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

WESTERN WATERSHEDS PROJECT,)	CASE NO. 12-cv-205
Plaintiff,)	
)	
vs.)	
)	COMPLAINT
ARNOLD L. PIKE, Bruneau Field Office)	
Manager, BUREAU OF LAND)	
MANAGEMENT, and the DEPARTMENT)	
OF THE INTERIOR, agencies of the United)	
States,)	
Defendants.)	

INTRODUCTION

1. This case is a companion to *W. Watersheds Project v. Salazar*, Case No. 08-435-BLM (D. Idaho) (“*Salazar*”), an ongoing lawsuit challenging BLM’s grazing decisions and associated environmental reviews on the Battle Creek and other allotments in the Bruneau, Owyhee and Burley Field Offices in southern Idaho. After Western Watersheds filed its Third Amended Complaint in *Salazar*, BLM transferred two grazing preferences on the Battle Creek allotment—which is at issue in *Salazar*—to the J.R. Simplot Company (“Simplot”), and issued two new grazing permits authorizing grazing on the Battle Creek allotment. Although the parties were then (as now) engaged in active litigation over the Battle Creek allotment, BLM never

provided Western Watersheds with any notice of its decisions to transfer the grazing preferences or issue the new grazing permits prior to issuing them. Indeed, Western Watersheds did not become aware of the new permits until after it filed its summary judgment motion in *Salazar*.

2. Due to these procedural irregularities – and in an abundance of caution in the event the court in *Salazar* finds that it lacks jurisdiction over two Simplot grazing permits - this case now challenges Defendant Bureau of Land Management’s grazing authorizations and grazing preference transfers on the Battle Creek allotment as violating the National Environmental Policy Act (“NEPA”), the Federal Land Policy and Management Act (“FLPMA”), and the Fundamentals of Rangeland Health (“the Fundamentals” or “FRH”). Through these decisions and permits, BLM has systematically ignored the adverse impacts that livestock grazing is having on Greater sage-grouse populations and habitat, as well as on the fragile native vegetation communities and high desert ecosystem. Instead, BLM has hidden its grazing preference transfers and grazing authorizations from the public, and has permitted grazing without any examination of the ecological costs of livestock grazing at inappropriate times, at inappropriate levels and under inappropriate terms and conditions in violation of NEPA, FLPMA and the Fundamentals.

3. Western Watersheds thus seeks vacatur and remand of BLM’s decision transferring the grazing preferences, BLM’s environmental review, and the new grazing permits issued to Simplot, as well as declaratory and/or injunctive relief requiring BLM to comply with the environmental laws and ensure that BLM’s management of the wildlife habitat and public lands within the Battle Creek allotments does not contribute to further decline of the Greater sage-grouse populations and degradation of sage-grouse habitat.

JURISDICTION AND VENUE

4. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question) because this action arises under the laws of the United States, including FLPMA, 43 U.S.C. §§ 1301 et seq.; NEPA, 42 U.S.C. § 4331 et seq.; the Administrative Procedure Act, 5 U.S.C. § 701 et seq. (“APA”); the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; and the Equal Access to Justice Act, 28 U.S.C. § 2412 et seq. (“EAJA”).

5. 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.

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

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

PARTY INFORMATION

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

9. Western Watersheds, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the

West, including within the Battle Creek allotment. Western Watersheds is also active in monitoring ecological conditions across the Great Basin and sagebrush steppe ecosystem, including within the Battle Creek allotment; in reviewing and commenting upon agency decisions; and in publicizing the adverse ecological effects of grazing in this region.

10. Western Watersheds, as an organization and on behalf of its staff, members and supporters, is also one of the leading conservation groups fighting to protect the Greater sage-grouse as well as other sagebrush-obligate species, such as the pygmy rabbit. Through the efforts of its staff, members, and supporters, Western Watersheds advocates science-based management of public lands in Idaho and other western states, with a focus on the sagebrush-steppe ecosystem, which forms the sole habitat of the Greater sage-grouse and pygmy rabbit.

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

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

13. Many of Western Watersheds' activities – including research and advocacy – have focused on preserving the remaining habitats of greater sage-grouse in the western states,

including areas within the Battle Creek allotment, and in restoring those habitats to protect and recover greater sage-grouse populations.

14. Western Watersheds has previously brought many cases before this Court seeking to protect Greater sage-grouse and its sagebrush-steppe habitat, including but not limited to the following: *W. Watersheds Project v. U.S. Fish and Wildlife Serv.*, 06-cv-277-BLW (sage-grouse listing litigation); *W. Watersheds Project v. Kempthorne*, 08-cv-516-BLW (challenges to BLM RMPs across sage-grouse range); *W. Watersheds Project v. Salazar*, 08-435-BLW (challenging BLM decisions within habitat for Great Basin Core population of Greater sage-grouse); *W. Watersheds Project v. Dyer*, 04-cv-181-BLW (Jarbidge sage-grouse litigation); *W. Watersheds Project v. Tower*, 04-cv-372-BLW (challenge to Curlew National Grasslands management plan for failure to protect sage-grouse); *W. Watersheds Project v. Collinge*, 02-cv-172-BLW (challenging “sage grouse predators” study which violated NEPA) .

15. Defendants’ violations of NEPA, FLPMA and the Fundamentals in approving the grazing preference transfer and grazing authorizations on the Battle Creek allotment, as further identified below, adversely and irreparably injure the aesthetic, commercial, conservational, scientific, recreational, educational, wildlife preservation and other interests of Western Watersheds and its staff and members. These are actual, concrete injuries caused by Defendants’ violations of law, for which judicial relief is required to remedy the harm caused to Plaintiff.

16. Defendant ARNOLD L. PIKE is the Bruneau Field Office Manager for the Bureau of Land Manager. Defendant Pike has management and supervisory authority over livestock grazing in the Bruneau Field Office, including the Battle Creek allotment, and is responsible for ensuring that livestock grazing on the Battle Creek allotment complies with all federal laws and regulations. Defendant Pike signed the grazing authorizations, grazing preference transfers and

associated environmental reviews discussed below. Defendant Pike is sued solely in his official capacity.

17. Defendant BUREAU OF LAND MANAGEMENT is an agency or instrumentality of the United States, within the U.S. Department of Interior; and is the federal agency charged by law with administering the public lands at issue in this case.

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

FACTUAL ALLEGATIONS

Greater Sage-Grouse

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

20. 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 12 states within the western United States and three Canadian provinces.

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

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

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

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

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

Great Basin Core Population of Greater Sage-Grouse

26. In 2004, leading scientific experts on Greater sage-grouse published the 2004 Conservation Assessment. The Conservation Assessment identified the Great Basin “core” population of Greater sage-grouse as one of the five largest remaining core sage-grouse populations across the entire range of the species.

27. The Great Basin core population is itself comprised of seven subpopulations of sage-grouse, including the North-Central Nevada/Southeast Oregon/Southwest Idaho population, and the Northeast Nevada/South-Central Idaho/Northwest Utah population.

28. Based on the movement patterns of Greater sage-grouse, birds within the North-Central Nevada/Southeast Oregon/Southwest Idaho subpopulation of the Great Basin core population migrate within and between the public lands managed by BLM’s Owyhee and Bruneau Field Offices in Idaho, and the Elko and Winnemucca districts in Nevada.

29. In fact, according to the Conservation Assessment, the North-Central Nevada/Southeast Oregon/Southwest Idaho subpopulation is “loosely connected” with the NE NV/S-Central ID/NW UT population, which is directly to the east.

30. Greater sage-grouse in the Great Basin core population have seen similar declines in population abundance as Greater sage-grouse rangewide. For example, the 2004 Conservation Assessment concluded that every major metric in sage-grouse population abundance has decreased since 1965-69 in the Great Basin core population, including (1) percent active leks, (2) average males per lek, (3) median males per lek, (4) average males per active lek, and (4) median males per active lek. AR 9883. Moreover, the population index for the Great Basin core population has decreased significantly between 1964 and 2004. These same population and

abundance trends apply to the seven subpopulations as well, as identified in detail in the Conservation Assessment.

Bruneau Field Office

31. The Bruneau Field Office is located in southwestern Idaho's Owyhee County, and it encompasses nearly 1.5 million acres of mostly public lands. The topography of the field office is gently rolling to mountainous, and the lands are dissected by several major stream and canyon systems. The predominant vegetation types within the Bruneau Field Office are the same big sagebrush and low sagebrush vegetation communities commonly referred to as the Sagebrush Sea, which includes a large diversity of landforms and vegetation types ranging from vast expanses of sagebrush covered plateaus to rugged mountains blanketed with juniper woodlands and desert low sagebrush and native grass vegetation communities.

32. The public lands administered by the Bruneau Field Office are located within southwestern Idaho's "ruggedly beautiful" Owyhee region, an area "[s]tartling in its ecological diversity, from arid sagebrush desert to lush juniper woodlands," where the rivers "have sculpted spectacular and wild canyonlands out of the Owyhee's volcanic rock formations." *Idaho Watersheds Project v. Hahn*, 307 F.3d 815, 820-21 (9th Cir. 2002).

33. The public lands managed by the Bruneau Field Office are home to numerous BLM-designated sensitive species, including greater sage-grouse, pygmy rabbit, California bighorn sheep, redband trout, and Columbia spotted frog. Other wildlife in the area include elk, pronghorn antelope, mule deer, black-collared lizard, bald eagle, northern goshawk, mountain quail, prairie falcon, golden eagle, ferruginous hawk, great horned owl, red-tailed hawk, Swainson's hawk, loggerhead shrike, Brewer's sparrow, and scores of species of nongame birds

and mammals, many of which fulfill an important ecological niche as prey species for avian and mammalian predators.

34. The Bruneau Field Office historically offered abundant suitable habitat for sage-grouse breeding, nesting, brood rearing, overwintering and other essential biological functions; and historically numbers of sage-grouse were abundant in the area year-round.

35. The Bruneau Field Office remains a sage-grouse stronghold, and the Bruneau contains the largest unburned, intact sagebrush habitat remaining in Idaho. This area comprises over 1,525,000 acres of key sage-grouse habitat, and contains the largest area with a high density of leks in Idaho.

36. Although BLM and Idaho Department of Fish and Game lack consistent lek data within the Bruneau Field Office, there is no doubt that sage-grouse population levels in the Bruneau – as well as across the N-Central NV/SE OR/SW ID subpopulation of Great Basin Core sage-grouse – have declined significantly in the recent past.

37. The Bruneau Field Office falls within the so-called Owyhee Sage-Grouse Planning Area, under the Idaho Conservation Plan. This area is approximately 2.6 million acres in size, and the BLM administers – through the Owyhee and Bruneau Field Offices – approximately 83% of the sage-grouse habitat within the planning area. In 2006, nearly $\frac{3}{4}$ of the entire planning area was considered “key sage-grouse habitat.”

Bruneau Grazing EIS and Management Framework Plan (MFP)

38. In 1982, BLM issued the Bruneau-Kuna Grazing Final Environmental Impact Statement, in which BLM proposed to implement “an improved rangeland management program” on the public lands within the Bruneau Resource Area. The purpose of BLM’s proposal was to “improve the soil, water, and vegetation resources within the area. *Id.* Improvement was

necessary – according to BLM – because only “trace” acreage of public lands within the Bruneau were in excellent condition, and 14% was in good condition. Fully 73 percent of the public lands were in poor or fair condition.

39. Under BLM’s proposed modifications to livestock grazing, BLM claimed that 70% of the area would improve in range condition, and BLM committed to improve “sage grouse habitat to increase nesting, brood rearing and wintering areas.” Overall, BLM predicted that “sage grouse population levels would increase.”

40. More specifically, BLM proposed to improve sage-grouse late brood-rearing habitat – i.e., upland seeps, springs, and wet meadows – by establishing rest or deferred grazing systems on these upland areas. Deferring grazing until after seed ripe in the uplands would also benefit the native vegetation communities, according to BLM, because allowing native plants to reach seed ripe is “necessary to improve maintenance of desired plant species, vigor and productivity.”

41. In 1983, BLM issued its Final Bruneau Management Framework Plan, which remains in effect today. The Bruneau MFP adopted the proposed action identified in the EIS, and it requires that BLM manage the public lands within the Bruneau Resource Area to rectify these degraded conditions.

42. Under the MFP, BLM is required to manage the public lands to comply with a number of wildlife-specific objectives and management requirements, including:

- Manage 520,000 of sage-grouse range to improve nesting, brood rearing and winter habitats;
- Adjust management of livestock or exclude grazing on sage grouse brood-rearing areas to improve habitat;
- Manage sensitive species habitats to “maintain or increase” existing and potential

populations;

- Manage upland game habitats – including habitat for the Greater sage-grouse – to increase populations;
- Manage springs, seeps, and meadows and adjacent upland areas as key wildlife habitat for Greater sage-grouse and other upland game species, and exclude livestock from these areas if conditions do not improve, AR 114, 49; and
- Adjust livestock season of use on spring and summer range to meet the minimum growth needs of preferred plants or forage species, including by deferring grazing until after seed ripe.

Battle Creek Allotment

43. The Battle Creek allotment is located southeast of Grand View in Owyhee County, Idaho, and it is bordered by Shoofly Creek on the northwest, Little Jacks Creek on the east and Highway 78 on the north. The allotment includes 145,085 acres of BLM-administered public lands, and includes over 20,000 acres of state and private lands. The allotment extends southwest nearly 35 miles into the Owyhee Mountains, and averages nearly 12 miles in width.

44. Elevations in the allotment range from 2,600 feet in the north to 6,600 feet at Bald Mountain, and the major landforms are alluvial hills and plateaus dissected by drainages in the lower elevation areas, and hills and mountains deeply dissected by drainages at higher elevations.

45. There are nearly 30 miles of streams located on the public lands in the Battle Creek allotment, with Battle Creek, Little Jacks Creek and Shoofly creeks being the major drainages. The Battle Creek allotment also contains 18 upland seeps, springs and wet meadows.

46. The Battle Creek allotment is home to a wide array of native wildlife species, including Greater sage-grouse, Yellow-billed cuckoo, Columbia spotted frog, pygmy rabbit, California bighorn sheep, Northern Goshawk, Interior redband trout, and a host of other desert-dependent species.

47. The BLM has divided the Battle Creek allotment into two use areas – i.e., the Battle Creek Use Area (comprising the northern and southwest portions of the allotment) and the Little Jacks Creek Use Area (comprising the southeast portion of the allotment); BLM further divides these areas into several pastures.

48. The higher elevation pastures within the Battle Creek allotment – i.e., all pastures except pastures 8-21 – contain Greater sage-grouse habitat, including nesting, summer brood-rearing, and winter habitats. Fully 64,000 acres within the Battle Creek allotment are considered sage-grouse habitat. BLM wildlife biologists have identified 7 historic leks within the Battle Creek allotment, with four of these leks being active in 1996 and 1997.

49. Currently, the lower elevation pastures in the Battle Creek allotment no longer provide suitable sage-grouse habitat, however, because they lack adequate grasses and cover, are dominated by cheatgrass, or have burned.

50.

BLM's Authorization of Grazing on the Battle Creek Allotment

51. On July 19, 1999, BLM issued the Battle Creek Allotment Analysis, Interpretation, and Evaluation (1999 Assessment). The 1999 Assessment evaluated whether standards in the Bruneau MFP, the Fundamentals of Rangeland Health, and the Idaho Water Quality Standards were met. It concluded that livestock grazing was causing widespread violations of these three sets of minimum standards across significant portions of the allotment.

52. In September 1999, BLM issued an Environmental Assessment examining various alternatives for grazing management. BLM's proposed alternative including only minor changes in the grazing system, despite the widespread violations of the Fundamentals of Rangeland Health. In September 1999, BLM issued Final Decisions to implement the proposed action in the EA.

53. Four permittees administratively appealed the 1999 decisions and requested that implementation of the decisions be stayed, which the Office of Hearings and Appeals denied. Thus, BLM implemented the 1999 final decisions from 2000–2003.

54. Meanwhile, BLM and the permittee appellants entered settlement negotiations to resolve the appeals, and the parties reached a settlement on December 2, 2003, under which the permittees' appeals were dismissed, the 1999 Final Decisions were set aside, and a new grazing regime was instituted as provided in the settlement.

55. Later, BLM determined that additional analysis was needed prior to implementing the settlement, and BLM reverted to pre-1999 livestock management for the 2004–2007 grazing seasons – i.e., the precise management that BLM found in the 1999 Assessment to be violating the Fundamentals of Rangeland Health.

56. In January 2007, BLM issued its new allotment assessment for the Battle Creek allotment. The assessment documented the conditions of the public lands and wildlife habitat throughout the allotment, including a statistically significant decline since 1999 in native plant populations, a decrease or (at best) static trend in native vegetation condition, and overall lack of native grasses and forbs in many areas on the allotment.

57. Since 1999, BLM has only conducted five sage-grouse habitat evaluations across the entire Battle Creek allotment, and four of these five evaluations showed suitable conditions for sage-grouse. BLM conducted no evaluations on any pasture grazed in the early spring/spring rotation, and BLM also collected no data on the conditions of sage-grouse late-brood rearing habitat.

58. On June 8, 2007, BLM issued a Battle Creek Allotment Evaluation and Determination, which found that conditions on the Battle Creek allotment worsened between

1999 and 2007. Overall, the Determination concluded that Standards 2, 3, 7, and 8 and Guidelines 1, 3, 5, 6–9, 10, 12, and 17 were not met in the Battle Creek allotment due to current grazing.

59. On January 9, 2008, BLM issued an environmental assessment ostensibly examining the environmental impacts of reissuing grazing permits on the Battle Creek allotment, as well as constructing multiple new range projects within the allotment. On the very next day, BLM issued a FONSI, finding that allowing grazing under the proposed action would have no significant impact on the environment.

60. Despite the degraded conditions of this allotment, BLM failed to examine any alternative that reduced grazing in the Battle Creek allotment, and each alternative maintained the same numbers of cattle currently permitted, as well as the 40-50% utilization guideline including in the prior decisions.

61. BLM's preferred alternative was Alternative D, in which BLM proposed to install 11 new troughs, 11 new miles of pipeline, 3.5 miles of new fences, and 3 miles of relocated fences across this high desert landscape—in addition to the 41 troughs, 60 miles of pipeline, and 51 miles of fence already present on the allotment.

62. BLM itself admits in the EA that many resources conditions will not make significant progress toward meeting the Fundamentals of Rangeland Health under its preferred alternative. For example, BLM admits that “areas which currently are not fully meeting the watershed standard . . . could show slight progress towards meeting this standard over time.”

63. BLM also admits that upland vegetation will remain in “static” or “static or upwards” condition in the majority of pastures, as well as downwards in the areas surrounding the new proposed troughs. BLM similarly notes that the new pipelines and troughs would result in

soil disturbance, weed invasion, and increased trampling. BLM also acknowledges that “[t]he small differences in dates for pasture changes between [Alt. D] and . . . current management would not cause measurable differences to wildlife habitat.”

64. In its Cumulative Impacts analysis, BLM never took a comprehensive look at the impacts of Alternative D – together with the impacts of other past, present and future grazing decisions, vegetation manipulation projects and other actions – on the population and habitat of Greater sage-grouse rangewide.

65. On January 10, 2008, BLM issued proposed decisions proposing to adopt Alternative D. On January 24, 2008, Western Watersheds and others filed a timely protest.

66. On February 19, 2008, BLM denied the protest in a letter from David Wolf, Acting Bruneau Field Office Manager, and approved the Final Decisions issuing six grazing permits and authorizing the range projects identified in the EA’s Alternative D.

67. On March 20, 2008, Western Watersheds timely filed an administrative appeal and petition for stay of the EA, FONSI, Assessment, and the six Final Decisions, which was denied on April 23, 2008. Thereafter, Western Watersheds dismissed its appeal.

68. In May 10, 2008, BLM issued a permit (authorization number 1101613) to permittee Bruneau Cattle Company authorizing 7,021 AUM’s of livestock grazing on the Battle Creek allotment under the terms of the February 29, 2008 Final Grazing Decision.

69. On this same day, BLM issued a separate permit (authorization number 1101664)) to permittee Bruneau Cattle Company authorizing 782 AUMs of livestock grazing on the Battle Creek allotment under the terms of the February 29, 2008 Final Grazing Decision.

Related Litigation

70. On October 14, 2008, Western Watersheds challenged BLM's final grazing decisions and underlying environmental analysis issued on the Battle Creek allotment. *W. Watersheds Project v. Salazar*, Case No. 08-00435-BLW (D. Idaho 2008) (Docket No. 1) (Complaint). Shortly after, Western Watersheds filed a first amended complaint that challenged BLM's Battle Creek decisions, in addition to a host of other BLM actions – including grazing decisions, grazing permits, sagebrush eradication decisions and others – authorized within the habitat for the Great Basin Core population of Greater sage-grouse. *See id.* at Docket No. 3 (First Amended Complaint). Western Watersheds subsequently amended the complaint to further identify the breadth of BLM's actions challenged. *See id.* at Docket No. 43 (Second Amended Complaint).

71. Consistent with the parties' stipulated litigation plan, Western Watersheds filed a Third Amended Complaint on April 15, 2011. *Id.* at Docket Nos. 118 (Third Amended Complaint), 115 (Stipulated litigation plan). This Third Amended Complaint again challenged BLM's Battle Creek decisions, in addition to decisions on a host of other allotments, as violating NEPA, FLPMA, the Fundamentals and other environmental laws.

72. After receiving briefing and oral argument on summary judgment, the district court granted Western Watersheds' motion for summary judgment, and denied BLM's and Intervenor's motions for summary judgment. *W. Watersheds Project v. Salazar*, --- F.Supp.2d ----, 2012 WL 380284 (D. Idaho 2012). More specifically, the court held that BLM's final grazing decisions on the Battle Creek allotment violated NEPA, FLPMA and the Fundamentals. *Id.*

BLM's Grazing Preference Transfers and Grazing Permits

73. While the parties were actively litigating the merits of BLM's February 20, 2008 Battle Creek final grazing decisions, environmental assessment and finding of no significant

impact in *Salazar*, BLM received two Grazing Preference Applications and Preference Transfer Applications from the J.R. Simplot Company on September 20, 2010. In the first application, Simplot sought a transfer of 7,021 AUMS of grazing preference on the Battle Creek allotment from the Bruneau Cattle Company to the J.R. Simplot Company. Shortly after, on December 21, 2010, Simplot sought a transfer of 782 AUMS of grazing preference on the Battle Creek allotment from the Bruneau Cattle Company to the J.R. Simplot Company.

74. Simplot did not simultaneously submit an application for a grazing permit or lease with its Grazing Preference Applications and Preference Transfer Applications.

75. Simplot never notified Western Watersheds of its applications – although the parties were actively litigating the *Salazar* case, which directly challenged the grazing permits associated with the requested grazing preference transfers.

76. On February 11, 2011, BLM approved Simplot's application, and transferred 7,803 AUMs of Bruneau Cattle Company's grazing preference in the Battle Creek allotment to the J.R. Simplot Company. BLM never notified Western Watersheds of the receipt of Simplot's transfer application, and never provided Western Watersheds with any prior notice to approving the transfer.

77. The two grazing permits associated with the now-transferred grazing preferences terminated automatically and without notice on February 11, 2011.

78. Before transferring the grazing preference from Bruneau Cattle Company to Simplot, BLM refused to prepare an environmental assessment or environmental impact statement; instead, BLM issued a Categorical Exclusion Review ("Categorical Exclusion" or "CE"). In its CE, BLM prepared a checklist to determine whether its transfer was permitted

under a CE or whether “extraordinary circumstances” demanded a more detailed environmental review.

79. In its CE, BLM acknowledged that its grazing preference transfers were related to issuance of a new grazing permits on the Battle Creek allotment, and BLM noted that it “will act upon the application for the grazing permit or lease concurrently through a *separate process* (italics added) (Determination of NEPA Adequacy-DNA) which will include a review and possible change to the terms and conditions of grazing use from that authorized to the previous preference holder.”

80. On February 23, 2011, BLM issued two proposed decisions calling for the issuance of new grazing permits to J.R. Simplot Co. authorizing livestock grazing on the Battle Creek allotment under the terms of the February 20, 2008 final grazing decision.

81. In its Proposed Decision, BLM claimed that its January 9, 2008 Environmental Assessment – held unlawful in *Salazar* – “adequate[ly]” examined the ecological implications of permitting grazing on the Battle Creek allotment.

82. Instead of preparing supplemental environmental reviews, on March 21, 2011, BLM prepared two documents entitled, Determinations of Land Use Plan Conformance and NEPA Adequacy (“DNA”). In each DNA, BLM confirmed that the “DNA documents that the analysis in Environmental Assessment (EA) #ID-120-2007-3353 is adequate so that a grazing permit can be issued to JR Simplot Company.” Again, this EA is the same environmental review the court held unlawful in *Salazar*.

83. BLM also claimed that the grazing scheme authorized under the February 20, 2008 final grazing decision “is in conformance” with the Bruneau Management Framework Plan. In the

DNA, BLM also noted that “the lease, permit, or other authorization based on this DNA is subject to protest or appeal” under BLM’s grazing regulations.

84. On March 9, 2011, Western Watersheds filed a 76-page protest to BLM’s proposed decision to issue J.R. Simplot Company a grazing permit on the Battle Creek allotment. In its appeal, Western Watersheds explicitly requested BLM to undertake a more comprehensive review of the cumulative impacts of its decision on Greater sage-grouse populations and habitat, and similarly argued that BLM’s proposed decisions violated the requirements of the Bruneau Management Framework Plan. The very next day, Western Watersheds filed supplemental protest points, again arguing that BLM has violated NEPA and FLPMA.

85. BLM never responded to Western Watersheds’ protest points.

86. Upon information and belief, BLM never issued a final decision granting term grazing permits to J.R. Simplot Company. Western Watersheds never received a final grazing decision from BLM issuing J.R. Simplot a grazing permit, although in its DNA BLM stated that any decision would be subject to protest and appeal.

87. On April 25, 2011, BLM issued J.R. Simplot Company two separate grazing permits, one for 7,021 AUMs and another for 782 AUMs. These permits stated, “LIVESTOCK GRAZING MANAGEMENT IN THE BATTLE CREEK ALLOTMENT SHALL BE MADE IN ACCORDANCE WITH THE FIELD MANAGER’S FINAL DECISION DATED FEBRUARY 20, 2008.”

88. Instead of issuing a final grazing decision – and providing public notice and an opportunity for filing an administrative appeal – BLM relied on a grazing rider included in Department of Defense and Full-Year Continuing Appropriations Act of 2011 (P.L. 112-10)

(“2011 Grazing Rider”) to ostensibly permit BLM to issue the permits without first following NEPA, FLPMA or its own grazing regulations.

89. P.L. 112-10 became law on April 15, 2011.

90. Sections 1104(a)(4), 1104, and 1106 of P.L. 112-10, read together, extended for Fiscal Year 2011 the provision of Section 1406 of P.L. 111-88 (“2010 Grazing Rider”), which, in turn, extended the provision of Section 325 of P.L. 108-108 (“2004 Grazing Rider”). With exceptions, under the provisions of Section 325 of P.L. 108-108, “a grazing permit or lease issued by the Secretary of the Interior . . . that expires, is transferred, or waived during fiscal years 2004-2008 shall be renewed under section 402 of the Federal Land Policy and Management Act of 1976.”

91. Under the terms of the 2011 Grazing Rider, BLM is without authority to use the 2011 Grazing Rider to renew grazing permits that expired, were transferred or waived prior to the enactment of the 2011 Grazing Rider on April 15, 2011.

92. Under the terms of the 2011 Grazing Rider, BLM is without authority to use the 2011 Grazing Rider to renew grazing permits that terminated or were cancelled prior to its enactment on April 15, 2011.

93. Under the terms of the 2011 Grazing Rider, BLM is without authority to use the 2011 Grazing Rider to issue new grazing permits after the prior permits terminated or were cancelled prior to its enactment on April 15, 2011.

94. Under the terms of the 2011 Grazing Rider, BLM is without authority to use the 2011 Grazing Rider to renew grazing permits that terminated or cancelled after April 15, 2011

95. Under the terms of the 2011 Grazing Rider, BLM is without authority to use the 2011 Grazing Rider to issue new grazing permits after the prior permits terminated or were cancelled after April 15, 2011.

96. On August 10, 2011 – six days after Western Watersheds filed its opening summary judgment brief in *Salazar* - BLM notified Western Watersheds through email of some of the terms and conditions in the grazing permit issued to J.R. Simplot Company.

FIRST CLAIM FOR RELIEF:
BLM’S PREFERENCE TRANSFERS VIOLATE NEPA

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

98. This First Claim for Relief challenges BLM’s violation of NEPA in refusing to examine the direct, indirect and cumulative impacts of its final decision transferring the grazing preferences from Bruneau Cattle Company to the J.R. Simplot Company. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

99. NEPA requires all federal agencies to undertake a thorough and public analysis of the environmental consequences of proposed federal actions, including by preparing a detailed EIS for all major federal actions that “may significantly affect the quality of the human environment.” 42 U.S.C. § 4332(2)(C). When several actions may have cumulative or synergistic environmental impacts, BLM must consider these actions together and prepare a comprehensive environmental analysis

100. BLM may use a “Categorical Exclusion” – and refuse to prepare any further NEPA analysis – in certain limited circumstances, however. For example, agency actions that may not individually or cumulatively have a significant effect on the environment fall within categorical exclusions for which “neither an environmental assessment nor an environmental impact statement is

required.” 40 C.F.R. § 1508.4. Further NEPA review is not required for categorical exclusions unless there are “extraordinary circumstances” related to the proposed agency action. *Id.*

101. Through its Department Manual, BLM has identified actions eligible for a Categorical Exclusion, including “[a]pproval of transfers of grazing preference.” 516 DM 11.9 D(1).

102. In its Department Manual, BLM has similarly adopted an 11-step test to determine if it must prepare an EA or EIS for an agency action generally eligible for a Categorical Exclusion based on so-called “Extraordinary Circumstances.” Under this stepped-test, “Extraordinary circumstances exist for individual actions within categorical exclusions which may, *inter alia*, (1) have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; or other ecologically significant or critical areas; (2) have highly controversial environmental effects; (3) have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks; or (4) have a direct relationship to other actions within individually insignificant but cumulatively significant environmental effects.

103. BLM violated NEPA in approving J.R. Simplot Company’s application for a grazing preference transfer, and transferring the grazing preferences on the Battle Creek allotment from Bruneau Cattle Company to J.R. Simplot through the February 11, 2011 Categorical Exclusion in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. BLM misapplied its own 11-step test for determining the existence of “Extraordinary circumstances,” including, *inter alia*, by ignoring the direct relationship between the transfer of the grazing preference and the BLM’s authorization of livestock grazing

under the terms of the now-unlawful February 20, 2008 Final Grazing Decision on the Battle Creek allotment

- b. BLM failed to take a “hard look” at the direct, indirect, and cumulative impacts of its decision to transfer the livestock preference to J.R. Simplot Company – together with its related decision to authorize livestock grazing in the Battle Creek and surrounding allotments – upon the public lands and wildlife resources in the Battle Creek and surrounding areas, particularly on sagebrush habitats and sage-grouse populations.
- c. BLM failed to examine the highly uncertain and potentially significant environmental effects of permitting grazing on Battle Creek allotment, especially in light of the collapse of sage grouse populations and degradation of sage-grouse habitat.

104. BLM’s decisions transferring grazing preference to J.R. Simplot Company are thus arbitrary, capricious, an abuse of discretion, and not in accordance with law under NEPA and its implementing regulations; and hence must be reversed and set aside pursuant to the APA, 5 U.S.C. § 706.

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CLAIM FOR RELIEF:
BLM’S GRAZING PERMITS VIOLATE NEPA

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

106. This Second Claim for Relief challenges Defendants’ violation of NEPA by issuing a grazing permit without first preparing an environmental assessment or environmental impact statement examining the ecological impacts of issuing the grazing permits, especially on Greater sage-grouse populations and habitat; and, instead, relying on two legally-deficient Determinations of Land Use Plan

Conformance and NEPA Adequacy (“DNAs”). This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

107. In its March 21, 2011 DNAs, BLM relied exclusively on the 2008 Battle Creek Environmental Assessment as providing adequate NEPA coverage. In the DNAs, BLM asserts that the 2007 Battle Creek EA took the required “hard look” at the direct, indirect and cumulative impacts of permitting grazing on the Battle Creek allotment, and BLM refused to prepare any subsequent or undated environmental review.

108. BLM’s reliance on the 2007 Battle Creek EA violates NEPA in the following ways, *inter alia*, each of which is a distinct and separate violation of law:

- a. BLM failed to take a “hard look” at the direct, indirect, and cumulative impacts of livestock grazing – together with climate change, infrastructure, vegetation treatments, wildfires, and other management actions allowed on the allotments and nearby allotments – upon the public lands and wildlife resources in the Battle Creek and surrounding areas, particularly on sagebrush habitats and sage-grouse populations;
- b. BLM further violated NEPA’s requirements of using high quality data and accurate scientific information in the challenged decisions and permits, including by misrepresenting the nature of the effect of current livestock grazing on the public lands and wildlife on the Battle Creek allotment and surrounding areas, and by using inaccurate or misleading information on sage-grouse population and habitat needs, and in other ways;
- c. BLM did not consider a reasonable range of alternatives to the grazing scheme adopted in the grazing permits and final grazing decisions on the Battle Creek allotment;

109. Based on these NEPA violations, BLM's issuance of the challenged grazing permits is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of NEPA and the APA, and will allow serious ecological degradation as well as harm to the public and Western Watersheds' interests, unless reversed by this Court.

WHEREFORE, Plaintiff prays for relief as set forth below.

THIRD CLAIM FOR RELIEF:
BLM'S GRAZING PERMITS VIOLATE FLPMA AND THE
FUNDAMENTALS OF RANGELAND HEALTH

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

111. This Third Claim for Relief challenges BLM's violations of FLPMA, the Fundamentals of Rangeland Health, and BLM's implementing regulations, handbook, manual, and policies, through BLM's unlawful issuance of the Battle Creek grazing permits under the auspices of Sections 1101(a)(4), 1104 and 1106 of Public Law 112-10. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

112. FLPMA governs the management of the federal public lands by the Bureau of Land Management. Under FLPMA, BLM must develop land use plans for the public lands under its control. 43 U.S.C. § 1712. All resource management decisions made by BLM must conform to the approved land use plan. 43 C.F.R. § 1610.5-3(a). To conform to a land use plan, a resource management decision "shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan." 43 C.F.R. § 1601.0-5. Prior to carrying out a proposed action that is not clearly consistent with the land use plan, BLM must amend the plan, complying with NEPA and allowing for public participation. 43 C.F.R. §§ 1610.5-3, 1610.5-5.

113. FLPMA and BLM's implementing regulations also contain procedural requirements prior to authorizing use or occupancy of the public lands, including: (1) consulting, cooperating, and coordinating with the "interested public" prior to issuing or renewing grazing permits, 43 C.F.R. § 4130.2(b); (2) informing the public of BLM's proposed grazing decisions and allowing for a public protest period consistent with 43 C.F.R. § 4160.2; and (3) informing the public of BLM's final grazing decisions and allowing for a public appeal period consistent with 43 C.F.R. § 4160.3.

114. In issuing the challenged grazing permits under the sections of Public Law 112-10 identified *supra*, BLM violated these procedural requirements to consult, cooperate, and coordinate with the interested public, including Western Watersheds, and similarly failed to issue final grazing decisions and afford the interested public, including Western Watersheds, an opportunity to inform these decisions through a public appeal period, as required under BLM's own grazing regulations.

115. These grazing permits also fail to conform to the Bruneau Management Framework Plan, and thus violate FLPMA's substantive "consistency" requirements.

116. These grazing permits also fail to conform to the requirements of the Fundamentals of Rangeland Health, 43 C.F.R. § 4180.

117. Based on such violations of FLPMA and implementing regulations and policies, BLM's issuance of the challenged grazing permits is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of 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.

WHEREFORE, Plaintiff prays for relief as set forth below.

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 issuing the challenged decisions transferring the grazing preferences and issuing new grazing permits; as identified *supra*;

B. Reverse and set aside each and all of the preference transfer decisions and grazing permits identified *supra*;

C. Enter declaratory and/or injunctive relief requiring Defendants to undertake comprehensive and legally valid NEPA analysis and adoption of new grazing decisions and grazing permits that will comport with the requirements of NEPA, FLPMA, and the Bruneau Management Framework Plan, especially regarding the protection and conservation of Greater sage-grouse populations and habitat;

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

E. Award Western Watersheds 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 BLM's violations of law, vindicate the interests of Western Watersheds and the public, and preserve and protect the public lands and resources at issue.

Dated this 26th day of April, 2012.

Respectfully submitted,

/s/ Todd C. Tucci
Todd C. Tucci
Attorney for Plaintiff