Lauren M. Rule (ISB # 6863) (lrule@advocateswest.org)
Todd C. Tucci (ISB # 6526) (ttucci@advocateswest.org)
Judith M. Brawer (ISB #6582) (jbrawer@advocateswest.org)
ADVOCATES FOR THE WEST
P.O. Box 1612
Boise, ID 83701
(208) 342-7024
(208) 342-8286 (fax)

Laurence ("Laird") J. Lucas (ISB # 4733) (llucas@lairdlucas.org)
P.O. Box 1342
Boise, Idaho 83701
(208) 424-1466 (phone and fax)

Attorneys for Plaintiff Western Watersheds Project

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, Plaintiff, vs. JOE KRAAYENBRINK, BLM Idaho Falls District Manager; KATHLEEN CLARKE, BLM Director; and BUREAU OF LAND MANAGEMENT, Defendants.	)	Civ No. 05-297-E-BLW **FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

[NOTE: Additions from original Complaint are shown in **Bold Face/Underlined** text, and deletions are shown in strikeout form.]

INTRODUCTION

1. Plaintiff WESTERN WATERSHEDS PROJECT ("Western Watersheds") brings this case to challenge the 2005 grazing decision by Defendants JOE KRAAYENBRINK and BUREAU OF LAND MANAGEMENT et al. ("BLM") for the Pleasantview allotment, which is located near Malad City in Oneida County, Idaho, and

managed by BLM's Idaho Falls District office. The 2005 Pleasantview grazing decision unlawfully **increases** grazing levels and fails to heed BLM's own prior findings that such grazing levels are excessive; and is contrary to the settlement agreement reached in prior litigation before this Court, *see* Civil No. 01-529-E-BLW, under which BLM was required to cut grazing levels by at least 19%, and undertake other grazing management changes to make significant progress toward meeting the Fundamentals of Rangeland Health and their implementing Idaho Standards and Guidelines for Rangeland Health.

2. **In this First Amended Complaint,** Western Watersheds further **reinstates and updates its** challenges **to** BLM's revisions of its grazing regulations found at 43 C.F.R. Part 4100, **which BLM recently approved through publication of a Final Rule, 71Federal Register 39402-39509 (July 12, 2006), based on** a Final Environmental Impact Statement entitled *"Proposed Revisions to Grazing Regulations for the Public Lands, Final Environmental Impact Statement FES 04-39"* (hereafter "Final EIS" or "FEIS"), released on June 17, 2005, **and amended by an "Addendum" released in March 2006**. (An electronic copy of the Final EIS **and Addendum**, which includes the text of the revised regulations, is available on BLM's website at www.blm.gov/grazing/EIS). Unless enjoined by this Court, the revised grazing regulations are scheduled to take effect on ~~August 22, 2005~~ **August 11, 2006.** The regulations revisions would sanction BLM's unlawful Pleasantview decision by gutting the Fundamentals of Rangeland Health requirements that BLM adopted in 1995 as a vital tool to improve grazing management and to protect the public lands from livestock degradation; by allowing BLM to avoid reducing grazing levels on the Pleasantview allotment by 19%, as BLM previously deemed necessary; and by excluding Western

Watersheds from any meaningful role in future grazing management decision-making on the Pleasantview allotment.

3. Likewise, unless enjoined, the new grazing regulations will immediately and irreparably harm Western Watersheds by virtually eliminating its ability to obtain information and participate meaningfully in upcoming grazing management decisions for dozens of other allotments in BLM's Idaho Falls District – which covers public lands having enormous ecological values ranging from the Lemhi, Pahsimeroi, Upper Salmon, and Little Lost River basins, down to the Utah border in eastern Idaho – as well as thousands of other BLM allotments around Idaho and other parts of the West. The revised regulations will further result in BLM authorizing destructive and harmful grazing practices on these allotments, causing irreparable environmental harm of many kinds, as discussed further below.

4. These grazing regulation revisions were unlawfully adopted by BLM to benefit the livestock industry at local and national levels, at the expense of the natural resources and public interest, and in violation of the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the Public Lands Improvement Act (PRIA), the Taylor Grazing Act (TGA), the Endangered Species Act (ESA), and the Administrative Procedure Act (APA). Through its June 2005 Final EIS **and associated NEPA documents**, **as well as in the Final Rule published in the Federal Register**, BLM has concealed and misrepresented the major changes that would be made in its grazing management regulations, without acknowledging or analyzing the serious adverse environmental harms that will result to the public lands, streams, fish, birds, wildlife, and the public's many uses and enjoyment of the affected lands. Indeed,

as addressed further below, BLM has suppressed and ignored the views of its own expert scientists, and those of other federal agencies as well as independent scientists, that the regulation changes will cause serious adverse environmental impacts, such that June 2005 Final EIS **and related NEPA documents** wholly fails to comply with NEPA's requirement that BLM must take a "hard look" at and publicly disclose the environmental impacts of its proposed grazing regulation revisions.

5. Accordingly, the unlawful grazing regulation revisions must be immediately enjoined from taking effect by this Court to preserve the status quo under the existing BLM grazing regulations – which were previously upheld by the courts, including the U.S. Supreme Court – and to prevent irreparable harm to the environment, to the public interest, and to Western Watersheds, until these challenges to the revised regulations are adjudicated.

JURISDICTION AND VENUE

6. 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 NEPA, 42 U.S.C. §§ 4321 et seq.; FLPMA, 43 U.S.C. §§ 1701 et seq.; PRIA, 43 U.S.C. § 1901 et seq; TGA, 43 U.S.C. § 315 et seq; the ESA, 16 U.S.C. § 1531 et seq.; the APA, 5 U.S.C. § 551 et seq.; 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. An actual, justiciable controversy now exists between Plaintiff and Defendants, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. § 701-06.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to the claims herein occurred within this judicial district,

and both Plaintiff and Defendants, as well as affected public lands and resources, are located in this judicial district.

8. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 701 and 16 U.S.C. § 1540.

PARTIES

9. Plaintiff WESTERN WATERSHEDS PROJECT ("Western Watersheds") is a non-profit membership conservation group based in Idaho, and with offices or staff in Utah, Wyoming, and Montana as well. Western Watersheds has over 1400 members, volunteers, and supporters, located in Idaho and around the United States. Through the efforts of its staff, members, supporters, and volunteers, Western Watersheds is actively engaged in advocating science-based management of BLM's public lands in Idaho, Utah, Nevada, Oregon, Montana, Wyoming, Colorado, and California; and accordingly, Western Watersheds is directly interested in and harmed by BLM's grazing regulation revisions that are challenged here.

10. Western Watersheds also manages and controls the Greenfire Preserve, a former cattle ranch located on the East Fork Salmon River near Clayton, Idaho (Custer County), which is owned by a Western Watersheds subsidiary, Valley Sun, LLC. Through the Greenfire Preserve and its location in the biologically-rich Upper Salmon basin, Western Watersheds is actively engaged in land restoration, public education and outreach, and advocacy efforts to improve public and private lands management within BLM's Idaho Falls District. The Greenfire Preserve is also the "base property" for BLM grazing permits in the area, which Western Watersheds manages. Accordingly, as a

BLM permittee, Western Watersheds has direct proprietary interests in BLM's grazing regulation revisions as well.

11. Since its founding in 1993 (under the original name of Idaho Watersheds Project, since changed to reflect a broader mission), Western Watersheds has emerged as one of the most prominent conservation groups dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West, with a particular focus on promoting responsible livestock grazing management on the public lands and enforcing the nation's public lands and environmental laws with respect to livestock grazing.

12. Western Watersheds uses expert scientists, professional staff, consultants, members, and volunteers to monitor and track conditions on the public lands and livestock management practices in the states identified above; to communicate with BLM and other agencies about current conditions, trends, and livestock impacts on public lands; to participate in grazing-related information gathering and management decisions for these public lands; to educate the public and agency decision-makers about grazing impacts and scientific understanding of them; to advocate for responsible grazing management decision-making; and to promote voluntary grazing retirements to achieve protection and restoration of the ecological values of the public lands in the West.

13. Western Watersheds' staff, members, volunteers, and scientists spend literally thousands of hours out on the public lands managed by BLM in the Idaho Falls District, including on the Pleasantview allotment, and other parts of Idaho and the West, as identified above, where they engage in a variety of tasks and pursuits including scientific observations and measurements; looking for and observing fish, birds, wildlife,

and plants and their habitats; studying native ecosystems and the impacts of livestock grazing upon them; documenting resource harms from grazing and other actions; and recreational or aesthetic pursuits such as hiking, fishing, camping, hunting, photography, and similar activities. They derive professional, aesthetic, recreational, scientific, inspirational, educational, and other benefits from these public lands and their natural resources on a regular and continuing basis, and intend to do so frequently in the immediate future, including on the Pleasantview allotment, other allotments in the Idaho Falls District, and allotments elsewhere in Idaho and other western states.

14. In order to pursue its mission and these activities, Western Watersheds is designated as an "interested public" under BLM's existing grazing regulations for the Pleasantview allotment, as well as all other BLM allotments in the Idaho Falls District. Western Watersheds is also an "interested public" on hundreds of other BLM allotments around Idaho and the other western states noted above, totaling approximately 70 million acres. Western Watersheds relies on its status as an interested public on these allotments to obtain information from BLM, engage in communications with BLM at many levels, participate in all aspects of grazing management on the allotments, to educate the public, and to undertake other activities in pursuit its mission. The ability to consult, cooperate, and coordinate with BLM as an interested public allows Western Watersheds' staff and members to receive notification about upcoming activities, share scientific and other information concerning the public lands with BLM, tour the lands with agency staff and decision-makers, and generally express varying viewpoints about proposed activities to help inform the agency about Western Watersheds' concerns prior to issuance of a formal decision.

15. Moreover, based on its status as an interested public, the above-described efforts of its staff, scientists, members, and volunteers, and the accumulation of scientific and factual knowledge and information that these efforts have generated, Western Watersheds has also been one of the leading conservation groups enforcing public lands and environmental laws and regulations with respect to BLM's grazing management, in the Idaho Falls District as well as other parts of Idaho and the West. For instance, Western Watersheds has successfully litigated numerous grazing cases in Idaho, Oregon, Nevada, and Utah enforcing NEPA and the Fundamentals of Rangeland Health regulations, and causing substantial changes in grazing management on millions of acres of public lands permitted to some of the most influential ranchers in the country.

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

17. Western Watersheds' expertise and effectiveness in using facts, science, and law to demonstrate that BLM is unlawfully managing livestock grazing on literally hundreds of public lands allotments encompassing millions of acres, and that such violations are causing serious ecological degradation of the public lands, wildlife, and other resources, appears to be one of the principal reasons why BLM and the livestock industry are so intent on gutting the existing grazing regulations and thereby impairing Western Watersheds' effectiveness.

18. Defendants' violations of law, as alleged in more detail below, adversely and irreparably injure the aesthetic, commercial, scientific, conservation, recreational,

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

19. Defendant JOE KRAAYENBRINK is the District Manager for BLM's Idaho Falls District office, which is headquartered in Idaho Falls, Idaho (Bonneville County). The Idaho Falls District includes BLM's Salmon, Challis, Upper Snake, and Pocatello field offices, with dozens of grazing allotments covering millions of acres of public lands, ranging from the Salmon River basin down to the Utah border. These public lands have enormous ecological importance and public values, including offering native habitat for sensitive and declining species such as salmon, steelhead, bull trout, sage grouse, pygmy rabbit, bighorn sheep, lynx, wolves, grizzly bear, neotropical migratory birds, waterfowl, and many others. Defendant Kraayenbrink exercises supervisory authority over all land and resource management decisions affecting public lands managed by BLM in the Idaho Falls District, including the Pleasantview allotment and numerous other allotments for which BLM imminently plans to undertake grazing management decisions in coming weeks and months that will be subject to BLM's revised grazing regulations, unless enjoined by this Court. Defendant Kraayenbrink is sued solely in his official capacity.

20. Defendant KATHLEEN CLARKE is the politically-appointed Director of BLM, based in Washington, D.C. Defendant Clarke exercises supervisory authority over land and resource management decisions affecting all public lands under the administration of the BLM, and is directly responsible for authorizing the BLM's grazing

regulation revisions challenged herein. Defendant Clarke is sued solely in her official capacity.

21. Defendant BUREAU OF LAND MANAGEMENT is an agency or instrumentality of the United States, within the U.S. Department of Interior, and is charged with administering the public lands of the Pleasantview allotment, the Idaho Falls District, and other public lands in the West in accordance with NEPA, FLPMA, PRIA, TGA, ESA, APA, and other applicable laws.

STATEMENT OF FACTS

BLM's Grazing Management In The Western States.

22. BLM manages some 160 million acres of public lands that are subject to livestock grazing in the western states (exclusive of Alaska). *See 2005 Grazing Regulation Revisions FEIS, ES-1 & Figure 1-1, p. 1-11*. In 2002, livestock grazing operators held 18,142 BLM grazing leases and permits, allowing up to 7.9 million Animal Unit Months ("AUMs") of active use on this vast region, with another 4.8 million AUMs in temporary nonuse or conservation use. *FEIS, pp. 1-12 to 1-13*. These numbers declined slightly in 2003 due to widespread drought conditions. *Id.*

23. As stated by one court, "[t]he history of grazing policy and politics in the west and in Washington, D.C., has been the story of competing interests, changing values, and, unfortunately, deteriorating resources." *Natural Resources Defense Council v. Hodel, 618 F. Supp. 848, 855 (E.D. Cal. 1985). See also Public Lands Council v. Babbitt, 529 U.S. 728, 120 S.Ct. 1815, 1818-22 (2000)* (describing history of grazing management on western public lands).

24. Until 1934, the public rangelands were unregulated and largely monopolized by private ranchers who strongly opposed any sort of federal regulation, which in turn led to severe overgrazing that culminated in the Dust Bowl era. *Id.* To address this growing damage to the public range, Congress enacted the Taylor Grazing Act, which was meant to regulate the use and occupancy of public lands, preserve the land and its resources from injury due to overgrazing, and provide for the use, improvement, and development of the range. *43 U.S.C. § 315a.*

25. The Secretary of the Interior was charged with administering this Act, and empowered to make rules and regulations to implement it. *Id.* The Taylor Grazing Act authorized the Secretary to divide the public lands into grazing districts and issue permits for livestock grazing. *Id. § 315b.* "The process of carving up the land into grazing districts was swift, hasty, and dominated by the stock industry." *NRDC v. Hodel, 618 F.Supp. 848, 856 (E.D. Cal. 1985).* Those who had existing livestock operations were given preference in the issuance of permits, and then permittees had preference right to renewal of those permits; but the permits did not create any right, title, interest, or estate in or to the public lands. *43 U.S.C. § 315b.* The Act also directed the Secretary to specify the extent and timing of livestock grazing that could occur under each permit. *Id.* Thus, the Taylor Grazing Act essentially closed the public domain in the hopes that regulation would improve range conditions and stabilize the livestock industry. *See NRDC v. Hodel, 618 F. Supp. at 856.*

26. Forty years after enactment of the Taylor Grazing Act, it was clear that Congress' intent of restoring the range was not being fulfilled. *See NRDC v. Hodel, 618 F. Supp at 857* (citing several Government reports documenting continued deterioration

of public lands); *NRDC v. Morton, 388 F. Supp. 829, 840 (D.D.C. 1974), aff'd, 527 F.2d 1386 (D.C. Cir. 1976)* (describing degraded range conditions); *Public Lands Council v. Babbitt, 120 S.Ct. at 1821* (similar). Recognizing this failure to improve the public lands, as well as the need for comprehensive legislation that addressed contemporary national goals of multiple and sustainable uses of public lands, Congress thus enacted the Federal Land Policy and Management Act ("FLPMA") in 1976. *Id.; 43 U.S.C. § 1751(b)(1)* ("Congress finds that a substantial amount of the Federal range lands is deteriorating in quality . . . ."); *H.R. Rep. No. 94-1163, at 1 (1976), reprinted in 1976 U.S.C.C.A.N. 6175* (noting that existing public land laws "do not add up to a coherent expression of Congressional policies adequate for today's national goals.").

27. FLPMA was a comprehensive statement of national public policy, mandating that the public lands be managed to protect their scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; and to provide food and habitat for fish and wildlife and domestic animals as well as outdoor recreation and human occupancy use. *43 U.S.C. § 1701(a)(8).*

28. To protect these values, FLPMA required the Secretary to manage the public lands for multiples uses and sustained yield; and to engage in a land use planning process and ensure that activities on the public lands comply with those plans and do not cause unnecessary or undue degradation. *Id. § 1732(a) & (b).* The Act also emphasized the importance of public participation in land use planning and management decisions, to coincide with the statute's recognition of the multiple uses and values of the rangelands and the public's desire to protect them on a sustainable basis. *See id. §§ 1702(d), 1739(e), 1712(f).*

29. FLPMA allowed for continued grazing of the public lands pursuant to grazing permits, which were mandated to contain terms and conditions deemed appropriate by the Secretary of Interior (who has delegated such authority to BLM) to meet these statutory requirements and goals; and FLPMA expressly provided that the Secretary has authority to cancel, suspend, or modify any grazing permit. *Id. § 1752(a).* The Secretary also may reexamine the condition of the range and adjust grazing use accordingly at any time. *Id. § 1752(e).*

30. Shortly after Congress enacted FLPMA, it clarified and reaffirmed its conclusion that the public lands were in unsatisfactory condition and required improvement, through the Public Rangelands Improvement Act ("PRIA"). *43 U.S.C. § 1901 et seq.* This Act laid out Congress' findings that "vast segments of the public rangelands are producing less than their potential for livestock, wildlife habitat, recreation, forage, water and soil conservation benefits, and for that reason are in an unsatisfactory condition," and called for a commitment to "manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process established pursuant to [FLPMA]." *Id. § 1901(a)(1), (b)(2).*

BLM's Prior Grazing Regulations.

31. After the Taylor Grazing Act was enacted, the Department of Interior adopted grazing regulations (known as the "Range Code") to begin administering grazing permits and other aspects of range management. Livestock interests wielded enormous influence over the grazing program under the Range Code, however, and they dominated the national and local advisory boards that participated in grazing management.

32. The Range Code underwent minor amendments from time to time over the years; but after Congress enacted FLPMA, BLM adopted a comprehensive new set of grazing regulations in 1978, that caused sweeping changes in grazing administration. *See Public Lands Council v. Babbitt, 167 F.3d 1287, 1295 (10th Cir. 1999), aff'd, 529 U.S. 728 (2000)* (describing the regulations). The 1978 regulations addressed the need to comply with land use plans, and the authority to modify grazing use if needed to achieve plan objectives. *See Public Lands Council, 120 S.Ct. at 1822.*

33. The livestock industry opposed these and other changes intended to improve grazing management and the condition of the public lands. Thus, in 1984, during the so-called "Sagebrush Rebellion" (of which President Reagan's first Interior Secretary, James Watt, was a leader), BLM again amended the grazing regulations, attempting to return power to the livestock industry, dilute the use of land use plans, and reduce the ability of the public to participate in grazing management decisions.

34. In response to legal challenges by conservationists, key parts of these 1984 grazing regulations were reversed, on procedural and substantive grounds. *See NRDC v. Hodel, 618 F. Supp. at 881.* The court found that the regulations unlawfully abdicated BLM's duty to prescribe the extent and timing of grazing allowed under each permit, and to retain the authority to cancel, suspend, or modify permits if ranchers were overgrazing. *Id. at 869-71.* It also found that BLM violated NEPA by failing to conduct an adequate environmental analysis of some proposed changes, and further violated the APA by failing to address public comments and adequately explain the need for the changes. *Id. at 871-80.*

The Rangeland Reform Regulations.

35. Beginning in 1993, BLM launched the "Rangeland Reform" process, under which it comprehensively studied the impacts of livestock grazing on the public lands and implemented a new set of revisions to the grazing regulations, which became final in 1995. *See 60 Fed. Reg. 9893 (Feb. 22, 1995), now codified at 43 C.F.R. Parts 1780 & 4100 (2004 ed.).* These 1995 grazing regulations remain the BLM's current grazing regulations in effect as of this date.

36. In its 1994 Environmental Impact Statement (EIS) for the Rangeland Reform regulations, BLM found that the public lands continue to suffer serious degradation from livestock grazing, despite Congress' calls for improvement since the Taylor Grazing Act. For example, the EIS noted that: "Rangeland ecosystems are not functioning properly in many areas of the West. Riparian areas are widely depleted and some upland areas produce far below their potential. Soils are becoming less fertile." *Rangeland Reform '94 DEIS at 5.*

37. BLM's EIS further noted that "many riparian areas continue to be degraded, and are not functioning properly." *Id. at 1-3.* The EIS determined that "most riparian areas are in poor condition because of past management. Excessive amounts of plant biomass have been removed from riparian areas by livestock grazing and timber harvesting," and that some areas were so degraded they were no longer recognized as having riparian or wetland values or potential. *Id. at 3-31 to 3-32.* Further, "riparian areas degraded by livestock will continue to degrade through accelerated erosion until grazing management is changed." *Id. at 3-32.*

38. The Rangeland Reform EIS likewise found that "[i]n addition to damaging the riparian communities, past management has also degraded most of the associated upland vegetation areas, resulting in watersheds of unsatisfactory condition in addition to riparian areas in poor condition." *Id. at 3-31.*

39. In order to address these and other concerns, BLM thus adopted numerous changes in the grazing regulations. After conducting 49 public meetings across western states; spending hundreds of hours in discussions with western governors, State and local officials, ranchers, conservationists, and other public lands users; and reviewing over 30,000 comment letters and testimony from more than 1,900 people attending the public hearings, BLM issued the 1995 regulations. *See 60 Fed. Reg. at 9894-95* (describing public process).

40. The 1995 grazing regulations, in part, addressed the resource degradation documented in the 1994 EIS by adopting the new "Fundamentals of Rangeland Health" regulations (found at 43 C.F.R. § 4180 et seq.), which set minimum ecological standards for grazing management on the public lands and which require BLM to take prompt action to revise grazing management when those fundamental ecological standards are not being met. The 1995 regulations also increased public participation in rangeland management; confirmed that the United States holds title to permanent range improvements and livestock water rights on public lands; altered the definition of "grazing preference"; and authorized conservation use, among other changes. *60 Fed. Reg. 9895-99.*

41. BLM explained that these changes were necessary in order to meet the statutory requirements set by Congress in FLPMA, PRIA, and the Taylor Grazing Act, in

order to improve its management of grazing and help restore degraded areas on the public lands. For example, BLM emphasized that the Fundamentals of Rangeland Health provisions were needed to "accelerate restoration and improvement of public rangelands to proper functioning condition," *Rangeland Reform DEIS at 1-3;* and BLM "believes that these provisions are critical to ensuring that BLM's administration of grazing helps preserve currently healthy rangelands and restore healthy conditions to those areas that currently are not functioning properly, especially riparian areas." *60 Fed. Reg. at 9898*.

42. In adopting the 1995 regulations, BLM also specifically rejected a proposed provision requiring it to "phase-in" reductions of livestock use greater than 10% over a period of five years, because it "inhibited responsive action in situations where reductions in use are most needed." BLM explained that it required "more flexibility to deal with situations in which immediate action was necessary to protect rangeland resources." *60 Fed. Reg. at 9931; Rangeland Reform DEIS at 1-14.*

43. BLM also underscored the need to increase public participation in rangeland management. "An important element of true rangeland reform involves allowing more Americans to have a say in the management of their public lands." *Rangeland Reform DEIS at 1-10.* Further, BLM "believes that the public interest will be best served if a wide range of interests are represented when decisions are being made. Thus, increased public participation is essential to achieving lasting improvements in the management of our public lands." *60 Fed. Reg. at 9895*. BLM accomplished this goal by significantly expanding the number of opportunities for public involvement in decision-making, as well as making it easier to participate by adopting a broad definition of "interested public."

44. BLM also was concerned that its policy with regard to title of range improvements and water rights needed to be consistent with common law principles and U.S. Forest Service policy, since many permittees graze cattle on both BLM and National Forest lands. Hence, the 1995 regulations provided that BLM will hold title to all permanent range improvements; and BLM explained that such rule "conforms with common law concepts regarding retention of the title of permanent improvements in the name of the party that holds title to the land" and "makes BLM practice consistent with that of the Forest Service." *60 Fed. Reg. at 9897.* A similar provision requiring BLM to acquire water rights in the name of the United States when permitted by State law also made BLM's policy consistent with Forest Service practices. *Id.*

45. The 1995 grazing regulations also changed the definition of "grazing preference" so that it no longer attributed a certain amount of forage to the permittee's base property, but instead simply referred to the permittee's priority position for renewal of his permit. This change was intended to better reflect the original statutory intent of the term under the Taylor Grazing Act and FLPMA. *60 Fed. Reg. at 9922, 9928.*

BLM Consultation Over Rangeland Reforms.

45a. In promulgating the 1995 regulations, BLM acknowledged that the regulations "may affect" endangered and threatened species present on the public lands subject to livestock grazing management; and hence BLM (in cooperation with U.S. Forest Service) undertook formal consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Services over its Rangeland Reform proposals, pursuant to Section 7 of the Endangered Species Act.

45b. In a Biological Opinion and Conference Report dated November 4, 1994, the Services addressed the likely effects of the Rangeland Reform proposals upon endangered and threatened species, and found that they were "not likely to jeopardize the continued existence of listed or proposed species" and "not likely to result in the destruction or adverse modification of designated or proposed critical habitat." *Biological Opinion, at 31.*

45c. In reaching this determination, the Services emphasized their assumption that "full implementation" of the Rangeland Reforms would occur, particularly the Fundamentals of Rangeland Health requirements of adopting standards and guidelines that "will maintain or achieve healthy rangeland ecosystems," and that: "Management actions that diminish ecosystem function and health will be modified or eliminated, and actions promoting ecosystem function and health will be implemented and maintained. . . Areas may require total rest from use or disturbance until desired resource conditions are reached. . . ." *Biological Opinion, at 2-3, 20. See also id. at 4-9* (further discussion).

45d. Based on these and other assumptions, the Services determined that implementation of the Rangeland Reform regulations "will improve current methods of making rangeland decisions to better integrate all of the biological, cultural, social, and economic factors needed to maintain or restore ecosystems. . . . Management attention will shift from narrow, short-term resource-specific issues toward broader objectives aimed at restoring or maintaining desired landscape conditions, environmental health, social amenities, and sustained economic well-being, all products of propertly functioning ecosystems." *Biological Opinion, at 9.*

45e. The Services further found that the Rangeland Reform regulations would result in both short-term and long-term improvements in uplands and riparian/wetland/aquatic habitats, and thus promote "restoration of some special status species" and "recovery of several listed species," particularly riparian and aquatic species. *Biological Opinion, pp. 20-26.*

45f. The Biological Opinion further provided that BLM must reinitiate consultation "if: (1) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (2) the agency action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in this opinion; (3) if a new species is listed or critical habitat designated, other than those addressed in this opinion/conference report, that may be affected by the identified action; or (4) if actions are initiated under Rangeland Reform without completion of section 7 consultation/conference, this consultation must be reinitiated immediately." *Biological Opinion, p. 33.*

Livestock Industry Challenge To Rangeland Reforms.

46. As with the 1978 regulations, the livestock industry strongly opposed the 1995 Rangeland Reform regulations, including the provisions for increased public involvement in grazing management, establishing minimum ecological standards and requirements under the Fundamentals of Rangeland Health, clearly vesting ownership of range projects and water rights on public lands in the name of the United States, and altering the definition of "grazing preference."

47. The 1995 regulations were thus challenged by the livestock industry, spearheaded by a group called the Public Lands Council, in litigation that ultimately went to the U.S. Supreme Court. *See Public Lands Council v. Dept. of Interior, 929 F. Supp. 1436 (D. Wyo. 1996), aff'd in part and rev'd in part sub nom Public Lands Council v. Babbitt, 167 F.3d 1287 (10th Cir. 1999), aff'd 529 U.S. 728, 120 S.Ct. 1815 (2000).*

48. In the district court proceedings, the livestock industry challenged numerous aspects of the 1995 Rangeland Reform regulations, including the adequacy of the 1994 EIS and BLM's determination to adopt the Fundamentals of Rangeland Health, as well as the following provisions of the regulations: (a) replacing the prior term "grazing preference" with "permitted use;" (b) "affiliate" regulations governing permittee qualifications; (c) prospectively vesting the United States with sole title to range improvements; (d) allowing "conservation use" permits; (e) limiting "temporary non-use" under grazing permits; (e) eliminating the prior requirement that permittees must be "engaged in the livestock business" to hold a permit; (f) a provision clarifying that permittees do not have exclusive use of water diversions, and further directing that BLM hold title to all new water rights on public lands (where allowed by state law); (g) provisions for suspending or canceling permits based on permittee violations of various laws and regulations; (h) restrictions on subleasing public lands grazing authorizations to others; and (i) challenges to the Fundamentals of Rangeland Health regulations. *See Public Lands Council, 929 F. Supp. 1436 et seq.*

49. The livestock industry prevailed on four of these claims before the district court, with respect to: (a) replacing "grazing preference" with "permitted use," (b) providing that the United States shall have full title to all future range improvements, (c)

allowing conservation use permits; and (d) reducing the mandatory qualifications for a permit. *Id.* But the district court rejected all other livestock industry challenges – including to the Fundamentals of Rangeland Health regulations and the adequacy of BLM's NEPA analysis in the 1994 EIS. *Id.*

50. On appeal by the United States, the Tenth Circuit reversed the district court's ruling that three provisions of the regulations were unlawful, but affirmed the holding that conservation use permits were not consistent with the Secretary's statutory authority under FLPMA and other laws. *Public Lands Council v. Babbitt, 167 F.3d at 1291-1309.*

51. After granting *certiorari*, the Supreme Court unanimously affirmed the Tenth Circuit ruling in all respects. *Public Lands Council v. Babbitt, 120 S.Ct at 1818-29.* Hence, the only portion of the Rangeland Reforms that was judicially reversed was the "conservation use" provision. All other aspects – including BLM's NEPA compliance in promulgating the Fundamentals of Rangeland Health regulations – were upheld by the courts.

Livestock Industry Influence Over BLM Grazing Management.

52. Stymied in its effort to use the courts to prevent public involvement in grazing management and to avoid having to meet basic ecological standards on the public lands, the livestock industry is now utilizing its political might and influence to dominate the BLM's grazing management, and instigate the new revisions to the grazing regulations that would reverse or effectively gut many of the changes promulgated in 1995.

53. The infiltration of livestock industry representatives into public lands management and decisions is evident from the national to the local level. For instance, the Bush Administration appointed William Myers, one of the leading architects of the Public Lands Council's challenges to the Rangeland Reform regulations, as its first Interior Solicitor. Likewise, Gale Norton, the ~~current~~ **recently-departed** Secretary of Interior, was a former attorney with Mountain States Legal Foundation, a group formerly led by James Watt that helped with the Public Lands Council challenge.

54. At a more local level, a former rancher and BLM permittee was installed as Idaho State Director (K Lynn Bennett), and ranching advocate Glen Secrist was appointed as head of the BLM's Boise District office, which encompasses the Owyhee, Bruneau, and Jarbidge Resource Areas. Before becoming the Boise District manager, Secrist was an "expert" for the livestock permittees in Idaho Watersheds v. Hahn (concerning grazing in the Owyhee Resource Area) and in the prior Pleasantview litigation; and he disputed BLM's findings that grazing was responsible for significant ecological problems in the Owyhee Resource Area and Pleasantview allotments, while denying that any reductions in livestock numbers were needed.

54a. In addition, Bud Cribley was recently designated Acting Director for BLM's Idaho State Office, after K Lynn Bennett resigned from that position. Before taking the Idaho post, Mr. Cribley was intimately involved in the BLM's grazing regulation revisions process in Washington, D.C., as BLM's Division Chief for Rangeland Resources; and he signed the March 2006 Addendum to the Final EIS.

55. The current Administration has not only worked to actively install livestock industry and other industry representatives in positions of power throughout the

BLM, but as numerous media reports indicate, the current Administration has also been active in seeking to suppress, alienate, or drive out agency scientists who do not conform with the Administration's policies and views on environmental matters.

56. These efforts include well-publicized instances where Department of Interior scientists have had their biological analysis and opinions overturned, changed, or suppressed, in locations ranging from the Klamath to the Middle Rio Grande.

57. Similarly in Idaho, as documented in the pending litigation before this Court concerning grazing management in the Jarbidge Resource Area, BLM terminated the consulting contracts of two former BLM employees – both veteran biologists who retired after spending their careers with BLM – when they advised that BLM's proposal to increase long-term grazing permits for Simplot Livestock and other Jarbidge permittees would have significant adverse effects on fisheries and wildlife values and habitats. *See Declarations of Robert House and Matthias Kniesel, filed in Western Watersheds Project v. Bennett, CV-04-181-S-BLW (D. Idaho 2005).*

58. By appointing these industry representatives into high-level positions within the Interior Department, and suppressing the analysis of agency scientists, BLM is now able to issue the new grazing regulation revisions that cater to the livestock industry, accompanied by an inadequate and misleading environmental analysis, as discussed further below.

The Current Attempt To Gut The Rangeland Reforms.

59. The rulemaking process for the current regulation revisions began in March 2003, when BLM published a Notice of Intent to revise the grazing regulations in

the Federal Register. BLM thereafter held four public meetings and took comments as part of a so-called "scoping" process for the proposal to revise the grazing regulations.

60. On December 8, 2003, BLM published the text of its proposed rule to amend the grazing regulations. *See 68 Fed. Reg. 68,452 (December 8, 2003).* The notice states that the revisions were designed to "improve working relationships" between BLM and ranchers. *Id.*

61. Notably, BLM did not release any draft NEPA analysis when it published the proposed regulation changes in December 2003. As explained further below, the failure to issue timely NEPA analysis apparently was because Administration officials declined to publicly release a draft EIS in which BLM's own scientific experts found that the proposed regulation changes would have significant adverse environmental effects, exclude public participation, and reduce BLM's livestock grazing management effectiveness.

62. About a month after announcing the proposed regulation changes, and after hastily rewriting sections of the draft EIS to alter the views of its own scientists, BLM published a notice of availability for the draft EIS on January 2, 2004, and allowed public comment until March 2, 2004. BLM also held six public meetings to take comments on the proposed rule and draft EIS during that same period.

63. Plaintiff Western Watersheds submitted extensive comments on the proposed grazing regulations, as did other concerned conservation groups, scientists, and public land users. Western Watersheds also provided testimony at the public hearings in Boise and Salt Lake City. The overwhelming majority of comments, Plaintiff is informed and believes, opposed the proposed regulations' weakening of public

participation and environmental protections, and the turnover of ownership interests and control of the public lands to the livestock industry.

64. Indeed, the proposed grazing regulation revisions, as described in one 2004 law review article, "are a virtual wish list for ranchers seeking liberation from environmental constraints and restoration of their historic position as dominant users of the western public lands." *See Prof. J. Feller, "Ride 'Em Cowboy: A Critical Look At BLM's Proposed New Grazing Regulations," 34 Environmental Law 1123, 1125 (2004).*

65. In part, the proposed grazing revisions would give the livestock industry what it failed to attain in the *Public Lands Council* litigation, including by reinstating the use of "grazing preferences" in permits; and by allowing ranchers to obtain ownership of water rights, fences, wells, and pipelines on public lands, "thus crippling BLM's ability to manage the land in the greater public interest." *Id., at 1125-26.*

66. Further, the proposed grazing regulation revisions would "repeal some environmental standards, delay implementation of others, and render most of the rest unenforceable. They would remove critical opportunities for public land users other than ranchers to provide input into management decisions, slant environmental analyses and appeals procedures to favor ranchers over environmentalists, and even make it easier for ranchers convicted of environmental crimes to obtain grazing permits." *Id., at 1125* (citing regulation provisions).

67. Public comments by Western Watersheds and others opposed these and other changes proposed by BLM. The comments also established in detail the scientific evidence and data showing that grazing is causing serious ecological problems on public lands across the West; that adverse environmental impacts would occur as a result of the

grazing regulation revisions; and that BLM's depiction of the environmental impacts of the proposed regulations in the EIS was inaccurate, incomplete, and misleading in many ways.

2005 Final EIS And Grazing Regulation Revisions.

68. On June 17, 2005, i.e., more than fifteen (15) months after the public comment period closed on the proposed regulation changes and draft EIS, BLM publicly released the Final EIS along with the text of the ~~final~~ **revised** grazing regulations.

69. As noted on the cover of the Final EIS, it was actually printed in October 2004, but not released until June 2005. The "Errata" section (in different typeface from the rest of the EIS) states: "Due to delay in final clearance, the EIS was not cleared for release until June, 2005," and directs that all references to the EIS should include the language "released June 2005." BLM has not publicly explained why it delayed so long in releasing the EIS after it was finalized and printed.

70. The Final EIS further states, in the Errata section, that these regulation revisions will take effect 30 days after a Record of Decision is published in the Federal Register. **At the time this case was first filed,** Plaintiff **was** ~~is~~ informed that BLM plan**ned** to publish the Record of Decision on or about July 22, 2005. ~~Hence, the revised regulations may take effect 30 days after that, unless enjoined by this Court.~~ **Plaintiff thus brought this action to seek injunctive relief preventing the regulations from taking effect, as anticipated, in August 2005.**

70a. After Plaintiff filed this lawsuit, and also filed a motion for immediate injunctive relief, counsel for BLM advised Plaintiff's counsel that BLM would not proceed to publish and implement the regulation changes in August 2005, as

previously announced. In addition, BLM issued a press release stating that it intended to prepare a Supplemental Environmental Impact Statement for the proposed grazing regulation changes. Accordingly, Plaintiff agreed to withdraw the motion for injunctive relief, "at least temporarily," but reserved the right to refile the motion in the event that BLM determined to proceed with finalizing the challenged regulations. See Docket No. 5.

70b. After further communications with counsel for BLM, Plaintiff was advised that BLM would not finalize the proposed regulation changes until spring 2006, at the earliest; and that BLM took the position that there was no final agency action at that time. Based on this, and to avoid unnecessary litigation, Plaintiff filed a "Notice of Voluntary Dismissal of First, Second and Third Claims For Relief," stating that Plaintiff was voluntarily dismissing those claims challenging the proposed grazing regulations, but "without prejudice to refiling before this Court if BLM does issue grazing regulation revisions in the future that are unlawful." See Docket No. 9.

70c. On March 31, 2006, BLM publicly released a so-called "Addendum" to the June 2005 Final EIS, which purports to respond to certain comments that BLM allegedly "became aware" of after publication of the Final EIS. A copy of the "Addendum" is available on BLM's website at: http://www.blm.gov/nhp/news/releases/pages/2006/pr060331_grazing.htm.

70d. BLM also published notice in the Federal Register, stating that the "Addendum" would be available for review until April 29, 2006; but did not solicit comments from the public. 71 Fed. Reg. 16274 (3/31/06).

70e. Contrary to its prior public statement in August 2005 that it would prepare a Supplemental Environmental Impact Statement, BLM has not prepared any such Supplement EIS; and the "Addendum" does not provide any materially different analysis of the likely environmental effects of the proposed grazing regulation changes than is set forth in the Draft and Final EISs.

70f. On July 12, 2006, BLM published a Final Rule in the Federal Register to adopt the new grazing regulations. See 71 Fed. Reg. 39402-509 (July 12, 2006). According to this Federal Register notice, the Final Rule will take effect thirty (30) days after the date of publication, on August 11, 2006.

70g. The July 2006 Final Rule comprises over 100 pages of 3-column text in the Federal Register, the vast bulk of which simply reiterates BLM's contentions that the new regulations are "administrative" in nature, and intended to improve BLM's working relationships with ranchers and its grazing management. The Final Rule also reiterates BLM's "opinions" that the new rules will not substantively affect the existing Fundamentals of Rangeland Health or other grazing management provisions; and will not have long-term adverse environmental consequences.

71. The Final EIS and regulation changes adopted by BLM **in the July 2006 Final Rule** are nearly identical to the proposed changes published in December 2003 and the draft EIS released in January 2004. Indeed, the bulk of the Final EIS differs from the draft EIS only in small ways, noted at the beginning of each chapter. **The March 2006 "Addendum" made further minor changes in the proposed regulations; but did not substantively alter BLM's analysis of the environmental and other effects.**

71a. Since at least 2003, in response to pressures from ranching permittees, BLM has been considering ways to avoid conducting NEPA analysis for many grazing permit decisions, which BLM has failed to address in its NEPA documents for the new grazing regulations. In January 2006, BLM published in the Federal Register notice of its intent to revise its policies and procedures so as to increase its use of "categorical exclusions" to avoid meaningful NEPA analysis and further exclude public involvement in grazing decisions. See 71 Fed. Reg. 4159 (1/25/06). The March 2006 "Addendum" for the proposed grazing regulation changes, however, wholly fails to address this proposed action; and nowhere in BLM's NEPA documents for the proposed grazing regulation changes has BLM addressed (much less evaluated) how exclusion of grazing decisions from NEPA review may have direct, indirect and/or cumulative effects in connection with the grazing regulation changes.

72. The final grazing regulation revisions would implement numerous proposed changes in the existing grazing regulations that will adversely impact the environment, Western Watersheds, and the public interest in many ways, including the following summary (with citations to the specific revisions in 43 C.F.R. Part 4100 noted in italics):

Limiting or Excluding Public Participation By Conservation Groups:

73. One set of changes eliminates meaningful public involvement in grazing management decisions, while increasing the livestock industry's influence. Reversing the very provisions of the 1995 regulations that added opportunities for participation, the regulations now eliminate the requirement that BLM must consult, cooperate, and

coordinate with interested publics before adjusting allotment boundaries, *§ 4110.2-4*; changing active grazing use, *§ 4110.3-3(a)(1);* authorizing emergency closures, *§ 4110.3-3(b)(1);* issuing or renewing grazing permits, *§ 4130.2(b);* modifying terms in grazing permits, *§ 4130.3-3(a)*; changing grazing use within terms and conditions of permits, *§ 4130.4(b)(3);* and issuing temporary non-renewable (TNR) grazing authorizations, *§ 4130.6-2(a)*. Not only is the public excluded from these key grazing management determinations – including the issuance and renewal of permits themselves – but the new regulations also provide for BLM and permittees to reach "agreements" over such decisions without any public involvement, or right to protest and appeal either, *§ 4110.3-3(a)(1)*.

74. Moreover, under the revised grazing regulations, BLM can now issue TNR authorizations effective immediately, with no ability by Western Watersheds or other interested publics to protest a proposed decision or appeal a final decision, thus removing yet another layer of public involvement. *§§ 4130.6-2 & 4160.1(c).*

75. Furthermore, BLM is making it more burdensome to remain an interested public. Under the 1995 regulations, anyone who requested to be an interested public remained on the list, and could participate in all grazing management processes whenever he or she had concerns over upcoming activities. Now, to remain on the list, a party is required to respond at each and every opportunity, or risk involuntary removal from the interested public list, *§ 4100.0-5*.

76. At the same time as it removes substantial opportunities for the public to be involved in grazing management, BLM is increasing access for the livestock industry in BLM's decisionmaking process. Under the new regulations, BLM must consult with

State, local, and Tribal grazing boards when reviewing allotment management plans and range improvement. *§ 4120.5-2(c).* This provision was added despite the decision in 1995 to eliminate the need to consult with local grazing boards.

Eviscerating The Fundamentals of Rangeland Health:

77. Another focus of the new regulations effectively guts the Fundamental of Rangeland Health, which BLM adopted in 1995.

78. In the 1995 regulations, BLM defined the "Fundamentals of Rangeland Health" in terms of four broad ecological conditions necessary for healthy rangelands. *See 43 C.F.R. § 4180 et seq.* In addition, the regulations called for adopting additional Standards and Guidelines For Rangeland Health, on a state-by-state basis, to provide site-specific measures of rangeland health. *Id.*

79. The Fundamentals of Rangeland Health regulations further provided that BLM should use all available data and information to assess whether public lands allotments are meeting the Fundamentals and the Standards and Guidelines. The 1995 regulations also impose a mandatory requirement that, if livestock grazing is found to be causing an allotment to violate these minimum ecological requirements, BLM's authorized officer must change grazing management promptly, and no later than the next grazing year, by adopting cuts in livestock numbers or other measures necessary to meet (or make significant progress toward meeting) the relevant Fundamentals, Standards and Guidelines. *Id.; see also Idaho Watersheds Project v. Hahn, 187 F.2d 1035 (9th Cir. 1999).*

80. In the revised grazing regulations, however, BLM is eviscerating these regulatory measures, first, by removing the requirement to assess compliance with the

Fundamentals, if state-specific Standards and Guidelines are in place. *§ 4180.1*. The agency claims that the Fundamentals are redundant to the Standards and Guidelines, despite clear language in the 1995 proposed rule and 1994 Rangeland Reform EIS that BLM deemed both necessary to improve the conditions of the public lands. *60 Fed. Reg. At 9954, 9956; Rangeland Reform DEIS at 1-16, 1-18.*

81. Second, in making a determination that grazing is causing failures of the Standards and Guidelines, *§ 4180.2(c)(1)*, the revised regulations actually forbid BLM from relying on all appropriate information and data deemed reliable by the authorized officer, and, instead, require that BLM rely exclusively on "monitoring" data, before it can determine that grazing is causing failures of the Standards and Guidelines, *§ 4180.2(c)(1)*, again contrary to direction in the 1995 rulemaking that the agency should not rely only on monitoring data before making changes to grazing use, but instead use all information and data deemed reliable by the authorized officer. *60 Fed. Reg. at 9931, 9956.*

82. In fact, BLM lacks the funding and staffing to undertake such "monitoring," and has rarely if ever done so in the past. By requiring that multi-year "monitoring" data be collected before it can determine whether the applicable Standards and Guidelines for Rangeland Health are even being met or not, BLM's revised regulations would sharply reduce if not eliminate the occasions in which BLM would find any ecological problems on the public lands. At a minimum, this monitoring requirement will extend for years the timeframes in which BLM will find any ecological problems on its grazing allotments.

83. Third, the revised grazing regulations would also delay any BLM action designed to remedy violations of the Standards and Guideline that it might find. Under the revised regulations, BLM will now have 24 months just to propose a new grazing regime; and then will have until the following grazing year to begin implementing that action. *§ 4180.2(c)(1).*

84. Further, if the new grazing decision requires a reduction in grazing use of more than 10% – as is required on the Pleasantview allotment, among many others in Idaho and other western states – the revised regulations forbid BLM from implementing these necessary changes immediately, and instead require that BLM "phase-in" the reduction over a five (5) year period. *§ 4110.3-3(a)(1).*

85. These time frames, combined with the additional time needed to collect monitoring data, will thus delay any remedial actions by BLM to correct ongoing livestock degradation of the public lands for many years, if not decades; and will not allow for expeditious improvement of degraded conditions, as contemplated under the existing regulations and applicable statutes, as BLM itself previously emphasized was so important. *60 Fed. Reg. at 9907.*

Favoring Ranchers in Ownership Rights and Other Provisions

86. In addition to providing the livestock permittees with far greater influence over grazing management decisions, the regulation revisions would also reverse BLM's existing regulations to give permittees ownership of title to permanent range improvements with BLM, *§ 4120.3-2(b),* and remove the requirement that BLM retain livestock water rights in the name of the United States to the extent allowed by State law. *§ 4120.3-9.*

87. Likewise, the revised regulations would reinstate the definition of "grazing preference" that was changed in the 1995 regulations, and upheld by the Supreme Court, where preference refers to the amount of forage apportioned and attached to base property owned by the permittee. *§4100.0-5*. **In addition, the grazing regulation revisions eliminate the prior term "permitted use," and replace it with the terms "grazing preference," "preference," or "active use"; and would further redefine "active use" to mean "that portion of the current authorized use which is available for livestock grazing based on rangeland grazing capacity and resource conditions in an allotment under a permit or lease and which is not in suspension." These definition changes appear to be an attempt to eliminate "carrying capacity" as a range management concept, equating it instead to past livestock usage irrespective of the true "carrying capacity" of an allotment.**

88. The revised regulations also allow livestock permittees to extend their grazing on the public lands, by providing that temporary changes "within the terms and conditions of a permit" mean temporary changes in the number of livestock and period of use for one grazing year so long as the changes do not exceed the amount of "active use" specified in the permit and occur not earlier than 14 days before the season of use begin date and no later than 14 days past the season of use end date. *§ 4130.4(b).*

89. Further, under the existing regulations, BLM may deny grazing privileges to any permittee who is convicted of violating certain Federal or State laws, if the conviction is for an action related to grazing use authorized by a BLM permit or lease and public lands is involved. Now, BLM is limiting this provision by requiring that the conviction must have occurred on the specific allotment covered by the permit,

§4140.1(c)(1). Thus, for example, a permittee's cattle trespassing onto another allotment would not be covered under this new provision; and permittees otherwise would be given far more latitude to violate federal laws and permit requirements, without risking losing their grazing privileges.

90. These and other changes to the regulations are contrary to the language and intent of FLPMA, PRIA, and TGA, and are not supported by a reasoned basis, all in violation of the APA.

BLM Suppression And Avoidance Of Science Showing Adverse Effects.

91. Further, BLM has violated NEPA by misrepresenting the sweeping nature of the changes it is making to the grazing regulations, and their likely adverse impacts on the environment, the public, and on BLM's ability to properly manage grazing on the public lands. Rather than candidly and fully advising the public of these changes and their impacts, BLM has instead "whitewashed" its analysis and rulemaking, suppressed the contrary views of its own scientists, and misrepresented the nature and effects of its actions.

92. One clear example of this is BLM's suppression and alteration of the contrary views of its own expert scientists, which BLM did not address or admit in its NEPA analysis **leading up to the June 2005 Final EIS**.

93. Indeed, the first version of the draft EIS for the proposed grazing regulation revisions, known as the Administrative Review Copy (or "ARC-DEIS"), was prepared by BLM staff and circulated to BLM offices around the country for their review on November 18, 2003, three weeks before publication of the proposed regulations on December 8, 2003.

94. BLM's professional staff and agency scientists drafted relevant portions of the ARC-DEIS addressing effects of livestock grazing in general, and environmental impacts of the proposed changes in particular. These scientists documented extensive harms to riparian areas, wildlife, aquatic habitat, and plant communities from livestock grazing, citing numerous studies to support their statements.

95. Yet much of this information was excised from the draft and final EISs released to the public by BLM, including the following:

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

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

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

D. Discussions of various studies concluding that "livestock grazing has led to a decline in neotropical migratory birds that utilize riparian habitat," "livestock grazing was the fourth leading cause of species endangerment in the U.S. and the second leading cause of plant endangerment," "livestock grazing has major effects on stream channel morphology," and "in Arizona and New Mexico there are more than 100 special

status species dependent on riparian ecosystems and they are all sensitive largely due to livestock grazing. This can be generalized to most special status species on rangelands."

96. Similarly, the draft and final EISs released by BLM for the grazing regulation revisions suppressed and avoided even mentioning the conclusions stated in the ARC-DEIS that the proposed grazing regulation revisions would have negative environmental impacts in many ways. Among these were the following observations:

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

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

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

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

E. The revisions that delay changes or reductions in grazing will further "exacerbate long term impacts on riparian habitats, channel morphology and water quality. Degradation of channel morphology and water quality will continue in watersheds with declining vegetative cover due in-large to the increasing and burdensome administrative procedural requirements for assessment and for acquisition of monitoring data."

97. Media reports and other information also reveal that the Administration undertook other steps to "sanitize" the record for this rulemaking, to avoid any mention of adverse environmental impacts from the regulation changes, and to present a misleading picture to the public that the regulation changes would supposedly have no or minor environmental effects.

98. Specifically, as reported in the L.A. Times on July 16, 2005, professional staff in the U.S. Fish and Wildlife Service (a sister agency to BLM in the Department of Interior), prepared comments on the draft EIS noting in detail many ways in which the regulation changes would have significant adverse effects on fish and wildlife resources, as well as the Service's own management of public lands under its jurisdiction. These draft comments received approval from the three western Service Regional Directors, and were sent to BLM as a draft, but it appears that political appointees in the Department of Interior suppressed these comments, and excluded them from the public record.

99. The draft Fish and Wildlife Service comments, which Western Watersheds has obtained, included the following observations, which BLM has not addressed in its ~~NEPA analysis or rulemaking~~ June 2005 Final EIS:

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

B. “Removing some requirements to consult with the ‘interested public’ while adopting a requirement to cooperate with State, county, or locally established grazing advisory boards (PR section 4120.5-2) conveys preferential treatment to one group over another. We believe adopting this modification is inconsistent with current Department of the Interior objectives to promote coordination, cooperation, and consultation with all entities to accomplish conservation.”

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

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

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

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

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

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

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

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

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

100. According to the same LA Times story, the Environmental Protection Agency (EPA) also prepared comments on the proposed grazing regulation revisions, which also were excluded from any analysis and the final EIS. These comments focused on water quality and aquatic habitat, concluding that the new regulations appeared to “reduce the flexibility” to act against “degradation of water quality or rangeland” and could delay urgent intervention that would alleviate such degradation.

101. Comments submitted by Western Watersheds and others raised very similar points as these from BLM’s own scientists, Fish and Wildlife Service, and EPA. Yet the Final EIS avoids squarely and candidly discussing these impacts.

102. Instead, consistent with the history noted above of suppressing contrary scientific views and avoiding any recognition of adverse impacts, the Final EIS presents a false and misleading portrait that minimizes the true nature of the changes that will occur under the grazing regulation revisions and that misrepresents their likely effects as being

minor at best. These misrepresentations are rife throughout the document, as the following examples illustrate:

A. "This rulemaking is designed to provide limited refinements to the larger grazing reforms made in 1995. The BLM does not anticipate that the proposed changes would have significant environmental effects. . . ." *FEIS, p. ES-1.*

B. "There are no irreversible or irretrievable commitments of resources directly resulting from the proposed regulation changes nor are there any projected discernible effects from short-term uses on long-term productivity of resources arising from this rulemaking. Most of the proposed regulatory changes have little or no adverse impacts on the human environment. . . . In the long-term, it is expected that the effects of these provisions would be beneficial to rangeland health." " *FEIS, p. ES-5.*

C. "A determination was made that the regulatory changes would have no adverse effects to proposed, candidate, threatened or endangered species, or designated or proposed critical habitat from the proposed regulation changes." *FEIS, p. ES-6.*

103. Contrary to requirements under NEPA, BLM makes these statements without taking a hard look at the impacts of the regulation changes, disclosing the contrary scientific viewpoints of its own staff and sister agencies, or supporting its summary conclusions with data and analysis.

104. For instance, the Final EIS asserts that by 2002, BLM had conducted Fundamentals of Rangeland Health assessments for 7,437 allotments (comprising 58.7 million acres), out of 21,273 total allotments west-wide (or 35% of the total number of allotments). Of these, BLM claims that 1,766 allotments were not meeting standards;

and that 1,213 of these were due to current livestock grazing (i.e., about 16% of the allotments studied). *See FEIS, p. 3-19.*

105. The Final EIS provides no citation, support, or other justification for these figures; yet it uses them repeatedly to contend that excluding public participation and substantially altering the Fundamentals of Rangeland Health will not adversely affect public lands or resources. **Likewise, the July 2006 Final Rule simply reiterates these assertions, without even attempting to update the analysis from 2002 or to provide any more detail about the locations, sizes, resource issues, and other aspects of the allotments in question.**

106. In the absence of full details that might support these figures, it is impossible to verify the veracity of these claims. However, even if accurate, BLM's determination that 16% of the public lands under its grazing management are not meeting the Fundamentals of Rangeland Health ecological standards means that some 25.6 million acres of public lands (by its own estimation) are experiencing serious ecological problems due to livestock grazing management – a fact not addressed by BLM.

107. Further, it appears that these statistics are also false or misleading. For example, based on Western Watersheds' familiarity with allotments in Idaho and other western states, it appears that many of the larger allotments with highest resource values – including wilderness study areas, riparian habitat and streams, and upland habitats for sensitive species (including sage grouse and others) – reflect widespread failures to meet the applicable Fundamentals of Rangeland Health and Standards and Guidelines; and that these problems exist over large portions of the relevant ecosystems.

108. As just one example, in the Jarbidge Resource Area, since 1999 BLM has conducted Standards and Guidelines Assessments and Determinations for 26 allotments, covering over 800,000 acres (or about half of the resource area); and BLM found that **all** of these allotments are not meeting one or more applicable standard, with many of the failures due to current livestock grazing management.

109. BLM's failure to take a hard look and adequately disclose information to the public also shows up consistently throughout its discussion of the "Environmental Consequences" in the Final EIS, *pp. 4.23 to 4-51*. For example, when assessing the impacts from changing the role of public participation, BLM simply asserts that it will be beneficial because it will allow for increased efficiency. *FEIS at 4-28.* Yet BLM does not discuss how much time is actually spent consulting with interested publics, or whether removing them from early consultation will increase later appeals and litigation and what affect that might have on efficiency. There is also no discussion about the impacts to the public from requiring them to respond to all opportunities to participate in order to remain on an interested public list. And BLM completely fails to acknowledge or assess the impacts to vegetation, wildlife, soils, and other resources when it eliminates viewpoints, knowledge, and experience of interested publics, such as Western Watersheds, from its decision-making processes.

110. Similarly, BLM fails to candidly assess the adverse environmental impacts that will result from the revised regulations essentially gutting the Fundamentals of Rangeland Health. Among other defects, BLM's NEPA analysis never looks at whether each state's Standards and Guidelines fulfill all four Fundamentals, thus rendering them redundant as BLM asserts, or whether this change has any impact on resource values. It

also fails to even identify what the new monitoring requirements will be, i.e. what type of monitoring will be required, how long such monitoring will take, and how BLM plans to fulfill that monitoring when it does not have a sufficient budget or staff. Further, it does not assess the effects on various resource values from delaying implementation of changes in grazing due to both long-term monitoring requirements and extensions of deadlines, especially in combination with the five-year phase-in requirement.

111. Additionally, BLM's Final EIS does not consider the effect on vegetation, wildlife, and soils from changes in title to range improvements and water rights. Both the Rangeland Reform EIS and the comments from BLM and other agency scientists all recognize that, under these changes in the regulations, BLM will lose flexibility and discretion in managing range improvements and water rights to benefit the public lands and other resources, but BLM does not acknowledge this impact. Neither does BLM acknowledge that permittee ownership of range improvements and water rights will result in additional direct and indirect adverse impacts to wildlife, including sensitive and declining species, including because the permittees typically do not construct and maintain range projects in accordance with the biological requirements of these species.

112. Neither does the Final EIS even address the issue of cumulative impacts at all, as required by NEPA. This is despite the fact that BLM is currently engaged in unprecedented energy development activities (including programmatic and site-specific NEPA analyses) on the public lands, including for coal, oil and gas, coalbed methane, wind, geothermal, and related infrastructural development, as well as other development activities (including gold mining and other mining activities), which individually and together with livestock grazing are causing (or likely to cause) alteration and

fragmentation of native habitats, soils, vegetation, and other biotic resources across the public lands at issue here. Similarly, BLM has failed to address the cumulative impacts of existing and likely future drought conditions, which further deplete scarce water resources in the West that are already depleted and degraded by livestock grazing.

112a. After Western Watersheds filed the initial Complaint in this matter, and submitted its motion for injunctive relief to prevent the grazing regulation changes from taking effect – filings which prominently featured the suppressed Fish and Wildlife Service and EPA comments, and the national media reports about them – BLM delayed finalizing the regulations, as previously noted above. Although BLM publicly indicated that it intended to conduct further public comment and prepare a Supplemental EIS for the proposed grazing regulation changes, it never did so. Instead, it issued the March 2006 "Addendum" to the Final EIS, to purportedly respond to the Fish and Wildlife Service comments. The "Addendum" fails to cure the defects of the Final EIS, however; and is insufficient to remedy BLM's NEPA violations, as alleged herein. Indeed, both the March 2006 Addendum and the July 2006 Final Rule continue to reiterate BLM's false assertions that the new regulations are "administrative" in nature and will not substantively change the Fundamentals of Rangeland Health or otherwise cause adverse environmental impacts; and they largely rely on BLM's asserted "opinions" to reject the criticisms of Fish and Wildlife Service and others as being unjustified.

113. In these and many other ways, which Western Watersheds will present to the Court at the appropriate stage of the litigation, the Final EIS and the revised grazing

regulations that BLM has adopted based on that EIS are inadequate, misleading, false, arbitrary and capricious, an abuse of discretion, and contrary to law.

Adverse Impacts Of The Revised Grazing Regulations.

114. Unless enjoined by this Court, the grazing regulation revisions adopted by BLM will take effect on **August 11, 2006** ~~or about August 22, 2005~~, and will cause immediate and growing irreparable harm to Western Watersheds, the environment, and the public interest, in many ways.

115. First, the new regulations will authorize BLM to cease providing information as of right to Western Watersheds on dozens of allotments in the Idaho Falls District, as well as hundreds of other allotments elsewhere in Idaho and the West. The changes in the role of "interested publics" under the revised regulations will allow BLM to exclude Western Watersheds from information gathering, communications and other processes relating to a host of grazing management decisions, including the issuance and renewal of grazing permits as well as "TNR" authorizations. This will prevent or impair Western Watersheds from gathering site-specific allotment information, communicating it to BLM in a timely fashion, and participating in all decision-making stages for grazing management on these allotments, while ranchers will have full and unfettered access to BLM to promote their interests. It will also result in adverse impacts to the environment in many ways, as discussed in the comments of Western Watersheds, the ARC-DEIS, the U.S. Fish and Wildlife Service, and many others, including because BLM will no longer be informed of existing conditions or receive the expertise and input of Western Watersheds.

116. Second, the revised grazing regulations will also immediately impose an extraordinary burden on Western Watersheds in its attempts to remain informed on BLM's livestock grazing decisions. As stated previously, the new regulations require that Western Watersheds must respond at each and every opportunity on each and every allotment, or be eliminated from interested public status. If and when that happens, Western Watersheds will then be deprived even of notice that BLM has adopted new grazing management decisions on the allotments from which it may be dropped as a interested public, and thereby potentially lose rights to appeal such decisions administratively.

117. Third, the gutting of the Fundamentals of Rangeland Health will further result in immediate and growing irreparable harms to the public lands, streams, and wildlife values that Western Watersheds seeks to defend and protect. The rulemaking process which BLM undertook in 1993-95 for adopting the Fundamentals of Rangeland Health regulations and requirements, as well as subsequent agency findings and directives, underscore that prompt changes in grazing management are often needed to avoid such irreparable harms; and that BLM must not wait for years before determining that a problem exists or responding to it. But under the revised regulations, that is exactly what will happen; and public lands that are facing serious livestock-related degradation (including but not limited to the Pleasantview allotment, and many others in the Idaho Falls District and elsewhere in Idaho and other states) will accordingly suffer further irreparable ecological degradation and destruction.

118. Fourth, the "management flexibility" and turn-over of ownership to ranchers of range projects and water rights will rapidly lead to further impairment of

BLM's ability to manage grazing on the public lands in a responsible manner and in compliance with FLPMA and other statutes; and again lead to irreparable environmental harm**; <u>while giving permittees claims of "property rights" and "ownership" that will create significant procedural, legal, and possible monetary difficulties for the United States in the future, if the regulations are not enjoined from taking effect</u>**. Again, the comments submitted by Western Watersheds, the ARC-DEIS team, U.S Fish and Wildlife Service, and others underscore this point; but BLM has failed to address it in the Final EIS.

119. These and other forms of irreparable harm to Western Watersheds, the environment, and the public interest cannot be remedied by monetary damages; nor is there any other adequate remedy at law. Only prompt issuance of injunctive relief to prevent the revised regulations from taking effect, pending full adjudication of Western Watersheds' claims, will avoid these and other forms of irreparable harm from BLM's actions herein.

The 2005 Pleasantview Decision.

120. Finally, Western Watersheds also challenges here the latest (2005) grazing decision for the Pleasantview allotment, as identified above.

121. In many ways, the Pleasantview allotment is illustrative of the ecological harms being caused by livestock grazing on the public lands, which BLM has failed to address in any meaningful fashion; and which will continue and accelerate under the recent grazing regulation changes, if they are allowed to take effect.

122. The Pleasantview allotment consists of 69,806 acres of mostly public lands managed by the BLM, west of Malad City, Idaho. The topography is mountainous

throughout the allotment. The area is steep and rugged with narrow valleys and, like much of the Interior West, has limited water sources.

123. Native vegetation within the allotment includes Douglas fir, aspen, big sagebrush, bluebunch wheatgrass, and juniper. At least two populations of Cooper's rubber-plant, a BLM sensitive species, are present on the Pleasantview allotment and have been degraded by livestock grazing and associated off-road vehicle use. Numerous species of migratory birds, as well as sage grouse and sharptail grouse – both designated by BLM as sensitive species – inhabit the sagebrush and juniper habitat throughout the allotment.

124. Three creeks also are located on the allotment: Wood Canyon, Sheep Creek and the South Fork of Sheep Creek. Comprising approximately 15 percent of the allotment, the dry canyon bottoms feature the most productive soils, but today consist almost entirely of non-native and invasive weeds due to the impacts of livestock grazing.

125. Grazing has caused, and continues to cause, significant resource damage throughout the Pleasantview allotment. In 2000, the BLM made detailed findings of extensive violations of the Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management, adopted pursuant to the Fundamentals of Rangeland Health regulations, *43 C.F.R. § 4180 et seq.*, across the entire portion of the Pleasantview allotment used by cattle.

126. These findings are summarized in the "Determination for Achieving Standards for Rangeland Health and Conforming with Guidelines for Livestock Grazing Management" ("Determination"), issued by BLM on September 27, 2000. The Determination is based on the "2000 Pleasantview Allotment Assessment/Evaluation"

("Assessment"), which compiled and analyzed detailed monitoring and evaluation information collected by BLM between 1993 and 1999.

127. The Determination and Assessment conclude that the Pleasantview allotment is violating the applicable Standards for: Riparian Areas and Wetlands (Standard 2), Stream Channel/Floodplain (Standard 3), Native Plant Communities (Standard 4), Water Quality (Standard 7), and Threatened and Endangered Plants and Animals (Standard 8); while the Watersheds Standard (Standard 1) is not being met in the upland canyon bottoms and riparian areas.

128. The Assessment and Determination also stated that the carrying capacity of the allotment was being exceeded by 19%. Because BLM's grazing regulations and FLPMA provide that grazing cannot exceed an allotment's carrying capacity, this finding alone dictated an immediate reduction of more than 10% on the allotment – a reduction that the revised grazing regulations would prohibit BLM from implementing, except over a 5-year "phase in" period.

129. As a result of these findings, BLM issued an Environmental Assessment ("EA") and decision in 2001 revising the grazing permit, purportedly to address these Fundamentals of Rangeland Health violations. Due to political pressure brought to bear by the permittees, however, the necessary grazing management changes were not implemented, and BLM only reduced cattle grazing use 9% by shortening the season of use.

130. Western Watersheds and another conservation group thus challenged this 2001 decision, in the prior Pleasantview litigation referenced above, Civil No. 01-529-E-

BLW. Eventually, a stipulated settlement agreement was reached between BLM and Western Watersheds in that litigation, approved by the Court.

131. Pursuant to the settlement, BLM issued another EA and decision in 2002, reducing cattle use by 19% in order not to exceed the determined carrying capacity of the allotment. The decision also implemented larger riparian pastures to be grazed two out of three years.

132. Unhappy with the 19% reduction in cattle use, the permittees (the Pleasantview Livestock and Grazing Association) pressured BLM to initiate yet another review of the allotment by an "outside" party, which issued a report with specific recommendations for a deferred grazing with herding alternative.

133. In early 2005, BLM issued yet another EA ("2005 EA") to again revise the grazing permit and change the grazing management on the Pleasantview allotment, pursuant to the permittees' wishes. BLM's proposed alternative in the 2005 EA was for a deferred rotation with herding grazing system based on the system recommended by the "outside" party, and eliminated the 19% cattle use reduction previously ordered by BLM. In BLM's proposed alternative, however, many of the "outside" party's essential and specific recommendations were altered, made purely voluntary, or left out altogether.

135. In March 2005, BLM issued its latest Final Decision and Finding of No Significant Impact ("FONSI") implementing the new grazing system for the Pleasantview allotment.

136. The 2005 EA, FONSI and Final Decision are unlawful for a number of reasons. First, by eliminating the 19% cattle use reduction previously required by the 2002 decision, the

revised permit authorizes grazing at levels that exceed the carrying capacity of the allotment as determined by BLM itself, in violation of FLPMA. *See 43 C.F.R. 4130.3-1.*

137. The new permit also violates FLPMA by removing the mandatory terms and conditions that BLM determined are necessary to restore the allotment's seriously degraded resources and meet the Fundamentals of Rangeland Health – instead making them voluntary "guidelines." *Id.* For example, pursuant to the new permit the grazing rotation, utilization level, riparian use, and the type and extent of herding are all so-called "management guidelines."

138. The new grazing permit also violates the existing Fundamentals of Rangeland Health regulations by authorizing livestock grazing on the Pleasantview allotment at levels that continue to impair riparian areas, native plant communities, water quality, and sensitive species. *43 C.F.R. § 4180.*

139. The 2005 EA, FONSI and Final Decision also violate the requirements of NEPA and its implementing regulations in numerous respects. *42 U.S.C. §4321 et seq.; 40 C.F.R. § 1500 et seq.* First, BLM did not conduct an Environmental Impact Statement, despite the significant impacts that grazing has had, and will continue to have, on the Pleasantview allotment; despite the presence of a number of BLM "sensitive" plant and animal species; despite the substantial amount of controversy surrounding BLM's management of, and the numerous changes to the grazing system on, the Pleasantview allotment; and despite the substantial controversy and impacts that the troughs and other water developments have had in drowning dozens of dead birds and small mammals, as documented by Western Watersheds repeatedly to BLM.

140. BLM also violated NEPA because the 2005 EA does not analyze a reasonable range of alternatives to the agency's proposed action – instead analyzing only

the “no action” and “no grazing” alternatives. The 2005 EA also fails to take the “hard look” NEPA requires at the numerous issues and impacts of the historic and proposed grazing on the Pleasantview allotment, including impacts to native plants and wildlife, springs, wetlands, streams, and soils. In addition, the 2005 EA analyzes the proposed grazing system only relative to the pre-2001 grazing system and conditions – ignoring the grazing system, on-the-ground conditions and any monitoring conducted since then.

141. These defects in the 2005 Pleasantview decision illustrate the adverse impacts that BLM’s revised grazing regulations will have on public lands grazing allotments throughout the Upper Snake District and other parts of the West. By capitulating to the permittees’ desire to avoid livestock grazing reductions, ignoring the concerns, comments and data supplied by Western Watersheds and other interested publics, and adopting a grazing system that fails to include necessary terms and conditions to prevent further livestock damage, the agency has thus adopted yet another management scheme that is bound to fail, and that will cause continued adverse harm to the public lands and resources of the Pleasantview allotment. This is exactly the kind of result that will be seen over and over again on the public lands under the revised grazing regulations.

142. Because of these and other legal violations, this Court must reverse, set aside, and remand the 2005 grazing decision for the Pleasantview allotment.

143. If and when the Court takes that action, moreover, BLM will be able to continue to avoid making meaningful grazing management changes on the Pleasantview allotment, as needed to avoid further ecological degradation and begin restoring the

public lands and resources of the allotment, if BLM is allowed to implement the 2005 grazing regulation revisions addressed hereinabove.

144. Among other impacts of the revised regulations, BLM will be able to exclude Western Watersheds from its communications and management decisions with the permittees over any new grazing permit on the Pleasantview allotment; and BLM will be relieved of the current requirement to meet the Fundamentals of Rangeland Health and implementing Standards and Guidelines, including by taking immediate management changes and reducing grazing by 19% in order not to exceed the livestock carrying capacity of the allotment.

145. These and similar impacts of the revised grazing regulations will occur not only on the Pleasantview allotment, but other allotments in the Idaho Falls District (and elsewhere around Idaho and the West) where BLM is engaged in upcoming grazing permit issuance or renewals; making determinations under the Fundamentals of Rangeland Health; issuing TNR authorizations; and undertaking a host of other grazing management decisions.

FIRST CLAIM FOR RELIEF
~~2005~~ GRAZING REGULATION REVISIONS
VIOLATE NEPA AND APA

146. Plaintiff repeats all allegations above as if set forth fully herein.

147. As hereinabove alleged in more detail, BLM has violated NEPA by adopting the **July 2006** ~~2005~~ grazing regulation revisions based on a false, misleading, inaccurate, incomplete, and legally inadequate Final EIS. These violations include, but are not limited to, the following:

A. Violating NEPA's requirement to analyze and take a "hard look" at the direct, indirect, and cumulative environmental impacts of the proposed action along with other past, present and future actions, and to consider a reasonable range of alternatives, as well as the requirement to consult with and obtain comments from other federal agencies, make those comments available to the public and have them accompany the proposal through the agency review process. *42 U.S.C. § 4332(2)(C);*

B. Violating the NEPA regulations' requirement to insure that environmental information is available to the public before decisions are made, that the information is of high quality, and that the scientific analysis is accurate. *40 C.F.R. § 1500.1(b);*

C. Violating the further requirement to ensure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements. *40 C.F.R. § 1502.24;* and

D. Violating the NEPA requirements to disclose and discuss any responsible opposing view which was not adequately discussed in the draft statement. *40 C.F.R. § 1502.9(b).*

148. BLM has further violated NEPA and the APA by approving the revised grazing regulations based on the Final EIS without adequately, honestly, and clearly addressing and explaining why the agency is altering and reversing the analysis and determinations it made in the 1994 Rangeland Reform EIS and associated rulemaking; without responding to public comments on these changes and other aspects of the revised regulations; and without having a reasonable basis in science or fact for its changes in the regulations, as discussed above.

149. BLM's violations of NEPA and the APA as alleged herein are subject to judicial review under 5 U.S.C. § 706; and the **July 2006** ~~2005~~ grazing regulation revisions and Final EIS must be reversed, set aside, and remanded under NEPA and the APA, as being arbitrary, capricious, an abuse of discretion, and/or contrary to law.

WHEREFORE, Plaintiff prays for relief as set forth below.

SEOND CLAIM FOR RELIEF
~~2005~~ GRAZING REGULATION REVISIONS
VIOLATE FLPMA, PRIA, TAYLOR GRAZING ACT, AND APA

150. Plaintiff repeats all allegations above as if set forth fully herein.

151. The **July 2006** ~~2005~~ grazing regulation revisions adopted by BLM are arbitrary, capricious, an abuse of discretion, and violate provisions and requirements of FLPMA, PRIA, the Taylor Grazing Act, and the APA in multiple respects, including but not limited to the following:

A. Violating FLPMA's requirements for public participation in grazing management decisions, *43 U.S.C. §§ 1702(d), 1712(f), 1739(e);*

B. Violating FLPMA's mandate to manage for multiple uses on a sustained yield basis in accordance with land use plans, *43 U.S.C. § 1732(a);*

C. Violating FLPMA's requirement to prevent unnecessary and undue degradation, *43 U.S.C. § 1732(b);*

D. Violating FLPMA's mandate that the Secretary may adjust grazing on a date specified if necessary for range conditions, *43 U.S.C. §§ 1732(c), 1752(e);*

E. Violating the Taylor Grazing Act's requirement to do all things necessary to preserve land and its resources from destruction or unnecessary injury, *43 U.S.C. § 315b*; and

F. Violating PRIA's requirement to manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process established pursuant to FLPMA, *43 U.S.C. § 1901(b)(2).*

152. BLM has further violated these statutes and the APA by approving the revised grazing regulations without adequately, honestly, and clearly addressing and explaining why the agency is altering and reversing the analysis and determinations it made in the 1994 Rangeland Reform EIS and associated rulemaking; without responding **meaningfully** to public comments on these changes and other aspects of the revised regulations; and without having a reasonable basis in science or fact for its changes in the regulations, as discussed above.

153. BLM's violations of law in adopting the revised grazing regulations, as alleged herein, are subject to judicial review under 5 U.S.C. § 706; and the **July 2006** ~~2005~~ grazing regulation revisions must be reversed, set aside, and remanded under these laws and the APA, as being arbitrary, capricious, an abuse of discretion, and/or contrary to law.

WHEREFORE, Plaintiff prays for relief as set forth below.

THIRD CLAIM FOR RELIEF
~~2005~~ GRAZING REGULATION REVISIONS VIOLATE ESA

154. Plaintiff repeats all allegations above as if set forth fully herein.

155. BLM has violated the requirements of Section 7 of the Endangered Species Act, 16 U.S.C. § 1536(a), by failing to undertake consultation with the respective Services over its adoption of the grazing regulation revisions; **by failing to reinitiate consultation over the 1995 Rangeland Reforms, as required by the November 2004**

Biological Opinion; and by failing to ensure that its action in adopting said regulation revisions does not jeopardize the existence of any listed threatened or endangered species or adversely modify their designated critical habitat.

156. Further, BLM has acted in a manner that is arbitrary, capricious, an abuse of discretion, and contrary to law, in determining that the grazing regulation revisions will have "no effect" on any ESA listed species.

157. Such violations of law are judicially reviewable by this Court under the **ESA, 16 U.S.C. § 1540(g)(1), and/or the** APA, 5 U.S.C. § 706; and BLM's "no effect" determination must be reversed, set aside and remanded as being arbitrary, capricious, an abuse of discretion, and contrary to law.

158. Plaintiff ~~is further giving notice herewith~~ **gave notice in July 2005** to the BLM Defendants of their violation of the mandatory duties to undertake consultation and avoid jeopardy under ESA Section 7; and **accordingly has complied with the ESA notice requirements before bringing this Third Claim for Relief in the First Amended Complaint** ~~will amend this complaint after expiration of sixty days from the date of said notice letter to add citizen suit claims for such violations~~, under 16 U.S.C. § 1540(g).

WHEREFORE, Plaintiff prays for relief as set forth below.

FOURTH CLAIM FOR RELIEF
2005 PLEASANTVIEW GRAZING DECISION IS UNLAWFUL

159. Plaintiff repeats all allegations above as if set forth fully herein.

160. BLM's 2005 grazing decision for the Pleasantview allotment, as identified above, represents final agency action that is arbitrary, capricious, an abuse of discretion,

and contrary to law, as being in violation of NEPA, FLPMA, implementing regulations, and the APA, as alleged above in more detail.

161. Such violations of law are judicially reviewable by this Court under the APA, 5 U.S.C. § 706; and BLM's 2005 Pleasantview decision must be reversed, set aside and remanded as being arbitrary, capricious, an abuse of discretion, and contrary to law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

A. Order, adjudge and declare that BLM violated NEPA and the APA in adopting the **July 2006** ~~2005~~ grazing regulation revisions based on the June 2005 Final EIS **and related NEPA documents**, and reverse and set aside said FEIS and the regulations due to such violations;

B. Order, adjudge and declare that BLM violated FLPMA, PRIA, the Taylor Grazing Act, and/or the APA in issuing the **July 2006** ~~2005~~ grazing regulation revisions, and reverse and set aside said regulations;

C. Order, adjudge and declare that BLM violated the ESA and/or APA in issuing the **July 2006** ~~2005~~ grazing regulation revisions **without conducting ESA Section 7 consultation**, and reverse and set aside said regulations;

D. Enter immediate injunctive relief, including (as necessary and appropriate) an ex parte temporary restraining order and/or a preliminary or permanent injunction, prohibiting BLM from implementing the **July 2006** ~~2005~~ grazing regulation revisions, pending final adjudication of the challenges presented herein to the regulation revisions;

E. Enter such other injunctive relief as Plaintiff may specifically seek hereafter, including to ensure that BLM adheres to the existing grazing regulations in its administration of livestock grazing in the Idaho Falls District and other places;

F. Reverse and remand the 2005 Pleasantview grazing decision as being arbitrary, capricious and contrary to law, and enter such specific injunctive relief relating to the Pleasantview allotment as Plaintiff may hereinafter seek or as the Court deems appropriate;

G. Grant Plaintiff its litigation costs and expenses incurred in bringing this matter, including reasonable attorney fee and expert witness fees, pursuant to the Equal Access to Justice Act, the ESA, and all other applicable provisions of law; and

H. Grant such other or further relief as the Court deems appropriate and in service of the interests of Plaintiff and the public interest.

Dated: July 12, 2006

Respectfully submitted,

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

Laurence ("Laird") J. Lucas (ISB # 4733)
llucas@lairdlucas.org

Attorney for Plaintiff Western Watersheds Project