

Kristin F. Ruether, ISB 7914
WESTERN WATERSHEDS PROJECT
PO Box 2863
Boise, ID 83701
(208) 440-1930 (phone)
(208) 475-4702 (fax)
kruether@westernwatersheds.org

Paul D. Ruprecht (OSB # 132762), *pro hac vice*
WESTERN WATERSHEDS PROJECT
126 NE Alberta Street, Suite 208
Portland, OR 97211
(208) 421-4637 (phone)
(208) 475-4702 (fax)
paul@westernwatersheds.org

David H. Becker (OSB # 081507), *pro hac vice*
LAW OFFICE OF DAVID H. BECKER, LLC
833 SE Main Street # 302
Portland, OR 97214
(503) 388-9160
davebeckerlaw@gmail.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

WESTERN WATERSHEDS PROJECT,

Plaintiff,

v.

U.S. FOREST SERVICE,

Defendant.

No. 1:15-cv-00218-REB

**FIRST AMENDED COMPLAINT
FOR DECLARATORY &
INJUNCTIVE RELIEF**

I. INTRODUCTION

1. This action challenges the Forest Service's recent and ongoing violations of the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600–1614, in authorizing livestock grazing that damages fisheries habitat on four allotments in the Copper Basin area of the Big Lost River watershed, within the Salmon-Challis National Forest.

2. The Big Lost River watershed supports important populations of native fish, including a "unique form of mountain whitefish." This population, already imperiled by agricultural diversions and competition from non-native fish, faces deteriorating habitat conditions as a result of livestock grazing. Livestock harm fish habitat by trampling stream banks, widening stream channels, and wading in streams, among other activities. Grazing also decreases streamside vegetation and raises water temperature.

3. The U.S. Forest Service ("Forest Service") authorizes livestock grazing each year via Annual Operating Instructions ("AOIs") on the Antelope, Boone Creek, Copper Basin, and Wildhorse allotments (collectively, the "Copper Basin allotments"). The Forest Service recently issued AOIs authorizing grazing in 2015. These AOIs violate NFMA's requirement that all actions be consistent with the Salmon-Challis National Forest's Land and Resource Management Plan ("Forest Plan"). Specifically, the Forest Plan includes standards to protect fish, known as the INFISH aquatic conservation strategy. INFISH sets quantifiable riparian conservation goals toward which the Forest Service must progress. Not only has the Forest Service failed to consider the impact of its grazing program on these riparian goals and whether the authorized grazing complies with INFISH, but the Forest Service's own data shows that riparian habitat conditions are deteriorating on all four Copper Basin allotments.

4. Further, the Forest Plan's Sediment Standard 5(f) places limits on activities that

contribute sediment, such as livestock grazing, where existing levels of fine sediments are over 30%. Fine sediments exceed 30% in several streams on the Copper Basin allotments. However, the Forest Service failed to analyze or ensure consistency with this standard when it issued the AOIs, or take the required actions to reduce sediment from grazing.

5. Because the Forest Service authorized grazing in 2015 that is not consistent with INFISH and the Forest Plan, the Court should hold unlawful and vacate the challenged 2015 AOIs for the Copper Basin allotments and order the Salmon-Challis National Forest to prepare new grazing decisions that comply with NFMA.

II. JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question) because this action arises under the laws of the United States, including the NFMA, 16 U.S.C. §§ 1600–1614, the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* An actual, justiciable controversy exists between the parties, and the requested relief is therefore proper under 28 U.S.C. §§ 2201–2202 and 5 U.S.C. § 701–06.

7. Venue is proper in this Court under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, some or all of the agency records in question are located in this district, plaintiff Western Watersheds Project’s principal place of business is in this district, and the public lands and resources at issue are located in the district.

8. The Federal Government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

III. PARTIES

9. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) is a regional, membership, not-for-profit conservation organization with over 1,500 members dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP is headquartered in Hailey, Idaho, and also has staff in Boise, as well as in other western states.

10. Through agency proceedings, public education, scientific studies, and legal advocacy conducted by its staff, members, volunteers, and supporters, WWP is actively engaged in protecting and improving riparian areas, water quality, fisheries, wildlife habitat, and other natural resources and ecological values of western watersheds, including the Big Lost River watershed and the Copper Basin allotments. WWP has extensively participated in decision-making processes for livestock grazing on Forest Service and BLM lands throughout the west, including the Salmon-Challis National Forest and the Copper Basin allotments.

11. WWP staff, members, and supporters regularly use and enjoy the fish and wildlife, public lands, and natural resources on federal lands in the Big Lost River watershed, including the Copper Basin allotments, for recreational, scientific, spiritual, educational, aesthetic, and other purposes. WWP staff and members pursue activities such as hiking, fishing, hunting, wildlife viewing, photography, scientific monitoring, and spiritual renewal on these allotments. Livestock grazing degrades the lands, waters, fish habitat, aesthetics, and other natural resources, and impairs WWP’s use and enjoyment of the Big Lost River watershed and the Copper Basin allotments.

12. Copper Basin and the Big Lost River watershed are located just over Trail Creek Summit east of Ketchum, Idaho. This is an area of enormous beauty, enjoyed by WWP members, residents of Idaho, and visitors from outside of Idaho. Wildlife viewing, fly-fishing,

backpacking, and camping are just a few of the activities enjoyed by humans who spend time in the Big Lost River watershed. WWP recently launched a Copper Basin campaign to protect and recover fish and wildlife habitat, plant communities, and water quality in the watershed from the impacts of livestock grazing, which is the most pervasive and least regulated source of environmental harm on public lands in Copper Basin. The campaign also recognizes the importance of the area to humans, and seeks to improve the scenic and recreational values of this popular destination.

13. Western Watersheds Project staff, members, and supporters intend to continue to visit and use the public lands in the Big Lost River watershed and the Copper Basin allotments in the near future, including this summer and fall. WWP's interests, organizationally, and on behalf of its staff, members, and supporters, in the protection and restoration of the Big Lost River watershed and the Copper Basin allotments, and its threatened native fish and other resources, are being directly harmed by Defendant's actions challenged herein. WWP's above-described interests have been, are being, and unless the relief prayed for is granted, will continue to be adversely affected and irreparably injured by Defendant's violations of law.

14. Defendant U.S. FOREST SERVICE is an agency or instrumentality of the United States, and is charged with managing the public lands and resources of the Salmon-Challis National Forest in accordance and compliance with federal laws and regulations.

IV. LEGAL BACKGROUND

A. National Forest Management Act

15. In 1976, Congress enacted NFMA, 16 U.S.C. §§ 1600–1614, which governs the U.S. Forest Service's management of the national forests, including the Salmon-Challis National Forest.

16. NFMA establishes a two-step process for forest planning. First, it requires the Forest Service to develop, maintain, and revise Land and Resource Management Plans (“Forest Plans”) for each national forest. *Id.* § 1604(a); *see also* 36 C.F.R. § 219.5.

17. In the second step of the forest planning process, the Forest Service assesses site-specific actions. All site-specific decisions (such as grazing authorizations) must be consistent with the Forest Plan. 16 U.S.C. § 1604(i), 36 C.F.R. § 219.15. Additionally, each project or activity approval document must describe how the project or activity is consistent with applicable plan components. *Id.* § 219.15(d).

B. INFISH

18. The Salmon-Challis National Forest’s Forest Plan was amended in 1995 to incorporate INFISH to restore native fish populations. INFISH establishes Riparian Management Objectives (“RMOs”), which are streamside and instream conditions that define “good ecosystem health.”

19. RMOs serve as quantifiable, easy-to-measure benchmarks against which the Forest Service may measure its progress in attaining Forest Plan standards. INFISH establishes RMOs for pool frequency, water temperature, bank stability, bank angle, and with-to-depth ratio. INFISH standards and guidelines apply to all watersheds that contain “inland native fish.”

20. INFISH standard GM-1 requires the Forest Service to “modify grazing practices” if those practices “retard or prevent the attainment of [RMOs] or are likely to adversely affect inland native fish.” “Retard” means to “slow the rate of recovery below or near the natural rate of recovery if no additional human caused disturbance was placed on the system.”

21. If watershed conditions do not improve, the GM-1 standard requires the Forest Service to modify grazing practices such as the “accessibility of riparian areas to livestock, [the]

length of [the] grazing season, stocking levels,” and the “timing of grazing.” Standard GM-1 also requires the Forest Service to suspend grazing altogether if it fails to meet RMOs after altering grazing practices. Thus, the “do not retard” standard prohibits *status quo* grazing practices where those practices degrade riparian conditions or maintain degraded conditions.

22. The Forest Service has an affirmative duty to monitor RMO trends over time and move toward attainment of RMOs and riparian recovery. Monitoring is “an important component” of INFISH. RMOs function as a “target toward which managers aim.” Thus, the INFISH strategy requires the Forest Service to monitor its progress and adjust its management practices accordingly.

C. FOREST PLAN SEDIMENT STANDARD 5(f)

23. The Challis Forest Plan also contains a series of standards and guidelines to protect wildlife, soil, water, air, and riparian areas. NFMA requires that the Forest Service ensure consistency with all Forest Plan standards when it issues grazing AOIs.

24. Among those standards is Sediment Standard 5(f), which provides that:

Impacts of activities may not increase fine sediment by depth (within critical reaches) of perennial streams by more than 2 percent over existing levels. Where existing levels are at 30% or above new activities that would create additional stream sedimentation would not be allowed. If these levels are reached or exceeded, activities that are contributing sediment will be evaluated and appropriate action will be taken to bring fine sediment within threshold levels.

Challis Forest Plan at IV-21.

V. STATEMENT OF FACTS

A. Inland Native Fish in the Big Lost River Watershed

25. The Big Lost River is an “isolated stream system” in south-central Idaho. At its terminus, the river sinks into the Snake River Plain. The Big Lost River and its tributary streams contain “a unique form of mountain whitefish.” Mountain whitefish are “the only salmonid

native to the [Big Lost River] drainage.” In addition to mountain whitefish, sculpin are also native to the watershed.

26. According to studies by Idaho Department of Fish and Game (“IDFG”) and the Forest Service, Big Lost River mountain whitefish have “declined substantially” from their historical range and abundance. In 2005, IDFG and Forest Service scientists estimated that Big Lost River whitefish occupied 24% of their historical range. The same study showed that whitefish in the Big Lost River basin had declined to 1.5% of historical population levels. The authors speculated that if “downward trend[s]” continued, whitefish would “disappear completely from the Big Lost River drainage in the next few decades.”

27. The Copper Basin allotments lie within the headwaters of the Big Lost River and several of its tributaries. Fish-bearing streams in the area include the North Fork of the Big Lost River, the East Fork of the Big Lost River, Antelope Creek, Star Hope Creek, Bear Creek, Wildhorse Creek, Kane Creek, Summit Creek, and the Big Lost River itself. All of these streams are within the historical range of mountain whitefish, and all currently contain either mountain whitefish or sculpin, or both.

B. Livestock Grazing Degrades Fish Habitat

28. Past and present grazing practices have caused substantial habitat degradation in the Big Lost River basin. Grazing impacts the vigor, composition, and amount of natural vegetation. Changes in vegetation that result from grazing can increase erosion, decrease streambank stability, and reduce the amount of shade and vegetative cover.

29. Grazing also causes “mechanical compaction” when cattle tread on banks and enter streams, leading to channel widening, erosion, and excess sedimentation.

30. According to INFISH, most of the negative effects on riparian vegetation

throughout the intermountain west are caused by excessive grazing. In particular, areas in which grazing occurs “during the hot, mid-summer months ... have experienced degradation of riparian and aquatic habitat.” The Salmon-Challis National Forest authorizes grazing in the Copper Basin allotments between June and October. Grazing is the dominant land use activity in the area.

C. Riparian Monitoring in the Copper Basin Allotments

31. The Forest Service conducts a regional PACFISH/INFISH Biological Opinion Effectiveness Monitoring Program (“PIBO-EM”), in which it collects data on fish habitat in the upper Columbia River Basin, including the Big Lost River. Specifically, PIBO-EM measures RMOs such as: bankfull width, pools/mile, temperature, lower bank angle, and width to depth ratio.

32. The PIBO-EM data show that many streams in the Big Lost River watershed are not meeting RMOs and are not improving; in fact, they are getting worse. Since 2001, PIBO-EM has examined 15 streams within the Copper Basin allotments for trends in fish habitat quality. Out of these 15, all began in a degraded state for at least one RMO. All 15 streams fell far short of the standard for lower bank angle. In addition, all failed to meet the water temperature RMO for spawning and rearing habitat. Roughly one-third did not meet the temperature RMO for adult fish habitat. Finally, about 80% of streams initially failed to meet the pool frequency RMO.

33. Of these 15 streams, subsequent data show that most are remaining static or deteriorating in one or more RMO category. For example, in the Antelope allotment, Antelope Creek and its tributary Bear Creek have shown negative trends in bank stability. In the Boone Creek allotment, Boone Creek and Fox Creek are falling further behind the RMO for bank angle. In the Copper Basin allotment, Cabin Creek, Lake Creek, and Muldoon Canyon Creek have

shown increasing degradation in bank angle and pool frequency. And, in the Wildhorse allotment, Summit Creek, Bady Creek, and the North Fork of the Big Lost River are showing negative trends in pool frequency, water temperature, and lower bank angle. Additionally, Bear Creek and Fox Creek, which initially failed to attain the RMO for water temperature, have remained static and degraded in that category.

34. All of these streams either contain inland native fish or empty into streams that contain inland native fish. Thus, all are subject to INFISH standards. As the only extant information on RMOs in the Copper Basin allotments, these data represent a baseline against which the Salmon-Challis National Forest may measure its compliance with the Forest Plan and the GM-1 standard when it authorizes livestock grazing.

D. Grazing Management on the Copper Basin Allotments

35. The Forest Service governs the Copper Basin allotments through a permit system under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701–1784, and NFMA implementing regulations. 36 C.F.R. Part 222.

36. The Forest Service divides each allotment into units. The agency may authorize (or not authorize) different levels of grazing on each allotment or pasture. It may also alter times of grazing and levels of use from one grazing season to the next. The Forest Service authorizes and manages livestock grazing on specified allotments by issuing (1) a grazing permit pursuant to 43 U.S.C. § 1752(a) and 36 C.F.R. § 222; (2) an Allotment Management Plan (“AMP”) pursuant to 43 U.S.C. § 1752(d) and 36 C.F.R. § 222.1(b); and (3) AOIs.

37. The Forest Service re-authorizes grazing on the Copper Basin allotments each spring through AOIs. AOIs direct stocking levels, rotation, and other season-specific conditions for grazing. Through the AOIs, the Forest Service informs permittees of dates for moving cattle,

applicable standards, any outstanding management issues, and other concerns.

38. Forest Service range personnel monitor stubble height and woody plant browse and/or age composition on some riparian areas in the Copper Basin allotments. Since at least 2003, Forest Service AOIs for the Copper Basin allotments have required a minimum end-of-season stubble height of four inches and a minimum 50% woody browse use. Neither stubble height nor forage or woody browse use is an RMO.

39. The AOIs have not discussed or required compliance with INFISH or RMOs or Sediment Standard 5(f). The Salmon-Challis National Forest does not generally monitor RMOs. Rather, the only RMO monitoring that occurs is the occasional monitoring by the PIBO-EM team.

40. Over the past decade, stubble height levels have repeatedly violated the four-inch limit at one or two sites per allotment per year—that is, the stubble left after grazing was shorter than four inches. Cattle in the Copper Basin allotments have also routinely trespassed across allotment and pasture boundaries. These violations indicate poor management by permittees, including failure to watch cattle closely during the season and failure remove cattle when needed.

i. Antelope Allotment

41. The Antelope allotment has suffered from recurring management problems over the past decade. In 2003, cattle trespassed in the Iron Bog and Burnt Hollow pastures. Cattle also entered the Smiley Meadows exclosure—an area ostensibly fenced-off from grazing—when an electric fence failed. In all, over 200 unauthorized cattle trespassed during the 2003 season. The Forest Service took no enforcement action.

42. Management problems occurred again in 2007. The Forest Service received

several reports of unauthorized cattle in two areas supposedly off limits to grazing—Iron Bog Campground and the nearby Research Natural Area. Permittees again failed to maintain an electric fence around the Smiley Meadows enclosure. Utilization exceeded allowable levels in two pastures. Despite these problems, in 2008, the Forest Service increased the number of authorized cattle from 768 to 812. Management problems occurred again in 2008.

43. The Forest Service partially suspended the Antelope permit at the end of 2010 because the permittees failed to keep their cattle in the proper pastures. The suspension reduced the grazing season by 21 days in 2011 and 12 days in 2012. In spite of the shortened season, cattle continued to trespass. Utilization exceeded allowable levels in the Dry Canyon pasture in 2012.

44. The Forest Service lifted the suspension in 2013, and increased the number of authorized cattle from 622 to 717. Management problems returned, with the Forest Service reporting an “excessive” amount of trespass. Utilization exceeded allowable levels in two pastures, and cattle once again broke into the Smiley Meadows enclosure. Permittees were slow to respond to management concerns, but the Forest Service took minimal enforcement action.

45. The 2014 AOI imposed no consequences for violations occurring in 2013. The Forest Service admitted use in the Dry Canyon Unit “barely met” standards and probably did not meet the stubble height requirement during the grazing period; and violated the woody browse standard for the third year in a row. Between five to 59 pairs of cattle were observed outside of authorized units on 13 separate occasions. Unauthorized cattle grazing contributed to the limited ability of sedges to regrow in the Dry Canyon and Smiley Units, and several troughs on the former unit were not up to standard and need repair before 2015.

46. The 2015 AOI was approved in May 2015. The Forest Service authorized 821

cattle on the allotment in groups between July 1 and October 15, 2015. The AOI contains no mention of INFISH or stream conditions.

ii. Boone Creek Allotment

47. Management problems have occurred repeatedly over the past decade, particularly the problem of cattle drifting between pastures at unauthorized times. In 2007, several areas exceeded stubble height and utilization standards. Problems with over-use continued as the Forest Service gradually increased the authorized number of cattle from 894 in 2007 to 1176 in 2013. Several areas exceeded stubble height and woody browse limits in 2012 and 2013. In addition, Forest Service visitors spotted cattle in the Bellas Lakes area, which is supposed to be closed to grazing. Cattle drift remains a perennial problem, with cattle freely moving between pastures and even between allotments. The Forest Service has never taken any effective action to correct the recurring management problems in this allotment. Despite three consecutive years of grazing in excess of stubble height standards, the 2014 AOI contained no consequences. Cattle from the Copper Basin allotment trespassed on the Boone Creek allotment on numerous occasions in 2014. 100 pair (200 cattle) trespassed into Bella Lakes in July. Grazing violated the woody browse standard at at two monitoring sites; and one site was not monitored because it was “dry all season.” Grazing violated the stubble height standard at least two different sites. A permittee received Forest Service authorization to clean out some existing dugouts (stockwater ponds), but went far beyond the scope of the authority and created numerous new dugouts using earth-moving equipment. Upon being discovered by the Forest Service, the permittee claimed ignorance. The Forest Service issued a suspension reducing the permittee’s permitted livestock numbers by 40% for two years.

48. The 2015 AOI was approved in May 2015. The Forest Service authorized 881

cattle on the allotment in groups between June 6 and October 15, 2015. The AOI contains no mention of INFISH and little mention of stream conditions.

iii. Copper Basin Allotment

49. In 2007, several areas within the Copper Basin allotment exceeded stubble height and woody browse use limits. Permittees repeatedly failed to keep cattle in the proper pasture, and the Forest Service issued a notice of non-compliance. However, the notice imposed no consequences, nor did the Forest Service modify the subsequent year's grazing authorizations. In 2008, permittees again failed to move cattle according to the grazing schedule. Over-utilization occurred again in 2010. Further problems occurred in 2011 and 2012; for example, in 2012, cattle pressured and broke down fences on three separate occasions. Despite these problems, authorized use has remained approximately constant since 2007. The agency has yet to take enforcement actions against permit violations or modify grazing practices.

50. Trespass was nearly constant in 2014; dozens of trespassing cattle were out of place on numerous occasions from June to October, including several breaches of enclosures. In response to unsatisfactory recovery progress, most notably in the Basin Flats Unit, the Forest Service imposed a 20% suspension for two years. Grazing violated stubble height and the browse standard in the Fish and Game Unit was only 3.7 inches, while browsing was 66%. The 2015 AOI was approved in May 2015. The Forest Service authorized 2,583 cattle on the allotment in groups between June 6 and October 15, 2015. The AOI contains no discussion of INFISH or stream conditions.

iv. Wildhorse Allotment

51. Widespread management problems have occurred on the Wildhorse allotment over the past decade. In 2007, cattle repeatedly moved into the wrong pastures and broke down

fences. Cattle violated utilization standards in several areas. Between 2008 and 2013, the Forest Service gradually increased the number of cattle authorized to graze the allotment. Authorized use peaked in 2013 at 1717 animals. Meanwhile, management difficulties and over-use mounted. The Forest Service issued a notice of noncompliance in 2011, when four areas exceeded standards for stubble height, and a suspension in 2012 for failure to keep cattle within the allotment boundary and in scheduled units during scheduled time periods. However, no practical consequences or adjusted grazing practices followed, and management problems continued throughout the 2012 and 2013 grazing seasons. In 2013, the Forest Service removed the pending suspension as part of a mediation process, stating that if non-compliance occurred in 2013, then the suspension would go into effect in 2014. There were problems again in 2013 with “herd management.”

52. In the 2014 AOI, Forest Service went back on its statement that the suspension would take effect following noncompliance, instead agreeing to extend the terms of the mediation agreement for one more season.

53. In 2014, trespass occurred numerous times. An important fence near Burnt Creek was in disarray. One landowner observed 50 cattle trespassing on the North Fork Unit in just one weekend, prompting him to assert that the “fences must not be intact at all.” Grazing violated the stubble height standard on numerous units. Despite these problems, the Forest Service once again failed to institute the suspended suspension, claiming there were no compliance issues during the 2014 season.

54. The 2015 AOI was approved on May 26, 2014. The Forest Service authorized 1453 cattle on the allotment in groups between June 9 and September 30, 2015. The AOI contains no discussion of INFISH or stream conditions.

**FIRST CLAIM FOR RELIEF:
VIOLATIONS OF NFMA FOR THE ANTELOPE, BOONE CREEK,
COPPER BASIN, AND WILDHORSE ALLOTMENTS.**

55. Plaintiff realleges and incorporates by reference the preceding paragraphs.

56. Under NFMA, the Forest Service must comply with the Forest Plan in all site-specific management decisions and explain its compliance. 16 U.S.C. § 1604(i), 36 C.F.R. § 219.15. Forest Plan standard GM-1 requires the Forest Service to modify or suspend grazing practices if such practices cause INFISH RMOs to deteriorate or remain in a degraded condition.

57. The Forest Service has violated NFMA because the agency's 2015 grazing authorizations for the Copper Basin allotments violate Forest Plan standards—including Standard GM-1 and Sediment Standard 5(f).

58. The Forest Service 2015 AOIs for the Copper Basin allotments fail to consider, describe, or achieve compliance with INFISH standards. PIBO-EM data shows that many streams within these allotments are not meeting INFISH standards and not achieving a "near natural rate of recovery." Nonetheless, the AOIs, like the ones for years prior, fail to even acknowledge this data, much less explain how to achieve compliance.

59. Because the AOIs fail to respond to the Forest Service's own data that establishes a downward trend in aquatic habitat conditions, or static trends in conditions not meeting RMOs, on the Copper Basin allotments, the Forest Service has failed to implement INFISH.

60. The Forest Service also failed to modify and correct grazing practices when these practices result in mismanagement and overuse. In spite of a track record of permit violations and considerable evidence that it is failing to achieve a "near natural rate of recovery," the Forest Service has refused to take corrective action, and instead has maintained and even increased

grazing on the Copper Basin allotments.

61. The 2015 AOIs also fail to consider, describe, or achieve consistency with Sediment Standard 5(f), or undertake the required “appropriate action” to reduce sediment levels in streams with over 30% sediment. Nor did the Forest Service conduct a consistency analysis elsewhere.

62. For each of the above reasons, the Forest Service’s 2015 AOIs for the Antelope, Boone Creek, Copper Basin, and Wildhorse allotments are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with NFMA. The AOIs are reviewable under the Administrative Procedure Act, 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Order, declare, and adjudge that the Forest Service’s 2015 Annual Operating Instructions for the Antelope, Boone Creek, Copper Basin, and Wildhorse allotments are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with NFMA and its implementing regulations, in violation of the APA, 5 U.S.C. § 706(2);

B. Order, declare, and adjudge that the Forest Service has violated non-discretionary requirements of INFISH and the Sediment Standard 5(f), and thereby violated the NFMA consistency requirement;

C. Hold unlawful, set aside, and vacate the Forest Service’s continued authorization of grazing through its Annual Operating Instructions for the Antelope, Boone Creek, Copper Basin, and Wildhorse allotments for failure to implement INFISH and Sediment Standard 5(f), as described above, under the APA, 5 U.S.C. § 706(2)

D. Issue such preliminary and permanent injunctive relief as appropriate and as

subsequently requested by Plaintiff;

E. Award Plaintiff its reasonable costs, litigation expenses, and attorney fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2414 *et seq.*, and all other applicable authorities; and

F. Grant such further relief as the Court deems just and proper to serve the public interest and mitigate adverse impacts of the Forest Service's unlawful actions.

DATED this 28th day of March, 2017.

Respectfully submitted,

s/ Kristin F. Ruether
Kristin F. Ruether

Attorney for Plaintiff Western Watersheds
Project

CERTIFICATE OF SERVICE

I hereby certify that on 28th day of March, 2017, I caused a true and correct copy of the foregoing FIRST AMENDED COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF to be electronically filed with the Clerk of the Court using the CM/ECF system, which caused the following counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

| | |
|-------------------------|---|
| Jessica Gunder | Jessica.Gunder@usdoj.gov |
| Christine Gealy England | christine.england@usdoj.gov, CaseView.ECF@usdoj.gov, Danielle.Narkin@usdoj.gov |
| John Richard Hammond | jrh@fisherpusch.com |
| Karen Budd-Falen | main@buddfalen.com, karen@buddfalen.com |

s/Kristin F. Ruether
Kristin F. Ruether

Attorney for Plaintiff Western
Watersheds Project