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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

WESTERN WATERSHEDS PROJECT

Plaintiff,

v.

WASHINGTON DEPARTMENT OF FISH
AND WILDLIFE, and TERESA
ETURASPE, the Department's SEPA
Responsible Official,

Defendants.

No. 10-2-00128-7

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF,
PETITION FOR REVIEW, NOTICE OF
APPEAL, AND ALTERNATIVE
APPLICATION FOR
CONSTITUTIONAL WRIT OF
CERTIORARI**

I. STATEMENT OF THE CASE

1. This action challenges a December 21, 2009 decision and associated Final Environmental Impact Statement ("FEIS") by Defendant Washington Department of Fish and Wildlife ("WDFW"), approving a plan to vastly increase commercial livestock grazing within the Whiskey Dick and Quilomene Wildlife Areas in Kittitas County. The decision would open up over 28,000 acres of publicly-owned Wildlife Area land to livestock grazing, as well as building miles of barbed-wire fencing and developing numerous springs for livestock use.

1 offices and staff in Idaho, Arizona, California, Montana, Wyoming, and Utah. WWP’s mailing
2 address is P.O. Box 1770, Hailey, Idaho, 83333. WWP is dedicated to protecting and conserving
3 the public lands and natural resources of watersheds in the American West. WWP, as an
4 organization and on behalf of its 1,400-plus members – approximately 50 of whom live in
5 Washington – is concerned with and seeks to protect and improve the wildlife, riparian areas,
6 water quality, fisheries, and other natural resources and ecological values of watersheds
7 throughout the West, including in the State of Washington. WWP is also active in monitoring
8 ecological conditions on public lands; in reviewing and commenting upon agency grazing and
9 other resource decisions; and in publicizing the adverse ecological effects of grazing in this
10 region. WWP and its members regularly visit and use the WDFW state lands affected by the
11 challenged FEIS for numerous personal and professional reasons, including for camping, nature
12 study, hiking, photography, and other recreational and aesthetic pursuits. WDFW’s approval of
13 the FEIS prejudices WWP’s cognizable interests in the public resources that will be harmed by
14 the proposed activities. WWP’s interests are intended to be protected by the SEPA procedures as
15 described below. A ruling by this court requiring WDFW to properly apply SEPA to the FEIS
16 and any subsequent permits will redress WWP’s grievances.

17 6. Defendant WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
18 (WDFW) is an agency of the State of Washington, and located at 1111 Washington Street S.E.,
19 Olympia (mailing address, 600 Capitol Way North, Olympia, Washington, 98501-1091). The
20 legislature has established the statutory mandates that WDFW “shall preserve, protect,
21 perpetuate, and manage the wildlife” of the state; and “conserve the wildlife and food fish, game
22 fish, and shellfish resources in a manner that does not impair the resource.” RCW 77.04.012.

1 Quilomene in 1974. Funding for these purchases was provided in large part by the Interagency
2 Committee for Outdoor Recreation (IAC Grant Program) to expand the winter range for the
3 Colockum deer and elk herds, and to perpetuate and improve the upland game bird habitat,
4 including sage grouse. WDFW in its grant applications for IAC moneys explained that
5 “Acquisition of this parcel would protect an entire watershed and connect it with the largest
6 remaining block of shrub steppe in the State of Washington,” and that “[a] long list of shrub
7 steppe obligate and associated species will benefit from this acquisition including sage grouse,
8 sage thrasher, sage sparrow, loggerhead shrike and sagebrush lizard.”

9 12. WDFW prepared a recovery plan for sage grouse, called the Greater Sage Grouse
10 Recovey Plan (2004). Under the recovery plan the Whiskey Dick and Quilomene Wildlife Areas
11 are considered critical habitat linkages for the only two extant sage grouse populations in the
12 state: one in Douglas and Grant Counties, and the other on the Yakima Training Center in
13 Kittitas and Yakima Counties.. The Wildlife Areas, together with the adjacent Colockum
14 Wildlife Area to the north, provide the only contiguous habitat between these two
15 subpopulations. The recovery plan provides that protecting the remaining habitat and restoring
16 degraded habitat and re-establishing populations outside their current range is key to maintaining
17 sage grouse populations in Washington.

18 13. Grazing occurred on much of the lands purchased by WDFW in the Wildlife
19 Areas for many decades. Over large portions of the Wildlife Areas, grazing caused severe
20 impacts on sage grouse habitat, and this species was largely extirpated from the area by the late
21 Twentieth Century. As a result of these impacts, WDFW halted grazing on much of the Wildlife
22 Areas after acquisition.

1 14. More recently, as a result of political pressure from the livestock industry,
2 WDFW determined that grazing on the Wildlife Area should be expanded. In support of this
3 decision, the challenged EIS was prepared to support new grazing leases on WDFW land in the
4 Wildlife Areas. WDFW's purpose and need for the proposed action includes "to support local
5 economies and values" because "agriculture constituents made clear the need for those lands to
6 continue to support livestock grazing."

7 15. The selected alternative in the FEIS would increase the amount of wildlife lands
8 available to commercial livestock grazing to 45,298 acres, and permit 550 animal unit-months
9 "AUMs" to annually graze the Wildlife Areas. The FEIS includes as the "no action" Alternative
10 1 continuation of grazing on 16,748 acres of WDFW land at an annual rate of 500 AUMs
11 ("animal unit months"). Alternative 2, the chosen preferred action, would institute grazing on
12 28,550 acres of WDFW land not currently open to grazing. Alternative 3 would eliminate
13 grazing, but WDFW determined it "does not meet the purpose and need." No alternative was
14 considered or evaluated for comparison of impacts that would reduce the grazing amount without
15 increasing the acreage grazed, or that would reduce the total acreage grazed but not eliminate it
16 entirely. The FEIS eliminated as an alternative for consideration an increase in grazing intensity
17 (as opposed to the 170% increase in grazed area) because it would "likely result in adverse
18 effects to sage-grouse habitat." WDFW thus failed to include a reasonable range of alternatives
19 in the FEIS for purposes of comparative evaluation of the impacts of its proposal to increase
20 grazing on 28,550 acres in the Wildlife Area.

21 16. The FEIS additionally failed to take a hard look at the direct, indirect, and
22 cumulative impacts of the proposed action on sage grouse. The expansion of livestock grazing
23 and the associated range structures (fencing and water developments) will have significant

1 adverse impacts on the highly imperiled sage grouse. For example, barbed wire fencing poses
2 high collision risk for the low-flying sage grouse; yet WDFW plans to construct or reconstruct
3 miles of new barbed wire fencing; and the FEIS concludes that adverse impacts on sage grouse
4 and their habitat will be minimal or mitigated to insignificance. Despite the degree of adverse
5 impacts on sage grouse being largely unknown, WDFW refused to undertake a worse case
6 analysis. In addition, sage grouse face many cumulative threats in Washington, including a wind
7 power facility immediately adjacent to the Wildlife Areas; but there is little to no mention of
8 cumulative threats to the species in the EIS.

9 17. Nor did WDFW take a hard look at the impacts of the increased grazing and range
10 structures on other wildlife, fish and riparian areas, plants, and soils. Some streams in the
11 Wildlife Areas are designated Critical Habitat for steelhead trout, listed as “threatened” under the
12 ESA. The Wildlife Areas are home to a regionally-significant elk herd known as the Colockum
13 elk herd, and is a stronghold for no less than six other species of special concern, including
14 white-tailed and black-tailed jackrabbits (both state candidate species), sage sparrows (state
15 candidate), sage thrashers (state candidate), and loggerhead shrikes (state candidate and federal
16 species of concern). The Wildlife Areas are within the largest core habitat for the striped
17 whipsnake, a state candidate species and by far the least abundant of all snakes in the state.
18 Three-quarters of all the snake species in Washington State occur in the Wildlife Areas, as well
19 as five known species of lizard and five known species of amphibians, making it an
20 exceptionally diverse area for reptiles and amphibians. The FEIS contains little analysis of the
21 impacts of turning out livestock upon these resources.

22 18. The FEIS claims that monitoring and adaptive management will ensure that
23 adverse impacts will not occur to sage grouse, wetlands, riparian habitat, or water quality.

1 WDFW fails to acknowledge the record of failed and incomplete monitoring regarding grazing
2 on its wildlife lands in eastern Washington. WDFW's mitigation assumptions cannot be
3 supported by monitoring and adaptive management with no assurances that they will occur.
4 WDFW did not evaluate the potential impacts of expanded grazing in the Wildlife Area in the
5 absence of monitoring. Finally, WDFW failed to evaluate the economic impacts of the action.

6 19. Unless the relief prayed for herein is granted, WDFW will proceed to permit
7 expanded grazing in the Wildlife Are, in violation of SEPA and other requirements of law, and
8 causing irreparable harm to plaintiff's interests and to the wildlife values and habitats of the State
9 of Washington.

10 **CLAIMS FOR RELIEF**

11 **First Cause of Action**
12 **(State Environmental Policy Act)**

13 18. Plaintiff WWP incorporate by reference Paragraphs 1 through 17 above.

14 19. WDFW's December 21, 2009 decision to approve the FEIS violates the State
15 Environmental Policy Act, chapter 43.21C RCW, and WDFW's implementing regulations, for
16 reasons including, but not limited to, that the FEIS: (1) failed to consider reasonable alternatives
17 within the range dictated by the proposal's purpose and need; (2) failed to include a reasonably
18 thorough discussion of the direct, indirect and cumulative impacts of the decision on natural
19 resource values of the Whiskey Dick and Quilomene Wildlife Areas, including sage grouse and
20 their habitat, other wildlife, fish, native plants, weeds, soils, wetlands, riparian habitat, and water
21 quality; (3) failed to included a worst case analysis of the potential impacts of grazing on sage
22 grouse and their habitat; and (4) failed to include a reasonably complete discussion of the
23

1 measures proposed to mitigate the effects of the decision on sage grouse and their habitat,
2 wetlands, riparian habitat, and water quality.

3 **Second Cause of Action**
4 **(Administrative Procedure Act)**

5 20. Plaintiffs incorporate by reference Paragraphs 1 through 19 above.

6 21. WDFW's December 21, 2009 decision to approve the FEIS violates the State
7 Environmental Policy Act, chapter 43.21C RCW, and WDFW's implementing regulations, for
8 reasons including, but not limited to, that the FEIS: (1) failed to consider reasonable alternatives
9 within the range dictated by the proposal's purpose and need; (2) failed to include a reasonably
10 thorough discussion of the direct, indirect and cumulative impacts of the decision on natural
11 resource values of the Whiskey Dick and Quilomene Wildlife Areas, including sage grouse and
12 their habitat, other wildlife, fish, native plants, weeds, soils, wetlands, riparian habitat, and water
13 quality; (3) failed to included a worst case analysis of the potential impacts of grazing on sage
14 grouse and their habitat; and (4) failed to include a reasonably complete discussion of the
15 measures proposed to mitigate the effects of the decision on sage grouse and their habitat,
16 wetlands, riparian habitat, and water quality. WDFW's arbitrary, capricious and unlawful
17 decision violated the Administrative Procedure Act (APA), RCW 34.05.570(4)(c).

18 **Third Cause of Action**
19 **(Constitutional Writ of Certiorari)**

20 22. Plaintiffs incorporate by reference Paragraphs 1 through 21 above.

21 23. As stated above WDFW's SEPA decision with respect to expanded grazing on the
22 Wildlife Area should be invalidated under SEPA and the APA. Alternatively, under the court's
23 inherent constitutional power to review arbitrary, capricious and illegal administrative action, a
writ should be issued ordering Defendants to produce all documents (including staff reports,

1 presentations, plans, maps, spreadsheets, records, minutes of meetings, correspondence, emails,
2 and papers) in the possession or control of Defendants, and their agents or employees, that are in
3 any way related to WDFW's preparation and approval of the FEIS, and the Court should then
4 invalidate WDFW's December 21, 2009 decision approving and adopting the FEIS supporting
5 expanded grazing on the Wildlife Area, because the decision was arbitrary, capricious and
6 contrary to applicable law and because Plaintiff WWP has no administrative appeal or any plain,
7 speedy or adequate remedy at law.

8 **REQUEST FOR RELIEF**

9 WHEREFORE, Plaintiff WWP respectfully prays for the following relief:

10 A. That the Court issue a writ directing the Defendants to certify and return to the
11 Court copies of any and all documents, including staff reports, presentations, plans, maps,
12 spreadsheets, records, minutes of meeting, correspondence, emails, or papers, in the possession
13 or control of Defendants, and their agents or employees, that are in any way related to the
14 WDFW's December 21, 2009 decision approving and adopting the FEIS supporting expanded
15 grazing on the Wildlife Area.

16 B. That the Court order, declare, and adjudge that Defendants acted unlawfully in
17 approving the WDFW's challenged Notice of Action; and reverse, declare invalid, or issue a writ
18 invalidating, the decision for being in violation of SEPA and/or the APA.

19 C. That the Court direct, or issue a writ directing, that prior to the WDFW issuing
20 permits authorizing the expansion of grazing authorized in the FEIS on the Wildlife Areas, that
21 WDFW must prepare a revised final EIS or supplemental EIS adequately examining: (1) all
22 reasonable alternatives to the WDFW's preferred alternative; (2) the direct, indirect and
23 cumulative impacts of the changes in management policy, practice and procedure on sage grouse

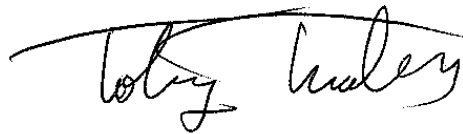
1 and their habitat, wetlands, riparian habitat, and water quality; and (3) measures to assure
2 mitigation of the effects of expanded livestock grazing and associated range infrastructure on the
3 sage grouse and their habitat, wetlands, riparian habitat, and water quality.

4 D. That the Court issue a preliminary and permanent injunction barring WDFW from
5 approving any new or renewed grazing leases in the Wildlife Areas until WDFW prepares a
6 revised final EIS or supplemental EIS fully and adequately analyzing the direct, indirect and
7 cumulative effects of such grazing leases on sage grouse and their habitat, wetlands, riparian
8 habitat, and water quality.

9 E. That the Court award Plaintiffs their litigation expenses, including reasonable
10 attorneys fees, under RCW 4.84.350 and other applicable law.

11 F. For such other relief as the Court may deem just and equitable.

12 DATED this 19th day of January, 2010.

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Toby Thaler, WSBA #8318
Attorney for Plaintiff

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2 **Verification**

3 The plaintiff through their executive director, certifies that they have read the foregoing
4 first amended complaint and that to the best of their knowledge, information, and belief, formed
5 after an inquiry reasonable under the circumstances, and upon advice of counsel, the complaint:
6 (1) is well grounded in fact; (2) is warranted by existing law; and (3) is not interposed for any
7 improper purpose, such as to harass or to cause unnecessary delay or needless increase in the
8 cost of litigation.
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11 
12 _____
13 Jon Marvel, Executive Director
14 Western Watersheds Project
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