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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

14 WESTERN WATERSHEDS PROJECT)
15 and WILD EARTH GUARDIANS,)
16 Plaintiffs,)
17 v.)
18 BUREAU OF LAND MANAGEMENT,)
19 an agency of the United States,)
20 Defendant.)

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

21
22 **NATURE OF ACTION**

23 1. This action challenges the Bureau of Land Management’s (“BLM”) grazing decisions
24 for the Bodie Mountain, Mono Sand Flat, Aurora Canyon, and Potato Peak allotments (collectively, the
25 “Bodie Hills Allotments”) in the Bishop Field Office of eastern California as inconsistent with the
26 National Environmental Policy Act (“NEPA”) and Federal Land Policy and Management Act
27 (“FLPMA”).
28

1 21. Extirpation of the Mono Basin population would create a significant gap in the range of
2 the greater sage-grouse and prevent repopulation of areas that were once part of the species' range.

3 22. The Mono Basin population has been declining since at least 1916, with a decline of 37-
4 42% measured over the past 50 years. Considering the Mono Basin sage-grouse's unique genetic make-
5 up and its dwindling numbers, the U.S. Fish and Wildlife Service found that this population might
6 warrant listing under the Endangered Species Act as a threatened or endangered Distinct Population
7 Segment ("DPS") on April 29, 2008. 90-Day Finding on a Petition to List the Western Sage-Grouse
8 (*Centrocercus urophasianus phaios*) as Threatened or Endangered, 73 Fed. Reg. 23173, 23175 (April
9 29, 2008).

10 23. The Greater Sage-Grouse Conservation Plan for the Mono Basin Planning Area of
11 Nevada and Eastern California ("Mono Basin Plan") has divided the remaining Mono Basin sage-grouse
12 into "population management units" ("PMU"). This case concerns BLM grazing allotments in the
13 Bodie Hills PMU.

14 24. Like the other Mono Basin PMUs, the Bodie Hills PMU contains large areas of historic
15 sage-grouse habitat that are now unoccupied and unsuitable for restoration for sage-grouse. The Bodie
16 Hills PMU contains 29 known leks, of which only 14 are known to be active. The northern and eastern
17 slopes of Bodie Mountain and the area around Paramount Mine provide important spring and summer
18 habitat for the Bodie Hills PMU.

19 25. As a small, isolated population, the Mono Basin sage-grouse is particularly vulnerable to
20 the numerous threats facing sage-grouse across the West. Recent habitat fragmentation and population
21 declines have further isolated the Mono Basin sage-grouse so that it is now separated from the nearest
22 neighboring sage-grouse populations by more than 100 kilometers. The Mono Basin sage-grouse
23 population itself consists of isolated, local populations.

24 26. As a small, isolated population, the Mono Basin sage grouse has limited genetic
25 diversity, which hinders its ability to adapt to environmental change. The population's isolation thus
26 threatens to decrease its fitness and accelerate population declines, ultimately resulting in "a decline to
27 oblivion for small populations" known as an "extinction vortex."
28

1 **Factors Contributing to the Decline of Mono Basin Sage-Grouse**

2 27. Numerous factors are contributing to the decline of the Mono Basin sage-grouse, most
3 significantly the degradation, destruction, and fragmentation of its sagebrush habitat. Sagebrush now
4 covers only 25% of the Mono Basin area and over 70% of suitable sage-grouse habitat has been lost.

5 28. A variety of human activities contribute to the loss of the sagebrush, including energy
6 development, off-road vehicle use, mineral exploration, conversion to agricultural lands, residential
7 development, and the construction of power lines, roads, canals, and other infrastructure. However, it is
8 the BLM's perennial decision to permit livestock grazing at whatever cost that has caused the most
9 damage across the greatest extent of Mono Basin sage-grouse range.

10 29. Domestic livestock alter sagebrush steppe by preferentially grazing on native grasses
11 and forbs, trampling sagebrush, compacting the soil, and destroying the microbotic soil crusts that serve
12 to retain moisture, prevent the invasion of nonnative weeds, and limit wildfire. Years of grazing results
13 in depletion of the native grasses and forbs, soil erosion, loss of the microbotic soil crusts, and incursion
14 of weeds.

15 30. The impacts of prolonged livestock grazing make habitat unsuitable for sage-grouse.
16 Sage-grouse hens visit leks to mate and then move to suitable nesting habitat. Hens build their nest on
17 the ground and take sole responsibility for incubating the eggs and raising their broods. Sage-grouse
18 depend on native grasses and forbs for food and cover during the nesting and brood-rearing seasons.
19 The grasses and forbs in the Mono Basin area have been so depleted, and the riparian areas so degraded,
20 that the shortage of nesting and brood-rearing habitat is causing the Mono Basin sage-grouse to
21 experience a "population bottleneck."

22 31. Cattle may flush nesting hens and cause them to abandon their nests, and cattle may
23 trample nests, eggs, and nestlings. Cattle also consume the vegetative cover that is essential to reduce
24 risks of predation on sage-grouse eggs and nestlings.

25 32. Livestock also help promote the invasion of alien or exotic plant species, notably
26 cheatgrass and noxious weeds, through these disturbance effects and by acting as "vectors" that carry
27 and distribute weed seeds into native habitats.

1 33. Livestock grazing devastates riparian areas that protect the West's all-too-scarce water
2 sources. Riparian areas also play an important role during sage-grouse brood-rearing. Domestic
3 livestock were bred for the cooler and moister climate of northern Europe; they are poorly adapted for
4 the hot, dry summers of the sagebrush steppe. During hot periods, livestock try to stay cool by
5 congregating around water sources and shady areas. This causes severe damage to streams, springs,
6 seeps, and wet meadows.

7 34. West Nile virus, a disease transmitted by mosquitoes, also threatens Mono Basin sage-
8 grouse. Scientists have documented reductions in sage-grouse survival caused by West Nile virus since
9 2003.

10 35. Birds infected with West Nile virus can carry it for long distances and migratory birds
11 are widely considered to be responsible for the spread of the disease in the United States. In fact, birds
12 are the most significant vector for the disease.

13 36. Sage-grouse may easily transmit West Nile virus to one another, either directly or
14 through mosquitoes, when they congregate around standing water, both natural and man-made, during
15 the hot days of late summer. This is also the season when mosquitoes are most prevalent. Increased
16 temperatures caused by climate change will likely increase the risk of sage-grouse contracting West Nile
17 virus.

18 37. Water developments constructed for the benefit of livestock are a particularly effective
19 vector for West Nile virus. Stock tanks, ponds, and even hoof prints that collect water provide ideal
20 places for mosquitoes to breed. Sage-grouse gathering near water development are at risk of infection.
21 The livestock themselves may also serve as intermediate hosts for the virus, infecting mosquitoes that
22 bite them and then go on to bite (and infect) wildlife such as sage-grouse.

23 38. Small, isolated populations like the Mono Basin sage-grouse are at a particularly high
24 risk from West Nile virus. Mortality among infected sage-grouse can be as high as 100%, and outbreaks
25 in small populations are more likely to reduce numbers beyond the point where recovery is possible.

26 39. The Mono Basin sage-grouse population has experienced outbreaks of West Nile virus
27 in the past and frequent visits from migrating birds make further introductions of the disease likely.
28

1 Data suggests that West Nile virus may already be at epidemic levels within the Bodie Hills PMU. West
2 Nile virus thus poses a serious threat to the conservation of the Mono Basin sage grouse.

3 **The Pygmy Rabbit**

4 40. Like the sage-grouse, the pygmy rabbit is a sage-brush obligate that depends on
5 sagebrush for food, shelter, and other essential biological needs.

6 41. The pygmy rabbit has suffered substantial population losses across its range due to the
7 loss and degradation of its sagebrush habitat.

8 42. Livestock harm pygmy rabbits in a variety of ways, including trampling their burrows,
9 depleting the native bunchgrasses that are a vital component of the pygmy rabbit's summer diet, and
10 damaging sagebrush that provides food and essential cover from predators.

11 43. The range and population levels of the pygmy rabbit have contracted significantly in
12 California as a result of the fragmentation, degradation, and destruction of the sagebrush steppe.

13 44. California's Department of Fish and Game considers the pygmy rabbit to be a species of
14 special concern and the California Natural Diversity Database rates the pygmy rabbit as, "Vulnerable; at
15 moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer),
16 recent and widespread declines, or other factors."

17 **The Bishop Field Office**

18 45. For administrative purposes, the BLM has divided the 256 million acres of public land
19 under its care into units it calls "Field Offices." 43 C.F.R. § 1601.0-5. The Bishop Field Office
20 encompasses 750,000 acres of public land in Mono County and Inyo County, California, running south
21 along the eastern Sierra from Topaz Lake to Owens Lake.

22 46. Each field office is divided into grazing allotments, and each allotment into pastures.
23 BLM has designated 58 grazing allotments in the Bishop Field Office, and it currently permits 26
24 individuals and entities to graze their livestock on 52 of the allotments.

25 47. This case concerns four allotments located in the Bishop Field Office ("BFO"): Bodie
26 Mountain, Mono Sand Flat, Aurora Canyon, and Potato Peak.

1 48. BLM's management of the BFO is governed by the Bishop RMP, which was adopted in
2 1993. BLM's California State Office amended the Bishop RMP in 2000 when it adopted the Standards
3 for Rangeland Health and Guidelines for Livestock Grazing for Central California.

4 49. The Bishop RMP provides "specific guidelines for managing the various resources and
5 activities occurring throughout the resource area," including the directive that the Field Office must
6 "[m]anage candidate species, sensitive species and other species of management concern in a manner to
7 avoid the need for listing as state or federal endangered and threatened species." Bishop Resource
8 Management Plan Record of Decision at 13 (April 1993).

9 50. The "RMP Decisions" section of the Bishop RMP sets forth "area-wide decisions, which
10 present management prescriptions applicable throughout the entire field office." Bishop RMP at 16.
11 These management prescriptions include:

- 12 • "Yearlong protection of endangered, threatened, candidate, and sensitive plant and animal
13 habitats;"
- 14 • "Yearlong Protection within 1/3 mile of sage grouse leks;" and
- 15 • "Seasonal Protection within 2 miles of active sage-grouse leks from 5/1 to 6/30."

16 51. The "RMP Decisions" section of the Bishop RMP also includes management
17 prescriptions for groups of allotments called management areas. In the Bodie Hills management area,
18 BLM must provide, "Seasonal Protection and no snowmobile use in sage grouse wintering areas from
19 11/15 to 5/1." Bishop RMP at 37. According to the Bishop RMP's glossary, "Seasonal Protection"
20 means "[d]uring the period specified, no discretionary actions which would adversely affect target
21 resources would be allowed. Existing uses and casual use would be managed to prevent disturbance
22 which would adversely affect the target resources." Bishop RMP at G-5.

23 **The Bodie Hills Allotments**

24 52. Together, the four Bodie Hills allotments comprise an area of 133,264 acres of federal
25 public land ranging in elevation from 6,400 feet along the eastern boundary of Mono Lake Scenic Area
26 to 10, 236 feet at the summit of Potato Peak. They are dominated by sagebrush/bitterbrush and
27 mountain shrub vegetation communities. Because of their shared characteristics, the Bishop RMP
28 grouped the Bodie Hills Allotments into a management area called the Bodie Hills management area.

1 53. The Bodie Hills Allotments provide habitat for a rich diversity of wildlife, including the
2 greater sage-grouse and the pygmy rabbit. The Bodie Mountain, Potato Peak, and Aurora Canyon
3 allotments contain several sage-grouse leks and extensive nesting habitat. In summer, large numbers of
4 sage-grouse migrate to habitat near springs, streams, and meadows in the Bodie Mountain, Potato Peak,
5 and Aurora Canyon allotments. Sage-grouse also use the Mono Sand Flat allotment.

6 54. The BFO may contain the only remaining populations of pygmy rabbit in the state of
7 California. Pygmy rabbits are known to live on the Bodie Mountain, Potato Peak, and Aurora Canyon
8 allotments. Pygmy rabbit may also occur on the Mono Sand Flat allotment, which contains suitable
9 pygmy rabbit habitat.

10 55. The Hilton Family Trust (“Hilton Trust”) is the only permittee authorized to graze
11 livestock on the Bodie Mountain and Mono Sand Flat allotments. The Hilton Trust grazes these
12 allotments in conjunction with its nearby private land and adjacent federal allotments.

13 56. Before the BLM issued the permits at issue in this litigation, it permitted the Hilton
14 Trust to graze 505 cows on the Mono Sand Flat allotment from December 1 to May 31 and to consume
15 2,357 Animal Unit Months (“AUMs”) of forage. BLM permitted the Hilton Trust to graze 1791 cows
16 on the Bodie Mountain allotment from June 1 to October 15 and to consume 5,647 AUMs.

17 57. The Hilton Trust has not grazed the Mono Sand Flat allotment since 2002.

18 58. Similarly, F.M. Fulstone, Inc. (“Fulstone”) is the only permittee authorized to graze
19 livestock on the Aurora Canyon and Potato Peak allotments. Fulstone grazes these allotments in
20 conjunction with its nearby private land.

21 59. Before BLM issued the permits at issue in this litigation, it permitted Fulstone to graze
22 235 cows on the Potato Peak allotment from June 1 to October 31 and to consume 1,088 AUMs of
23 forage. Fulstone was permitted to graze 526 cows on the Aurora Canyon allotment from June 15 to
24 September 30 and to consume 1,737 AUMs.

25 **The Contested Grazing Decisions**

26 60. The Hilton Trust and Fulstone’s 10-year grazing permits expired in 2008. Since that
27 time, BLM has enabled grazing to continue on the Bodie Hills Allotments without analyzing the
28

1 environmental impacts of grazing by issuing grazing permits under Section 325 of Public Law 108-108,
2 the grazing appropriations rider.

3 61. On December 17, 2007, the BFO sent WWP and other interested individuals a Notice of
4 Proposed Action, indicating that it intended to renew the ten-year grazing permits for the four Bodie
5 Hills allotments.

6 62. In July 2008, the BFO published a draft Environmental Assessment (“EA”) analyzing its
7 proposal to renew the Hilton Trust and Fulstone’s 10-year grazing permits. Under BLM’s proposed
8 alternative, grazing would continue on the Bodie Hills Allotments at the same level and during the same
9 season of use as previously authorized, except on the Mono Sand Flat allotment where the stocking rate
10 would be increased to 2370 AUMs.

11 63. The major difference between the historic grazing practices that resulted in the
12 allotments’ failure to meet the Fundamentals of Rangeland Health and BLM’s proposed action would be
13 the inclusion of additional mandatory terms and conditions in the Hilton Trust and Fulstone’s permits.
14 These terms and conditions include:

- 15 • “[F]orage utilization on key perennial species [must] not exceed 40 percent on the
16 average”;
- 17 • If “utilization guidelines on the average of the upland key areas across the
18 allotment are exceeded for 2 consecutive years or in any 2 years out of 5 years,
19 BLM will consult with the permittee to address the situation”;
- 20 • “[W]hen grazing utilization exceeds 70% in any upland key area for more than 2
21 consecutive years, immediate management action will be taken to remedy the
22 problem in the area of the allotment that key area represents;” and
- 23 • Grazing practices should maintain a minimum herbage stubble height of 4-6
24 inches on the average on all stream-side riparian and wetland areas at the end of
25 the growing season.

26 64. WWP submitted comments on the draft EA, pointing out that the EA failed to consider
27 the extent to which livestock grazing contributes to global climate change and the cumulative impacts
28 that would result from climate change combined with the proposed action.

1 65. WWP urged the BLM to consider multiple alternatives. One alternative would reduce
2 livestock stocking rates but not eliminate grazing. A second alternative would close Wilderness Study
3 Areas and areas proposed for Wild and Scenic river designation to livestock grazing in order to “reduce
4 impacts to potential wilderness and thus allow a clear, comparative analysis of the impacts of the
5 proposed action on the various [Wilderness Study Areas].” A third alternative was to modify allotment
6 boundaries in order to permanently exclude livestock from occupied Mono Basin sage-grouse and
7 pygmy rabbit habitat.

8 66. On September 30, 2008, BLM issued two proposed decisions for the Bodie Hills
9 Allotments—one renewing the Hilton Trust’s permit to graze the Bodie Mountain and Mono Sand Flat
10 allotments and the other renewing Fulstone’s permit to graze the Potato Peak and Aurora Canyon
11 allotments.

12 67. At the same time, BLM issued a final EA for the renewal of the Hilton Trust and
13 Fulstone permits. The final EA considered only three alternatives: the no action alternative, under
14 which grazing would continue as before; a no grazing alternative, under which no grazing would be
15 allowed anywhere in the four allotments; and the Proposed Action Alternative, under which BLM would
16 issue its proposed decisions.

17 68. WWP timely protested the proposed decisions to the current Field Manager of the BFO.
18 WWP’s protest reiterated the concerns WWP had expressed in its comments on the EA and further
19 noted the contribution of livestock grazing to the spread of West Nile virus. WWP urged BLM to adopt
20 mitigation measures to limit the use of stock ponds by mosquitoes.

21 69. On July 27, 2009, the BFO issued final decisions for the Bodie Hills Allotments. The
22 final decisions are substantially identical to the proposed decisions and the Proposed Action Alternative
23 analyzed in the 2008 EA.

24 **Significant New Information**

25 70. On November 4, 2009, the U.S. Geological Survey announced the early release of a
26 comprehensive monograph prepared by the nation’s leading sage-grouse experts entitled, “Ecology and
27 Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats” (the “Monograph”).
28

1 approving the Bodie Hills grazing decisions based on the defective and inadequate 2008 EA and Finding
2 of No Significant Impact (“FONSI”). This claim is brought pursuant to the judicial review provisions of
3 the APA, 5 U.S.C. § 706.

4 78. NEPA requires all federal agencies to undertake a thorough and public analysis of the
5 environmental consequences of proposed federal actions, including a detailed EIS for all “major Federal
6 actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Such
7 analysis must include consideration of a reasonable range of alternatives to a proposed action. 42 U.S.C.
8 § 4332(2)(C)(iii) (alternatives); see also 40 C.F.R. § 1502.14 (alternatives including the proposed
9 action). NEPA also requires cumulative analyses of the likely environmental impacts of a proposed
10 action. See 40 C.F.R. §§ 1508.7; 1508.25(a)(2).

11 79. An agency must prepare a supplemental NEPA document when “significant new
12 information becomes available.” 40 C.F.R. § 1502.9(c)(1)(ii).

13 80. Defendants violated NEPA and its implementing regulations in multiple respects in
14 adopting the Bodie Hills grazing decisions based on the 2008 EA and FONSI, including:

- 15 a. Failing to prepare an EIS examining the ecological implications of implementing
16 the Bodie Hills grazing decisions;
- 17 b. Failing to consider an adequate range of alternative courses of action that meet the
18 stated need and purpose of the action;
- 19 c. Failing to take the requisite “hard look” at all the significant and potential
20 environmental impacts of the proposed action;
- 21 d. Failing to fully consider the cumulative effects of the proposed action in
22 association with past, present, and reasonably foreseeable future actions, including the
23 impacts of climate change and the mining survey currently underway and reasonably
24 foreseeable future mining activities; and
- 25 e. Failing to prepare supplemental NEPA analysis to consider the significant new
26 information about Mono Basin DPS discussed in the Monograph and FWS’s warranted
27 but precluded finding.
- 28

1 e. They fail to provide seasonal protection within sage-grouse winter use areas from
2 November 15 to May 1.

3 87. Defendant's violations of the Bishop RMP, FLPMA, and FLPMA's implementing
4 regulations are arbitrary, capricious, an abuse of discretion, and not in accordance with law, and will
5 allow serious ecological degradation as well as harm to the public and Plaintiffs' interests, unless
6 reversed by this Court.

7
8 **THIRD CAUSE OF ACTION:**
VIOLATION OF SPECIAL STATUS SPECIES POLICY AND FLPMA

9 88. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

10 89. This Third Cause of Action challenges Defendant's violations of FLPMA, 43 U.S.C. §
11 1701 et seq., BLM's implementing regulations, handbook, manual, and policies. This claim is brought
12 pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

13 90. FLPMA imposes procedural and substantive statutory requirements upon Defendant's
14 management of the public lands in question here, including mandates relating to multiple use/sustained
15 yield and preventing unnecessary or undue degradation of the public lands and resources. Pursuant to
16 these and other statutory authorities, BLM has adopted various regulations, handbooks, manuals,
17 conservation strategies, and other policies relating to its management of the public lands, including the
18 Special Status Species Policy, Section 6840 of the BLM Manual (2001).

19 91. The Special Status Species Policy requires that BLM "shall ensure that actions
20 authorized, funded or carried out by the BLM do not contribute to the need for the species to become
21 listed." See BLM Manual 6841.06C.

22 92. Defendant's adoption of the Bodie Hills grazing decisions violate the Special Status
23 Species Policy by authorizing livestock grazing that will further destroy, fragment, and degrade
24 sagebrush habitats in the Bodie Hills area, causing further declines in habitat and populations of the
25 Mono Basin sage-grouse DPS and the pygmy rabbit and contributing significantly to their decline and
26 the need to list them under the ESA.

27 93. Defendant's adoption of the Bodie Hills grazing decisions is arbitrary, capricious, an
28 abuse of discretion, and not in accordance with law under FLPMA and the APA, and will allow serious

1 ecological degradation as well as harm to the public and Plaintiffs' interests, unless reversed by this
2 Court.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiffs respectfully request that the Court grant the following relief:

5 A. Order, adjudge, and declare that the Bodie Hills grazing decisions, EA, and FONSI
6 violate NEPA, FLPMA, the Bishop RMP, and/or the Administrative Procedure Act;

7 B. Reverse and remand the Bodie Hills grazing decisions, EA and FONSI;

8 C. Enter such temporary, preliminary, or permanent injunctive relief as Plaintiffs may
9 hereafter specifically seek;

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

13 E. Grant such further relief as the Court deems necessary or appropriate to redress the
14 BLM's legal violations and protect the public lands and resources of the Bodie Hills Allotments from
15 further degradation.

16 Dated this 25th day of October, 2010.

17 Respectfully submitted,

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21
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24 ADVOCATES FOR THE WEST

25
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28