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

WESTERN WATERSHEDS PROJECT,)
WILDEARTH GUARDIANS, and CENTER)
FOR BIOLOGICAL DIVERSITY,)
Plaintiffs,)
v.)
U.S. SHEEP EXPERIMENT STATION, and)
USDA AGRICULTURAL RESEARCH)
SERVICE,)
Defendants.)

No. 01:19-cv-065-REB

**PLAINTIFFS’ SEPARATE
STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

1. The U.S. Sheep Experiment Station (“Sheep Station”) is run by the USDA Agricultural Research Service (“ARS”). AR31011. It supports research using domestic sheep owned by the University of Idaho (“UI”) under a Memorandum of Understanding (“MOU”) with UI. AR 52039–46; AR 52892.

2. In July 2017, ARS issued its first-ever Final Environmental Impact Statement (FEIS) for the Sheep Station, entitled “U.S. Sheep Experiment Station Grazing and Associated Activities Project.” AR 31005–448. The FEIS identified modified alternative 1 as the “Preferred Alternative,” to “continue historical and ongoing grazing and associated activities necessary to achieve the mission of the station.” AR 31009.

3. On July 23, 2018, ARS issued a Record of Decision (“ROD”) adopting FEIS modified alternative 1, with “minor adjustments.” AR037013–70. ROD Appendix C was an “Errata” to the FEIS, which *inter alia* deleted language from FEIS page 161 regarding sheep grazing management requirements in sage-grouse habitat. AR 37069–70. The same day, ARS issued a Supplemental Information Report (SIR) that determined no supplemental NEPA analysis was required for the ROD. AR 37008–12.

4. The FEIS identified Sheep Station properties owned by ARS as the Headquarters, Humphrey, and Henninger ranches, and the East and West Summer Ranges, together totaling some 48,330 acres. AR 31011, 31033–36, 31271 (FEIS Map 2).

5. The FEIS identified other federal agency allotments to be used under the Preferred Alternative as the Mud Lake Feedlot on Department of Energy (DOE) land, and the Snakey Canyon, Kelly Canyon, East Beaver, and Meyers Creek Forest Service allotments (“non-ARS allotments”). *Id.* The FEIS cited agreements with the Forest Service and a 1963 MOU with DOE to authorize Sheep Station grazing on these non-ARS allotments. AR 31036–38.

6. The Sheep Station previously used the BLM's Bernice allotment, but BLM ended sheep grazing there in 2012 citing the risk to bighorn sheep. *See* AR01704, 1528–29.

7. FEIS modified alternative 1 included Sheep Station grazing in all the non-ARS allotments. AR 31012, 31079–80. The FEIS showed that sheep would utilize 3,625 animal unit months (“AUMs”) on the ARS properties, and 712 AUMs on the non-ARS allotments. AR 31050. The FEIS identified number of sheep and periods of grazing each year on the Forest Service allotments including on Meyers Creek, East Beaver Creek, Snakey Canyon, and Kelly Canyon. AR 31037. The FEIS described the Mud Lake Feedlot as “a winter feeding area” with 3,000 animals being trucked in/out each year. AR 31051.

8. Unlike the ARS properties, the FEIS never disclosed the geographic size of those non-ARS allotments. *See* AR 31011, 31033–36. The Administrative Record contains an old (undated) map, appearing to show Meyers Creek as 3,592 acres, East Beaver Creek (called Miners Creek) at 6,794 acres, Snakey-Kelly Canyons (called Winter Range) at 13,000 acres, and the Mud Lake (called Winter) Feedlot at 700 acres. AR 1404. Together, these total 24,086 acres, or about 50% the size of the ARS Sheep Station properties.

9. The FEIS did not assess direct or indirect effects of Sheep Station grazing on the non-ARS allotments. *See* AR 31101–19. It “analyze[d] the direct/indirect effects of the proposed actions on ARS properties only.” AR 31102. The FEIS stated: “Separate NEPA analyses were prepared and decisions were made by the respective agencies to authorize sheep grazing on the lands they administer. It is neither required nor appropriate that the Sheep Station revisit these decisions.” *Id.* The FEIS did not support this claim with any citation to other agency NEPA analysis or decisions. *Id.*; *see* AR 31005–448 (entire FEIS).

10. The Administrative Record does not contain any NEPA analysis for the Mud Lake Feedlot. It only contains the 1963 MOU, which is not a NEPA document and its only environmental language were two sentences on erosion and weed control. AR 1769–76. The MOU was modified in 1978 but with no environmental analysis. *Id.*

11. For the Forest Service allotments, the FEIS cited two agreements between ARS and Forest Service to authorize Sheep Station activities, including grazing and use of the Centennial Mountains portion of the Continental Divide National Scenic Trail. AR 31037. None of the ARS/Forest Service agreements in the Administrative Record constitutes a NEPA analysis. *See* AR 1777–88, 1834–39, 1880–83, 36758–62, 36999–37001.

12. Although not identified or discussed in the body of the FEIS, its References section cited a 2007 Forest Service “Decision Memo: Meyers/Ice House Creek Range Analysis.” AR 31433. That is a 7-page decision to renew grazing authorizations on Meyers Creek and Ice House Creek allotments using a “categorical exclusion” (“CE”) from NEPA analysis, under Section 339 of the 2005 Consolidated Appropriations Bill, Pub. L. 108-447. AR 1840–47. It did not provide NEPA analysis of a reasonable range of alternatives, or of direct, indirect and cumulative impacts of the proposed actions. *Id.*

13. In response to Plaintiffs’ request that the Administrative Record be supplemented with any other NEPA documents that the FEIS relied upon, the Sheep Station produced a 1996 Environmental Assessment (EA) for grazing allotments including East Beaver Creek, and a 1998 EA for the Beaver Creek Drainage Vegetation Management Plan. *See* AR Section ZB. These EAs were two decades old at the time the FEIS was finalized. AR 52047–107; AR 52108–261. The FEIS did not disclose these EAs nor analyze whether they remain valid and adequate to

justify relying on them in light of potentially significant new circumstances or information since they were issued. *See* AR 31005–31448 (entire FEIS).

14. The FEIS did not cite, and the Administrative Record does not contain, any current NEPA analysis for the Forest Service’s Snakey and Kelly Canyons allotments. In November 2017, U.S. Magistrate Judge Dale of this Court issued a temporary restraining order enjoining sheep grazing on the Snakey-Kelly Canyons allotments due to conflicts with bighorn sheep, and noted the lack of any valid NEPA analysis for those allotments. *See W. Watersheds Proj. v. U.S. Forest Serv.*, No. 1:17-CV-434-CWD, 2017 WL 5571574 (D. Idaho Nov. 20, 2017). A June 2018 settlement in that case provided that the allotments will not be reopened to sheep grazing until the Forest Service conducts new NEPA analysis. *Id.* ECF No. 44-1.

15. The SIR issued with the ROD in July 2018 did not discuss Judge Dale’s rulings or the settlement, but acknowledged the Forest Service June 2018 decision “to not authorize any domestic grazing or trailing on the Snakey-Kelly allotments until a new NEPA analysis is completed.” AR 37008–09. The SIR stated that the Sheep Station herd “will be reduced” as a result, and sheep normally scheduled to graze them would be maintained at Headquarters or “placed in the care of the University of Idaho for temporary re-location.” *Id.* The SIR stated that these “interim actions do not exceed the magnitude of use of the environmental effects that were considered in the analysis for the headquarters unit.” *Id.* The SIR did not otherwise evaluate how closure of the Snakey-Kelly allotments would impact Sheep Station grazing practices or research, *id.*, despite the FEIS contention that closing Snakey-Kelly under modified alternative 5 would have a “major impact” on the Sheep Station research program. *Id.*; *see* AR 31079–89.

16. The ROD stated that FEIS modified alternative 5 (which would close Snakey-Kelly) would reduce sheep numbers by 40%, and have a “major impact” on the Sheep Station

research program. AR 37013–23. Citing the SIR, the ROD stated that, under the selected modified alternative 1, grazing on Snakey-Kelly “will not be utilized (i.e., no sheep grazing will occur) until the Forest Service authorizes use for grazing.” AR 37018.

17. The Sheep Station lands and allotments are located in and around the Centennial Mountains, which run east-west along the Idaho/Montana border, and connect Yellowstone National Park—and the Greater Yellowstone Ecosystem (GYE) around it—with large wilderness and roadless areas in Idaho and Montana. *See* AR 31026, 31104–113, 31123–159, 31180–85 (FEIS descriptions) & 31270–71 (FEIS Maps 1 & 2). The Centennials are an important connectivity corridor for many imperiled wildlife species, including grizzly bear, Rocky Mountain bighorn sheep, Canadian lynx, wolverine, gray wolves, and others. *Id.*

18. In 2007, Plaintiffs filed litigation in this Court challenging the Sheep Station’s decades-long refusal to comply with NEPA and examine the impact of Sheep Station domestic sheep grazing and other actions on wildlife. AR 30602. Settlement of that case required completion of a NEPA analysis by November 28, 2008. AR 30650.

19. The Sheep Station did not meet that deadline, but issued an “interim” decision allowing its sheep grazing to continue until 2010 without NEPA analysis. AR 00008, 31011.

20. In 2010, the Sheep Station issued a Decision Notice in response to the relisting of GYE grizzly bear under the Endangered Species Act (ESA), which halted sheep grazing on the Meyers Creek allotment and East Summer Range pending ESA consultation and completion of an EIS. AR 00373–74. Thus, the last time Meyers Creek allotment and the East Summer Range were used by the Sheep Station, prior to issuance of the FEIS, was in 2008. *Id.*; AR 01572.

21. Settlements in litigation challenging Biological Opinions over impacts of Sheep Station grazing on grizzly bears also temporarily ended grazing on the East and West Summer

Ranges and Meyers Creek allotments in 2013, *see Cottonwood Env'tl. Law Ctr. v. United States Fish & Wildlife Serv.*, No. 4:13-cv-235-BLW (D. Idaho May 17, 2013), ECF No. 31, and extended that prohibition after UI declined to allow the Sheep Station to graze on those lands until the legal and environmental issues were resolved, *see Cottonwood Env'tl. Law Ctr. v. U.S. Sheep Experiment Station*, No. 9:14-cv-00192-DLC (D. Mont. June 23, 2014), ECF No. 55-1.

22. In July 2011, the Sheep Station issued a Draft EIS (DEIS), AR 00403, but after BLM determined in 2012 that it would not renew sheep grazing authorization on the Bernice allotment, the Sheep Station cited that “changed circumstance” to initiate a “supplemental DEIS” process in early 2013. *See* AR 1704, 1528–29. Eventually, in March 2016, the Sheep Station issued a “Revised DEIS” for public comment. AR 30707.

23. Plaintiffs submitted extensive comments throughout the EIS process. *See, e.g.*, AR 20864, 32349, 32411, 35237, 38298. Plaintiffs’ comments provided substantial science and emphasized that the EIS must fully analyze adverse impacts of Sheep Station grazing on grizzly bear, bighorn sheep, sage-grouse and other wildlife, and to evaluate a full range of alternatives, including ceasing Sheep Station grazing to protect wildlife and other environmental values. *Id.*

24. The FEIS and ROD dismissed alternatives that would reduce or eliminate sheep grazing in wildlife habitats, asserting they would impair the Sheep Station’s ability to conduct research. AR 31011–13, 31044–46, 31079–92 (FEIS); AR 37017–21 (ROD).

25. Yet, prior to finalization of the FEIS, the Sheep Station had not grazed on Meyers Creek or the East Summer Range since 2008, and had not grazed the West Summer Range since 2014; and before the ROD was issued, the Sheep Station lost the ability to graze the Snakey-Kelly allotments. *See supra* ¶¶ 4–15, 20–21.

26. Nonetheless, the Sheep Station continued to maintain a herd within or above the “ideal” size, which ranges from 1500 to 3000 sheep depending on research needs. AR 52892. In 2006, the herd had 2658 sheep and in 2019 it was predicted to have 2400 sheep— with larger fluctuations up and down in the intervening years—and any decreases in herd size were attributed to “financial challenges” at the Sheep Station, not an inability to perform valuable research without specific allotments. *Id.*; AR 30695; Todd Decl. Ex. A.

27. North America has lost over ninety percent of its bighorn sheep and most remaining herds are small and vulnerable. AR 30125, 30135. In part, this is because bighorns are susceptible to respiratory disease caused by pathogens spread by domestic sheep. AR 29695.

28. Pathogens transmission from domestic sheep to bighorns can trigger large-scale pneumonia die-offs within bighorn populations and poor lamb survival for many years. AR 31153–54. The risk of disease transmission is high because these species seek each other out in the wild. AR 28159. Direct contact is not necessary to cause a die-off, and studies show that some potential die-off-causing diseases can be transmitted through the air. *See* AR 31154.

29. This risk is exacerbated because domestic sheep frequently stray from their band even under the “best management practices” (BMPs) utilized by the Sheep Station, as demonstrated by the numerous times the Sheep Station has lost track of sheep while utilizing the same BMPs. *See* AR 49524 (ten sheep lost in 2012 on West Summer Range after “very thorough search,” and thirteen sheep were lost there in 2010); AR 02165 (“loss of domestic sheep from the Bernice Allotment is an annual event”); AR 02196 (in 2009, at least twenty-four stray domestic sheep remained on Bernice Allotment); AR 31134 (in 2007, seven sheep were killed in the West Summer Range, their causes of death could not be determined, and corpses were only discovered because herders returned to the area after the rest of the herd left).

30. Separating bighorn and domestic sheep is also difficult because bighorn frequently roam many miles outside of their home range on “forays.” AR 31154. These can stretch for at least 21.75 miles, *id.*, and, because of these forays, studies show that bighorn and domestic sheep should be kept 12 to 25 miles apart to prevent disease transmission. AR 01672.

31. The Lionhead herd of bighorn sheep is recognized by the Idaho Department of Fish and Game as a small herd with a high value that is less than 1.5 miles from the Sheep Station’s East Summer Range, less than 3 miles from the Meyers Creek allotment, and less than 9 miles from the West Summer Range. AR 20875, 31156. The FEIS’s map shows this herd as being right next to the Ranges, but—without any evidence—claims there are over 20 miles between this herd and their grazing lands. AR 31155.

32. The Hilgard bighorn herd is located in Idaho and Montana, but is called the Lionhead herd in Montana. AR 31159, 29380. It is not shown on the FEIS map, AR 31156, but it is 10–11 miles from the East Summer Range on other maps in the record. *See* AR 27208. The Hilgard/Lionhead herd is near other Montanan bighorn herds and an infection could spread throughout the region. AR 27208, 29261. The Hilgard/Lionhead herd experienced die-offs in 1987 and 1997, with the 1997 die-off hitting the bighorn near Henry’s Lake particularly hard. AR 29381. This led Montana to invest heavily by transplanting sheep to the area. *Id.*

33. The Greater Yellowstone Ecosystem (GYE) contains one of the only remaining grizzly populations in the continental United States with a population of over 100 grizzlies. AR 36566. The GYE grizzly is listed as threatened under the ESA because of the isolation and lack of connectivity between it and other grizzly bear populations. *See Crow Indian Tribe v. United States*, 343 F. Supp. 3d 999, 1014–21 (D. Mont. 2018).

34. For long-term survival, GYE grizzlies must be able to intermix with other grizzly populations to maintain genetic diversity. AR 30634–35. The Centennial Mountains are an important wildlife corridor for GYE grizzlies to spread towards other grizzly populations. AR 2553–55, 20655. However, Sheep Station lands and allotments occupy the center of this vital corridor, and research suggests that because grizzlies are far less frequently found in the western half of the Centennials, there may be a bottleneck inhibiting grizzly movement past the Sheep Station. AR 27554–56.

35. The FEIS and ROD approved Sheep Station use of the Meyers Creek allotment inside the Grizzly Primary Conservation Area, AR 36585, even though a 2012 Biological Opinion from U.S. Fish and Wildlife Service found Sheep Station use of Meyers Creek and East Summer Range was “likely to adversely affect” the grizzly bear and recommended that the Sheep Station find alternatives to the Summer Ranges and Meyers Creek. AR 27967, 29992.

36. BLM also submitted comments urging the Sheep Station to comply with Forest Service policies protecting grizzlies by ending grazing in the Summer Ranges, Humphrey ranch, Henninger ranch, and the East Beaver and Meyers Creek allotments. AR 20626.

37. Greater sage-grouse populations have been decimated since monitoring began in the 1960s. AR 31161. Headquarters, Humphrey ranch, Henninger ranch, Mud Lake Feedlot, and parts of the Snakey-Kelly and East Beaver allotments are located in priority sage-grouse habitats identified by state and federal agencies. AR 31164–70. These lands contain breeding sites (“leks”) and associated pre-nesting, nesting, and brood-rearing habitats. *Id.* Headquarters ranch is part of a migration corridor in priority sage-grouse habitat. AR 31163, 36517. The majority of the BLM land surrounding Headquarters ranch is also priority sage-grouse habitat, AR 31170.

38. Fences pose a hazard to sage-grouse, particularly near leks and corridors, as they can promote spread of invasive species, provide raptor perches, and cause collision deaths. AR 31165–56, 27671. The FEIS stated most Sheep Station fences are at least .5 miles from known leks, AR 31171, but most leks appear to be within .5 miles of fences. *Compare* AR 31169 to AR 31274.

39. In the Errata attached to the ROD, the Sheep Station removed a protection that required sheep grazing on the Headquarters ranch to avoid leks, nesting areas, and early brood-rearing areas during the lekking, nesting, and brooding seasons. AR 37069–70.

40. An independent analysis of Sheep Station research was prepared in 2015 by Dunrovin Ranch and Research. AR 52893–934. It found, *inter alia*, that the Sheep Station in the prior decade and a half published only three papers that dealt with topics where high elevation pastures were essential, all of which could have been conducted elsewhere. AR 52896.

41. In 2014, Agriculture Secretary Vilsack informed Congress of USDA’s “plans to close [the Sheep Station] and reprogram the associated funding,” explaining that a “productive research program [there] is no longer viable or sustainable,” and other research locations could continue the Sheep Station’s mission. AR 30687. USDA 2018 and 2019 budgets also proposed defunding the Sheep Station. *See* <https://www.obpa.usda.gov/18arsexnotes2018.pdf>; <https://www.obpa.usda.gov/18ars2019notes.pdf>.

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Respectfully submitted,

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