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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

<p>NATIVE ECOSYSTEM COUNCIL,</p> <p>Plaintiff,</p> <p>vs.</p> <p>JON RABY, Acting State Director, the BUREAU OF LAND MANAGEMENT, RYAN ZINKE, Secretary, DEPART- MENT OF THE INTERIOR, an agency of the United States, and KEITH JOHN- SON, Acting Field Manager for the BLM's Dillon Field Office.</p> <p>Defendants.</p>	<p><b>CV-</b></p> <p><b>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</b></p>
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**I. INTRODUCTION**

1. This is a civil action for judicial review under the citizen suit provision of the Administrative Procedure Act of the U.S. Bureau of Land Management's (BLM) authorizations, analyses, and lack thereof in the Dillon Field Office related to and regarding various Watershed Projects approved pursuant to Findings of No Significant Impacts requiring preparation of an Environmental Impact Statement.

2. Plaintiff Native Ecosystems Council assert that the challenged decisions of Defendants authorizing livestock management and range improvements that include extensive sagebrush burning and conifer removal across vast public landscapes within the Dillon District of BLM's Montana and Dakotas Division are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law.
3. Defendants' actions or omissions violate the National Environmental Policy Act (NEPA), 42 U.S.C. 4331 et seq., the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 et seq., and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 et seq., by failing to prevent "unnecessary or undue degradation" of public lands, *Id.* § 1732(b), and/or to take a hard look at the direct, indirect and cumulative impacts of the final decisions implementing the following landscape scale watershed assessments: Middle Ruby River; Centennial; South Tobacco Root; Blacktail.
4. Plaintiff requests that the Court set aside the Watershed Projects pursuant to 5 U.S.C. § 706(2)(A) and enjoin their implementation.
5. Plaintiff seeks a declaratory judgment, injunctive relief, the award of costs and expenses of suit, including attorney and expert witness fees pursuant to the Equal Access to Justice Act (EAJA) 28 U.S.C. § 2412, and such other relief as this Court deems just and proper.

## II. JURISDICTION

6. This action arises under the laws of the United States and involves the United States as a Defendant. Therefore, this Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 28 U.S.C. §§ 1331, 1346.
7. An actual controversy exists between Plaintiffs and Defendants. Plaintiff and its supporters use and enjoy the Middle Ruby River, Centennial, South Tobacco Root, and Blacktail Watersheds for hiking, fishing, hunting, photographing scenery and wildlife, and engaging in other vocational, scientific, spiritual, and recreational activities. Plaintiffs and their members have an aesthetic and recreational interest in the natural landscapes of Southwest Montana, especially in viewing Sage Grouse and other sagebrush obligates in their natural environments, and in the recovery of robust populations of Sage Grouse in Southwestern Montana. Plaintiffs' members intend to continue to use and enjoy these areas frequently and on an ongoing basis in the future.
8. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiffs' members have been and will be adversely affected and irreparably injured if Defendants are permitted to implement the Projects. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under NEPA, FLPMA and the APA. The requested relief would redress these injuries and this Court has the authority to grant Plaintiffs' requested relief under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

9. Plaintiffs submitted timely written comments and objections concerning the Project in the available administrative review process, thus they have exhausted administrative remedies. Therefore, the challenges to these Projects are ripe for judicial review, and this Court has jurisdiction to review Plaintiffs' APA claims.

### **III. VENUE**

10. Venue in this case is proper under 28 U.S.C. § 1391(e) and LR 3.2(b)(1)(C). Defendant Raby resides within the Billings Division of the United States District Court for the District of Montana.

### **IV. PARTIES**

11. Plaintiff NATIVE ECOSYSTEMS COUNCIL (NEC) is a non-profit Montana corporation with its principal place of business in Three Forks, Montana. Native Ecosystems Council is dedicated to the conservation of natural resources on public lands in the Northern Rockies generally, and Southwest Montana in particular. Its members and supporters use and will continue to use the Dillon District of BLM and the surrounding areas in Southwest Montana for work and for outdoor recreation of all kinds, including fishing, hunting, hiking, horseback riding, and cross-country skiing.
12. NEC, along with its members and supporters, work, live and/or recreate throughout the public lands of the sagebrush-steppe ecosystem of Southwest Montana which is occupied by Greater sage-grouse; and they regularly visit and utilize the public lands in Southwest Montana to observe and study the Greater sage-grouse and the sagebrush-steppe ecosystem. NEC and its supporters derive

- recreational, aesthetic, scientific, inspirational, educational, and other benefits from these activities, and have an interest in preserving the possibility of such activities in the future. Their use and enjoyment of the sage grouse depends on its continued existence within, and the scientifically sound management of, public lands within the Dillon District Planning Area of the BLM.
13. The decline of the Greater sage-grouse in Southwest Montana and across its range is of great concern to NEC, its members, and supporters; and the preservation and recovery of the species and its sagebrush-steppe habitat are highly important to NEC, its members, and supporters.
  14. The BLM's unlawful actions adversely affect Native Ecosystems Council's organizational interests, as well as its members' use and enjoyment of Southwest Montana and the Dillon District Planning Area of BLM. Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely affected members.
  15. Defendant Ryan Zinke is the Secretary of the U.S. Department of Interior, who has ultimate statutory authority and responsibility to comply with federal law in the management of the federal public lands at issue in this litigation. He is sued solely in his official capacity.
  16. Defendant Jon Raby is the Acting State Director for the Montana/Dakotas Bureau of Land Management.

17. Defendant Keith Johnson is the Acting Field Manager for the BLM's Dillon Field Office, responsible for the approvals and implementation of the challenged decisions.
18. Defendant U.S. Department of Interior is an agency or instrumentality of the United States, charged by law with administering the public lands at issue in this litigation.
19. Defendant U.S. Bureau of Land Management (BLM) is an administrative agency within the U.S. Department of Interior, and is responsible for the health, diversity and productivity of public lands for the use and enjoyment of present and future generations.

#### **V. LEGAL REQUIREMENTS**

20. The National Environmental Policy Act (NEPA) is America's basic "charter for protection of the environment." 40 C.F.R. § 1500.1(a). The Council on Environmental Quality ("CEQ") promulgated regulations implementing NEPA, which are binding on all federal agencies. *Id.* §§ 1500-1518.4.
21. One of NEPA's fundamental goals is to "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." 42 U.S.C. § 4321. The scope of NEPA review is quite broad, including disclosure and consideration of all reasonable alternatives, 40 C.F.R. § 1502.14(a), and direct, indirect, and cumulative effects, *id.* § 1508(b). The federal agency must "[r]igorously explore and objectively evaluate all reasonable

- alternatives,” “[d]evote substantial treatment to each alternative considered in detail including the proposed action.” *Id.* § 1502.14(a)-(c).
22. NEPA obligates the agency to make available to the public high-quality information, including accurate scientific analyses, expert agency comments, and public comments before decisions are made and actions are taken. The CEQ’s NEPA regulations require that information used to inform NEPA analysis “must be of a high quality,” and that “[a]ccurate scientific analysis . . . [is] essential to implementing NEPA.” *Id.* § 1500.1(b). The agency’s analysis must be based on professional and scientific integrity. *Id.* § 1502.24. To take the required “hard look” at a proposed action’s effects, an agency may not rely on incorrect assumptions or data.
23. The Federal Land Policy and Management Act (FLPMA) provides that BLM public lands “shall” be managed “for multiple use and sustained yield.” *Id.* § 1732(a). FLPMA further mandates that the Secretary of Interior “shall” take any action necessary to prevent “unnecessary or undue degradation” of public lands. *Id.* § 1732(b).
24. FLPMA’s definition of “multiple use” calls for “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” *Id.* § 1702(c) (emphasis added). This prohibition on permanent

- impairment of the environment in FLPMA's definition of multiple-use is unique and purposeful. Instead of using the definition of multiple-use from the Multiple-Use Sustained-Yield Act, as it did in enacting NFMA, Congress chose to weave this environmental protection mandate into FLPMA's multiple-use provisions. *See* H. R. Rep. No. 94-583, 94th Cong. 1st Sess. (Dec. 18, 1975).
25. FLPMA directs that the Secretary of Interior (and hence BLM, which has been delegated the Secretary's authority in management of the public lands) develop and periodically revise lands use plans, and adhere to those plans in management decision-making. *See* 43 U.S.C. § 1712(a) (Secretary "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.* § 1732(a) (Secretary "shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans").
26. When a land use plan is revised pursuant to FLPMA, existing resource plans and permits, contracts and other instruments are to be revised within a "reasonable period of time." 43 C.F.R. § 1610.5-3.

## **VI. BACKGROUND REGARDING THE NEED FOR AMENDING DILLON RMP**

27. According to the BLM's web site, "The Dillon Field Office manages over 900,000 acres of public lands and approximately 1.3 million acres of mineral estate within Beaverhead and Madison Counties in the southwest corner of Montana. Ranching and livestock grazing are important uses of the area. The wide



- open spaces provide excellent wildlife habitat and a wealth of dispersed recreation opportunities... Big game hunting, hiking, fishing, camping, and wildlife viewing are popular activities within the Dillon Field Office and the nearby Beaverhead-Deerlodge National Forest.”
28. BLM adopted a Resource Management Plan pursuant to FLPMA for the Dillon Field Office in February of 2006.
  29. Greater sage-grouse (hereinafter, “sage grouse”) once numbered in the millions across the western U.S and Canada, but loss and fragmentation of their native sagebrush-steppe habitats have caused populations to decline precipitously over the last century. The current population of greater sage grouse is estimated at less than 10% of historic population levels; that is, sage grouse populations have experienced a 90% or more decline.
  30. Sage grouse is a landscape species that uses a variety of seasonal habitats throughout the year. Sage grouse breeding sites (leks) and associated nesting and brood-rearing habitats, as well as winter concentration areas, are especially important to the species’ life cycle. The grouse have high fidelity to leks, and most hens will nest within four miles of the lek where they mated.
  31. In Southwest Montana, according to the terms of a 1998 Memorandum of Understanding between the Beaverhead-Deerlodge National Forest and Montana Fish, Wildlife and Parks, sage grouse may nest up to 23 miles from a lek.
  32. Sage grouse also return to the same winter habitats year after year, even if these habitats have been degraded. Anthropogenic disturbance and disruptive activities,

- noise, and habitat degradation in breeding, nesting, brood-rearing, and winter habitats negatively affect sage grouse productivity.
33. Leading sage grouse experts and other scientists documented the declining trends of sagebrush habitats and sage grouse populations in the Conservation Assessment released by the Western Association of Fish and Wildlife Agencies (“WAFWA”) in June 2004. *See* CONNELLY ET AL., CONSERVATION ASSESSMENT OF GREATER Sage grouse AND SAGEBRUSH HABITATS (WAFWA June 2004) (“2004 Conservation Assessment”).
34. Sage grouse is a Montana listed “sensitive species” for purposes of BLM management.
35. BLM’s Sensitive Species Manual requires that “implementation-level plans identify appropriate outcomes, strategies, restoration opportunities, use restrictions, and management actions necessary to conserve and/or recover listed species, as well as provisions for the conservation of Bureau sensitive species. In particular, such plans should address any approved recovery plans and conservation agreements” Manual 6840 at .04D5. The Manual further requires that: “Implementation-level planning should consider all site-specific methods and procedures which are needed to bring the species and their habitats to the condition under which the provisions of the ESA are not necessary, current listings under special status species”.
36. Sage grouse are also a useful “umbrella species” for sagebrush habitats used by many other species of conservation concern, including a suite of sagebrush-

- dependent avifauna that would benefit from increased protection of sagebrush habitat. Montana Species of Concern that are associated with sagebrush include the sage sparrow, sage thrasher, Brewer's sparrow, pygmy rabbit, black-tailed jack rabbit, sage grouse, and Loggerhead shrike, while Montana Species of Concern associated with ecotones populated by sagebrush, juniper, and/or limber pine include the golden eagle, ferruginous hawk, Clark's nutcracker, pinyon jay, Cassin's finch, and goshawk.
37. In November 2004, responding to the threats documented in the 2004 Conservation Assessment, BLM adopted a “National Sage grouse Habitat Conservation Strategy,” which remains in effect and applicable to the challenged EISs and RODs. *See* BUREAU OF LAND MANAGEMENT, NATIONAL Sage grouse HABITAT CONSERVATION STRATEGY (U.S. Dep’t of Interior November 2004) (“2004 Conservation Strategy”). The Conservation Strategy emphasized using BLM’s land use planning process to conserve and restore sagebrush habitats in order to prevent further sage grouse declines and avoid ESA listing, and specified that BLM will use the best available science and other relevant information to develop conservation efforts for sage grouse and sagebrush habitats.
38. In 2010, the US Fish and Wildlife Service (FWS) listed the Greater Sage Grouse (GRSG) under the Endangered Species Act as “warranted, but precluded,” and identified the primary threats to GRSG as: (1) the present or threatened destruction, modification, or curtailment of habitat or range and (2) the inadequacy of existing regulatory mechanisms, specifically identifying the

- principal regulatory mechanisms for the BLM as conservation measures incorporated into land use plans.
39. Federal agencies manage over half the remaining sagebrush steppe. Although cooperation among federal and state agencies, private land owners, and others is important to conserve sage grouse and sagebrush habitat, the federal government and federal lands are key to ensuring conservation of the species.
40. In response to the 2010 determination by FWS that the listing of the GRSB was warranted, but precluded by other priorities, the BLM acknowledged: “Changes in management of GRSB habitats are necessary to avoid the continued decline of populations across the species’ range” and thus developed a landscape-level management strategy, based on the best available science, that was said to be “targeted, multi-tiered, coordinated, and collaborative.” This strategy was represented by BLM to the public as providing “the highest level of protection for GRSB in the most important habitat areas,” and as addressing the specific threats identified in the 2010 FWS “warranted, but precluded” decision along with the FWS 2013 Conservation Objectives Team (COT) Report. See: ROD S-2.
41. On August 22, 2011, BLM adopted the official charter for the “National Greater Sage grouse Planning Strategy.” The charter established various policy and technical teams to carry out the new planning process. These included a National Technical Team (“NTT”) to serve “as an independent, technical and science-based team to ensure the best information related to greater sage grouse management is fully reviewed, evaluated and provided to the BLM for consideration in the land

- use planning process.” BUREAU OF LAND MANAGEMENT NATIONAL GREATER Sage grouse PLANNING STRATEGY CHARTER 2 (Aug. 22, 2011).
42. The NTT was directed to “[i]dentify science-based management considerations for the greater sage grouse (e.g., conservation measures) that are necessary to promote sustainable sage grouse populations, and which focus on the threats in each of the management zones.” *Id.*
43. In carrying out the National Greater Sage grouse Planning Strategy, BLM and the Forest Service have publicly and repeatedly committed to *utilizing* - not just “considering” - the best available science in their analysis and adoption of proposed sage grouse conservation measures.
44. On December 21, 2011, BLM released the NTT’s “Report on National Greater Sage grouse Conservation Measures” (“NTT Report”), which Report has been found by a federal court to “contain[] the best available science concerning the sage grouse.” See: Memorandum Decision and Order, *Salazar*, 2012 WL 5880658 at \*2 (Nov. 21, 2012) (No. 08-cv-516-BLW).
45. The NTT Report avers that BLM has adopted a “new paradigm” for its public lands management to ensure that sage grouse populations and habitats receive scientifically-based management protection, as follows:

Through the establishment of the National Sage grouse Planning Strategy, BLM has committed to a new paradigm in managing the sagebrush landscape...Land uses, habitat treatments, and anthropogenic disturbances will need to be managed below thresholds necessary to conserve not only local sage grouse populations, but sagebrush communities and landscapes as well. Management

priorities will need to be shifted and balanced to maximize benefits to sage grouse habitats and populations in priority habitats.

SAGE GROUSE NATIONAL TECHNICAL TEAM, A REPORT ON NATIONAL GREATER Sage grouse CONSERVATION MEASURES 6-7 (Dec. 21, 2011).

46. The NTT Report emphasized that the designation and protection of priority sage grouse habitats is key to conserving the greater sage grouse:

The overall objective is to protect priority sage grouse habitats from anthropogenic disturbances that will reduce distribution or abundance of sage grouse. Priority sage grouse habitats are areas that have the highest conservation value to maintaining or increasing sage grouse populations. These areas would include breeding, late brood-rearing, winter concentration areas, and where known, migration or connectivity corridors.

*Id.* at 7.

47. The NTT Report further stated that it will be necessary to achieve certain “sub-objectives” for sage grouse priority habitats, including: “To maintain or increase current populations, manage or restore priority areas so that at least 70% of the land cover provides adequate sagebrush habitat to meet sage grouse needs.” *Id.* at 7-8.

48. The NTT Report identified specific “Conservation Measures” by categories of management actions, which “are designed to achieve population and habitat objectives stated in this report.” *Id.* at 11-31.

49. In September 2015, BLM issued a Record of Decision (ROD) and Approved Resource Management Plan Amendments (ARMPAs) for the Great Basin GRSG Sub-Regions of Idaho and Southwestern Montana. These ARMPAs established GRSG habitat management direction that was designed to avoid and minimize

disturbances in GRSG habitat management areas. This new direction was said to accomplish the following:

- i. Eliminate most new surface disturbance in the most highly valued sagebrush ecosystem areas identified as Sagebrush Focal Areas;
  - ii. Avoid or limit new surface disturbance in Priority Habitat Management Areas, of which Sagebrush Focal Areas are a subset; and,
  - iii. Minimize surface disturbance in General Habitat Management Areas.
50. After preparing an Environmental Impact Statement on the ARMPAs, BLM

concluded that:

The cumulative effect of these measures is to conserve, enhance, and restore GRSG habitat across the species' remaining range in the Great Basin Region and to provide greater certainty that BLM resource management plan decisions in GRSG habitat in the Great Basin Region can lead to conservation of the GRSG and other sagebrush-steppe associated species in the region. The targeted resource management plan protections presented in this ROD and ARMPAs apply not only to the GRSG and its habitat but also to over 350 wildlife species associated with the sagebrush-steppe ecosystem; this is widely recognized as one of the most imperiled ecosystems in North America.

51. On September 15, 2015, Defendant State Director for BLM approved the "Idaho and Southwestern Montana Greater Sage grouse Approved RMP Amendment" (ARMPA), which amended the Dillon District RMP of 2006, allocating habitat management areas for GRSG in Southwestern Montana. The stated "purpose and need" for the RMP Amendment was to respond to the USFWS's March 2010 "warranted, but precluded" ESA listing petition decision for GRSG; that is, to avoid listing of the GRSG as threatened or endangered.

52. The ARMPA supplements, or is in addition to, the MANAGEMENT PLAN AND CONSERVATION STRATEGIES FOR SAGE GROUSE IN MONTANA (“Montana SG Plan”) which was finalized in 2005 pursuant to a Memorandum of Understanding between federal land management agencies, including BLM, and member states of WAFWA, including Montana.
53. The ARMPA amends the Dillon RMP according to the following habitat allocations: “GRSG habitat on BLM-administered lands in the decision area consists of lands allocated as priority habitat management areas (PHMA), important habitat management areas (IHMA), and general habitat management areas (GMHA).”
54. PHMA, IHMA, and GHMA are defined as follows:
- i. PHMA—BLM-administered lands identified as having the highest value to maintaining sustainable GRSG populations. Areas of PHMA largely coincide with areas identified as priority areas for conservation in the USFWS’s COT report. These areas include breeding, late brood-rearing, winter concentration areas, and migration or connectivity corridors.
  - ii. IHMA—BLM-administered lands that provide a management buffer for PHMA and connect patches of PHMA. IHMA encompass areas of generally moderate to high conservation value habitat and populations but that are not as important as PHMA. There are no IHMA designated within southwestern Montana.



- iii. GHMA—BLM-administered lands where some special management will apply to sustain GRSG populations; areas of occupied seasonal or year-round habitat outside of PHMA or IHMA.
55. The COT Report emphasized that “rangeland fire (both lightning-caused and human-caused fire) in sagebrush ecosystems is one of the primary risks to the greater sage grouse, especially as part of the positive feedback loop between exotic invasive annual grasses and fire frequency” (FWS 2013).
56. Prescribed fire is a “human-caused fire” within the meaning of the COT Report.
57. One of the “Key Management Responses from the Great Basin Region GRSG ARMPAs” to the “Threats to GRSG and its Habitat (from COT Report)” referenced in the Record of Decision was to “Restrict the use of prescribed fire for fuel treatments.” Table 1-4, p. 1-19. Specifically, according to the ROD:  
“[P]rescribed fire will not be used in sagebrush steppe. The exception would be if the NEPA analysis for the burn plan were to provide a clear rationale for why alternative techniques were not selected as a viable option. The analysis also would need to explain how GRSG habitat management goals and objectives would be met by its use and how the COT Report objectives would be met. It would require a risk assessment to address how potential threats to GRSG habitat would be minimized.” ROD, p. 1-27.
58. Table 2-3 of the ARMPA sets forth the “Estimated Acres of Treatment Needed within a 10-Year Period to Achieve Vegetation Objectives on BLM-Administered Lands.” ARMPA, p. 2-17. According to this table, there is no need for any

treatments in Dillon via prescribed fire (MD Fire 31) or to restore grasslands (MD Veg 2). (“MD” refers to Management Direction).

59. Of particular relevance to this litigation, MD Fire 31 (ARMPA 2-22) provides that “If prescribed fire is used in GRSG habitat, the NEPA analysis for the Burn Plan will address: why alternative techniques were not selected as a viable options; how GRSG goals and objectives will be met by its use; how the COT Report objectives will be addressed and met; [and], a risk assessment to address how potential threats to GRSG habitat will be minimized.”

60. The “COT Report objectives” that must be addressed and met, pursuant to the ARMPA, prior to approving prescribed burns in GRSG habitat include the following “Conservation Objective” (COT, p. 40) for fire:

Retain and restore healthy native sagebrush plant communities within the range of sage grouse. Fire (both lightning-caused and human-caused fire) in sagebrush ecosystems is one of the primary risks to the greater sage grouse, especially as part of the positive feedback loop between exotic invasive annual grasses and fire frequency. As the replacement of native perennial bunchgrass communities by invasive annuals is a primary contributing factor to increasing fire frequencies in the sagebrush ecosystem, every effort must be made to retain and restore this native plant community...

61. To address and meet the Conservation Objective for Fire referenced in the preceding paragraph, one of the “Conservation Measures” listed in the COT requires BLM to: “Eliminate intentional fires in sagebrush habitats, including prescribed burning of breeding and winter habitats.” Ibid.

62. The Montana SG Plan adopted in 2005 recognized a need to identify remaining breeding and winter habitats in Montana.

63. According to Management Decision SSS 7 in the AMRPA, Sage Grouse habitat must be assessed during project-level NEPA analysis within the management area designations, and the “effects will be evaluated based on the habitat and values affected.”
64. Another Conservation Measure related to maintaining and restoring healthy GRSG habitat is to: “Reduce or eliminate disturbances that promote the spread of [] invasive species,” including “precluding the use of treatments intended to remove sagebrush.” COT, pp. 42-43.
65. According to the COT: “The intentional removal or treatment of sagebrush (using prescribed fire, or any mechanical and chemical tools to remove or alter the successional status of the sagebrush ecosystem) contributes to habitat loss and fragmentation, a primary factor in the decline of sage grouse populations. Removal and manipulation of sagebrush may also increase the opportunities for the incursion of invasive annual grasses, *particularly if the soil crust is disturbed* (Beck et al. 2012). Although many treatments are often presented as improving sage grouse habitats, data supporting the positive impacts of sagebrush manipulation on sage grouse populations is limited (Beck et al. 2012).” (emph. added) COT, p. 44.
66. Soil crust is disturbed by grazing cows in sagebrush habitats.
67. The Montana SG Plan acknowledges that Big Mountain Sagebrush does not require fire, and that best available science supports arguments against use of prescribed fire to manage Sage Grouse habitats.

68. The Montana SG Plan acknowledges that appearance of even-age or decadence in sagebrush habitat is often “deceiving” and not, of itself, an indication of the need to aggressively treat sagebrush habitat for the purpose of increasing or introducing diversity of age classes.
69. The COT establishes the following Conservation Objective: “Avoid sagebrush removal or manipulation in sage grouse breeding or wintering habitats.” Ibid.
70. Related to the Conservation Objective in the preceding paragraph, the COT provides: “Exceptions to this can be considered where minor habitat losses are sustained while implementing other habitat improvement or maintenance efforts (e.g., juniper removal) and in areas used as late summer brood habitat (Connelly et al. 2000). Appropriate regulatory and incentive-based mechanisms must be implemented to preclude sagebrush removal and manipulation for all other purposes.” Ibid.

#### Middle Ruby River Decision

71. The Middle Ruby River Watershed Environmental Assessment (“Middle Ruby EA”) was finalized in December of 2014, and was tiered to the EIS for the Dillon RMP. It reauthorizes 11 allotments, approves slashing conifers and burning sagebrush habitat on 4,568 acres, as well as removal of conifers along 5 miles of streams, mostly within occupied sage grouse habitat as per Montana Fish Wildlife and Parks assessments from 2003.

72. Approximately 51% of the Middle Ruby assessment area is comprised of sagebrush habitat, with 23% of the area having been designated “Priority Management” habitat for sage grouse.
73. The RMP (App. X) in force at the time of the Middle Ruby DN precluded “any proposed burning in sagebrush habitats” absent a showing that: a) biological and physical limitations of the site and impact on sage grouse are identified and considered, b) management objectives for the site, including those for wildlife, are clearly defined, c) potential for weed invasion and successional trends are well understood, and d) capability exists to manage the post-burn site properly, including a funded monitoring schedule, to achieve a healthy sagebrush community.
74. The Middle Ruby EA provides no baseline inventory of sagebrush conditions which, consistent with the RMP and Montana Plan, is a pre-requisite for treatment according to the best available science in place at the time of the decision (*Connelly* 2000).
75. The Middle Ruby EA provided no information regarding the biological and physical limitations within the proposed burn areas. No information regarding slope, soil properties, erosion potential, or other factors has been provided.
76. The Middle Ruby EA failed to “clearly define” wildlife objectives. No evidence was provided that the “potential for weed invasion and successional trends are well understood.” No site specific recovery objectives have been defined to

- determine post-burn management, and no adequately funded monitoring was identified.
77. The Middle Ruby Decision Notice (DN) approves 1485 acres of slashing and burning treatments of sagebrush habitat in the Ruby Mountain Wilderness Study Area.
78. The rationale for treatments approved in the Middle Ruby DN is, in part, to reintroduce diversity into the age structure of what appear to be even-aged stands of sagebrush habitat.
79. According to best available science in place at the time of the Middle Ruby DN, burning sagebrush habitat adversely impacts sage grouse, including but not limited to the loss of forbs, unless the landscape is comprised of greater than 60% sagebrush.
80. Approximately 200-240 thousand square kilometers of sagebrush habitat was destroyed between 1940 and 1970, with another 400-480 thousand square kilometers being “treated” (e.g., with herbicides) in the 1970s. This eradication of approximately 10-12% of sage grouse habitat included approximately 180 thousand square kilometers of BLM lands. The primary reason for this aggressive elimination of sagebrush habitat was to make the forage more palatable for cows.
81. One of the purposes of the Middle Ruby DN is to make forage more palatable for cows.

82. Beck (2012) notes the irony that from about 1940-1980, fire was used to “remove” sagebrush, while in more recent times it is said to be an effective means for “improving” sagebrush habitat.
83. The RMP in force at the time of the Middle Ruby DN also requires BLM to set specific habitat objectives and implement appropriate grazing management to achieve those objectives, and to maintain or improve vegetation condition and trends. The Middle Ruby DN/EA authorizes the removal of 50% of the upland vegetation by livestock but fails to provide any rational basis to conclude this high level of use meets sage grouse habitat needs.
84. According to best available science at the time of the Middle Ruby DN, large blocks of well-distributed, un-fragmented, tall sagebrush are required to support sage grouse viability.
85. The average size of sagebrush blocks to be burned in the Middle Ruby DN is 456 acres. The result will be to increase fragmentation, and reduce total sagebrush habitat in the Project Area from 51% to 41%.
86. The Middle Ruby DN and EA approve treatments in Wilderness Study Areas without complying with the BLM WSA non-impairment standard, and without providing “clearly articulated, well-supported management objectives and available scientific information,” including but not limited to the following: clear evidence that treatments are necessary; choosing the least disruptive means of treatment; and, supporting the decision with monitoring in place prior to treatments.

87. The RMP in force at the time the Middle Ruby DN was signed provided that:  
“Allow the use of prescribed fire and associated tools (including mechanical treatments if necessary) in Wilderness Study Areas only where it is determined wilderness values would be enhanced. Use of prescribed fire and associated tools in WSAs would be limited to areas where fire history evidence correlates to historically frequent fire events. Prescribed fire treatments should also move the area toward achieving wildland fire use prescriptions to allow naturally ignited fires to play a more natural role within the WSA.”
88. The Middle Ruby EA/DN does not provide any information about the historical fire frequency in this specific area nor does the analysis in the EA describe the how the prescribed burning of sagebrush habitat will move the area toward achieving wildland fire use prescription.
89. The Middle Ruby EA fails to give careful consideration to the potential for cheatgrass invasion in the Ruby Mountain WSA as a result of prescribed burning.
90. The Middle Ruby EA failed to “consider all site specific methods and procedures” for conserving sage grouse and their habitat, as required for sensitive species, including but not limited to the direction contained in the BLM’s NTT report, which was available at the time but was not considered.
91. The U.S. Fish & Wildlife Service’s 12-Month finding for petitions to list the Greater Sage grouse as a threatened species specifically found that mechanical removal and burning to remove conifers in sage grouse habitat have not been



- shown to increase sage grouse activity, and the the Proposed Rule found that it is unclear whether conifer removal has a positive long-term effect on sage grouse.
92. The Middle Ruby EA wrongly concluded that prescribed fire treatments proposed will increase sagebrush habitat.
93. The Middle Ruby DN is not scheduled to be implemented until 2019.
94. Plaintiff requested that BLM supplement the EA and reconsider their decision for the Ruby Mountain Project in light of the subsequent ARMPA.

Centennial Decision

95. The Centennial Watershed Environmental Assessment (“Centennial EA”) was finalized in June 2015. It is tiered to the Dillon RMP EIS.
96. The Decision Notice and Finding of No Significant Impact for the Centennial Project was signed on November 16, 2015 - approximately 2 months after the ARMPA was signed.
97. BLM did not supplement the Centennial EA after the ARMPA was signed, and thus the November 16, 2015 Decision Notice is not consistent with the Dillon RMP in force at the time of the decision.
98. The Centennial DN approves 8,850 acres of prescribed fire in sagebrush habitat and along 5.5 miles of riparian habitat, including portions of a Wilderness Study Area.
99. The treatments approved in the Centennial DN include treatments within 5 allotments that are all meeting biodiversity and uplands standards.

100. Preliminary Priority Management Areas for sage grouse were reduced in size in the Centennial DN in order to allow for sagebrush burning and removal without applying best available science in considering impacts.
101. The Centennial DN and EA fail to demonstrate that the treatments approved will maintain 80% of nesting (breeding) habitat, at least 40% of late summer/brood-rearing habitat, and 80% of winter habitat for affected sage grouse habitats.
102. The “fuels reduction” approved in the Centennial DN includes removal/elimination of ecotone habitats and increasing forage for cows.
103. The Centennial EA fails to consider the best available science for the Historic Range of Variability of fire return intervals and the association with fire exclusion and conifer expansion.
104. While BLM agreed through the Montana SG Plan to “clearly define” effects of proposed burning to wildlife species other than sage grouse, the Centennial EA fails to identify and consider the effects of prescribed fire on elk calving and deer fawning habitats.
105. The “seral age class diversity” objective supporting the Centennial DN is not supported with baseline data and/or justify in relation to the 2003 Winslow Fire, which burned more than 6,000 acres within the analysis area (and 13,000 acres total).
106. In spite of acknowledging significant declines in the health of aspen in the Centennial analysis area, the EA does not analyze the reasons for those declines, does not disclose baseline conditions or a health inventory, does not discuss why

- aspen are in need of restoration, and prescribes burning without considering the contributions of browsing by cows to adverse impacts or considering protections of regenerating aspen from such browsing. In effect, BLM blames encroaching conifers for the extensive damage to aspen from browsing by cows, thus failing to consider an important aspect of the problem.
107. The Centennial DN and EA approve treatments in Wilderness Study Areas without complying with the BLM WSA non-impairment standard, and without providing “clearly articulated, well-supported management objectives and available scientific information,” including but not limited to the following: clear evidence that treatments are necessary; choosing the least disruptive means of treatment; and, supporting the decision with monitoring in place prior to treatments.
108. The fuels reduction in Wilderness Study Areas approved by the Centennial DN is based on stale science and/or fails to consider the best available science.
109. While the Centennial DN approves treatments adjacent to known occupied habitat of the Canada lynx, BLM failed to carry out surveys to support a finding that lynx are not present in the treatment areas.
110. BLM failed to take a hard look at the potentially significant effects of approved treatments in the Centennial DN on Montana Species of Concern.
111. The Centennial DN’s approval of sagebrush treatments is not consistent with the Dillon RMP as amended by the ARMPA, including but not limited to the failure

to conduct risk assessments and demonstrate compliance with Conservation Objectives prior to approving prescribed burning of sagebrush habitat.

112. The Centennial DN violates the general prohibition from the ARMPA of burning breeding and/or wintering sage grouse habitats, as BLM has failed to disclose the location of same in the approved treatment areas.

South Tobacco Root Watershed Decision

113. The South Tobacco Root Watershed (“STRW”) Environmental Assessment was approved by a DN and Finding of No Significant Impact on December 20, 2017.
114. The STRW DN approves approximately 9000 acres of burning in sagebrush habitats, as well as treatments along approximately 8 miles of riparian habitat.
115. The STRW DN and EA fail to demonstrate compliance with the ARMPA and related COT Conservation Objectives and Measures, including but not limited to those related to fire, exotics/invasive species, and the unintentional removal of sagebrush habitats through prescribed treatments.
116. The STRW DN and EA fail to demonstrate that the treatments approved will maintain 80% of nesting (breeding) habitat, at least 40% of late summer/brood-rearing habitat, and 80% of winter habitat for affected sage grouse habitats.
117. The STRW DN violates the general prohibition from the ARMPA of burning breeding and/or wintering sage grouse habitats, as BLM has failed to disclose the location of same in the approved treatment areas.
118. The STRW DN fails to disclose the locations and/or extent of conifer encroachment which the prescribed burning is intended to treat, fails to

- demonstrate why mechanical treatment is not feasible, and fails to include the risk assessment required by the ARMPA for approval of prescribed burns.
119. The STRW DN and EA fail to disclose and analyze the potential adverse effects of fuels treatment on wildlife that benefit from sagebrush and juniper/limber pine habitats, including but not limited to mule deer, elk, and the following Montana Species of Concern: Clark's nutcracker; Loggerhead shrike; and, pinyon jay.
  120. BLM failed to consider or discuss the science demonstrating that gradual development of conifers within sagebrush ecosystems is a natural historical condition (*Burkowski and Baker, 2013; Floyd et al., 2004*) that promotes species diversity and abundance (*Reinsmeyer et al., 2007*).
  121. BLM failed to consider the potential adverse impacts of fuels treatment on limber pine and the wildlife that benefits from limber pine's development in juniper woodlands as part of its approval process of the STRW Project.
  122. Ecotones are the result of natural ecological processes that create expansion of woodland habitats through dispersal of seeds by various wildlife species, and creating greater species diversity than in the adjacent habitats.
  123. The STRW EA failed to take a hard look at the potential impacts of fuels reduction on ecotones and the species that inhabit same.
  124. The STRW DN and EA fail to take a hard look at the potential adverse impacts, including cumulative impacts, of fuels treatments, new road construction and fences on sagebrush habitats, including: increased potential for invasion of such

- habitats by invasive species, especially cheatgrass; increasing frequency of fire associated with cheatgrass; and, fragmentation of sagebrush habitats.
125. The STRW EA and DN fail to demonstrate that effective treatments of cheatgrass invasions are available and/or that the agency has sufficient budget allocated to such treatments in the event of increasing spread, representing an irretrievable commitment of public resources without adequately considering the potential for irreversible infestations and losses of wildlife habitats, including but not limited to priority sage grouse habitats.
126. The STRW EA fails to disclose and analyze the adverse direct, indirect and cumulative impacts of livestock grazing on wildlife, including sage grouse, on the spread of exotic/invasive species of plants, including cheatgrass, and on the decline in aspen along riparian zones.
127. The STRW EA fails to disclose the potential adverse impacts of new road construction, conifer removal, and fuels reduction on big game security, habitat effectiveness, and hiding/thermal cover.
128. The STRW EA fails to substantiate claims that the 7 inch residual standard for grass and forbs in sage grouse habitat will be provided by a 50% utilization level for livestock grazing and in spite of allowing spring grazing.
129. The STRW EA fails to take a hard look at the potential adverse impacts of new water developments on wildlife, including sage grouse, and fails to demonstrate compliance with the relevant Conservation Objectives and Measures associated with same in the COT Report, as incorporated into the ARMPA.

Blacktail Watershed Decision

130. The Blacktail Watershed (“Blacktail”) EA was adopted by DN and FONSI in December of 2017.
131. The Blacktail DN approves treatment of 8,180 acres of ecotones, including thousands of acres of burning sagebrush habitat.
132. The Blacktail EA fails to take a hard look at potential direct, indirect and cumulative impacts of treatments approved in ecotones on wildlife that is associated with ecotones, including but not limited to the association of wildlife and conifers in ecotone habitats (limber pine, juniper, etc.) and/or Montana Species of Concern such as pinyon jay, Clark’s nutcracker, Loggerhead shrike, Ferruginous hawk, and golden eagle.
133. The Blacktail EA fails to take a hard look at potential direct, indirect and cumulative impacts of treatments approved in ecotones on hiding cover for big game.
134. The Blacktail DN and EA fail to demonstrate compliance with the ARMPA, including but not limited to Conservation Objectives and Measures, including but not limited to those related to fire, exotics/invasive species, and the unintentional removal of sagebrush habitats through prescribed treatments.
135. There is a clear relationship, supported by best available science, between prescribed fires and the invasion/spread of treated areas by exotics, such as cheatgrass.

136. There is currently a significant expansion of cheatgrass and other invasive species of plants on public lands in Southwest Montana, including ongoing treatments of approximately 2,500 acres in the Dillon Field Office.
137. Plaintiff provided documentary evidence to BLM of cheatgrass invasion in the landscapes of Southwest Montana following prescribed burns.
138. The Blacktail DN and EA fail to demonstrate the extent of the invasion by cheatgrass in the analysis area, the association of same with management activities, the relative levels of success and failure in treating cheatgrass invasions (as well as other invasive species), and sufficient budgetary resources for reversing the trends of invasives/exotics associated with grazing and prescribed fire. Accordingly, BLM has failed to take a hard look at the tradeoffs between conifer “encroachment” and cheatgrass invasion, as well as the cumulative impacts of grazing, prescribed fires, new road construction, and related management activities on the natural and human environments.
139. The Blacktail DN and EA fail to include the required risk assessment in accordance with the criteria set forth in the ARMPA and related documents incorporated by reference.
140. The Blacktail DN and EA fail to disclose and analyze the potential direct, indirect and cumulative impacts of approved treatments on existing levels of sage grouse nesting habitat, late-summer brood rearing habitat, and winter habitat.



141. The Blacktail DN and EA fail to demonstrate that the treatments approved will maintain 80% of nesting (breeding) habitat, at least 40% of late summer/brood-rearing habitat, and 80% of winter habitat for affected sage grouse habitats.
142. The Blacktail EA fails to include inventory data, maps, and/or other information disclosing the location of sage grouse nesting habitat.
143. While the Blacktail DN and EA assert that only areas where there is at least 10% canopy cover of conifers in sagebrush habitat will be treated, no information is provided disclosing the canopy cover in areas proposed for treatment, and no indication is provided as to when and how these areas were surveyed.
144. While the Blacktail DN and EA assert that no limber pine trees will be impacted by the approved treatments, no indication is provided that limber pines were surveyed or otherwise excluded from treatment areas.
145. While the Blacktail DN and EA assert that conifer encroachment into sagebrush and grassland habitats is extensive, no baseline data is provided, no habitat objectives are disclosed, no discussion of the relative benefits of the various habitats to wildlife is analyzed, and there is no discussion of the forage values associated with ecotones in their undisturbed (dynamic) state.
146. Nature is not static, and conifer “encroachment” is a term used to describe a natural process by which the seeds from conifers are distributed by associated wildlife species.
147. The Blacktail DN and EA approve treatments in Wilderness Study Areas without taking a hard look at the potential impacts of exotic/invasive species associated

- with such treatments, the value of conifers, ecotones, and migration of conifers to maintaining wilderness characteristics, and the loss of solitude associated with treatment programs that may continue for up to 10 years.
148. The Blacktail DN and EA approve treatments in Wilderness Study Areas without complying with the BLM WSA non-impairment standard, and without providing “clearly articulated, well-supported management objectives and available scientific information,” including but not limited to the following: clear evidence that treatments are necessary; choosing the least disruptive means of treatment; and, supporting the decision with monitoring in place prior to treatments.
149. The Blacktail DN and EA fail to take a hard look at the cumulative impacts of grazing on aspen regeneration.
150. Removing junipers to promote grazing has been a long-standing management practice on public lands recognized in scientific studies like *Balda and Masters* (1980).
151. The Blacktail DN and EA fail to demonstrate the effectiveness of removing conifers from riparian areas for restoring aspen regeneration in the absence of exclusion of grazing by cows.

## **VII. CLAIMS FOR RELIEF FIRST CLAIM FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### Middle Ruby River Watershed EA/DN/FONSI

1. All the preceding paragraphs are incorporated into this claim.

2. The EA for the Middle Ruby River final decision failed to take a hard look at the direct, indirect, and cumulative impacts of the approved treatments on sage grouse, sagebrush habitats, riparian, ecotones, and woodland habitats, together with the wildlife species associated with these habitats, in part because it was not based upon accurate, high quality scientific analysis, and as a consequence relied upon incorrect assumptions and data.
3. The DN/FONSI for the Middle Ruby River final decision is arbitrary and capricious, as it failed to adequately consider a reasonable range of alternatives, including a no-grazing or significantly reduced grazing alternative, failed to explain how the impacts of the project would not be significant, and failed to consider important aspects of the problems (supra.) associated with approved treatments.
4. The DN/FONSI for the Middle Ruby River final decision is inconsistent with FLPMA's mandate against permanent impairment of the productivity of the land, in part because it fails to address the potential, according to best available science, that the spread of invasive like cheatgrass associated with approved treatments, grazing and roads, as well as the shorter fire return intervals associated with cheatgrass, is irreversible.
5. The DN/FONSI for the Middle Ruby River final decision is inconsistent with FLPMA's mandate against permanent impairment of the productivity of the land, in part because it fails to comply with the non-impairment standard and related BLM policies and guidelines for managing Wilderness Study Areas.

6. The DN for the Middle Ruby River is tiered to the RMP for the Dillon Field Office, and the EA is tiered to the EIS for the Dillon RMP.
7. The failure to supplement the EA for the Middle Ruby River final decision within a reasonable period of time after the ARMPA was approved, and before the project was scheduled for implementation, is a violation of FLPMA. 43 C.F.R. § 1610.5-3.

### **SECOND CLAIM FOR RELIEF**

#### Centennial Watershed EA/DN/FONSI

1. All the preceding paragraphs are incorporated into this claim.
2. The DN for Centennial was signed after the ARMPA was adopted and incorporated into the Dillon RMP, while the EA for Centennial pre-dated ARMPA.
3. The failure to supplement the EA before issuing the Centennial final decision is a violation of FLPMA and NEPA, as it was required to be tiered to the ARMPA FEIS in force at the time of the final decision.
4. The Centennial DN and EA do not demonstrate compliance with the ARMPA, including but not limited to demonstrating compliance with Conservation Objectives and related Conservation Measures set forth in the COT Report, not demonstrating compliance with the general prohibition on burning breeding and/or wintering sage grouse habitats, and not preparing an adequate risk assessment prior to approving prescribed burns in priority sage grouse habitat.
5. The EA for the Centennial final decision failed to take a hard look at the direct, indirect, and cumulative impacts of the approved treatments on sage grouse, sagebrush habitats, ecotones, riparian, and woodland habitats, together with the

wildlife species associated with these habitats, in part because it was not based upon accurate, high quality scientific analysis, and as a consequence relied upon incorrect assumptions and data.

6. The DN/FONSI for the Centennial final decision is arbitrary and capricious, as it failed to adequately consider a reasonable range of alternatives, and failed to consider important aspects of the problems (supra.) associated with approved treatments, including but not limited to the spread of invasive species like cheatgrass and the relative impacts of browsing by livestock and conifer “encroachment” on aspen.
7. The DN/FONSI for the Centennial final decision is inconsistent with FLPMA’s mandate against permanent impairment of the productivity of the land, in part because it fails to address the potential, according to best available science, that the spread of invasive like cheatgrass associated with approved treatments, grazing and roads, as well as the shorter fire return intervals associated with cheatgrass, is irreversible.
8. The DN/FONSI for the Centennial final decision is inconsistent with FLPMA’s mandate against permanent impairment of the productivity of the land, in part because it fails to comply with the non-impairment standard and related BLM policies and guidelines for managing Wilderness Study Areas.
9. The decision to reduce the size and extent of Priority Management Areas as part of the Centennial DN was arbitrary and capricious.

10. The failure of BLM to conduct surveys for Canada lynx habitat in areas adjacent to known, occupied lynx habitat prior to approving treatments in the Centennial DN that could adversely impact lynx was arbitrary and capricious.

### **THIRD CLAIM FOR RELIEF**

#### South Tobacco Root Watershed (STRW) EA/DN/FONSI

1. All the preceding paragraphs are incorporated into this claim.
2. The STRW DN and EA do not demonstrate compliance with the ARMPA, including but not limited to demonstrating compliance with Conservation Objectives and related Conservation Measures set forth in the COT Report, not demonstrating compliance with the general prohibition on burning breeding and/or wintering sage grouse habitats, not preparing an adequate risk assessment prior to approving prescribed burns in priority sage grouse habitat, and not demonstrating the efficacy of the 50% utilization standard for the purpose of providing adequate cover in sage grouse nesting and brood-rearing habitat.
3. The EA for the STRW final decision failed to take a hard look at the direct, indirect, and cumulative impacts of the approved treatments on sage grouse, sagebrush habitats, ecotones, riparian, and woodland habitats, together with the wildlife species associated with these habitats, in part because it was not based upon accurate, high quality scientific analysis, and as a consequence relied upon incorrect assumptions and data.
4. The STRW DN is arbitrary and capricious as the STRW EA fails to disclose and consider the potential adverse impacts of new road construction, conifer removal, and

fuels reduction on big game security, habitat effectiveness, and hiding/thermal cover for big game.

5. The DN/FONSI for the STRW final decision is arbitrary and capricious, as it failed to adequately consider a reasonable range of alternatives, and failed to consider important aspects of the problems (supra.) associated with approved treatments, including but not limited to the spread of invasive species like cheatgrass and the relative impacts of browsing by livestock and conifer “encroachment” on aspen.
6. The DN/FONSI for the STRW final decision is inconsistent with FLPMA’s mandate against permanent impairment of the productivity of the land, in part because it fails to address the potential, according to best available science, that the spread of invasive like cheatgrass associated with approved treatments, grazing and roads, as well as the shorter fire return intervals associated with cheatgrass, is irreversible.

#### **FOURTH CLAIM FOR RELIEF**

##### Blacktail Watershed EA/DN/FONSI

1. All the preceding paragraphs are incorporated into this claim.
2. The Blacktail DN and EA do not demonstrate compliance with the ARMPA, including but not limited to demonstrating compliance with Conservation Objectives and related Conservation Measures set forth in the COT Report, not demonstrating compliance with the general prohibition on burning breeding and/or wintering sage grouse habitats, not preparing an adequate risk assessment prior to approving prescribed burns in priority sage grouse habitat, and not demonstrating the efficacy of

the 50% utilization standard for the purpose of providing adequate cover in sage grouse nesting and brood-rearing habitat.

3. The EA for the Blacktail final decision failed to take a hard look at the direct, indirect, and cumulative impacts of the approved treatments on sage grouse, sagebrush habitats, ecotones, riparian, and woodland habitats, together with the wildlife species associated with these habitats, in part because it was not based upon accurate, high quality scientific analysis, and as a consequence relied upon incorrect assumptions and data.
4. The Blacktail DN is arbitrary and capricious as the STRW EA fails to disclose and consider the potential adverse impacts of new road construction, conifer removal, and fuels reduction on big game security, habitat effectiveness, and hiding/thermal cover for big game.
5. The DN/FONSI for the Blacktail final decision is arbitrary and capricious, as it failed to adequately consider a reasonable range of alternatives, and failed to consider important aspects of the problems (supra.) associated with approved treatments, including but not limited to the spread of invasive species like cheatgrass and the relative impacts of browsing by livestock and conifer “encroachment” on aspen.
6. The DN/FONSI for the Blacktail final decision is inconsistent with FLPMA’s mandate against permanent impairment of the productivity of the land, in part because it fails to address the potential, according to best available science, that the spread of invasive like cheatgrass associated with approved treatments, grazing and



roads, as well as the shorter fire return intervals associated with cheatgrass, is irreversible.

7. The DN/FONSI for the Blacktail final decision is inconsistent with FLPMA's mandate against permanent impairment of the productivity of the land, in part because it fails to comply with the non-impairment standard and related BLM policies and guidelines for managing Wilderness Study Areas.

### **FIFTH CLAIM FOR RELIEF**

#### Cumulative Impacts of Sagebrush Burning and Conifer Removal

1. All the preceding paragraphs are incorporated into this claim.
2. For many decades in SW Montana and throughout the Western U.S., BLM and others treated sagebrush habitats as an impediment to agriculture and livestock production, and aggressively removed and/or degraded extensive areas of sagebrush habitat through burning and application of herbicides, to the significant detriment of sage grouse and many other sagebrush obligate species.
3. For many decades in SW Montana and throughout the Western U.S., BLM and others treated conifers naturally present in ecotones and riparian areas, including but not limited to junipers and limber pine, as impediments to livestock production, and aggressively removed and/or degraded ecotones and riparian zones to favor grasslands for grazing, to the significant detriment of aspen and the many species that benefit from conifers and ecotones.
4. While the reasons proffered by BLM and other land managers have changed in response to increasing public and scientific concerns over the impacts of their

management practices, BLM continues to favor aggressive burning of sagebrush habitats and removal of conifers, with little demonstrated concern for the potentially cumulative adverse impacts on species that benefit from intact sagebrush habitats and the diversity of trees and associated plants in ecotones and riparian habitats.

5. The decisions challenged in this case cumulatively would burn another 30,598 acres (approximately 48 square miles) of sagebrush habitat, in addition to all the burning (and poisoning) of sagebrush habitat that has occurred over the decades, leading to the listing of the Greater Sage Grouse as a candidate species under the Endangered Species Act.
6. At the same time, there is an ongoing ecological crisis in SW Montana associated with decline of aspen and invasion of cheatgrass and other exotic species of plants, both of which are clearly associated with livestock grazing, and both of which threaten irreversible impairment of public lands and wildlife habitat.
7. To the extent that BLM continues to burn sagebrush habitats, to burn ecotones, to remove conifers, and continues to fail to address the significant impacts of livestock on aspen and riparian habitats, along with other associated management activities like road construction, it is failing its duties under FLPMA to strike an appropriate balance between livestock uses and recreational uses and to protect against permanent impairment of the lands, and it is failing to take a hard look at the cumulative impacts of its practices and the increasing influence of climate change on wildlife and recreation pursuant to NEPA.

8. For these reasons, all the challenged EAs, DNs, and FONSIIs in this case fail to comply with BLM's duties under the law, and merit broad relief designed to finally alter the destructive course that BLM generally, and the Dillon Field Office in particular, have been pursuing since their inception, which has resulted in the extirpation of sage grouse from 90% of its former range and continues to threaten its extinction as the impacts of climate change exacerbate the problem.

### **VIII. RELIEF REQUESTED**

For all of the above-stated reasons, Plaintiff requests that this Court award the following relief:

- A. Declare that the BLM has violated and is in continuing violation of the law;
- B. Vacate the challenged Decisions;
- C. Permanently enjoin implementation of treatments approved in the challenged decisions;
- D. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees under EAJA; and
- E. Grant Plaintiffs any such further relief as may be just, proper, and equitable.

Respectfully submitted this 2nd day of November, 2018.

/s/ Thomas J. Woodbury  
Thomas J. Woodbury  
FOREST DEFENSE, PC

Attorney for Plaintiffs