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

WESTERN WATERSHEDS PROJECT, )  
)  
Plaintiff, )  
and )  
)  
HELLS CANYON PRESERVATION )  
COUNCIL, and THE WILDERNESS SOCIETY, )  
)  
Co-Plaintiffs; )  
)  
v. )  
)  
BUREAU OF LAND MANAGEMENT and )  
SECRETARY OF INTERIOR KEN SALAZAR, )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. 09-cv-507

**COMPLAINT**

1. Plaintiffs WESTERN WATERSHEDS PROJECT (“WWP”), HELLS CANYON PRESERVATION COUNCIL (“HCPC”), and THE WILDERNESS SOCIETY (“TWS”) challenge Defendant Bureau of Land Management’s (“BLM”) ongoing authorization of domestic sheep grazing on the Partridge Creek allotment in the Salmon River canyon and the Secretary of Interior’s denial of Plaintiffs’ petition to close that allotment, which threatens excessive harm and significant damage to the Main Salmon River bighorn sheep population, in violation of the National Environmental Policy Act (“NEPA”) and the Federal Land Policy and Management Act (“FLPMA”), and their implementing regulations.

2. When in close contact, domestic sheep commonly transmit disease to bighorn sheep, which almost always results in mortality of the bighorn sheep. This disease transmission can lead to substantial die-offs within bighorn populations as the disease spreads through the population. In addition, ewes that survive such an outbreak continue to carry the pathogen, and will transfer the disease to their lambs, impairing lamb survival for several years. Scientists have concluded that the two species must be kept separated to maintain viable bighorn sheep populations. Intermingling of domestic and bighorn sheep has occurred many times in Idaho, leading to die-offs within bighorn populations.

3. BLM’s Partridge Creek allotment is sandwiched between allotments on the Payette National Forest and Nez Perce National Forest. Both of those forests have closed the adjacent allotments for the last several years to protect bighorn sheep in the canyon while they complete new environmental analyses assessing the impacts of continued domestic sheep grazing within bighorn sheep habitat.

4. The Bureau of Land Management just recently announced that it too was initiating a supplemental environmental analysis for four domestic sheep allotments within the

Cottonwood Field Office, including the Partridge Creek allotment, to address conflicts with bighorn sheep. BLM has stated, however, that it will continue to authorize grazing on these allotments pending its analysis.

5. The Partridge Creek allotment in particular is high risk to bighorn sheep in the Salmon River canyon, but BLM and the Secretary of Interior have refused to close the Partridge Creek allotment despite numerous requests from Plaintiffs. Grazing this allotment creates a substantial risk of disease transmission to bighorn sheep, which would cause excessive harm to the declining Salmon River bighorn population, the only remaining native bighorn sheep in the state. Until BLM completes its analysis assessing the actions necessary to protect bighorn sheep, the agency must not allow domestic sheep grazing on the Partridge Creek allotment.

6. BLM also is authorizing installation of a new cattleguard, gates and fencing for the Partridge Creek bridge to prevent stray domestic sheep from crossing the Salmon River, but without conducting any environmental analysis of this activity. The only reason to install these items is to enable grazing on the Partridge Creek allotment, and thus this interrelated and interdependent activity must be assessed in conjunction with the impacts of continued grazing on this allotment in a comprehensive environmental analysis.

7. In order to prevent BLM from authorizing domestic sheep grazing on the Partridge Creek allotment—which is next scheduled to begin October 15—and installing a new cattleguard, gates, and fencing for the Partridge Creek bridge, which would result in violations of BLM's duties under NEPA and FLPMA and continued harm to bighorn sheep populations, Plaintiffs seek immediate injunctive and declaratory relief from this Court to prevent such violations of law and irreparable harm from occurring.

## **JURISDICTION AND VENUE**

8. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq.; the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; NEPA, 42 U.S.C. § 4321 et seq.; FLPMA, 43 U.S.C. § 1701 et seq.; and the Equal Access to Justice Act, 28 U.S.C. § 2214 et seq. An actual, justiciable controversy now exists between Plaintiffs and Defendants, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occur within this judicial district, Plaintiffs and/or their members reside in this district, and the public lands and resources in question are located within this district.

10. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

## **PARTIES**

11. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) is a regional not-for-profit conservation organization with over 1,300 members. WWP is headquartered at the Greenfire Preserve, which it manages on the East Fork of the Salmon River, near Clayton, Idaho; and it has offices and staff located in Idaho, Utah, Wyoming, Montana, Arizona, and California.

12. WWP, and its staff and members, have actively participated in agency proceedings as well as litigation and other advocacy efforts concerning management of federal lands in central Idaho, including over livestock grazing management. WWP has expressed concerns in meetings, tours and letters regarding incompatibility of domestic sheep and bighorn

sheep and the risk of disease transmission due to interactions between the two species. In particular, WWP has notified the BLM about its concern over domestic sheep grazing this year on the Partridge Creek allotment because of risk to bighorn sheep populations.

13. WWP, and its staff and members, have deep and long-standing interests in the preservation and protection of Rocky Mountain bighorn sheep, which interests are directly harmed by Defendant's actions challenged herein. WWP's staff and members use and enjoy the public lands in the Salmon River canyon and will continue to do so in the future, including the area around the Partridge Creek allotment, in order to observe, photograph, study, and enjoy the bighorn sheep and other native species. WWP and its members derive recreational, scientific, aesthetic, spiritual, and commercial benefits from the existence in the wild of this species through observation, study, photography, and other pursuits.

14. Plaintiff HELLS CANYON PRESERVATION COUNCIL ("HCPC") is a regional nonprofit corporation of approximately 2,400 members, based in La Grande, Oregon. For over thirty years, HCPC has involved itself in federal public land management issues and decisions that affect the Hells Canyon ecosystem, including conflicts between domestic sheep grazing and native bighorn sheep population health. HCPC's mission is the protection and restoration of the Hells Canyon-Wallowa and Blue Mountain ecosystems, which HCPC considers to also include the Salmon River area of the greater Hells Canyon ecosystem. HCPC, and its staff and members, actively use lands in the Hells Canyon and Salmon River canyon areas in Idaho as well as adjacent lands on the Wallowa-Whitman National Forest in Oregon for recreational, economic, spiritual, and aesthetic purposes.

15. HCPC has for well over a decade been involved in efforts to address conflicts between domestic and bighorn sheep stemming from domestic sheep grazing on the above-

referenced public lands, which affects the larger Hells Canyon ecosystem in Oregon and Washington as well as Idaho. HCPC has actively and consistently engaged federal land management decisions affecting the above-referenced public lands through designated administrative comment periods, public meetings, field tours, conversations with and written letters to the BLM and other affected interests, as well as administrative appeals and litigation when necessary. Through these processes, and since at least 1990, HCPC has actively advocated for separation of bighorn and domestic sheep throughout the Hells Canyon ecosystem and has consistently communicated this position with federal officials in BLM and other agencies.

16. Plaintiff THE WILDERNESS SOCIETY (“TWS”) is a national nonprofit corporation founded in 1935 and is dedicated to the protection and preservation of the unspoiled legacy of America’s wilderness and wild places, along with the natural values they provide. TWS has its headquarters in Washington, D.C. and currently represents over 200,000 members and supporters nationwide.

17. TWS and its regional office in Boise, Idaho have long been involved in protecting the wild values, including native bighorn sheep, of the Hells Canyon and Salmon River canyon ecosystems and surrounding lands in Idaho, Oregon, and Washington, including area around the Partridge Creek allotment. TWS and its staff and members use, and will continue to use, the above referenced lands in Idaho and Oregon for recreational, economic, aesthetic, and spiritual purposes. TWS has been actively and consistently involved in the BLM’s management decisions affecting the management of the Partridge Creek allotment, consistently advocating for protection

of wild bighorn sheep through written comments, agency meetings, public meetings, formal and informal conversations, administrative appeals, and other avenues.

18. Defendant BUREAU OF LAND MANAGEMENT is an agency or instrumentality of the United States, and is charged with managing the public lands and resources of the Cottonwood Field Office, in accordance and compliance with federal laws and regulations.

19. Defendant KEN SALAZAR is the Secretary of Interior, and is charged with administering and managing the Department of Interior, under which the Bureau of Land Management falls. Secretary Salazar is responsible for assuring that all agencies within the Department of Interior act in accordance and compliance with all federal laws and regulations. Secretary Salazar is sued solely in his official capacity.

### **LEGAL BACKGROUND**

20. NEPA requires federal agencies to undertake a thorough and public analysis of the environmental consequences of proposed federal actions. To insure that it has taken the required “hard look” at the impacts of an action and notified the public of these impacts, a federal agency must prepare an Environmental Impact Statement (“EIS”) if a proposed federal action will significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). NEPA’s implementing regulations allow an agency to prepare an Environmental Assessment (“EA”) to decide whether the environmental impact of a proposed action is significant enough to warrant preparation of an EIS. 40 C.F.R. § 1508.9.

21. An agency must include all connected or cumulative actions within one analysis. 40 C.F.R. § 1508.25(a). It may not segment an action into smaller components in order to avoid a finding of significant cumulative effects. 40 C.F.R. § 1508.27(b)(7).

22. An agency does not have to prepare an EA or EIS if the action to be taken falls within a categorical exclusion (“CE”)—i.e. a category of activities that the agency has determined do not individually or cumulatively have a significant effect on the environment. 40 C.F.R. § 1508.4. A normally excluded activity may still need an EA or EIS if it falls within an exception identified by the agency or if extraordinary circumstances are present. *Id.*

23. An agency must insure that its NEPA analysis uses high quality information and accurate scientific analysis; and that the discussion and analysis is based on professional and scientific integrity. *Id.* §§ 1500.1(b), 1502.24. In assessing the environmental impacts of a proposed action, the agency must assess both the effects of the individual action as well as the cumulative effects of the proposed action added to effects from other past, present, and reasonably foreseeable future actions. *Id.* § 1508.7.

24. An agency must also prepare a supplement to an earlier NEPA analysis if there are significant new circumstances or information relevant to environmental concerns and bearing on the agency action or its impacts. *Id.* § 1502.9.

25. NEPA regulations require that the agency prepare an EIS early in the planning process so that it can contribute to the decision-making process and is not used simply to rationalize or justify a decision already made. 40 C.F.R. §§ 1501.2, 1502.2(g), 1502.5. An agency cannot take any action or make any commitment of resources before making its final decision that would have an adverse environmental impact or prejudice or limit the choice of reasonable alternatives. *Id.* §§ 1502.2(f), 1506.1(a).

26. FLPMA is the statute governing BLM’s management of public lands, and calls for those lands to be managed on the basis of multiple use and sustained yield to protect, among other values, scientific, ecological, and environmental values and to provide food and habitat for



wildlife. 43 U.S.C. § 1701(a)(7), (a)(8). When managing for multiple use, BLM must consider all resources, including range and wildlife, and must coordinate management of various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. *Id.* § 1702(c).

27. FLPMA also mandates that BLM “shall . . . take any action necessary to prevent unnecessary or undue degradation of the lands.” *Id.* § 1732(b). To implement this provision, the regulations require that when BLM determines that continued grazing use poses an imminent likelihood of significant resource damage, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use. 43 C.F.R. § 4110.3-3(b).

28. BLM must prepare and periodically revise land use plans that guide the use of public lands. 43 U.S.C. § 1712(a). When BLM revises a land use plan, it must coordinate planning and management activities with management programs of other Federal agencies and Indian tribes. *Id.* § 1712(c)(9); *see also* 43 C.F.R. § 1610.3-2(b) (guidance and resource management plans shall be consistent with resource related policies and programs of other Federal agencies and Indian tribes).

## **FACTUAL BACKGROUND**

### **Bighorn Sheep in Central Idaho**

29. Three subspecies of bighorn sheep are native to North America—California, desert, and Rocky Mountain. Rocky Mountain bighorn is the subspecies native to central Idaho, including the Hells Canyon and Salmon River regions, and thus is the subspecies at issue here.

30. Bighorn sheep were once abundant and widely distributed across the western United States, but severely declined in abundance and were extirpated from many states in the late 1800's due to loss of habitat, overhunting, competition with livestock for forage, and diseases transmitted by domestic livestock. The total number of bighorn sheep in the western U.S. is now estimated at less than 10% of pre-settlement numbers, distributed over an area less than one-third of its pre-settlement distribution. Most existing herds are relatively isolated and small (less than 100 animals) and susceptible to extirpation, and at least half are the result of translocations.

31. Bighorns typically occur in a metapopulation structure, where a large metapopulation consists of discrete local populations, or herds, that interact through limited migratory movements between them. These movements provide benefits of creating opportunities for population augmentation, colonization of new areas, and enhancement of genetic diversity. At the same time, they can also facilitate the spread of diseases between local populations.

32. Currently, two geographic areas in central Idaho are occupied by bighorn sheep metapopulations: Hells Canyon and the Salmon River Mountains. Each of these metapopulations contains several local populations.

33. In Hells Canyon, bighorns were historically abundant, numbering as many as 10,000. These animals were important to the Nez Perce Tribe and their ancestors for food, clothing, and tribal rituals. After bighorns were extirpated from this area by the mid-1940's due to hunting, disease, and forage competition, efforts to reintroduce them began in 1971 and continued in the mid-1990's. This metapopulation currently consists of 16 local populations, or herds, found in Oregon, Washington, and Idaho. As of 2006, scientists estimate 870 sheep in

this metapopulation, but only two of the local populations number greater than 100 animals. Many herds are below 50 animals, and several of those experienced declines or have been extirpated over the last few years due to disease.

34. Rocky Mountain bighorn sheep were also abundant throughout the central mountains of Idaho prior to the 1850's. However, in the 1860's discovery of gold led to an influx of people to the area, thereby increasing harvest of bighorns as well as introduction of domestic sheep. Major die-offs of bighorn sheep began in the Salmon River Mountains around 1870. Although the Salmon River metapopulation was never completely extirpated, reintroductions of bighorns into central Idaho began in 1969, and bighorn numbers increased to almost 4,000 by 1989. This was followed by further die-offs in the 1990's caused primarily by disease outbreaks that reduced the number of bighorns in central Idaho by over 50 percent.

35. Because the Salmon River Mountains metapopulation was never completely extirpated, the current bighorns there are genetically derived from the original native populations. This metapopulation contains local populations, or herds, in the South Fork Salmon River drainage and Big Creek drainage, along the Middle Fork Salmon River, and along the Main Salmon River.

36. Based on winter surveys conducted by Idaho Department of Fish and Game, all of the populations in the Salmon River Mountains metapopulation have experienced fluctuations in size, with each of them declining significantly since the 1980's due in large part to pneumonia outbreaks. Other than the Big Creek population, which is the largest and most stable, most of the local populations within the Salmon River Mountains area are under 100 animals.

### **Bighorn Sheep Behavior and Disease Transmission**

37. Bighorn sheep prefer steep, remote, sub-alpine and alpine habitats with high visibility for predator avoidance. Suitable habitat contains forage, water sources, and adequate escape terrain and lambing areas such as talus slopes, rock outcrops, and cliffs. Some herds remain in a given area all year, while others have separate summer and winter ranges that could be many miles apart. Generally, summer range is at higher elevations and covers a large area to take advantage of forage availability. Winter range is usually much smaller and is constrained to lower elevation, snow-free areas.

38. Although bighorns generally occupy traditional ranges, individual or small groups of animals will move long distances outside of their home range during their migratory travels, which often brings them into contact with other populations. This is particularly true for young rams, which frequently wander outside of their normal range for many miles before returning to the location of their natal herd.

39. When bighorns are within their herd, they are socially gregarious, meaning that they prefer to be in groups. Adult rams live in bachelor groups apart from ewe-lamb subgroups. Rams establish and maintain a social hierarchy primarily through head butting rituals. There is little interaction between rams and ewes until the annual rut occurs in November and early December. Breeding takes place during this time, followed by a gestation period for ewes that lasts approximately 180 days and usually produces a single lamb in May or June.

40. Bighorn sheep are much more susceptible to diseases than other ungulates. Scientists have documented many bighorn die-offs caused by disease, historically up to the present, with most of these die-offs implicating bacterial pneumonia, likely from *Pasteurella*

bacteria, as the cause of death. These die-offs often occur following contact with domestic sheep.

41. All ungulates, including bighorn sheep, naturally carry one or more strains of *Pasteurella* bacteria. Certain strains of *Pasteurella*, however, are fatal to bighorns but not to domestic sheep. Research has shown that the immune system of bighorns has a reduced capacity to kill bacteria as compared with domestic sheep immune function. In most of the documented bighorn die-offs linked to contact with domestic sheep, 75% to 100% of the bighorns died while the domestic sheep remained healthy.

42. In controlled experiments where bighorns were pastured with domestic sheep, virtually all of the healthy bighorns developed pneumonia and died just days or weeks following contact with healthy domestic sheep. The strain of *Pasteurella* bacteria isolated from the dead bighorns had not been found in them prior to their contact with the domestic sheep but was found in the domestics, indicating that these bacteria can be directly transmitted from domestic sheep to bighorn sheep. When bighorns were pastured together with other ungulates such as elk, deer, cattle, or llamas, however, it did not result in pneumonia in bighorn sheep.

43. In further experiments, bighorns inoculated with bacteria cultured from the respiratory tracts of healthy domestic sheep died in most cases, but domestic sheep inoculated with the same cultured bacteria remained healthy.

44. Similarly, in other nonexperimental situations, direct contact between domestic sheep and bighorn sheep was observed, followed shortly after by death of the bighorns from pneumonia. On at least two occasions, bighorns were captured by wildlife officials after they were seen co-mingling with domestic sheep. These bighorns died a few days later, and when autopsies were conducted, scientists diagnosed the cause of death as pneumonia. This

pneumonia was caused by the same strain of *Pasteurella* bacteria found in the domestic sheep. Based on this, they concluded that the transmission of the *Pasteurella* bacteria occurred on the range during the co-mingling of the domestic and bighorn sheep. In two other situations, the bighorns were not removed and subsequently transferred the disease to other members of the herd. In one case, all 43 bighorns in the population died, while 13 of 14 died in another case.

45. Bighorn sheep may also experience death from disease that did not involve contact with domestic sheep, but these die-offs generally only kill 15-35% of the population rather than the 75-100% mortality exhibited after contact with domestic sheep.

46. When bighorn sheep experience a pneumonia episode, it normally results in high mortality of all age classes. Moreover, ewes that survive the outbreak likely carry the pathogen for several years and transfer the bacteria to their lambs, which then usually do not survive past three months of age. Low lamb survival rates usually last for three to five years, thereby resulting in negative or stagnant population growth and delaying population recovery for many years. Because of these impacts on both survival and recruitment of bighorn sheep, pneumonia outbreaks are known to have significant long-term impacts on bighorn populations.

47. Transmission of *Pasteurella* bacteria requires nose-to-nose contact or transfer of mucus through coughing or sneezing. Because bighorn sheep and domestic sheep are closely related—both are in the genus *Ovis*—and are highly social and gregarious, they tend to be attracted to each other. Thus, the potential for contact and disease transmission is high.

48. Transmission of disease can occur even when domestic sheep do not directly overlap the normal home range of bighorn populations because of the tendencies of bighorns, particularly young rams, to wander outside of their home range. Once individual bighorns become infected through contact with domestic sheep, they spread the disease to the rest of the

herd when they return and mingle with healthy bighorns. Moreover, domestic sheep often stray from their herds, and are also social and gregarious. When a stray domestic sheep joins a bighorn herd, it can infect the entire herd, and the results are generally catastrophic to bighorns.

49. Currently, despite numerous attempts, there is no known vaccine to prevent bighorns from developing pneumonia after contact with deadly pathogens. Furthermore, the availability of such a vaccine would likely not remedy the problem as it would be very difficult and expensive to administer to large numbers of wild bighorn sheep in their rugged habitat.

50. Die-offs of bighorn sheep have occurred in both the Hells Canyon and Salmon River Mountains metapopulations. Wildlife biologists charged with managing these bighorns, and scientists studying the die-offs, believe the cause to have been contact with domestic sheep. For instance, in the Hells Canyon area, seven bighorn die-offs have been reported since bighorn reintroductions began in 1971 and most were linked to contact with domestic sheep. These die-offs eliminated one entire bighorn population, and significantly reduced the size of other populations.

51. In several cases, these die-offs occurred within bighorn populations in Oregon after individuals from one of those populations were seen on the Smith Mountain domestic sheep allotment on the Payette National Forest in Idaho. Currently, population growth in seven of the eleven bighorn herds in Oregon is negative or stagnant due to the impacts of disease.

52. Because bighorns from different herds commonly interact, the viability of any metapopulation is dependent on the health of each of its individual populations, or herds. An example of this relationship is seen through the die-off of the Hells Canyon metapopulation in 1995-1996. The die-off resulted in the death of over 300 bighorn sheep in a nine-week period,

and spread over 40 air miles, affecting six bighorn herds. Lamb survival was poor in all affected herds for two to seven years after the outbreak.

53. Likewise, the Salmon River Mountains metapopulation has experienced pneumonia die-offs as well over the last twenty years, resulting in significant mortality in each of the local populations. Die-offs in the 1980's and 1990's affected each of the local herds, reducing some by almost 50%. Lamb recruitment remained low for these populations for two or more years due to effects of the disease outbreak. None of the populations have recovered to levels that occurred prior to the die-offs, and most are still below 100 animals.

54. Based on an abundance of research, anecdotal and experimental evidence, there is consensus among wildlife biologists and veterinarians experienced in bighorn sheep management that domestic sheep and bighorn sheep must be kept separated in order to maintain healthy bighorn populations.

#### **Forest Service Direction Regarding Bighorn Sheep**

55. The Forest Plans for the Payette National Forest and the Nez Perce National Forest contain management direction that the forests provide habitat to support viable populations of native and desired non-native wildlife species, including wild bighorn sheep. These provisions implement the NFMA regulations that govern each of these Forest Plans, and which require the forests to maintain viable populations of existing native and desired non-native vertebrate species.

56. The Forest Service has long recognized the incompatibility of bighorn sheep and domestic sheep, which impairs the viability of the bighorn populations.

57. In 1995, the Wallowa-Whitman National Forest terminated domestic sheep grazing within the Oregon portion of the HCNRA in order to protect bighorn sheep populations



from contact with domestic sheep. In the Environmental Analysis and Decision Notice for this decision, the Forest Service acknowledged the threat to bighorn sheep from contact with domestic sheep, stating:

The scientific research indicates that domestic sheep pose a severe health risk to bighorn sheep when the two species are allowed to intermingle. When domestic sheep and bighorn sheep come into contact, the probability of bighorn sheep dying is very high because the probability of disease transmission from domestic to bighorn sheep is very high. The only way to avoid this health risk is to keep the animals spatially isolated, a task complicated by the tendency of both species to wander.

*Decision Notice for the Proposal to Terminate Domestic Sheep Grazing on Portions of the Hells Canyon National Recreation Area, Wallow-Whitman National Forest (Aug. 1995).*

The Forest Service thus decided to eliminate grazing on several allotments in the HCNRA to comply with viability requirements as well as the HCNRA Act.

58. When that decision was challenged, the U.S. District Court in Oregon upheld it, finding that under the HCNRA Act, domestic sheep grazing could continue only if it was compatible with the protection and maintenance of wildlife. The Court specifically found the Forest Service's determination that domestic sheep grazing was incompatible with maintenance of viable bighorn sheep populations, and that the incompatibility could only be avoided by keeping the domestics and bighorns separate, was supported by the record and was not arbitrary and capricious. *Idaho Wildlife Fed'n v. Richmond*, Case No. 94-1347 (D. Or. April 10, 1996).

59. In 1997, the Wallowa-Whitman National Forest signed a Memorandum of Agreement with the Idaho Department of Fish and Game ("IDFG"), the Oregon Department of Fish and Wildlife ("ODFW"), the Washington Department of Fish and Wildlife, the Bureau of Land Management, and the Foundation for North American Wild Sheep establishing the Hells Canyon Initiative ("HCI").

60. The HCI area encompasses parts of Idaho, Oregon, and Washington. It extends from the mouth of the Clearwater River at the north end to Brownlee Reservoir on the south end; and from just west of the Eagle Cap Wilderness in Oregon to the Snake/Salmon River divide near Riggins, Idaho, covering over 5.6 million acres of land.

61. The purpose of the HCI was to restore self-sustaining bighorn sheep herds to suitable habitat in the Hells Canyon area. The plan developed in conjunction with this initiative determined that over 1.3 million acres of suitable habitat for bighorn sheep exists in the Hells Canyon region, most of which is managed by federal agencies.

62. The HCI plan focused on bighorn sheep restoration efforts through herd reintroductions and supplementation, as well as research into factors limiting successful reintroduction and prolonged viability of herds in the project area. To aid these efforts, the agencies involved in the HCI initiated telemetry studies on bighorn sheep in 1997 and have continued these studies to the present, providing extensive information about movement of bighorn sheep and population trends.

63. In 2004, the HCI plan was updated and revised to incorporate research and management efforts since 1997, refocus management strategies, and identify as well as emphasize *Pasteurella* disease, and adult-related mortality, as the primary factor limiting the restoration of self-sustaining bighorn herds in the HCI project area.

64. Also in 1997, the Payette National Forest began the process of revising its Forest Plan. In analyzing the "Need for Change" in its preliminary analysis, the Forest Service recognized that bighorn sheep were declining across the Payette National Forest and beyond, that U.S. Fish and Wildlife Service was concerned about their population status and threats to their local viability, and that one threat may be the potential for disease transmission from livestock.

This early analysis then noted that direction was needed to reduce/eliminate potential conflicts between livestock and wildlife that use areas in common, including the conflict of disease transmission between domestic sheep and bighorn sheep.

65. In 2000, the Summary of the Draft EIS for the revised Payette Forest Plan continued to emphasize disease risk to terrestrial wildlife species as a “Significant Issue,” again reiterating Fish and Wildlife Service’s concern about the viability of bighorn populations on the Forest due to the risk of disease transmission from domestic sheep where their grazing overlaps with occupied bighorn sheep habitat.

66. The final revised Forest Plan and EIS, issued in 2003, contained similar statements as the 1997 and 2000 documents concerning the threat to bighorn population viability from disease transmission from livestock, and the need for direction to reduce or eliminate conflicts between livestock and wildlife that use common areas, such as the risk of disease transmission between domestic sheep and bighorn sheep.

67. The Forest Plan EIS, which lists bighorn sheep as a “Species of Special Interest,” discussed the risk of disease transmission in the Hells Canyon area. It explained that bighorn populations in Oregon have expanded due to transplants and elimination of domestic sheep grazing, and that some of these bighorns have crossed the Snake River into Idaho, allowing for contact with domestic sheep on allotments within the Payette National Forest. These bighorns may then return to Oregon and infect a large and extensive bighorn sheep population because “where domestic sheep and bighorn sheep come in direct contact, bighorn sheep almost always die from infections, whereas domestic sheep are unaffected.” *Payette LRMP FEIS at 3-286.*

68. Later, the Final EIS stated again that domestic sheep grazing in Idaho near Hells Canyon is a disease transmission issue due to the mobility of bighorn sheep and potential for

disease spread. Yet, the revised Payette Forest Plan did not eliminate domestic sheep grazing from the Hells Canyon Management Area, or do anything to ensure effective separation of the species, which triggered an appeal of the Forest Plan by several organizations and the Nez Perce Tribe.

69. In reviewing the appeal, the Chief of the Forest Service found that the revised Forest Plan for the Payette did not comply with NFMA regulations concerning wildlife viability of bighorn sheep, in that the direction in the Plan “[did] not adequately provide for habitat to insure the maintenance of a viable bighorn sheep population within the Payette National Forest (36 CFR 219.19).” *Decision for Appeal of the Payette National Forest Land and Resource Management Plan Revision* at 15 (March 9, 2005). He also found that “the Payette NF is not managing livestock grazing in the Hells Canyon MA in a manner compatible with the protection and maintenance of bighorn sheep or their habitat within the Hells Canyon NRA,” contrary to the HCNRA Act and its implementing regulations. *Id.* at 14.

70. The Chief based this decision on the concern over the small size and lack of viability of the current bighorn populations on the Payette National Forest, the threat of disease transmission from domestic to bighorn sheep as described in the EIS, and the failure to reduce domestic sheep grazing in the Hells Canyon Management Area. The Chief’s decision specifically focused on the inadequacy of the Plan with respect to viability in the Hells Canyon Management Area and the HCNRA, but it also clarified that the bighorn viability concerns exist throughout the Payette National Forest due to domestic livestock grazing. *Id.* at 15. Thus, “the viability of bighorn sheep populations within the Hells Canyon area, and across the Payette NF, appears to be threatened by allowing continued grazing of domestic sheep in or near occupied bighorn sheep habitat.” *Id.* at 14.

71. The Chief therefore reversed the revised Payette Forest Plan direction related to domestic sheep grazing and bighorn sheep protection in the Hells Canyon Management Area, and ordered the Forest Service to do an analysis of bighorn sheep viability across the Payette National Forest, and amend the Forest Plan accordingly. He directed the Payette National Forest to adopt management changes “as necessary to ensure bighorn sheep viability,” particularly within the Hells Canyon Management Area but in “adjacent areas” as well. *Id.* at 15. He stated that the analysis must be extensive enough to comply with all applicable laws, including the HCNRA Act and its regulations, as well as the viability regulations under NFMA.

72. Subsequent to that appeal decision, the Forest Service conducted a “Risk Analysis of Disease Transmission Between Domestic Sheep and Bighorn Sheep on the Payette National Forest” (“Risk Analysis”), which was completed in 2006. This risk analysis discussed the risk of disease to bighorn populations, noting that an extensive body of scientific literature indicates that, “(1) numerous examples of bighorn die-offs due to disease have been documented; . . . (3) bighorn die-offs typically follow known or suspected contact with domestic sheep; (4) under experimental conditions, clinically healthy bighorn sheep have developed pneumonia and died within days to weeks following contact with clinically healthy domestic sheep; . . . (6) there is consensus among wildlife biologists and veterinarians experienced in bighorn sheep management that domestic sheep and bighorn sheep must be kept separated in order to maintain healthy bighorn populations [citing numerous articles].” *Risk Analysis at 3.*<sup>1</sup>

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<sup>1</sup> This Court has subsequently held that this panel, as well as the Science panel discussed next, violated the procedural requirements of the Federal Advisory Committee Act, but this holding did not call into question the substantive findings of either panel, which have been cited repeatedly in other scientific publications and reports. *Idaho Woolgrowers Association v. Schafer*, Case No. 08-394 (Order of July 1, 2009).

73. The Risk Analysis also noted that bighorn sheep and domestic sheep are attracted to each other, which greatly increases the potential for close contact and disease transmission. And because the disease outbreaks can affect lamb survival for two or more years, these episodes can have significant long-term impacts on bighorn sheep populations.

74. This analysis then discussed a number of reports and guidelines developed by federal agencies to reduce the risk of disease transmission from domestic sheep to bighorns, including a 2001 report from the Forest Service's national bighorn expert, Tim Schommer. Mr. Schommer's report, entitled "A Process for Finding Management Solutions to the Incompatibility between Domestic and Bighorn Sheep," discussed the extensive evidence of disease transmission from domestic to bighorn sheep, and presented strategies to keep domestics and bighorns separated at all times to reduce or eliminate the risk of disease transmission.

75. To conduct the Risk Analysis, the Forest Service convened an expert panel of six wildlife biologists who had considerable knowledge of bighorn sheep biology and management. These experts rated the Payette National Forest domestic sheep allotments in the Hells Canyon area and the Salmon River Mountains area for risk of disease transmission, from very low risk to very high risk, considering factors such as the distance of the allotments to bighorn populations, location and distribution of suitable bighorn habitat, bighorn movements and distribution, and the permitted use of the allotment by domestic sheep.

76. For the Hells Canyon area, the panel rated the Smith Mountain allotment as very high risk based on its proximity to Hells Canyon bighorn populations and telemetry data showing bighorn sheep on this allotment on 319 occasions between 1997 and 2004. Also in the Hells Canyon area, the experts rated the Curren Hill allotment as high risk due to its close proximity to known bighorn range and presence of suitable bighorn habitat within the allotment, as well as

known telemetry locations within one to four miles of the allotment. The Risk Analysis also noted that domestic ewes are bred on the Curren Hill allotment in late summer or early fall, and that could further increase chances of contact with bighorn sheep as bighorn rams are attracted to estrous domestic ewes.

77. For the Salmon River Mountains area, the expert panel rated three allotments as high risk: Marshall Mountain, Bear Pete, and French Creek. This rating was based on proximity to the Main Salmon River and South Fork Salmon River bighorn populations, and presence of suitable bighorn habitat on the allotments. These allotments are just four miles from the winter range of the Main Salmon River bighorns, and extensive suitable habitat is available.

78. The panel experts also ranked five of the Salmon River allotments as moderate risk. Two of those allotments are located just a few miles from the Main Salmon River bighorn range, and also are not far from telemetry locations of bighorn sheep from the Hells Canyon metapopulation. The rest of the moderate risk allotments are located close to the South Fork Salmon bighorn population, and also contained two recent sightings of bighorn sheep, although the populations of origin for those bighorns could not be determined.

79. In addition, the experts considered sheep trailing routes for their risk of disease transmission, including the Salmon River Driveway that runs through the Smith Mountain allotment, and the trailing routes along the Main Salmon River that access several of the Salmon River Mountains allotments. They concluded that the Salmon River Driveway presented a high risk of disease transmission, and the trailing routes near the Main Salmon River also presented considerable risk, particularly the route that accessed the Marshall Mountain allotment.

80. The discussion in the Risk Analysis also stated that the Allison-Berg sheep allotment on the Nez Perce National Forest would seem to present a substantially greater risk of

disease transmission than the allotments on the Payette National Forest because of its adjacency to bighorn winter range on the north side of the Main Salmon River.

81. Based on the expert's risk ratings, the Forest Service concluded in the Risk Analysis that continuing to graze the Smith Mountain and Curren Hill allotments would likely threaten the viability of bighorn populations within the Hells Canyon metapopulation and preclude the establishment of a viable population on the west side of the Payette National Forest. Because much less is known about the distribution and movement patterns of the Main Salmon River and South Fork Salmon River bighorn populations due to lack of telemetry data, the Forest Service recognized the uncertainty of the level of risk posed by the Salmon River Mountains domestic sheep allotments.

82. Following the release of the Risk Analysis, the Forest Service convened a separate Science Panel Discussion in November 2006 to discuss the Analysis and solicit additional information regarding the risk of disease transmission. The eleven panelists were all bighorn experts with Ph.D.'s who worked for universities or government agencies, and were selected to represent views of both domestic livestock interests and bighorn sheep interests.

83. Although the question was presented three times during the discussion, not one of the panelists disagreed with the premise that domestic sheep transmit disease to bighorn sheep on the range. Likewise, no one disagreed that contact between domestic sheep and bighorn sheep can occur on the range.

84. After discussion of numerous issues, the panelists reached agreement on the following statements:

- 1(a) Scientific observation and field studies demonstrate that "contact" between domestic sheep and bighorn sheep is possible under range conditions. This contact increases risk of subsequent bighorn sheep mortality and reduced recruitment, primarily due to respiratory disease.



- 1(b) The complete range of mechanisms/causal agents that lead to epizootic disease events cannot be conclusively proven at this point.
- 1(c) Given the previous two statements, it is prudent to undertake management to prevent contact between these species.
- 2 Not all bighorn sheep epizootic disease events can be attributed to contact with domestic sheep.
- 3 Gregarious behavior of bighorn sheep and domestic sheep may exacerbate potential for disease introduction and transmission.
- 4 Dispersal, migratory, and exploratory behaviors of individual bighorn sheep traveling between populations may exacerbate potential for disease introductions and transmission.
- 5 There are factors (e.g. translocation, habitat improvement, harvest, weather, nutrition, fire, interspecies competition, and predation), some that can be managed and some that cannot, that can influence bighorn sheep population viability.
- 6 *Pasteurellaceae*, other bacteria, viruses, and other agents may occur in healthy, free-ranging bighorn sheep.

*Summary of the Science Panel Discussion*, Nov. 2, 2006.

#### **Risk to Bighorns From Grazing Federal Allotments-**

85. The Hells Canyon area within the Payette National Forest contains four domestic sheep allotments, including the Smith Mountain and Curren Hill allotments. The Hells Canyon region contains some of the best bighorn sheep habitat in North America, with steep, rocky cliffs, slopes, and canyons that provide extensive escape terrain, ample water sources, and native grasses, forbs, and shrubs that provide desirable, quality forage. Biologists agree that this habitat historically did, and could still, support thousands of bighorn sheep were it not for disease-based die-offs.

86. The Smith Mountain and Curren Hill allotments both contain excellent summer and winter habitat for bighorn sheep. In fact, the telemetry research conducted for the HCI shows that bighorns have used areas in or near those two allotments on many occasions. Individual bighorn sheep from the Upper Hells Canyon and Sheep Mountain herds frequently move into or near the Smith Mountain and Curren Hill domestic sheep allotments on the Payette

National Forest, and the use of these areas by bighorns has occurred when domestic sheep have also been on the allotments.

87. For example, telemetry data collected for the HCI study since 1997 shows over three hundred telemetry locations of bighorns on the Smith Mountain allotment, and hundreds more adjacent to the allotment, many of which occurred between the months of May and October. More than twenty locations of radio-collared bighorns also occurred within four miles of the Curren Hill allotment, mostly between July and October. Not all bighorns from these populations have radio collars so this data represents just a sample of the population.

88. Uncollared bighorns have also been documented moving near or onto these allotments. Over 3,000 visual observations of non-radio collared bighorn sheep have occurred in conjunction with researchers collecting movement data from radio collared sheep within or adjacent to the Smith Mountain allotment. Likewise, fifteen non-collared bighorn sheep were located in close proximity to the Curren Hill allotment in addition to the collared sheep.

89. Domestic sheep graze the Smith Mountain allotment from mid-May until mid-October, and as stated above, bighorns have been documented on this allotment during that same period, thus creating a strong potential for contact between the two species. On the Curren Hill allotment, domestic sheep grazing occurs later in the season, which coincides with sightings of bighorns in close proximity to this allotment in late summer and fall.

90. Scientists agree that domestic and bighorn sheep are attracted to each other, and both species are gregarious. These characteristics increase the likelihood of contact when the two species are located on or near the same allotment. In addition, domestic ewes are bred on the Curren Hill allotment during late summer or early fall, which further increases the likelihood

of contact between the two species because bighorn rams are attracted to breeding domestic ewes.

91. The tendency of individual bighorns, particularly rams, to move between herds and wander many miles outside of their home range also increases the likelihood of contact with domestic sheep. As just one example of this type of wandering, 2004 and 2005 telemetry data show the movements of one individual bighorn ram between several different bighorn herds in Oregon, Washington, and Idaho over a thirteen month period. When the ram finally returned to its original herd in Oregon, it had traveled over 75 miles, and crossed the Snake River twice.

92. Even with the use of herding practices for domestic sheep, contact with bighorns on the same allotment can be a problem. Herders that are managing hundreds of sheep can not always see when a bighorn sheep comes into contact with a domestic sheep within the rugged terrain of these allotments.

93. Furthermore, domestic sheep often stray from their herds. It is inevitable that some of the hundreds of domestic sheep on each allotment will get lost from their band and become a threat to bighorns. Neither herders nor dogs can ensure that every individual domestic sheep remains with the band. In fact, two stray domestic sheep were seen both on and near the Smith Mountain allotment on several occasions between December 2006 and February 2007 despite the fact that all domestic sheep were supposed to be removed from that allotment by mid-October. These domestic sheep were unattended and wandering in high quality bighorn habitat. One of the domestic sheep was finally shot by wildlife officials after it had been wandering the allotment for over four months in order to eliminate risk of contact with bighorn sheep.

94. Because of the risk of contact between domestic sheep and bighorn sheep on these two Hells Canyon area allotments, the bighorn experts convened by the Forest Service for the

Risk Analysis rated the Smith Mountain allotment as very high risk of disease transmission, and the Curren Hill allotment as high risk. They also rated the Salmon River Driveway trailing route that runs through these allotments as high risk.

95. If contact occurs between domestic and bighorn sheep, the potential for transmission of disease to one or more bighorn herds is high, which in turn could threaten not only the viability of those herds, but the entire metapopulation due to the movement of animals between herds.

96. Several bighorn populations in the Hells Canyon area have experienced significant declines in the past due to disease outbreaks, which occurred subsequent to contact with domestic sheep.

97. The McGraw herd was started from a 1998 transplant, but was extirpated by 2003 due to die-off from pneumonia. This die-off began after several radio-collared bighorn sheep from this population were observed in close proximity to domestic sheep on the Smith Mountain allotment. This intermingling occurred after the Payette National Forest ignored requests by state wildlife biologists to alter domestic sheep turnout patterns in order to avoid this very situation. These bighorns appeared sick, and at least one was later diagnosed with pneumonia. Biologists shot two of these bighorns on the Smith Mountain allotment to attempt to avoid spreading any disease to the rest of the herd in Oregon, but some infected bighorns apparently made it back to the McGraw herd anyway, and the herd began dying shortly thereafter. This herd is now considered extirpated.

98. The Upper Hells Canyon herd in Oregon has also declined due to pneumonia outbreaks. Individuals from this herd have been detected on the Smith Mountain allotment and just west of the Curren Hill allotment. This population is currently at 25 animals, down from 50

in 2001 and 35 in 2005. Lamb survival has also been low, with no survival of lambs in 2005 or 2006. The lambs recovered or observed by ODFW biologists appear to have died from pneumonia. Bighorns from this herd summer on the same range as animals from the Lostine herd. Thus, bighorns from the Upper Hells Canyon herd that are infected with pneumonia could transfer the disease to the Lostine herd.

99. The Sheep Mountain herd, which is also located on the Oregon side of the Snake River just six air miles from the Smith Mountain allotment, started from a transplant in 1990. By 1998, its population was estimated at almost ninety bighorns, but in August 1999, a pneumonia outbreak started and this group of bighorns declined by over 50%, and now has just twenty-five animals in 2006. The outbreak began shortly after biologists observed bighorns from the McGraw herd mingling with the Sheep Mountain herd. Since 2000, only three lambs have been known to have survived in this herd, and dead or sick lambs recovered by ODFW have been diagnosed with pneumonia. Bighorns from this herd have been observed in close proximity (less than four air miles) to domestic sheep on the Smith Mountain allotment.

100. The viability of the Hells Canyon metapopulation is dependent on the viability and good health of each of its herds. As discussed above, the herds within this metapopulation interact, facilitating the spread of disease from one herd to another. When animals from one herd are infected with pneumonia, the viability of that particular herd, as well as the entire metapopulation, is jeopardized.

101. Based on the surveys conducted for the HCI, the overall size of the Hells Canyon metapopulation has been stagnant or slightly declining the last few years. After it peaked in 1995 at 950 animals, a large pneumonia die-off reduced the population to 650 animals by 1998. Since then, the population slowly grew for a few years to reach 893 animals in 2003, but since

then has declined to 870 animals in 2006. Considering that over 600 animals have been transplanted into the area since 1971, the overall growth rate for this population is poor.

102. In the Salmon River Mountains area, twenty-one grazing allotments exist on the Payette National Forest, all of which are grazed by domestic sheep in the summer and fall. These allotments are on the south side of the Main Salmon River east of Riggins. Many of these allotments contain suitable bighorn habitat and are located near several local bighorn populations.

103. One domestic sheep allotment occurs on the Nez Perce National Forest—the Allison-Berg allotment. This allotment, which permits domestic sheep to graze twice a year in both summer and winter, is found on the north side of the Salmon River opposite the BLM Partridge Creek allotment and the allotments on the Payette. The Allison-Berg allotment contains an extensive amount of suitable bighorn habitat.

104. Recent telemetry data shows the Main Salmon River bighorn population occupying habitat all along the Salmon River canyon, primarily on the north side of the river but also crossing to the south side on and around the Partridge Creek allotment. One group of ten or eleven rams has been residing on the Allison-Berg allotment directly across from the Partridge Creek allotment for two years. One ram from this group crossed the river and used habitat on the Partridge Creek allotment four times in 2008 and 2009. In addition, telemetry locations of animals from the Hells Canyon metapopulation occurred just a few miles west of the Partridge Creek allotment, indicating the potential for connectivity between the Hells Canyon and Salmon River Mountains metapopulations.

105. As discussed above, the attraction between bighorn and domestic sheep and the nature of both species to wander increase the likelihood of these species intermingling on

allotments that are located close to bighorn populations and contain suitable bighorn habitat. This is particularly true for the Allison-Berg allotment on the Nez Perce National Forest and the BLM Partridge Creek allotment, which are grazed by domestic sheep in fall and winter when bighorns are in the rut and tend to wander more.

106. Based on the proximity to bighorn populations and the presence of suitable habitat, the Risk Analysis panel of bighorn experts ranked the French Creek, Bear Pete and Marshall Mountain allotments as high risk, and the Shorts Bar, Hershey-Lava, Victor-Loon, North Fork Lick Creek, and Lake Fork allotments as moderate risk of disease transmission. They also noted considerable risk from the use of trailing routes by domestic sheep along the south side of the Main Salmon River. The Risk Analysis further stated that the Allison-Berg allotment would seem to be an even greater risk than the above Payette National Forest allotments since it is directly adjacent to bighorn winter range. The Partridge Creek allotment is in between the Allison Berg and Shorts Bar, Hershey-Lava, and French Creek allotments.

107. Disease outbreaks have occurred in each of the bighorn populations in the Salmon River Mountains metapopulation; and many of the current local populations are below 100 animals. Further die-offs could severely impair the viability of these populations.

108. Scientists and wildlife biologists agree that complete separation between bighorn and domestic sheep is the only known way to prevent disease transmission to bighorns. Fencing or the addition of herders or dogs are not sufficient to prevent contact between the species. Without complete separation, disease transmission will continue to impair the existing bighorn populations, and prevent further populations from establishing in high quality habitat.

### **Supplemental Facts Related To The Payette And Nez Perce National Forests**

109. The Payette National Forest has been working on a supplemental EIS and amendment to the revised Payette Forest Plan to address the issue of risk to bighorn sheep from domestic sheep allotments on that forest. It issued a draft SEIS in September 2008 and solicited public comments. It expects to have the final SEIS and amendment to the revised Forest Plan issued by the end of December 2009.

110. The draft SEIS thoroughly discussed the scientific evidence on disease transmission from domestic sheep to bighorn sheep and impacts to bighorn sheep populations. It stated that even limited contact between domestic sheep and bighorn sheep is a risk to bighorn sheep viability. Draft SEIS at 3-28. Because of the severe consequences resulting from contact with domestic sheep, the risk of contact must be absent or extremely low to maintain viable populations of bighorn sheep. *Id.* The potential risk of contact must approach a “zero percent probability.” Draft SEIS at 3-29.

111. As part of its analysis, the Forest Service used the best available science on bighorn habitat and observations to map the geographic population ranges of the Hells Canyon and Salmon River canyon bighorn populations. These ranges are considered occupied bighorn sheep habitat. In the draft SEIS, the Forest Service selected an alternative that closed all domestic sheep grazing within occupied bighorn habitat to protect the populations of bighorn sheep.

112. In 2007, Plaintiffs brought an injunction motion to halt grazing on five high risk allotments and use of a high risk trailing route while the Payette completed its long-term analysis. Prior to a Court ruling, the Payette National Forest decided to follow the recommendations of the Nez Perce Tribe and restrict grazing on five domestic sheep allotments



(Smith Mountain, Curren Hill, Shorts Bar, Hershey Lava, and French Creek), closing all or part of the allotments that are a risk to bighorn sheep.<sup>2</sup> It also decided in conjunction with the permittee to not use the Salmon River Driveway trailing route to trail domestic sheep off the forest. The Forest Service imposed these same closures in 2008 and 2009.

113. The Nez Perce National Forest published a notice of intent to prepare an EIS for the Allison-Berg allotment to address the issue of risk to bighorn sheep from continued grazing of that allotment. The notice was published in May 2009 and stated that the Forest Service expects to have the EIS completed by March 2011. 74 Fed. Reg. 20276 (May 1, 2009). The Nez Perce National Forest intends to use much of the science and analysis conducted for the Payette SEIS in the Allison-Berg analysis.

114. As part of Plaintiffs' injunction motion in 2007 seeking to halt grazing on high risk allotments, they included a challenge to the Allison-Berg allotment on the Nez Perce National Forest. Prior to a Court ruling, the Forest Service determined that recent sightings of bighorn sheep on and near the allotment warranted its closure.<sup>3</sup> The agency has maintained that closure since fall 2007 because of the high risk to bighorn sheep.

115. Both the Payette and Nez Perce National Forests have explained in their one-year permit modifications that they need to prohibit grazing on the allotments because of an emergency situation for bighorn sheep based on bighorn habitat and bighorn observations on or near the allotments that create a risk of contact between the species.

116. Both Forests have also recognized that best management practices or mitigation measures proposed for these allotments to reduce risk of contact between domestic and bighorn

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<sup>2</sup> The permittee for the Smith Mountain allotment challenged the Forest Service's closure decision but this Court upheld it. *See Memorandum Decision and Order (Dckt. No. 54)*.

<sup>3</sup> The permittee for the Allison-Berg allotment likewise challenged the Forest Service's closure decision and this Court upheld that as well. *Memorandum Decision and Order (Dckt. No. 103)*.

sheep were not sufficient to **ensure** separation of the species to protect the bighorn populations. The Forests therefore refused to rely on those measures to keep the allotments open.

#### **Bureau Of Land Management's Partridge Creek Allotment**

117. The Partridge Creek allotment occurs on BLM land managed by the Cottonwood Field Office. The allotment is seven miles east of Riggins, Idaho along the south side of the Salmon River. It encompasses 9,166 acres of BLM land adjacent to the Salmon River and is just north of the Shorts Bar, Hershey Lava, and French Creek allotments of the Payette National Forest and directly across the river from the Allison-Berg allotment of the Nez Perce National Forest.

118. The permit for this allotment authorizes 833 domestic sheep to graze from April 11 to July 15 and October 15 to November 30 each year. The term permit for this allotment was last renewed in November 2003. BLM did not conduct any NEPA analysis for this allotment at that time and has not completed any since then.

119. BLM annually authorizes grazing on this allotment through annual billing statements. The 2009 annual bill, issued on February 19, 2009, authorized 833 domestic sheep to graze April 11 to July 15 and 635 domestic sheep to graze October 15 to December 15.

120. The Partridge Creek allotment contains a large amount of high quality winter and summer habitat for bighorn sheep and is within the geographic population range of the Salmon River canyon bighorn population.

121. Telemetry studies initiated two years ago and other observations of bighorn sheep document bighorns adjacent to or on the Partridge Creek allotment almost year-round. A group of eleven bighorn rams has been detected on the Allison-Berg allotment directly across the river from the Partridge Creek allotment on an almost continual basis for two years. Telemetry data

analyzed this past February shows locations of a bighorn ram on the south side of the river on the Partridge Creek allotment several times in 2008 and 2009 and other bighorns crossing to the south side of the river as well. Many other observations of bighorns have also occurred in the vicinity of the Partridge Creek allotment over the last several years.

122. This telemetry data also shows numerous bighorn social groups within the Main Salmon River population, with significant interchange of bighorns among groups and many bighorns making long movements along the canyon. Thus, contact between one domestic sheep and one bighorn on the Partridge Creek allotment could easily cause disease to be spread through the whole population. And as discussed above, the Main Salmon River population is one of several populations within the Salmon River Mountains metapopulation. Given contact between populations within the metapopulation, disease outbreaks in the Main Salmon River population could threaten the whole metapopulation.

123. The Cottonwood Field Office revised its Resource Management Plan (“RMP”) in 2008 and noted that the Salmon River bighorn populations have been greatly reduced compared to historic levels, that disease from domestic sheep is the primary threat to bighorns, and that the Partridge Creek allotment is **high risk** for disease transmission. However, BLM did not impose significant changes to any domestic sheep grazing in the RMP.

124. In its August 2009 response to protests of this new RMP, the Cottonwood Field Office recognized that new information on conflicts between domestic sheep and bighorn sheep within the Field Office warranted further analysis of this issue. BLM agreed to initiate a supplemental EIS to address this issue for four domestic sheep allotments, including Partridge Creek. But BLM stated that it would continue to authorize grazing as usual on these allotments pending the new analysis.

125. Because of the threat of domestic sheep grazing on the Partridge Creek allotment to the native Salmon River bighorn population, which has already experienced a decline of 70% over the last twenty years and is well below viable levels, Plaintiffs and the Nez Perce Tribe contacted BLM numerous times this spring and summer to request that it close the Partridge Creek allotment to domestic sheep. Plaintiffs also petitioned the Secretary of Interior to close the allotment. The Secretary did not respond to Plaintiffs' petition and BLM has stated that it intends to allow grazing to proceed this fall starting October 15.

126. The threats to bighorn sheep from grazing this allotment stem both from bighorns using habitat on the allotment and domestic sheep straying from their band and wandering alone in high quality bighorn habitat. Numerous instances of stray sheep have occurred with this permittee over the last few years, including several occurrences this past spring where groups of domestic sheep strayed from the permittee's bands on private land and the Partridge Creek allotment. Such straying is particularly likely to occur when wolves are present in the area, as they are in the Salmon River canyon, as a wolf attack can quickly cause sheep to scatter.

127. Also this spring, a bighorn sheep was seen near this permittee's domestic sheep on private land within the Allison-Berg allotment. IDFG was contacted quickly and went to the site the following day. The bighorn ram appeared sick and IDFG determined that it should kill the bighorn to prevent it from contacting other bighorns and transmitting disease. Although the bighorn ram was wearing a radio collar and thus could be tracked, IDFG biologists were unable to get close enough to shoot the ram on several occasions. It took three weeks for the biologists to kill the bighorn, and in the meantime the sick ram was located in the vicinity of several other bighorns and was suspected of making contact with one or more of them.

128. These events occurred despite there being a strategy in place to reduce risk of disease transmission. An agreement signed in April 2009 described Best Management Practices (BMPs”) for the Partridge Creek allotment that entailed using herders and dogs to control domestic sheep and watch for bighorns, counting the domestic sheep periodically, notifying IDFG within 24 hours of any bighorn seen near the domestic sheep, and removing or killing stray domestic sheep.

129. These measures are similar to those rejected by the Payette and Nez Perce National Forests as not sufficient to ensure separation of the species and protect the bighorn populations. These BMPs were not successful at preventing domestic sheep from straying from their band in spring 2009 nor preventing a sick bighorn ram from co-mingling with other bighorns after suspected contact with domestic sheep.

130. Last month the permittee for the Partridge Creek allotment and Idaho Department of Fish and Game (“IDFG”) negotiated another BMP plan pursuant to a new State of Idaho law. Idaho Code § 36-106(e)(5)(E). This law required IDFG to coordinate with willing permittees to develop BMP plans and also required IDFG to certify that these plans would reduce risk of disease transmission to a level that was either acceptable for bighorn sheep viability or acceptable because of other factors, such as that the bighorn sheep in the area were already exposed to disease.

131. The BMP plan for this permittee underwent several edits as negotiated by the attorney for the permittee and the attorney for IDFG before a final agreement was signed in September 2009. IDFG certified that this agreement would reduce risk of disease transmission to an acceptable level based on “other factors.”

132. This new BMP plan contains measures similar to the spring 2009 strategy. It also allows the permittee to kill any bighorn sheep seen co-mingling with domestic sheep or within its fenced private pastures that contain domestic sheep.

133. These BMP plans attempt to keep the species separate by allowing domestic sheep to graze in occupied bighorn sheep habitat and then killing any bighorn using that habitat that comes near the domestic sheep. Bighorn experts agree that these practices not only result in the death of bighorns that are critically important to the persistence of these dwindling populations, but also fail to ensure separation of the species. The only way to effectively separate the species and protect bighorn sheep is to remove domestic sheep from occupied bighorn sheep habitat.

134. BLM also intends to install a new cattleguard, gates and fencing for the Partridge Creek bridge this fall prior to the October 15 turn-out of domestic sheep to attempt to reduce the risk of stray domestic sheep crossing between the Partridge Creek allotment and the Allison-Berg allotment. BLM is not conducting any NEPA review for this project but instead is using a categorical exclusion to eliminate any environmental analysis. The only purpose for installing these items is to enable grazing on the Partridge Creek allotment.

135. Immediate declaratory and injunctive relief is necessary to prevent domestic sheep grazing on the Partridge Creek allotment and construction and installation of a cattleguard, gates, and fencing for the Partridge Creek bridge until the agency has completed a full and comprehensive environmental analysis for both activities that insures it will not excessively harm or permanently impair the native Salmon River bighorn population.

136. Absent such declaratory and injunctive relief, irreparable and irreversible harm to bighorn sheep populations may occur, injuring Plaintiffs and their staff and members, as well as

the public. Plaintiffs have no adequate remedy at law in the form of monetary damages or relief.

Plaintiffs reallege and incorporate by reference the preceding paragraphs.

**FIRST CLAIM FOR RELIEF  
VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT**

137. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

138. This First Claim for Relief challenges BLM's violation of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and its implementing regulations, in authorizing domestic sheep grazing on the Partridge Creek allotment pursuant to the 2003 grazing permit and annual authorizations, including the 2009 authorization, without first completing the necessary environmental analysis of the impacts of this action in light of the significant new information discussed herein on disease risk, locations and movement of bighorn sheep, and the need to avoid interactions between the two species.

139. This claim also challenges BLM's violation of NEPA and its implementing regulations in authorizing the installation of a new cattleguard, gates, and fencing on the Partridge Creek bridge using a categorical exclusion and thereby failing to assess the individual and cumulative impacts of this action in conjunction with the interrelated and interdependent action of authorizing grazing on the Partridge Creek allotment in a comprehensive environmental analysis.

140. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

141. These violations of NEPA and implementing regulations are arbitrary, capricious, an abuse of discretion, and not in accordance with law under the APA, which has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests.

**SECOND CLAIM FOR RELIEF**  
**VIOLATIONS OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT**

142. This Second Claim for Relief challenges the Secretary of Interior's and BLM's violations of the Federal Land Policy and Management Act, 43 U.S.C. § 1701 et seq., and FLPMA's implementing regulations, in denying Plaintiffs' petition to close the Partridge Creek allotment, and authorizing domestic sheep grazing on that allotment in a manner that will foreseeably impair the Salmon River bighorn sheep population. Such violations include, but are not limited to:

a. Violating FLPMA's requirements to prevent unnecessary and undue degradation, and permanent impairment of the quality of the environment, by denying Plaintiffs' petition and authorizing grazing practices that will likely cause excessive harm and permanent impairment to bighorn sheep populations;

b. Violating the regulations' requirement to close allotments or portions of allotments to any kind of livestock or modify authorized grazing use when continued grazing use poses a likelihood of significant resource damage by denying Plaintiffs' petition and authorizing grazing that is likely to significantly damage the bighorn sheep populations in the Salmon River canyon; and

c. Violating FLPMA and its regulations' requirement to coordinate planning and management activities and ensure that its resource management plans are consistent with policies and programs of other Federal agencies and Indian tribes by continuing to authorize grazing and endanger bighorn sheep, which is inconsistent with the Forest Service's and Nez Perce Tribe's policies and actions to protect the same bighorn sheep populations.

143. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.



144. These violations of FLPMA and implementing regulations are arbitrary, capricious, an abuse of discretion, and not in accordance with law under the APA, which has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that the Court grant them the following relief

A. Issue immediate injunctive relief, including temporary restraining order(s) and/or preliminary injunction(s), to prohibit BLM from authorizing domestic sheep grazing on the Partridge Creek allotment and installing a cattleguard, gates and fencing for the Partridge Creek bridge;

B. Issue declaratory relief holding that the Secretary of Interior's denial of Plaintiffs' petition and BLM's grazing authorization for the Partridge Creek allotment, and BLM's authorization to install a cattleguard, gates, and fencing for the Partridge Creek bridge, violate NEPA and/or FLPMA, and are arbitrary, capricious, an abuse of discretion, and/or contrary to law.

C. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's 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/or

D. Grant such further relief as the Court deems just and proper in order to provide Plaintiffs with relief and protect the public interest.

Dated this 5th day of October, 2009.

Respectfully submitted,

s/Lauren M. Rule  
Lauren M. Rule (ISB # 6863)  
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s/ Jennifer Schemm  
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