FEIS did not even address the Strategy; and in fact the approved RMP is not consistent with the Strategy or the Special Status Species Policy.

429. The Dillon FEIS also did not analyze any proposed ACEC to protect remaining sage-grouse populations, despite their growing isolation and declining numbers. The FEIS did evaluate a proposed ACEC to protect 74 miles of westslope cutthroat trout habitat; but the RMP did not adopt that ACEC.

430. BLM approved a final Record of Decision for the Dillon RMP in February 2006; and it is being implemented now.

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

431. Plaintiff realleges and incorporates by reference the preceding paragraphs.

432. This First Claim for Relief challenges Defendants' violations of NEPA, 42 U.S.C. §§ 4321 et seq., and NEPA's implementing regulations in preparing the defective and legally inadequate EISs and approving the challenged RMPs based on them, both individually and collectively, as identified above in Section III.

433. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706, for review of the final agency actions identified above with respect to the challenged RMPs and EISs.

434. In addition, or in the alternative, Plaintiff seeks declaratory relief with respect to Defendants' NEPA violations as alleged herein, pursuant to the Declaratory Relief Act, 28 U.S.C. § 2201-02.

435. NEPA and its implementing regulations require all federal agencies to undertake a thorough and public analysis of the environmental consequences of proposed federal actions, including a detailed EIS for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). Such analysis must include consideration of a reasonable range of alternatives to a proposed action. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. § 1502.14. NEPA also requires analyses of the likely cumulative environmental impacts of a proposed action. 40 C.F.R. §§ 1508.7 & 1508.25(a)(2). NEPA documents are to use high quality information and accurate scientific analysis. *Id.* § 1500.1(b).

436. Defendants violated NEPA and its implementing regulations in multiple respects in preparing and relying on the defective EISs for the challenged RMPs, as

identified in Section III above. As described in detail in Sections I-III above, these NEPA violations include, but are not necessarily limited to, the following separate violations:

A. Defendants' above-identified EISs violated NEPA, individually and collectively, by not taking a "hard look" at the direct, indirect, and cumulative impacts of livestock grazing upon the public lands and wildlife resources presented in each of the Field Offices identified above, particularly on sagebrush habitats and sage-grouse populations;

B. Defendants' above-identified EISs violated NEPA, individually and collectively, by not taking a "hard look" at the direct, indirect, and cumulative impacts of livestock grazing along with infrastructure, vegetation treatments, energy development, and other management actions under the challenged RMPs, particularly on sagebrush habitats and sage-grouse populations within each Field Office as well as at regional or range-wide scales;

C. Defendants further violated NEPA by not taking a "hard look" in any of the challenged EISs at the cumulative effects of livestock grazing and other management actions along with the likely effects of global climate change, and what those effects mean for sage-grouse and other sagebrush-obligate species in particular, at either a Field Office, regional or range-wide scale;

D. Defendants further violated NEPA's requirements of using high quality data and accurate scientific information in the challenged EISs, including by misrepresenting the nature of proposed vegetation treatments, using inaccurate or misleading sage-grouse population and habitat information, and in other ways;

E. Defendants did not consider a reasonable range of alternatives in any of the EISs for the challenged RMPs, including by refusing to consider a meaningful range of grazing alternatives;

F. Defendants' above-identified EISs also violated NEPA in multiple respects by not performing analysis of sage-grouse habitat and population values as called for by the National Sage-Grouse Habitat Conservation Plan, including by failing to address the regional importance of sagebrush habitats for sage-grouse and other species in the EISs for the challenged RMPs;

G. Defendants' above-identified EISs further violated NEPA by not analyzing alternatives to maximize conservation of sagebrush habitat, or other alternatives to protect and restore sage-grouse habitats and populations, as required under the National Sage-Grouse habitat Conservation Plan; and

H. Defendants refused to take a "hard look" at grazing impacts and alternatives based on their misreading or misrepresentation of their legal authorities and duties, including with respect to the land use planning and other authorities described in Section II above.

437. Defendants' preparation and approval of the challenged RMPs and EIS identified above, individually and collectively, is arbitrary, capricious, an abuse of discretion, not in accordance with law under NEPA and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiff and its members and staff.

WHEREFORE, Plaintiff prays for relief as set forth below.

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

438. Plaintiff realleges and incorporates by reference the preceding paragraphs.

439. This Second Claim for Relief challenges Defendants' violations of FLPMA, 43 U.S.C. § 1701 et seq., and BLM's implementing regulations, handbook, manual, and policies, through Defendants' unlawful adoption of the challenged RMPs and EISs as identified in Section III above, both collectively and individually.

440. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706, for review of the final agency actions identified above with respect to the challenged RMPs and EISs.

441. In addition, or in the alternative, Plaintiff seeks declaratory relief with respect to Defendants' FLPMA violations as alleged herein pursuant to the Declaratory Relief Act, 28 U.S.C. § 2201-02.

442. As noted above, FLPMA imposes procedural and substantive statutory requirements upon Defendants' management of the public lands in question here, including mandates relating to land use planning, multiple use/sustained yield, and preventing unnecessary or undue degradation of the public lands and resources.

443. Pursuant to these and other statutory authorities, BLM has adopted various regulations, handbooks, manuals, conservation strategies, and other policies relating to its management of the public lands, including the Fundamentals of Rangeland Health regulations, 43 C.F.R. 4180 et seq; land use planning regulations, 43 C.F.R. § 4100 et seq.; the Special Status Species Policy, Section 6840 of the BLM Manual (2001); and the National Sage-Grouse Habitat Conservation Strategy.

444. As noted above, the Special Status Species Policy requires that BLM “shall implement management plans that conserve” BLM-designated sensitive species, including sage-grouse; and that BLM “shall ensure that actions authorized, funded or carried out by the BLM do not contribute to the need for the species to become listed.” *See* BLM Manual 6841.06C.

445. As also noted above, the National Sage-Grouse Habitat Conservation Strategy requires BLM to address numerous issues through its land use planning process relating to sage-grouse and to sagebrush habitat protection and restoration, as a means of conserving sage-grouse populations and avoiding the need for ESA listing of greater sage-grouse.

446. Defendants’ adoption of the challenged RMPs and EISs as identified in Section III above, individually and collectively, violates the National Sage-Grouse Habitat Conservation Strategy, the Special Status Species Policy, as well as FLPMA’s mandates, by authorizing livestock grazing and other management actions that will further destroy, fragment, and degrade sagebrush habitats across many millions of acres of greater sage-grouse range on BLM lands, causing further sage-grouse population losses and fragmentation, and contributing significantly to the accelerating decline of the species and the need for its listing under the ESA.

447. Based on such violations of FLPMA and implementing regulations and policies, Defendants’ approval of the challenged RMPs and EIS, individually and collectively, is arbitrary, capricious, an abuse of discretion, and not in accordance with law under FLPMA and the APA, and will allow serious ecological degradation as well as harm to the public and Plaintiff’s interests, unless reversed by this Court.

**PRAYER FOR RELIEF**

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

A. Order, adjudge, and declare Defendants violated NEPA, FLPMA, their implementing regulations and policies, and/or the Administrative Procedure Act in preparing and adopting each and all of the challenged RMPs and/or EISs, as identified in Section III above;

B. Reverse and remand each and all of the EISs and/or RMPs identified in Section III above;

C. Enter declaratory and/or injunctive relief requiring Defendants to undertake comprehensive and legally valid NEPA analysis and adoption of new RMPs that will conserve sagebrush habitat and sage-grouse populations across the BLM lands within the sage-grouse range;

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

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

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

Dated this 17th day of December, 2008.

Respectfully submitted,

/s/ Laird J. Lucas  
Attorney for Plaintiff  
Western Watersheds Project