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

WESTERN WATERSHEDS PROJECT,	)	
	)	CIV. _____
Plaintiff,	)	
	)	
v.	)	
	)	<b>COMPLAINT</b>
U.S. FOREST SERVICE,	)	
	)	
Defendant.	)	
_____	)	

1. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) challenges Defendant U.S. Forest Service’s ongoing authorization of domestic sheep grazing on multiple public lands allotments within the Hells Canyon and Salmon River regions of the Payette and Nez Perce National Forests, which threatens the viability and sustainability of Rocky Mountain bighorn sheep populations, in violation of the National Forest Management Act (“NFMA”) and its implementing regulations, the Hells Canyon National Recreation Area Act (“HCNRA Act”) and its implementing regulations, and the National Environmental Policy Act (“NEPA”) and its 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 on the Payette National Forest, leading to die-offs within bighorn populations.

3. In 2005, the Chief of the Forest Service issued an administrative appeal decision acknowledging significant concerns over bighorn sheep viability due to disease contracted from domestic sheep on the Payette National Forest, and within the Hells Canyon region in particular. The Chief's decision found legal inadequacies in the Payette National Forest's management direction for domestic and bighorn sheep, and called for immediate action to prevent bighorn extirpation.

4. In response to that appeal decision, the Forest Service completed a risk analysis for the Payette National Forest just last year to assess risk of disease transmission from domestic to bighorn sheep. The analysis rated five allotments as having a "very high" or "high" risk of disease transmission: Smith Mountain and Curren Hill allotments in the Hells Canyon area, and French Creek, Bear Pete, and Marshall Mountain allotments in the Salmon River area. In addition, the analysis noted considerable risk from using certain domestic sheep trailing routes on the Payette National Forest, and from grazing the Allison-Berg allotment on the Nez Perce National Forest. Thus, the Forest Service's own study shows the need to adjust grazing to avoid significant risk of disease transmission from domestic to bighorn sheep.

5. Yet, the Forest Service continues to authorize domestic sheep grazing on these and other allotments and trailing routes, which continues to create a substantial risk of disease

transmission to bighorn sheep, thus impairing the viability and sustainability of bighorn populations in both the Hells Canyon and Salmon River areas. Moreover, the Forest Service will authorize this grazing in the coming domestic sheep grazing season without conducting a full environmental analysis to address this new information contained in the recent risk analysis and without assessing the actions necessary to achieve and maintain viable populations of bighorn sheep. Until this analysis is completed, the agency must not allow domestic sheep on these high risk allotments and trailing routes.

6. In order to prevent the Forest Service from authorizing domestic sheep grazing during 2007 in ways that will result in continued harm to bighorn sheep populations and violations of the Forest Service's duties under NFMA, NEPA, and the HCNRA Act – including imminent authorization of spring grazing in coming days or weeks – WWP seeks immediate injunctive and declaratory relief from this Court to prevent such violations of law and irreparable harm from occurring.

### **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.; the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; the HCNRA Act, 16 U.S.C. § 460gg et seq., NFMA, 16 U.S.C. § 1600 et seq.; NEPA, 42 U.S.C. § 4321 et seq.; and the Equal Access to Justice Act, 28 U.S.C. § 2214 et seq. An actual, justiciable controversy now exists between Plaintiff and Defendant, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

8. 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, Plaintiff resides in this district, and the public lands and resources in question are located within 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 (“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, and Wyoming.

11. WWP, and its staff and members, have actively participated in agency proceedings as well as litigation and other advocacy efforts concerning management of the Payette and Nez Perce National Forests, including over livestock grazing management on these forests. WWP has expressed concerns in meetings, tours and letters regarding incompatibility of domestic sheep and bighorn sheep and the risk of disease transmission on parts of the Payette and Nez Perce National Forests, including within the HCNRA, due to interactions between the two species. In particular, WWP has notified the Payette and Nez Perce National Forests about its concern over domestic sheep grazing this year on the allotments at issue in this case, including the allotments on the Payette National Forest assessed in the Forest Service’s risk analysis as well as the Allison-Berg allotment on the Nez Perce National Forest, because of risk to bighorn sheep populations.

12. 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 on the Payette and Nez Perce National Forests, including the areas at issue in this case, 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.

13. Defendant UNITED STATES FOREST SERVICE is an agency or instrumentality of the United States, and is charged with managing the public lands and resources of the Payette and Nez Perce National Forests, in accordance and compliance with federal laws and regulations.

#### **LEGAL BACKGROUND**

14. NFMA, 16 U.S.C. § 1601 et seq., is the central federal statute guiding management of the National Forests, and imposes the mandate that the National Forests be managed for multiple uses, including outdoor recreation, watershed protection, wildlife and fish resources, and wilderness. NFMA requires all National Forests to prepare detailed land and resource management plans (“Forest Plans”), and sets requirements for those plans. 16 U.S.C. § 1604. All actions taken by the Forest Service, including issuance of permits, plans, or contracts for the use of Forest Service land, must be consistent with Forest Plans. *Id.* at § 1604(i); 36 C.F.R. § 219.8.

15. Among other requirements under NFMA, Forest Plans must “provide for diversity of plant and animal communities based on the suitability and capability of the specific land area” consistent with multiple use. *Id.* at § 1604(g)(3)(B). To implement this requirement, the NFMA regulations that govern the original and revised Payette Forest Plans as well as the Nez Perce Forest Plan, require that:

Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.

36 C.F.R. § 219.19 (1999).

16. In 1975, Congress established the Hells Canyon National Recreation Area (“HCNRA”), providing that the lands in the HCNRA shall be administered to preserve the natural beauty, and historic and archeological values of the Hells Canyon region, and to enhance the recreational and ecologic values and public enjoyment of the area. 16 U.S.C. § 460gg(a). The HCNRA Act requires the Forest Service to administer the HCNRA in a manner compatible with certain objectives, including the following: “conservation of scenic, wilderness, cultural, scientific, and other values contributing to public benefit” as well as “protection and maintenance of fish and wildlife habitat.” *Id.* § 460gg-4. The Act allows for continued use of natural resources on these lands, including grazing, but only to the extent those uses “**are compatible with the provisions of**” the Act, including the above-mentioned conservation values. *Id.* (emphasis added).

17. The regulations implementing the HCNRA Act establish standards and guidelines for managing the area in order to “prescribe the scope and extent of certain activities that may occur in the HCNRA. These standards and guidelines are consistent with the overall objective of administering the HCNRA to preserve its natural beauty, historical and archaeological values and enhance its recreational and ecological values and the public’s enjoyment.”

36 C.F.R. § 292.42.

18. The standards and guidelines that apply to livestock grazing include the following:

(a) Grazing may be authorized only on rangeland determined by the authorized officer to be suitable for grazing and meeting or moving towards satisfactory condition and meeting the conditions described in paragraph (b) of this section.

(b) Where domestic livestock grazing is incompatible with the protection, restoration, or maintenance of fish and wildlife or their habitats; public outdoor recreation; conservation of scenic, wilderness, and scientific values . . . , the livestock use shall be modified as necessary to eliminate or avoid the incompatibility. In the event an incompatibility persists after the modification or modification is not feasible, the livestock use shall be terminated.

(c) Range improvements must be designed and located to minimize their impact on scenic, cultural, fish and wildlife, and other resources in the HCNRA.

*Id.* § 292.48. The term “suitable” under paragraph (a) above is defined in the regulations as “appropriate to apply certain resource management practices to a particular area of land, as determined by an ecological and environmental analysis of the land.” *Id.* § 292.41.

19. 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.

20. 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.

21. 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.

## **FACTUAL BACKGROUND**

### **Bighorn Sheep on the Payette and Nez Perce National Forests**

22. Three subspecies of bighorn sheep are native to North America—California, desert, and Rocky Mountain. Rocky Mountain bighorn is the subspecies native to the Payette and Nez Perce National Forests in Idaho, including the Hells Canyon and Salmon River regions, and thus is the subspecies at issue here.

23. 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.

24. 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.

25. Currently, two geographic areas on the Payette National Forest are occupied by bighorn sheep metapopulations: Hells Canyon and the Salmon River Mountains. Each of these metapopulations contains several local populations.

26. 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.

27. 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.

28. 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 on the Payette National Forest, along the Middle Fork Salmon River drainage just east of the Payette National Forest, and along the north side of the Main Salmon River in the Nez Perce National Forest just north of the Payette National Forest.

29. 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**

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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. Five of these die-offs were caused by pneumonia disease

outbreaks linked to domestic sheep. A sixth pneumonia outbreak was linked to contact with a domestic goat. These die-offs eliminated one entire bighorn population, and significantly reduced the size of other populations.

44. 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.

45. 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. This bighorn die-off, the largest within the Hells Canyon area, is linked to contact with a single domestic goat, which was discovered to carry the same strain of *Pasteurella* bacteria fatal to several of the bighorns. 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.

46. 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.

47. 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.” *Risk Analysis of Disease Transmission Between Domestic Sheep and Bighorn Sheep on the Payette National Forest, Payette National Forest (2006) (hereafter “Risk Analysis”)*.

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

48. 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.

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

50. 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.

51. 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).

52. 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").

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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.*

61. 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.

62. 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.

63. 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.

64. 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.

65. 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.*

66. 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.

67. 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.

68. 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.

69. 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.

70. 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, particularly

within the Marshall Mountain allotment as well as between that allotment and the Main Salmon River.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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.

76. 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.

77. 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.

78. The Forest Service has indicated that, in the future, it intends to supplement the EIS for the revised Payette Forest Plan and then amend the Plan to address the issue of risk to bighorns from domestic sheep using the Risk Analysis and Science Panel information; and then potentially adjust grazing allotment management plans based on the results of the first two steps. However, none of these steps will be completed prior to this year's grazing season. This year's grazing season will mark the third consecutive year during which the Payette National Forest has authorized domestic sheep grazing without any meaningful changes to address bighorn viability since the Forest Service Chief issued his appeal decision.

#### **Current Risk to Bighorns From 2007 Grazing**

79. The Payette National Forest sets specific management direction for domestic sheep grazing on individual allotments of national forest land through the issuance of term grazing permits and allotment management plans ("AMPs"), followed by annual operating instructions ("AOIs"). The permits are usually for ten years, while AMPs often are not revised for decades. AOIs convey the annual instructions to the individual livestock permittee that are responsive to issues or conditions that may or may not have been anticipated during the longer-range grazing permit or allotment management plan process. The AOIs, when issued, become part of the term grazing permit and govern the permittee's grazing operations for the year at issue. Each of these agency decisions must comply with the Payette Forest Plan as well as other laws and regulations.

80. According to statements made at various public and private meetings in recent weeks, WWP is informed and believes, and alleges thereon that the Forest Service intends to



continue authorizing domestic sheep grazing during 2007 on various allotments in the Hells Canyon and Salmon River areas of the Payette National Forest, as identified above and below, as well as on the Allison-Berg allotment on the Nez Perce National Forest, that will facilitate disease transmission to bighorn sheep and further impair the viability of bighorn populations.

81. Specifically, the Hells Canyon area within the Payette National Forest contains four domestic sheep allotments. The two allotments at issue here are the Smith Mountain and Curren Hill allotments, which are on the west side of this grouping of allotments. The Smith Mountain allotment abuts the Snake River, and part of that allotment falls within the boundaries of the HCNRA. Thus, management of that allotment must comply with the HCNRA Act.

82. 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.

83. 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.

84. 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.

85. 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.

86. 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.

87. 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.

88. 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 on the Smith Mountain and Curren Hill allotments. 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.

89. 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 over a thousand sheep can not always see when a bighorn sheep comes into contact with a domestic sheep within the rugged terrain of these allotments.

90. Furthermore, domestic sheep often stray from their herds. It is inevitable that some of the thousand plus 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.

91. 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. Yet as alleged above, based on statements made by the Forest Service recently, the Forest Service will continue to authorize grazing on these

allotments and use of this sheep driveway for the 2007 grazing season. This authorization will occur despite the lack of any environmental analysis addressing the impacts of domestic sheep grazing to bighorns in light of the new information from the Forest Service Chief's appeal decision, the Risk Analysis, and the Science Panel Discussion.

92. 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.

93. 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.

94. 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.

95. 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.

96. 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.

97. 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.

98. 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.

99. 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.

100. One domestic sheep allotment on the Nez Perce National Forest is also at issue here—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 allotments on the Payette and adjacent to a local bighorn population.

101. Although no telemetry data exists for the Salmon River bighorn populations, their winter ranges have been mapped based on winter aerial surveys. Biologists have mapped the winter range of the Main Salmon River bighorn herds on the north side of the Main Salmon River. The Shorts Bar, Hershey-Lava, French Creek, Bear Pete, and Marshall Mountain allotments occur on the opposite side of the river on the Payette National Forest just four air miles from this bighorn population. This same bighorn winter range is directly adjacent to the Allison-Berg allotment on the Nez Perce National Forest. The Allison-Berg allotment contains an extensive amount of suitable bighorn habitat.

102. The winter range of the South Fork Salmon River bighorn herd is located about eight miles east of the Marshall Mountain, Victor-Loon, North Fork Lick Creek, and Lake Fork allotments on the Payette Forest.

103. Because summer range is generally larger than winter range for bighorns, biologists expect that the use of summer habitat by these herds is greater than that shown as their winter range. In fact, two sightings of bighorns occurred within this group of allotments in the summer of 2005 and an additional sighting occurred in 2006. In addition, telemetry locations of animals from the Hells Canyon metapopulation occurred just a few miles west of the Shorts Bar allotment, indicating the potential for connectivity between the Hells Canyon and Salmon River Mountains metapopulations.

104. 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. This allotment is adjacent to bighorn winter range, and, unlike the allotments on the Payette National Forest, is grazed by domestic sheep in winter. The sheep on this allotment are loosely herded, allowing the band to spread out across large areas of the allotment and making contact with bighorn sheep more likely.

105. 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.

106. Again, WWP alleges that the Forest Service will authorize grazing on all or most of these allotments in the Salmon River Mountains, as well as use of the existing trailing routes, for the 2007 grazing season. And as with the Hells Canyon allotments, the Forest Service intends to authorize this grazing prior to conducting any environmental analysis addressing risk to bighorns as revealed in the Forest Service Chief's appeal decision, the Risk Analysis, and the Science Panel Discussion. If contact occurs between domestic sheep grazing these allotments and bighorn sheep, it is likely to cause transmission of disease to one or more of the local bighorn populations, which would impair the viability of those populations as well as other nearby populations due to interactions between local herds.

107. Such 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 viability of existing bighorn populations, and prevent further populations from establishing in high quality habitat on the Payette and Nez Perce National Forests.

109. Immediate declaratory and injunctive relief is necessary to prevent domestic sheep grazing on these "very high risk" and "high risk" allotments on the Payette National Forest (i.e. Smith Mountain, Curren Hill, French Creek, Bear Pete, Marshall Mountain), as well as on the Allison-Berg allotment on the Nez Perce National Forest, and to prevent use of the Salmon River Driveway and the livestock trailing routes along the south side of the Main Salmon River,



until the agency has completed a full environmental analysis that insures it will achieve and maintain viable populations of bighorn sheep throughout the forests.

110. Absent such declaratory and injunctive relief, irreparable and irreversible harm to bighorn sheep populations may occur, injuring Plaintiff WWP and its staff and members, as well as the public. Plaintiff has no adequate remedy at law in the form of monetary damages or relief.

Plaintiff realleges and incorporates by reference the preceding paragraphs

**FIRST CLAIM FOR RELIEF**  
**VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT**

111. This First Claim for Relief challenges the Forest Service's violations of the National Forest Management Act, 16 U.S.C. § 1601 et seq., and NFMA's implementing regulations, in authorizing domestic sheep grazing during 2007 on the allotments identified above in a manner that will foreseeably impair the viability and sustainability of bighorn sheep. Such violations include, but are not limited to:

- a. Violating NFMA's requirement to act consistently with Forest Plans by authorizing grazing practices for the 2007 grazing season that will violate Plan directives, including those related to wildlife and bighorn sheep; and
- b. Violating the regulations' requirement to ensure the viability and sustainability of populations of native species by authorizing grazing that will impair the ability of bighorn sheep populations to achieve or maintain a viable population level.

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

113. These violations of NFMA 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 Plaintiff's rights and interests.

WHEREFORE, Plaintiff prays for relief as set forth below.

**SECOND CLAIM FOR RELIEF**  
**VIOLATIONS OF THE HCNRA ACT**

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

115. This Second Claim for Relief challenges the Forest Service's violations of the HCNRA Act, 16 U.S.C. § 460gg et seq, and its implementing regulations in authorizing grazing in and near the HCNRA for the 2007 grazing season that will foreseeably harm bighorn sheep and their habitat within the HCNRA. Such violations include, but are not limited to:

a. Authorizing livestock grazing that is incompatible with the objectives of the Act, including the protection and maintenance of fish and wildlife and their habitat; and

b. Authorizing livestock grazing without determining through an environmental analysis that such grazing is suitable under the HCNRA Act and its implementing regulations.

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

117. These violations of the HCNRA Act 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 Plaintiff's rights and interests.

WHEREFORE, Plaintiff prays for relief as set forth below.

**THIRD CLAIM FOR RELIEF**  
**VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT**

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

119. This Third Claim for Relief challenges the Forest Service's violation of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and NEPA's implementing regulations, in authorizing domestic sheep grazing for the 2007 season without first conducting the necessary

environmental analysis of the impacts of this action in an EA or EIS in light of the significant new information discussed herein on disease risk, movement of bighorn sheep, and the need to avoid interactions between the two species.

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

121. This violation of NEPA and implementing regulations is 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 Plaintiff's rights and interests.

WHEREFORE, Plaintiff prays for relief as set forth below.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court grant it the following relief

A. Issue immediate injunctive relief, including temporary restraining order(s) and/or preliminary injunction(s), to prohibit the Forest Service from authorization domestic sheep grazing on the above-identified allotments and trailing routes, or any of them, during 2007;

B. Issue declaratory relief holding that the Forest Service's planned grazing authorizations for 2007 on the above-identified allotments and trailing routes, or any of them, violate NFMA, NEPA, and/or the HCNRA Act, and are arbitrary, capricious, an abuse of discretion, and/or contrary to law.

C. Award Plaintiff its 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 Plaintiff with relief and protect the public interest.

Dated this 30<sup>th</sup> day of March, 2007.

Respectfully submitted,

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

Attorney for Plaintiff Western Watersheds Project