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

WESTERN WATERSHEDS PROJECT,)	Civ No. 05-297-E-BLW
)	
Plaintiff,)	
)	
vs.)	DECLARATION OF JON
)	MARVEL
JOE KRAAYENBRINK, BLM Idaho)	
Falls District Manager; KATHLEEN)	
CLARKE, BLM Director; and BUREAU)	
OF LAND MANAGEMENT,)	
)	
Defendants.)	

I, Jon Marvel, declare:

1. My name is Jonathan (Jon) Marvel. I have resided in Idaho since 1969, and own property in both Custer and Blaine Counties. I am personally aware of the matters set forth below, and if called as a witness I would and could truthfully testify thereto.

2. I founded Idaho Watersheds Project in 1993 to begin addressing issues of public lands grazing in Idaho, and served as its Board President until 2001. At that time, Idaho Watersheds Project changed its name to Western Watersheds Project to reflect an expanded

mission of addressing public lands grazing more broadly throughout the West. I have served as Executive Director of Western Watersheds Project since that time.

Overview of Western Watersheds Project.

3. Western Watersheds Project is an Idaho non-profit membership conservation group, which has offices or staff in Idaho, Utah, Wyoming, and Montana. The organization is recognized as an IRS 501(c)(3) charitable entity.

4. Western Watersheds Project currently has over 1400 members, plus a larger group of volunteers and supporters, who are located in Idaho and around the United States. Our staff and volunteers include many highly-trained and experienced expert scientists, as well as a number of former federal and state agency employees.

5. Through the efforts of our staff, members, supporters, and volunteers, Western Watersheds Project is actively engaged in how the BLM manages public lands in Idaho, Utah, Nevada, Oregon, Montana, Wyoming, Colorado, and California.

6. In Idaho, Western Watersheds Project is a designated “interested public” under BLM’s current grazing regulations for all BLM allotments in the Pocatello, Upper Snake, Challis and Salmon field offices in the Idaho Falls District in eastern Idaho and the Burley, Jarbidge and Shoshone field offices (which are now in the recently created Twin Falls District). In addition, Western Watersheds is designated as “interested public” on all allotments in the Bruneau, Owyhee and Four Rivers Field Offices in the Boise District in southwest Idaho.

7. Western Watersheds is also designated “interested public” on BLM lands in other states throughout the West. These include all allotments in the Malheur and Jordan field offices of BLM’s Vale District and some allotments in the Andrews field office of the Burns District in Oregon; most allotments in the Little Snake Field Office in Colorado, and a number of

allotments in the BLM field office in Meeker, Colorado; all allotments in the Pinedale, Lander, Rawlins, Kemmerer, Cody and Worland field offices and several allotments in the Rock Springs field office, all in Wyoming; all allotments in the Salt Lake and Kanab field offices in Utah; all allotments in the Dillon field office in Montana; all allotments in the Elko, Winnemucca, Battle Mountain, Ely and Carson City field offices and the Tonopoh Field Station in Nevada; and several allotments in the Susanville field office in California.

8. Western Watersheds Project also manages and controls the Greenfire Preserve, a former cattle ranch located on the East Fork Salmon River near Clayton, Idaho (Custer County), which is owned by Valley Sun, LLC, a Western Watershed's subsidiary. Through the Greenfire Preserve, Western Watersheds Project is actively engaged in land restoration, public education and outreach, and advocacy efforts to improve public and private lands management within Custer County and the surrounding region.

Western Watersheds Project's Mission

9. The Greenfire Preserve is the "base property" for three BLM grazing permits in the area, for which Western Watersheds is the permittee. Accordingly, as a BLM permittee, Western Watersheds has direct proprietary interests in BLM's grazing regulation revisions, at issue here.

10. I believe it is fair to say that Western Watersheds Project is one of the most prominent conservation groups dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West, with a particular focus on promoting responsible livestock grazing management on the public lands and enforcing the nation's public lands and environmental laws with respect to livestock grazing.

11. Based on the efforts of our expert scientists, professional staff, consultants, members, and volunteers, Western Watersheds Project fulfills its mission in various ways, including by the following: (1) engaging in monitoring and tracking conditions on the public lands and livestock management practices in the states identified above; (2) communicating with BLM and other agencies about current conditions, trends, and livestock impacts; (3) participating in grazing-related information gathering and management decisions for these public lands; (4) educating the public and agency decision-makers about grazing impacts and scientific understanding of them; (5) advocating for responsible grazing management decision-making; and (6) promoting voluntary grazing retirements in order to achieve protection and restoration of the ecological values of the public lands in the West.

12. I personally, and based on my knowledge and supervision I know for a fact that other Western Watersheds Project staff, members, volunteers, and scientists also spend literally thousands of hours out on the public lands managed by BLM in the states described above. For myself, this includes a particular focus on BLM lands in the Upper Salmon basin of Idaho (including Lemhi, Custer, Blaine, and other counties), as well as other lands in the BLM's Idaho Falls District of eastern Idaho. I regularly visit these areas (including the specific allotments discussed below, and many others), for both personal and professional reasons; and I will regularly return to them in the foreseeable future, as I have done for many years past.

13. In addition to the Idaho Falls District, I spend considerable time visiting and inspecting public lands managed by BLM in the Owyhee, Jarbidge, and Bruneau Resource Areas of southwestern Idaho; the Elko District of northern Nevada; the Southeast Oregon BLM district; and other BLM lands in Utah, Wyoming, Montana, and other states. Again, I will continue to regularly visit these lands in the foreseeable future, for both personal and professional reasons.

14. I personally – and based on my personal knowledge and experiences with them I know that other Western Watersheds Project staff, members, and volunteers also do the same – engage in a variety of tasks and pursuits on these public lands, including scientific observations and measurements; looking for and observing fish, birds, wildlife, and plants and their habitats; studying native ecosystems and the impacts of livestock grazing upon them; documenting resource harms from grazing and other actions; and recreational or aesthetic pursuits such as hiking, fishing, camping, hunting, photography, and similar activities.

15. Likewise, I and other Western Watersheds Project staff, members, and volunteers derive professional, aesthetic, recreational, scientific, inspirational, educational, and other benefits from these public lands and their natural resources on a regular and continuing basis, and intend to do so frequently in the immediate future, including on the specific allotments in the Idaho Falls District discussed below, and allotments elsewhere in Idaho and other western states.

16. In order to pursue its mission and these activities, Western Watersheds Project relies on its status as an “interested public” under BLM’s existing grazing regulations in order to obtain information from BLM, engage in communications with BLM at many levels, and participate in all aspects of grazing management on the allotments. BLM’s proposed grazing regulation revisions would dramatically reduce Western Watersheds Project’s ability to undertake these roles and its mission. Below, I illustrate how these impacts would harm Western Watersheds Project, and our staff, members and supporters, through discussion of some specific allotments in the Idaho Falls District and elsewhere.

17. Moreover, due to Western Watersheds Project’s status as an interested public, the above-described efforts of our staff, scientists, members, and volunteers, and the accumulation of scientific and factual knowledge and information that these efforts have generated, I believe it is

also fair to say that Western Watersheds Project is one of the leading conservation groups enforcing public lands and environmental laws and regulations with respect to BLM's grazing management, in the Idaho Falls District as well as other parts of Idaho and the West.

18. Just a few of the successful federal court cases that Western Watersheds Project has brought in recent years –including to enforce the Fundamentals of Rangeland Health and other aspects of the existing grazing regulations that BLM is now proposing to gut – are the following:

A. Prior litigation over the Pleasantview allotment, Civil No. 01-529-E-BLW (D. Idaho), addressed further below;

B. Litigation over grazing management in the 1.8 million acre Owyhee Resource Area in the litigation styled Idaho Watersheds Project v. Hahn, Civ. No. 97-0519-S-BLW (D. Idaho), in which this Court issued a series of orders requiring BLM to adopt a final Resource Management Plan and supporting Environmental Impact Statement for the Owyhee Resource Area; finding that BLM violated NEPA in issuing 68 allotment permits for the Owyhee area; and enjoining BLM to conduct new allotment environmental reviews and issue valid decisions on a priority schedule, which the Ninth Circuit affirmed in Idaho Watersheds Project v. Hahn, 307 F. 3d 815 (9th Cir. 2002);

C. Related to the above, Western Watersheds won the first circuit court decision under the Fundamentals of Rangeland Health regulations, which upheld BLM's obligation to implement grazing management changes before the next grazing season after finding violations of the Fundamentals of Rangeland Health, with respect to the Succor Creek allotment, see Idaho Watersheds Project v. Hahn, 187 F.3d 1035 (9th Cir. 1999);

D. In another Fundamentals of Rangeland Health enforcement action, Western Watersheds won a settlement with BLM in 2001, requiring it to implement grazing management changes in response to findings of violations of relevant Standards and Guidelines for Rangeland Health on the 350,00-acre Bully Creek Landscape Area of eastern Idaho, see Western Watersheds Project et al. v. Masinton, No. 01-CV-348-BR (D. Oregon);

E. In yet another Fundamentals of Rangeland Health enforcement action, Western Watersheds won an injunction in 2003 over BLM's failure to adopt grazing management improvements on four allotments in the Jarbidge Resource Area of southern Idaho that BLM determined to be violating the Idaho Standards and Guidelines for Rangeland Health, see Committee for the High Desert and Western Watersheds Project v. Guerrero, Civ. No. 02-0521-S-MHW (D. Idaho);

F. In Western Watersheds Project v. Snyder, Civ. No. 03-314-E-BLW (D. Idaho, 2004), this Court held that BLM violated NEPA in issuing a new grazing decision allowing grazing to adversely affect the Burnt Creek wilderness study area in the Pahsimeroi watershed (Custer County, Idaho);

G. Western Watersheds has also repeatedly challenged BLM's unlawful issuance of "temporary non-renewable" (TNR) grazing authorizations in the Jarbidge Resource Area of Idaho, including the Guerrero litigation referenced above; and in Western Watersheds Project v. Bennett, No. CV-04-181-S-BLW (D. Idaho 2004), in which this Court issued an injunction and then summary judgment holding that BLM unlawfully approved TNR grazing authorizations across the Jarbidge Resource Area in 2004;

H. In Western Watersheds Project v. Carpenter, No. 2:02 CV 0352 PGC (D. Utah), BLM and Western Watersheds recently reached a court-approved settlement requiring BLM to

undertake land use planning and grazing management changes on about 1.5 million acres of public lands in northern Utah (Rich, Toelle and Box Elder counties); and

I. In Western Watersheds Project v. Oke, CV-N-03-0197-HDM (D. Nevada), the Court held in August 2004 that BLM violated NEPA in failing to prepare an EIS studying adverse impacts of livestock grazing on sage grouse and other sensitive species on allotments covering some 1.4 million acres of northern Nevada.

19. In addition to these and many other court actions, Western Watersheds Project has been, and continues to be, deeply involved in administrative appeals and related actions over BLM grazing management decisions, including over the Hawley Mountain allotment in the Idaho Falls District and many other allotments around Idaho and other western states.

The BLM's Proposed Grazing Regulation Revisions.

20. In my opinion, Western Watersheds Project's effectiveness in using facts, science, and law to demonstrate that BLM is unlawfully managing livestock grazing on literally hundreds of public lands allotments, and that such violations are causing serious ecological degradation of the public lands, wildlife, and other resources, is one of the principal reasons why BLM and the livestock industry are so intent on gutting the existing grazing regulations and thereby attempting to impair Western Watersheds Project's effectiveness.

21. I have reviewed the BLM's Final Environmental Impact Statement for the proposed grazing regulation revisions, which are challenged in this case. The FEIS is entitled: *"Proposed Revisions to Grazing Regulations for the Public Lands," Final Environmental Impact Statement FES 04-39 (October 2004, released June 2005)*. An electronic copy of the FEIS is available on BLM's website, at www.blm.gov/grazing/EIS. Appendix A of the FEIS contains

the Proposed Final Regulations shown with strike and replace. This clearly shows the changes between the previous and new regulations.

22. The FEIS was publicly released on June 17, 2005, although (as its title page shows) it was actually printed in October 2004. I have been informed that BLM intends to publish the grazing regulation revisions in the Federal Register in coming days, possibly as early as July 25, 2005. According to the “Errata” section of the FEIS, the revised regulations will go into effect 30 days after such publication, unless enjoined by this Court.

23. Western Watersheds Project participated in the rulemaking process leading up to the FEIS, including participating in public meetings, and submitted detailed comments on the Draft EIS. Written comments were drafted and submitted on behalf of Western Watersheds Project by Dr. John Carter, a board member and Ph.D. ecologist who owns property in Utah and southeastern Idaho.

24. Western Watersheds Project also participated in the BLM’s prior grazing rulemaking process, commonly called “Rangeland Reform,” which resulted in a Final EIS issued in 1994, and adoption of the current grazing regulations in 1995. These regulations substantially increased opportunities for public involvement in BLM’s decision-making, and established the Fundamentals of Rangeland Health – changes that BLM asserted at the time were necessary to improve grazing management and resource conditions and meet the requirements of FLPMA.

25. As indicated above, Western Watersheds Project is one of the leading conservation groups in the nation to utilize and enforce various parts of the BLM’s current grazing regulations, after they were adopted in 1995. In particular, the provisions requiring involvement of the “interested public” have been essential to our work and efforts; and we have

been leaders in seeking to require BLM to faithfully follow and implement the Fundamentals of Rangeland Health provisions (43 C.F.R. § 4180 et seq.).

26. If the BLM's proposed grazing regulation revisions are allowed to take effect, the interests of Western Watersheds Project and our staff, members and volunteers will be adversely and irreparably injured in many ways. Only an injunction preventing the grazing regulation revisions from going into effect will prevent these irreparable injuries from occurring.

27. For instance, under the grazing regulation revisions, Western Watersheds Project will no longer be entitled as an "interested public" to participate in a wide array of grazing management decisions by BLM – including issuance and renewal of grazing permits, issuance of "temporary non-renewable" (TNR) grazing authorizations, and many others.

28. Excluding the interested public from these decision-making processes will, among other harmful impacts, prevent Western Watersheds Project and our staff, members, and volunteers from obtaining timely information about public lands conditions and grazing management plans and activities, so that we can timely gather our own data, scientific literature, and other information to submit to BLM. Likewise, we will be prevented from participating in the communications, planning, negotiations, and other processes by which BLM typically develops grazing management plans and permits, whereas livestock operators will have exclusive access to BLM during this process.

29. Based on my many years of experience with BLM's grazing management, I can state unequivocally that this will result in BLM's adopting grazing management decisions that will allow excessive, improper, and environmentally destructive livestock grazing to occur. By excluding Western Watersheds Project from the preliminary discussions about grazing activities,

BLM is only increasing the likelihood that Western Watersheds will appeal these decisions and litigate over them when necessary.

30. Furthermore, Western Watersheds Project will be harmed due to the burdensome requirements necessary for remaining an “interested public.” Under BLM’s proposed regulation revisions, an interested public must respond in every instance whenever an opportunity to participate arises in order to remain in the interested public list for that allotment. As noted above, Western Watersheds is an interested public on hundreds of allotments across the West and does not have the resources or staff to respond in every instance. I estimate that Western Watersheds receives more than 1,800 proposed grazing actions per year that would require a response in order to maintain “interested public status.” Yet, just because we do not respond, does not mean that Western Watersheds is not interested in, or concerned about, each allotment. Even if we do not participate actively, Western Watersheds compiles the information we receive over time for reports, future monitoring, trend analyses, and even future litigation.

31. As a public interest organization, we disseminate this information to our members and the public through our website, printed and electronic newsletters, at public meetings and speaking events, conferences and news reports, among others. By forcing Western Watersheds to take the time to comment on each and every allotment and issue, rather than those with which it is immediately concerned, the new regulations will thus impair Western Watershed’s ability to continue to monitor all of those allotments, and will reduce its effectiveness and ability to provide the public information.

32. Below, I describe a number of allotments below to illustrate these points. In general, however, these injuries will commence immediately, and continue to grow over time, impairing the aesthetic, commercial, scientific, conservation, recreational, educational, wildlife

preservation, organizational, informational, and other interests of Western Watersheds, its staff, and its members and supporters. These are actual and/or imminent injuries caused by Defendants' violations of law. The declaratory and injunctive relief sought herein would redress these injuries.

Mountain Springs/San Felipe Allotment

33. One of the grazing allotments that sparked my dedication to address livestock grazing mismanagement on our public lands - almost 15 years ago - is the Mountain Springs allotment (formerly the San Felipe allotment). One of the largest BLM allotments in central Idaho, the almost 100,000-acre Mountain Springs allotment is located in the Upper Salmon River watershed and is currently managed by BLM's Challis Field Office (within the Idaho Falls District). The Mountain Springs allotment contains critical habitat for chinook salmon and steelhead trout, both threatened species under the Endangered Species Act. It is also important sage grouse habitat - in fact, I recently saw three sage grouse on the allotment during a visit on July 11, 2005.

34. My active involvement in livestock grazing issues on the Mountain Springs allotment began in 1992, before I became the Board president of Idaho Watersheds Project, when I determined that excessive grazing had caused significant degradation of the riparian areas, seeps, springs, aspen stands and sage grouse habitat throughout the allotment.

35. Yet, in the early 1990's - prior to the Rangeland Reform that required BLM to conduct "consultation, cooperation and coordination" ("CCC") with the interested public - my efforts to work with BLM concerning the mismanagement of the Mountain Springs allotment (and many others, as discussed further below), were often rejected by BLM. It was extremely difficult, if not impossible, to get the BLM to meet with me or to respond to any of my phone

calls and letters, and I repeatedly was thwarted in my attempts to participate in meetings or field trips.

36. After implementation of the Rangeland Reform in 1995 and the adoption of the provisions requiring “CCC” (consultation, cooperation and coordination) with interested publics, however, it became noticeably easier to be involved in BLM grazing management on the Mountain Springs allotment, as well as the many other allotments in Idaho that I was monitoring. It became clear to me that because of the CCC the public had more input and influence in grazing management and resource protection because the BLM was obliged to respond to my letters and phone calls and would more often request Western Watersheds’ participation in meetings and field trips.

37. On the Mountain Springs allotment, this increased participation and cooperation – including countless meetings and tours with BLM and the permittee’s ranch manager - led to the development of a new Allotment Management Plan (“AMP”) in 1999. Some of the more progressive provisions of the AMP include measurable aquatic habitat, riparian and upland objectives and the requirement of public participation in changes to the AMP and even in the annual authorization meetings.

38. I believe that were it not for the CCC required by the Rangeland Reform regulations, this more progressive AMP, and the associated improvements in the condition of the Mountain Springs allotment since then, would not have happened. For example, since the excessive grazing levels of the early 1990s, grazing pressure has been reduced, both by BLM-required cattle reductions and by the permittee voluntarily reducing grazing levels. As a result, a number of the riparian areas on the allotment are beginning to show improvement and recovery. Nonetheless, many of the springs, seeps, and wet meadow areas as well as aspen clones still are

being degraded by cattle use. I believe that it will take continued effort and participation by Western Watersheds – and communication and cooperation by BLM - to improve these conditions.

39. Western Watersheds continues to be involved on the Mountain Springs allotment, and continues to receive – albeit sometimes unwillingly – BLM’s consultation, cooperation and coordination regarding management changes and monitoring. In fact, were it not for Western Watersheds’ continued oversight, BLM would continue to fail to implement a number of important monitoring requirements of the 1999 AMP, including taking photo points and conducting upland trend analyses, which BLM committed to do this year due to my participation in the annual authorization meeting.

40. I am very concerned that as a result of the grazing regulations revisions, BLM’s consultation, cooperation, and coordination with Western Watersheds Project will cease. Through persistence and its right to participate as an “interested public” under the existing regulations, Western Watersheds is currently able to participate in BLM’s management of the important public lands on the Mountain Springs allotment in order to begin their recovery and restoration; and I only began to see success after implementation of the rangeland health reforms and the public interest CCC requirement. These successes will be nullified by the revised grazing regulations, which will enable BLM to return to secrecy and exclude Western Watersheds from grazing management actions such as implementing changes in grazing use. See e.g., 43 C.F.R. § 4110.3-3.

41. Further, the new regulations require repeated multi-year “monitoring” before any management changes can be made to comply with the Fundamentals of Rangeland Health. As demonstrated above, however, on the Mountain Springs allotment BLM was not conducting the

monitoring required by the 1999 AMP, and it was Western Watersheds that had to force this monitoring to occur. The new regulations, by eliminating public participation, will enable this lack of monitoring to go undetected and uncompleted for many years on the Mountain Springs allotment, as well as all allotments throughout the west. The result will be an excuse to avoid meeting the Fundamentals of Rangeland Health, causing further declines in resource conditions.

42. Further, the new regulations require BLM to implement grazing use reductions in excess of 10% over a 5-year period. The grazing reductions implemented by BLM on the Mountain Springs allotment exceeded 10%, and had they been implemented over a 5-year period, the above-mentioned improvements to the riparian areas would not have occurred.

Burnt Creek Allotment

43. Western Watersheds has also long been involved in trying to improve grazing management on the Burnt Creek allotment, which totals about 4,884-acres of public land in east-central Idaho, and is managed by the BLM's Challis Field Office (Idaho Falls District). The allotment lies completely within the Burnt Creek Wilderness Study Area ("WSA"), which is part of a larger wilderness landscape encompassing Forest Service and BLM lands in the Lost River Range and upper Pahsimeroi valley.

44. A tributary of the Pahsimeroi River, Burnt Creek flows through the middle of the allotment and is spawning habitat for Threatened bull trout (*Salvelinus confluentus*). The Burnt Creek allotment is also important habitat for bighorn sheep, sage grouse, mule deer, pronghorn antelope and elk. I have personally visited the Burnt Creek allotment numerous times – as have other Western Watersheds personnel – and have viewed a number of these species there, as well as the degradation that grazing has caused to Burnt Creek and its riparian area.

45. Unfortunately, unlike with the Mountain Springs allotment, the BLM's Challis Field Office has been less willing to consult, cooperate and coordinate with Western Watersheds concerning management changes and resource protection on the Burnt Creek allotment. For example, to develop changes to the grazing permit necessary to meet the Fundamentals of Rangeland Health and protect bull trout, BLM, the U.S. Fish and Wildlife Service ("FWS"), and the permittee went on a field trip to the allotment. Neither I, nor anyone from Western Watersheds Project was invited on this field trip.

46. According to BLM's own notes, during this field trip the permittee proposed – and BLM agreed to implement - specific changes to the grazing permit. Even after this field trip, there was no CCC with Western Watersheds concerning these changes. Instead, soon thereafter BLM issued an EA proposing the exact changes put forward by the permittee, and subsequently issued a so-called "Full Force and Effect" decision immediately implementing these changes.

47. As a result of this biased decision-making, Western Watersheds was forced to bring litigation in this Court against the BLM. Western Watersheds Project v. Snyder, CIV-03-314-E-BLW. In its decision, this Court held that BLM's EA was unlawful because the agency failed to analyze a range of alternatives, and that by including only one alternative to its proposed action, BLM's EA was a "foreordained formality."

48. As a result of this litigation, the Burnt Creek allotment has been rested from grazing for the last two years. This is soon to change, however, as according to BLM, the agency will be conducting another rangeland health assessment on the Burnt Creek allotment, and will issue another EA for a new grazing permit this year.

49. If the new grazing regulations are in effect, and the new permit is authorized under them, then BLM will be able to lawfully do what it did with the previous permit revision –

exclude Western Watersheds and work only with the permittee to develop a proposed grazing system pursuant to the permittees wishes.

The Pleasantview Allotment

50. Concurrently with Western Watersheds' challenge to the grazing regulations changes here, we are initiating a second round of litigation on the Pleasantview allotment (also in the Idaho Falls District) to force BLM to implement the changes necessary to bring the allotment into compliance with the Fundamentals of Rangeland Health. Encompassing the Pleasantview Mountains west of Malad City, Idaho, the Pleasantview allotment consists of 69,806 acres, of which 59,026 acres are public lands managed by the BLM's Pocatello Field Office.

51. Western Watersheds has been involved in various grazing management issues on the Pleasantview allotment over the past decade. Beginning in 1997, based on information obtained from BLM personnel, Western Watersheds hired consultant Jackie Maughan to conduct monitoring and gather information and photographs of the allotment's condition. What she found was dozens of dead birds and rodents in water troughs and storage tanks throughout the allotment. Mrs. Maughan provided this data and photographs to the BLM, and also attended field trips with BLM and the permittees to discuss this issue. As a result, BLM promised to install escape ladders in the troughs and tanks. Yet nothing was done.

52. In recent years, several Western Watersheds Project members and consultants have returned repeatedly to the Pleasantview allotment to document resource conditions. Again, a large number of dead birds and small rodents were found in water troughs and storage tanks still devoid of escape devices. Again, Western Watersheds provided this data and photographs to BLM, which promised to address the issue.

53. Today, although some on-the-ground progress has been made by the installation of escape devices in some troughs and tanks, much more remains to be done. Further, as these escape devices decay or are broken – which in my experience they do regularly - they must be immediately fixed or replaced. Given BLM’s and the permittee’s failure to install even some of the necessary escape devices for many years after the problem was discovered and brought to their attention, this will require repeated monitoring and consultation, coordination and cooperation between BLM and WWP.

54. Under the new regulations, however, making progress on this issue will be much more difficult because BLM will no longer be required to conduct CCC with Western Watersheds Project. Further, the new grazing regulations require BLM and the permittees to share title to permanent range improvements such as water troughs, tanks and pipelines, and fences. 43 C.F.R. § 4120.3-2(b). Thus, the Pleasantview permittee (the Pleasantview Grazing Association) may obtain title to any future water developments, including the large number of water troughs, tanks and pipelines on the allotment that are not properly functioning and need to be replaced. When title to these developments passes to the permittee, it will be even more difficult – if not impossible - for Western Watersheds to ensure they are functioning properly and contain the necessary bird and wildlife escape devices.

55. Western Watersheds has also been working for the past several years to ensure that BLM implements the necessary management changes on the Pleasantview allotment to comply with the Fundamentals of Rangeland Health standards and guidelines. See Idaho Conservation League and Western Watersheds Project v. Steele, Civil No. 01-529-E-BLW. Indeed this is the second round of litigation concerning management of the Pleasantview allotment, necessary due to BLM’s repeated capitulation to pressure from the permittees, re-

instating the 19% grazing reduction the agency had previously implemented due to our prior litigation, and removing all of the mandatory terms and conditions from the grazing permit that it previously determined are necessary to protect and restore the allotment's degraded resources and meet the Fundamentals of Rangeland Health.

56. Although on the surface BLM complied with FLPMA's public interest CCC requirements and included Western Watersheds Project in its meetings and field trips on the Pleasantview allotment, our concerns were never seriously considered. Instead, BLM listened only to the permittees and implemented the grazing management changes they proposed.

57. Under the new regulations, this situation will only get worse – BLM will no longer have to go through the guise of cooperating or coordinating with Western Watersheds or other interested publics. Instead, Western Watersheds will be excluded from the start and despite its years of effort and participation, will no longer have the opportunity to participate in field trips or meetings concerning grazing management on the Pleasantview allotment. BLM will not be obliged to return our phone calls or to consider our monitoring data and photographs. The public will effectively be cut out of management decisions on our own public lands – instead, the management decisions will be left up to the livestock industry who has taken hold of the BLM and through these regulations will enforce its will.

Salmon River Allotment

58. Another example of CCC having a positive impact is the Salmon River allotment located about 5 miles southeast of Jackpot, Nevada near the Idaho border, which is managed by BLM's Elko Field Office. The Salmon River allotment includes the entire Granite Mountain Range as well as the entire Trout Creek watershed (a tributary of Salmon Falls Creek that flows into Idaho and the Snake River). This is one of the most damaged watersheds that I have seen in

the west. In fact, I personally take the entire Whitman College “Semester in the West” class to Trout Creek every two years to show them an example of the worst impacts of livestock grazing anywhere.

59. Unfortunately, in my experience and the experience of other Western Watersheds Project employees, this BLM office has been particularly hostile to Western Watersheds’ involvement and participation in grazing management issues. Recently, however, we were able to make some progress - after many years of effort Western Watersheds has been able to use the CCC requirements to force our involvement and focus BLM’s attention on improving the degraded riparian areas. I personally have taken more than a dozen trips to the Salmon River allotment, as did other Western Watersheds’ staff. In addition, I as well as other Western Watershed’s staff have repeatedly communicated with BLM’s Elko office, sending them photographs, data and scientific information on the impacts of grazing on riparian areas in the west and on the Salmon River allotment in particular. The result is increased efforts by the BLM range staff and the grazing permittee to keep cows from congregating in riparian areas as they used to, resulting in improvement in riparian conditions in some locations.

60. I believe that BLM would not have cooperated and communicated with Western Watersheds without the CCC interested public requirement. Given Elko BLM’s continuing hostile treatment of Western Watershed’s involvement in its grazing management, the new regulations will give Elko BLM field office the excuse it needs to exclude Western Watersheds from future grazing management actions.

Green Mountain Common Allotment

61. Another example of successful public participation in effecting change occurred on the Green Mountain Common allotment in Wyoming, located south of the Sweetwater River

and Jeffrey City, and managed by BLM's Lander field office. Approximately 500,000 acres in size, it is the largest unfenced public land area in the lower 48 states and has important habitat for sage grouse and antelope. Western Watersheds Project became an interested public on this allotment several years ago because of the high values for wildlife there, and the enormous controversy and recalcitrance of the allotment's many permittees. Western Watersheds Project members participated in the allotment's Coordinated Resource Management planning process several years ago, and Western Watershed's Wyoming Director, Jonathan Ratner, has visited this allotment numerous times in recent years.

62. Extensive analysis of the allotment's riparian areas conducted by Ray Corning, a retired state Fish and Game field biologist and Western Watersheds' member (he has since passed away), showed steep declines in their condition. This data was provided to BLM, which responded by conducting a Fundamentals of Rangeland Health assessment - which confirmed what Mr. Corning's data showed. As a result of this data and of Western Watersheds' persistence and frequent communications with BLM concerning this issue, and because of the drought in central Wyoming, the agency significantly reduced grazing use on the allotment - substantially more than 10%.

63. Again, were it not for the CCC requirement, I do not believe that BLM would have been willing to cooperate and work with Western Watersheds Project. This is an example of how public involvement is critical in identifying the serious problems in places where BLM does not have the time or funds to conduct necessary monitoring, and also demonstrates the importance of immediately implementing grazing reductions to meet the Fundamentals of Rangeland Health. The new grazing regulations would prohibit BLM from making such necessary and extensive reductions unless the permittees agreed to them - which in my opinion

would never have happened here. Further, under the new regulations, BLM would have been required to conduct several more years of monitoring before it could even make a determination that the riparian areas were degraded thus further delaying any action or restoration.

Upcoming Actions

64. I am also deeply concerned about the impact that the new grazing regulations will have on upcoming grazing permit revisions. Once the new regulations are in effect, I believe that most, if not all, BLM offices will no longer include Western Watersheds in field trips and pre-NEPA meetings and communications concerning proposed permit revisions and proposed alternative grazing management systems.

65. According to BLM documents that I recently received, the agency will be conducting rangeland health and other monitoring on a number of allotments in Idaho this year. For example, the Upper Snake Field Office of Idaho BLM's Idaho Falls District will be conducting field assessments for the following allotments in 2005: Rattle Snake Point, Reno Point, Wigwam, Sinks, Kyle Canyon, Leslie Butte, Limestone, Judd Brown, Jumpoff, Serviceberry, Champagne Creek, Hammond Canyon, Harger Point, Mahogany, Hittson, Salisbury, WE Farms, Briggs Canyon, Cedarville, Uncle Ike, East Dubois, Bluebunch, Shotgun Valley, Sheridan, and Bear Canyon.

66. These allotments total 148,850 acres of BLM land, contain important resources such as threatened and sensitive fish, wildlife and plant species, and are seriously degraded by livestock grazing. I personally have visited a number of these allotments, such as the Kyle Canyon and Uncle Ike allotments, many times.

67. According to BLM's letter, which is addressed to "Interested Public," following its field assessments, BLM will mail out draft and final assessments, a determination, an EA and

a proposed decision for each allotment. While Western Watersheds Project may be able to participate in the NEPA process for any proposed permit revisions, after implementation of the new regulations, the Upper Snake Field Office will no longer be required to cooperate, coordinate and consult with Western Watersheds – i.e., based on personal experience I believe that BLM will no longer return my phone calls or letters requesting information and an opportunity to participate in grazing management field trips and meetings for developing proposed alternatives and management strategies. Instead, BLM is required to consult only with the permittees, despite the fact that these are public lands. In addition, under the new regulations Western Watersheds will not be automatically be sent the NEPA documents relating those allotments we did not respond to in order to remain “interested public.”

68. In another letter addressed to “Interested Public” that I received from BLM’s Challis Field Office in January 2005, the agency identifies a large number of monitoring and permit revision activities that it intends to do this year and asks the public to submit to BLM any data, issues or concerns “that should be addressed during the environmental analysis, or if you have recommendations for management for the allotments...” These include permit renewals on the following allotments: Bear Creek, Summit Creek, Garden Creek, Squaw Creek, Upper Pahsimeroi, Burnt Creek, Willow Creek, Dickey, Whiskey Springs and Alison Creek; Standard and Guideline Assessments for the Mackay, Copper Basin, Spengler, Penal Gulch, Salmon River, Upper Pahsimeroi, Burnt Creek, and Donkey Hills allotments; and BLM will be “summarizing existing data and scoping for issues” on the Lime Creek, Grouse Creek, Meadow Creek, Lawson Creek, Eddy Creek, Arentson Gulch, Woodbury, Thousand Springs, Falls Creek, Mahogany Creek and Little Morgan Creek allotments.

69. Thus, BLM will be issuing new grazing permit decisions on many, if not all of these allotments after the grazing regulations are implemented. As I stated previously, the Challis Field Office, which manages these allotments, is already resistant to including Western Watersheds Project in its CCC process, and the new grazing regulations will merely give them the excuse to do so lawfully. This is despite Western Watersheds' involvement in grazing management on a number of these allotments for many years – and even decades. Examples include the Burnt Creek, Donkey Hills, Upper Pahsimeroi, Eddy Creek and Copper Basin, which I have personally visited countless times, as have other Western Watersheds' staff. These allotments have numerous and diverse resource values such as Wilderness Study Areas, Areas of Critical Environmental Concern, critical habitat for bull trout, steelhead and Chinook salmon, sage grouse and pygmy rabbit habitat, and important habitat for numerous other species such as antelope, deer, elk and moose, which will all be threatened, in my opinion, by implementation of the new grazing regulations, exclusion of the interested public from participation in management changes and restoration, and postponement of changes to grazing management necessary to meet the Fundamentals of Rangeland Health.

70. Another example of upcoming projects is on the Burley Field office, where BLM states that it will complete rangeland health field assessments beginning in May 2005 on the following allotments: Chadwick-Berger, Lierman-Berger, Landing-Berger, Lassen-Berger, Parrott-Berger, Schnitker-Berger – totaling approximately 9,038 acres. According to BLM, the sensitive resource values on these allotments that BLM will be evaluating include upland management, sensitive species, and special management areas such as Areas of Critical Environmental Concern, Resource Natural Areas, and/or WSAs. Similar to the many other BLM offices, based on my experiences and the experiences of other Western Watersheds' staff, the

Burley field office has also been resistant to including Western Watersheds in its CCC process. I seriously fear that once the new regulations are in place, we will be shut out completely from field trips, meetings and other communications concerning these upcoming projects as well as all future projects throughout the field office area.

71. On the above mentioned allotments, as well as all allotments across the west, a few of the specific examples of how, in my opinion, the public and Western Watersheds Project will be hurt from the elimination of the public interest CCC requirements include: being left out of allotment tours and meetings with grazing boards, Congressional staff, range consultants and/or the permittees where issues are discussed and alternative grazing management systems are developed; not being notified of, or having any input on, various changes to grazing permits such as changes in pasture rotations and schedules, extending the season of use beyond the permit limit, and authorizing early season grazing during sensitive plant growth stages; and not being notified of trespass and permit violations.

72. Other examples of the various ways in which the public (including Western Watersheds Project) and the natural resources of our public lands will be harmed by the new grazing regulations are detailed in several documents that the politically-appointed bureaucrats in the BLM attempted to suppress from the public. For example, the Administrative Review Copy of the Draft Environmental Impact Statement (“ARC-DEIS”) expressed the views of BLM wildlife biologists and other professional staff that the proposed revisions would result in long-term adverse harms to the environment, and reduce BLM’s ability to manage the public lands. I understand that a copy of the ARC-DEIS was submitted by commenters on the Draft EIS for this rulemaking, and I have a copy as well.

73. The ARC-DIES included sections addressing the adverse impacts of livestock grazing that were excised from the Draft and Final EISs released by BLM, including on the following topics:

A. Discussion and citation of studies showing how livestock grazing “causes numerous changes in plant communities,” including by removing streamside vegetation, and converting native species to noxious weeds;

B. Citations of recent studies that “only serve to validate Platts (1982) conclusion that livestock grazing is a major cause of impaired stream and riparian environments and reduced fish populations throughout the arid western U.S.;

C. Discussion of research showing livestock impacts to aquatic and riparian species, including declines in fish and invertebrate diversity, abundance, and productivity due to alteration of aquatic habitat, as well as alteration of bird and mammal diversity and abundance caused by loss of food and changes to the vegetation, all stemming from livestock activity; and

D. Discussions of various studies concluding that “livestock grazing has led to a decline in neotropical migratory birds that utilize riparian habitat,” “livestock grazing was the fourth leading cause of species endangerment in the U.S. and the second leading cause of plant endangerment,” “livestock grazing has major effects on stream channel morphology,” and “in Arizona and New Mexico there are more than 100 special status species dependent on riparian ecosystems and they are all sensitive largely due to livestock grazing. This can be generalized to most special status species on rangelands.”

74. Similarly, the Draft and Final EISs released by BLM for the grazing regulation revisions suppressed and avoided even mentioning the conclusions stated in the ARC-DEIS that

the proposed grazing regulation revisions would have negative environmental impacts in many ways. Among these were the following observations:

A. “The Proposed Action will have a slow, long-term adverse impact on wildlife and biological diversity in general.”

B. Granting ownership of water rights or range improvements to permittees “greatly diminishes the ability of the BLM to regulate grazing and will create long-term impacts to wildlife resources.”

C. The revisions that would require multi-year “monitoring” data before determining that grazing is responsible for failing to meet Fundamentals of Rangeland Health standards and guidelines “will further delay the grazing decision process. Present BLM funding and staffing levels do not provide adequate resources for even minimal monitoring and the additional monitoring requirement will further burden the grazing decision process, thus adversely impacting wildlife resources and biological resources in the long-term.”

D. Deleting requirements to involve the interested public in grazing decisions “will further reduce the ability of environmental groups and organizations to participate in, weigh in and support wildlife and special status species with regard to public land grazing issues. This should result in long-term adverse impacts to wildlife and special status species on public lands.”

E. The revisions that delay changes or reductions in grazing will further “exacerbate long term impacts on riparian habitats, channel morphology and water quality. Degradation of channel morphology and water quality will continue in watersheds with declining vegetative

cover due in-large to the increasing and burdensome administrative procedural requirements for assessment and for acquisition of monitoring data.”

75. I am informed and believe that the Administration “deep-sixed” the offending parts of the ARC-DEIS, and ordered a hasty rewrite to eliminate any suggestion that the regulations would harm the environment or have any significant effects. In fact, this was reported in several newspaper articles in the Los Angeles Times, the San Francisco Chronicle and the Seattle Times, among others, on June 18, 2005. A true and correct copy of the June 18, 2005 Los Angeles Times article, obtained from its website, is attached hereto as Exhibit 1.

76. Another document suppressed by the BLM is the written comments of the FWS, which state that the regulation revisions would undermine BLM’s ability to protect and restore fish, wildlife, water quality, and other values on our public lands, while elevating livestock interests above all others and above sound management. I have obtained a copy of the draft FWS comment letter, which states in part:

A. “Overall, we are concerned that the Proposed Revisions have the effect of making grazing a priority use over other uses. This seems contrary to the regulations in the Federal Land Policy Management Act which specify multiple uses, but do not prioritize them. Additionally, the Proposed Revisions constrain biologists and range conservationists from recommending and implementing management changes based on their best professional judgment in response to conditions that may compromise the long-term health and sustainability of rangeland resources. Taken together we believe these aspects of the Proposed Revisions have the potential to be detrimental to fish and wildlife resources.”

B. “Removing some requirements to consult with the ‘interested public’ while adopting a requirement to cooperate with State, county, or locally established grazing advisory

boards (PR section 4120.5-2) conveys preferential treatment to one group over another. We believe adopting this modification is inconsistent with current Department of the Interior objectives to promote coordination, cooperation, and consultation with all entities to accomplish conservation.”

C. “By removing public comment opportunities from daily or seasonal grazing operations, the public is essentially removed from any substantive decision-making processes.”

D. “The 5-year implementation period [for instituting reductions in livestock numbers to protect rangeland health] may be too long to begin necessary and effective range management changes (for example, in the event of extended drought) and thus result in irreversible long-term impacts to vegetation communities and associated wildlife species.”

E. “By relinquishing ownership [of range improvements], the BLM compromises its ability to manage the public’s resources to the degree necessary to ensure their health.”

F. Regarding the provision limiting the permittee violations that may be grounds for suspending or revoking a permit: “Under the proposed amendment, the owner of the trespassing livestock that are found on NWR [National Wildlife Refuge] lands, for example, would no longer risk loss or suspension of his BLM grazing permit. Such a change communicates to permittees that attention to a healthy rangeland ethic ends at their permit boundary. It is highly likely that adopting this modification may result in more trespass violations on NWRs, with significant adverse effects to fish and wildlife resources the Service is mandated to protect, as well as increased operational expenses by the NWR. We, therefore, believe the proposed amendment not only contradicts the objectives of the Proposed Revisions, but also the direction of the Department of the Interior to promote conservation through cooperation and coordination among agencies and the general public.”

G. “Extending the deadline for initiating an appropriate course of action to make remedial changes in grazing practices that significantly contribute to an allotment’s failure to meet rangeland health standards from 12 to 24 months could be extremely detrimental to long-term range health and fish and wildlife resources.”

H. “The Proposed Revisions would change fundamentally the way the BLM lands are managed temporally, spatially, and philosophically. These changes could have profound impacts on wildlife resources.”

I. “The Service is concerned that, by extending the amount of time the BLM would take to make needed grazing changes to ensure that resource conditions conform to the requirements, resources necessary for the long-term conservation of sage-grouse may become increasingly degraded during the interim.”

J. “Giving up water rights inhibits the BLM flexibility in making management decisions and has the potential to impact water resources.”

K. “We believe that many of the Proposed Revisions would give priority to a use that is often in competition with fish and wildlife resources, and thus could be detrimental to fish and wildlife habitats and populations.”

77. A recent newspaper article in the Los Angeles Times on July 16, 2005 addressed these Fish and Wildlife Service comments, and indicated that they were approved at the highest level of the Service, but never submitted to BLM during the comment period. A true and correct copy of this article, obtained from the Los Angeles Times website, is attached hereto as Exhibit 2. This article also reports that comments were written by the Environmental Protection Agency (“EPA”), and – even though these comments advised that the regulation changes would reduce

BLM's ability to protect water quality and riparian areas from livestock degradation - were also suppressed.

78. I find this suppression of scientific information extremely disturbing, and believe that until the BLM discloses all of the potential environmental and other impacts that these new grazing regulations will have on our public lands and our ability to participate in grazing management issues on our public lands, that these regulations should be enjoined from being implemented.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 22nd day of July, 2005, at Hailey, Idaho.

_____/s/_____
Jonathan Marvel