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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MEDFORD DIVISION

WESTERN WATERSHEDS PROJECT, Plaintiff, v. UNITED STATES FISH AND WILDLIFE SERVICE, an agency in the Department of Interior, Defendant.	Case No.: 1:17-cv-00098 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** (Environmental Matter—National Environmental Policy Act, National Wildlife Refuge System Administration Act, Kuchel Act, and Administrative Procedure Act)

INTRODUCTION

1. This action challenges the United States Fish and Wildlife Service's (Service) adoption of a Comprehensive Conservation Plan (CCP) for five National Wildlife Refuges in the Klamath Basin. The CCP will govern management of the Upper Klamath, Lower Klamath, Tule Lake, Clear Lake, and Bear Valley Refuges in southern Oregon and Northern California for the next 15 years. The Service issued its Record of Decision (ROD) to implement the CCP on January 13, 2017.

2. The Klamath Basin Refuges contain critically important habitat for waterbirds, providing stopover refugia for millions of waterfowl and other migratory birds each year on a path that may stretch from the Arctic to South America. They contain some of the last remnants of the hundreds of thousands of acres of wetlands that once existed in the Klamath Basin. The refuges also provide a wide range of habitats for many other fish and wildlife species year-round.

3. Despite their designation and purpose as wildlife refuges, the Service currently allows extensive commercial agriculture, including private livestock grazing and haying, to occur within the refuges. Under the CCP, the Service will authorize increased livestock grazing on the Upper Klamath, Lower Klamath, and Clear Lake Refuges, despite the fact that grazing has numerous adverse impacts on native species, ecosystems, and ecological processes, and undermines the biological integrity, diversity, and environmental health of the refuges, contrary to the National Wildlife Refuge System Administration Act (Refuge Act).

4. In making determinations that these private economic uses could occur on the Klamath Refuges, the Service failed to apply sound scientific principles, consider available information, or adhere to legal obligations and its own policies for analyzing their likely impacts.

5. Clear Lake National Wildlife Refuge is home to an imperiled population of greater sage-grouse, a species that has experienced marked declines in the Klamath Basin over the past decades. The refuge is now home to the last known lek (or breeding ground) for the population. Livestock grazing adversely impacts sage-grouse in a number of ways, including by reducing the frequency and height of the native vegetation that sage-grouse rely upon for food and cover. Despite these impacts, the CCP allows *increased* grazing in essential sage-grouse habitat at Clear Lake Refuge, which is incompatible with the seasonal habitat needs of the dwindling population.

6. Two species of endangered fish, the shortnose and Lost River suckers, are also found at Clear Lake Refuge. The refuge is critical habitat for both species, and is one of only several places where they still exist. Juvenile suckers rely on shallow water habitat along the edges of Clear Lake Reservoir. Again, the CCP authorized *increased* livestock grazing along the shoreline, where livestock have direct access to shallow water habitat, which is also incompatible with the protection and recovery of these species.

7. As part of its process of developing the CCP, the Service issued an environmental impact statement (EIS). In the EIS, the Service was required to analyze the benefits of reducing or eliminating livestock grazing on the Upper and Lower Klamath Refuges and at Clear Lake, but refused to even consider doing so. The Service was also required to take a "hard look" at the effects of management under the CCP, including the direct, indirect, and cumulative impacts of the agricultural uses it authorizes. The Service failed in that regard as well because it ignored impacts to sage-grouse or Lost River and shortnose suckers from livestock grazing on Clear Lake Refuge and adjacent lands on the Modoc National Forest.

8. Plaintiff Western Watersheds Project seeks a declaration that the Service violated the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq*., the Refuge Act, as amended by the National Wildlife Refuge System Improvement Act, 16 U.S.C. § 668dd *et seq*., and the Kuchel Act, 16 U.S.C. § 695k *et seq*. through its issuance of the ROD approving the CCP. Plaintiff requests that this Court vacate the ROD and CCP. Additionally, Plaintiff requests that the Court issue injunctive relief to remedy these violations of law.

JURISDICTION AND VENUE

9. Plaintiff brings this suit pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 706.

10. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question) because this action arises under the laws of the United States, including the APA, NEPA, and the Refuge Act.

11. An actual, justiciable controversy exists between Plaintiff and Defendant. The relief Plaintiff requests is proper under 28 U.S.C. §§ 2201–02.

12. Venue lies in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, a substantial amount of the public lands and resources involved are located in this district, Plaintiff maintains an office located within this district, and many of Plaintiff's affected members reside here.

13. Defendant waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

PARTIES

14. Plaintiff WESTERN WATERSHEDS PROJECT (WWP) is a non-profit conservation organization dedicated to the protection of the public lands and natural resources of

the American West. WWP has offices and staff in Oregon, Idaho, Arizona, California, Montana, and Wyoming. More than 1,500 members in Oregon and other states support WWP and its work.

15. As an organization and on behalf of its members, WWP is concerned with and active in seeking to conserve and promote the recovery of wildlife, riparian areas, water quality, fisheries, and other ecological values of watersheds in the West. WWP is active in monitoring ecological conditions on public lands, in reviewing and commenting on agency decisions, and in publicizing the adverse ecological impacts of livestock grazing. For example, WWP advocates for increased protections for wildlife in and around Clear Lake, Klamath Marsh, and Upper Klamath Refuges, and in many other places within the Lost River and Klamath River watersheds.

16. WWP's staff and members live, work, and recreate throughout southern Oregon and northern California, including in and around the Klamath Basin. WWP's members and staff regularly visit and monitor public lands on the Modoc and Fremont-Winema National Forests and the Klamath Basin Refuges. They derive aesthetic, recreational, scientific, inspirational, educational and other benefits by visiting the Klamath Basin Refuges and surrounding areas on a regular and continuing basis and intend to continue to do so in the immediate future.

17. The organization is also one of the leading conservation groups fighting to protect the greater sage-grouse. Through the efforts of its staff, members, and supporters, WWP advocates for science-based management of public lands with a focus on the sagebrush steppe landscape that forms the sole habitat of the greater sage-grouse. The decline of sage-grouse and other sagebrush-obligate species across the West is of great concern to WWP; and the preservation and recovery of sage-grouse and its habitat are highly important to WWP's members, staff, and supporters. For many years, the organization and its members have

participated in the public processes for federal management activities that impact the small, unique population of sage-grouse at Clear Lake Refuge.

18. Another of WWP's major focus areas is imperiled native fishes. The organization works to protect native fish species and their habitats in many areas, including within Oregon and California. WWP is greatly concerned about the degraded condition of native salmonid and endangered sucker habitat in the Klamath Basin, and the impacts from livestock grazing on species like bull trout and suckers. Because of its concerns, WWP has participated in two other recent cases challenging livestock grazing that harms these native species' habitat in the Basin, both of which have been adjudicated or are pending before this Court (*Oregon Wild et al. v U.S. Forest Service*, No. 1:15-cv-00896-CL, and *Oregon Wild et al. v. Cummins*, No. 1:15-cv-1360-CL).

19. The Service's authorization of economic activities, including livestock grazing, within the Upper Klamath, Lower Klamath, and Clear Lake Refuges adversely impacts the native species WWP advocates for, including sage-grouse, migratory birds, fish, and plant communities, and is not consistent with the purposes for which the refuges were designated.

20. WWP and a number of its members and supporters participated in the administrative process preceding the Service's issuance of the ROD and adoption of the CCP.

21. Defendant's violations of law, regulations, and policy as alleged here directly injure the interests of WWP and its staff and members. Those interests have been and will continue to be harmed by Defendant's violations. Unless the relief requested is granted, WWP and its members will continue to suffer on-going and irreparable injury to their interests.

22. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is an agency within the Department of Interior, and is responsible for administration of the National Wildlife

Refuge System, including the Klamath Basin Refuges, in accordance with federal laws, regulations, and policies.

LEGAL BACKGROUND

National Wildlife Refuge Administration

23. In 1966, Congress passed the National Wildlife Refuge System Administration Act (Refuge Act), creating a nationwide system of refuges. 16 U.S.C. § 668dd(a)(1). In 1997, Congress amended the Refuge Act with the passage of the National Wildlife Refuge System Improvement Act (Improvement Act).

24. The mission of the Refuge System is "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States. . . ." *Id.* § 668dd(a)(2). "Conservation" and "management" mean "to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants" in accordance with Federal laws. *Id.* § 668ee(4). The Service must also "ensure that the biological integrity, diversity, and environmental health" of national wildlife refuges are maintained. *Id.* § 668dd(a)(4)(B). Each refuge must be managed to ensure that the purposes for which the refuge was established are carried out. *Id.* § 668(a)(4)(D).

25. Under the Improvement Act, the Service must issue a "comprehensive conservation plan for each refuge or . . . complex of refuges . . . in the [refuge] System" and subsequently "manage the refuge[s] . . . in a manner consistent with the plan." *Id.* § 668dd(e)(1)(A), (E). The Service will revise the CCP every 15 years or any time that conditions that affect the refuge change significantly. *Id.* The CCP must "identify and describe . . . the distribution, migration patterns, and abundance of fish, wildlife, and plant populations and

related habitats within" the refuge, as well as "significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants" and "the actions necessary to correct or mitigate such problems." *Id*. § 668dd(e)(2)(B), (E).

26. The Service may "permit the use of any area . . . for any purpose . . . whenever [it] determines that such uses are compatible with the major purposes" of a refuge. *Id*. § 668dd(d)(1)(A). Purposes of a refuge are those "derived from the law, proclamation, Executive order," or other means of establishing or expanding the refuge. *Id*. § 668ee(10). The Service "shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless [it] has determined that the use is a compatible use." *Id*. § 668dd(d)(3)(A).

27. "Refuges are first and foremost national treasures for the conservation of wildlife." 603 FW § 1.4(A) (Fish and Wildlife Service Manual). A "compatible use" is any use of a refuge that, based on "sound professional judgment, [] will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge." *Id*. § 668ee(1); 50 C.F.R. § 25.12. Sound professional judgment means "a finding, determination, or decision that is consistent with the principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of [the Refuge] Act and other applicable laws." 16 U.S.C. § 668ee(3).

28. When a use is incompatible, the Service will "expeditiously terminate or modify the use to make it compatible." 50 C.F.R. § 26.41(d).

29. If the use is a "public or private economic use of the natural resources of any national wildlife refuge," a heightened standard applies: The Service may only authorize it where it "determine[s] that the use *contributes to the achievement* of the national wildlife refuge purposes or the National Wildlife Refuge System mission." 50 C.F.R. § 29.1 (emphasis added).

The Service considers "grazing livestock" and "harvesting hay and stock feed" to be economic uses. *Id*.

30. The Service must evaluate each refuge use in a written compatibility determination (CD). 16 U.S.C. § 668dd(d)(3)(B). CDs are typically made as part of the CCP process. 50 C.F.R. § 26.41.

31. In determining whether a use is compatible, the Service must consider the anticipated impacts of the use on the refuge's purpose and on the mission of the National Wildlife Refuge System. 50 C.F.R. § 26.41(a)(8). Impacts that must be considered include:

> [N]ot only the direct impacts of a use but also the indirect impacts associated with the use and the cumulative impacts of the use when conducted in conjunction with other existing or planned uses of the refuge, and uses of adjacent lands or waters that may exacerbate the effects of a refuge use.

603 FW §§ 2.11(B)(3), 2.12(A)(8)(c).

32. Uses that may otherwise be compatible may exceed the compatibility threshold "when considered cumulatively in conjunction with other existing or planned uses." *Id*. § 2.11(B)(1). Cumulative impacts "over time may become quite substantial." *Id*. § 2.12(A)(8)(b).

33. The CD must "[d]escribe the specific areas of the refuge that will be used: habitat types and acres involved [and] key fish, wildlife, and plants that occur in or use that habitat" including other areas that may be affected incidentally. *Id*. § 2.12(A)(6)(b). Uses that are reasonably anticipated "to reduce the quality or quantity or fragment habitats on a national wildlife refuge will not be compatible." *Id*. § 2.5(A).

34. Even if a use is compatible, the Service may decline to allow it. 603 FW §§ 1.8, 2.11(G), 2.15.

35. Under the 1964 Kuchel Act, the Service must manage the Lower Klamath, Upper Klamath (except the Barnes-Agency Unit), Tule Lake, and Clear Lake National Wildlife Refuges for wildlife conservation, including waterfowl management, and must determine whether agricultural use of those refuges is "consistent" with wildlife conservation. If so, it must still consider whether or not to authorize agricultural uses there. 16 U.S.C. § 695l.

National Environmental Policy Act

36. The Service's issuance of a CCP and CDs are subject to analysis under the National Environmental Policy Act. NEPA is our nation's "basic charter for protection of the environment." 40 C.F.R. § 1500.1(a). NEPA's primary purposes are to ensure that agencies carefully and fully consider the environmental consequences of their actions, and to ensure that the public has sufficient information to evaluate an agency's actions. *Id.* § 1500.1(b), (c).

37. Under NEPA, an agency must prepare an Environmental Impact Statement (EIS) for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). The EIS must adequately describe the affected environment and disclose the environmental consequences of the proposed action. 40 C.F.R. § 1502. The agency's statements "shall be supported by evidence that the agency has made the necessary environmental analyses." *Id.* § 1502.1.

38. High quality information must be made available to the public before an agency makes its decision and takes action. *Id.* § 1500.1(b). Accurate scientific analysis and public scrutiny are essential to implementing NEPA. *Id.* NEPA also requires that an agency discuss any reasonable opposing viewpoints. *Id.* § 1502.9(b).

39. The agency shall consider three types of environmental impacts or effects in the EIS: those that are direct, indirect, and cumulative. 40 C.F.R. § 1508.25(c). Direct effects "are

caused by the action and occur at the same time and place." *Id.* § 1508.8(a). Indirect effects are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8(b).

40. The agency must disclose to the public "[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts." 40 C.F.R. § 1508.27(b)(7). A cumulative impact results from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency undertakes such other actions. *Id.* § 1508.7. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. *Id.* The agency cannot avoid significance by dividing a proposed project into component parts. *Id.* § 1508.27(b)(7).

41. Actions that are "cumulative" or "connected" must be considered together in the same NEPA document. *Id.* § 1508.25(a)(1), (2).

42. Alternatives to the proposed action are required in every EIS. 42 U.S.C. § 4332(C)(iii). The agency must study, develop, and describe an appropriate range of alternatives. *Id.* § 4332(E). This requirement serves to "inform decisionmakers and the public of reasonable alternatives that would avoid or minimize adverse impacts" of a proposal. 40 C.F.R. § 1502.1. The agency should present the alternatives "in comparative form, thus sharply defining the issues and providing a clear basis of choice among the options." 40 C.F.R. § 1502.14. Alternatives are "the heart of the environmental impact statement," and the agency must "rigorously explore and objectively evaluate all reasonable alternatives." *Id.*

43. An EIS must include a "no action" alternative. *Id*. The no action alternative provides a benchmark that allows decisionmakers and the public to compare the magnitude of the effect of the action alternatives on the environment.

44. The EIS must also include "reasonable alternatives not within the jurisdiction of the lead agency." *Id*.

Administrative Procedure Act

45. The APA confers a right of judicial review on any person that is adversely affected by a federal agency action. 5 U.S.C. § 702. Upon review, the Court shall "hold unlawful and set aside agency actions . . . found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id*. § 706(2)(A).

FACTUAL BACKGROUND

The Klamath Basin Refuges

46. The Klamath National Wildlife Refuge Complex includes six refuges: Upper Klamath, Lower Klamath, Tule Lake, Clear Lake, Bear Valley, and Klamath Marsh. A separate CCP was issued for Klamath Marsh Refuge in 2010 so it was not included in the planning process at issue in this case.

47. Historically, the Upper Klamath Basin was dominated by shallow lakes and extensive wetlands, supporting some of the greatest concentrations of migrating waterfowl in North America. Because of conversion to agricultural lands, less than 25% of the original wetlands remain, largely within the Refuge Complex.

48. The Refuge Complex is composed of a variety of habitats, including freshwater marshes, open water, lakes, rivers, riparian zones, sagebrush and juniper uplands, and grasslands. These habitats support diverse populations of resident and migratory wildlife.

49. The refuges are all within the Great Basin Ecoregion, which is generally arid. The lower elevation refuges receive between 7 and 11 inches of rainfall annually. The region is expected to become warmer and drier due to climate change. By 2070, sagebrush and other shrub-steppe vegetation is projected to decline by 41 to 56%. Snow-fed rivers and streams will have less water.

Upper Klamath Refuge

50. Upper Klamath National Wildlife Refuge was established in 1928 by President Calvin Coolidge "as a refuge and breeding ground for birds and wild animals." Executive Order 4851 (Apr. 3, 1928). The refuge has been expanded numerous times since then. It currently contains 23,098 acres of mostly freshwater marsh, open water, and uplands.

51. The Kuchel Act established several other purposes for the refuge, including "to preserve intact the necessary existing habitat for migratory waterfowl in this vital area of the pacific flyway" and "dedicated to wildlife conservation . . . for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith." 16 U.S.C. §§ 695k, 695l. However, the Kuchel Act does not apply to the Barnes-Agency Unit of the refuge, which was acquired by the federal government only in recent years.

52. The refuge must also be managed "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. § 715d.

53. Another purpose of the refuge is "to conserve fish or wildlife [that] are listed as endangered species or threatened species." 16 U.S.C. § 1534.

54. Upper Klamath Lake is a shallow lake fed by the Wood, Williamson, and Sprague Rivers and has extensive adjacent wetlands. The refuge is an important breeding area for diving ducks and colonial waterbirds, as well as a heavily-used location for molting waterfowl. Sandhill

cranes breed on the refuge and yellow rail, a special status species, also occurs there. Oregon spotted frog, a federally threatened species, likely occurs in the Upper Klamath Refuge.

55. The Barnes-Agency Unit in the northwest portion of the refuge is a system of diked waterways and upland tracts that is separated from Agency Lake by containment levies that prevent the area from functioning naturally as an emergent marsh. Grazing and haying—the cutting of grasses that otherwise would provide cover for birds so that the grass can dry and be fed to livestock—occurs in this area annually in the spring, summer, and/or fall. Grazing and haying are authorized through special use permits.

Lower Klamath Refuge

56. The Lower Klamath National Wildlife Refuge was established "as a preserve and breeding ground for native birds" in 1908 by President Theodore Roosevelt. Executive Order 924 (Aug. 8, 1908). It was the nation's first waterfowl refuge. The purposes established by the Kuchel Act also apply to Lower Klamath Refuge. Additionally, with respect to the Tule Lake and Lower Klamath Refuges, the Kuchel Act directs that "consistent with proper waterfowl management, continue the present pattern of leasing the reserved lands . . . ." 16 U.S.C. § 695n.

57. Lower Klamath is the most diverse refuge in the Complex, hosting high numbers of waterbirds, including migrant and breeding shorebirds, waterfowl, colonial nesting waterbirds, wading birds, and passerines.

58. The refuge contains a mixture of shallow freshwater marshes, open water, uplands, wet meadows, and croplands. The current extent of the refuge is 51,247 acres, made up of 47% wetlands, 38% uplands (rangelands/pasture), and 15% croplands.

59. Haying occurs on 1,965 acres and livestock grazing occurs on around 12,000 acres. Haying and grazing take place in the north, west, and south portions of the refuge.

Livestock grazing is primarily by cattle. Grazing is authorized through special use permits, leases, and cooperative land management agreements.

Clear Lake Refuge

60. President William Taft established the Clear Lake National Wildlife Refuge "as a preserve and breeding ground for native birds." Executive Order 1332 (Apr. 11, 1911). Other refuge purposes include those established by the Kuchel Act, including dedication to "wildlife conservation." 16 U.S.C. § 695k *et seq*.

61. Clear Lake is an important site for colonial waterbirds including white pelicans and Caspian terns.

62. The refuge is 33,401 acres, of which about 20,000 acres is open water in Clear Lake Reservoir. The landscape surrounding Clear Lake is high desert with sagebrush, grassland, and juniper communities. Upland areas provide habitat for pronghorn, mule deer, and a number of other species.

63. The refuge is surrounded on all sides by the Modoc National Forest. Four Forest Service grazing allotments border Clear Lake Refuge: the Tucker, Carr, Clear Lake, and Mammoth allotments.

64. A roughly 6,000 acre peninsula extends into Clear Lake Reservoir, nearly dividing it into two parts. It is known as the "U."

65. Clear Lake Refuge and the surrounding public lands provide crucial habitat for an important, but struggling population of greater sage-grouse, an iconic bird species at risk across its range, as well as several other species of sagebrush-obligate birds including sage thrasher, Brewer's sparrow, and sage sparrow. The U is the epicenter of the sage-grouse population at Clear Lake.

66. Vegetation on the U consists of uplands and shoreline habitat that is intermittently submerged or exposed depending on water level. The uplands are mainly sagebrush and bunchgrass communities including native Idaho fescue and bluebunch wheatgrass. Sagebrush is recovering in upland areas that burned in a wildfire in 2001 or were intentionally burned by the Service in prior years. Nonnative cheatgrass and medusahead are also present in these areas.

67. Vegetation along the shoreline includes a variety of forbs and wildflowers, as well as perennial grasses and some annual grasses.

68. Clear Lake Reservoir and its tributaries are designated critical habitat for two species of fish listed under the Endangered Species Act, the shortnose and Lost River suckers.

69. Livestock grazing by cattle has occurred in recent years on the U in late summer and fall. The Service also allows cattle from the Modoc National Forest to access the western portion of the refuge each year in late summer during the authorized season of grazing use on the Tucker allotment. Trespass livestock from the Carr allotment have also been documented in the refuge.

Greater sage-grouse

70. The greater sage-grouse (*Centrocercus urophasianus*) is the largest North American grouse species. Sage-grouse were once widely distributed throughout the sagebrush biome across the western U.S. and Canada, with populations numbering in the millions. Today, there are only between 200,000 and 500,000 sage-grouse range-wide.

71. Until September 2015, greater sage-grouse was considered by the Service as a "candidate" species that warranted listing as "threatened" under the Endangered Species Act, but was precluded by lack of resources.

72. As its name suggests, sage-grouse are sagebrush obligates, meaning they depend on sagebrush habitats year-round to provide roosting, cover, and food. The persistence of the species is closely linked to the availability and condition of this habitat.

73. The sagebrush steppe ecosystem is comprised of sagebrush in the overstory; native grasses, forbs, and litter in the understory; and biological soil crusts filling interspaces between vegetation.

74. Sage-grouse typically inhabit large, interconnected expanses of sagebrush habitat, and are thus characterized as a landscape-scale species. Their annual ranges may encompass hundreds of square miles. Even so, sage-grouse exhibit remarkable fidelity to seasonal habitat locations within their home ranges. Seasonal habitat includes breeding, nesting, brood-rearing, and wintering areas.

75. By early March, sage-grouse move to areas known as leks, where males perform breeding displays in the early morning. This activity may occur into May.

76. After mating, female grouse move away from the lek site to establish nests. The nesting season lasts from April through June. The nesting season is critical because the sage-grouse has one of the lowest reproductive rates of any North American game bird and its populations are not able to recover from low numbers as quickly as many other upland bird species. The nest is a shallow depression on the ground, often under sagebrush because sagebrush and taller grasses provide scent, visual, and physical barriers to predators.

77. Sage-grouse require forbs, which are herbaceous flowering plants other than grasses. The forbs provide nutrition for the hen, increasing her chances of successfully giving birth to, and raising, her chicks. Both the hen and her chicks also feed on insects and beetles. An herbaceous understory provides greater access to insects and forbs, both for the female before

breeding and by her chicks after hatching. During summer months, when brood-rearing occurs, sage-grouse move to wetter habitats like springs and wet meadows because these areas have abundant forb cover.

78. As vegetation dries through later summer and fall, sage-grouse shift their diet to sagebrush, and through winter, sage-grouse depend exclusively on sagebrush for food and cover. During winter, sage-grouse often rely on windswept areas where sagebrush protrudes above the snow.

79. Destruction, fragmentation, and degradation of sagebrush habitats over past decades, including through the effects of livestock grazing, grazing-related infrastructure and landscape manipulation, invasive species, and fire, have caused substantial declines in sage-grouse populations. The range of the species has also declined by about half.

80. Grazing by domestic livestock has direct and indirect negative impacts on sage-grouse. Livestock compete directly with sage-grouse for resources, including grasses and forbs. Livestock also reduce complex cover by trampling vegetation, including sagebrush seedlings.

81. Nest destruction from trampling and even depredation of sage-grouse eggs by livestock has been documented, and the presence of livestock can cause hens to flush from their nests and abandon them. Sage-grouse in cattle-grazed areas have higher levels of stress hormones than those in ungrazed habitat.

82. Springs, seeps, shorelines, meadows, and other riparian areas that are important brood-rearing habitat for sage-grouse are readily impacted by livestock, leading to reductions in their extent or duration due to altered flows, decreased species richness, erosion, and reduced vegetation.

83. Grazing reduces the hiding cover required by sage-grouse, both over the long-term and seasonally. Sagebrush ecosystems evolved without heavy grazing, and native bunchgrasses are therefore highly sensitive to grazing disturbance, especially during their spring growth period.

84. Livestock preferentially graze the larger bunchgrasses that provide the best hiding cover for sage-grouse. Over time, grazing reduces these grazing-intolerant species.

85. The reduction in grass height from annual grazing in nesting areas also negatively affects nesting success. Scientific studies establish that a 7-inch grass height is required to provide adequate concealment.

86. Livestock facilitate the introduction and spread of invasive plant species (particularly cheatgrass) in various ways, including by transporting their seeds, and reducing competition with native bunchgrasses through their preferential grazing of native species.

87. Disturbance from livestock grazing results in increased potential for invasion by cheatgrass and medusahead. Livestock-degraded areas are more susceptible to post-fire invasion by these and other exotic annuals. Biological soil crusts form a protective barrier that inhibits cheatgrass from growing, hold moisture in the soil, and fix nitrogen from the air to provide nutrients critical to plant survival and growth. Soil crusts also slow fires, limit their intensity, and speed recovery of the landscape following fires. Livestock damage soil crusts.

88. Fire harms sage-grouse because sagebrush species are killed by fire, and do not re-sprout after being burned. Thus, fire results in long-term habitat loss. Cheatgrass invasion is a significant driver of increased fire frequency.

89. Prior to European settlement, fires in sagebrush ecosystems occurred far less frequently than today, with historic fire return intervals estimated at between 100 and more than 300 years.

90. Infrastructure in the sagebrush landscape fragments sage-grouse habitat, resulting in direct habitat loss; habitat alteration causing functional loss for sage-grouse; and the preclusion of use of areas through physical barriers or avoidance behavior. Infrastructure used to facilitate the livestock industry on public lands includes fencing, wells, tanks, windmills, reservoirs, troughs, pipelines, and corrals.

91. Development of springs and water sources to support livestock in upland habitats can artificially concentrate domestic and wild ungulates in sage-grouse habitats, exacerbating impacts in those areas. Human-created water sources known to support breeding mosquitos that transmit West Nile virus to sage-grouse include stock tanks and ponds.

92. Negative impacts to sage-grouse from fencing include mortality from collision during flight. Fences and other structures also create perching areas that allow raptors and corvids (such as common ravens) to more successfully hunt and prey on sage-grouse and their nests. Sage-grouse inherently avoid tall structures and fencing to minimize risk of predation. This avoidance results in effective habitat loss around structures. Actual habitat loss occurs from the spread of invasive plant species where disturbance is concentrated along fence lines.

93. Anthropogenic disturbance and "subsidies" such as agricultural infrastructure, as well as livestock themselves, increase raven populations and predation intensity.

94. Landscape and vegetation "treatments" conducted to increase livestock forage are another harmful indirect impact to sage-grouse from livestock production. Sagebrush is intentionally removed by mechanical means, burning, or spraying in many areas on public lands.

Treated areas are often reseeded with non-native grasses like crested wheatgrass. These non-native grasses provide poor habitat for sage-grouse.

The Clear Lake Sage-Grouse Population

95. The sage-grouse found at Clear Lake Refuge belong to the Klamath OR/CA population, described as "a small population on the east side of the Klamath Basin in Oregon and California." The Klamath OR/CA population represents the westernmost extent of the species' range. The population is nearly extirpated.

96. If the population disappears, a significant range contraction will occur, as the next closest population is 70 to 80 km to the east.

97. Sage-grouse in the Klamath OR/CA population no longer occur in Oregon and are currently found in only one location in California—the area surrounding Clear Lake Reservoir. Sage-grouse once inhabited Lower Klamath Refuge as well, but have not been observed there for several decades. The last sage-grouse from the Klamath OR/CA population observed in Oregon were near Gerber Reservoir in 1993.

98. Clear Lake Refuge is within a geographic management area known as the Devil's Garden/Clear Lake Sage-grouse Population Management Unit (PMU), which includes northwest Modoc County and a small portion of Siskiyou County. Sage-grouse were found throughout most of the PMU into the 1940s and 1950s. The California Department of Fish and Wildlife estimated that there were as many as 14,000 sage-grouse in Modoc County alone as recently as 1970.

99. Fifty-six separate leks were originally recorded in the PMU, with most concentrated around Clear Lake. In 1977, there were nine active leks in the PMU. By 2002, only a single lek, located on the Clear Lake U, was active.

100. Attendance at the lek has declined by 80% since 1992. Between 1999 and 2008, only between five and ten males were observed at the lek each year. In 2015, 29 males were counted there.

101. Since 2005, the Service and other agencies have annually captured sage-grouse at nearby Hart Mountain and Sheldon Refuges and other locations in Nevada and released them at Clear Lake.

102. The Clear Lake sage-grouse population is non-migratory, and the U provides important, year-round habitat. In addition to the U's significance for breeding activities, sage-grouse also nest on the U. From late summer to fall, the lakeshore provides excellent forage for sage-grouse chicks as the lake recedes and forbs emerge on the newly exposed soil.

103. Sage-grouse also nest in various other locations surrounding Clear Lake Reservoir, including to the west in the Clear Lake Hills, south in the area between Doublehead Mountain and Mowitz Creek, and east of the reservoir. Female sage-grouse use these same areas for brood-rearing, as well as the Pothole Valley further to the southeast. Winter use by sage-grouse has centered on the U, but also occurs to the areas south and southeast of the reservoir, between Doublehead Mountain and the Pothole Valley. These areas are all on the Modoc National Forest.

104. Within the Devil's Garden/Clear Lake PMU, the refuge and the four surrounding Modoc National Forest grazing allotments (Tucker, Carr, Clear Lake, and Mammoth) make up the "active management area" (AMA) for the population. In 2007, the Forest Service eliminated sheep grazing within the AMA to reduce conflicts between livestock grazing and sage-grouse. However, grazing by cattle still occurs yearly in the four allotments, in addition to the Clear Lake Refuge.

105. Beginning in the 1940s, the Forest Service undertook a series of "range improvement" projects in the Clear Lake Hills within the Tucker allotment and in other areas in what is now the AMA in order to improve forage for livestock. These activities included plowing, spraying, and burning thousands of acres of sagebrush, and re-planting alfalfa and crested wheatgrass. The landscape is still recovering from the negative impacts of these treatments. During this period, dozens of stock watering facilities and many miles of fences were also constructed.

Endangered Sucker Species

106. Clear Lake Refuge supports populations of the Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostris*). Both species are listed as endangered under the Endangered Species Act. Clear Lake Reservoir is designated critical habitat for both fish. The Clear Lake watershed hosts one of only two remaining spawning populations of Lost River sucker, and one of three remaining spawning populations of shortnose sucker.

107. Willow Creek, Clear Lake Reservoir's major tributary, is also designated critical habitat for both species, as is Boles Creek, a tributary of Willow Creek. Willow and Boles Creeks flow almost exclusively through Modoc National Forest lands before they enter Clear Lake Refuge. Spawning by both species occurs principally in Willow Creek. Suckers have been observed spawning at least 29 miles upstream from Clear Lake Reservoir.

108. Lost River and shortnose suckers spawn from February through May in riffles or runs with gravel and cobble substrate, moderate flows, and depths of less than four feet.

109. After hatching, sucker larvae move out of the gravel, and drift downstream to Clear Lake Reservoir. Larval habitat is generally along the shoreline, in water 4 to 20 inches

deep. Shallow water is a "primary constituent element" of critical habitat for the larval life stage of these species.

110. The suckers feed on a broad array of insects (particularly midges), crustaceans, and other macroinvertebrates.

111. The Service cited grazing as a threat to the Lost River and shortnose suckers in its listing decision and critical habitat designation. Degradation caused by livestock grazing includes removal of riparian vegetation, destabilizing banks, widening stream channels, compacting soils, lowered water tables, and increased erosion. This habitat alteration reduces hiding cover for the fish, increases water temperatures, increases sediment, and reduces flows. Livestock defecating and urinating in and around water bodies add nutrients and pollutants, further impairing water quality.

112. Water impoundments, diversions, dams, and stock ponds restrict or eliminate the ability of suckers to access spawning or rearing habitats and reduce flows.

113. Drought compounds these impacts. The Service considers Lost River and shortnose suckers to be highly vulnerable to negative impacts from climate change, especially increased drought. Threats from climate change include reductions in amount of spring runoff, reduced water quality, spread of disease and parasites, and proliferation of invasive and nonnative species that compete with and prey on suckers.

The Klamath Basin Refuges CCP, FEIS, and CDs

114. In 2010, the Service announced its intent to prepare a CCP for the five Klamath Basin Refuges other than Klamath Marsh Refuge.

115. In May 2016, the Service released its Draft CCP/EIS for the Upper Klamath, Lower Klamath, Bear Valley, Clear Lake, and Tule Lake Refuges, along with draft compatibility

determinations (CDs) for livestock grazing and/or haying at Clear Lake, Upper Klamath, and Lower Klamath Refuges. WWP submitted timely comments on the drafts along with other materials for the Service to consider in its Final EIS.

116. On December 8, 2016, the Service released the Final CCP/EIS, as well as final CDs, with a notice of availability on the following day. *See* Final Comprehensive Conservation Plan/Environmental Impact Statement, 81 Fed. Reg. 89,138 (Dec. 9, 2016). WWP submitted comments on the Final CCP/EIS on January 4, 2017.

117. The Service signed a ROD for the CCP on January 13, 2017.

118. Among the stated purposes and need for the CCP are to "[e]nsure that the management programs on the refuges are consistent with the mandates of the [Refuge System] and the purposes for which each refuge was established" and to "evaluate the existing and proposed uses of each refuge to ensure that they are compatible with th[ose purposes] as well as the maintenance of biological integrity, diversity, and environmental health." One of the issues identified during plan development was to "[d]iscuss the pros and cons of continuing existing agriculture, and the compatibility of agriculture on the refuges."

Alternatives Considered in the FEIS and Adopted in the ROD

119. With respect to livestock grazing and haying, the alternatives for the Upper Klamath, Lower Klamath, and Clear Lake Refuges in the FEIS are unchanged from the DEIS. The FEIS considers only grazing at previously authorized levels, or increases in the season of grazing use, acres grazed, or numbers of livestock allowed. It does not consider any alternatives to reduce grazing and haying, or to not authorize those uses at all.

120. In response to WWP's comments on the DEIS asserting that the Service must consider reducing or eliminating grazing on the Upper Klamath, Lower Klamath, and Clear Lake Refuges, the Service responded that the Kuchel Act precluded it from doing so.

121. The Service also stated in the FEIS that it is unable to prevent livestock authorized on the Modoc National Forest from entering Clear Lake Refuge unless it fences the refuge boundary. This is not legally or factually correct.

122. The FEIS defines "no action" as the current management for each refuge. Alternative A is the "no action" alternative.

123. For the Upper Klamath Refuge, under Alternative A, the Service would authorize grazing on 200 to 400 acres (100 AUMs) and on 1,200 to 1,800 acres (460 AUMs) in the Barnes-Agency Unit of the refuge. Haying would be authorized on 200 acres. The season of use could be spring, summer, and/or fall. Under Alternative B, the Service would authorize grazing as under Alternative A and expand the use of haying and grazing on up to an additional 2,500 acres. Alternative B was the Service's preferred alternative.

124. For Lower Klamath Refuge, under Alternative A, the Service would allow grazing on approximately 11,000 acres (3,670 Animal Unit Months (AUMs)), and haying and/or grazing would occur on an additional 2,350 acres. Under Alternative B, grazing would be the same as in Alternative A, except that grazing and/or haying would be allowed on an additional 2,000 acres. Under Alternative C, grazing would be similar to Alternatives A and B, but additional areas (2,000 to 3,000 acres) would be considered for grazing in the future, up to 15,500 acres. Under Alternative D, grazing and haying would be the same as under Alternative C. The Service's preferred alternative was Alternative C.

125. For Clear Lake Refuge, under Alternative A, grazing would be allowed on approximately 5,500 acres on the U each year from mid-August to mid-November (600 AUMs). Grazing on the western portion of the refuge would also be allowed by 300 cows authorized to graze on the adjacent Tucker allotment on the Modoc National Forest for approximately 5 weeks beginning in mid-July. Alternative B would allow this same grazing to occur, and would additionally authorize creation of two pastures of approximately 1,500 acres each on the U, which would be grazed by 300 to 500 cattle from March 1 to mid-April every year. Also, under Alternative B, the Service would "work with the U.S. Forest Service to identify an alternative location/source of water for cattle grazing" on the Tucker allotment. Alternative B was the Service's preferred alternative.

126. The Service ultimately adopted its preferred alternatives for each refuge in the ROD.

127. Because the FEIS did not consider any reductions in grazing, nor a no-grazing alternative, the Service never analyzed the beneficial effects of removal of livestock on wildlife, vegetation, water quality, and other resources, and the public was unable to review such an analysis. This is despite the fact that WWP provided the Service with multiple studies that documented profound improvements in the condition of similar habitats following the cessation of grazing.

Livestock Grazing Evaluation in the CCP/FEIS

128. The FEIS admits a variety of negative impacts from grazing and haying on the Upper Klamath Refuge to soils, water quality, and habitat for species that rely on thick vegetation for nesting, feeding, or resting. It notes that grazing can introduce and facilitate spread of invasive species. While creating openings in thick vegetation may provide some benefits to

dabbling ducks and geese, it reduces tall cover needed by sandhill cranes. Haying may kill ground nesting birds and terrestrial wildlife.

129. The FEIS does not consider any direct, indirect, or cumulative impacts from livestock grazing and haying at Upper Klamath Refuge on sensitive yellow rail. The FEIS does not consider adverse direct, indirect, or cumulative impacts from livestock grazing and haying at Upper Klamath Refuge on Oregon spotted frog or its habitat.

130. The FEIS also describes a variety of negative impacts from grazing and haying on the Lower Klamath Refuge to soils, including compaction and erosion. The FEIS claims possible benefits of reduction of the invasive plant pepperweed, but concludes that the long-term effectiveness of using grazing for this purpose is unknown. On the other hand, introduction of non-native and invasive species is a potential adverse effect of grazing on the Lower Klamath Refuge.

131. The FEIS notes that grazing livestock can adversely impact nesting birds by preventing nesting attempts; causing nest abandonment; trampling nests, eggs, and young; and disturbing ground nesting birds.

132. In its analysis of livestock grazing at Clear Lake, the FEIS admits adverse impacts to soils, including compaction and disturbance that increases wind and water erosion. According to the FEIS, without mitigation such as the Best Management Practices (BMPs) identified in the FEIS, these impacts would be intermediate to significant.

133. But the BMPs do not contain any measures that address livestock impacts to soils, except for siting watering facilities. The stipulations listed in the Clear Lake grazing CD do not address impacts to soils either.

134. The FEIS concedes that if livestock access surface waters, they create turbidity, which reduces water quality and harms wildlife. Livestock have direct access to Clear Lake Reservoir whenever grazing occurs on the refuge.

135. One of the CCP's Goals for Clear Lake Refuge is to "[p]rotect, maintain, and restore sagebrush-steppe and associated upland and wetland communities." The Objective for this Goal includes to "[r]estore 3,000 acres of fire-degraded sagebrush-steppe communities in the "U" Unit to the same composition and cover as the intact communities," including by reducing invasive annual grasses.

136. The FEIS claims that "grazing would be used to control invasive plant species," specifically cheatgrass and medusahead, and give "native perennial grasses and forbs a competitive advantage." However, the Service did not consider various peer-reviewed studies cited in WWP's comments that found no support for that conclusion.

137. Instead, the FEIS relied on a short-term, unpublished, non-peer reviewed study for the proposition that prescribed grazing "can result in a reduction in annual grasses, an increase in perennial grasses and forbs, and no change in bare ground." But the study showed nominal benefits, and explicitly admitted it would be difficult to replicate.

138. The results of the experimental study documented a 10% increase in perennial grasses, although the change was mostly attributed to an increase in Sandberg bluegrass. Sandberg bluegrass is a native grass known to increase under grazing pressure. It is short-statured, and rarely attains the height required for sage-grouse security cover needs, even when ungrazed.

139. Bare ground increased in the study area from 12% to 15%. Forbs increased by seven percent, particularly big-head clover and desert parsley. However, clover was seeded in the study area as part of the experiment.

140. The experiment was conducted on an 80-acre plot with 40 cow-calf pairs for 24 days. The investigator concluded that the results would be difficult to replicate on a large scale (greater than 160 acres) with cattle. Yet, based on the results of the study, the Service plans to conduct prescribed grazing on two 1,500 acre plots with 300 to 500 cattle for six weeks.

141. This spring grazing would occur during the active growing period for native bunchgrasses.

142. The FEIS states that this spring grazing would occur in an area where no sage-grouse hens are known to nest due to lack of sagebrush. However, the FEIS also notes that "[n]on-sagebrush habitat can provide sage-grouse nesting habitat." Further, telemetry data for sage-grouse at Clear Lake since 2002 shows sage-grouse have repeatedly nested or attempted to nest throughout the U. Thus, the spring grazing could occur in nesting areas, including during breeding and nesting season.

143. In response to WWP's comments noting the lack of scientific support for using grazing as fire prevention, the Service claimed that it "is not using or proposing to use grazing for the purpose of preventing fires or reducing fuels on the Klamath Basin Refuges." However, the FEIS directly contradicts this statement in over a dozen places. As just one example, one of the "strategies" to implement the Goals and Objectives for sagebrush steppe habitat at Clear Lake Refuge under both of the CCP's alternatives is: "Use livestock grazing to reduce fuels produced by early season and annual grasses."

144. The CCP contains an objective for Shoreline Habitat at Clear Lake Refuge, which is to "maintain and promote native forbs (20%) and native grasses (25%) to meet the cover requirements of brooding sage grouse hens."

145. The CCP authorizes livestock grazing in shoreline habitat during sage-grouse brood-rearing season. Grazing is authorized on the U from mid-August to mid-November and along the western edge of Clear Lake Reservoir beginning July 15. During this time, "most of the cattle use is on the shoreline." Grazing during this time period is "not for noxious weed control" but would "reduce grass heights."

146. Cattle compete with sage-grouse for food resources on the lakeshore. The Service admits that in areas where livestock have been excluded, "grasses and forbs grow tall and become available to deer and sage grouse broods" and that "[m]ore forage for native wildlife would be available along the lakeshore if it were not first eaten by cattle."

147. The CCP also authorizes grazing in shoreline habitat from March 1 to mid-April, prior to sage-grouse brooding use.

148. The FEIS fails to adequately describe the seasonal habitat requirements of the Devil's Garden/Clear Lake sage-grouse population, as well as the location and extent of its breeding, nesting, brood-rearing, and winter habitat.

149. The FEIS also fails to consider the full scope of impacts to sage-grouse from livestock grazing at Clear Lake, including the indirect impacts to sage-grouse nesting success from reduction of herbaceous vegetation height caused by grazing in nesting habitat.

150. The CCP and Clear Lake grazing CD contain no stipulations to ensure adequate grass height following grazing, such as residual vegetation height requirements, utilization limits, or season-of-use restrictions.

151. The FEIS does not discuss impacts from grazing to upland seeps, springs, wet meadows, and riparian habitats.

152. The FEIS does not adequately consider the indirect adverse impacts to sage-grouse from development of livestock grazing infrastructure such as new fencing and water wells, pipelines, and troughs on the refuge or adjacent Modoc National Forest.

153. The FEIS fails to consider any cumulative impacts to sage-grouse from grazing activities authorized on the surrounding Modoc National Forest grazing allotments including the Tucker, Carr, Clear Lake, and Mammoth allotments. The sage-grouse population heavily utilizes parts of these allotments every year for vital needs including nesting, brood-rearing, and winter use.

154. The FEIS fails to consider cumulative impacts to the sage-grouse population as a whole from activities within the Clear Lake AMA, or the Devil's Garden/Clear Lake PMU.

155. The CCP and Clear Lake grazing CD do not prescribe any stipulations or requirements for protection of the sole remaining lek used by the Clear Lake sage-grouse, including avoidance areas, buffers, or other restrictions.

156. Each of the CDs for grazing state that there is no inherent conflict between livestock and wildlife because wildlife and their habitats evolved with large, terrestrial grazing animals. However, studies indicate that significant numbers of native grazing animals were not historically present in the Great Basin.

157. In each of the grazing CDs, the Service determined that the use was compatible with certain stipulations. One of these stipulations required ranchers to place livestock on weed-free feed for at least 48 hours prior to grazing on the refuges. In the final CDs, this stipulation was amended to make weed-free feed discretionary.

158. None of the CDs for grazing or haying consider cumulative impacts, as required by the Service's Compatibility Manual.

Discussion of Effects on Endangered Fish in the CCP/FEIS

159. The CCP contains no objectives, goals, or strategies aimed at protecting Lost River or shortnose suckers or their designated critical habitat.

160. Shallow water habitat is a primary constituent element of the larval stage of Lost River and Shortnose suckers. Livestock have direct access to the shoreline at Clear Lake, where they wade and severely disturb saturated soils.

161. The FEIS does not consider direct or indirect impacts to Lost River or shortnose suckers from livestock grazing at Clear Lake, nor does it consider direct or indirect impacts to their designated critical habitat, or its primary constituent elements.

162. The FEIS does not consider any cumulative impacts to Lost River or shortnose suckers or their designated critical habitat from land use activities, including livestock grazing, authorized by the Modoc National Forest.

FIRST CLAIM FOR RELIEF
(Violations of the National Environmental Policy Act)

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

164. The National Environmental Policy Act and its implementing regulations require an agency to prepare an EIS for every major federal action significantly affecting the environment. 42 U.S.C. § 4332(C). The Service is a federal agency subject to NEPA, and the Service's adoption of the CCP through its issuance of the ROD is a major federal action significantly affecting the human environment.

165. Under NEPA, the Service must study, develop, and describe alternatives to the proposed action in every EIS, and analyze "all reasonable alternatives." *Id.* § 4332(C)(iii), (E);

40 C.F.R. § 1502.14. This requirement allows the agency and the public to consider alternatives that would "avoid or minimize adverse effects." 40 C.F.R. §§ 1500.2(e), 1502.1.

166. The Service failed to consider reasonable alternatives to the proposed action, including by refusing to analyze any alternatives for reducing or eliminating the duration or extent of livestock grazing and haying, or numbers of livestock, currently authorized on the Upper Klamath, Lower Klamath, and Clear Lake Refuges, despite the harm that the Service admitted grazing causes to native wildlife and plants and the availability of alternatives that have fewer impacts to these resources.

167. The EIS must include a "no action" alternative. *Id*. § 1502.14. The Service failed to consider a true no action alternative, falsely claiming livestock grazing was a status quo use of these national wildlife refuges, despite the Service's clear legal mandate to determine whether or not livestock grazing contributes to the refuges' purposes before affirmatively acting to allow it.

168. Reduced-grazing and no-grazing alternatives would meet the purpose and need for the CCP.

169. By not analyzing any alternatives for reduced grazing or no grazing, the Service denied itself and the public the benefit of considering the beneficial effects of fewer or no livestock on the Upper Klamath, Lower Klamath, and Clear Lake Refuges.

170. NEPA requires discussion of all environmental impacts of a proposed action, including direct, indirect, and cumulative impacts when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. §§ 1508.7, 1508.8, 1508.25(c).

171. The FEIS fails to analyze a number of direct, indirect, and cumulative impacts to the Clear Lake/Devil's Garden sage-grouse population from livestock grazing, including the

indirect impacts of allowing grazing in sage-grouse nesting habitat and other seasonally-important areas.

172. Direct and indirect impacts to Lost River and shortnose suckers from livestock grazing at Clear Lake are not disclosed in the FEIS.

173. The Service also failed to disclose the cumulative impacts of livestock grazing and other land use activities on the Modoc National Forest to sage-grouse and Lost River and shortnose suckers.

174. An agency must also consider "connected actions" together in the same impact statement. 40 C.F.R. § 1508.25(a).

175. Livestock grazing on the Tucker allotment is "connected" to the Service's allowance of grazing on the western edge of Clear Lake because absent the Forest Service's authorization of grazing there, livestock would not enter Clear Lake Refuge from the Modoc National Forest. The Forest Service is currently developing an allotment management plan for the Tucker allotment.

176. Defendant's failure to analyze all the direct, indirect, and cumulative impacts of its actions in a reasonable range of alternatives is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA, in violation of 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF
(Violations of the Refuge Act)

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

178. Under the National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act, the Service must provide for the conservation of fish, wildlife, and plants, and their habitats, and "ensure that the biological

integrity, diversity, and environmental health" of national wildlife refuges are maintained. 16 U.S.C. § 668dd(a)(4)(A), (B).

179. Neither the FEIS nor the ROD demonstrates that the CCP will ensure the biological integrity, diversity, and environmental health of the Klamath Basin Refuges, or provide for the conservation of fish, wildlife, and plants, and their habitats.

180. The Service "shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless [it] has determined that the use is a compatible use." *Id*. § 668dd(d)(3)(A). A "compatible use" is any use of a refuge that, based on "sound professional judgment, [] will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge." *Id*. § 668ee(1); 50 C.F.R. § 25.12.

181. The Service failed to rationally justify its determinations that livestock grazing and haying on the Upper Klamath, Lower Klamath, and Clear Lake Refuges will not materially interfere with or detract from the fulfillment of the mission of the National Wildlife Refuge System or the purposes of those refuges.

182. The Service's compatibility determinations for livestock grazing and haying on the Upper Klamath, Lower Klamath, and Clear Lake Refuges were not based on "sound professional judgment" because the Service disregarded directly applicable, available science showing grazing and haying are not compatible uses and did not adhere to its own regulations and policies for considering the impacts of the uses, or the requirements of other applicable laws, including NEPA.

183. Further, the Service may only authorize an economic use of a refuge such as grazing if the use "contributes to the achievement of the national wildlife refuge purposes or the National Wildlife Refuge System mission." 50 C.F.R. § 29.1.

184. The agency failed to make determinations that livestock grazing or haying contributes to the achievement of the National Wildlife Refuge System or the purposes of the Upper Klamath, Lower Klamath, or Clear Lake Refuges, or to rationally justify such determinations if it made them.

185. Defendant's failure to comply with the Refuge Act, as amended, and its implementing regulations and policies is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of 5 U.S.C. § 706(2)(A).

THIRD CLAIM FOR RELIEF
(Violations of the Kuchel Act)

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

187. The 1964 Kuchel Act confirmed that the primary purpose of the Klamath Basin Refuges is wildlife conservation. 16 U.S.C. § 695l. The Act further provides that the lands "shall" be managed for wildlife conservation, allowing agricultural use only to the extent it is "consistent therewith." *Id.*

188. The Act does not apply to the Barnes-Agency Unit of the Upper Klamath Refuge, which is the only area on that refuge where grazing and haying occurs.

189. Defendant's application of the Kuchel Act to the Barnes-Agency Unit of the Upper Klamath Refuge is arbitrary and unlawful.

190. Livestock grazing as authorized under the CCP is not consistent with the purposes for which the Lower Klamath and Clear Lake Refuges were established—as preserves and breeding grounds for native birds and other wildlife, for waterfowl management, and for wildlife conservation.

191. The Service failed to consider whether the "optimum agricultural use" of the Lower Klamath and Clear Lake Refuges includes the modification, reduction, or elimination of livestock grazing there.

192. Defendant's interpretation of the Kuchel Act, as well as its determination that livestock grazing and haying as currently practiced or authorized under the CCP are consistent with wildlife conservation and other refuge purposes, is arbitrary, capricious, an abuse of discretion, violates the law, and is reviewable under the APA, 5 U.S.C. § 706(2)(A).

REQUESTS FOR RELIEF

WHEREFORE, Western Watersheds Project respectfully requests that the Court grant the following relief:

A. Declare that the Service violated the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq*., by issuing an EIS that did not comply with NEPA's requirements to analyze a reasonable range of alternatives, or disclose and consider the direct, indirect, and cumulative impacts of the CCP;

B. Declare that the Service violated the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. § 668dd–668ee, by issuing a CCP and ROD and by making compatibility determinations that fail to fulfill the Refuge System mission and that authorize uses that are incompatible with refuge purposes;

C. Declare that the Service's issuance of the CCP and ROD violated the Kuchel Act, 16 U.S.C. § 695k–r;

D. Declare that the Service's issuance of the EIS, CCP, and ROD is arbitrary, capricious, an abuse of discretion, and/or not in accordance with the law under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A);

E. Set aside and vacate the EIS, CCP, and ROD;

F. Enjoin the Service from authorizing or expanding livestock grazing or haying on the Upper Klamath, Lower Klamath, and Clear Lake Refuges until the Service completes a CCP in compliance with NEPA, the Kuchel Act, and the Refuge Act; or enter such other temporary, preliminary, and/or permanent injunctive relief as WWP may request hereafter;

G. Award WWP its reasonable costs, litigation expenses, and attorneys' fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq*., and/or all other applicable authorities; and

H. Grant such further relief as the Court deems just and appropriate to provide WWP with relief and protect the public interest.

Dated: January 20, 2017

Respectfully submitted,

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