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

WESTERN WATERSHEDS PROJECT, and)	
WILDEARTH GUARDIANS,)	
)	No. 1:17-cv-434-CWD
Plaintiffs,)	
)	
v.)	<u>AMENDED COMPLAINT</u> ¹
)	
U.S. FOREST SERVICE,)	
)	
)	
Defendant.)	
_____)	

INTRODUCTION

1. Plaintiffs Western Watersheds Project and WildEarth Guardians bring this case to challenge Defendant Forest Service’s authorization of domestic sheep grazing on the Snakey Canyon and Kelly Canyon allotments within the Caribou-Targhee National Forest because of the grave risk to the small South Beaverhead population of Rocky Mountain bighorn sheep. These allotments are permitted to the USDA Sheep Experimental Station and are grazed by sheep owed by the University of Idaho for the purpose of conducting research.

¹ Plaintiffs are amending the complaint to add a few key facts as well as challenges to the 2017 Interagency Agreement. The substantive additions have been underlined to allow for easy identification.

2. This Court has repeatedly acknowledged the high risk of disease transmission from domestic sheep to bighorn sheep when domestic sheep graze nearby, and has ordered or approved closures of numerous domestic sheep allotments on public lands in Idaho to reduce this risk. *Western Watersheds Project et al. v U.S. Forest Serv.*, 2007 WL 1729734, No. 4:07-cv-151-BLW (D. Idaho, June 13, 2007) (approving closure of Smith Mountain allotment); *Western Watersheds Project et al. v. U.S. Forest Serv.*, 2007 WL 3407679, No. 4:07-cv-151-BLW (D. Idaho, Nov. 13, 2007) (approving closure of Allison-Berg allotment); *Western Watersheds Project et al. v. BLM*, 2009 WL 3335365, No. 4:09-cv-507-BLW (D. Idaho, October 14, 2009) (ordering closure of Partridge Creek allotment); *Western Watersheds Project et al. v. U.S. Forest Serv.*, 2012 WL 2254206, No. 1:12-cv-286-BLW, ECF #16-17 (D. Idaho, June 15, 2012) (ordering Forest Service to withdraw grazing authorizations and implement direction closing numerous allotments on Payette National Forest); *Idaho Wool Growers Ass'n et al. v. Vilsack et al.*, 7 F. Supp. 3d 1085 (D. Idaho 2014) (approving Forest Service decision to close numerous allotments on Payette National Forest), *aff'd* 816 F.3d 1095 (9th Cir. 2016).

3. Despite this line of precedent, the Forest Service is putting bighorn sheep in danger by authorizing domestic sheep to graze within the core home range of a small bighorn population in eastern Idaho. The Forest Service's own analysis showed these allotments present a very high risk to this bighorn population, and more recent telemetry data shows that the risk is even greater due to bighorn locations on and adjacent to the allotments. Given the small size of the South Beaverhead bighorn population, a die-off within this population due to disease would likely lead to the population's extirpation.

4. The Forest Service initiated an assessment under the National Environmental Policy Act (NEPA) in 2015 to analyze the environmental impacts of grazing six allotments,

including the Snakey Canyon and Kelly Canyon allotments. Rather than closing these two allotments to use until the agency completes that analysis, as the Forest Service and Bureau of Land Management (BLM) have both done for other domestic sheep allotments in Idaho that pose similarly high risk to bighorn sheep, the Forest Service renewed a five year agreement with the Sheep Station and authorized domestic sheep grazing on the allotments again this fall and winter.

5. Authorizing the Sheep Station to graze these allotments for research purposes when they are in such close proximity to a struggling bighorn herd threatens irretrievable loss of this bighorn population even while the agency is undertaking an environmental analysis for these allotments, which violates NEPA. Additionally, authorizing this grazing is inconsistent with direction in the Targhee Forest Plan, and therefore violates the National Forest Management Act (NFMA).

6. Accordingly, Plaintiffs seek declaratory relief that the Forest Service has violated NEPA and NFMA by renewing its agreement with the Sheep Station for another five years and authorizing grazing on the Snakey Canyon and Kelly Canyon allotments this fall and winter. Because there is a likelihood of irreparable harm to the South Beaverhead bighorn sheep population from these violations, Plaintiffs request immediate injunctive relief from this Court ordering the Forest Service to withdraw the 2017-2018 authorization for the Snakey Canyon and Kelly Canyon allotments and to close these allotments to use until the agency completes its NEPA analysis.

JURISDICTION AND VENUE

7. 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.*; NEPA, 42 U.S.C. § 4321 *et seq.*; NFMA, 16 U.S.C. § 1600 *et seq.*; the

Declaratory Judgment Act, 28 U.S.C. § 2201 *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 Defendant, and the requested relief is therefore proper under 5 U.S.C. §§ 701–06 and 28 U.S.C. §§ 2201–02.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, Plaintiff Western Watersheds Project resides in this district, and the public lands and resources in question are located in this district.

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

PARTIES

10. Plaintiff WESTERN WATERSHEDS PROJECT is a non-profit membership organization headquartered in Hailey, Idaho with over 6,000 members and supporters, which is dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP, as an organization and on behalf of its members, is concerned with and active in seeking to protect and restore the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West, including in Idaho.

11. Plaintiff WILDEARTH GUARDIANS is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Guardians has over 66,000 members and supporters, many of whom have particular interests in bighorn sheep. Headquartered in Santa Fe, New Mexico, Guardians maintains several other offices around the West, including in Missoula, Denver, and Portland.

12. Plaintiffs, and their 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 action challenged herein. Plaintiffs' staff and members use and enjoy the public lands in and around the South Beaverhead Mountains, including the area at issue in this case, in order to observe, photograph, study, and enjoy bighorn sheep and other native species. Plaintiffs and their members derive recreational, scientific, aesthetic, spiritual, and commercial benefits from the existence in the wild of bighorn sheep through observation, study, photography, and other pursuits. Plaintiffs will continue to use public lands in and around the South Beaverhead Mountains in 2018 and beyond for these purposes, and their enjoyment will be reduced if the South Beaverhead bighorn sheep population is extirpated or remains at low numbers due to disease.

13. Plaintiffs have been long-time advocates for bighorn sheep in Idaho and elsewhere, and have long-standing concerns about the threat to bighorn populations from domestic sheep grazing on public lands. Plaintiffs have engaged in public outreach and education, advocacy with agencies, agency administrative processes, and litigation to promote the protection of bighorn sheep from domestic sheep grazing on public lands. Plaintiffs have engaged with the Forest Service over the Snakey Canyon and Kelly Canyon allotments, expressing concerns about domestic sheep grazing on these allotments due to their very high risk to the South Beaverhead bighorn population.

14. Plaintiffs' interests in protecting and enjoying bighorn sheep in the South Beaverhead Mountains are being directly harmed by Defendant's action. Plaintiffs' above-described interests have been, are being, and unless the relief prayed for is granted, will continue to be adversely affected and irreparably injured by Defendant's violations of law.

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

STATEMENT OF FACTS

I. Disease Transmission from Domestic Sheep to Bighorn Sheep

16. The issue of disease transmission from domestic sheep to bighorn sheep is contentious but there is virtually no dispute among scientists and wildlife biologists that domestic sheep can transmit a pathogen to bighorn sheep that leads to pneumonic die-offs within bighorn populations. Domestic sheep are immune to this pathogen but bighorns have not developed an immunity yet because they are a newer species evolutionarily. Die-offs occur when the pathogen is transmitted from a domestic sheep to a bighorn sheep, and then that bighorn transmits it to other members of the same herd. Most bighorn die-offs from pneumonia reduce herd sizes by 75-100%.

17. For those female bighorns that are exposed but do not die, they continue to carry the pathogen and transmit it to their lambs during pregnancy, causing the lambs to die within months of birth. Herds that have experienced die-offs often have low lamb recruitment for years following the disease outbreak. This keeps populations at low numbers, which makes them susceptible to extirpation from stochastic events or further disease impacts.

18. Scientists originally thought that transmission of the pathogen from domestics to bighorns required direct physical contact between the species, but recent research indicates the pathogen can be transmitted through the air. The risk of contact between these species is high when they are using the same range because they are closely related—within the same genus—and both species are gregarious. Therefore, they seek each other out when in the same vicinity.

19. Although bighorn populations have home ranges where they spend most of their time, individual rams and ewes make forays outside of their home ranges when looking for mates or seeking out new or additional habitat. Forays can occur miles away from the home range, with some bighorns traveling 20 miles or more. In particular, young rams will make forays during the rut in the fall to look for mates. Just last fall, a bighorn ram was documented in northern Idaho far away from its home range, moving more than 90 miles over several weeks.

20. The ranges used by both bighorn sheep and domestic sheep are generally steep and rugged. Due to this topography, it is often very difficult to spot bighorn sheep on the landscape, and likewise difficult to find stray domestic sheep. Most pneumonia disease outbreaks in bighorns have occurred without observing the actual contact between domestic and bighorn sheep.

21. It is common for domestic sheep to stray from their band while on an allotment, and they can remain on their own for weeks or months at a time. Stray domestic sheep have been documented miles away from their band or remaining on an allotment several months after the rest of the band had been removed. Domestic sheep can also stray from their band when they are trailing to or from an allotment.

22. Because of the difficulty seeing and tracking individual bighorn sheep and domestic sheep in steep and rugged terrain, and the likelihood that these species will seek each other out when using the same range, bighorn experts agree that “best management practices” such as using extra herders and dogs, and notifying agency personnel when a bighorn is seen near domestic sheep, are not sufficient to prevent contact.

23. Furthermore, if a bighorn is known to have made contact with a domestic sheep, it is not always possible to capture and remove the bighorn to prevent the spread of disease to the

rest of the herd. For instance, several years ago Idaho Department of Fish and Game (IDFG) made three attempts to capture and remove a bighorn that was suspected of contacting domestic sheep but failed all three times. The only way to prevent disease transmission is to keep the species physically separated by long distances.

24. Both the Forest Service and BLM have taken steps in Idaho to separate domestic sheep from bighorn populations on public lands. After being sued by WWP and others, the Payette National Forest closed five allotments with very high, high, or moderate risk of disease transmission in order to protect bighorn sheep while the agency conducted a NEPA analysis assessing the long-term options for all domestic sheep allotments on the forest. The same situation occurred with the Allison-Berg allotment across the river on the Nez Perce National Forest that was also high risk for disease transmission. When the permittees challenged the closures, this Court upheld them, finding that the decisions were well-supported by the science and bighorn sheep experts. *Western Watersheds Project et al. v U.S. Forest Serv.*, 2007 WL 1729734, No. 4:07-cv-151-BLW (D. Idaho, June 13, 2007); *Western Watersheds Project et al. v. U.S. Forest Serv.*, 2007 WL 3407679, No. 4:07-cv-151-BLW (D. Idaho, Nov. 13, 2007).

25. When BLM failed to close the neighboring Partridge Creek allotment, the plaintiffs prevailed in another lawsuit that resulted in this Court ordering the BLM to close the allotment until a NEPA analysis was completed to prevent any irreversible harm to the bighorn population in the interim. *Western Watersheds Project et al. v. BLM*, 2009 WL 3335365, No. 4:09-cv-507-BLW (D. Idaho, October 14, 2009). The Court determined that relying on best management practices to keep the species separate was unreasonable when those practices had not been proven effective and experts agreed they would not work.

26. The Payette National Forest's analysis resulted in a decision to close almost 70%

of the forest to domestic sheep grazing to maintain separation between domestic sheep and bighorn populations. The analysis contained an appendix explaining why best management practices are not sufficient to prevent contact and disease transmission.

27. The Idaho Wool Growers Association challenged the Payette decision in court, but it was upheld by this Court as well as the Ninth Circuit Court of Appeals. *Idaho Wool Growers Ass'n et al. v. Vilsack et al.*, 7 F. Supp. 3d 1085 (D. Idaho 2014), *aff'd* 816 F.3d 1095 (9th Cir. 2016). The courts found that the Forest Service's analysis and decision were well-reasoned and supported by the science. The Payette allotment closures were phased in over three years, but all have now been closed since 2013. The Allison-Berg allotment also remains closed because the Nez Perce National Forest has not yet completed its NEPA analysis.

28. Just this year, BLM finished its NEPA analysis for the Partridge Creek allotment and three other domestic sheep allotments in the area, deciding to close three of the four allotments due to their risk to bighorn sheep. BLM reiterated that best management practices were not effective at separating the species so the closures were necessary to prevent disease transmission. BLM had also closed the Bernice allotment in 2012 and refused to renew its Interagency Agreement with the Sheep Station because of the allotment's risk to the South Lemhi bighorn sheep population.

29. Based on the modeling and disease transmission analysis performed for the Payette EIS, the Forest Service expanded that approach to the rest of Forest Service Region 4, which consists of western Wyoming, Utah, most of Idaho, and Nevada. The agency planned to conduct risk of contact analyses for forests in the Region, beginning with Wyoming and Utah, and then moving to Idaho and Nevada.

30. For this analysis, the Forest Service first identified the core herd home range for

each bighorn sheep population at issue. This was the area generally used by the herd as its home range. Then it conducted a foray analysis to determine the likelihood that an individual bighorn travelling away from its home range during a foray would contact other areas. The result of these analyses determined the risk of contact assigned to each allotment on each forest. If an allotment fell within the core herd home range of a bighorn population, it was considered an “overlap” allotment and had the highest risk of disease transmission.

31. The Forest Service completed the risk of contact analysis for forests in Wyoming and Utah in 2015. It also finished delineating the core herd home ranges for forests in Idaho in late 2015. It completed a draft risk of contact analysis for Idaho forests in 2016, but has not yet issued a final version.

II. South Beaverhead Bighorn Sheep Population

32. The South Beaverhead bighorn population occurs at the south end of the Beaverhead Mountains in eastern Idaho, not far from the Montana border. Historical accounts indicate that bighorn were plentiful and widely distributed in this area, with evidence showing bighorns using the area at least ten thousand years ago, but were extirpated from most of the southern Beaverheads by the early 1900s and severely reduced in the remaining habitats. To boost the population, forty-one bighorn sheep were transplanted into the area during four translocations between 1976 and 1982.

33. Despite these translocations, the population remains very small—one of the smallest in Idaho. Counts of bighorn sheep have fluctuated: 26 in 2002, 17 in 2005, 30 in 2007, 13 in 2014, and 36 in 2016. All of these numbers are far below a viable population, and show a decline from numbers in the mid-1990’s. The rise and fall of the population and its low reproductive rates indicates that disease is affecting this population. A ewe from the population

tested positive in 2013 for pathogens that cause pneumonia in bighorns.

34. IDFG estimated, based on its modeling of suitable habitat, that the area can sustain a population of 275 bighorn sheep. If this population was healthy, it would expand into this unused habitat. Because of the small size of the population, there are no bighorn hunts allowed in this management unit, and none are planned until the population increases.

35. The most observations of bighorns from this population have occurred in the Skull Canyon area, but bighorns have also been documented in Crooked Creek, Horsethief Ridge, Snakey Canyon, the Nature Conservancy Ranch, Sullivan Ridge, Irving Creek, and numerous other locations throughout the area.

36. IDFG has radio-collared a number of bighorns from this population and collected telemetry data. One ram and three ewes were collared and tracked between 2011 and 2014, and another four rams were collared in 2014-2015. The majority of locations occurred just a few miles west of the Snakey Canyon and Kelly Canyon allotments, and one ram had numerous locations near the western and southern edges of the allotments and one within the allotments in November 2015. Given that only a small portion of the entire population has radio collars and monitoring has occurred for just a few years, it is very likely that other bighorns in the population make similar movements, and have visited the Snakey Canyon and Kelly Canyon allotments over the years.

37. Overall, the fall and winter locations overlapped significantly with the summer locations but also included the points closest to or within the allotments. The telemetry data shows that rams from this population travel long distances within the South Beaverhead Mountains, including moving north along the Beaverhead Range toward the North Beaverhead bighorn sheep population. Rams are documented moving more than ten miles over the course of

just a few days.

38. IDFG has designated population management units (PMUs) for all bighorn sheep populations in the state, and the South Beaverhead PMU encompasses many of the bighorn telemetry points as well as additional habitat needed to support a larger population. The Snakey Canyon and Kelly Canyon allotments occur within the southern end of the PMU.

39. The South Beaverhead bighorn population is in close proximity to other bighorn populations and could easily interact with those populations during forays. The South Lemhi population is only ten miles to the west, the North Beaverhead population is just to the north within the Beaverhead Mountain range, and the Tendoy population in Montana is just a few miles to the east. All three of these populations are within common foray distances for bighorn rams from the South Beaverhead population.

III. Snakey Canyon and Kelly Canyon Allotments

40. As noted above, the Snakey Canyon and Kelly Canyon allotments occur at the southern end of the Beaverhead Mountains, a little west of Dubois, Idaho. The Forest Service has permitted the Sheep Station to graze these allotments for years, authorizing 1200 dry ewes to graze the Snakey Canyon allotment from November 6 to January 2, and 1000 dry ewes to graze the Kelly Canyon allotment from November 20 to January 3. The only water sources on these allotments is water that is trucked in and snow and thus less grazing occurs in poor snow years.

41. Over the past several years, the actual use of the allotments had been less than authorized, grazing less than half the number of authorized domestic sheep and for shorter seasons of use.

42. Unlike with private ranchers, the Forest Service does not charge the Sheep Station any fee for the grazing. Since the Sheep Station does not own domestic sheep, the University of

Idaho has been the entity that owns the sheep grazing these allotments and the Sheep Station helps manage them. The Sheep Station conducts no research on these allotments, and instead just uses them to support its research on other land.

43. The Snakey Canyon and Kelly Canyon allotments have bighorn sheep habitat that is open and easily accessible by South Beaverhead bighorns. The habitat in this area is almost continuous, with just intermittent breaks, so bighorns can easily move down onto and within the allotments. The telemetry data shows bighorns making numerous movements and using a large portion of the habitat during fall and winter.

44. The open habitat also makes it easy for domestic sheep from the allotments to go upslope into the areas consistently used by the bighorn population. The Sheep Station has a history of problems with domestic sheep straying from allotments it manages.

45. In 2007, the Forest Service attempted to avoid conducting a full NEPA analysis for renewal of the grazing permits for these allotments and four others. That decision, among other similar ones, was challenged in court, and the parties settled. The settlement required the Forest Service to initiate a NEPA process for these six allotments by April 2015, and complete either an Environmental Assessment (EA) or Environmental Impact Statement (EIS) for them. The Forest Service issued a scoping notice on April 22, 2015 but has not yet issued any draft or final EA or EIS.

46. As discussed above, the Forest Service has been conducting risk of contact analyses for national forests within Region 4. For Idaho, it completed the core herd home range analyses in late 2015. The Snakey Canyon and Kelly Canyon allotments are almost completely within the South Beaverhead bighorn population core herd home range.

47. In its 2016 draft risk of contact analysis for Idaho, the Forest Service identified

the Snakey Canyon and Kelly Canyon allotments as overlapping core herd home range, meaning they pose an unacceptable risk of disease transmission from domestic sheep to bighorn sheep.

48. The allotment just north of the Snakey Canyon and Kelly Canyon allotments is the Nicholia-Chandler allotment, but that allotment has been in non-use since 2014. The Snakey Canyon and Kelly Canyon allotments are the only remaining active Forest Service domestic sheep allotments that overlap the South Beaverhead bighorn population core home range.

49. The Sheep Station completed its own EIS in July 2017 to assess the environmental impact of grazing and other activities it conducts on its own land and other public land it is permitted to use. The EIS acknowledged that the Snakey Canyon and Kelly Canyon allotments pose a risk to bighorn sheep, but claimed that best management practices such as using herders and dogs would be sufficient to protect the bighorn population.

50. In February 2017, the Forest Service renewed its interagency agreement with the Sheep Station that mandated issuance of annual livestock use permits to the Sheep Station to use lands within the Caribou-Targhee National Forest for research. The agreement stated that the Forest Service shall “[i]ssue an annual Livestock Grazing Permit to ARS [Sheep Station] to authorize sheep grazing on NFS lands each season.” The agreement lasts until January 31, 2022.

51. The Forest Service issued an annual permit to the Sheep Station in June 2017 that covered the Snakey Canyon, Kelly Canyon, and Table Mountain allotments. The permit stated that it had been created based on the Interagency Agreement between the Forest Service and the Sheep Station.

52. The Forest Service issued the Annual Operating Instruction (AOI) for the Snakey Canyon and Kelly Canyon allotments in September 2017, and then issued a revised AOI in early October 2017. The AOI authorizes 1200 dry ewes to graze the Snakey Canyon allotment from

November 6 until January 2, and 1000 dry ewes to graze the Kelly Canyon allotment from November 20 until January 3. The AOI includes requirements to use herders and dogs and contact agency personnel upon seeing a bighorn sheep to attempt to reduce the risk of domestic sheep coming into contact with bighorn sheep.

53. The Snakey Canyon and Kelly Canyon allotments occur on the Targhee portion of the Caribou-Targhee National Forest. Therefore, the Targhee Forest Plan covers activities occurring on those allotments.

54. The 1997 Targhee Forest Plan included the following forest-wide Wildlife goals: (1) Wildlife biodiversity is maintained or enhanced by managing for a diverse array of habitats and distribution of plant communities; and (2) Provide habitat to support the wildlife and hunting goals of the States of Idaho and Wyoming. Targhee Forest Plan III-15.

55. National direction for managing national forests was included in Appendix A to the Targhee Forest Plan and incorporated as additional forest-wide direction. Appendix A provided direction for Fish and Wildlife and Sensitive Species, including maintaining viable populations of all native and desired nonnative wildlife, fish, and plant species in habitats distributed throughout their geographic range on National Forest System lands, developing and implementing management objectives for populations and/or habitat of Sensitive Species, and managing Sensitive Species habitat as directed in the Forest Service Manual. App. A-10, A-18. Bighorn sheep are a Forest Service Sensitive Species in Region 4.

56. The Targhee Forest Plan also contained direction specific to the Medicine Lodge portion of the forest, which includes the Snakey Canyon and Kelly Canyon allotments. That direction included the objective to “assess opportunities to modify grazing allotment boundaries and permits to more effectively use natural barriers, change grazing patterns, adjust seasons of

use, administratively close some additional areas, etc, to further separate winter domestic sheep grazing in the Medicine Lodge portion of the subsection from bighorn sheep.” Targhee Forest Plan III-40.

57. One of the Standards and Guidelines for this particular area of the forest stated:

To better manage bighorn sheep habitat, the Kelly Canyon and Snakey Canyon winter sheep allotments in the Medicine Lodge portion of the subsection on the Dubois Ranger District, will be phased out on an opportunity basis (Process Papers L and N). In addition, the winter sheep grazing permit will be phased out on the Nicholia-Chandler S&G allotment. An opportunity is defined as a suitable or favorable time to abolish or close an allotment because of nonuse violations, term permit waivers where the permit is waived back to the government, resource protection, or permit actions resulting in cancellation of the permit. If opportunities do not arise, then efforts will be made to relocate or accommodate sheep to other areas. When all winter sheep allotments in that portion of the subsection have been vacated, they will be closed. The intent of closing these individual allotments as they become vacated is to provide an opportunity to minimize conflicts between domestic and bighorn sheep (S).

Targhee Forest Plan III-40.

58. Absent relief from this Court, domestic sheep may start grazing these allotments on November 6, again putting the South Beaverhead bighorn sheep population at risk of contact with domestic sheep and thus at risk of disease that could further decimate this small herd.

FIRST CLAIM FOR RELIEF
VIOLATION OF NATIONAL ENVIRONMENTAL POLICY ACT

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

60. This first claim for relief challenges the Forest Service’s violation of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and its implementing regulations, by renewing the Interagency Agreement with the Sheep Station in February 2017 and then authorizing the Sheep Station to graze domestic sheep on the Snakey Canyon and Kelly Canyon allotments for the 2017-2018 fall/winter season, without first completing the necessary environmental analysis of the impacts of these actions. Plaintiffs bring this claim pursuant to the

judicial review provisions of the APA, 5 U.S.C. § 706.

61. NEPA regulations require that an agency conduct the necessary environmental analysis 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). In other words, an agency cannot make any irreversible or irretrievable commitment of resources before an environmental analysis is completed.

62. The Forest Service has violated NEPA by renewing the five-year Interagency Agreement and authorizing grazing on the Snakey Canyon and Kelly Canyon allotments for the 2017-2018 fall/winter season, which could irreversibly harm the South Beaverhead bighorn population, before completing its environmental analysis assessing the impacts of that grazing.

63. Accordingly, the Forest Service's 2017 Interagency Agreement and 2017-2018 annual grazing authorizations for the Snakey Canyon and Kelly Canyon allotments on the Caribou-Targhee National Forest are arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA, and therefore are unlawful and must be set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

WHEREFORE, Plaintiffs pray for relief as set forth below.

SECOND CLAIM FOR RELIEF
VIOLATION OF NATIONAL FOREST MANAGEMENT ACT

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

65. This second claim for relief challenges the Forest Service's violation of the National Forest Management Act, 16 U.S.C. § 1600 et seq., and NMFA's implementing

regulations, by renewing the Interagency Agreement with the Sheep Station in February 2017 and then authorizing the Sheep Station to graze domestic sheep on the Snakey Canyon and Kelly Canyon allotments for the 2017-2018 fall/winter season. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

66. Under NFMA, the Forest Service must act consistently with direction in the applicable land management plan when authorizing any project or activity. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15. The Targhee Forest Plan contains direction regarding protecting biodiversity and viability of wildlife, including Forest Service Sensitive Species, and taking actions to minimize conflicts between domestic sheep and bighorn sheep on the Snakey Canyon and Kelly Canyon allotments. The Forest Service has acted inconsistently with that direction by renewing the five-year Interagency Agreement and then authorizing the Sheep Station to graze domestic sheep on those two allotments in 2017-2018, putting the South Beaverhead bighorn population at high risk of disease.

67. Accordingly, the Forest Service's 2017 Interagency Agreement and 2017-2018 annual grazing authorizations for the Snakey Canyon and Kelly Canyon allotments on the Caribou-Targhee National Forest are arbitrary, capricious, an abuse of discretion, and not in accordance with NFMA, and therefore are unlawful and must be set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare that the Forest Service's 2017 Interagency Agreement with the Sheep Station and 2017-2018 annual grazing authorizations for the Snakey Canyon and Kelly Canyon

allotments were arbitrary, capricious, an abuse of discretion, and/or violated NEPA and/or NFMA, and thus were unlawful under the judicial review standards of the APA, 5 U.S.C. § 706(2)(A);

B. Vacate and set aside the 2017 Interagency Agreement with the Sheep Station and the 2017-2018 grazing authorizations for the Snakey Canyon and Kelly Canyon allotments;

C. Enjoin the Forest Service from authorizing domestic sheep grazing on the Snakey Canyon and Kelly Canyon allotments in 2017-2018;

D. Order the Forest Service to comply with NEPA and NFMA before signing a new Interagency Agreement with the Sheep Station or issuing further grazing authorizations for the Snakey Canyon and Kelly Canyon allotments;

E. Enter such other declaratory relief, and temporary, preliminary, or permanent injunctive relief as may be prayed for hereafter by Plaintiffs;

F. Award Plaintiffs their reasonable attorney fees, costs, and litigation expenses under the Equal Access to Justice Act, and/or any other applicable provision of law; and

G. Grant such further and additional relief as the Court deems just and proper in order to remedy the violations of law alleged herein and to protect the interests of Plaintiffs, the public, and the lands at issue.

Dated: December 5, 2017

Respectfully submitted,

s/ Lauren M. Rule
Lauren M. Rule
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of December, 2017, I filed the foregoing AMENDED COMPLAINT with the Clerk of Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Christine Gealy England, Attorney for U.S. Forest Service
christtine.england@usdoj.gov

Caroline Lobdell, Attorney for Proposed Defendant-Intervenor
clobdell@wrlegal.org

Paul A. Turcke, Attorney for Proposed Defendant-Intervenor
pat@msbtlaw.com

Executed this 5th day of December, 2017 in Portland, Oregon

s/Lauren M. Rule
Lauren M. Rule