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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

OREGON NATURAL DESERT ASS’N and
WESTERN WATERSHEDS PROJECT,

Plaintiffs,

v.

CAROLYN FREEBORN, Field Manager,
Jordan Resource Area, BLM, *et al.*,

Defendants.

Case No. 06-1311-MO

FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

(Environmental Matter)

NATURE OF ACTION

1. This action seeks judicial relief ordering Defendants to comply with the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–61, with

respect to the Bureau of Land Management's ("BLM") management of public lands within a half-million acre administrative unit known as the Louse Canyon Geographic Management Area ("LCGMA"), situated in the Owyhee Canyonlands ecoregion in the southeastern corner of Oregon.

2. In December 2001, BLM determined that domestic livestock grazing within the 528,937-acre LCGMA is causing degradation to natural resources and failures to meet applicable ecological standards. In particular, concentrated livestock use within scores of riparian areas, meadows, wetlands, springs, and stream reaches throughout the LCGMA has caused extreme degradation to watersheds, water quality, and fish and wildlife habitat. Close to half the streams in the LCGMA are not meeting the BLM's riparian watershed function standard, and 90% of the meadow/wetland complexes throughout the LCGMA, as well as nearly 30 springs, are not functioning properly due to livestock trampling, overgrazing, or dewatering by water developments.

3. In an attempt to address this continuing degradation, and to meet its obligations under the Fundamentals of Rangeland Health ("FRH") regulations, 43 C.F.R. Subpart 4180, BLM adopted five management decisions on July 7, 2005. The decisions renewed five 10-year grazing permits and authorized structural and other rangeland projects throughout the LCGMA. The rangeland projects included installing barbed-wire fences, watering troughs, storage tanks and water pipelines, developing natural springs, removing native sage brush and mechanically drill-seeding areas with non-native plant species.

4. Plaintiffs Oregon Natural Desert Association ("ONDA") and Western Watersheds Project ("WWP") filed this lawsuit challenging those BLM decisions, on September 14, 2006. Between 2006 and 2009, ONDA, WWP and BLM entered into several stipulations before this

Court temporarily halting implementation of various rangeland infrastructure projects authorized by those BLM decisions. On March 30, 2010, BLM issued new final decisions. The new decisions set grazing schedules, authorize implementation of range projects and impose new terms and conditions on the grazing permits at issue. The new decisions replace the July 7, 2005 decisions.

5. BLM's final decisions¹ violate NEPA. First, BLM did not to prepare an environmental impact statement ("EIS"), relying instead on an environmental assessment ("EA") and Finding of No Significant Impact ("FONSI"). An agency must prepare an EIS for any major federal action significant affecting the quality of the human environment. Second, BLM failed properly to study impacts to Greater sage grouse (*Centrocercus urophasianus*), including by failing to study significant new information that has emerged since the agency prepared its EA in 2005. To satisfy NEPA, an agency must take a "hard look" at the environmental consequences of the proposed action.

6. ONDA and WWP have been injured by the BLM's refusal or failure to comply with these statutory and regulatory obligations. BLM's final decisions are arbitrary, capricious, and not in accordance with NEPA, and will result in significant adverse environmental impacts, some of which may be long-term or irreversible in nature.

JURISDICTION AND VENUE

7. 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 ("NEPA"), 42 U.S.C. §§ 4321–61, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Equal Access to Justice

¹ Hereafter, the term "final decisions" refers to the March 30, 2010 decisions, which replaced the earlier decisions.

Act (“EAJA”), 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.

8. 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.

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

PARTIES

10. Plaintiff OREGON NATURAL DESERT ASSOCIATION is an Oregon non-profit public interest organization of approximately 1,400 members. It has offices in Bend and Portland, Oregon. ONDA’s mission is to protect, defend and restore forever the health of Oregon’s native deserts. ONDA actively participates in BLM and 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 the final agency decisions challenged in this action, for educational, recreational, spiritual, and scientific activities. ONDA has been active in monitoring both ecological conditions and wilderness values in the Vale District BLM’s Jordan Resource Area.

11. Plaintiff WESTERN WATERSHEDS PROJECT is a non-profit membership organization headquartered at the Greenfire Preserve in Custer County, Idaho, with offices and staff in Boise, Hailey, McCall, and Salmon, Idaho; and also in Arizona, California, Montana,

Wyoming, and Utah. WWP 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 1,200-plus 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 Jordan Resource Area; 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.

12. Plaintiffs and their members regularly use and enjoy the waters, public lands, and natural resources throughout the LCGMA for recreational, scientific, spiritual, educational, aesthetic, and other purposes. Plaintiffs' members regularly 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.

13. 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 BLM's actions and/or inactions as complained of herein, including the agency's refusal to prepare an EIS for this broad-scale livestock and rangeland project and failure to properly study impacts to sage grouse. 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.

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

15. Defendant DON GONZALEZ is sued solely in his official capacity as District Manager for the Vale District of the Bureau of Land Management, in which the Jordan Resource Area is located. The District Manager is the one of the BLM officials responsible for authorizing the LCGMA projects and grazing permit renewals, and has principal authority for the actions and inactions alleged herein.

16. Defendant CAROLYN FREEBORN is sued solely in her official capacity as Field Manager for the Jordan Resource Area of the Vale District of the Bureau of Land Management. The Field Manager is the one of the BLM officials responsible for authorizing the LCGMA projects and grazing permit renewals, and has principal authority for the actions and inactions alleged herein.

STATEMENT OF FACTS

17. BLM manages about 2.5 million acres of public lands in the Vale District's Jordan Resource Area, which lies in the southeast corner of Oregon, bordering both Idaho and Nevada. This is one of the most remote landscapes in the lower 48 states. It includes Louse Canyon and the congressionally-designated Owyhee Wild Rivers.

18. Louse Canyon dissects the LCGMA administrative unit. Most of the West Little Owyhee River's 58 mile course through vast high desert and sagebrush steppe landscapes runs through the canyon. Louse Canyon spans from near the headwaters of the West Little Owyhee River to the river's eventual confluence with the main stem Owyhee River and the Owyhee

River Canyon. The West Little Owyhee originates in broad, hilly uplands not far from the Oregon-Nevada border, and winds through volcanic tuffs and basalts to form a very narrow, 500-foot deep canyon that continues for nearly 40 miles of the river's northeasterly course toward the main stem Owyhee.

19. The broad sagebrush steppe uplands that flank Louse Canyon range from Oregon, Mahogany and Willow buttes near the Oregon-Idaho-Nevada borders, to the Owyhee Desert and Sacramento Hill farther to the north, and finally to Three Forks, where the Owyhee, Middle Fork Owyhee and North Fork Owyhee rivers converge, 37 river miles upstream from the nearest incorporated settlement, Rome, Oregon.

20. The LCGMA is home to native redband trout, a BLM special status fish species. It also contains countless other significant plant and animal species, including pronghorn antelope, California bighorn sheep, pygmy rabbit, Brewer's sparrow, sage thrasher, horned lark, northern sagebrush lizard, and short-horned lizard.

21. Among the multitudes of bird species in the LCGMA is an important population of Greater sage grouse. Sage grouse once numbered more than a million birds across 16 western states and 3 Canadian provinces, but its numbers have declined severely over the last 50 years. For this reason, the U.S. Fish and Wildlife Service recently determined that the species is "warranted" for protection under the Endangered Species Act. 12-Month Findings for Petitions to List the Greater Sage-Grouse, 75 Fed. Reg. 13,909 (Mar. 23, 2010).

22. Sage grouse are sagebrush obligates. This means that they depend on sagebrush all year to provide roosting, cover and food. Moreover, they require large areas with a variety of sagebrush communities to meet their life-history needs. For example, they require big sagebrush

on deep soil sites with a healthy understory and tall residual grass cover for nesting. They rely on low sagebrush communities for food and winter habitat.

23. Riparian areas, seeps, springs and other wet areas also are important for sage grouse. This is because they rely upon eating forbs (i.e., wildflowers), in these areas during the late growing season when upland plant communities have been depleted.

24. Oregon sage grouse populations and sagebrush habitats comprise nearly 20% of the range wide distribution of the species. For this reason, management actions in Oregon have implications on a range wide scale for the species. Population fluctuations and decline in Oregon during the past century are similar to those documented throughout the species' range.

25. Oregon contains some of the largest expanses of relatively intact sagebrush habitat in North America. The LCGMA is at the heart of that habitat. Conservation and protection of sage grouse in Oregon is extraordinarily important to the species' survival and recovery range wide.

26. The LCGMA contains one of the highest concentrations of sage grouse leks (breeding areas) in the Vale District (and in Oregon). These generally are located in areas of low sagebrush. The entire LCGMA is historic range for sage grouse. The entire LCGMA is yearlong sage grouse habitat.

27. The threats to sage grouse habitat across the West are numerous. They include domestic livestock grazing, which can lead to the establishment and spread of weeds, erosion, denuded vegetation and associated lack of cover, pollution of water, and other impacts to sagebrush habitats; the proliferation of the non-native annual grass cheatgrass, which is spreading rapidly and replacing sagebrush; periods of drought and the effects of global climate change, which may exacerbate the expansion of cheatgrass and the loss of sagebrush habitat;

West Nile virus, which is spread through mosquito populations as they colonize wet areas on the landscape including livestock water developments; altered and unnatural fire regimes, which are caused by, among factors, grazing, climate change and altered vegetative ecosystems; encroachment of juniper trees on sagebrush habitats, which has been caused mainly by the impacts of livestock grazing, fire suppression and climatic influences over the last century or more; high road densities, which fragment sagebrush habitats; various types of energy development and utility corridors; and land use issues such as urban development, agriculture, and water development.

28. Barbed-wire fencing also negatively impacts sage grouse. Fencing is a mortality threat for sage grouse when flying grouse collide with the fencing. This is especially the case around late brood rearing habitat such as springs, seeps and wet meadows. Fences also provide perches for predators that prey on sage grouse.

29. Nearly all of these threats are present in sage grouse habitat in Oregon to one extent or another. In the LCGMA, the threats to sage grouse include livestock grazing, weeds, West Nile virus, habitat fragmentation, fencing and impacts associated with global climate change.

30. Habitat fragmentation and destruction across much of the Greater sage grouse's range has contributed to significant population declines over the past century. If current trends persist, many local populations may disappear in the next several decades, with the remaining fragmented population vulnerable to extinction.

31. Livestock can have serious impacts on the environment. 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 and other wet areas that cause sedimentation into streams, resulting in destruction of fish and riparian 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 Jordan Resource 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.

32. Vast segments of the public lands within the LCGMA contain wilderness characteristics. A wilderness is an area that is roadless, in natural condition, and has outstanding opportunities for solitude or for primitive and unconfined recreation. For legal purposes, Congress has defined wilderness in the Wilderness Act of 1964, 16 U.S.C. § 1131.

33. The LCGMA contains all or part of three Wilderness Study Areas (“WSAs”), which BLM designated pursuant to the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701 *et seq.* These are the Upper West Little Owyhee, Lookout Butte, and Owyhee River Canyon WSAs. These WSAs comprise more than 225,000 acres of public land.

34. The LCGMA also contains additional areas that ONDA inventoried and found to possess wilderness characteristics. These include the Black Butte Proposed WSA Addition, Oregon Butte Proposed WSA Addition, Willow Creek Proposed WSA, Mouse Trap Butte Proposed WSA, Rattlesnake Canyon Proposed WSA, and Ten Mile Creek Proposed WSA. ONDA identified these areas in a report dated February 6, 2004 (hereafter “ONDA Report”), which it provided to BLM.

35. The infrastructure required to sustain cattle grazing on this arid landscape can degrade or permanently destroy wilderness values. For example, fences, water developments,

pipelines, storage tanks and watering troughs, non-native seedings and access roads created to build and maintain these human-made structures all impair an area's naturalness.

36. In 1995, the U.S. Department of the Interior adopted the FRH regulations. 43 C.F.R. Subpart 4180. These regulations establish fundamental ecological criteria for the management of livestock grazing on BLM public lands. The FRH regulations require BLM to assess ecological conditions on the public lands, and then make a determination whether specific rangeland health standards are, or are not, being met in those areas. If standards are not being met, and BLM determines that existing grazing management or levels of grazing use are significant causal factors for the failure, BLM must implement grazing management changes on those lands no later than the start of the next grazing season.

37. The FRH regulations establish four "Fundamentals of Rangeland Health." All BLM grazing allotments must meet, or show significant progress toward meeting, these criteria. These relate to water quality, riparian habitat, watershed conditions, and species habitat. The FRH regulations further provide for evaluation of whether those criteria are met, through application of FRH Standards and Guidelines, which BLM has developed on a state-by-state basis.

38. To fulfill its FRH regulations obligations, BLM divided its Jordan Resource Area into eight Geographic Management Areas ("GMAs"). It assigned each GMA a priority for FRH assessment and evaluation. BLM ranked GMA priorities according to issues of concern such as the presence of riparian habitat, wilderness study areas, wild and scenic river corridors, and important fish and wildlife species. BLM identified the Louse Canyon GMA as its number one priority GMA in the Jordan Resource Area.

39. The LCGMA consists of seven grazing allotments administered by BLM: the Louse Canyon Community, Star Valley Community, Campbell, Anderson, Ambrose Maher, Little Owyhee, and Quinn River allotments. Each allotment is further divided into pastures. This allows 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.

40. In December 2001, BLM determined that standards were not being met, and livestock grazing was the cause of the failure, on 6 of the 21 pastures in the LCGMA. The agency's evaluation documented that close to 50% of the streams in the LCGMA were not meeting Standard 2 (Watershed Function—riparian/wetland), with 43% "Functioning at Risk, Trend Not Apparent," 5 reaches "Functioning at Risk, Downward Trend," and 3 reaches "Not Functioning." In addition, 90% of the meadow/wetland complexes in the LCGMA, as well as nearly 30 springs, were not functioning due to livestock grazing.

41. Following those determinations, BLM developed an "interim grazing management strategy." The interim strategy established new use dates for grazing in areas failing to meet standards, generally shifting use from "hot season" grazing in mid-summer to grazing earlier in the season. The numbers of livestock and the amount of forage authorized to be consumed remained unchanged.

42. BLM authorized this interim strategy for the 2003, 2004, 2005, 2006, 2007, 2008 and 2009 grazing seasons. Under this strategy, BLM authorizes livestock to graze in the LCGMA between about March 1st and October 15th each year.

43. BLM has not formally determined whether the interim strategy has been effective in remedying the violations documented in its December 2001 determinations.

44. In 2003, pursuant to its land use planning requirements under FLPMA, BLM adopted the Southeastern Oregon Resource Management Plan (“SEORMP”). The SEORMP governs BLM’s management of about 4.6 million acres of public land in BLM’s Vale District in southeast Oregon. This includes the public lands within the Jordan Resource Area, including the LCGMA.

45. Under the SEORMP, BLM uses the GMA process to manage a wide variety of resources, including soils and vegetation, fish and wildlife species and their habitats, and other resources. The SEORMP is based on “adaptive management,” meaning the agency engages in a continuing process of planning, implementation, monitoring, and evaluation, to adjust management strategies to meet goals and objectives.

46. By letter dated September 14, 2004, BLM issued for public comment under NEPA an environmental assessment (“EA”) for the LCGMA. The purpose of the EA was to develop a new plan for livestock grazing on the LCGMA grazing allotments, based on BLM’s FRH rangeland health evaluation and determinations.

47. By letter dated October 15, 2004, ONDA and WWP commented on BLM’s proposal. Among other issues, ONDA and WWP explained why the proposals would not protect the fragile desert habitats and riparian areas at issue from continued degradation from livestock, and would in fact continue certain adverse environmental impacts from current grazing practices.

48. ONDA and WWP also asked BLM to study impacts to the wilderness characteristics in the project area, including studying the wilderness report ONDA had provided to BLM earlier that year. BLM refused to do so. The agency denied that it had any legal obligation to consider, analyze or otherwise review wilderness characteristics outside of existing WSAs.

49. ONDA and WWP also complained about the extensive proposed range projects that were part of BLM's new grazing plan. BLM's proposal included installing about 58 miles of new barbed-wire fences, building new water storage systems and more than 13 miles of water pipelines, redeveloping 17 natural springs throughout the GMA (to extract water for livestock use), removing native sagebrush and mechanically drill-seeding more than 3,500 acres of public lands with non-native plant species.

50. ONDA and WWP objected to the plan's addition of significantly more rangeland infrastructure within the LCGMA when the area already was burdened with hundreds of defunct, nonfunctional, and abandoned structures no longer in use. ONDA and WWP provided information to BLM documenting defunct structures and abandoned projects, left on the landscape as a result of the "Vale Project," an 11-year rangeland rehabilitation program that BLM implemented in the 1960s in an attempt to restore a vast, grazing-damaged landscape in southeast Oregon.

51. By letter dated February 28, 2005, the BLM issued a revised EA and a FONSI, as well as five proposed decisions. BLM did not provide a public comment period for the revised EA.

52. The revised EA dated February 28, 2005 is the last EA BLM prepared for the LCGMA decisions. Further references in this complaint to the "EA" refer accordingly to the February 28, 2005 EA.

53. The EA contains a No Action alternative and six other alternatives. The other alternatives involve various combinations and levels of structural rangeland projects and continued domestic livestock grazing.

54. The EA contains no discussion of impacts to wilderness values, except for impacts within existing WSAs. The EA does not mention the ONDA Report.

55. By letters dated March 14 and March 17, 2005, and pursuant to the Department of the Interior's administrative protest and appeal regulations, 43 C.F.R. § 4160.3(a), ONDA and WWP protested the proposed decisions.

56. The Jordan Resource Area Field Manager responded on July 7, 2005, denying the protests. Along with that response, BLM issued five final decisions, including a FONSI for each decision. The final decisions and FONSIs were based on the EA. The final decisions renewed five 10-year grazing permits and authorized various rangeland projects throughout the LCGMA.

57. In its protest response, BLM claimed it was not required to consider wilderness characteristics during the LCGMA planning process. BLM stated that the LCGMA lacked wilderness characteristics outside of existing WSAs.

58. By letter dated August 10, 2005, pursuant to the Department of the Interior's administrative appeals regulations, ONDA and WWP administratively appealed the Field Manager's final decisions. At that time, ONDA and WWP also sought to stay implementation of the decisions pending an administrative law judge's ("ALJ") review of their claims on the merits. *See* 43 C.F.R. §§ 4.21, 4.471.

59. By order dated September 26, 2005, an ALJ in the Department of the Interior's Office of Hearings and Appeals issued an order denying the petition for stay. Under the Department's appeals regulations, the BLM was then free to implement the LCGMA final decisions.

60. In August 2005, the State of Oregon issued a conservation plan for sage grouse titled, *Greater Sage-Grouse Conservation Assessment and Strategy for Oregon: A Plan to Maintain and Enhance Populations and Habitat* (“Oregon Plan”).

61. The Oregon Plan established a goal of maintaining or enhancing sage grouse numbers and distribution, for the Vale District’s Jordan and Malheur Resource Areas, at the 2003 spring breeding population level, approximately 16,000 birds, until 2055.

62. On November 23, 2005, ONDA and WWP timely appealed the ALJ’s decision before the Department of the Interior’s Board of Land Appeals (“IBLA”). Finally, by order dated August 31, 2006, and received by ONDA’s and WWP’s counsel on September 5, 2006, the IBLA denied the administrative appeal, affirming the ALJ’s order denying appellants’ petition for stay of the Final Decisions.

63. On September 6, 2006, this Court ruled in a separate case that BLM violated NEPA when it adopted a grazing decision without adequate information concerning impacts to wilderness characteristics. *Or. Natural Desert Ass’n v. Rasmussen*, 451 F. Supp. 2d 1202 (D. Or. 2006). The Court held that BLM is obligated under NEPA to consider whether there are changes in or additions to wilderness values within a project area, and, if such values exist, whether the proposed action might negatively impact those values.

64. On September 14, 2006, having exhausted their administrative remedies, ONDA and WWP voluntarily dismissed their administrative appeal of BLM’s LCGMA decisions.

65. ONDA and WWP initiated this action by filing a complaint in this Court, also on September 14, 2006. The complaint challenged BLM’s five, July 7, 2005 decisions.

66. By late September 2006, BLM had completed or started a number of the projects authorized under the challenged LCGMA decisions. The Horse Hill Division Fence, Louse

canyon Division Fence, Cavietta Pipeline Extension, Coffee Pot Meadow Pipeline Rehab, Exchange Spring Pipeline Rehab and New Road Spring Pipeline Rehab projects had been completed. The Sacramento Hill Division Fence and Rawhide Spring Tank and Pipeline projects, as well as 13 spring projects and 6 new troughs on Exchange Pipeline, all were under construction.

67. On September 20, 2006, ONDA and WWP filed a motion for temporary restraining order, asking the Court to enjoin BLM from undertaking or authorizing further implementation of rangeland projects within or adjacent to areas ONDA had inventoried and alleged to possess wilderness characteristics. In response, BLM agreed not to move forward with or authorize construction of such projects “until such time next spring that conditions are suitable for construction.” Based on BLM’s representations, ONDA and WWP withdrew their motion.

68. By letter dated January 22, 2007, BLM informed the public that the agency intended to conduct additional analysis concerning wilderness characteristics on the public lands within the LCGMA. In the letter, BLM stated that it “will suspend any further ground-disturbing implementation of the projects at issue until it completes its additional analysis . . . with the possible exception of the Sacramento Hills Pipeline.”

69. On February 28, 2007, the parties entered into a stipulation under which BLM agreed not to build or use a series of projects authorized under the challenged decisions, and to maintain those projects already constructed sufficiently to avoid environmental injury through the 2007 grazing season or until the Court issued a decision on the merits.

70. Between February and October of 2007, BLM undertook a wilderness inventory. As part of its inventory, BLM evaluated the ONDA Report. The ONDA Report had identified about 138,000 acres of public land within the LCGMA as having wilderness character.

71. In April 2007, BLM filed a motion to stay proceedings. In support of its motion, BLM explained that, based on the *Rasmussen* decision, it intended to address the potential effects of the LCGMA decisions on wilderness characteristics within the project area.

72. The Court granted BLM's motion to stay in an opinion dated June 18, 2007.

73. In October 2007, BLM published a summary of its LCGMA wilderness review. Of the 138,000 acres within the LCGMA that were identified in the ONDA Report, BLM agreed that 112,000 of those acres, in five separate roadless areas, possessed wilderness character.

74. BLM then prepared an addendum to the EA, dated February 25, 2008. The addendum discussed the impacts of the July 5, 2005 decisions on the areas newly acknowledged to possess wilderness character. BLM made the document available for public comment at that time. In the addendum, BLM did not address any other issues aside from wilderness characteristics.

75. On March 20, 2008, the parties entered into another stipulation, renewing the terms of the 2007 stipulation.

76. By letter dated March 31, 2008, ONDA and WWP submitted comments on BLM's EA addendum. In those comments, ONDA and WWP discussed wilderness, grazing, sage grouse, pygmy rabbit, range projects, weeds, water development, land use planning, procedural and other issues.

77. In July 2008, the Ninth Circuit Court of Appeals held that BLM's decision adopting the SEORMP was unlawful under NEPA. *Or. Natural Desert Ass'n v. Bureau of Land Mgmt.*, 531 F.3d 1114 (9th Cir. 2008). The court held that BLM violated NEPA by not studying the impacts of the land use plan decision on wilderness characteristics (outside of existing WSAs) and by not studying a reasonable range of alternatives concerning areas closed to off-

road vehicle use. The court held unlawful and set aside BLM's Record of Decision approving the EIS and SEORMP.

78. On May 14, 2009, the parties jointly moved the Court to adopt a third stipulation, again renewing the terms of the prior stipulations. The Court granted the motion by order dated June 5, 2009.

79. On June 3, 2009, the Court held a status conference in this case. The Court explained it now intended to lift the stay and move toward a timely resolution of the plaintiffs' claims. The Court scheduled a further conference, in order to allow the parties time to discuss how to proceed. BLM explained that it intended to issue revised decisions that would replace the July 2005 decisions. In August, the Court directed the parties to have a case schedule ready to present at a further conference to be held in October.

80. On October 20, 2009, the Court issued a minute order setting a case schedule. The schedule provided for BLM to issue its new proposed decisions, for the agency to resolve any administrative protests, for ONDA and WWP to amend their complaint based on the new decisions, for BLM to lodge the administrative record, and for the parties to then brief cross-dispositive motions.

81. On November 11, 2009, BLM issued five proposed decisions.

82. The new proposed decisions are based on the 2005 EA and the 2008 addendum. The LCGMA grazing plan, as described in the proposed decisions, still includes new pasture fences, spring exclosures, spring development or re-development projects, and new water pipelines and troughs. Specifically, the proposed decisions authorize about 37 miles of new fence and 9 miles of new water pipelines. The proposed decisions also would maintain or complete the projects BLM already had built or started pursuant to the original decisions.

83. In December 2009, the United States Geological Survey announced the release of a publication titled, *Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats*. In the monograph, 38 federal, state, university and nongovernmental experts collaborated to produce new scientific information about Greater sage grouse populations, sagebrush habitats, and relationships among sage grouse, sagebrush habitats and land use. The information is formally published as a scientific monograph in the series *Studies in Avian Biology*.

84. This monograph is the best available compendium of science on sage grouse. On January 11, 2008, the U.S. Fish and Wildlife Service requested additional time from the U.S. District Court for the District of Idaho for making a new, court-ordered finding on whether Greater sage grouse warrant protection under the Endangered Species Act. The Service explained that the monograph “will contain data and interpretation that will be critically important to the Service’s status review.”

85. In December 2009, BLM notified the Court that BLM had received three administrative protests of the new LCGMA decisions. WWP was one of the three protesting parties. BLM advised the Court that the agency would need several months to resolve the protests.

86. On March 5, 2010, the U.S. Fish and Wildlife Service issued a 12-month finding in response to a petition to place the Greater sage grouse on the threatened and endangered species list under the Endangered Species Act. 12-Month Findings for Petitions to List the Greater Sage-Grouse, 75 Fed. Reg. 13,909 (Mar. 23, 2010). The Service determined that the sage grouse warranted protection as a “threatened” species under the Endangered Species Act. A threatened species is one that is likely to become an endangered species within the foreseeable

future throughout all or a significant portion of its range. The Service placed the sage grouse on the list of species that are candidates for Endangered Species Act protection.

87. On March 30, 2010, BLM issued a new set of five final LCGMA decisions authorizing new, 10-year grazing permits. The new decisions are accompanied by a new FONSI, also dated March 30, 2010. The decisions replace the July 7, 2005 decisions. No new documentation pursuant to NEPA was released with the decisions. Instead, the new decisions are based on the 2005 EA and the 2008 addendum. BLM did not withdraw the July 7, 2005 decisions.

88. BLM has not conducted any rangeland health assessment for the LCGMA pursuant to the FRH regulations, or any assessment of whether its interim plan has been effective, since the assessments it completed in December 2001.

89. The new decisions contain no discussion of monitoring information for the period July 7, 2005 to March 30, 2010. There is no discussion of the impacts, for the period September 2006 to March 2010, of the LCGMA projects that were completed or under construction as of September 26, 2006.

90. The new decisions include no mandatory term or condition specifying when monitoring will be performed.

91. The new decisions contain no discussion of stocking rates or carrying capacity.

92. The new decisions do not specify the animal unit months (“AUMs”) authorized.

93. The new decisions contain no maps. This includes no map(s) showing the location(s) of projects that have been relocated from locations shown or described in the original, 2005 decisions. This also includes no map(s) showing the location(s) of completed versus proposed new projects.

94. The new decisions contain no mandatory term or condition requiring compliance with Riparian Management Objective criteria established in the SEORMP.

95. On April 1, 2010, the Court ordered a revised case schedule.

96. On information and belief, BLM has commenced construction and other implementation of the rangeland projects and grazing described in the LCGMA EA and authorized by the March 30, 2010 decisions, and intends to continue such construction and/or implementation throughout the remainder of 2010 and for the life of the LCGMA plan.

CLAIM FOR RELIEF
VIOLATIONS OF NEPA

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

98. The Claim for Relief challenges defendants' violation of the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*, and NEPA's implementing regulations. BLM violated NEPA by issuing a FONSI for the challenged LCGMA decisions, by failing to prepare an environmental impact statement prior to issuing the challenged decisions, by failing to prepare a supplemental environmental analysis addressing significant new information concerning sage grouse, by failing to address new information and reasonable opposing views concerning sage grouse in the EA or EIS, and thereby by failing to take a hard look at the environmental impacts of the new grazing plan within the planning area. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

99. NEPA requires that federal agencies undertake a thorough and public analysis of the environmental consequences of proposed federal actions. An agency must prepare an EIS for all major federal actions significantly affecting "the quality of the human environment." 42 U.S.C. § 4332(2)(C). An analysis prepared in compliance with NEPA must undertake site specific and cumulative impacts analysis of the likely environmental consequences of proposed

actions. 40 C.F.R. §§ 1508.7, 15087.8, 1508.25(a)(2). An agency may issued a FONSI only where the proposed action will not have a significant effect on the human environment and for which an EIS is therefore is not required. *Id.* § 1508.13. An agency must discuss reasonable opposing views and scientific information in the NEPA document itself. *Id.* § 1502.9(b). An agency must prepare supplemental NEPA analysis if the agency makes substantial changes to the proposed action or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. *Id.* § 1502.9(c)(1)(i)–(ii).

100. To satisfy NEPA’s procedural requirements, an agency must demonstrate it has taken a “hard look” at the environmental consequences of the proposed action.

101. Defendants violated NEPA and federal regulations in multiple respects through issuance of the challenged decisions, including but not limited to:

- a. Adopting the challenged decisions without first preparing an EIS addressing the proposed actions, and instead electing to prepare an EA/FONSI;
- b. Adopting the challenged decisions without considering significant new information and failing to prepare a required supplemental NEPA document;
- c. Adopting the challenged decisions without discussing new information and responsible opposing views in the EA or EIS itself; and thereby
- d. Adopting the challenged decisions without taking the requisite “hard look” at all the significant and potential environmental impacts of the proposed actions, including impacts to sage grouse and their habitat.

102. Accordingly, defendants' final decisions are arbitrary, capricious, an abuse of discretion, and not in accordance with the National Environmental Policy Act, and therefore are actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

A. Order, declare, and adjudge that Defendants' adoption of the final decisions pursuant to the LCGMA EA is unlawful under and in violation of NEPA;

B. Issue an injunction barring Defendants from implementing or further implementing any and all construction or other ground-disturbing activity as part of the LCGMA EA projects, unless and until such time as Defendants have completed a lawful analysis that complies with NEPA;

C. Issue an order setting aside the final decisions, and ordering Defendants to prepare a new NEPA analysis or revise or supplement its current analysis in compliance with NEPA;

D. Enter such temporary, preliminary and/or permanent injunctive relief as Plaintiffs may request hereafter, including removal and reclamation of range projects found to be approved and constructed in violation of NEPA;

E. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*, and all other applicable authorities; and

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

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DATED this 7th day of June, 2010.

Respectfully submitted,

s/ Peter M. Lacy

Peter M. Lacy (“Mac”) (OSB # 01322)
Oregon Natural Desert Association

Of Attorneys for Plaintiffs