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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

OREGON NATURAL DESERT ASS'N, **COMMITTEE FOR THE HIGH DESERT**, and **WESTERN WATERSHEDS PROJECT**,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT, **ELAINE M. BRONG**, State Director, Oregon/ Washington BLM, **DAVE HENDERSON**, Vale District Manager, BLM, **TOM DABBS**, Field Manager, Malheur Resource Area, BLM, and **JERRY TAYLOR**, Field Manager, Jordan Resource Area, BLM,

Defendants.

Case No. 03-CV-1017-JE

FIRST AMENDED COMPLAINT

(Environmental Matter)

NATURE OF ACTION

1. Federal Defendants Bureau of Land Management (BLM), Elaine M. Brong, State Director, Oregon/Washington BLM, David Henderson, Vale District Manager, BLM, Tom Dabbs, Malheur Resource Area Field Manager, and Jerry Taylor, Jordan Resource Area Field Manager, have violated the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4361, the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701–1784, the Taylor Grazing Act of 1934, 43 U.S.C. §§ 315–315r, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 et seq., in approving of the Southeastern Oregon Resource Management Plan ("SEORMP") and the accompanying Final Environmental Impact Statement (FEIS). The SEORMP and FEIS: (1) fail to consider an adequate range of alternatives to the proposed action; (2) fail to take a "hard look" at the environmental consequences of the proposed action; (3) fail to discuss adequately the cumulative impacts of the proposed action; (4) fail to conduct and rely upon an inventory of the public land resources and values within the planning area; (5) fail to comply with the requirements of multiple use for the management of the public lands; (6) fail to determine which areas are "chiefly valuable for grazing and raising forage crops" and to assess the suitability of specific areas for livestock grazing; (7) fail to establish standards for livestock grazing management; and (8) fail to prevent unnecessary or undue degradation of the public lands. Defendants have also violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by failing to produce documents requested by Plaintiffs—and related to specific areas of concern in this litigation—or otherwise respond to Plaintiffs' FOIA request, within the statutorily prescribed timeframe.

2. Plaintiffs seek relief in the form of a declaration of the Defendants' violations of NEPA, FLPMA, and the Taylor Grazing Act, and an injunction compelling the BLM to amend or supplement the SEORMP/FEIS to satisfy the substantive and procedural requirements imposed by FLPMA, NEPA, and the Taylor Grazing Act on the agency's resource management planning process. Plaintiffs seek an order from this Court directing the BLM to suspend or reduce livestock grazing on allotments, pastures, special management areas, and/or other areas of concern where grazing is determined to be impairing or degrading resource values or otherwise violating federal environmental laws, until such time as the SEORMP has been adequately amended or supplemented to comply with the law. Plaintiffs also seek relief in the form of a declaration of the BLM's violations of the FOIA, and an injunction compelling the BLM to produce the requested documents without further delay.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the National Environmental Policy Act, 42 U.S.C. §§ 4321–4361, the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701–1784, the Taylor Grazing Act of 1934, 43 U.S.C. §§ 315–315r, the Freedom of Information Act, 5 U.S.C. § 552, the Administrative Procedure Act, 5 U.S.C. §§ 701 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 exists between the parties, and the requested relief is therefore proper under 28 U.S.C. §§ 2201–2202 and 5 U.S.C. § 701–06.

4. Venue is proper in this Court under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial

district, Defendants reside in this district, and the public lands and resources and agency records in question are located in this district.

5. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

6. The Plaintiffs have properly exhausted their administrative remedies. Id. § 704.

PARTIES

7. Plaintiff OREGON NATURAL DESERT ASSOCIATION (ONDA) is an Oregon non-profit public interest organization of approximately 1500 members. It is headquartered in Bend, Oregon and also has offices in Portland, Oregon. ONDA's mission is to protect, defend, and restore forever, the health of Oregon's native deserts. ONDA actively participates in Department of the Interior proceedings and decisions concerning the management of public lands in eastern Oregon. ONDA brings this action on its own behalf and on behalf of its members and staff, many of whom regularly enjoy and will continue to enjoy the public lands that are the subject of this resource management plan for educational, recreational, spiritual, and scientific activities. ONDA also has been active in monitoring ecological conditions in the Vale District BLM's Malheur and Jordan Resource Areas. In addition, ONDA and many of its members regularly review, study, and use the types of information requested from the BLM pursuant to the Freedom of Information Act.

8. Plaintiff COMMITTEE FOR THE HIGH DESERT ("CHD") is a non-profit membership organization located in Boise, Idaho, having about 200 members. CHD is dedicated to the protection, restoration, and wise use and enjoyment of public lands and high desert resources. CHD, as an organization and on behalf of its members, is concerned with and active in

seeking to protect and improve the riparian areas, forests, water quality, fisheries, wildlife, and other natural resources and ecological values of the sage-steppe ecosystem of southern Idaho, southeastern Oregon, the Great Basin and other high desert regions of Idaho, Oregon and Nevada. CHD, which recently changed its name from "Committee for Idaho's High Desert," has been active in monitoring ecological conditions in the Vale District BLM's Malheur and Jordan Resource Areas; in reviewing and commenting upon agency grazing and other resource decisions, including those at issue here; and in publicizing the adverse ecological effects of grazing in this region.

9. Plaintiff WESTERN WATERSHEDS PROJECT ("WWP") is a non-profit membership organization located in Hailey, Idaho, having over 1200 members, which is dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West, including southeast Oregon. WWP is also active in monitoring ecological conditions in the Vale District BLM's Malheur and Jordan Resource Areas; in reviewing and commenting upon agency grazing and other resource decisions, including those at issue here; and in publicizing the adverse ecological effects of grazing in this region.

10. Plaintiffs and their members use and enjoy the waters, public lands, and natural resources throughout the areas covered by the SEORMP for recreational, scientific, spiritual, educational, aesthetic, and other purposes. Plaintiffs' members enjoy fishing, hiking, camping, hunting, bird watching, study, contemplation, photography, and other activities in and around the

waters and public lands throughout the planning area. Plaintiffs and their members also participate in information gathering and dissemination, education and public outreach, commenting upon proposed agency actions, and other activities relating to the BLM's management and administration of these public lands. Plaintiffs and their members use information obtained from the BLM to ensure that the agency is satisfying its duties under all applicable statutes, regulations, and management plans, allowing Plaintiffs and the general public to assess current and future BLM land use management and planning actions on the public lands. Plaintiffs and their members also share information obtained through FOIA with their members, other organizations and other agencies, via organization newsletters, websites, email, and media contacts, furthering the public's understanding of the success of BLM land management.

11. The BLM's failure or refusal to comply with federal laws and regulations directly affects Plaintiffs' interests. The interests of Plaintiffs and their members have been and will continue to be injured and harmed by the BLM's actions and/or inactions as complained of herein, including the agency's decisions to allow livestock grazing at current levels without proper review of the environmental consequences, to close less than two percent of the entire planning area to damaging off-highway vehicle use, and to not undertake any further analysis of potential wilderness study areas that were last examined for wilderness characteristics and values more than a decade ago. This decision is particularly harmful in that status quo grazing practices and off-highway vehicle use will be permitted to continue despite a lack of critical baseline information and site-specific analysis of the effects of this action. Unless the relief prayed for herein is granted, Plaintiffs and their members will continue to suffer on-going and irreparable harm and injury to their interests.

12. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT (BLM) is an agency or instrumentality of the United States, and is charged with managing the public lands and resources of the Vale District BLM, Malheur and Jordan Resource Areas, in accordance and compliance with federal laws and regulations.

13. Defendant ELAINE M. BRONG is sued solely in her official capacity as State Director of the Oregon/Washington Bureau of Land Management, in which the Vale District is located. Ms. BRONG is the one of the BLM officials responsible for implementing the SEORMP, and has principal authority for the actions and inactions alleged herein.

14. Defendant DAVID HENDERSON is sued solely in his official capacity as District Manager for the Vale District of the Bureau of Land Management, in which the Malheur and Jordan Resource Areas are located. Mr. HENDERSON is the one of the BLM officials responsible for implementing the SEORMP, and has principal authority for the actions and inactions alleged herein.

15. Defendant TOM DABBS is sued solely in his official capacity as Field Manager for the Malheur Resource Area of the Vale District of the Bureau of Land Management. Mr. DABBS is the one of the BLM officials responsible for implementing the SEORMP, and has principal authority for the actions and inactions alleged herein.

16. Defendant JERRY TAYLOR is sued solely in his official capacity as Field Manager for the Jordan Resource Area of the Vale District of the Bureau of Land Management. Mr. TAYLOR is the one of the BLM officials responsible for implementing the SEORMP, and has principal authority for the actions and inactions alleged herein.

LEGAL BACKGROUND

National Environmental Policy Act

17. The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4361, is our "basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). NEPA's primary purposes are to insure fully informed decision-making and to provide for public participation in environmental analyses and decision-making. See id. § 1500.1(b), (c). The Council on Environmental Quality promulgated uniform regulations implementing NEPA that are binding on all federal agencies. 40 C.F.R. §§ 1500 et seq.

18. The BLM is required under NEPA to prepare an environmental impact statement (EIS) for all major federal actions significantly affecting the quality of the human environment. 42 U.S.C § 4332(2)(C). Preparation of a resource management plan under FLPMA is a major federal action for which an EIS is required. 43 C.F.R. § 1601.0-6.

19. NEPA requires federal agencies to discuss fully a reasonable range of alternatives to the proposed action. 42 U.S.C. § 4332(2)(C)(iii) (EIS must contain "a detailed statement [of] . . . alternatives to the proposed action"); 42 U.S.C. § 4332(2)(E) (independent requirement that agencies must "study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources"). See also 40 C.F.R. § 1502.1 (an EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment").

20. NEPA requires that, in an EIS, an agency must "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. §§ 1502.14. See also 1508.25 (scope of alternatives considered in an EIS must consist of "reasonable courses of actions").

21. NEPA requires federal agencies to analyze and discuss new information as it emerges during the planning process. Federal agencies are under a continuing duty to supplement existing environmental analyses in response to "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1509(c)(1)(ii).

22. NEPA requires federal agencies to provide a "full and fair discussion" of significant environmental impacts that is "supported by evidence that the agency has made the necessary environmental analyses." Id. § 1502.1. The discussion must include an analysis of the likely cumulative environmental impacts of proposed actions. See id. §§ 1508.7; 1508.25(a)(2).

Taylor Grazing Act of 1934

23. The Taylor Grazing Act ("TGA"), 43 U.S.C. §§ 315–315r, seeks to "promote the highest use of the public lands." Id. § 315. Enacted "[t]o stop injury to the public grazing lands by preventing overgrazing and soil deterioration," 48 Stat. 1269, preamble, June 28, 1934, the TGA requires the Secretary of the Interior to determine the characteristics of a parcel of land, classify that land based on its characteristics, and then regulate the use of the land based on its classification. Id.

24. The TGA requires that public lands placed within grazing districts be, in the opinion of the Secretary of the Interior, "chiefly valuable for grazing and raising forage crops." 43 U.S.C. § 315.

25. The TGA authorizes the Secretary "to examine and classify any lands . . . which are more valuable or suitable" for any other use than for livestock grazing. 43 U.S.C. § 315f.

Federal Land Policy and Management Act of 1976

26. The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701–1784, is the BLM's basic "organic act" for management of the public lands under the agency's administration.

27. In 1976, Congress found that "a substantial amount of the Federal range lands is deteriorating in quality." Id. § 1751(b)(1).

28. In FLPMA, Congress added a new management structure—land use planning—for the Secretary's management of the public lands, directing that the BLM "shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands." Id. § 1712(a).

29. These land use plans are known as resource management plans ("RMPs"). 43 C.F.R. § 1601.0-5(k).

30. Congress declared that any existing classification of public lands is subject to review in the land use planning process, granting the Secretary the authority to "modify or terminate any such classification consistent with such land use plans." 43 U.S.C. § 1712(d). See also id. § 1701(a)(3).

31. FLPMA requires the BLM to manage the public lands consistent with the "principles of multiple use and sustained yield." Id. § 1732(a). This means the BLM must "take into account the long-term needs of future generations for renewable and nonrenewable

resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." Id. § 1702(c). To comply with FLPMA's multiple use mandate, the BLM must make reasoned and informed analyses, balancing the competing resource values to ensure that the public lands are managed in a manner "that will best meet the present and future needs of the American people." Id.

32. FLPMA's multiple use mandate requires the BLM to manage the public lands and resources "without permanent impairment of the productivity of the land and the quality of the environment." Id. § 1702(c).

33. The primary standard for the BLM's management of the public lands requires that the agency "shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." Id. § 1732(b).

34. An RMP must adhere to multiple use principles. Id. § 1712(c)(1); 43 C.F.R. §§ 1601.0-2; 1610.4-4.

35. An RMP must establish "land areas for limited, restricted or exclusive use." 43 C.F.R. § 1601.0-5 (k)(1). The regulations governing grazing on public lands direct that the BLM "shall manage livestock grazing on public lands under the principle of multiple use and sustainable yield." Id. § 4100.0-8. In addition, an RMP must, with respect to livestock grazing, establish allowable uses, levels of production or use, areas of use, and resource conditions, goals and objectives. Id.

36. An RMP must contain "program constraints and general management practices needed to achieve" those constraints. Id. § 1601.0-5(k)(4). The BLM has interpreted these requirements to mean that the agency must "express desired outcomes or desired future

conditions in terms of specific goals, standards, and objectives" and that "standards are to be incorporated into all new land use plans." The BLM defines standards as "descriptions of physical and biological conditions or the degree of function required for healthy, sustainable lands (e.g., land health standards). Standards may address both site-specific and landscape or watershed-scale conditions."

37. FLPMA requires the BLM to "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern." 43 U.S.C. § 1711(a). The inventory "shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values." Id.

38. The BLM's resource management planning regulations require that "the District or Area Manager shall arrange for resource, environmental, social, economic and institutional data and information to be collected, or assembled if already available." 43 C.F.R. § 1610.4-3(a). The regulations state that "new information will emphasize significant issues and decisions with the greatest potential impact" and mandate that the "inventory data and information shall be collected in a manner that aids application in the planning process, including subsequent monitoring requirements." Id. The BLM "shall analyze the inventory data and other information available to determine the ability of the resource area to respond to" potential uses. Id. § 1610.4-4.

39. In developing a land use plan, the BLM must rely upon the inventory of the public lands, their resources, and values. 43 U.S.C. § 1712(c)(4).

Freedom of Information Act

40. Intended to "ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed," NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978), the Freedom of Information Act requires federal agencies to disclose information upon request unless the statute expressly exempts the information from disclosure. 5 U.S.C. § 552.

41. The FOIA allows any person, including public and private organizations, to request government information and receive it promptly. 5 U.S.C. § 552(a)(3)(A).

42. An agency must "determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." Id. § 552(a)(6)(A)(i).

43. The twenty-day time limit may be extended by up to ten work days in "unusual circumstances." Id. § 552(a)(6)(B)(i). Any such extension must be by written notice to the requester, "setting forth the unusual circumstances for such extension." Id.

44. The FOIA states that "[a]ny person making a request to any agency for records . . . shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph." Id. § 552(a)(6)(C)(i).

45. This Court has "jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld" and "shall determine the

matter de novo." Id. § 552(a)(4)(B). The burden is on the Forest Service to sustain its action. Id.

46. The FOIA provides that a court "may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed." Id. § 552(a)(4)(E).

FACTS

Geographic Setting

47. The high desert and sage-steppe of southeast Oregon covers a vast and diverse palette of landscapes, ranging from the labyrinthine Owyhee Canyonlands, to the endless basin and range cadences of flat-topped buttes and bleached alkali flats, to the high elevation aspen groves of the 8200-foot Trout Creek Mountains, to the emergence from the Blue Mountains of the Malheur River before it turns east to join the Snake River.

48. The SEORMP governs the BLM's management of approximately 4.6 million acres of public land in southeastern Oregon.

49 The area is home to more than 350 species of fish and wildlife, including many threatened, endangered, state- or BLM-sensitive, and otherwise significant species. The sagebrush steppe, which covers a majority of the planning area, provides habitat for Western sage grouse, pygmy rabbit, and antelope ground squirrel. The riparian areas and wetlands are the single most diverse and productive habitats in the desert. These areas are home to many species, including Great and snowy egrets, Mountain quail, and white-faced ibis, and provide essential habitat for species such as the peregrine falcon. Western juniper stands also provide habitat for many species of northern pygmy owl, pygmy nuthatch and mountain and western bluebirds, among others.

50. Desert streams and rivers provide habitat for Lahontan cutthroat trout and bull trout—both of which are listed as threatened species pursuant to the Endangered Species Act—as well as inland redband trout and several other fish and invertebrate species.

The SEORMP Planning Process

51. The BLM initiated the planning process for the SEORMP in October 1995. This process continued over the course of the next six-plus years, resulting eventually in release of a draft RMP in October 1998 and a proposed RMP in May 2001.

52. ONDA, CHD, WWP and five other organizations protested the proposed plan on December 5, 2001, pursuant to the BLM planning regulations. 43 C.F.R. § 1610.5-2. The BLM responded to the protest nine months later, on September 5, 2002, denying the protest in its entirety. With the denial of the protest Plaintiffs exhausted their administrative remedies. Id. § 1610.5-2(b).

53. On April 3, 2003 the BLM issued a notice in the Federal Register that the State Director of the Oregon/Washington BLM had issued a Record of Decision approving the SEORMP. Notice of Availability of the Record of Decision for the Southeastern Oregon Resource Management Plan and Final Environmental Impact Statement, 68 Fed. Reg. 16,307 (Apr. 3, 2003). See also 43 C.F.R. § 1610.5-1 (describing RMP approval and administrative review process). Plaintiffs received a copy of the "Southeastern Oregon Resource Management Plan and Record of Decision" in June 2003 (although the document was dated September 2002).

Public Land Uses and Resource Values within the SEORMP Planning Area

54. Overwhelming scientific opinion indicates that livestock grazing is extremely environmentally destructive. The effects of grazing include reduced riparian and stream-side

vegetation, which causes reduced stream shading and increased water temperatures that are harmful to native fish species; trampled and destabilized stream banks that cause sedimentation into streams, resulting in destruction of fish habitat and water quality; compaction of soils, which reduces infiltration and increases surface runoff, thereby increasing soil erosion and reducing the ability of the rangelands to sustain healthy vegetative cover; and the spread of invasive weed species, which are rapidly overtaking much of the SEORMP planning area, by selective grazing of more palatable native plants and by carrying and depositing weed seeds over vast areas via livestock coats, hooves, and manure.

55. Despite a lengthy, yet non-specific, acknowledgement in an appendix to the Plan of the significant adverse environmental effects of livestock grazing, the SEORMP defers any further consideration of these effects to future land use planning processes.

56. The SEORMP fails to disclose any assessment of the public lands that are suitable for livestock grazing. The document contains no disclosure of criteria, assessments, or determinations of which acres are suitable for livestock grazing and which are not.

57. The SEORMP fails to disclose any assessment of the areas of the public lands that are, or remain, or are no longer "chiefly valuable" for livestock grazing and forage production.

58. The SEORMP fails to provide any meaningful objective and numeric standards for management of rangelands and their associated vegetative and soil resources. The Plan fails to establish any standards for the livestock grazing that is authorized throughout the planning area, including, for example, standards for forage utilization levels, season of use, and bank stability along streams.

59. The SEORMP fails to analyze, replace, revise, or otherwise discuss the general—yet quantifiable—maximum forage utilization levels established in the previous land use plans and rangeland planning documents that the SEORMP replaces.

60. The SEORMP's "best management practices" (which are intended to "ensure[] that negative impacts to natural resources are minimized") section for livestock grazing refers the reader to a separate portion of the Plan that summarizes the environmental effects of grazing and then fails to establish any actual standards, instead deferring to an "adaptive management process on an allotment specific basis."

61. On the public lands within the SEORMP planning area are livestock grazing allotments established pursuant to the Taylor Grazing Act, and governed by a permit system under FLPMA and its implementing regulations. See 43 C.F.R., Part 4100. The SEORMP planning area includes 168 grazing allotments. Most allotments are divided by fences or topography into pastures, which allows the BLM to authorize (or not authorize) grazing on certain portions of each allotment at different times and levels of use throughout the grazing season and from one season to the next.

62. Prior to adoption of the SEORMP, there were 41,874 acres within the planning area (approximately 0.9% of the total planning area) that were not allocated to livestock grazing. The SEORMP states that these lands "have been set apart from grazing allotments for the specific purpose of improving or maintaining resource values that cannot be protected through mitigation of livestock impacts, or these areas were found unsuitable or unavailable for livestock grazing." These lands were not included in any grazing allotment prior to adoption of the SEORMP.

63. The SEORMP does not explain why these areas have been set apart from grazing allotments, and does not explain what criteria or assessments were used to make these determinations, either initially or in the land use planning process.

64. The SEORMP designates approximately 30,827 acres of public lands as newly "not allocated" to livestock grazing, while now allowing grazing to occur on 14,345 acres of public lands that were previously not allocated to grazing. The SEORMP does not explain what criteria or assessments were used to make these decisions.

65. Of the acres newly not allocated to livestock grazing under the SEORMP, grazing was permanently eliminated from at least a portion of those acres as a result of an April 28, 2000 court injunction. Ore. Natural Desert Ass'n v. Bureau of Land Mgmt., Civ. No. 98-97-RE (D. Or. Apr. 28, 2000).

66. The alternatives considered in the SEORMP/FEIS with respect to allocation of grazing throughout the planning area included adding to the 41,874 not allocated acres an additional 8730 acres under Alternative A; zero additional acres under Alternative B; an additional 8836 acres under Alternative C; an additional 8836 acres under Alternative D; and the entire planning area (4.6 million acres) under Alternative E.

67. At the final stage of public participation during the planning process, the BLM added, and then rejected, Alternative D2, which would have closed 1.45 million acres of the planning area to livestock grazing. As with the previous alternatives, this alternative was not supported with any significant baseline information, analysis, or discussion. Against the backdrop of this "range of alternatives," the Proposed RMP alternative (which became the

SEORMP) designated about 58,900 acres of public land as "not allocated" to grazing—an increase of 17,026 acres over the previous management situation.

68. Because the difference between 41,874 acres of non-allocated public lands (0.9% of the planning area) and 58,900 acres of non-allocated public lands (1.3% of the planning area) is negligible, the SEORMP essentially retains the status quo, allowing current livestock grazing levels and practices to be maintained.

69. The SEORMP and FEIS did not consider any adjustment to the number of "animal unit months" (AUMs) authorized throughout the planning area. An AUM is the amount of forage a cow and calf consume in one month. Thus, the number of individual livestock allowed to graze on the public lands remains the same under the SEORMP as under the previous management situation.

70. Similar to the issue of livestock grazing, the alternatives considered for public lands to be closed to off-highway vehicle ("OHV") use cover an equally narrow range of possibilities: Alternative A—30,585 acres (0.7% of the planning area); Alternative B—35,193 (0.8%); Alternative C—17,233 (0.4%); Alternative D—18,439 (0.4%); Alternative D2—18,439 (0.4%); Alternative E—278 acres (0.0%); and the Proposed RMP—15,826 (0.3%).

71. At the same time, the SEORMP designates over 2.6 million acres—nearly 57 percent of the planning area—as open to OHV use. The Plan permits unrestricted, cross-country vehicle travel over these vast portions of the public lands, despite the fact that OHVs cause, among other things, soil compaction and erosion, destruction of microbiotic crusts, the spread of invasive weed species, disruption of wildlife habitat and populations, noise and air pollution, and conflicts with other recreational public land users.

72. The BLM did not, for a number of significant resources and public lands values, conduct the FLPMA-mandated inventory of the "resource, environmental, social, economic and institutional data and information" to support the preparation and adoption of the final RMP.

73. For example, the BLM states in the SEORMP and in the denial of Plaintiffs' protest that the RMP process is not the proper venue to re-assess the suitability of wilderness study areas ("WSAs") that were not recommended for wilderness designation after a state-wide wilderness planning effort completed in 1989, or to re-inventory non-WSA roadless areas for wilderness values. As a result, the SEORMP provides no baseline inventory information on these non-recommended WSAs and non-WSAs, including, for example, any changes during the past 13-plus years in resource conditions, formerly- or subsequently-proposed agency projects, or public support for wilderness values.

74. The SEORMP also fails to conduct and rely upon the FLPMA-mandated inventory of the public lands and their resources with respect to microbiotic crusts. A key component of the high desert/sage steppe ecosystem, microbiotic crusts occur throughout the SEORMP planning area. Microbiotic crusts are a combination of lichens, mosses, green algae, fungi, and bacteria, which grow on or just beneath the soil. These crusts are recognized by the BLM and in the scientific literature as a major indicator of healthy arid lands, serving important desert ecosystem roles such as fixing nitrogen, increasing soil fertility, stabilizing soil, increasing the growth of higher plants, preventing the spread of invasive weed species, and increasing water filtration into the soils.

75. In the SEORMP, the BLM recognizes that "continual disturbance to these extremely fragile crusts may cause their degradation and contribute to incidental loss of

ecosystem function." However, the SEORMP provides no inventory information on the presence or extent of crust cover throughout the planning area. The Plan and its supporting documents fail to discuss the condition or degradation of both the soils and the microbiotic crusts in the planning area. Instead, the BLM states, without further discussion and without any basis or support, that "[c]urrent management practices . . . have reduced erosion effects and improved soil conditions."

76. The SEORMP FEIS admits that the "introduction and spread of noxious weeds within the planning area causes a decline in rangeland condition, exposes soils to accelerated rates of erosion, reduces productivity, reduces dominance of individual species and communities of native plants, and reduces economic returns to individuals and society."

77. Despite this candid acknowledgment of the seriousness of the problem, the SEORMP includes no preventative treatments for weed management, and provides non-quantitative promises of future, unspecified, site-specific measures to address the spread of invasive weed species only after infestations are detected. The Plan's "Integrated Weed Management" emphasizes control over prevention, and contains no quantitative standards or objectives with respect to controlling livestock grazing, off-highway vehicle use, or other human actions that cause significant disturbances by reducing native plant cover, reducing microbiotic crust cover and increasing soil disturbance.

78. The SEORMP is a "final agency action" under the Administrative Procedure Act because (1) it marks the consummation of the agency's decision-making process, and (2) rights or obligations have been determined from which legal consequences flow.

79. The SEORMP is the final determination of which areas within the planning area are considered to be chiefly valuable and/or suitable for livestock grazing. The SEORMP is the

final determination of which areas within the planning area are allocated or not allocated to livestock grazing, and changes the current status in this respect of tens of thousands of acres of public lands.

80. The SEORMP is also the final determination of which areas within the planning area are designated as closed, open, or limited-access for off-highway vehicles.

81. Because the SEORMP is the proper stage in the BLM land use planning process at which to assess the suitability of formerly non-recommended wilderness study areas for potential WSA status, as well as non-WSA roadless lands for wilderness values, the Plan is the BLM's final determination to not fulfill this mandatory requirement.

Freedom of Information Act Request

82. On July 15, 2002, Plaintiff Oregon Natural Desert Association (ONDA), through its attorneys, submitted a FOIA request to the BLM's Vale District, requesting various agency records and documents relating to the BLM's livestock grazing program management, including documentation by the agency of its multiple use balancing duties, resource inventory duties, and resource information on microbiotic crusts, stream and riparian ecological conditions, OHV use, and allotment-specific information for a number of BLM grazing allotments. This request was limited largely to these data and records for the years 1996 to present.

83. On March 14, 2003, ONDA, through its attorneys, informed the BLM, in writing, that ONDA had not yet received any response from the agency regarding ONDA's July 2002 FOIA request, and inquired when the agency would be responding to the request.

84. As of the filing of this Complaint, ONDA has not received any response from the BLM regarding the July 2002 FOIA request nor the March 2003 follow-up letter to the BLM.

FIRST CLAIM FOR RELIEF:
VIOLATIONS OF NEPA
Failure to Assess an Adequate Range of Alternatives,
Take a Hard Look at Environmental Consequences, and Address Cumulative Impacts

85. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

86. NEPA requires all federal agencies to discuss in an EIS a reasonable range of alternatives to the proposed action. 42 U.S.C. § 4332(2)(C)(iii); (2)(E). NEPA also requires federal agencies to take a "hard look" at the environmental consequences of a proposed action. See Idaho Sporting Cong. v. Rittenhouse, 305 F.3d 957, 973 (9th Cir. 2002) (quoting Marsh v. Ore. Natural Res. Council, 490 U.S. 360, 374 (1989)). In addition, NEPA requires an EIS to include an analysis of the likely cumulative environmental impacts of proposed actions. See 40 C.F.R. §§ 1508.7; 1508.25(a)(2).

87. The BLM violated NEPA and the federal regulations in multiple respects through issuance of the Record of Decision adopting the SEORMP/FEIS. Specifically:

a. Based on the above facts and legal obligations, the SEORMP/FEIS fails to analyze and discuss a reasonable range of alternatives because the alternatives with respect to areas allocated to livestock grazing and to off-highway vehicle restrictions fall well short of the range of alternatives required by NEPA, and as animated by FLPMA's multiple use requirements.

b. Based on the above facts and legal obligations, the SEORMP/FEIS fails to take a "hard look" at the environmental consequences of the proposed action because the Plan and FEIS do not present adequate baseline information and discussion on critical environmental resources and/or resource issues, including microbiotic crusts, the spread of invasive plant species, current conditions of non-recommended wilderness study areas

and non-WSA roadless areas, and the effects of livestock grazing on these resources (or as exacerbation of these resource issues).

c. Based on the above facts and legal obligations, the SEORMP/FEIS fails to analyze or discuss the likely cumulative environmental impacts of proposed action, including continuing existing levels and areas of livestock grazing, because the Plan relies almost exclusively on future management assessments and adjustments based on "adaptive management," rather than undertaking the required cumulative impacts analysis in the RMP/FEIS.

88. These failures render the BLM's decision arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and therefore actionable pursuant to 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF:
VIOLATION OF FLPMA
Failure to Perform Assessment and Inventory Duties

89. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

90. FLPMA requires the BLM to "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values)." 43 U.S.C. § 1711(a). The "inventory shall be kept current so as to reflect changes in condition and to identify new and emerging resource and other values." Id. (emphasis added). In preparing an RMP, the BLM must "arrange for resource, environmental, social, economic and institutional data and information to be collected." 43 C.F.R. § 1610.4-3.

91. The SEORMP/FEIS fails to present any evidence that the BLM has prepared, maintained, or relied upon any inventory and assessment data with respect to the following "public lands and their resource and other values," thus impairing the agency's ability to assess the impacts of various land uses on these resources, as well as the ecological, social, and economic roles and value of these resources within the planning area:

a. areas suitable for livestock grazing;

b. microbiotic crusts;

c. suitability of formerly non-recommended wilderness study areas; and

d. wilderness values on non-WSA roadless areas.

92. The BLM's failure to prepare and maintain on a continuing basis an inventory of these key resources in the SEORMP violates FLPMA, 43 U.S.C. § 1711(a), and its implementing regulations, 43 C.F.R. § 1610.4-3, and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and therefore actionable pursuant to 5 U.S.C. § 706(2)(A). Alternatively, this failure is action unlawfully withheld and unreasonably delayed, and thus actionable pursuant to 5 U.S.C. § 706(1).

THIRD CLAIM FOR RELIEF:
VIOLATION OF FLPMA
Failure to Rely Upon the Inventory of the Public Lands in Resource Management Planning

93. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

94. FLPMA requires the land use planning process under which the SEORMP has been developed to rely upon the inventory of the public lands required by Section 201, 43 U.S.C. § 1711. Id. § 1712(c)(4).

95. The SEORMP/FEIS fails to present any indication that the BLM relied upon inventory and assessment information gathered pursuant to FLPMA Section 201, with respect to areas deemed suitable or unsuitable for livestock grazing, the extent and condition of microbiotic crusts, and the present suitability of non-recommended wilderness study areas, as well as non-WSA roadless areas, for potential wilderness designation.

96. Therefore, the BLM's failure to utilize information on these resources and values obtained in a properly conducted inventory during the SEORMP planning process violates FLPMA, 43 U.S.C. § 1712(c)(4), and its implementing regulations, 43 C.F.R. § 1610.4-4, and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and therefore actionable pursuant to 5 U.S.C. § 706(2)(A). In the alternative, the finalization of the SEORMP without first conducting and relying upon a proper inventory is action taken without observance of procedure required by law, and thus actionable pursuant to 5 U.S.C. § 706(2)(D).

FOURTH CLAIM FOR RELIEF:
VIOLATION OF FLPMA
Failure to Manage Lands According to the Principles of Multiple Use

97. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

98. FLPMA requires the BLM to "use and observe the principles of multiple use" when developing a resource management plan. 43 U.S.C. §1712.

99. By failing to assess the on-the-ground conditions and impacts of current livestock grazing management in the land use planning process, the BLM has maintained the status quo by default. The SEORMP/FEIS fails to evaluate the current status over the entire planning area of soils and microbiotic crusts, give the causes of their degradation, and discuss concomitant losses of ecosystem function. Similarly, the SEORMP/FEIS fails to provide for prevention of the spread

of invasive weed species throughout the planning area, thereby foreclosing multiple uses of the public lands that emphasize native plant species and healthy soil and crust covers. Finally, by failing to close more than a minute fraction of the public lands within the planning area to off-highway vehicle use, yet leaving well over half the lands completely open to unrestricted cross-country vehicle access, the SEORMP again forecloses multiple uses of the public lands, favoring one land use to the detriment of many others.

100. Therefore, the BLM's decision to maintain status quo livestock grazing management and to close less than one percent of the public lands to OHV use, to the detriment of healthy soils, microbiotic crusts and native plants, and without making a reasoned and informed decision as to whether the land within the planning area can continue to endure these levels and distributions of grazing and vehicle use, violates FLPMA, 43 U.S.C. §§ 1712(c)(1), 1732(a), its implementing regulations, 43 C.F.R. §§ 1601.0-2, 1610.4-4, and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law therefore actionable pursuant to 5 U.S.C. § 706(2)(A). Alternatively, the BLM's failure apply the principles of multiple use is agency action unlawfully withheld and unreasonably delayed, and thus actionable pursuant to 5 U.S.C. § 706(1).

FIFTH CLAIM FOR RELIEF:
VIOLATION OF FLPMA
Failure to Assess Suitability of Public Lands for Livestock Grazing

101. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

102. FLPMA's implementing regulations require the BLM to define which areas are suitable for specific uses. 43 U.S.C. § 1712(a); 43 C.F.R. §§ 1601.0-5 (k)(1), 4100.0-8

103. The BLM's failure to define the areas of use is a violation of FLPMA, 43 U.S.C. § 1712(a), its implementing regulations, 43 C.F.R. §§ 1601.0-5 (k)(1), 4100.0-8, and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law therefore actionable pursuant to 5 U.S.C. § 706(2)(A). Alternatively, the designation of "allowable uses [], related levels of production or use to be maintained, areas of use, and resource conditions and goals and objectives to be obtained" is mandatory agency action that is unlawfully withheld and unreasonably delayed, and thus actionable pursuant to 5 U.S.C. § 706(1).

SIXTH CLAIM FOR RELIEF:
VIOLATION OF FLPMA
Failure to Establish Standards for Livestock Grazing

104. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

105. FLPMA's implementing regulations require the BLM to establish in its RMPs "[p]rogram constraints and general management practices." 43 C.F.R. §§ 1601.0-5(k)(4); 4100.0-8. With respect to livestock grazing, the RMP "shall establish allowable resource uses . . ., related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained." Id. § 4100.0-8.

106. Although the SEORMP sets out broad goals and conditions for its livestock grazing program, the plan fails to include any specific baseline grazing standards, such as standards for forage utilization, stream bank stability, riparian-area shrub use, or minimum residual microbiotic crust cover.

107. This failure to develop basic objective and numerical standards to guide and control responsible land management under the SEORMP violates FLPMA's implementing regulations, 43 C.F.R. §§ 1601.0-5(k)(4); 4100.0-8, and is arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with law therefore actionable pursuant to 5 U.S.C. § 706(2)(A). Alternatively, the development basic objective and numerical standards is mandatory agency action that is unlawfully withheld and unreasonably delayed, and thus actionable pursuant to 5 U.S.C. § 706(1).

SEVENTH CLAIM FOR RELIEF:
VIOLATION OF FLPMA
Failure to Prevent Unnecessary or Undue Degradation

108. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

109. FLPMA mandates that the BLM "shall . . . take any action necessary to prevent unnecessary or undue degradation of the [public] lands." 43 U.S.C. § 1732(b). Section 302(b) of FLPMA requires the BLM to consider the nature and extent of the impacts and environmental consequences of a proposed action. Thus, a failure to comply with applicable environmental protection statutes and regulations is necessarily unnecessary or undue degradation.

110. Therefore, BLM's failure to: (1) consider a reasonable range of alternatives, take a "hard look" at the environmental consequences of the proposed action, and discuss adequately the cumulative impacts of the proposed action; (2) provide a fully informed discussion of the baseline conditions for livestock grazing and OHV use; (3) conduct required inventory on key resources/uses; (4) discuss the suitability of areas for livestock grazing; and (5) establish objective numeric standards for livestock grazing, violates FLPMA, 43 U.S.C. § 1732(b), and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and is actionable pursuant to 5 U.S.C. § 706(2)(A). Alternatively, these are failures to conduct mandatory agency actions, and are therefore agency action unlawfully withheld and unreasonably delayed, and thus actionable pursuant to 5 U.S.C. § 706(1).

EIGTH CLAIM FOR RELIEF:
VIOLATION OF TAYLOR GRAZING ACT
Failure to Determine Whether Public Lands Are "Chiefly Valuable" for Grazing

111. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

112. The Taylor Grazing Act requires that lands placed into grazing districts be, in the opinion of the Secretary of the Interior, "chiefly valuable for grazing and raising forage crops." 43 U.S.C. § 315. The TGA authorizes the Secretary "to examine and classify any lands . . . which are more valuable or suitable for the production of agricultural crops . . . or any other use than [grazing]." Id. § 315f.

113. Under FLPMA, any existing classification of public lands is subject to review in the land use planning process, during which the Secretary has the authority to "modify or terminate any such classification consistent with such land use plans." 43 U.S.C. § 1712(d). See also id. § 1701(a)(3).

114. The BLM's failure to determine which public lands within the SEORMP planning area are, or remain, "chiefly valuable" for livestock grazing or the production of forage crops violates the Taylor Grazing Act, 43 U.S.C. § 315, and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law therefore actionable pursuant to 5 U.S.C. § 706(2)(A).

NINTH CLAIM FOR RELIEF:
VIOLATION OF FREEDOM OF INFORMATION ACT

115. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

116. The BLM has a mandatory duty to either make a determination and immediately notify a requester of that determination within twenty work days of receipt of a FOIA request, or provide written notice to the requester of unusual circumstances that would allow the agency to

extend the determination date by up to ten work days. 5 U.S.C. § 552(a)(6)(A), (B). The deadline for the BLM's determination and response to Plaintiff Oregon Natural Desert Association's July 2002 FOIA request was approximately August 14, 2002. Almost a year after this deadline, the BLM still has failed to respond to Plaintiff's FOIA request or produce the requested information. The duty to respond and produce the requested information remains in effect.

117. By failing to respond to Plaintiff's FOIA request, Defendants have violated the Freedom of Information Act. 5 U.S.C. § 552. By this failure, Defendants have also unlawfully withheld or unreasonably delayed compliance of the FOIA, within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(1).

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

A. Order, declare, and adjudge that Defendants have violated the National Environmental Policy Act, the Federal Land Policy and Management Act, the Taylor Grazing Act, and the Freedom of Information Act, as enumerated above.

B. Order Defendants to comply with NEPA by preparing and issuing an amended or supplemental EIS that corrects the SEORMP's failure to consider a full range of alternatives and take a "hard look" at the environmental consequences of the proposed action, and which provides a fully informed discussion of baseline resource conditions and public lands values;

C. Order Defendants to comply with FLPMA's continuing inventory requirements by (1) establishing and immediately implementing a process and schedule for a systematic inventory

of microbiotic crusts and invasive weed species throughout the planning area; and (2) inventorying non-recommended wilderness study areas and non-WSA roadless areas within the planning area and analyzing and incorporating that inventory data in a supplemental EIS that considers whether those areas are suitable for recommendation to Congress as potential wilderness areas.

D. Order Defendants to comply with FLPMA by establishing specific standards for livestock grazing and by assessing the suitability and availability for livestock grazing of the public lands within the planning area, including an assessment, according to the requirements of the BLM's multiple use management requirements, of whether grazing on those public lands will best meet the present and future needs of the American people.

E. Order Defendants to comply with the FOIA by delivering the requested documents to Plaintiffs immediately upon judgment;

F. Enter such temporary, preliminary, and/or permanent injunctive relief as may be prayed for hereafter by Plaintiffs, including an order from this Court directing the BLM to suspend or reduce livestock grazing on allotments, pastures, special management areas, and/or other areas of concern where grazing is determined to be impairing or degrading resource values or otherwise violating federal environmental laws, until such time as the SEORMP has been adequately amended or supplemented to comply with the law.

G. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation pursuant to the Equal Access to Justice Act, the Freedom of Information Act, and all other applicable authorities; and

H. Grant such further relief as the Court deems just and proper.

DATED this 15th day of August 2003.

Respectfully submitted,

s/ Peter M. Lacy

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