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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 WESTERN WATERSHEDS PROJECT and
11 the CENTER FOR BIOLOGICAL
12 DIVERSITY,

13 Plaintiffs,

14 vs.

15 U.S. DEPARTMENT OF THE INTERIOR,
16 BUREAU OF LAND MANAGEMENT,
17 JARED BYBEE in his official capacity as
18 Field Manager of the Bureau of Land
19 Management Bristlecone Field Office, and
20 SHIRLEY JOHNSON in her official capacity
21 as Field Manager of the Bureau of Land
22 Management Caliente Field office,

23 Defendants.

Case No: 2:23-cv-435

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. This action challenges the South Spring Valley and Hamlin Valley Watershed
3 Restoration Plan Decision Record (the Decision), signed by Bristlecone Field Office Manager
4 Jared Bybee and Caliente Field Office Manager Shirley Johnson on September 28, 2022, and the
5 associated Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).
6 Plaintiffs bring this case under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332,
7 the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701-1787, and the
8 Administrative Procedure Act (APA), 5 U.S.C. § 706.

9 2. South Spring and Hamlin Valleys are located in far-eastern Nevada near Great
10 Basin National Park. Both valleys contain vast areas of federal public land, managed by Defendant
11 Bureau of Land Management (BLM) under a federal statutory mandate to “protect the quality of
12 scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and
13 archeological values.” 43 U.S.C. §1701(a)(8). Public lands in South Spring and Hamlin Valleys
14 provide habitat for a wide variety of wildlife species, including the imperiled greater sage-grouse
15 and pinyon jay. BLM itself has identified sagebrush shrublands in South Spring and Hamlin
16 Valleys as having “the highest habitat value for maintaining sustainable [sage-grouse]
17 populations.” South Spring and Hamlin Valleys also host millennia-old pinyon and juniper forests,
18 including a grove of Utah juniper on the floor of Spring Valley known as *Bahsawahbee*, or the
19 “Swamp Cedars,” which is sacred to the area’s original inhabitants, the Western Shoshone.

20 3. Although labeled a “Restoration Plan,” BLM’s September 28, 2022 Decision is in
21 reality a prescription for widespread deforestation and sagebrush eradication over a 384,414-acre
22 area encompassing nearly all of the federal public land in South Spring and Hamlin Valleys.
23 Specifically, the plan calls for the following:

- 24 a. “Chaining”—dragging an anchor chain from a U.S. Navy vessel (with 40- to
25 120-pound links and 18-inch-long railroad irons welded perpendicular to the
26 links) between two bulldozers in order to uproot and crush pinyon-juniper
27 forests and sagebrush;

- b. “Dixie Harrow”—a large spike-tooth harrow (a heavy frame set with teeth or tines) pulled cross-country by a four-wheel drive tractor in order to kill shrubs;
- c. “Roller Chopper”— a large steel cylindrical drum, equipped with several blades protruding 12-14 inches along the entire width, which is towed behind a crawler-type tractor to crush and chop sagebrush and other mature vegetation;
- d. “Mowing”— a mowing deck pulled behind a tractor which, according to BLM, would reduce vegetation height to between “ground level to 12-15 inches high,” resulting in 40 to 100% sagebrush mortality;
- e. “Mastication”— the cutting, chopping and sometimes chipping of pinyon pine and juniper trees using light- to heavy-duty logging equipment;
- f. “Hand Treatment”—clearcutting or selective cutting of pinyon and juniper trees with chainsaws;
- g. Prescribed fire—intentionally ignited wildland fires designed to kill pinyon-juniper forests, sagebrush, and other forest, woodland and/or shrub vegetation types; and
- h. “Chemical Treatments”—application of any one, or any combination of, the dozens of chemical herbicides discussed in BLM’s 2007 “Programmatic Environmental Impact Statement for Vegetation Treatments Using Herbicides on BLM Lands in 17 Western States.”

4. BLM’s EA states that any of these so-called “treatments” could occur anywhere within the 384,414-acre project area, and that some areas may be subject to multiple “treatments” (e.g., hand-cutting of pinyon-juniper combined with Dixie Harrow to eliminate sagebrush and herbicide application).

5. BLM’s Decision approving these so-called “treatments” and the associated EA use an approach that has been soundly rejected by the courts—they fail to specify where each of these activities will occur, and do not provide any site- or species-specific information about the affected environment. Consequently, they fail to adequately describe the project’s direct, indirect, and

1 cumulative impacts on the human environment, as required under NEPA, and do not provide a
2 sufficient basis for informed decisionmaking and informed public participation. 42 U.S.C. § 4332.

3 6. Under FLPMA, BLM must comply with the Ely District Approved Resource
4 Management Plan (Ely RMP). The Ely RMP imposes specific requirements on BLM when
5 authorizing vegetation management projects. Specifically, BLM must consider the habitat needs
6 of certain sensitive wildlife species, such as the pinyon jay and tree-roosting bats, and
7 appropriately mitigate any habitat losses. But the EA provides no information on where the various
8 “treatments” discussed above would occur, or how particular species’ habitats would be impacted,
9 making such consideration impossible. And the Decision fails to provide for mitigation of any
10 habitat losses for these species. Consequently, BLM’s Decision and EA violate the Ely RMP and
11 FLPMA. 43 U.S.C. § 1712.

12 7. Plaintiffs Western Watersheds Project (Western Watersheds) and the Center for
13 Biological Diversity (the Center) seek remand and vacatur of this decision and the associated
14 environmental analysis, as well as declaratory and/or injunctive relief requiring BLM to comply
15 with NEPA and FLPMA.

16 **JURISDICTION AND VENUE**

17 8. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question), 28
18 U.S.C. § 1346 (United States as defendant), and 5 U.S.C. §§ 551-706 (Administrative Procedure
19 Act), because this action involves the United States as a defendant and arises under the laws of the
20 United States, including NEPA, 42 U.S.C. § 4332, FLPMA, 43 U.S.C. §§ 1701-1736, 1737-1782,
21 and the APA, 5 U.S.C. §§ 551-706. An actual justiciable controversy exists between Plaintiffs and
22 Defendants. The requested relief is proper under 28 U.S.C. §§ 2201 and 2202 (Declaratory
23 Judgment Act) and 5 U.S.C. §§ 705 and 706 (Administrative Procedure Act). The challenged
24 agency actions are final and subject to this Court’s review under 5 U.S.C. §§ 702, 704, and 706
25 (Administrative Procedure Act).

26 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Defendants
27 have offices in this judicial district, a substantial part of the events or omissions giving rise to the

1 claims in this Complaint occurred in this judicial district, and the lands involved in this case are
2 located in this judicial district.

3 10. Venue is proper in the Southern Division of this District, as the challenge involves
4 federal lands and resources in Lincoln and White Pine Counties. L.R. 1A 1-6.

5 11. Western Watersheds and the Center timely appealed the Decision, EA and FONSI
6 to the Interior Board of Land Appeals (IBLA) and sought to stay implementation of the Decision.
7 IBLA denied the request for a stay, and Western Watersheds and the Center dismissed their
8 administrative appeal. Plaintiffs have thus exhausted all required administrative remedies.

9 **PARTIES**

10 12. Western Watersheds is a non-profit organization with more than 12,000 members
11 and supporters whose mission is to protect and restore western watersheds and wildlife through
12 education, public policy initiatives, and legal advocacy. Based in neighboring Idaho, Western
13 Watersheds has longstanding interests in public land management in Nevada. Western Watersheds
14 and its staff and members use and enjoy the public lands and their wildlife, cultural, and natural
15 resources for health, recreational, scientific, spiritual, educational, aesthetic, and other purposes,
16 including in Nevada. Western Watersheds also has a direct interest in natural resource management
17 projects that occur in areas with sensitive wildlife populations and important wildlife habitat, such
18 as greater sage-grouse and designated sage-grouse habitat management areas.

19 13. The Center is a non-profit corporation headquartered in Tucson, Arizona, with
20 offices and staff in several states including Nevada. The Center works through science, law, and
21 policy to secure a future for all species, great or small, hovering on the brink of extinction. The
22 Center is actively involved in endangered species and habitat protection nationwide, and has more
23 than 89,000 members throughout the United States and the world, including 700 members in
24 Nevada.

25 14. Western Watersheds and the Center bring this action on their own behalf, and on
26 behalf of their members, whose diverse interests span natural history, ecology, conservation,
27 wildlife and native plant observation, nature photography, hiking, camping, backpacking, quiet

1 and solitude in nature, dark skies, spiritual renewal, and a love of Nevada’s natural landscapes,
2 and who enjoy and use federal public land in Nevada, including lands administered by BLM in
3 South Spring and Hamlin Valleys, as places to pursue these activities now and into the future.

4 15. For example, Western Watersheds and Center member Patrick Donnelly regularly
5 visits Spring Valley to survey for rare plants, view wildlife, take photographs, and enjoy the
6 remote, rugged, and undisturbed character of the area. Mr. Donnelly has also visited Hamlin Valley
7 to survey for rare plants, and intends to return to both Spring Valley and Hamlin Valley continue
8 these surveys in Spring of 2023. The area’s importance to Mr. Donnelly cannot be understated; he
9 calls Spring Valley “one of the centers of [his] universe in the Great Basin” and “one of the most
10 special places in the whole world.”

11 16. Western Watersheds Conservation Advocate and member Paul Ruprecht has
12 visited Spring Valley and Hamlin valley several times to hike, camp, take photographs, observe
13 scenery including sagebrush shrublands and pinyon-juniper forests, and observe wildlife
14 associated with these habitats. Mr. Ruprecht last visited South Spring and Hamlin Valleys in May
15 2021, and plans to return to the area in May or June of 2023. During his visits, Mr. Ruprecht enjoys
16 viewing and photographing species such as sage-grouse, pinyon jay, Clark’s nutcracker, mule deer,
17 elk, and other species which require or prefer pinyon juniper woodlands and sagebrush shrublands.

18 17. Center members Rick and Delaine Spilsbury are members of the Western Shoshone
19 Tribe who live within their ancestral homelands near Ely, Nevada and frequently visit Spring
20 Valley. Both have visited Spring Valley more times than they can count in order to hike, camp,
21 hunt, cycle, seek spiritual renewal, and connect with their Western Shoshone heritage. Spring
22 Valley contains a sacred site of great historical and spiritual significance to the Western Shoshone.
23 Known in the Shoshone language as *Bahsawahbee*, it is a unique grove of Utah juniper on the
24 floor of Spring Valley, and the site of three massacres of Western Shoshone people by the U.S.
25 military. The Spilsburys often visit the site to connect with and honor their ancestors, and are
26 currently working to secure protected status for the site at both the state and federal levels.

27

1 18. Mr. Donnelly is injured by BLM’s Decision because, if the project were to move
2 forward as approved, “over one hundred thousand acres of beautiful Spring and Hamlin Valleys
3 would be decimated by bulldozers dragging chains, masticators destroying forest, and mowers
4 ripping up valuable sagebrush habitat.” Mr. Donnelly states that he “would no longer be able to
5 enjoy a pristine and undeveloped landscape”; he would “no longer . . . be able to view wildlife and
6 biodiversity in its undisturbed state”; he would “no longer be able to seek spiritual renewal and
7 quiet contemplation there”; and he would “be harmed by the knowledge that one of the most
8 special places in the world to me was now the site of unimaginable destruction and deforestation.”

9 19. Mr. Ruprecht is injured by BLM’s Decision because it will negatively impact the
10 species and landscapes he enjoys viewing and photographing. Mr. Ruprecht has personally
11 observed the results of BLM vegetation removal treatments in other, ecologically similar areas,
12 and found that these areas are abandoned by wildlife and often do not recover into healthy or
13 functional habitat. A similar outcome in Spring and Hamlin Valleys would irreparably injure Mr.
14 Ruprecht’s enjoyment of Spring and Hamlin Valleys, their scenery, and their wildlife. Mr.
15 Ruprecht is further injured by BLM’s failure to appropriately manage livestock grazing in the
16 Project area, which has degraded many of the habitats that Mr. Ruprecht has visited, and would
17 likely inhibit recovery if the Project were to go forward. Mr. Ruprecht reports that in some heavily
18 grazed areas within Spring and Hamlin Valleys have been “essentially reduced to dirt over huge
19 expanses.”

20 20. The approved tree- and shrub-removal activities would also irreparably harm the
21 Spilsburys’ experience of visiting their ancestral homelands in Spring Valley and the
22 *Bahsawahbee* sacred site. To the Spilsburys, pinyon and juniper woodlands are themselves sacred,
23 having helped sustain their ancestors in the Great Basin for tens of thousands of years.
24 Additionally, the pinyon and juniper woodlands and sagebrush shrublands in Spring and Hamlin
25 valleys are a part of a natural, unaltered landscape that the Spilsburys value and frequently enjoy.
26 Removing these woodlands and shrublands would harm the Spilsburys personally, spiritually,
27 aesthetically, and professionally. As Delaine Spilsbury explains, the ongoing destruction of pinyon

1 and juniper trees on BLM lands in eastern Nevada, including in Spring and Hamlin valleys,
2 connects with a deeply felt tragic and traumatic history for her people:

3 I see the destruction of pinyon and juniper forests in the Great Basin as theft of our
4 Native spirituality and heritage. When will the U.S. Government stop stealing from
5 us former inhabitants of this great land of ours? There is almost nothing left to take.
6 It would severely and irreparably harm me to see the pinyon-juniper forests and
sagebrush in Spring Valley destroyed on my next visit to the area. It would be like
seeing a cemetery desecrated or destroyed.

7 21. The Spilsburys, Mr. Donnelly, Mr. Ruprecht and other members of Western
8 Watersheds and the Center have been and will continue to be adversely affected and irreparably
9 injured if Defendants' ongoing violations of NEPA, FLPMA, and the APA continue. These are
10 actual, concrete injuries caused by the Defendants' violations of the NEPA, FLPMA, and the APA.
11 The relief sought will redress these injuries to Western Watersheds, the Center, and their members.

12 22. Defendants' failure to comply with NEPA additionally harms Western Watersheds,
13 the Center, and their members by denying them the right to informed decisionmaking and full
14 disclosure under NEPA, as well as the right to meaningfully participate in the decisionmaking
15 process.

16 23. Defendant U.S. Department of the Interior ("Interior") is a cabinet-level executive
17 agency responsible for, among other things, managing federally-owned lands, wildlife, and public
18 natural resources throughout the United States. Interior has the ultimate responsibility to
19 administer and implement FLPMA, and to comply with all other applicable federal laws, including
20 NEPA.

21 24. Defendant Bureau of Land Management is an agency within the U.S. Department
22 of the Interior. BLM and its officers are responsible for administering federally-owned public lands
23 and natural resources, under all federal laws applicable thereto, including NEPA and FLPMA.

24 25. Defendant Jared Bybee is the Field Office Manager for BLM's Bristlecone Field
25 Office. As Field Office Manager, Mr. Bybee is responsible for administering and managing public
26 lands and resources within the Bristlecone Field Office, including lands and resources located in
27

1 South Spring and Hamlin Valleys. Mr. Bybee co-signed the September 28, 2021 Decision and
2 FONSI authorizing the project. Mr. Bybee is sued in his official capacity.

3 26. Defendant Shirley Johnson is the Field Office Manager for BLM's Caliente Field
4 Office. As Field Office Manager, Ms. Johnson is responsible for administering and managing
5 public lands and resources within the Caliente Field Office, including lands and resources located
6 in South Spring and Hamlin Valleys. Ms. Johnson co-signed the September 28, 2021 Decision and
7 FONSI authorizing the project. Ms. Johnson is sued in her official capacity.

8 **LEGAL BACKGROUND**

9 **A. The National Environmental Policy Act (NEPA)**

10 27. NEPA is "basic national charter for protection of the environment." 40 C.F.R. §
11 1500.1(a) (2019). In passing NEPA, Congress "recogniz[ed] the profound impact of man's activity
12 on the interrelations of all components of the natural environment" and set out "to create and
13 maintain conditions under which man and nature can exist in productive harmony." 42 U.S.C. §
14 4331(a).

15 28. NEPA serves twin goals. First, it aims to ensure that federal agencies carefully
16 consider detailed information regarding the environmental impact of a proposed action before
17 reaching a decision on the action. Second, it ensures that information about a proposal's
18 environmental impact is made available to members of the public so that they may play a role in
19 the decision-making process. NEPA ensures that important effects will not be overlooked or
20 underestimated, only to be discovered after resources have been committed or the die is otherwise
21 already cast.

22 29. The White House Council on Environmental Quality (CEQ) has promulgated
23 regulations implementing NEPA. *See* 40 C.F.R. § 1507.3(b) (1978). On July 16, 2020, CEQ
24 published a Final Rule significantly revising these regulations. 85 Fed. Reg. 43304-76 (July 16,
25 2020). The Final Rule took effect on September 14, 2020, and applied to federal projects beginning
26 after September 14, 2020. *Id.* at 43372-73. The NEPA process for the South Spring Valley and
27 Hamlin Valley Watershed Restoration Plan began well before September 14, 2020, and BLM

1 applied the pre-2020 regulations to the project. Accordingly, the regulations in effect before the
2 promulgation of CEQ's July 16, 2020 Final Rule apply and are cited throughout this Complaint.

3 30. NEPA and its implementing regulations require federal agencies to prepare an
4 environmental impact statement (EIS) for all "major Federal actions significantly affecting the
5 quality of the human environment." 42 U.S.C. § 4332(C)(i); 40 C.F.R. § 1501.4 (2019). An agency
6 may first prepare an environmental assessment (EA) to determine whether an EIS is necessary. 40
7 C.F.R. §§ 1501.4, 1508.9 (2019). If, after preparing an EA, the agency decides that an EIS is not
8 necessary, the agency must prepare an explanatory finding of no significant impact (FONSI) which
9 "briefly present[s] the reasons why an action . . . will not have a significant effect on the human
10 environment." 40 C.F.R. § 1508.13 (2019).

11 31. Whether the agency prepares an EA or an EIS, the agency must take a "hard look"
12 at all direct, indirect, and cumulative environmental impacts of the proposed action and reasonable
13 alternatives thereto. 40 C.F.R. §§ 1502.14, 1502.16 (2019). To fulfill its purpose, the agency's
14 environmental analysis must "provide full and fair discussion of significant environmental impacts
15 and . . . inform decisionmakers and the public of the reasonable alternatives which would avoid or
16 minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1
17 (2019).

18 32. A "hard look" under NEPA requires a thoughtful and probing analysis of the
19 possible impacts associated with the proposed project. General statements about "possible" effects
20 and "some risk" do not constitute a "hard look" absent a justification regarding why more
21 definitive information could not be provided. Without quantified, detailed information, BLM
22 cannot adequately assess the project's environmental impacts, and cannot comply with NEPA. The
23 agency may not simply rely on its staff's opinions without hard data; it must explain the
24 conclusions it has drawn from its chosen methodology, and the reasons it considered the
25 underlying evidence to be reliable.

26 33. An EA or EIS must also consider a project's cumulative impacts. A cumulative
27 impact is "the impact on the environment which results from the incremental impact of the action

1 when added to other past, present, and reasonably foreseeable future actions regardless of what
2 agency (Federal or non-Federal) or person undertakes such other action.” 40 C.F.R. § 1508.7
3 (2019). “Cumulative impacts can result from individually minor but collectively significant actions
4 taking place over a period of time.” *Id.* A cumulative impacts analysis must be more than
5 perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future
6 projects. To be useful to decision makers and the public, the cumulative impacts analysis must
7 include some quantified or detailed information.

8 34. NEPA permits an agency to predict broad cumulative impacts of related actions in
9 a programmatic NEPA document before it knows the actual direct and indirect effects of
10 implementation decisions on specific project areas. *See* 40 C.F.R. § 1508.28 (2019). However,
11 once the site-specific effects of a proposed action become reasonably foreseeable, an agency must
12 analyze the direct and indirect effects of the proposed action. Where an agency seeks to authorize
13 site-specific actions through a single EIS or EA—that is, where the broad-scale analysis represents
14 the agency’s “last word” on environmental impacts before ground-level implementation—the
15 required level of analysis is stringent. At a project’s “implementation stage,” NEPA review must
16 be more tailored and detailed because the agency is confronting individual, site-specific actions
17 and impacts.

18 **B. The Federal Land Policy and Management Act (FLPMA)**

19 35. FLPMA is the “organic act” of BLM and governs the agency’s management of
20 public lands and resources. In FLPMA, Congress declared that is the policy of the United States
21 to manage the public lands “in a manner that will protect the quality of scientific, scenic, historical,
22 ecological, environmental, air and atmospheric, water resource, and archeological values” and that,
23 “where appropriate, will preserve and protect certain public lands in their natural condition.” 43
24 U.S.C. § 1701(a)(8).

25 36. FLPMA provides that BLM “shall manage the public lands . . . in accordance with
26 the land use plans developed . . . under section 1712 of this title.” 43 U.S.C. § 1732(a). “All . . .
27 resource management authorizations and actions” must “conform to the approved plan.” 43 C.F.R.

1 §§ 1610.5-3(a). If a proposed action is not consistent with the applicable land use plan, BLM must
2 deny the proposed action or propose and adopt an amendment to the plan. 43 C.F.R. §§ 1610.5-3,
3 1610.5-5.

4 37. The approved land use plan applicable to this Project is the Ely RMP, as modified
5 by the Nevada Greater Sage-Grouse Resource Management Plan Amendment. The Ely RMP
6 contains two requirements specifically applicable to this Project regarding impacts to special-status
7 species. First, BLM must “[m]itigate all discretionary permitted activities that result in the loss of
8 special status species habitats on a ratio of 2 acres of comparable habitat for every 1 acre of lost
9 habitat as determined on a project-by-project basis.” Second, BLM must “consider the habitat
10 needs of obligate bat species in restoration treatments.”

11 **C. The Administrative Procedure Act (APA)**

12 38. The APA provides for judicial review of federal agency actions for persons
13 adversely affected or aggrieved by the agency action. 5 U.S.C. § 702. Agency action made
14 reviewable by statute and final agency action for which there is no other adequate remedy are
15 subject to judicial review. *Id.* § 704.

16 39. The APA requires a reviewing court to “compel agency action unlawfully withheld
17 or unreasonably delayed” and “hold unlawful and set aside agency action, findings, and
18 conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in
19 accordance with law.” *Id.* § 706

20 40. An agency action is arbitrary and capricious if the agency relied on factors which
21 Congress did not intend it to consider, entirely failed to consider an important aspect of the
22 problem, offered an explanation for its decision that runs counter to the evidence before the agency,
23 or is so implausible that it could not be ascribed to a difference in view or the product of agency
24 expertise.

25 **FACTUAL BACKGROUND**

26 41. The Project authorizes several different methods of deforestation and shrub
27 destruction across a vast area of federal public land in eastern Nevada, and specifically targets the

1 habitat of imperiled wildlife species such as the greater sage-grouse and pinyon jay. Current federal
2 policy emphasizes the conservation of these species and their habitats. However, because BLM
3 evaluated the Project at the most general scale, it failed to provide any meaningful analysis of the
4 Project's impacts to these specific species or their habitats. BLM also failed to evaluate the
5 Project's site-specific impacts on other highly important public resources, including wilderness
6 characteristics. And BLM failed to consider the cumulative impacts of BLM-authorized livestock
7 grazing—a widespread and significant land use has been shown to directly impact BLM's stated
8 objectives for the Project. BLM's failure to look before leaping violates both NEPA and FLPMA.

9 **A. The Greater Sage-Grouse and its Habitat**

10 42. The greater sage-grouse (*Centrocercus urophasianus*) is the largest grouse species
11 found in North America. Sage-grouse are ground-dwelling birds, and because they depend upon
12 sagebrush for food, shelter, and hiding cover throughout their lifecycle, they are considered
13 "sagebrush obligates." Greater sage-grouse are known for their elaborate courtship displays, which
14 take place on breeding grounds called "leks."

15 43. Sage-grouse populations have been in decline since the 1960s due to the destruction
16 and degradation of their sagebrush habitat. Average population declines across the range of the
17 species are estimated at 2% per year from 1965 to 2015, or a total of 66% over that same time
18 period. More recently, a study by the U.S. Geological Survey concluded that sage-grouse
19 populations have plummeted by 80% since 1965. Half of that decline has happened since 2002.
20 Declines have been especially severe in the Great Basin, where the primary sage-grouse
21 conservation strategy has relied on treatments like those proposed here.

22 44. Sage-grouse exhibit strong site fidelity (loyalty to a particular area) to seasonal
23 habitats (i.e., breeding, nesting, and wintering areas). Adult sage-grouse rarely switch from these
24 habitats once they have been selected, limiting their ability to adapt to habitat degradation and
25 other changes in their local environments.

26 45. On March 23, 2010, the U.S. Fish and Wildlife Service (the Service) determined
27 that protecting the greater sage-grouse under the Endangered Species Act was "warranted" due to

1 persistent, range-wide population declines, but the Service refused to do so at that time, finding it
2 precluded by other priorities. 75 Fed. Reg. 13910 (March 23, 2010).

3 46. In its 2010 “warranted” finding, FWS attributed the sage-grouse’s decline primarily
4 to the degradation and fragmentation of sagebrush habitats. FWS found that human activities,
5 including agriculture, urbanization, infrastructure expansion, livestock grazing, recreation, and
6 energy development had significantly degraded and destroyed sagebrush habitats across the West,
7 and posed a continuing threat to the greater sage-grouse’s persistence. FWS stated:

8 Past and current human influences on sagebrush-steppe ecosystems (particularly
9 livestock grazing, fire, and recreation) are not perpetuating the original plant
10 communities. West (1999) estimates that *less than 1 percent of the sagebrush-*
11 *steppe remains in unaltered condition.* Furthermore, systematic disturbance has
caused significant, and sometimes radical, changes in species composition in many
areas. (emphasis added).

12 47. In the Great Basin portion of the species’ range, which encompasses the Project
13 area, FWS emphasized the threats posed by interactions between human disturbance, wildfire, and
14 invasive species. FWS identified a cycle of habitat degradation in which human activities such as
15 livestock grazing, recreation, mining, and energy development produce ground disturbance, which
16 encourages the invasion of highly flammable non-native annual grasses, which in turn contribute
17 to unnaturally frequent and severe wildfires. Invasive exotic grasses such as cheatgrass (*Bromus*
18 *tectorum*) readily invade sagebrush habitats, particularly after these areas have been disturbed by
19 development, grazing, or the kinds of vegetation-removal treatments BLM has authorized here.
20 Once established, invasive grasses provide abundant and continuous fuel for wildfires, thus
21 increasing both wildfire risk and frequency. While sagebrush killed by fire are extremely slow to
22 reestablish, cheatgrass recovers quickly, often within one to two years of a fire event. Consequently,
23 the invasion of cheatgrass and other invasive annual grass species ultimately leads to a reoccurring
24 “cheatgrass-fire” cycle that prevents sagebrush reestablishment and permanently eliminates sage-
25 grouse habitat.

26 48. In addition to land-use practices, invasive species, and fire, FWS’s 2010
27 “warranted” finding acknowledged adverse impacts from BLM vegetation-management practices:

1 In addition to wildfire, land managers are using prescribed fire as well as
2 mechanical and chemical treatments to obtain desired management objectives for a
3 variety of wildlife species and domestic ungulates in sagebrush habitats throughout
4 the range of the greater sage-grouse. *While the efficacy of treatments in sagebrush
habitats to enhance sage-grouse populations is questionable, as with wildland fire,
an immediate and potentially long-term result is the loss of habitat* (emphasis
added).

5 49. The Service recognized that vegetation-removal projects—which were originally
6 implemented in order to increase grass cover and forage for domestic livestock—have historically
7 been widespread throughout the sage-grouse’s range:

8 Extensive rangeland treatment has been conducted by federal agencies and private
9 landowners to improve conditions for livestock in the sagebrush-steppe region. By
10 the 1970s, over 2 million ha (5 million ac) of sagebrush are estimated to have been
11 mechanically treated, sprayed with herbicide, or burned in an effort to remove
12 sagebrush and increase herbaceous forage and grasses. The BLM treated over
13 1,800,000 ha (4,447,897 ac) from 1940 to 1994, with 62 percent of the treatment
14 occurring during the 1960s. Braun (1998, p. 146) concluded that, since European
15 settlement of western North America, all sagebrush habitats used by greater sage-
16 grouse have been treated in some way to reduce shrub cover. The use of chemicals
to control sagebrush was initiated in the 1940s and intensified in the 1960s and
early 1970s. Crawford et al. (2004, p. 12) hypothesized that reductions in sage-
grouse habitat quality (and possibly sage-grouse numbers) in the 1970s may have
been associated with extensive rangeland treatments to increase forage for domestic
livestock.

17 50. Although the Service acknowledged research suggesting that mechanical
18 treatments may be beneficial to sage-grouse “if carefully designed and executed,” it cautioned that
19 “[m]echanical treatments in blocks greater than [247 acres], or of any size seeded with exotic
20 grasses, degrade sage-grouse habitat by altering the structure and composition of the vegetative
21 community.” The Service was particularly skeptical regarding using prescribed fires to benefit
22 sage-grouse, concluding that the “preponderance of evidence . . . suggests [that] these treatments
23 are not beneficial to sage-grouse.”

24 51. The Service further acknowledged the historical and ongoing impacts to sagebrush
25 habitats from domestic livestock grazing. Prior to the arrival of Euro-American settlers in the
26 1800s, large herbivores did not exist in significant numbers in the Great Basin, with many species
27 having gone extinct 10,000 to 12,000 years ago. From that period up until settlement, many areas

1 of sagebrush did not support herds of large ungulates, and grazing pressure by native species such
2 as pronghorn, bighorn sheep, and mule deer was likely sporadic and localized. Sagebrush thus
3 evolved without significant grazing pressure, and most plant species within the sagebrush
4 ecosystem are not adapted to heavy or persistent grazing.

5 52. Grazing can alter and degrade sagebrush habitats in numerous ways. Livestock
6 affect soils, vegetation, water, and nutrient availability by consuming or altering vegetation,
7 redistributing nutrients and plant seeds, trampling soils and vegetation, and disturbing biological
8 soil crusts. Put succinctly, livestock alter both the physical composition of sage-grouse habitats,
9 as well as the ecological processes that sage-grouse depend upon for their survival. Among other
10 impacts, livestock remove vegetation that sage-grouse depend on to conceal themselves from
11 predators, and create conditions that facilitate the invasion of sagebrush habitats by exotic annual
12 grasses such as cheatgrass. Additional direct impacts from livestock include trampling, as well as
13 fencing and infrastructure installed to facilitate grazing, which fragment sage-grouse habitat and
14 pose a collision-mortality hazard. Despite these impacts, grazing remains the most widespread use
15 of sagebrush habitats on BLM public lands. Grazing is authorized on nearly all of the sage-grouse
16 habitat in the Great Basin.

17 53. Once sagebrush habitats have been degraded by invasive species, wildfire,
18 mechanical treatment, grazing or other causes, they are exceedingly difficult to restore. Restoration
19 and rehabilitation techniques for sagebrush habitats are considered to be mostly unproven and
20 experimental. Restoration success also depends on uncontrollable factors, such as precipitation.
21 And even assuming complete success of restoration efforts on targeted areas, it may still take
22 decades for a shrub-dominated vegetation community to return. Landscape restoration may require
23 centuries, and even longer periods may be required for greater sage-grouse to use recovered or
24 restored landscapes. Consequently, sage-grouse conservation efforts have mainly focused on
25 preserving, protecting, and enhancing areas which currently provide functional sage-grouse
26 habitat. The Service, other federal agencies, and academic experts have all warned against
27 conducting treatments that remove sagebrush cover within sage-grouse habitat.

1 54. After identifying these various threats to the greater sage-grouse and its sagebrush
2 habitat, the Service’s 2010 “warranted” finding explained that existing local, State, and Federal
3 regulatory mechanisms were not sufficient to address these threats or protect the species from
4 eventual extinction. The Service identified the BLM’s resource management plans (RMPs) as the
5 primary regulatory mechanisms applicable to sage-grouse on federal public lands.

6 55. The widespread degradation of sagebrush ecosystems across the West has affected
7 other sagebrush-obligate species as well. For example, the pygmy rabbit (*Brachylagus idahoensis*),
8 a BLM-designated “sensitive” species, is found primarily on big-sagebrush-dominated plains and
9 valley bottoms where sagebrush occurs in tall, dense clumps. Pygmy rabbits require dense stands
10 of sagebrush and prefer sites with greater shrub cover and height. As with the greater sage-grouse,
11 pygmy rabbits depend on sagebrush for both cover and food. Sagebrush may comprise up to 99
12 percent of a pygmy rabbit’s diet in winter and 51 percent in summer. Pygmy rabbit dispersal may
13 be limited by open (sagebrush-free) areas, roads, and fences. Put simply, Sagebrush cover is
14 critical to pygmy rabbits and sagebrush eradication is detrimental. The overall decline in sagebrush
15 habitat throughout the Great Basin is likely the most significant factor contributing to pygmy rabbit
16 population declines in this region.

17 56. Pygmy rabbits, like sage-grouse, have been adversely impacted by habitat
18 fragmentation, wildfire, invasive species, infrastructure development, and livestock grazing, with
19 an overall population decline of 10 to 50 percent from historic levels. Due to continuing declines
20 in both population and suitable habitat, pygmy rabbits were recently petitioned for listing under
21 the Endangered Species Act. The listing petition reports that an “alarming amount of pygmy rabbit
22 habitat . . . has been lost, degraded and/or fragmented in recent decades,” and that the species is at
23 risk even in so-called “stronghold” areas. The Service has yet to make a determination on the
24 petition to list the pygmy rabbit.

25 **B. The Pinyon Jay and its Habitat**

26 57. Pinyon and juniper forests are ecologically rich areas that provide habitat for
27 hundreds of plant and animal species. Game species such as elk, mule deer, and wild turkey are

1 year-round residents in pinyon-juniper woodlands and depend on this habitat for food and cover.
2 Pinyon-juniper woodlands also make significant contributions to carbon sequestration, and thus
3 help mitigate the impacts of global climate change.

4 58. Pinyon-juniper woodlands support a high diversity of birds, some of which depend
5 exclusively on these woodlands. The pinyon jay (*Gymnorhinus cyanocephalus*)—a medium-sized,
6 blue, crestless bird species found throughout the western United States—is a pinyon-juniper
7 obligate.

8 59. Due in part to loss and degradation of its obligate pinyon-juniper habitat, the pinyon
9 jay is declining at an alarming rate. Over the last 50 years, the species has declined by an estimated
10 80%, faster than the greater sage-grouse. BLM has designated the pinyon jay as a “sensitive”
11 species.

12 60. The continuing loss of pinyon-juniper woodlands poses a significant threat to the
13 pinyon jay. As a pinyon-juniper obligate species, the pinyon jay cannot survive without pinyon-
14 juniper woodlands. Since the 1800s, millions of acres of pinyon-juniper woodlands have been
15 deliberately destroyed across the West. Despite the well documented importance of pinyon-juniper
16 woodlands to not only the pinyon jay but numerous other species, land managers continue to
17 remove extensive amounts of pinyon and juniper in the name of wildfire risk reduction and habitat
18 restoration for other species, including, ironically, greater sage-grouse.

19 61. The International Union for the Conservation of Nature (IUCN) has assessed the
20 pinyon jay as “vulnerable” to extinction, and linked its decline to conversion and degradation of
21 pinyon-juniper woodland habitat. IUCN has specifically identified pinyon-juniper eradication
22 efforts by federal land managers as contributing to the decline of pinyon-juniper habitat across the
23 pinyon jay’s range:

24 [O]ngoing forest loss within the species’s range is currently estimated at ~5.6% per
25 three generations. Land managers have followed a policy to eradicate this
26 woodland, with the U.S. Forest Service classifying it as “noncommercial” and
27 placing it in a “no-value” category. . . . Piñon-juniper woodland is also often
removed to create or promote shrublands for the benefit of sage-grouse, a species
targeted for conservation efforts, despite its rates of decline being slower than those

1 of [the pinyon jay], which declines as a result. Currently herbicides, mechanical
2 ploughing and fire are used to turn piñon-juniper woodland into pasture land for
cattle.

3 62. Pinyon and juniper forests have been widespread in the Great Basin for thousands
4 of years. The distribution and composition of these forests has shifted over time in response to
5 climactic conditions, a process that continues today. And as a result of global climate change,
6 pinyon and juniper forests are experiencing significant mortality, which will further affect their
7 distributions. Climate change has been linked to reductions in pinyon and juniper cover, which in
8 turn exacerbate the effect of human destruction of pinyon jay habitat.

9 63. Human activities since the mid-1800s have had a tremendous impact on pinyon and
10 juniper forests. Early Euro-American settlers depended on local sources of wood for both fuel and
11 construction. Historically, large numbers of trees were cut to make fences. Pinyon and juniper
12 were also an important source of wood for mining operations, which used pinyon and juniper trees
13 for mine supports, buildings, and fuel for smelters and kilns. Throughout the late 1880s, mining
14 communities consumed enormous quantities of local pinyon and juniper. For example, the
15 Comstock mines in western Nevada consumed 18 million board feet of timber annually, while
16 mines in Eureka, Nevada used 17,850 bushels of charcoal per day. By about 1870, forests had been
17 depleted for a distance of 50 miles around Eureka, and to similar extents around other communities
18 including Cedar City, Utah.

19 64. Subsequent deforestation occurred as pinyon-juniper woodlands were removed, or
20 “treated,” by federal range managers. Historical treatments used many of the same methods
21 proposed here, including burning and chaining. Accurate records of these early projects are not
22 available, but estimates indicate that roughly three million acres of woodland were removed and
23 converted to livestock forage between 1960 and 1972 alone. As BLM’s EA for the Project
24 acknowledges, many of the treated sites remain in poor condition today.

25 65. Currently, federal land management agencies, including BLM, follow a policy of
26 pinyon-juniper reduction and eradication, often with the stated purpose of improving habitat for
27 species of conservation concern or economic importance, such as sage-grouse and mule deer. As

1 the Service acknowledged in 2015, evidence for the effectiveness of this policy as a sage-grouse
2 conservation method is lacking. While researchers have found that targeted removal of lower-
3 density pinyon-juniper trees during the early phases of woodland expansion can benefit sage-
4 grouse nesting success where adequate shrub and grass cover are present, there is scant scientific
5 support for the widespread removal of pinyon and juniper forests, particularly where those forests
6 are well-established or lack a shrub/grass understory. Nevertheless, both BLM and the U.S. Forest
7 Service continue to remove pinyon-juniper forests across the West, often with little consideration
8 of how these actions affect the pinyon jay and other pinyon-juniper obligate species.

9 66. Researchers are just beginning to understand effects of land management actions
10 on pinyon jays and their habitats. Current resources on the topic, such as the Conservation Strategy
11 for the Pinyon Jay, produced in collaboration with the Service, recommend against treating
12 (thinning, burning, herbicide application, etc.) pinyon-juniper woodlands at pinyon jay nesting
13 colony sites and foraging areas within the home ranges of pinyon jay flocks. Knowledge of
14 individual pinyon jay flocks, their home ranges, and habitats is thus necessary for designing
15 effective site-specific management and mitigation actions.

16 67. Like sagebrush habitats, pinyon-juniper forests are vulnerable to the “cheatgrass-
17 fire” cycle, particularly in arid locations. Prior to Euro-American settlement, fire in pinyon and
18 juniper communities was thought to be rare in general, and fire cycle in persistent pinyon-juniper
19 communities were likely hundreds or even thousands of years. When fire does occur in pinyon and
20 juniper woodlands it is typically high-intensity and stand-replacing—meaning it completely
21 eliminates tree cover. With the introduction of annual invasive grasses such as cheatgrass, fire
22 rotations in pinyon-juniper woodlands can shorten dramatically, limiting the forests’ ability to
23 recover.

24 68. Pinyon and juniper removal treatments are frequently proposed with the purpose of
25 reducing wildfire risk or returning the landscape to a purported “natural” condition. But because
26 these woodlands never experienced frequent fire, treatments that aim to reduce fire rotations do
27 not restore natural conditions in these ecosystems.

1 69. Although targeted removal of pinyon and juniper, under certain conditions, may
2 benefit species that favor sagebrush or grasslands, both pinyon-juniper and sagebrush removal
3 projects can have significant adverse, unintended consequences. Paradoxically, projects designed
4 to reduce wildfire can end up increasing wildfire risk by increasing grass growth, particularly
5 invasive, non-native annuals like cheatgrass. While projects often aim to increase herbaceous plant
6 growth (grasses and forbs), these “desired” species also create continuous ground-level fuel loads
7 that are easily ignited and contribute to larger, more frequent, and more intense fires. Many areas
8 in the Great Basin that have been treated in the past 50 years are now infested with non-native
9 cheatgrass or introduced forage grasses such as crested wheatgrass.

10 70. Because of its significant decline and the various threats to its long-term
11 persistence, including the continuing removal of pinyon and juniper forests across the West, the
12 pinyon jay was recently petitioned for listing under the Endangered Species Act. The Service has
13 yet to make a determination on the petition to list the pinyon jay.

14 71. Pinyon and juniper forests also hold cultural, spiritual, and historical significance
15 for the region’s Native American tribes. Native Americans have used pinyon pine and juniper trees
16 for food, medicine, and ceremonial purposes since time immemorial. Pinyon pine nuts are a
17 traditional food source for area tribes and a focal point of traditional ways of life. Tribes and their
18 members today maintain ties to historical pine-nut gathering locations, and hold ceremonies to
19 coincide with the annual pine nut harvest. Tribal elders still participate in pine nut collecting
20 activities, though the removal of trees from low-elevation sites by federal land managers makes
21 such participation more difficult, and in some cases impossible.

22 **C. The Ely RMP**

23 72. BLM’s Ely District Office manages approximately 11.5 million acres of public
24 lands within central Nevada. The public lands managed by the Ely District Office measures
25 approximately 230 miles (north-south) by 115 miles (east-west) in east/central Nevada, and
26 encompass South Spring and Hamlin Valleys.

1 73. The northern two-thirds of the Ely District, which lies within the Great Basin
2 ecological system, historically featured sagebrush habitat, while the southern third lies in the more
3 arid Mojave ecological region. Sagebrush habitat in the Ely District once supported abundant sage-
4 grouse populations. The Ely District also historically supported large expanses of pinyon-juniper
5 woodland.

6 74. However, after a century of excessive livestock grazing as well as construction of
7 roads, fences, powerlines, and other infrastructure, and because of effects of cheatgrass and other
8 non-native plant invasions, fires, drought, and other pressures, much sagebrush habitat in the Ely
9 District has been lost, and remaining sagebrush stands are now seriously degraded and fragmented.
10 As a result, sage-grouse populations along with other sagebrush-obligate species, including pygmy
11 rabbit, have suffered and continue to decline.

12 75. BLM began the process of revising the Ely RMP and released a draft EIS for the
13 revised RMP in July 2005 for public comment. BLM issued a Final Environmental Impact
14 Statement (EIS) for the revised Ely RMP in November 2007, and approved a Record of Decision
15 (ROD) adopting the final revised Ely RMP in August 2008.

16 76. The ROD for the 2008 Ely RMP expressly states that it is a programmatic document
17 designed to “guide decisionmaking for future site-specific actions,” and specifies the
18 implementation of the plan will require “preparation of detailed, project-level NEPA analysis prior
19 to on-the-ground implementation.”

20 77. Accordingly, the environmental analysis in the EIS for the Ely RMP is
21 programmatic in nature, and contemplates that future, project-level analysis would examine the
22 affected areas and resources in greater detail. The EIS explains:

23 Land use plan decisions, which are made on a broad (programmatic) scale, guide
24 subsequent site-specific implementation decisions. Specific projects for any given
25 resource, resource use, or resource program that are not analyzed in this Proposed
26 RMP/Final EIS would be detailed in future activity plans or site-specific proposals,
27 and additional NEPA analysis and documentation would be conducted as needed.

1 78. Because the analysis in the Ely RMP EIS is programmatic, it contains very little
2 specific or quantified information regarding environmental conditions in the planning area and the
3 impacts of the various land-management activities authorized under the RMP. The EIS explains
4 that “since many of the management actions presented for the alternatives are programmatic in
5 nature, impacts are frequently described in qualitative terms, relying on best professional
6 judgment.” The EIS and RMP contemplate that more detailed, quantified data will be collected
7 and analyzed through subsequent, site-specific NEPA analysis.

8 79. Due in part to its programmatic nature, the EIS does not include any specific
9 information on several special-status wildlife species occurring in the planning area, including
10 sage-grouse and pinyon jay:

11 Site-specific information is lacking for many of the special status species listed in
12 Appendix E. . . . During implementation of this RMP, site-specific information is
13 necessary for accurate impact analysis in support of proper habitat management
14 for special status species. The programmatic analysis in this RMP/EIS can be
15 completed without the site-specific information. . . . *An assumption was made for*
16 *impact analysis in this programmatic RMP/EIS that the site-specific information*
would be collected during implementation of this RMP. Impacts to special status
species would be evaluated during the watershed analysis process and through
project-specific NEPA analysis. (emphasis added)

17 80. The EIS further admits that “[l]imited quantitative data exist regarding trends of
18 vegetation communities within the planning area.” Regarding sagebrush, the EIS notes that
19 “quantitative information . . . especially within the planning area, is not available,” and instead
20 discusses “general patterns” across the Great Basin, which indicate “deterioration” of sagebrush
21 vegetation communities.

22 81. Although the EIS acknowledges the pinyon jay as a species “of management
23 concern” due to population declines, it contains no analysis of the pinyon jay and its habitat other
24 than an assertion that expansion and infill of pinyon and juniper woodlands “benefit species that
25 occur primarily in woodland habitats” but “also lead to loss of forage (grass and forb) production
26 within dense stands and a reduction of species diversity.”
27

1 82. The 2008 Ely RMP authorizes widespread destruction of sagebrush and pinyon-
2 juniper woodlands, including the planned conversion of nearly five million acres of sagebrush to
3 a “total herbaceous state (early, mid and late).” BLM plans to “treat” 70% of the sagebrush
4 vegetation community, and maintain only 30% of the current sagebrush vegetation undisturbed.
5 For pinyon-juniper, BLM plans to convert over one million acres to a “herbaceous state,” and
6 “treat” 77% of pinyon-juniper communities within the District, leaving only 23% undisturbed.

7 83. The RMP’s analysis of the environmental impacts of these treatments is not based
8 on site-specific data or scientific literature, but rather on an “underlying assumption” that the
9 treatments would be successful in achieving BLM’s stated goals. The EIS explains:

10 For purposes of the EIS analysis, the underlying assumptions are first that ongoing
11 natural and human-related changes would continue in vegetation communities in
12 the absence of management intervention, and second, that the successful
13 application of treatments developed for a specific watershed would result in the
14 maintenance or establishment of the desired range of conditions for the major
15 vegetation communities in approximately the desired proportions. Thus, the
16 planned management actions would increase vegetation and habitat resilience
17 beyond that existing prior to the treatment.

18 84. Nevertheless, the EIS accompanying the RMP acknowledges that vegetation
19 removal treatments might have unintended, adverse consequences. The EIS explains:

20 [A]ny vegetation manipulation involves certain risks that variables of weather,
21 wildland fire, or other unpredicted circumstances may prevent immediate
22 achievement of the desired results. Throughout most of the planning area, one of
23 the more substantial risks is that unsuccessful treatments could accelerate the spread
24 of invasive or noxious weed species, thereby contributing to further deterioration
25 rather than restoration of ecological health.

26 The EIS further acknowledged that “43 percent of the sagebrush communities in the planning area
27 are at moderate and 24 percent at high risk of displacement of sagebrush by cheatgrass.”

28 **D. BLM Sage-Grouse Conservation Policy and RMP Amendments**

29 85. In 2010, in response to the Service’s finding that existing regulatory mechanisms,
30 including BLM RMPs, were not sufficient to address the threats to the greater sage-grouse and its
31 sagebrush habitat, BLM and other federal agencies initiated a range-wide sage-grouse
32 conservation effort, which focused on amending BLM’s RMPs (as well as the U.S. Forest

1 Service’s Land and Resource Management Plans) to better protect the species and avoid an ESA
2 listing. BLM acknowledged that “[c]hanges in management of [sage-grouse] habitats [were]
3 necessary to avoid the continued decline of populations across the species’ range.”

4 86. In 2011, BLM assembled a National Technical Team (NTT) of sage-grouse and
5 sagebrush habitat experts to identify the best available science-based information to guide the RMP
6 revision process. In 2011 the NTT issued a report entitled, “A Report on National Greater Sage-
7 grouse Conservation Measures” (NTT Report), listing proposed conservation measures based on
8 habitat requirements and other life-history aspects of the species. Because the NTT report was led
9 and authored by the BLM’s leading sage grouse scientists, it constitutes the agency’s expert
10 opinion to the extent that deference is due. The NTT Report also described the scientific basis for
11 the proposed conservation measures. Federal Courts have acknowledged the NTT report “contains
12 the best available science concerning the sage-grouse.” *W. Watersheds Project v. Schneider*, 417
13 F.Supp.3d 1319, 1325 (D. Idaho 2019).

14 87. The NTT Report found that “[s]age-grouse populations have the greatest chance of
15 persisting when landscapes are dominated by sagebrush and natural or human disturbances are
16 minimal.” It therefore recommended reducing human disturbance within important sage-grouse
17 habitats, and avoiding land management practices that reduce or eliminate sagebrush. Specifically,
18 the NTT Report recommends that land managers permit no degradation of sage-grouse habitat
19 through vegetation removal treatments, maintain sagebrush canopy cover of at least 15 percent,
20 prohibit prescribed fire in sagebrush habitats receiving less than 12 inches of annual precipitation,
21 and prohibit all treatments in winter habitat that do not “maintain winter range habitat quality.”

22 88. In 2012, the Service, with the support of the Western Governors Association Sage-
23 Grouse Task Force, convened the Conservation Objectives Team (COT), composed of State and
24 Federal representatives. One of the team’s tasks was to produce a peer-reviewed report identifying
25 the principal threats to sage-grouse survival. Another task was to determine the degree to which
26 these threats need to be reduced or ameliorated. The goal was to conserve sage-grouse so that they
27

1 would no longer be in danger of extinction or likely to become in danger of extinction in the
2 foreseeable future.

3 89. The COT’s peer-reviewed report, released in March 2013 (COT Report) identified
4 Priority Areas for Conservation (PACs) and emphasized that “[m]aintenance of the integrity of
5 PACs . . . is the essential foundation for sage-grouse conservation.” The COT Report also
6 emphasized the need to avoid or minimize additional disturbance in sage-grouse habitat:

7 There is an urgent need to “stop the bleeding” of continued population declines and
8 habitat losses by acting immediately to eliminate or reduce the impacts contributing
9 to population declines and range erosion. There are no populations within the range
of sage-grouse that are immune to the threat of habitat loss and fragmentation.

10 90. The COT Report recommended an “avoidance first strategy” and stressed that
11 “threats in PACs must be minimized” in order to meet sage-grouse population goals at both the
12 federal and state levels. The COT Report also included specific conservation measures intended
13 to reverse sage-grouse population declines and protect the species. These included:

- 14 • Eliminate intentional fires in sagebrush habitats, including prescribed burning
15 of breeding and winter habitats.
- 16 • Address degraded sagebrush systems before fire occurs (*e.g.*, improve grazing
17 systems).
- 18 • Retain all remaining large intact sagebrush patches, particularly at low
19 elevations.
- 20 • Avoid sagebrush removal or manipulation in sage-grouse breeding or wintering
21 habitats.
- 22 • Reduce or eliminate disturbances that promote the spread of these invasive
23 species, such as reducing fires to a “normal range” of fire activity for the local
24 ecosystem, employing grazing management that maintains the perennial native
grass and shrub community appropriate to the local site, reducing impacts from
any source that allows for the invasion by these species into undisturbed
sagebrush habitats, and precluding the use of treatments intended to remove
sagebrush.

25 91. Drawing on the findings made in the Service’s 2010 “warranted” finding, the NTT
26 Report, the COT report, and other scientific sources, BLM and the U.S. Forest Service in 2015
27 amended 98 land-use plans across the West, including the 2008 Ely RMP, to incorporate more

1 robust protections for the greater sage-grouse. BLM explained that the purpose of the plan
2 amendments was to “provide a comprehensive, coordinated, and effective conservation strategy
3 for addressing the threats to the [greater sage-grouse] identified by the FWS [in the 2010
4 ‘warranted’ finding] such that the need for additional protections under the ESA may be avoided.”
5 According to the BLM’s Record of Decision (ROD) amending land-use plans in the Great Basin
6 region, the amendments are “consistent with measures identified or recommended in the NTT
7 Report, the COT report, recent [U.S. Geological Survey] studies, and other relevant research and
8 analysis.”

9 92. BLM’s 2015 plan amendments—known as Approved Resource Management Plan
10 Amendments or ARMPAs—adopted the COT Report’s “avoidance first” strategy. According to
11 BLM’s ROD, “[t]his avoidance first strategy is accomplished by identifying important sage-grouse
12 habitat areas, then applying allocations that exclude or avoid surface-disturbing activities,
13 appropriately managing grazing, and aggressively suppressing fire that could degrade or fragment
14 remaining [greater sage-grouse] habitat.”

15 93. Based on the COT Report’s identification of PACs, the ARMPAs delineated
16 “priority habitat management areas” (PHMAs) on federal public lands. These PHMAs contain
17 “lands identified as having the highest habitat value for maintaining sustainable [greater sage-
18 grouse] populations.” PHMAs roughly coincide with the PACs geographically but contain
19 substantially fewer acres.

20 94. The ARMPA for Nevada and Northeastern California also identified two additional
21 categories of sage-grouse habitat outside of the PHMAs. “General habitat management areas,” or
22 GHMAs, consist of “habitat that is occupied seasonally or year-round and is outside of PHMAs.”
23 Within GHMAs, BLM stated, “special management would apply to sustain [sage-grouse]
24 populations.” Such areas “would be managed consistent with the COT report recommendation to
25 recognize ‘that important habitats outside of PACs are to be conserved to the extent possible.’”
26 The Nevada/Northeastern California ARMPA also identified “other habitat management areas” or
27 OHMAs, which “contain seasonal or connectivity areas.”

1 95. Within each habitat category, the ARMPAs establish specific sage-grouse “habitat
2 objectives” for BLM to use in “evaluat[ing] management actions.” Generally, the habitat
3 objectives emphasize avoiding disturbance in and around sage-grouse habitat, and maintaining
4 sagebrush cover above certain levels. Specific objectives for sagebrush cover retention range from
5 85% in winter areas to 20% in nesting areas. The ARMPAs direct BLM to maintain at least 15%
6 sagebrush cover within PHMAs.

7 96. The ARMPAs adopt the strategy of “avoid, minimize, and compensatory
8 mitigation” for all proposed human disturbance within sage-grouse habitat. Under this strategy,
9 “[t]he first priority [is] to avoid new disturbance.” Where complete avoidance is not feasible, the
10 plans require BLM to “minimize and mitigate any new disturbance.” The ARMPAs further direct
11 the agency to minimize habitat fragmentation and restore connectivity among sage-grouse
12 populations.

13 97. The ARMPAs impose specific restrictions on vegetation removal treatments,
14 particularly those utilizing prescribed fire. BLM’s 2015 ROD states that “prescribed fire will not
15 be used in sagebrush steppe.” However, the text of the ARMPAs provides a narrow exception to
16 this general restriction: BLM must prepare a “burn plan” for each proposed use of prescribed fire
17 in sage-grouse habitat, and conduct a NEPA analysis of the burn plan. BLM may only approve the
18 use of prescribed fire if the burn plan NEPA analysis provides “a clear rationale for why alternative
19 techniques were not selected as a viable option. The analysis would also need to explain how [sage-
20 grouse] habitat goals and objectives would be met by [the use of prescribed fire] and how the COT
21 Report objectives would be met.” Moreover, BLM must conduct a “risk analysis to address how
22 potential threats to [sage-grouse] habitat would be minimized.”

23 98. The ARMPAs also address mechanical treatments, such as mowing and chaining,
24 in sage-grouse habitat. While such treatments are generally permitted, they are subject to the sage-
25 grouse habitat objectives discussed above, and BLM must prepare a treatment plan demonstrating
26 that any proposed treatment will be *beneficial* to sage-grouse. BLM’s environmental impact
27 statement for the 2015 ARMPAs envisions vegetation management actions that “increase[]

1 sagebrush height and herbaceous cover and vegetation productivity,” and predicts that “fewer acres
2 of sagebrush habitat” will be “converted to an early seral [*i.e.*, grassland or herbaceous] stage.”

3 99. Finally, the ARMPAs impose specific requirements on BLM regarding livestock
4 grazing in sage-grouse habitat. The ARMPA EIS acknowledges that livestock grazing may impact
5 “soils, vegetation health, species composition, water, and nutrient availability.” The ARMPAs
6 contemplate grazing reductions where habitat objectives are not being met, and admit that reducing
7 grazing would “speed recovery of negatively impacted [greater sage-grouse] habitats.” The
8 ARMPA requires BLM to “rest areas that have received vegetative treatments from livestock
9 grazing until resource monitoring data verifies the treatment objectives are being met *and an*
10 *appropriate grazing regime has been developed*” (emphasis added).

11 100. As amendments to existing RMPs, the ARMPAs are “programmatic” actions,
12 which require site-specific planning and additional NEPA analysis in order to carry out their broad
13 objectives. The ROD explains:

14 Implementation decisions (or activity-level decisions) are management actions tied
15 to a specific location. They generally constitute the BLM’s final approval allowing
16 on-the-ground actions to proceed and *require appropriate site-specific planning*
17 *and NEPA analysis. . . . These ARMPAs do not contain implementation decisions.*
18 *Implementation decisions and management actions that require additional site-*
specific project planning, as funding becomes available, will require further
environmental analysis (emphasis added).

19 Because the ARMPAs are programmatic actions which do not contain implementation decisions,
20 BLM’s NEPA analysis for the ARMPAs is also programmatic, and does not analyze the site-
21 specific impacts of any particular action.

22 101. Based largely on BLM’s adoption of the ARMPAs, the Service in 2015 concluded
23 that the greater sage-grouse was no longer warranted for ESA listing. The Service found that the
24 plans represented a “paradigm shift in western Federal lands management in their focus on
25 maintaining large expanses of sagebrush ecosystem for the benefit of sage-grouse and many other
26 species.” Combined with various state and private conservation efforts, the ARMPAs, according
27 to the Service, “have substantially improved the regulatory mechanisms across the range of the

1 sage-grouse since the 2010 finding.” The Service was particularly impressed that the 2015 Plans
2 followed the “COT Report and NTT guidance [by] restricting impacts in the most important habitat
3 [thereby] . . . ensur[ing] that high-quality sage grouse lands with substantial populations are
4 minimally disturbed and sage grouse within this habitat remain protected.” Accordingly, the
5 Service found that there were adequate regulatory mechanisms to address the threats to the sage-
6 grouse and its habitat, and that as such, ESA listing was not warranted.

7 102. BLM revised the ARMPAs in March of 2019. However, on October 19, 2019 the
8 Federal District Court for the District of Idaho enjoined implementation of those plan revisions.
9 *Western Watersheds Project v. Schneider*, No. 1:16-cv-00083-BLW, ECF 189 (D. Idaho Oct. 16,
10 2019). Consequently, the 2015 ARMPAs apply to the Spring/Hamlin project.

11 103. Since 2015, BLM has engaged in several other large-scale programmatic planning
12 efforts within the range of the greater sage-grouse. These include the Programmatic EIS for Fuel
13 Breaks in the Great Basin, finalized in March 2020, and the Programmatic EIS for Fuels Reduction
14 and Rangeland Restoration in the Great Basin, finalized in November 2020. These planning
15 efforts, like the ARMPAs and the Ely RMP, consider the environmental impacts of various
16 vegetation removal techniques at the programmatic level. For example, the analysis area for both
17 the Fuel Breaks PEIS and the Fuels Reduction PEIS reaches across six states and covers over 223
18 million acres. Consequently, these plans and analyses do not analyze the site-specific impacts of
19 individual projects, or impacts to specific areas, such as sage-grouse and pinyon jay habitats within
20 Spring and Hamlin valleys.

21 **E. The Project**

22 104. The Project authorizes various vegetation removal methods, including chaining,
23 mowing, harrowing, and prescribed fire, across 384,414 acres in Spring and Hamlin valleys. The
24 Project area is approximately 45 to 59 miles northeast of Caliente, Nevada and approximately 25
25 to 85 miles southeast of Ely, Nevada. As BLM acknowledged in its EA, the area contains “diverse
26 and widespread” wildlife habitat, including sage-grouse PHMA, sage-grouse GHMA, and
27 extensive pinyon-juniper woodlands. Other wildlife species that regularly inhabit the Spring and

1 Hamlin valleys include Rocky Mountain elk, pronghorn antelope, mule deer, Rocky Mountain
2 bighorn sheep, several small mammals and reptiles, and several native fish with highly restricted
3 ranges. The northeastern boundary of the Project area abuts Great Basin National Park. The Project
4 area also entirely surrounds the *Bahsawahbee* sacred site, which is located in central Spring Valley.

5 105. BLM initiated its planning process for the Project in 2012, but shortly thereafter
6 paused the process until 2018. Between April 19 and May 21, 2018, BLM held a 30-day “scoping”
7 period in which it solicited public comment on the proposed project. On June 23, 2021, BLM
8 release a “preliminary EA” and held another 30-day comment period. The Center and Western
9 Watersheds both submitted public comment letters to BLM. Generally, the comment letters
10 highlighted the potential negative impacts of the proposed treatments, requested a more
11 informative analysis of the Project’s environmental impacts, and warned BLM that it could not
12 approve site-specific actions through a programmatic EA.

13 106. On September 28, 2022, BLM issued its Decision approving the Project, along with
14 a final EA and FONSI. Consistent with its regulations, BLM served its Decision, EA, and FONSI
15 on the Center and Western Watersheds via certified U.S. mail. The Center and Western Watersheds
16 received BLM’s Decision Record, final EA, and FONSI on October 5, 2022.

17 107. The Decision Record authorizes a variety of vegetation removal methods across the
18 384,414-acre Project area. These include chaining to deforest established pinyon juniper
19 woodlands, mechanical removal and shredding of low- to high-density pinyon-juniper woodlands,
20 clearcutting or selective hand-cutting of pinyon-juniper woodlands, mowing and various other
21 methods of destroying or removing sagebrush, application of herbicides, and prescribed fire.

22 108. According to the EA, “chaining” involves “using the Ely Anchor Chain (Navy ship
23 anchor chain with 40-120 pound links and 18-inch railroad iron welded perpendicular to the chain
24 link) and/or smooth chain (chain with 40-120 pound links) pulled between two bulldozers.”
25 Chaining treatments “would consist of one or two-way (chaining the trees twice, once from one
26 direction, then from a different direction) chaining.” Chaining would occur in more developed or
27 established pinyon-juniper stands, with greater than 10% tree cover.

1 109. “Mastication,” according to the EA, involves “mechanical removal of pinyon and
2 juniper” using logging equipment with a “cutting head” designed to reduce trees to mulch. The
3 mulch is then either piled or scattered. Mastication would be used “where tree densities fall below
4 the threshold for chaining,” i.e. where there is less than 10% tree cover.

5 110. The EA states that vegetation removal activities may use a “dixie harrow” to
6 remove and reduce sagebrush, including in PHMA. A “dixie harrow” “consists of a large spike-
7 tooth harrow [an industrial farming tool] pulled by a four-wheel drive rubber-tired tractor.” In
8 addition to direct “treatment” of sagebrush habitats as part of the vegetation removal activities,
9 “[t]he Dixie harrow may be used as a secondary treatment within areas that have been treated for
10 removal of pinyon and juniper to further reduce the shrub component . . . ”

11 111. Another proposed sagebrush vegetation removal method is the “roller chopper.”
12 “Roller chopper treatment involves the use of a large drum with paddles attached that is pulled
13 behind a piece of machinery such as a tractor or bulldozer.” The drum “crushes and chops brush
14 and small trees.” Like the dixie harrow, the EA states that a roller chopper may be used as a
15 secondary treatment to remove sagebrush from areas where pinyon and juniper trees have already
16 been removed.

17 112. A third proposed method to reduce or remove sagebrush around the Project area is
18 “mowing.” This method involves “use of a mowing deck pulled behind a tractor.” Trees may be
19 removed in treatment areas prior to mowing. According to the EA mowing could be used to reduce
20 shrub height to anywhere “from ground level to 12-15 inches high,” and would result in 40-100%
21 sagebrush mortality, depending on the mower deck height. As with the dixie harrow and roller
22 chopper, mowing may be used as a “secondary treatment” for sagebrush remaining in pinyon-
23 juniper removal areas.

24 113. Prescribed fire is authorized under the Decision in both sagebrush and pinyon-
25 juniper habitats. Although BLM claims the purpose of the project is to *restore* the native perennial
26 understory, the EA states that prescribed fire would be used in areas “with existing native perennial
27 understory species.” BLM plans to target a wide range of vegetation for prescribed burning across

1 the Project area, including native vegetation types such as “aspen, mixed conifer, mountain
2 mahogany, sagebrush, mountain brush, and sagebrush communities where pinyon and juniper have
3 become established.” Habitats that could be “incidental[ly]” impacted by prescribed burns include
4 “limber pine, bristlecone pine, lower elevation Wyoming big sagebrush and black sagebrush
5 (generally areas where precipitation is less than 10 inches annually), and salt desert scrub
6 communities.” The EA states that prescribed burning will be specifically utilized to “reduce the
7 shrub component” of the targeted habitats. Like the other methods described above, prescribed fire
8 could be used as a “secondary treatment.”

9 114. All of these vegetation removal methods, in addition to hand-cutting of trees, are
10 authorized across the entire 384,414-acre Project area, including in PHMA and GHMA. Although
11 BLM divided the Project area in 13 “restoration units,” the EA states that “any treatment could be
12 implemented in any unit as part of an adaptive management process.”

13 115. Despite the inherently impactful nature of the proposed activities, and the sensitive
14 nature of the affected species and habitats, BLM concluded that the Project would have no
15 significant environmental impacts. BLM reached this conclusion through a broad-scale analysis
16 that does not consider the impacts of the Project on specific locations, habitats, or species. The EA
17 considers the impacts of the proposed treatments only generally across the 384,414-acre Project
18 area and defers critical decisions about siting, methods of implementation, and mitigation to future
19 decisions which will not undergo additional site-specific NEPA review. As a result, the public has
20 been left to speculate as to where the proposed treatments will occur, how the treatments will be
21 conducted, and how the treatments will impact specific habitats, such as pinyon-jay nesting habitat
22 and the three areas of PHMA within the Project area.

23 116. The EA provides only the most general information about the affected environment
24 and the impacts of the proposed treatments, and includes no specific or detailed information on
25 where, how, or when treatments will be conducted. For example, the EA’s description of the
26 “proposed action” states: “Vegetative community restoration could take place across 13 restoration
27

1 units covering up to approximately 123,969 acres over a total of 384,414 acres within the project
2 area.”

3 117. The EA’s description of the “affected environment” is similarly general and vague,
4 devoid of critical details necessary for understanding the Project’s site-specific environmental
5 impacts. Some sections of the EA, such as “soils” and “vegetation,” simply recite characteristics
6 common to cold-desert valleys in the Great Basin. Other sections, such as “wildlife” and “wetlands
7 and riparian areas” merely provide a general list of species or habitats that may be found within
8 the Project area, without any geographic specificity. The “affected environment” description for
9 migratory birds consists of a single sentence: “Migratory bird habitats are located throughout the
10 planning area.” And for species of conservation concern such as the pygmy rabbit and pinyon jay,
11 the final EA offers only a general description of the species’ habitat requirements, and presents no
12 information on where these species actually occur in the project area, or where occupied or suitable
13 habitat is located in relation to the proposed treatments.

14 118. The EA’s analysis of the Project’s environmental impacts confirms that BLM has
15 conducted a general, programmatic review that is insufficient for site-specific implementation. For
16 many of the affected resources, the EA fails to consider the site-specific impacts of the proposed
17 vegetation removal, or even disclose where specific treatments would occur. Concerning soil
18 resources, the EA states, “[t]he degree of ... effects would vary depending on the type of vegetation
19 restoration treatments being implemented” and discusses some impacts which “may” occur
20 without any indication of how likely they are or how severe they could be. The EA’s wildlife
21 analysis, meanwhile, concludes that “effects to wildlife would range from negligible to major
22 depending on the species and their habitat.” Apart from a general discussion about the purported
23 benefits of treatments generally, the EA offers no treatment-, habitat-, or species-specific analysis
24 of the Project’s likely impacts. As with BLM’s description of the affected environment, the EA’s
25 impacts analysis for migratory birds is entirely cursory, consisting of two sentences.

26 119. The EA does not even offer a site-specific analysis of impacts to vegetation, even
27 though the main purpose of the Project is to remove or reduce vast swathes of pinyon-juniper and

1 sagebrush. Instead, the EA simply asserts that BLM will manage for a “desired range of
2 conditions” across the entire project area, and provides a regulatory—not environmental—
3 analysis, discussing the general requirements of the Ely RMP and the applicable ARMPA. And
4 although the EA acknowledges these regulatory requirements, it does not consider the potential
5 impacts of the proposed treatments in light of the ARMPA’s overriding objectives of retaining
6 sagebrush and preventing the degradation of sagebrush habitats. Nor does the EA acknowledge
7 the NTT and COT recommendations regarding mechanical treatments and prescribed fire in
8 sagebrush habitats.

9 120. The EA takes a similar, general approach to special-status species, such as the
10 pygmy rabbit and pinyon jay. Although BLM’s goals for the Project call for the widespread
11 elimination of these species’ habitat (i.e. pinyon-juniper woodland and dense sagebrush), the EA
12 entirely fails to consider Project- or site-specific impacts to these species. BLM’s analysis of
13 impacts to the pinyon jay consists of a short, general description of how pinyon-juniper removal
14 “could” affect the species generally, with no discussion of where pinyon jay occurs in the Project
15 area, or how specific treatments in specific locations could impact pinyon jay habitat.

16 121. Regarding the pygmy rabbit, the EA simply states: “[e]xpanded sagebrush
17 vegetation would increase breeding, nesting, and foraging habitat for sagebrush obligate species
18 such as [greater sage-grouse], pygmy rabbit, and other sagebrush dependent species,” but one of
19 the Project’s main objectives is to *reduce* sagebrush through mechanical treatments and prescribed
20 fire. As a result, the EA fails to address the net effects on these species from the Project. And
21 despite the Ely RMP requiring BLM to “consider the habitat needs of obligate bat species in
22 restoration treatments,” the EA contains only a single sentence on tree-roosting bats.

23 122. Because the EA takes a broad, programmatic approach, it does not satisfy NEPA’s
24 requirement to take a “hard look” at a Project’s environmental impacts based on quantified,
25 detailed information. The EA’s analysis is cursory and thus insufficient with respect to special-
26 status species, biological soil crusts, invasive annual grasses, and impacts to Lands with
27 Wilderness Characteristics.

1 123. As noted, the Ely RMP requires BLM to “[m]itigate all discretionary permitted
2 activities that result in the loss of special status species habitats on a ratio of 2 acres of comparable
3 habitat for every acre of lost habitat as determined on a project-by-project basis.” The EA entirely
4 fails to mention this mitigation requirement, identify how much special-status-species habitat will
5 be impacted as a result of the proposed treatments, or how BLM will ensure a two-to-one
6 mitigation ratio for any lost habitat. BLM cannot perform this analysis because it has failed to
7 specify where, when, and how treatments would be conducted.

8 124. Similarly, the Ely RMP requires BLM, when conducting activities in riparian areas
9 and pinyon-juniper woodlands, to “consider the habitat needs of obligate bat species in restoration
10 treatments.” But even though the EA specifies throughout that removal of pinyon and juniper trees
11 is a primary objective of the Project, it contains no analysis or discussion of impacts to tree-
12 roosting bats. The EA does not even specify what bat species are present in the affected area, and
13 what their habitat needs are. The EA merely offers speculative statements and an unsupported
14 conclusion. The EA acknowledges that “[t]ree roosting bats may be disturbed, displaced, or killed
15 during implementation of vegetation treatments,” but then, without providing any detail about
16 where the treatments would occur, states “suitable habitat exists adjacent to the treatment areas.”
17 The EA then simply concludes, “the actions should not affect local bat populations.” NEPA’s hard
18 look requirement demands more.

19 125. The final EA presents only the most cursory analysis of impacts to the pinyon jay
20 from the proposed pinyon-juniper removal treatments. The final EA simply speculates that
21 treatments “could” have an impact on the species, and states, without citations or discussion, that
22 unspecified “design features” would reduce these impacts. BLM fails to identify occupied pinyon
23 jay habitat within the Project area, determine the likely treatments that would be applied in any
24 occupied habitat, or discuss the impacts of treatments to this habitat in the context of the pinyon
25 jay’s habitat needs. Indeed, the EA contains no discussion whatsoever about the species’ specific
26 habitat needs. Nor does the EA evaluate the proposed action and “design features” in light of the
27 recommendations in the Conservation Strategy for the Pinyon Jay produced by the Service—there

1 is no discussion whatsoever about whether BLM would identify nesting and colony sites, whether
2 BLM would conduct treatments in these sites or not, and how the proposed treatments would
3 impact the availability of pinyon nuts, one of the pinyon jay’s primary food sources.

4 126. The EA contains no information on local pygmy rabbit locations, occupied habitat,
5 or if there has been a response to past treatments in the project area. BLM simply assumes the
6 Project will be a success, without considering any data whatsoever on pygmy rabbits or their
7 habitat within the Project area.

8 127. The EA fails to analyze the impacts of the proposed treatments on biological soil
9 crusts, which are an integral part of soil ecology in the Great Basin and help to prevent the invasion
10 of exotic species such as cheatgrass. Biological soil crusts can be extremely sensitive to
11 disturbance and take decades to regenerate. Without biological crust cover, the risk of cheatgrass
12 invasion increases. The EA’s entire analysis of potential impacts to biological soil crusts consists
13 of a statement postulating that crusts “could” be impacted. There is no discussion of where crusts
14 occur in the Project area, what condition they are in, what role they play in the local ecology, or
15 what the potential short- and long- term impacts could be if crusts are degraded or destroyed during
16 treatment.

17 128. The EA also fails to examine one of the most foreseeable impacts from the proposed
18 vegetation removal—invasion by exotic annual grasses. A large body of scientific literature,
19 including sources cited in the EA and included in the Project record, conclude that mechanical
20 disturbance in sagebrush and pinyon-juniper habitats has a high potential to promote exotic grass
21 invasion. But even though cheatgrass invasion is a foreseeable risk of the proposed treatments, and
22 even though cheatgrass invasion contributes to many of the “undesirable” conditions identified in
23 the final EA, including reduced perennial bunchgrass cover, reduced wildlife habitat function, and
24 unnaturally large and frequent wildfires, the EA contains only the most cursory analysis of
25 potential for cheatgrass invasion. As with many of the Project’s foreseeable risks, the EA simply
26 states that cheatgrass “may” increase after treatment, and that “seeding and chemical treatment”
27 could decrease this. Notably, the EA contains no analysis of the efficacy of these weed control

1 measures; nor does BLM commit to ensuring that these mitigation measures are actually
2 implemented.

3 129. According to the EA, the Project area overlaps with 11 Lands with Wilderness
4 Characteristics (LWCs), and the Project authorizes a variety of treatments on these lands, including
5 mastication, chaining, mowing, and prescribed fire. BLM maintains discretion under FLPMA to
6 manage LWCs under a “non-impairment” standard, and BLM has exercised that discretion through
7 the Ely RMP, which requires BLM to “[m]anage lands identified as having wilderness
8 characteristics to protect those characteristics through a variety of land use plan decisions”
9 However, the EA fails to adequately consider impacts to LWCs, or discuss whether proposed
10 treatments within LWCs would meet the BLM’s own “non-impairment” standard under the Ely
11 RMP. The EA merely states that wilderness characteristics such as “naturalness” would be
12 “temporarily affected,” but would return once the treated areas “recover.” This analysis lacks
13 meaningful detail including a necessary analysis of the temporal element. Specifically, it fails to
14 acknowledge that natural restoration of sagebrush and pinyon-juniper can take decades or longer.
15 The EA thus indirectly admits that the Project would have a decades-long impact on key wilderness
16 characteristics, but fails to even acknowledge, let alone analyze, that impact. As with the other
17 resources discussed here, the general, programmatic nature of BLM’s analysis makes it insufficient
18 for understanding the Project’s direct, indirect, and cumulative impacts to wilderness
19 characteristics.

20 130. Finally, the EA fails to take a “hard look” at impacts to greater sage-grouse. Among
21 other things, the EA fails to consider the well-documented negative effects that sagebrush removal
22 can have on greater sage-grouse. As explained above, the EA discusses published research
23 (Severson et al. 2017) showing that targeted removal of expanding pinyon-juniper trees may
24 benefit sage-grouse nesting success. But an even larger body of literature, which includes the NTT
25 and COT reports, warns *against* implementing treatments such as chaining, mowing, roller-
26 chopper, dixie harrow, and prescribed fire in sage-grouse habitat generally, and PHMA
27 specifically. The EA fails to even mention, let alone consider, the significant and well-documented

1 risks posed by mechanical and prescribed-fire sagebrush treatments in PHMA. Moreover, the EA
2 failed to examine the actual current condition of PHMA in the project area as part of the NEPA
3 baseline analysis.

4 131. Contrary to ARMPA management direction, as well as NTT and COT
5 recommendations, BLM has not prepared a treatment plan that shows the proposed treatments
6 would be beneficial for sage-grouse. Nor has BLM prepared a burn plan for the proposed
7 prescribed fire treatments, or analyzed a burn plan under NEPA to determine that the proposed use
8 of prescribed fire would be beneficial or detrimental to sage-grouse. The EA and Decision state
9 that burn plans will be developed at a later date, and would not be subject to NEPA review.

10 132. The EA further omits analysis of important cumulative impacts, most notably the
11 impacts of livestock grazing throughout the Project area. Virtually all of the BLM public lands
12 within the project area are grazed, and according to the EA, many areas exhibit conditions
13 symptomatic of livestock overgrazing, including low cover of perennial bunchgrasses, reduced
14 cover of biological crusts, and exotic invasive species such as cheatgrass. The EA discloses that
15 public lands within the Project area are failing to meet the BLM's Standard of Rangeland Health,
16 which the agency uses to evaluate the impacts of livestock grazing and the effectiveness of its
17 grazing management. Grazing is expected to continue throughout the Project area for the
18 foreseeable future. Nevertheless, the final EA analyzes only the impact of the Project on livestock
19 grazing operations—it does not consider the cumulative effects of continuing livestock grazing on
20 natural resources. BLM offers no analysis of past, present, and reasonably foreseeable impacts of
21 livestock grazing in the EA. The EA's discussion of cumulative impacts simply lists past projects
22 and activities that "could occur" within 10 years, and offers general speculation about these "past
23 and future actions" collectively, with no specific discussion of particular activities such as
24 livestock grazing.

25 133. The EA and Decision leave the decision whether to rest treated areas from livestock
26 grazing to BLM's discretion in the future. In some cases, "[l]ivestock grazing would resume
27 immediately within treatment areas"

1 134. BLM has represented to the Center and Western Watersheds that the vegetation
2 reduction and removal authorized under the Decision Record will begin in the fall of 2023.

3 **FIRST CLAIM FOR RELIEF**

4 BLM's Final EA, FONSI, and Decision Record Violate NEPA and the APA

5 135. Western Watersheds and the Center hereby incorporate by reference all preceding
6 paragraphs.

7 136. NEPA requires federal agencies to take a "hard look" at the environmental impact
8 of any proposed federal action and provide a "full and fair discussion" of all direct, indirect, and
9 cumulative impacts of the proposed action. 40 C.F.R. §§ 1502.1, 1502.14, 1502.16 (2019). A "hard
10 look" under NEPA requires quantified or detailed information, including site-specific information.

11 137. The final EA does not provide site-specific information about the Project or its
12 impacts. The final EA does not disclose specific locations where proposed activities, including
13 chaining, prescribed fire, and various means of mechanical sagebrush reduction, will occur. As of
14 the Project's approval date in October 2022, BLM had not determined where within the Project
15 area these activities would occur.

16 138. As a consequence of this approach, the final EA does not adequately assess the
17 direct, indirect, and cumulative impacts of the Project on the human environment. The final EA
18 does not contain sufficient information to foster informed decisionmaking and public participation.
19 And the final EA fails to examine impacts on multiple sensitive resources, even though
20 consideration of these resources is expressly required in BLM's own regulations, plans, and
21 policies.

22 139. For these reasons, BLM's actions and omissions regarding the Project violate
23 NEPA and are arbitrary, capricious, an abuse of discretion, not in accordance with law, without
24 observance of procedure required by law, and in excess of statutory jurisdiction, authority, or
25 limitations, within the meaning of the judicial review provisions of the APA. 5 U.S.C. §§ 701-706.

1 **SECOND CLAIM FOR RELIEF**

2 BLM’s Final EA, FONSI, and Decision Record Violate FLPMA and the APA.

3 140. Western Watersheds and the Center hereby incorporate by reference all preceding
4 paragraphs.

5 141. FLPMA requires that the public lands be managed “in accordance with” land use
6 plans. 43 U.S.C. § 1732(a). “All . . . resource management authorizations and actions” must
7 “conform to the approved plan.” 43 C.F.R. §§ 1610.5-3(a). If a proposed action is not consistent
8 with the applicable land use plan, BLM must deny the proposed action or propose and adopt an
9 amendment to the plan. 43 C.F.R. §§ 1610.5-3, 1610.5-5.

10 142. The approved land use plan applicable to the Project is the 2008 Ely RMP, as
11 amended by the 2015 ARMPA. The 2008 Ely RMP expressly requires BLM to “[m]itigate all
12 discretionary permitted activities that result in the loss of special status species habitats on a ratio
13 of 2 acres of comparable habitat for every 1 acre of lost habitat as determined on a project-by-
14 project basis”; and “consider the habitat needs of obligate bat species in restoration treatments.”
15 As amended by the 2015 ARMPA, the 2008 Ely RMP requires BLM to demonstrate, based on a
16 treatment plan or burn plan, that any proposed mechanical or prescribed fire treatment in PHMA
17 would be beneficial to sage-grouse and meet the ARMPA’s sage-grouse habitat objectives.

18 143. The final EA, FONSI, and Decision Record do not comply with the 2008 Ely RMP
19 as amended. The final EA, FONSI, and Decision Record make no mention of the RMP’s
20 requirement for two-to-one mitigation, or even discuss mitigation for the Project’s adverse
21 impacts. The final EA, FONSI, and Decision Record do not consider the habitat needs of tree-
22 roosting bats. And the final EA, FONSI, and Decision Record fail to show that the proposed
23 treatments would be beneficial for sage-grouse, or result in compliance with the ARMPA’s sage-
24 grouse habitat objectives.

25 144. For these reasons, BLM’s actions and omissions noted above regarding its review
26 and approval of the Project violate FLPMA and its implementing regulations. BLM’s actions and
27 omissions in reviewing and approving the Project are therefore arbitrary, capricious, an abuse of

1 discretion, not in accordance with law, without observance of procedure required by law, and in
2 excess of statutory jurisdiction, authority, or limitations, within the meaning of the judicial review
3 provisions of the APA. 5 U.S.C. §§ 701-706.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Western Watersheds and the Center respectfully request that this Court:

6 A. Declare that BLM's EA, FONSI, and Decision are unlawful under NEPA and
7 arbitrary and capricious under the APA;

8 B. Declare that BLM's EA, FONSI, and Decision are unlawful under FLPMA and the
9 APA;

10 C. Vacate and set aside the final EA;

11 D. Vacate and set aside the FONSI;

12 E. Vacate and set aside the Decision;

13 F. Enjoin any implementation of the Decision;

14 G. Award Western Watersheds and the Center costs, expenses, expert witness fees,
15 and reasonable attorney fees pursuant to applicable law including the Equal Access to Justice Act,
16 28 U.S.C. § 2412; and

17 H. Grant Western Watersheds and the Center such further relief as may be just, proper,
18 and equitable.

19
20 Dated March 23, 2023

Respectfully submitted,

21 */s/ Scott Lake*

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