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14 Resource Center and Sierra Forest Legacy

15 **UNITED STATES DISTRICT COURT**  
16 **EASTERN DISTRICT OF CALIFORNIA**

17 CENTRAL SIERRA ENVIRONMENTAL ) Case No. 1:17-cv-00441-LJO-SAB  
18 RESOURCE CENTER et al., )  
19 Plaintiffs, ) **AMENDED COMPLAINT FOR**  
20 v. ) **DECLARATORY AND INJUNCTIVE**  
21 JEANNE M. HIGGINS et al., ) **RELIEF**  
22 Defendants, )  
23 CALIFORNIA FARM BUREAU, et al., )  
24 Defendant-Intervenors. )  
25 /

Introduction.

1  
2 1. Plaintiffs Central Sierra Environmental Resource Center and Sierra Forest Legacy hereby  
3 respectfully file this suit against Defendants Jeanne M. Higgins, Stanislaus National Forest and  
4 the U.S. Forest Service (“Forest Service”), challenging their actions authorizing cattle grazing in  
5 sensitive forest habitats and wetland areas, and along forest streams, on three livestock grazing  
6 allotments in the Stanislaus National Forest, because their actions violate the Clean Water Act,  
7 California's Porter Cologne Act, the National Environmental Policy Act (“NEPA”), the National  
8 Forest Management Act (“NFMA”), and the Endangered Species Act (“ESA”).

9 2. The Forest Service has authorized cattle grazing on the Bell Meadow, Eagle Meadow,  
10 and Herring Creek (“BEH”) allotments in a manner that contaminates streams in the public forest  
11 and in a manner that significantly degrades sensitive natural resources, including meadows, fens  
12 and stream and lake environments, violating standards applicable to grazing activities. The  
13 Forest Service has continued to authorize grazing without the required waste discharge permit or  
14 waiver. Further, the Forest Service has continued to authorize grazing that has caused and will  
15 continue to cause repeated violations of water quality standards for fecal coliform in streams in  
16 the allotments. The Forest Service has authorized grazing without any required completed NEPA  
17 process analyzing its effects. And the Forest Service has authorized grazing in violation of the  
18 ESA.

19 3. Plaintiffs bring this action to require the Forest Service to comply with federal and state  
20 laws and to ensure that any continued grazing protects and restores sensitive habitat areas and  
21 streams in the Stanislaus National Forest.

Jurisdiction.

22 4. Final agency action exists that is subject to judicial review under the Administrative  
23 Procedure Act (“APA”). 5 U.S.C. § 702. Plaintiffs have exhausted any administrative remedies  
24 available to them. 36 C.F.R. part 215.18(c). This Court has jurisdiction pursuant to 28 U.S.C. §  
25 1331 and 16 U.S.C. § 1540(g)(1). Pursuant to the ESA, more than 60 days ago, Plaintiffs served  
26 Defendants with written notice of their intent to sue. 16 U.S.C. § 1540(g)(2). Defendants have  
27 not remedied their violations of the ESA, which are ongoing and likely to continue. The relief

1 Plaintiffs seek is proper under 16 U.S.C. § 1540(g)(1)(A), 28 U.S.C. §§ 2201–02, and 5 U.S.C.  
2 §§ 701–06.

3 5. An actual controversy exists between the parties within the meaning of 28 U.S.C. §  
4 2201(a). This Court may grant declaratory relief and additional relief, including an injunction,  
5 pursuant to 28 U.S.C. §§ 2201 and 2202 and 5 U.S.C. §§ 705 and 706.

6 6. Venue is proper in this Court pursuant 28 U.S.C. § 1391(e) because the events or  
7 omissions giving rise to the claims occurred in this district, the Stanislaus National Forest is in  
8 this district, the livestock allotments are in this district, and Plaintiffs and Defendants reside in  
9 this district. Fresno is the appropriate division within this district for this suit. LR 120(d).

10 Parties.

11 7. Plaintiff Central Sierra Environmental Resource Center ("CSERC") works to protect  
12 water, wildlife, and wild places across the Northern Yosemite region. CSERC has over 750  
13 members who actively recreate, work, seek spiritual renewal, volunteer, do rehabilitation  
14 projects, undertake research, fish, hike, bird-watch, hunt, and otherwise make use of lands within  
15 the boundaries of the Stanislaus National Forest and specifically on lands within the project  
16 boundaries. CSERC's staff scientists and executive director have been deeply involved for more  
17 than 25 years in efforts to protect and restore at-risk plant and wildlife populations of the affected  
18 project area. CSERC staff has intensively engaged in local and regional grazing management  
19 planning both within and outside the project area. CSERC has participated in and provided  
20 detailed comments on the Stanislaus National Forest's approvals for range management within  
21 the grazing allotments challenged in this case.

22 8. Sierra Forest Legacy ("Legacy") is a regional environmental coalition with 81 partner  
23 groups. Legacy is focused on the conservation, enhancement and protection of old growth  
24 forests, wildlands, at-risk species, protection of the region's rivers and streams, and the  
25 ecological processes that shape the forest ecosystem of the Sierra Nevada. Legacy is a leader in  
26 bringing together scientists and diverse interests on a wide range of forest issues including fire  
27 ecology, fuels management, protection of at-risk wildlife species, and socio-economic values

1 associated with public forest management. Legacy has a high level of expertise dealing with  
2 species such as the Yosemite Toad and Sierra Nevada Yellow-Legged Frog.

3 9. Plaintiffs' members live, work, and/or recreate in or near the Stanislaus National Forest,  
4 including the allotments that are the subject of this case. Plaintiffs' members use and visit, on a  
5 continuing and ongoing basis, the resources in and surrounding the allotments for recreational,  
6 scientific, aesthetic, educational, wildlife and botanical preservation, conservation and other  
7 purposes such as camping, swimming, hiking, fishing, bird-watching, other wildlife observation,  
8 instruction, study, photography and general enjoyment of the beauty of the wildlife, land, and  
9 other resources in the area. Members intend to return to and to continue using and enjoying these  
10 resources in the future.

11 10. In order to safeguard these interests and to carry out their respective missions, Plaintiffs  
12 and their members have been, and continue to be, actively involved in planning and resource use  
13 issues involving range management activities in the Stanislaus National Forest. Plaintiffs have  
14 participated in administrative proceedings and reviews of the BEH Rangeland Allotments Project  
15 since its inception. Plaintiffs provided timely comments on a Draft Environmental Impact  
16 Statement ("DEIS") prepared for the Project and filed formal objections to the BEH Rangeland  
17 Allotments Final Environmental Impact Statement ("FEIS") and Record of Decision ("ROD").

18 11. The Forest Service's actions in this case have harmed and injured, and continue to harm  
19 and injure, the interests of Plaintiffs and their members by causing significant harmful effects  
20 upon the forest and meadow habitats and on water quality in forest streams contained within the  
21 BEH Rangeland Allotments Project area. Significant negative impacts are caused by cattle  
22 adversely affecting the plant and wildlife species that depend upon that habitat and by cattle  
23 contributing pathogenic bacteria to unsafe levels of contamination of water. Additionally, the  
24 Forest Service's actions deny Plaintiffs' members their right to have public laws implemented  
25 and enforced. Plaintiffs' injuries would be redressed by the relief they seek. Plaintiffs have no  
26 adequate remedy at law. The actual and prospective harm to Plaintiffs' members has been caused  
27 by the Forest Service. The Court has authority to redress the actual and prospective harm  
28 Plaintiffs' members have suffered and will suffer.

1 12. Defendant Jeanne M. Higgins is the Forest Supervisor for the Stanislaus National Forest.  
2 Ms. Higgins is sued in her official capacity. Ms. Higgins is responsible to ensure that the  
3 national forest she supervises complies with all applicable laws.

4 13. Defendant Stanislaus National Forest is a unit of the National Forest System. The  
5 Stanislaus National Forest and its staff are required to comply with federal law.

6 14. Defendant United States Forest Service is an agency within the United States Department  
7 of Agriculture. The Forest Service is responsible for ensuring that livestock grazing activities  
8 occurring on Forest Service are consistent with all applicable laws.

9 Facts.

10 15. The Forest Service has issued permits authorizing cattle grazing on the BEH allotments  
11 on the Summit Ranger District in the Stanislaus National Forest in Tuolumne County.

12 16. The Bell Meadow Allotment is bounded on the west by Dodge Ridge; on the north by the  
13 South Fork of the Stanislaus River; on the east by Bear Lake, Grouse Lake, Lake Valley and  
14 Chain Lakes; and, on the south by Bell Mountain. The location is generally described as  
15 Townships 3 and 4 North and Ranges 18 and 19 East. The Bell Meadow Allotment ranges in  
16 elevation from about 6,350 to 9,150 feet. Annual precipitation averages 50 to 60 inches. The Bell  
17 Meadow Allotment encompasses about 13,240 acres, all of which are National Forest System  
18 lands.

19 17. The Eagle Meadow Allotment is bounded on the northwest by Highway 108 and the  
20 Middle Fork Stanislaus River; on the north by Double Dome; on the east by Haypress Lake; on  
21 the southeast by Lower Relief Valley; and, on the south by Eagle Pass and the Emigrant  
22 Wilderness. The location is generally described as Townships 5 and 6 North and Ranges 19 and  
23 20 East. The Eagle Meadow allotment ranges in elevation from about 6,400 to 9,900 feet.  
24 Annual precipitation averages 50 to 65 inches. The Eagle Meadow Allotment currently  
25 encompasses about 20,700 acres, and under the recent project proposal, would have expanded to  
26 25,092 acres, about 870 acres of which are private lands, with the remainder being National  
27 Forest System lands.

1 18. The Herring Creek Allotment is bounded on the west by Highway 108 and Leland Creek;  
2 on the north by Bull Run and Eagle Peak; on the east by Horse and Cow Meadow and  
3 McCormick Pocket; and on the south by the Emigrant Wilderness. The location is generally  
4 described as Townships 4 and 5 North and Ranges 18 and 19 East. The Herring Creek Allotment  
5 ranges in elevation from about 5700 to 9500 feet. Annual precipitation averages 50 to 60 inches.  
6 The Herring Creek Allotment encompasses about 18,150 acres, all of which are National Forest  
7 System lands.

8 19. In 1995, Congress enacted the Rescissions Act. The Rescissions Act requires the Forest  
9 Service to set a schedule for assessing the environmental impacts of grazing permits under  
10 NEPA. Section 504(a) of the Act requires the Forest Service to: 1) determine which grazing  
11 allotments need NEPA analysis and documentation in order to support the continuation of  
12 permitted grazing activity; 2) develop a schedule for each NFS unit for the completion of the  
13 NEPA analysis and documentation on those allotments where NEPA analysis is needed; and 3)  
14 adhere to the schedule. Section 504(b) of the Act states that "grazing permits which expire or are  
15 waived before the NEPA analysis and decision pursuant to the schedule... shall be issued on the  
16 same terms and conditions and for the full term of the waived or expired permits. Upon  
17 completion of the scheduled NEPA analysis and decision for the allotment, the terms and  
18 conditions of existing grazing permits may be modified or re-issued, if necessary to conform to  
19 such NEPA analysis."

20 20. To comply with the Rescissions Act of 1996, in 1996, the Forest Service published a  
21 NEPA Allotment Schedule. That schedule displayed information for allotments in need of NEPA  
22 Analysis during a 15-year span, from 1996 to 2010. The 1996 National Allotment NEPA  
23 Schedule identified 6,886 allotments (out of a total of approximately 9,400 allotments).

24 21. In 2004, Congress enacted the Interior Appropriations Act. P.L. 108-108. Section 325 of  
25 the Interior Appropriations Act provides that "notwithstanding Section 504 of the Rescissions  
26 Act (109 Stat. 212), the Secretaries in their sole discretion determine the priority and timing for  
27 completing required environmental analysis of grazing allotments based on the environmental  
28 significance of the allotments and funding available to the Secretaries for this purpose."

1 21. In 2008, the Forest Service updated the 1996 schedule to account for local adjustments  
2 relative to priority of allotments and timing due to funding issues and changing environmental  
3 significance. The new 2008 NEPA Allotment Schedule displayed a total of 3,897 allotments  
4 needing NEPA analysis.

5 22. In 2010, the Forest Service directed the Regional Foresters to provide updates or prepare  
6 NEPA analyses for allotments that needed them. The 2011 NEPA Allotment Schedule displayed  
7 a total of 3,605 allotments requiring NEPA analysis. Subsequently, the Forest Service created a  
8 compliance schedule addressing the 12-year period from 2014 to 2025. The 2014 NEPA  
9 Allotment Schedule displays a total of 3,782 allotments needing NEPA analysis, and includes  
10 four 3-year cycles ending in 2016, 2019, 2022 and 2025. According to the 2014 NEPA  
11 Allotment Schedule, NEPA review for the BEH allotments was to be completed by 2016, within  
12 the 2014 to 2016 cycle.

13 23. Following enactment of the Rescissions Act, representatives of environmental  
14 organizations (including some of Plaintiffs) met with Forest Service range officials at the  
15 Regional Office level and with representatives of the grazing industry and permittee associations.  
16 The organizations presented photos of resource conditions within the Stanislaus National Forest  
17 as examples of livestock impacts of grave concern that were also evident elsewhere on national  
18 forest lands in Region 5. These discussions and attempts to develop collaborative-based  
19 improvements in range management practices lasted for nearly two years of quarterly meetings,  
20 but did not result in substantive changes in grazing practices in sensitive areas within the Region  
21 or in the Stanislaus National Forest.

22 24. Following these meetings, the Stanislaus National Forest identified four allotments in  
23 upper elevation areas of the Stanislaus Forest as timely and appropriate for allotment  
24 management planning to address public concerns and to meet Rescissions Act direction. The  
25 allotments were: Bell Meadow-Bear Lake, Long Valley-Eagle Meadow, Herring Creek, and  
26 Stanislaus Meadow.

27 25. The Forest Service first listed the Rangeland Allotments Phase 1 (Phase 1) project in the  
28 April 1, 2006 issue of the Stanislaus National Forest Schedule of Proposed Actions (“SOPA”). In

1 December, 2006, the Forest issued an Environmental Assessment (“EA”) to analyze whether to  
2 re-authorize grazing on the four allotments. In 2007, the Forest Service issued a Decision Notice  
3 and Finding of No Significant Impact to authorize continued grazing on the four allotments.

4 Three administrative appeals were filed under 36 C.F.R. 215. A primary objection from  
5 environmental organizations focused on the Forest Service's failure to develop an EIS that would  
6 consider a range of alternatives to the status quo grazing that was then occurring within the  
7 affected allotments. In response to the appeals, the Regional Forester reviewed the project record  
8 and reversed the decision on October 15, 2007. The Regional Forester cited a lack of cumulative  
9 effects analyses in wildlife specialist reports and the failure of the record to support the  
10 elimination by the Stanislaus National Forest of additional alternatives suggested by the public  
11 for consideration.

12 26. Following the 2007 appeal decision, the Forest Supervisor determined a need to prepare a  
13 new EA in order to make a new decision. The Forest Service first listed the Rangeland Allotment  
14 Phase 1 (2008) in the April 2008 issue of the Stanislaus National Forest Schedule of Proposed  
15 Actions. A revised EA was made available for public comment on June 19, 2009. Environmental  
16 organizations raised objections to the failure of the EA to consider a reasonable range of  
17 alternatives, including management direction that would reduce resource impacts and water  
18 quality effects associated with livestock presence within the allotments. In comments submitted  
19 in July, 2009, CSERC provided extensive comments and citations of peer-reviewed literature  
20 related to fecal coliform and other pathogens contaminating water in streams sampled within  
21 grazing allotments within the Stanislaus National Forest.

22 27. On February 19, 2010, the Forest Supervisor determined that additional analysis was  
23 necessary to incorporate new information. The Forest Service decided to prepare an EIS to  
24 analyze and disclose environmental impacts related to grazing on the allotments.

25 28. In the next planning phase, the Forest Service narrowed management planning to the  
26 BEH allotments. The Forest Service first listed the BEH Allotment Project in the October 2010  
27 issue of the Stanislaus National Forest Schedule of Proposed Actions. On August 3, 2011 the  
28 Forest sent a scoping letter to individuals, permittees, organizations, agencies, and Tribes



1 interested in this project. On August 4, 2011, the Forest Service published a Notice of Intent  
2 requesting public comment on the proposal. 76 Fed. Reg. 47,140-41 (Aug. 4, 2011). CSERC and  
3 Legacy commented during scoping.

4 29. In 2012 and 2013, CSERC provided the Forest Service with photos and field  
5 measurements at forage utilization sites, meadows, and riparian areas within the BEH allotments.  
6 The data showed stream bank degradation and water quality effects associated with livestock  
7 being concentrated along streams for prolonged periods. CSERC expressed concern about  
8 contamination of streams in recreation areas within the allotments, where direct contact with  
9 polluted water by forest visitors poses a significant health issue.

10 30. On January 31, 2014 the Forest Service published an initial Notice of Availability for a  
11 DEIS prepared to assess the impacts of grazing on the BEH allotments. 79 Fed. Reg. 21 (Jan 31,  
12 2014).

13 31. The DEIS states: "Recent assessments indicate that specific locations within the project  
14 area may not be meeting or moving toward desired conditions in a manner that is timely and  
15 consistent with Forest Plan objectives, standards and guidelines. Gaps between existing resource  
16 conditions and desired conditions indicate a need to change grazing management by updating  
17 AMPs.... There is a need to design and implement an adaptive management system that will  
18 continue to move resource conditions toward desired conditions in a manner that is timely and  
19 consistent with Forest Plan goals and objectives."

20 32. The DEIS describes the Proposed Action as: "[U]pdate Allotment Management Plans,  
21 change Allotment boundaries, and implement design criteria, including resource conservation  
22 measures and an adaptive management strategy that would move existing resource conditions  
23 toward desired conditions. These actions are needed in order to fulfill P.L. 104-19 Section 504 of  
24 the 1995 Rescissions Act, which requires each National Forest to establish and adhere to a  
25 schedule for completing NEPA analysis and updating Allotment Management Plans for all  
26 rangeland Allotments on National Forest System lands."

27 33. The DEIS considers four alternatives: 1) proposed action; 2) no project alternative, which  
28 would allow no further grazing in the allotments; 3) continue current management; and 4)

1 reduced impact alternative. The DEIS describes Alternative 4 as implementing "resource  
2 protection measures immediately where a need for change in management was identified during  
3 project analysis. Livestock grazing would be minimized or excluded in areas where certain  
4 resource concerns were identified. Permitted livestock numbers for the Bell Meadow, Eagle  
5 Meadow, and Herring Creek Allotments would be reduced by an amount proportionate to the  
6 reduction in suitable foraging area caused by exclusion of those areas with resource concerns."

7 34. CSERC and other interested parties submitted comment letters on the DEIS. In March  
8 2014, a coalition of environmental organizations - including CSERC and Legacy -- submitted  
9 detailed comments, photos providing evidence of degraded resource conditions within the BEH  
10 allotments area, extensive field monitoring observations, and copies of e-mail correspondence  
11 between the Forest Service and Plaintiffs. These comments included declarations by research  
12 experts with field experience about resource conditions and affected wildlife species within the  
13 BEH allotments area.

14 35. In March 2014, the Central Valley Regional Water Quality Control Board commented to  
15 support Alternative 4 in the DEIS. The Board noted the lack of necessary monitoring by the  
16 Forest Service as being inadequate to achieve a successful adaptive management strategy. The  
17 Board noted that beneficial uses of water in the project area apply to all upstream tributaries and  
18 connected surface waters of the Stanislaus and Tuolumne Rivers.

19 36. On March 1, 2016, the Forest Service issued the BEH Rangeland Allotments Final EIS  
20 and draft ROD. The draft ROD states that the purpose of the project is to continue to authorize  
21 livestock grazing in the project area, implement an adaptive management strategy, and ensure  
22 compliance with regulations and agency policies. The draft ROD states the following regarding  
23 the use of monitoring and adaptive management in the BEH Allotment management strategy:  
24 "The Proposed Action implements an Adaptive Management Strategy to achieve defined desired  
25 conditions through design criteria, monitoring and constrained flexibility. By monitoring effects  
26 and evaluating results, managers can assess resource trends and modify management practices by  
27 adjusting the AMP or AOI."

1 37. In April 2016, CSERC and Legacy filed an objection in response to the FEIS and the  
2 draft ROD. On May 13, 2016, Objection Reviewing Officer Bernie Gyant and Stanislaus Forest  
3 Supervisor Jeanne Higgins participated in a resolution call with objectors regarding the BEH  
4 Rangelands project. No resolution was achieved. On July 22, 2016, all those filing objections  
5 along with other participants met with Stanislaus Forest staff at two meadow locations within the  
6 BEH allotments planning area. Forest Supervisor Higgins described reasons why her draft ROD  
7 continued to approve the same number of livestock for the same grazing period as the status quo  
8 management direction allowed. Forest Supervisor Higgins encouraged those filing objections to  
9 strongly consider accepting improved adaptive management and increased monitoring as the  
10 management direction for the three allotments. The field session ended without any resolution of  
11 the objections. On August 29, 2016, Forest Supervisor Higgins withdrew the draft ROD for the  
12 BEH Allotments Project.

13 38. On September 9, 2016, Objection Reviewing Officer Bernie Gyant set aside all objection  
14 appeals based on the withdrawal of the draft ROD by Supervisor Higgins. His letter to objectors  
15 noted that his action constitutes the final administrative determination by the Department of  
16 Agriculture and is not subject to further administrative review. The same general grazing  
17 management direction for the BEH allotments from prior to the start of AMP planning in 2006  
18 continues to be legal direction for livestock management in the upcoming 2017 grazing season.

19 39. Due to a lack of water quality monitoring data for streams in allotments within the  
20 Stanislaus National Forest, CSERC biologist Lindsey Myers coordinated with the State Water  
21 Resources Control Board to establish a protocol-consistent program of water quality sampling of  
22 forest streams. In cooperation with Water Board staff, Myers developed a Quality Assurance  
23 Project Plan (“QAPP”) to ensure accurate sampling. Starting in 2009, Myers and other CSERC  
24 biologists sampled streams within the BEH allotments following the QAPP. Samples were taken  
25 before livestock arrived, after they arrived, and after they departed. Surface waters were tested  
26 for pathogenic bacteria indicators (i.e., *E. coli*, total coliform bacteria, and fecal coliform  
27 bacteria). On June 7, 2011, the Journal of Water Quality, Exposure, and Health published a  
28

1 paper by Myers and Kane documenting sampling results and verifying that stream contamination  
2 levels spiked during periods when livestock were present on the BEH allotments.

3 40. In August 2012, the Journal of Environmental Protection published a paper by Myers and  
4 Whited that documented livestock-generated effects associated with laboratory tests of water  
5 quality in forest streams in three different climatic years within the BEH allotments. Myers  
6 (2012) reported multiple violations of water quality health thresholds within the BEH allotments.  
7 The levels of indicator bacteria quantified by testing done at the independent laboratory revealed  
8 water contamination levels in allotment streams that were significantly above thresholds  
9 established by the State for recreational bodily contact with water.

10 41. CSERC staff was present for each sampling event to ensure specific protocols were  
11 followed. Samples were delivered within the 6-hour time limit to an ELAP certified testing  
12 laboratory. Sample sites were selected to represent a range of conditions and allow samples to be  
13 delivered to the lab within 6 hours. A control site was selected and sampled where cattle were  
14 excluded from grazing. In addition to comparing grazed sites with the control site where cattle  
15 never graze, samples were taken “before, during and after” livestock presence in streams flowing  
16 through grazing areas to examine any fluctuations in fecal indicator bacteria correlated to the  
17 arrival and departure of livestock each season. As part of the QAPP, CSERC staff tested “field  
18 blanks” (samples of clean, filtered water) to ensure there were no quality control issues at the lab  
19 or with the sampling technique in the field.

20 42. The Central Valley Water Quality Control Board Basin Plan has adopted a water quality  
21 standard for pathogenic bacterial pollution in waters designed for contact recreation. Streams  
22 within the BEH allotments are designated for contact recreation. The water quality standard  
23 provides that in waters designated for contact recreation (REC-1), the fecal coliform  
24 concentration based on a minimum of not less than five samples for any 30-day period shall not  
25 exceed a geometric mean of 200CFU/100 ml, nor shall more than ten percent of the total number  
26 of samples taken during any 30-day period exceed 400CFU/100 ml.

27 43. The results of the 2011 and 2012 studies (as well as subsequent monitoring that continued  
28 through the summer and fall of 2016) show that individual and average concentrations of fecal

1 coliform bacteria in surface waters were below regulatory thresholds at the ungrazed (control)  
2 site and at the grazed sites before cattle arrived. Shortly after cattle were released into the  
3 allotments to graze, fecal coliform concentrations in streams were found to be much higher, and  
4 in places exceeded the established state standards for recreational contact with water. The  
5 increase in mean concentration of fecal coliform at each grazed site was significant ( $p < 0.05$ ),  
6 and there was no significant difference or increase in contamination at the control site. Total  
7 coliform bacteria and *E. coli* concentrations showed the same pattern. Significant violations of  
8 state water quality standards persisted throughout the summer grazing period, with more than 40  
9 documented violations of state water quality standards identified during the 2009 summer  
10 grazing season.

11 44. In the 2012 Study, evidence documented 161 violations of State standards during three  
12 years of sampling of the selected stream segments within the Stanislaus National Forest:  
13 “Violations of the Basin Plan Standard were documented each of the three years after cattle were  
14 present. No violations were found before cattle presence or at control sites. Violations of the  
15 State water quality standard for fecal coliform concentration in forest water-bodies were frequent  
16 after cattle arrival. For this study, reporting (i.e., five or more samples collected within a 30-day  
17 period) periods were tabulated only where a sampling event occurred on the first and/or last day  
18 of the last day of the 30-day period. This method of data analysis documented 41 violations in  
19 2009, 68 violation in 2010, and 52 violations in 2011 of the relevant water quality standard for  
20 fecal coliform bacteria contained in the Basin Plan. A more comprehensive analysis (i.e.,  
21 tabulating all possible 30-day periods by restarting the 30-day calendar each day) would likely  
22 produce many more violations.”

23 45. Monitoring conducted by CSERC during field seasons from 2012 through 2016 has  
24 shown continued water quality violations contributed to by livestock grazing in streams in the  
25 BEH allotments. In the 2016 field season, (summer, early fall), laboratory results from stream  
26 monitoring show 37 violations of Central Valley Regional Water Board (Region 5) regulatory  
27 standards for fecal coliform (which includes geometric mean of at least 5 samples in a 30-day  
28 period or 10% of samples in a 30-day period not exceeding a specific threshold) or 22 violations

1 of the U.S. Environmental Protection Agency's regulatory standards for *E. coli*. Just within the  
2 BEH allotments, lab results for 2016 showed 30 violations for fecal coliform and 18 for *E. coli*.

3 46. Livestock grazing on the BEH allotments has violated and is likely to continue to violate  
4 Forest Plan management standards related to streambank and shoreline protection, livestock  
5 impacts to special aquatic features, key grass species utilization and levels of riparian hardwood  
6 browse. The Forest Service's continued authorization of grazing on the BEH Allotments has  
7 violated and is likely to continue to violate regional Forest Plan Standard and Guideline No. 50,  
8 which requires the Forest Service to "protect hardwood regeneration in grazing allotments" by  
9 allowing "livestock browse on no more than 20 percent of annual growth of hardwood seedlings  
10 and advanced regeneration" and to "[m]odify grazing plans if hardwood regeneration and  
11 recruitment needs are not being met." The draft ROD for the BEH allotments stated that  
12 necessary adjustments to protect hardwood regeneration and recruitment would be accomplished  
13 through an adaptive management program, based on monitoring. Required monitoring has not  
14 occurred within each of the affected allotments each year, and current management direction  
15 lacks any adaptive program. Further, livestock grazing on the BEH allotments has violated that  
16 standard.

17 47. The Forest Service's continued authorization of grazing on the BEH Allotments has  
18 violated and is likely to continue to violate regional Standard and Guideline No. 103, which  
19 requires the Forest Service to "p]revent disturbance to streambanks and natural lake and pond  
20 shorelines caused by [livestock] activities ...from exceeding 20 percent of stream reach or 20  
21 percent of natural lake and pond shorelines." Plaintiffs have submitted photo evidence of  
22 streambanks and natural lake and pond shorelines, trampled, chiseled, and pocked by livestock  
23 hooves in excess of Standard and Guideline No. 103. The draft ROD for the BEH allotment  
24 states that the necessary adjustments for streambanks and shorelines would be accomplished  
25 through a proposed adaptive management program, based on diligent monitoring. Required  
26 monitoring has not occurred. Current management direction lacks any adaptive program.  
27 Livestock grazing continues in violation of this standard.

1 48. The Forest Service's continued authorization of grazing on the BEH allotments violates  
2 regional Standard and Guideline No. 117, which requires the Forest Service to ensure that  
3 "characteristics of special features are, at a minimum, at Proper Functioning Condition."

4 "Characteristics of special features" includes special aquatic features on the BEH allotments. The  
5 draft ROD for the BEH allotment states that the necessary adjustments to meet desired  
6 conditions would be accomplished through a proposed adaptive management program based on  
7 diligent monitoring. Required monitoring has not occurred. Current management direction lacks  
8 an adaptive program to comply with this standard. Springs, fens, and wetlands are special aquatic  
9 features on the BEH allotments. Some springs, fens, and wetlands are not in proper functioning  
10 condition. Cattle are not excluded from springs, fens, and wetlands. Monitoring conducted by  
11 Plaintiffs on the BEH allotments over the last nine years show numerous violations of this  
12 standard, and frequent resource damage to these vulnerable special habitats.

13 49. The Forest Service 's continued authorization of grazing on the BEH allotments violates  
14 regional Standard and Guideline No. 118, which requires the Forest Service to "[p]rohibit or  
15 mitigate ground-disturbing activities that adversely affect hydrologic processes that maintain  
16 water flow, water quality, or water temperature critical to sustaining bog and fen ecosystems and  
17 plant species that depend on these ecosystems." Under current permits, allotment management  
18 plans, and Annual Operating Instructions ("AOIs"), grazing in the BEH allotments has violated  
19 and is likely to continue to violate this standard. The draft ROD for the BEH allotment states that  
20 the necessary adjustments to protect fens would be accomplished through a proposed Adaptive  
21 Management program, based on diligent monitoring. A limited amount of monitoring was done.  
22 Current management direction lacks any adaptive program and an effective management strategy  
23 to exclude cattle from at-risk fens. Monitoring conducted by Plaintiffs on the BEH allotments  
24 over the last nine years show numerous violations of this standard.

25 50. The Sierra Nevada yellow-legged frog exists in the Bell Meadow allotment, along Bell  
26 Creek above Crabtree Trailhead. Other occurrences of the species are likely on the allotment, but  
27 there has been a failure to survey sufficiently for the species. The Yosemite toad exists on the  
28 Eagle Meadow allotment. Other breeding occurrences of the species may exist on the allotment,

1 but there has been a failure to demonstrate that the allotment has been surveyed sufficiently for the  
2 species. The Eagle Meadow allotment has not been surveyed comprehensively to determine if  
3 the Sierra Nevada yellow-legged frog exists on it. The Yosemite toad exists in the Herring Creek  
4 allotment, including but not limited to areas in Bluff Meadow, Castle Meadow, Bloomer Lake,  
5 Groundhog Meadow, and Wire Corral. Other breeding occurrences of the species may exist on  
6 the allotment, but there has been a failure to demonstrate the allotment has been surveyed  
7 sufficiently for the species. The Sierra Nevada yellow-legged frog exists within the Herring  
8 Creek allotment, including but not limited to areas along Willow Creek. Other occurrences of the  
9 species are likely on the allotment, but there has been a failure to survey sufficiently for it.

10 51. The Yosemite toad and the Sierra Nevada yellow-legged frog are listed as threatened  
11 with extinction under the ESA. The Forest Service has consulted with the U.S. Fish and Wildlife  
12 Service under Section 7 of the ESA to obtain its opinion whether grazing on the BEH allotments  
13 may jeopardize the continued existence of the Yosemite toad and the Sierra Nevada yellow-  
14 legged frog. Consultation between the Forest Service and the U.S. Fish and Wildlife Service has  
15 been predicated on the Forest Service's proposed actions, including livestock grazing on the  
16 BEH allotments. The proposed actions include authorizing grazing in specific ways, complying  
17 with applicable standards and guidelines, monitoring and reporting, modifying or altering  
18 grazing if appropriate to reflect the results of monitoring and reporting.

19 52. The Forest Service has not authorize or implemented, or required that permittees follow,  
20 the proposed action related to grazing on the BEH allotments. The Forest Service has failed to  
21 implement, or to require compliance with, the project description in the biological opinion,  
22 including the conservation measures. The Forest Service has failed to implement, or require  
23 compliance, with the reasonable and prudent measures. For the 2014 and 2015 grazing seasons,  
24 CSERC and other entities provided photographic evidence and detailed reports to the Forest  
25 Service and the U.S. Fish and Wildlife Service demonstrating lack of compliance monitoring,  
26 overgrazed meadows, degraded special aquatic features, and degraded stability along stream  
27 reaches where natural streambank and streambed stability have been pocked, chiseled, sloughed,  
28 and otherwise damaged by livestock in portions of the BEH allotments known to be utilized by



1 Yosemite toads and Sierra Nevada yellow-legged frogs. These and other data prove violations of  
2 Forest Plan standards #s 53, 54, 117, 120, & 121, and BMPs 8.1, 8.2, and 8.3. Pursuant to its  
3 proposed action that underlies consultation, the Forest Service must comply with these standards.

4 53. Under the Programmatic Biological Opinion prepared by the U.S. Fish and Wildlife  
5 Service related to, among other things, Forest Service projects that may affect the Yosemite toad  
6 and the Sierra Nevada yellow-legged frog, all potential habitat for the species is considered to be  
7 occupied habitat until proven otherwise. Potential habitat for the Yosemite toad and the Sierra  
8 Nevada yellow-legged frog exists in the BEH allotments. The Forest Service has failed to survey  
9 the BEH allotments to determine if all potential habitat is occupied habitat, or not.

#### 10 Claims for Relief.

##### 11 Claim One: Violation of the Clean Water Act

12 54. Plaintiffs reallege all previous paragraphs.

13 55. The Forest Service is required to comply with all State requirements respecting the  
14 control and abatement of water pollution in the state, including those set forth in California's  
15 Porter-Cologne Water Quality Control Act, Cal. Water Code §§ 1 *et seq.* See 33 U.S.C. § 1323.  
16 The Forest Service has violated the Porter Cologne Act, which requires either waste discharge  
17 permits or a waiver in order to authorize the discharge of pollutants into state waters. See Cal.  
18 Water Code §§ 13263; 13269. California's Nonpoint Source Plan states: "The SWRCB and  
19 RWQCB may not delegate their NPS authorities and responsibilities to another agency...  
20 Another agency's actions pursuant to an MOU or MAA do not fulfill the RWQCB's obligation  
21 to use its administrative tools to address the relevant NPS discharges." The Forest Service's  
22 authorization of grazing and associated water quality contamination within the BEH allotments  
23 violates state law requirements, because it authorizes non-point source pollutant discharges  
24 without a permit or waiver as required by state law.

25 56. The Forest Service has authorized livestock grazing on the BEH allotments that has  
26 caused violations of state water quality standards for fecal coliform bacteria in waters designated  
27 for contact recreation (REC-1), as set forth in the Central Valley Regional Water Quality Control  
28 Board Basin Plan, and is likely to continue to cause such violations. 33 U.S.C. § 1313.

Claim Two: Violation of the National Forest Management Act

1  
2 57. Plaintiffs reallege all previous paragraphs.

3 58. The Forest Service may authorize livestock grazing in areas of the Stanislaus National  
4 Forest if it complies fully with Stanislaus National Forest LRMP (Forest Plan) standards and  
5 guidelines, including regional standards contained in the 2004 Sierra Nevada Forest Plan  
6 Amendment. 36 C.F.R. §§ 222.2, 222.4. The Forest Service's continued authorization of grazing  
7 on the BEH Allotments violates regional Forest Plan Standard and Guideline No. 50, which  
8 requires the Forest Service to "protect hardwood regeneration in grazing allotments" by allowing  
9 "livestock browse on no more than 20 percent of annual growth of hardwood seedlings and  
10 advanced regeneration" and to "[m]odify grazing plans if hardwood regeneration and recruitment  
11 needs are not being met." Required monitoring has not occurred within each of the affected  
12 allotments each year, and current management direction lacks any adaptive program. The Forest  
13 Service has violated this standard and, therefore, NFMA.

14 59. The Forest Service's continued authorization of grazing on the BEH Allotments violates  
15 regional Standard and Guideline No. 103, which requires the Forest Service to "p]revent  
16 disturbance to streambanks and natural lake and pond shorelines caused by [livestock] activities  
17 ...from exceeding 20 percent of stream reach or 20 percent of natural lake and pond shorelines."  
18 Plaintiffs have submitted photo evidence of streambanks and natural lake and pond shorelines,  
19 trampled, chiseled, and pocked by livestock hooves in excess of Standard and Guideline No. 103.  
20 Required monitoring has not occurred, and current management direction lacks any adaptive  
21 program. The Forest Service has violated this standard and, therefore, NFMA.

22 60. The Forest Service's continued authorization of grazing on the BEH allotments also  
23 violates regional Standard and Guideline No. 117, which requires the Forest Service to ensure  
24 that "characteristics of special features are, at a minimum, at Proper Functioning Condition."  
25 "Characteristics of special features" means, in part, special aquatic features on the allotments.  
26 Numerous springs, fens, and wetlands defined as special aquatic features are not in proper  
27 functioning condition, and cattle are not excluded from these areas through fencing or alternative  
28 methods. The Forest Service has violated this standard and, therefore, NFMA

1 61. The Forest Service 's continued authorization of grazing on the BEH allotments also  
2 violates regional Standard and Guideline No. 118, which requires the Forest Service to  
3 "[p]rohibit or mitigate ground-disturbing activities that adversely affect hydrologic processes that  
4 maintain water flow, water quality, or water temperature critical to sustaining bog and fen  
5 ecosystems and plant species that depend on these ecosystems." Under current permits,  
6 allotment management plans and Annual Operating Instructions (AOI's), grazing in the BEH  
7 Allotments has violated this standard. Current management direction lacks any adaptive program  
8 and an effective management strategy to actually exclude cattle from at-risk fens. Monitoring  
9 conducted by Plaintiffs on the BEH allotments over the last nine years show numerous violations  
10 of this standard. The Forest Service has violated this standard and, therefore, NFMA.

#### 11 Claim Three: Violation of Rescissions Act

12 62. Plaintiffs reallege all previous paragraphs.

13 63. The 1995 Rescissions Act requires the National Forests to develop a schedule for each  
14 NFS unit for the completion of the NEPA analysis and documentation on those allotments where  
15 NEPA analysis is needed, and thereafter to adhere to that schedule. *See* Rescissions Act of 1995,  
16 From PL 104-19, Sections 504(a)-(b). Subsequent Congressional legislation has clarified that the  
17 Department of Agriculture Secretary has discretion over the timing set forth in the schedule  
18 based on two factors: 1) the environmental significance of the allotments; and 2) funding  
19 available to the Secretaries for the purpose of completing NEPA review. In 2014, the Forest  
20 Service adopted a new NEPA Allotment Schedule addressing the 12-year period from 2014 to  
21 2025, encompassing a total of 3,782 allotments needing NEPA analysis over four 3-year cycles  
22 (2016, 2019, 2022 and 2025). According to the 2014 NEPA Allotment Schedule, NEPA review  
23 for each of the Bell, Eagle and Herring Creek Allotments was to be completed by 2016, within  
24 the 2014-2016 cycle.

25 64. Forest Supervisor Higgins' decision on August 29, 2016 to withdraw the draft ROD for  
26 the BEH Allotments Project violates the schedule set for NEPA compliance by the Secretary of  
27 Agriculture. At the time of the withdrawal, the Forest Service had no other schedule in place for  
28 NEPA compliance for these allotments. Supervisor Higgins lacked the authority to unilaterally

1 alter the NEPA schedule for the allotments. Further, the Forest Supervisor's withdrawal did not  
2 evaluate or consider the relevant criteria for establishing the order and timing for NEPA review  
3 of grazing allotments, namely: 1) the environmental significance of the allotments; and 2)  
4 funding available to the Secretaries for the purpose of completing NEPA review. The BEH  
5 allotments are environmentally significant and funding was not only available, but was, in fact,  
6 utilized to complete the NEPA review process. The Forest Service's actions violate the  
7 Rescissions Act.

#### 8 Claim Four: Violation of the Endangered Species Act

9 65. Plaintiffs reallege all previous paragraphs.

10 66. Under Section 7 of the ESA, the Forest Service must consult with the U.S. Fish and  
11 Wildlife Service to obtain its opinion whether livestock grazing on the BEH allotments may  
12 jeopardize the continued existence of the Yosemite toad and the Sierra Nevada yellow-legged  
13 frog. Under Section 7 of the ESA, all federal agencies shall insure that they do not jeopardize the  
14 continued existence of a listed species or destroy or adversely modify its critical habitat. 16  
15 U.S.C. § 1536(a)(2); *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 518 (9th Cir. 2010). If a  
16 federal agency's actions may affect a listed terrestrial species, it is required to consult with the  
17 U.S. Fish and Wildlife Service, and obtain its opinion whether the activity is likely to jeopardize  
18 the species or adversely modify its critical habitat. *Id.* If it may, the U.S. Fish and Wildlife  
19 Service then writes a Biological Opinion that, among other things, suggests a "Reasonable and  
20 Prudent Alternative" to the agency's actions. 50 C.F.R. § 1536(b)(3).

21 67. The Forest Service has illegally failed to consult with the U.S. Fish and Wildlife Service  
22 as to the grazing it has actually authorized and allowed to occur on the BEH allotments. The  
23 Forest Service has also illegally failed to implement, or require permittees to implement, all of  
24 the terms and conditions required in consultation to prevent any jeopardy to the Yosemite toad  
25 and Sierra Nevada yellow-legged frog.

#### 26 Relief Requested.

27 1. Declare that the Forest Service has violated the Clean Water Act because it has  
28 authorized grazing on the BEH allotments in violation of state water quality requirements and,

1 independently, because grazing has violated and is likely to continue to violate state water  
2 quality standards for fecal coliform in waters within the allotments. *See* 33 USC § 1323; Cal.  
3 Water Code §§ 13263; 13269.

4 2. Declare that the Forest Service has violated NFMA by authorizing livestock grazing on  
5 the BEH allotments that violates forest plan management standards designed to protect stream  
6 and shore banks, riparian plant species, fens and special habitat features.

7 3. Declare that the Forest Service's decision to withdraw the draft ROD for the BEH  
8 Allotments Project and not adhere to the schedule set for NEPA compliance by the Secretary of  
9 Agriculture violates the Rescissions Act and subsequent acts.

10 4. Declare that the Forest Service has violated the ESA.

11 5. Order the Forest Service to modify livestock grazing on the BEH allotments to ensure full  
12 compliance with all relevant laws.

13 6. Grant such other relief as the Court deems necessary and proper.

14 Dated: June 30, 2017.

Respectfully submitted,

15 /s/ Peter M.K. Frost  
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23 Attorneys for Plaintiffs

Certificate of Service

1 I hereby certify that on June 30, 2017, I served the other parties to this case by  
2 electronically filing this document under the correct case number in the ECF system for the U.S.  
3 District Court for the Eastern District of California, which effectuates service on the other  
4 parties.  
5

6 Date: June 30, 2017.

/s/ Peter M.K. Frost  
Peter M.K. Frost