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Attorney for Plaintiffs Hells Canyon Preservation Council and The Wilderness Society

**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. 09-507-BLW

**RESPONSE TO MOTION TO
DISMISS**

Defendant Bureau of Land Management ("BLM") has moved to dismiss this case because there are no issues that remain in dispute in light of the existing injunction that precludes

domestic sheep grazing on BLM's Partridge Creek allotment until BLM has completed its supplemental environmental analysis assessing conflicts between domestic and bighorn sheep and issued a new grazing decision for the allotment (Docket No. 18). Plaintiffs do not oppose this motion provided the Court retains jurisdiction to enforce the injunction pending completion of BLM's environmental analysis and issuance of a new decision regarding authorization of grazing on the Partridge Creek allotment.

As explained in BLM's motion, Plaintiffs filed this case in October 2009 and immediately sought to enjoin BLM from authorizing grazing on the Partridge Creek allotment due to concerns over disease transmission from domestic sheep to bighorn sheep (Docket No. 1). The Court issued a temporary restraining order in this case enjoining Defendant BLM from authorizing grazing on the Partridge Creek allotment pending an evidentiary hearing on the matter (Docket No. 5).

In light of the Court's reasoning, BLM did not oppose extending the injunction to keep the Partridge Creek allotment closed until BLM completes an environmental analysis for the allotment that addresses conflicts between domestic sheep and bighorn sheep and issues a new decision regarding the authorization of grazing on the Partridge Creek allotment (Docket No. 7). Thus, Plaintiffs and Defendants notified the Court that they believed the evidentiary hearing was no longer necessary (Docket Nos. 10 & 11). After Intervenor Carlson Livestock Company also withdrew its request for the evidentiary hearing (Docket No. 16), the Court vacated the hearing, acknowledging that BLM agreed to extend the injunction closing the allotment while the agency completes its new analysis (Docket No. 17). Because the injunction remains in effect, no further activity has occurred in this case.

Plaintiffs agree that as long as the injunction remains in place, there is no live controversy

left in this case. Thus, they do not oppose dismissing this case, provided the Court retains jurisdiction to enforce the injunction closing the Partridge Creek allotment pending completion of BLM's supplemental environmental analysis and issuance of a new decision regarding authorization of grazing on the Partridge Creek allotment. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378, 391 (1991).

Plaintiffs also request that the Court release the \$9000 bond that Plaintiffs posted pursuant to the Court's TRO Order (Docket No. 5) and allow Plaintiffs to retrieve those funds.

Dated: June 27, 2011

Respectfully submitted,

s/Lauren M. Rule
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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June 2011, I caused a true and correct copy of RESPONSE TO MOTION TO DISMISS, to be electronically filed with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the following counsel of record in this matter:

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