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

WESTERN WATERSHEDS PROJECT,)	Civ. No. 05-297-E-BLW
)	
Plaintiff,)	
)	MOTION FOR LEAVE TO
vs.)	FILE FIRST AMENDED
)	COMPLAINT
JOE KRAAYENBRINK, et al.)	
)	
Defendants.)	

Plaintiff WESTERN WATERSHEDS PROJECT respectfully moves the Court for leave to file a First Amended Complaint in this matter, pursuant to F.R.Civ.P. 15. The proposed First Amended Complaint is submitted herewith.

Rule 15 provides that leave to amend “shall be freely given when justice so requires.” F.R.Civ.P. 15(a). According to the Supreme Court, “this mandate is to be heeded.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). “If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Id.*

Accordingly, the Ninth Circuit follows a “strong policy permitting amendment,” *Fuller v. Vines*, 36 F.3d 65, 67 (9th Cir. 1994); and cautions that leave to amend should only be denied in extreme cases such as undue delay, bad faith, or dilatory motive on the part of the movant. *Johnson v. Buckley*, 356 F.3d 1067 (9th Cir. 2004).

Here, good cause exists to grant leave to amend under these standards. Plaintiff Western Watersheds Project originally filed this case in July 2005, to challenge BLM’s proposed grazing regulation revisions as well as its latest grazing decision for the Pleasantview allotment (previously before this Court). *See Complaint (Docket No. 1)*. Western Watersheds also filed a motion for TRO and/or preliminary injunction, plus supporting Declaration of Jon Marvel, seeking an immediate injunction to prevent BLM from implementing the new grazing regulations, which it was about to publish in the Federal Register. *See Docket No. 3*. That injunction motion focused on BLM’s violations of NEPA in issuing a June 2005 Final EIS for the grazing regulation changes, which suppressed the views of BLM’s own experts that the regulation changes would have long-term adverse impacts. *Id.*

In response, BLM determined to delay publication of the new grazing regulations; and stated publicly that it would conduct supplemental NEPA proceedings. Accordingly, Western Watersheds voluntarily withdrew its injunction motion; and then agreed to voluntarily dismiss its First, Second and Third Claims for Relief challenging the new grazing regulations on NEPA and other grounds. *See Docket Nos. 3 & 9*. But in taking these actions, Western Watersheds noted that it was simply agreeing to avoid unnecessary litigation over whether the claims were ripe; and reserved the right to

reinstate its challenges and seek injunctive relief again, if BLM persisted in finalizing the grazing regulation changes based on its flawed NEPA and other analysis. *Id.*

Subsequently, BLM prepared and released a March 2006 “Addendum” to the June 2005 Final EIS, without reopening the EIS for public comment and without preparing any Supplemental EIS, as it previously indicated it would do. And based on the June 2005 Final EIS and Addendum, it has now finalized the new grazing regulations through publication of a Final Rule in the Federal Register. *See 71 Fed. Reg. 39402 (7/12/06)*. According to the Final Rule, the new grazing regulations will take effect on August 11, 2006. *Id.*

Because BLM has finalized its rulemaking, and the new regulations will take effect imminently, Western Watersheds is now reinstating and updating its challenges to the regulations, through the proposed First Amended Complaint. Western Watersheds is also seeking immediate injunctive relief to prevent the new regulations from taking effect, by filing herewith two separate injunction motions – one based on BLM’s NEPA violations, and the other on BLM’s ESA violations – along with extensive supporting declarations and exhibits. *See* Plaintiff’s Motion For Immediate Injunction Re: NEPA Violations, and supporting opening brief; Plaintiff’s Motion For Immediate Injunction Re: ESA Violations, and supporting opening brief; Declarations of Erick Campbell, Robert House, Kathleen Fite, and Dr. John Carter (all submitted herewith).

In short, Western Watersheds is entitled to file the proposed First Amended Complaint reinstating and updating its challenges to the BLM new grazing regulations, because those claims are now final and subject to judicial review; and because Western

Watersheds needs immediate injunctive relief to prevent irreparable harm to its interest and to the environment, from the new regulations.

WHEREFORE, Plaintiff respectfully prays that the Court grant this Motion for Leave To File First Amended Complaint.

Dated: July 12, 2006

Respectfully submitted.

/s/
Laurence ("Laird") J. Lucas (ISB # 4733)
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of July 2006, I caused to be electronically filed the foregoing MOTION TO FOR LEAVE TO FILE FIRST AMENDED COMPLAINT, plus a copy of the accompanying proposed FIRST AMENDED COMPLAINT with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the opposing counsel of record listed below:

Deborah Ferguson
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Lori Caramanian
U.S. Department of Justice
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I also certify that I caused to be served a copy of the foregoing documents via email to the following person, who is not yet of record in this matter but whom I am advised will be appearing as counsel for BLM:

Donna Fitzgerald
U.S. Department of Justice
Donna.Fitzgerald@usdoj.gov

/s/
Laurence ("Laird") J. Lucas