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Appeal # 0704-12-0048-A251

#07-04-12-0001-A251

UNITED STATES DEPARTMENT OF THE AGRICULTURE
UNITED STATES FOREST SERVICE
FOREST SUPERVISOR

SHIRTS BROTHERS SHEEP, Appellant, vs. DISTRICT RANGER FOR THE COUNCIL RANGER DISTRICT, Respondent.	Appeal No. _____

NOTICE OF APPEAL and REQUEST FOR PARTIAL STAY FROM THE DISTRICT RANGER'S DECISION DATED MAY 11, 2007, PURSUANT TO 36 C.F.R. 251, SUBPART C.

REVIEWING OFFICER: Forest Supervisor
Payette National Forest
800 West Lakeside Avenue
McCall, Idaho 83638

DECIDING OFFICER: District Ranger
Council Ranger District
P.O. Box 567
Council, Idaho 83612

ORIGINAL

36 C.F.R. 251.90(b)(1):
APPELLANT'S NAME, MAILING ADDRESS AND DAYTIME PHONE NUMBER

Shirts Brothers Sheep
Attn: Ronald W. Shirts
1839 Weiser River Road
Weiser, Idaho 83672
208-549-0391

(Hereinafter referred to as "*Shirts Brothers Sheep*" or as "Appellant")

36 C.F.R. 251.90(b)(2) & (b)(3): WRITTEN INSTRUMENT and DECISION

On May 11, 2007, a grazing decision[1] was issued by the Respondent modifying the Appellant's Grazing Permit for the 2007 grazing season ("May 11th Decision"). See Exhibit "A". This May 11th Decision, among other things, prohibited any livestock use in "*the portion of the Smith Mountain S&G Allotment that lies within the Hells Canyon National Recreation Area (HCNRA)*" and also prohibited any livestock use in "*the following 6th Order Hydrological Units: Deep Creek, Kinney Creek, McGraw Creek, Herman Creek, Indian Creek, Bear Creek, and Upper Rapid River*". Exhibit "A", p. 2. This May 11th Decision noted that the "*area not authorized for use is within the Deep Creek, Echols Butte, Snake River/Indian Creek, and the north & west portions of the Smith Mountain pastures.*" Exhibit "A", p. 2.[2]

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[1] This "grazing decision" is inclusive of the "Term Permit Modification #1" and the "2007 Annual Operating Instructions". See Exhibit "A".

[2] The May 11th Decision references another permit modification dated 4/11/07 (sic.) ("April 5th Decision"). The May 11th Decision states that it "*supercede(s)*" the April 5th Decision. Exhibit "A", p. 2. Based thereon, *Shirts Brothers Sheep* does not find any reason to appeal the April 5th Decision, but if the U.S. Forest Service interprets the April 5th Decision as being a viable decision-document in any respect, then *Shirts Brothers Sheep* appeals the April 5th Decision for the reasons stated herein.

36 C.F.R. 251.90(b)(4): APPELLANT IS ADVERSELY AFFECTED

Appellant files this Notice of Appeal to the Decision dated May 11, 2007 ("Term Permit Modification #1" and "2007 Annual Operating Instructions"), pursuant to 36 C.F.R. 251.82(a), 251.82(a)(2) and 251.82(b) because the Decision adversely impacts the Appellant's Grazing Permit and Appellant's 2007 grazing use. See Exhibit "B" (which is Appellant's Grazing Permit). Appellant is dependent upon its Grazing Permit to provide an annual stable forage source for its ewe/lambs. The modification has and will continue to adversely impact the stability of this annual forage source. In fact, the consequence of this modification is that *Shirts Brothers Sheep* has no home for 2 bands of its sheep, in the following respects:

* 700 sheep between *at least* May 16, 2007 and June 17, 2007, which should otherwise be authorized in the Surdam Allotment;

* 1,200 sheep between May 16, 2007 and June 5, 2007, which should otherwise be authorize be in the Smith Mountain Allotment; and,

* 1,900 sheep between June 18, 2007 and October 15, 2007, which should otherwise be authorized in the Smith Mountain Allotment.

See also Exhibit "A", p. 10 (wherein the Decision provides no authorization for the 15 head of horses, though the Decision does authorize a pack string). The modification also has and will continue to adversely impact base property values and operating costs, as well as the social, cultural, economical, and other resources associated with the people and land involved.

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36 C.F.R. 251.90(b)(5): STATEMENT OF FACTS

I. Background of *Shirts Brothers Sheep.*

Shirts Brothers Sheep is currently a partnership between two brothers, i.e. Ronald William (Ron) Shirts and John Timothy (Tim) Shirts. *Ronald W. Shirts Decl.* ¶ 1 *(Declaration of Ronald W. Shirts* is attached hereto in Exhibit "C").

Ronald W. Shirts and John T. Shirts are part of a large family of seven boys and three girls. Their parents owned and operated their own ewe/lamb operation. While their parents once owned and operated a domestic ewe/lamb ranch in their younger years, *Shirts Brothers Sheep* independently began their own domestic sheep operations in about 1977. Neither Ronald W. Shirts nor John T. Shirts inherited any part of this sheep operation from their parents or any other family member. Both only inherited from their parents and other family members the love for animal husbandry, the skillful management of natural resources, and dedication to hard work. *Ronald W. Shirts Decl.* ¶ 2.

Ronald W. Shirts began helping his brothers run their ewe/lamb operation when he was only 13 years old, about 3 years after *Shirts Brothers Sheep* purchased their first sheep around 1977. That early experience with *Shirts Brothers Sheep* taught at least Ronald W. Shirts invaluable lessons about every aspect of running a ewe/lamb operation, including aspects of animal health, husbandry, nutrition, and reproduction. During those early years, Ronald W. Shirts gained much experience by working as a herder caring for several bands of sheep throughout the year, including the period of time that the bands grazed within the Payette National Forest under Grazing Permits administered by the U.S. Forest Service. *Ronald W. Shirts Decl.* ¶ 3.

II. *Shirts Brothers Sheep's* ewe-lamb operation.

Shirts Brothers Sheep operates a year-long, 365-day, ewe-lamb operation. This means that *Shirts Brothers Sheep* maintains a base herd of ewes that (after culling) are annually breed to raise lambs which are marketed each fall. Plans are made at least 1-year in advance to sustain this ewe-lamb operation. *Ronald W. Shirts Decl.* ¶ 6.

This ewe-lamb operation is dependant upon the use of the *National Forest System lands* within in the Payette National Forest to provide an annual forage base for its ewes/lambs between May 16 and October 15. See Exhibit "B". The remainder of the year, *Shirts Brothers Sheep* is dependent upon the use of other public, state, and private lands to provide the necessary annual forage base for its ewe/lambs between October 16 and May 15. *Ronald W. Shirts Decl.* ¶ 7. The loss of *any* use of these lands, including the *National Forest System lands* within Payette National Forest, not only adversely affects, but immediately and irreparably impacts this annual dependency, since the loss of any use of, for example, the *National Forest System lands* within the Payette National Forest, places a hole in the year-long operation. *Ronald W. Shirts Decl.* ¶ 8.

III. *Shirts Brothers Sheep's* Grazing Permit.

In about 1979, *Shirts Brothers Sheep* first purchased a Grazing Permit within the Payette National Forest from George Speropolous. That Grazing Permit authorized use by approximately 1,200 ewe/lamb pairs in the Snake River/Indian S&G Allotment. *Ronald W. Shirts Decl.* ¶ 10.

In about 1982, *Shirts Brothers Sheep* expanded their grazing authorizations within the Payette National Forest by purchasing the Grazing Permit for the Deep Creek and the Echols Butte S&G Allotments from the Stringer Brothers. These additions allowed *Shirts Brothers*

Sheep to graze a total of approximately 1,800 ewe/lamb pairs within the Payette National Forest from late-spring through mid-fall. *Ronald W. Shirts Decl.* ¶ 11.

In about 1983, *Shirts Brothers Sheep* again expanded their grazing within the Payette National Forest by purchasing the Grazing Permit for the Smith Mountain, Lost Creek, and Sheep Creek S&G Allotments (and the Surdam "on/off" permit) from Jack Barrinaga, enlarging the Payette National Forest authorization to a total of approximately 3,100 ewe/lamb pairs from late-spring through mid-fall. *Ronald W. Shirts Decl.* ¶ 12.

In April 1997, the U.S. Forest Service consolidated for permit administration the Snake River/Indian Creek, Deep Creek, Echols Butte, Smith Mountain, Lost Creek, and Sheep Creek into different grazing units within one allotment, i.e. the Smith Mountain S&G Allotment. See also Grazing Permit dated April 10, 1997. *Ronald W. Shirts Decl.* ¶ 13.

On April 3, 2007, the U.S. Forest Service renewed the Grazing Permit for *Shirts Brothers Sheep*. This Grazing Permit speak for itself, but this renewed permit continued the *annual* authorization to graze within the Smith Mountain S&G Allotment by 1,200 ewe-lamb pairs from May 16 through July 17, by 3,100 ewe-lamb pairs from July 18 through August 10, by 3,100 dry ewes from August 17 through October 15, and by 15 horses from May 16 to October 15, and within the Surdam S&G Allotment by 1,900 sheep from April 1 to June 30, subject to the terms and conditions expressed in the Grazing Permit. This Grazing Permit remains effective through December 31, 2016. *Ronald W. Shirts Decl.* ¶ 14. See also Exhibit "B".

IV. The Smith Mountain Allotment.

The Smith Mountain Allotment is approximately 81,000 acres of *National Forest System lands* and approximately 2,000 acres of private land. See Exhibit "B", p. 11. However, inclusive

of some of the *National Forest System lands* is lands within and administered under the *Hells Canyon National Recreation Area Act*, 16 U.S.C. 480gg, et seq.. See Exhibit "D", p. 19 (Map of the Hells Canyon National Recreation Area (HCNRA), as related to the Smith Mountain Allotment; Exhibit "E" (Map of the HCNRA, as related to the Deep Creek and Echols Butte Units). In other words, approximately 3/4 of the Deep Creek Unit is within the HCNRA, and approximately 1/4 of the Echols Butte Unit is within the HCNRA.

The Smith Mountain Allotment is divided by six (6) units or pastures. See Exhibit "B", p. 11 (Map of the Allotment). The Snake River/Indian Creek Unit is in the western side of the Allotment. The Deep Creek Unit is on the north and central side of the Allotment. The Echols Butte Unit is on the north and eastern side of the Allotment. The Smith Mountain Unit is on the eastern side of the Allotment. The Lost Creek Unit is on the east and south side of the Allotment. The Sheep Creek Unit is on the southeastern side of the Allotment. See Exhibit "B", p. 11 (Map of the Allotment).

V. The Surdam Allotment.

The Surdam Allotment is a small allotment of mostly *non-National Forest System lands*. In fact, the U.S. Forest Service authorizes use in the Surdam Allotment based upon "5% Forest", which means that 95% of the lands within the Surdam Allotment is owned/controlled by *Shirts Brothers Sheep*. Exhibit "B", p. 1.

VI. 2007 grazing authorization process.

On January 18, 2007, Ronald W. Shirts met with the District Ranger for the Council Ranger District, as well as other members of the U.S. Forest Service. It was represented by the

U.S. Forest Service to Ronald W. Shirts at this meeting that grazing use would not be modified for the 2007 grazing season. *Ronald W. Shirts Decl.* ¶ 19.

In early March, 2007, Ronald W. Shirts was informed by the District Ranger or a member of her staff that the U.S. Forest Service was considering an idea to modify grazing use *by Shirts Brothers Sheep* for the 2007 grazing season. The idea was to impose a 1-year non-use for the Deep Creek and Echols Butte Units of the Smith Mountain Allotment. Ronald W. Shirts understood that the concern was that any use within the Deep Creek and Echols Butte Units was perhaps not compatible with the *Hells Canyon National Recreation Area Act. Ronald W. Shirts Decl.* ¶ 20.

In response to this idea, on March 8, 2007, *Shirts Brothers Sheep* sent a letter to the U.S. Forest Service explaining that any authorized, planned, and scheduled use within the Deep Creek and Echols Butte Units was compatible with the *Hells Canyon National Recreation Area Act* per the *Hells Canyon National Recreation Area Comprehensive Management Plan, Record of Decision*, dated July 21, 2003. *Ronald W. Shirts Decl.* ¶ 21. See also Exhibit "F" (A copy of the March 8, 2007 letter).

The U.S. Forest Service never answered the March 8th letter. *Ronald W. Shirts Decl.* ¶ 22.

Notwithstanding the March 8th letter, on April 5, 2007, the District Ranger of the Council Ranger District issued a Decision to implement a 1-year modification of the *Shirts Brothers Sheep's* Grazing Permit that intended to prohibit *Shirts Brothers Sheep* from grazing its domestic sheep "*within the Deep Creek and Echols Butte*" units in 2007 ("April 5th Decision"). See Exhibit "G" (A copy of the April 5th Decision). This April 5th Decision advanced three reasons for the 1-year modification. See Exhibit "G", p. 2. Two of the three reasons related to the need to be

compatible with the *Hells Canyon National Recreation Area Act*. The third reason related to radio telemetry data indicating that bighorn sheep have been documented within the HCNRA portion of the Smith Mountain Allotment, and that not authorizing livestock grazing within this portion of the allotment will reduce the risk of contact between bighorn sheep and domestic sheep. *Ronald W. Shirts Decl.* ¶ 23.

Ronald W. Shirts was surprised at the receipt of the April 5th Decision, considering the prior representations that he had received from the U.S. Forest Servie on January 18, 2007, and considering the comments that *Shirts Brothers Sheep* provided on March 8, 2007. *Ronald W. Shirts Decl.* ¶ 24.

Notwithstanding the April 5th Decision, on April 19, 2007, *Shirts Brothers Sheep* proffered to the U.S. Forest Service an idea for not grazing the Deep Creek and Echols Butte Units for the 2007 grazing season, as well as thirteen other management practices designed to prevent contact with any bighorn sheep during the 2007 grazing season. See Exhibit "H" (A copy of the April 19th letter). This proffer was made, because at that time, *Shirts Brothers Sheep*: (1) desired to remain as whole as possible even though any non-use of these two Units would adversely affect its 2007 grazing use and its 2007 bucking[3]; and, (2) were unaware of the *year-by-year account* of all of the bighorn sheep telemetry data relative to the areas upon and adjacent to the Smith Mountain Allotment. *Ronald W. Shirts Decl.* ¶ 25.

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[3] "Bucking" is a term used to describe the process when male sheep (rams) are exposed to female sheep (ewes) for breeding purposes.

The District Ranger for the Council Ranger District did not accept *Shirts Brothers Sheep's* April 19th proffer. No grazing billing was issued by the District Ranger, as requested in the April 19th letter. *Ronald W. Shirts Decl.* ¶ 26.

On May 7, 2007, *Shirts Brothers Sheep* withdrew its proffer to not graze the Deep Creek and Echols Butte Units for the 2007 grazing season. See Exhibit "I" (A copy of the May 7th letter). This withdraw was premised upon several reasons, but most importantly, it was based upon the fact that on or about May 1, 2007, Ronald W. Shirts became privy to the *year-by-year account* of all of the telemetry data relative to the areas upon and adjacent to the Smith Mountain Allotment. This information disclosed to Ronald W. Shirts that while some presence of bighorn sheep were disclosed between May and October within the western part of the Smith Mountain Allotment in the 1999, 2000, 2001, and 2002 grazing seasons, no telemetry data disclosed *any* bighorns within the Smith Mountain Allotment:

* in the 2003 grazing season (except in the northwestern corner within the Snake River/Indian Creek Unit);

* in the 2004 grazing season;

* in the 2006 grazing season;

* so far between January 1, 2007 and May 4, 2007.

See Exhibit "J", p. 12 (1999), p. 11 (2000), p. 10 (2001), p. 9 (2002), p. 8 (2003), p. 7 (2004), p. 6 (2006), p. 5 (2007) (Note that Exhibit "J" is the *Declaration of Josephine Hatton* relative to Maps she made based upon all the telemetry data between January 1, 1998 and May 4, 2007, which notes that no telemetry data was collected in 2005). *Ronald W. Shirts Decl.* ¶ 27. In other words, no basis existed to be concerned about contact between bighorn sheep and domestic

sheep, since the *best available information* disclosed no bighorns within the Smith Mountain Allotment during essentially that last 4 grazing seasons, and perhaps more importantly, since the *best available information* disclosed no bighorns upon the Smith Mountain Allotment right now.[4]

A day later, on May 8, 2007, Ronald W. Shirts was informed by the District Ranger for the Council Ranger District or a member of her staff that she was going to issue to *Shirts Brothers Sheep* a 2007 grazing authorization which was going to be even worse than the April 5th Decision. *Ronald W. Shirts Decl.* ¶ 28. This notification was made literally days before the planned and scheduled turnout, i.e. May 16, 2007.

Ronald W. Shirts again objected to any modification to Grazing Permit held by *Shirts Brothers Sheep*, though Mr. Shirts did ratify the willingness of *Shirts Brothers Sheep* to conform to the thirteen management practices proffered in the April 19th letter during the 2007 grazing season. At that time, Ronald W. Shirts also urged the District Ranger and members of her staff to advise him of their decision as soon as possible, considering that *Shirts Brothers Sheep* had already staged to turnout upon the Smith Mountain Allotment on May 16, 2007. *Ronald W. Shirts Decl.* ¶ 29.

VII. May 11th Decision, i.e. 2007 grazing authorization.

On May 11, 2007, the District Ranger of the Council Ranger District issued a Decision to implement a 1-year modification of the *Shirts Brothers Sheep* Grazing Permit that, among other things, prohibited any livestock use in "*the portion of the Smith Mountain S&G Allotment that lies within the Hells Canyon National Recreation Area (HCNRA)*" and also prohibited any

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[4] Ronald W. Shirts opined that the change in pattern of the bighorn sheep telemetry data between 1999-2002 and 2003-2007 was likely subject to the expanded presence of wolves upon and adjacent to the Smith Mountain Allotment. *Ronald W. Shirts Decl.* ¶ 27.

livestock use in "*the following 6th Order Hydrological Units: Deep Creek, Kinney Creek, McGraw Creek, Herman Creek, Indian Creek, Bear Creek, and Upper Rapid River*" ("May 11th Decision"). See Exhibit "A", p. 2. See also Exhibit "A", p. 5. This May 11th Decision noted that the "*area not authorized for use is within the Deep Creek, Echols Butte, Snake River/Indian Creek, and the north & west portions of the Smith Mountain pastures.*" See Exhibit "A", p. 2. See also Exhibit "A", p. 5. This May 11th Decision also noted that it superceded the April 5th Decision.[5] See Exhibit "A", p. 2. *Ronald W. Shirts Decl.* ¶ 30.

This May 11th Decision advanced the *same* three reasons for the 1-year modification as previously advanced in the April 5th Decision. Two of the three reasons related to the need to be compatible with the *Hells Canyon National Recreation Area Act*. The third reason related to radio telemetry data indicating that bighorn sheep have been documented within the HCNRA portion of the Smith Mountain Allotment, and that not authorizing livestock grazing within this portion of the allotment will reduce the risk of contact between bighorn sheep and domestic sheep. See Exhibit "A", p. 2. *Ronald W. Shirts Decl.* ¶ 31.

This May 11th Decision also included the 2007 Annual Operating Instructions, which implemented the consequence of the 1-year modification for the 2007 grazing season. See Exhibit "A", p. 5 [which states that "*Sheep grazing will not be authorized in 2007 in Hells Canyon NRA (Deep Creek & Echols Butte pastures) or on the west half of the Smith Mountain Allotment (Snake River/Indian Creek & the north and west half of the Smith Mountain pastures). The area not authorized for grazing in 2007 includes portions of the following 6th Order*

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[5] The District Ranger stated that the May 11th Decision "supercede(s)" the "Modification #1 dated 4/11/07 (sic.)". The Modification #1 was dated April 5, 2007, not April 11, 2007. See Exhibit "G".

Hydrologic Units within the Smith Mountain Allotment: Deep Creek, Kinney Creek, McGraw Creek, Herman Creek, Indian Creek, Bear Creek, and Upper Rapid River"]. *Ronald W. Shirts Decl.* ¶ 32.

The 2007 Annual Operating Instructions implemented the following management actions that are pertinent to this appeal and to this request for partial stay:

> (A) "Non Use" for two of the three scheduled bands of sheep for the period 6/18-10/15. I don't know the basis for the beginning date of "Non Use" of 6/18, since the beginning authorization date is May 16 in the Grazing Permit. I believe this is a typographical mistake.
>
> (B) Authorizes only one of the three scheduled bands of sheep for the period 6/6-10/1 within only certain Units/Pastures of the Smith Mountain Allotment.
>
> (C) Authorizes only one of the two scheduled bands of sheep for the period 4/1-6/16 within the Surdam Allotment. *Shirts Brothers Sheep* doesn't know the basis for limiting the authorization the Surdam Allotment to just 1 band, since an authorization of "27 Head Months" for the period 4/1-6/16 at "5% Forest" only equates to approximately 1,200 sheep. The May 11th Decision stated no reason to modify the grazing use in the Surdam Allotment.
>
> (D) Authorizes the trailing off of the Payette National Forest of the one band of sheep via the Salmon River stock driveway for the period 10/1-10/10.
>
> (E) Authorizes the thirteen management practices, identified in the April 19th letter by *Shirts Brothers Sheep*.
>
> (F) Authorizes no horse use, though it does authorize a pack string.

See Exhibit "A", pp. 5, 10, 11.

36 C.F.R. 251.90(a), 251.90(b)(5), 251.90(b)(6):
NARRATIVE, ISSUES RAISED BY THIS APPEAL,
and the APPLICABLE LAWS, REGULATIONS
or POLICIES VIOLATED

The regulations do *not* prescribe any *standard for administrative review* of the Decision. See 36 C.F.R. 251.99(a) (which only requires the "*Reviewing Officer*" to base her appeal decision

on the appeal record and applicable laws, regulations, orders, policies, and procedures). It is for this reason that this appeal cites and relies upon Section 706 of the *Administrative Procedures Act*. Section 706 prescribes the *standards for judicial review* should the Decision be reviewed by a Federal Court. Section 706 states that an agency decision, like the Decision here involved, will be held unlawful and set aside when an agency decision is "*arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law*", "*contrary to constitutional right, power, privilege, or immunity*", "*in excess of statutory jurisdiction, authority, or limitations, or short of statutory right*", "*without observance of procedures required by law*", and/or "*unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.*" See 5 U.S.C. 706(2)(A), (B), (C), (D), (F). Any one of these standards warrants and justifies that the "*Reviewing Officer*" reverse the Decision in accordance with 36 C.F.R. 251.99(b) for any one or all of the claims of relief discussed below.

FIRST CLAIM FOR RELIEF
THE DISTRICT RANGER VIOLATES 36 C.F.R. 222.4(a)(8), BY FAILING TO PROVIDE 1-YEAR NOTICE OF MODIFICATION.

36 C.F.R. 222.4(a)(8) authorizes the Forest Service to "*(m)odify ... season of use, numbers ... of livestock allowed or the allotment to be used under the permit, because of resource conditions ...* ***One year's notice will be given of such modification****, except in cases of emergency.*" Emphasis suppled. See also Forest Service Handbook 2209.13 (Section 16.1) (Effective 8/3/1992) (wherein the Handbook provides guidance for modifying permitted numbers. This document states that the Forest Service should not "*schedule more than a 20 percent reduction in numbers or season in any 1 year to give the permittee ample time to make changes in their livestock operation*").

In the present matter, the May 11th Decision explicitly cites and relies upon 36 C.F.R. 222.4(a)(8) as a legal basis for the modification of the Grazing Permit held by *Shirts Brothers Sheep*. See Exhibit "A", p. 3 (wherein the May 11th Decision stated that *"Changes in grazing permits is authorized by 36 CFR 222.4(a)(7) & (8)"*). However, the May 11th Decision discloses no 1-year notification by the U.S. Forest Service to *Shirts Brother Sheep* of the modifications made to *"season of use, numbers ... of livestock allowed or the allotment to be used under the permit"* within the May 11th Decision. The undisputed facts are that the U.S. Forest Service provided no 1-year notification of its modification to the Grazing Permit held by *Shirts Brothers Sheep*. In addition, the May 11th Decision discloses no finding of any "*emergency*" that would warrant a waiver of the 1-year notification requirement in 36 C.F.R. 222.4(a)(8). The undisputed facts are that no emergency exists, considering the *best available telemetry data* does not disclose any bighorns within the Smith Mountain Allotment during *Shirts Brothers Sheep's* authorized use period (May to October) within essentially the last 4-years, or currently.

Accordingly, the May 11th Decision should be reverse, as violating the notification requirement of 36 C.F.R. 222.4(a)(8).

SECOND CLAIM FOR RELIEF
THE DISTRICT RANGER ACTS CONTRARY TO THE 2003 HELLS CANYON NATIONAL RECREATION AREA PLAN.

The *Hells Canyon National Recreation Area Act*, 16 U.S.C. 460gg(a), established the *Hells Canyon National Recreation Area* (HCNRA). The regulations promulgated under the *Hells Canyon National Recreation Area Act* states that "*Where domestic livestock grazing is incompatible with the protection, restoration, maintenance of fish and wildlife ... the livestock*

use shall be modified as necessary to eliminate or avoid the incompatibility." 36 C.F.R. 292.48(b).

In the present matter, the May 11th Decision explicitly cites and relies upon the *Hells Canyon National Recreation Area Act* and 36 C.F.R. 292.48(b), as two of the three reasons for the modification of the Grazing Permit held by *Shirts Brothers Sheep*. See Exhibit "A", p. 2. However, the May 11th Decision discloses no finding or conclusion that the livestock grazing authorized in Grazing Permit held by *Shirts Brothers Sheep* is "*incompatible with the protection, restoration, maintenance of ... wildlife (such as bighorn sheep)*". 36 C.F.R. 292.48(b).

In addition, the May 11th Decision discloses no reference to the 2003 Hells Canyon National Recreation Area Plan. However, had the May 11th Decision referenced the 2003 Hells Canyon National Recreation Area Plan (Exhibit "D"), the May 11th Decision would have found that livestock grazing within the Deep Creek and Echols Butte Units areas of the Smith Mountain Allotment *is* compatible with the *Hells Canyon National Recreation Area Act*. See Exhibit "D"; Exhibit "E"; Exhibit "F".[6]

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[6] While the "*Hells Canyon Management Area*" (Management Area 01) of the 2003 Payette NF LRMP purports to cover part of the HCNRA (see 2003 Payette NF LRMP, p. III-90), the 2003 Payette NF LRMP explicitly deferred to the Plan covering the HCNRA as "*provid(ing) analysis and direction for those unique portions of the Forest*". See 2003 Payette NF LRMP, p. I-4. The 2003 Payette NF LRMP stated that: "*there are three areas within the proclaimed boundaries of the (Payette National) Forest that are administered by adjacent National Forests. Analysis and management direction for these areas can be found within the Forest Plan prepared for each of those Forests. These areas are: ... The Hells Canyon National Recreation Areas ... The Wallowa-Whitman National Forest administers these areas. Direction for the NRA is in the Comprehensive Management Plan for the Hells Canyon National Recreation Area*". See 2003 Payette NF LRMP, p. I-4. No part of the "*Hells Canyon Management Area*" intends to cover he HCNRA.

Accordingly, the May 11th Decision should be reversed, since the grazing use in the Deep Creek and Echols Butte Units of the Smith Mountain Allotment *is* compatible with the *Hells Canyon National Recreation Act* and the regulations promulgated thereunder.

THIRD CLAIM FOR RELIEF
THE DISTRICT RANGER VIOLATES 36 C.F.R. 222.4(a)(7),(8).

36 C.F.R. 222.4(a)(8) authorizes the U.S. Forest Service to "*(m)odify ... season of use, numbers ... of livestock allowed or the allotment to be used under the permit, because of resource conditions.*" 36 C.F.R. 222.4(a)(7) also authorizes the U.S. Forest Service to "*(m)odify the terms and conditions of a permit to conform to current situations brought about by changes in law, regulation, executive order, development or revision of an allotment management plan, or other management needs*".

In the present matter, the May 11th Decision explicitly cites and relies upon 36 C.F.R. 222.4(a)(7),(8) as a legal basis for the modification of the Grazing Permit held by *Shirts Brothers Sheep*. See Exhibit "A", p. 3 (wherein the May 11th Decision stated that "*Changes in grazing permits is authorized by 36 CFR 222.4(a)(7) & (8)*"). However , beyond the lack of 1-year notice as discussed above in *First Claim for Relief*, the May 11th Decision discloses no "*resource conditions*" or "*other management needs*" to warrant the modification of the Grazing Permit held by *Shirts Brothers Sheep*. See Exhibit "A", pp. 1-3. Instead, the May 11th Decision reasons that the modification is based upon "*Radio telemetry data*", stating that:

> "*Radio telemetry data indicate bighorn sheep have been documented within the HCNRA and other portions of the Smith Mountain S&G Allotment that are part of this modification. Not authorizing livestock grazing in this portion of the*

allotment will reduce the risk of contact between bighorn sheep and domestic sheep, thereby reducing the risk for disease transmission to bighorn sheep."

See Exhibit "A, p. 2.

Assuming this "*Radio telemetry data*" constitutes a "*resource condition*" or "*other management needs*" to warrant a modification of a grazing permit under 36 C.F.R. 222.4(a)(7),(8), no rational basis exists for such "*condition*" or "*need*", particularly as related to the 2007 grazing season. The undisputed facts are that the *year-by-year account* of all of the "*Radio telemetry data*" relative to the areas upon and adjacent to the Smith Mountain Allotment discloses that ---- while some presence of bighorn sheep were disclosed between May and October within the western part of the Smith Mountain Allotment during the 1999, 2000, 2001, and 2002 grazing seasons ---- no telemetry data discloses *any* bighorns within the Smith Mountain Allotment:

* in the 2003 grazing season (except in the northwestern corner within the Snake River/Indian Creek Unit);

* in the 2004 grazing season;

* in the 2006 grazing season; and,

* so far between January 1, 2007 and May 4, 2007.

See Exhibit "J", p. 12 (1999), p. 11 (2000), p. 10 (2001), p. 9 (2002), p. 8 (2003), p. 7 (2004), p. 6 (2006), p. 5 (2007). In other words, no rational basis exists to be concerned about any contact between bighorn sheep and domestic sheep, since the *best available information* discloses no bighorns within the Smith Mountain Allotment during essentially that last 4 grazing seasons, and perhaps more importantly, since the *best available information* discloses no bighorns upon the Smith Mountain Allotment now.

In addition, the "*risk for disease transmission to bighorn sheep*" due to contact between bighorn sheep and domestic sheep is not supported by noted *Pastuerella* research scientists. The work of Dr. A.C. Ward, a noted *Pastuerella* research scientist, and the work of Dr. Anette Rink, another noted *Pastuerella* research scientist,[7] on the question of the transmission of strains of *Pastuerella* between bighorns and domestics, demonstrates that researchers do not agree on *how bighorns become infected by Pasteurella that are able to produce pneumonia. Bulgin Decl.* ¶ 8 (Note that Exhibit "M" is the *Declaration of Marie S. Bulgin* relative to the issue of the risk of disease transmission between bighorn sheep and domestic sheep) .

The common concept that *Pasteurella* is transmitted from domestics to bighorns is based largely on assumption. One of the most frequently cited articles used to support the assumption is that of Foreyt and Jessup (1982). However, this article states that the assumption of transmission was based on circumstantial evidence. No bacteria were isolated from the bighorns that died in the group of bighorns discussed in that article. *Bulgin Decl.* ¶ 10.

Pasteurella researchers who have actually isolated, identified, worked, and studied the organisms isolated from bighorns and domestics believe that disease in the free ranging bighorn is caused by their own endogenous *Pastuerella* flora. *Bulgin Decl.* ¶ 12. See generally, *Bulgin Decl.* ¶ 13-43 (wherein Dr. Bulgin refutes the risk of disease transmission between bighorn sheep and domestic sheep, particularly in a free-range environment, as exists within the Smith Mountain Allotment). See also Exhibit "K"; Exhibit "L".

In addition, even assuming a "*risk for disease transmission to bighorn sheep*" due to contact between bighorn sheep and domestic sheep, no rational basis exists to warrant the

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[7] See Exhibit "K" and Exhibit "L", which are comments and article authored by Dr.Rink.

immediate and unilateral objective of removing the domestic sheep with 2/3 of the Smith Mountain Allotment. See Exhibit "N", p. 6 (wherein an exhaustive bighorn-domestic management solution process completed in Wyoming in September 2004, recommended that the "*Removal of Bighorn sheep or domestic sheep from areas of current overlap should not be an immediate and unilateral objective*").

Shirts Brothers Sheep never stated to the U.S. Forest Service that management actions between bighorns and domestics should be ignored. Instead, *Shirts Brothers Sheep* offered and the May 11th Decision accepted thirteen (13) management actions that were designed to be consistent with an objective "*to undertake management to prevent contact between (bighorns and domestics)*". See Exhibit "A", pp. 10-11; Exhibit "H", pp. 5-7. These management actions include:

> 1. Perform a careful health inspection of all domestic sheep and remove any old, unthrifty, or sick animals from the band prior to turnout onto the Forest. Cull any old, unthrifty, or sick animals from the band as soon as they are identified throughout the grazing season and when the lambs are shipped.
>
> 2. Double the number of guard dogs for each band of sheep (2 with all 3 bands, for a total of 6 guard dogs).
>
> 3. Double the number of herders for each band of sheep (2 with all 3 bands, for a total of 6 herders). Each herder typically also has at least one sheepdog, so there will typically be at least 4 dogs tending each band of sheep (2 guard dogs and 2 sheepdogs per band).
>
> 4. Each band of sheep will have its own pack string, rather than a single pack string to service all three bands. Each pack string will camp immediately adjacent to its band of sheep each night. Having two herders and a dedicated pack string for each band of sheep will allow for continuous supervision of all three bands for the entire time they are on the Forest, 24 hours a day (even if an individual herder must temporarily leave service).

5. Each pack string will carry a cell phone to maintain direct communication with the permittee for the entire grazing season. This will allow more frequent reporting to the owner regarding herd health and death losses. It will also allow for the coordination of more frequent and accurate counts of an entire band each time it moves through areas where such counts are feasible.

6. Herders will count marker sheep (black, horned, belled, etc.) daily to assure that no small groups of sheep have separated from the main band.

7. Each pack string will carry binoculars to improve their ability to spot bighorn sheep.

8. If any bighorn sheep are spotted within the Smith Mountain S&G Allotment, the herders and pack strings will adjust their grazing path or haze the bighorns out of the area to minimize the possibility of direct contact.

9. The permittee will immediately report any bighorn sheep sightings within the Smith Mountain S&G Allotment to the USFS and the Idaho Department of Fish and Game.

10. Ewes with mastitis (blue bag) will not be left behind to recover and catch back up to the band latter, but will be removed from the band or killed.

11. Predator attacks, primarily wolf attacks, create the most significant risk for stray domestic sheep because they cause sheep to scatter from the main band. In such cases, the permittee will immediately notify the USFS, Idaho Department of Fish and Game, and Idaho wildlife services and begin efforts to identify the sheep that were killed and to locate and re-gather any scattered sheep.

12. In 28 years of experience, *Shirts Brothers Sheep* have never observed a bighorn sheep intermingle with their domestic sheep bands (since using guard dogs). However, *Shirts Brothers Sheep* is willing to implement the IDFG's *Emergency Response Plan* which allows representatives of the IDFG or a permittee to kill any bighorn sheep that come into contact with domestic sheep on a grazing allotments. See letter from IDFG to Hells Canyon Preservation Council dated August 12, 2004 (wherein the *Emergency Response Plan* is referenced). This will ensure that if we observe any intermingling between a bighorn sheep and a domestic sheep, then the bighorn sheep will be killed and not allowed to return to its home herd. We certainly will immediately advise you and IDFG if the authority exercised in this *Emergency Response Plan* is implemented.

13. *Shirts Brothers Sheep* will allow the IDFG to remove or kill its domestic sheep which are located outside of private lands or permitted public land grazing

allotments, or are located within public land grazing allotments outside of the permitted season of use (hereafter referred to as offending livestock), provided that the following conditions have been met: a) the offending livestock are found to be in immediate association with bighorn sheep and pose a health risk to said bighorn sheep; and, b) reasonable but unsuccessful attempts have been made over a 5-day period to notify *Shirts Brothers Sheep* regarding the offending livestock so they can remove said livestock; or, c) *Shirts Brothers Sheep* is notified and agrees that IDFG field personnel can remove or kill the offending livestock; or, d) *Shirts Brothers Sheep* is notified, but fails to remove the offending livestock within 10 days of said notification; and, e) the IDFG makes a reasonable attempt to notify the office of the Idaho state veterinarian prior to any removal action, or as soon as possible after the removal action is taken if the attempt at prior notification fails; and, f) the IDFG immediately turns over to *Shirts Brothers Sheep* or to the Idaho state veterinarian any offending livestock removed or killed pursuant to the preceding provisions.

In addition, even assuming a "*risk for disease transmission to bighorn sheep*" due to contact between bighorn sheep and domestic sheep, no rational basis exists to warrant the immediate and unilateral objective of removing the domestic sheep upon 2/3 of the Smith Mountain Allotment, considering the 1997 Agreement and the Idaho Code. *Ronald W. Shirts Decl.* ¶ 15-18.

The issue of disease interaction between bighorns and domestics in Idaho cannot be properly discussed without referencing the *commitments* made to the domestic sheep operators, like *Shirts Brothers Sheep*, by the State Fish & Game agencies of Idaho, Oregon and Washington, by the Forest Service, by BLM, and by *Foundation for North American Wild Sheep*. These groups promised on January 16, 1997, that they would "*assume the responsibility for bighorn loses and further disease transmission*" and would "*reduce further losses of bighorn sheep without adversely impacting existing domestic sheep operators*" (1997 Agreement). *Ronald W. Shirts Decl.* ¶ 17. See also Exhibit "O" (A copy of the 1997 Agreement); Exhibit "P" (*Declaration of Robert M. Richmond*, who was the U.S. Forest Service signatory to the 1997

Agreement). This promise was implicitly ratified by the Idaho Legislature, when on March 24, 1997, the Legislature enacted a statute that required the Idaho Fish & Game "*Upon any transplant of bighorn ..., the department shall provide for any affected federal ... grazing permittees ... a written letter signed by all ... entities responsible for the transplant stating that the existing sheep ... operations in the area of any such bighorn sheep transplant are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted.*" Idaho Code 36-106(e)5.(D). See *Ronald W. Shirts Decl.* ¶ 18. Consistent with this charge, the Idaho Fish & Game has sent written letters to *Shirts Brothers Sheep*. It was and is within the framework of these *commitments* that the *Hells Canyon Bighorn Sheep Restoration Committee* (HCI) transplanted bighorns and continues to transplant bighorns within and/or adjacent to the Payette National Forest today. *Ronald W. Shirts Decl.* ¶ 16-18.

Accordingly, the May 11th Decision should be reverse, as violating the requirements of 36 C.F.R. 222.4(a)(7),(8).

FOURTH CLAIM FOR RELIEF
THE DISTRICT RANGER VIOLATES THE NEPA.

The *National Environmental Policy Act* imposes on federal agencies an ongoing duty to issue supplemental environmental analysis when either (1) an "agency makes *substantial changes* in the proposed actions," or (2) there "are *significant new circumstances* ... relevant to environmental concerns." See 40 C.F.R. 1509.2 (emphasis added). In essence, a Supplemental Environmental Impact Statement "*is required if a new proposal 'will have a significant impact on*

the environment in a manner not previously evaluated and considered". Westlands Water Dist. v. U.S. Dept. of Interior, 376 F.3d 853 (9th Cir. 2004).

In the present matter, the May 11th Decision ignores its obligations under the *National Environmental Policy Act* (NEPA), making "*substantial changes*" in the authorized use within the Smith Mountain Allotment without first completing any type of NEPA document. In fact, it is compelling to reveal that the U.S. Forest Service decided on April 11, 2007, of the need to prepare a Supplemental Environmental Impact Statement to, among other things, assess the viability of bighorn sheep within the Payette National Forest. 72 Fed.Reg. 18197 (4/11/07). However, here, the May 11th Decision implements the "*substantial changes*" ***before*** the publics have been given *any* opportunity to comment to a draft SEIS, and ***before*** the SEIS is completed. Given that the *Administrative Procedures Act*, 5 U.S.C. § 558(c), and *Public Law 108-108, Section 325*, safeguards and authorizes an activity of a continuing nature until an agency, like the U.S. Forest Service, completes its SEIS, the May 11th Decision unlawfully modifies the Grazing Permit held by *Shirts Brothers Sheep*.

Accordingly, the May 11th Decision should be reversed, as violating the requirements of the *National Environmental Policy Act* and the regulations promulgated thereunder.

36 C.F.R. 251.90(b)(7):
EFFORTS TO RESOLVE ISSUES

Shirts Brothers Sheep made attempts to resolve the issues being appealed, as described in the Statement of Facts section above, though such attempts were unsuccessful.

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36 C.F.R. 251.90(c): REQUEST FOR ORAL PRESENTATION

Appellant requests an opportunity for an oral presentation as permitted by 36 C.F.R. 251.90(c) and 251.97. Appellant requests that said presentation shall include an opportunity to present documentary evidence. Appellant requests that said presentation shall also include an opportunity to examine under oath and on the record the District Ranger, the Forest Service employee(s), and such other and additional persons as the Appellant may then call.

36 C.F.R. 251.91(b): REQUEST FOR PARTIAL STAY

Appellant requests a partial stay of the May 11th Decision during the pendency of this administrative appeal. 36 C.F.R. 251.91(a),(b). Appellant urges the Reviewing Officer to grant the stay request *immediately*, since turnout is already planned and scheduled for May 16, 2007. It is appreciated that the Reviewing Officer has 10-calendar days to rule on a stay request, but again, Appellant urges the Reviewing Officer to act sooner due to the circumstances. 36 C.F.R. 251.91(e).

I. 36 C.F.R. 251.91(c)(3)(i): The description of the specific actions to be stopped.

Shirts Brothers Sheep requests a stay, as follows:

> (1) Appellant requests a stay of the Decision to implement a 1-year modification of the *Shirts Brothers Sheep* Grazing Permit that prohibits any livestock use in "*the portion of the Smith Mountain S&G Allotment that lies within the Hells Canyon National Recreation Area (HCNRA)*" and also prohibits any livestock use in "*the following 6th Order Hydrological Units: Deep Creek, Kinney Creek, McGraw Creek, Herman Creek, Indian Creek, Bear Creek, and Upper Rapid River*" ("May 11th Decision"). See Exhibit "A", pp. 2, 5. See also Exhibit "A", pp. 2, 5 (wherein the Decision states that the "*area not authorized for use is within the Deep Creek, Echols Butte, Snake River/Indian Creek, and the north & west portions of the Smith Mountain pastures*").

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(2) Appellant requests a stay of the Decision to implement the 1-year modification of the *Shirts Brothers Sheep* Grazing Permit via the 2007 Annual Operating Instructions, in the following respects:

(A) "Non Use" for two of the three scheduled bands of sheep for the period between June 18, 2007 (sic) and October 15, 2007. Note that the beginning date is not correct. The Grazing Permit authorizes 1,200 ewe/lambs between May 16 and August 10. See Exhibit "B", p. 1.

Shirts Brothers Sheep seeks a stay of this provision.

(B) Authorizes only one of the three scheduled bands of sheep for the period 6/6-10/1 within only certain Units/Pastures of the Smith Mountain Allotment.

Shirts Brothers Sheep does not seek a stay of the authorized use of the one band, but seeks a stay of the reminder.

(C) Authorizes only one of the two scheduled bands of sheep for the period 4/1-6/16 within the Surdam Allotment. *Shirts Brothers Sheep* doesn't know the basis for limiting the authorization in the Surdam Allotment to just 1 band, since an authorization of "27 Head Months" for the period 4/1-6/16 at "5% Forest" only equates to approximately 1,200 sheep. The Decision stated no reason to modify the grazing use in the Surdam Allotment.

Shirts Brothers Sheep does not seek a stay of the authorized use of the one band, but seeks a stay of the reminder.

(D) Authorizes the trailing off of the Payette National Forest of the one band of sheep via the Salmon River stock driveway for the period 10/1-10/10.

Shirts Brothers Sheep does not seek a stay, though should the stay be granted, *Shirts Brothers Sheep* will need to trail its two other bands, consistent with its Grazing Permit.

(E) Authorizes the thirteen management practices, identified in the April 19th letter by *Shirts Brothers Sheep*.

Shirts Brothers Sheep does not seek a stay.

(F) Authorizes no horse use, though does authorize a pack string. The Decision stated no reason to modify the horse use in the Smith Mountain Allotment.

Shirts Brothers Sheep seeks a stay of the no horse use, but does not seek a stay of the pack string.

Should the stay be granted, *Shirts Brothers Sheep* will graze consistent with its Grazing Permit and the rotation described in the 2005 Annual Operating Instructions (Exhibit "Q"), since the U.S. Forest Service has consistently and historically authorized the rotation described in the 2005 AOI every other year. *Ronald W. Shirts Decl.* ¶ 34. See also Exhibit "R" (A copy of the 2006 AOI). In addition, should the stay be granted, *Shirts Brothers Sheep* would not oppose to coordinate monthly with the District Ranger to review any telemetry data collected after May 4, 2007, to monitor the location of any bighorns, and to coordinate a response, if any. Should coordination fail, *Shirts Brothers Sheep* acknowledges the potential that a ruling granting a stay may be changed pursuant 36 C.F.R. 251.91(i),(j).

II. 36 C.F.R. 251.91(c)(3)(ii)(A): The specific adverse effects upon the requester.

If the May 11th Decision is not stayed, as requested, domestic sheep grazing by *Shirts Brothers Sheep* will not only be adversely effected, but immediately and irreparably harmed beginning May 16, 2007. The Request for Partial Stay needs to be granted immediately to avoid this effect/harm. *Ronald W. Shirts Decl.* ¶ 33.

Shirts Brother Sheep are authorized in its Grazing Permit, have historically grazed, have planned, and have scheduled to graze three (3) bands of sheep during the 2007 grazing season in the following manner:

* 1 band of sheep (1,200 in band) from May 16, 2007 to October 15, 2007, within certain units/pastures of the Smith Mountain Allotment;

* 2 bands of sheep (950 in each band) from at least May 16, 2007 to June 17, 2007, within the Surdam Allotment;

* 2 bands of sheep (950 in each band) from June 18, 2007 to October 15, 2007, within certain units/pastures of the Smith Mountain Allotment.

Ronald W. Shirts Decl. ¶ 34. It was planned and scheduled that the specific unit/pasture rotation within the Smith Mountain Allotment would conform to the 2005 rotation, since historically the U.S. Forest Service requested that *Shirts Brothers Sheep* annually alternate its grazing rotation. Compare Exhibit "Q" (2005 AOI); Exhibit "R" (2006 AOI). *Ronald W. Shirts Decl.* ¶ 34.

Notwithstanding, the May 11th Decision only authorizes *Shirts Brothers Sheep* to graze 1 band of sheep (1,200 in band) from June 6, 2007 to October 1, 2007, and authorizes it to trail this 1 band of sheep (1,200 in band) off of the Payette National Forest via the Salmon River Driveway from October 1, 2007 to October 10, 2007. *Ronald W. Shirts Decl.* ¶ 35.

The adverse effect and the immediate and irreparable consequence of this May 11th Decision is that *Shirts Brothers Sheep* has no home for:

* 700 sheep between *at least* May 16, 2007 and June 17, 2007, which should otherwise be authorized in the Surdam Allotment;

* 1,200 sheep between May 16 and June 5, 2007, and between October 11 and October 15, 2007, which should otherwise be authorized in the Smith Mountain Allotment;

* 1,900 sheep between June 18, 2007 and October 15, 2007, which should otherwise be authorized in the Smith Mountain Allotment.

Ronald W. Shirts Decl. ¶ 36. See also Exhibit "A" (no horse use authorization). These effects/consequences are specifically discussed and described below, but generally implicate additional costs for the single band authorized to graze, implicate adverse effects associated with

the two bands not authorized to graze, implicates additional costs to liquidate the two bands, and implicates additional costs to feed two bands through the 2007 grazing season.

A. Additional Costs for the Single Band Authorized to Graze.

The delay in the dates *Shirts Brothers Sheep* can start using the Surdan Allotment and the Smith Mountain Allotment under the May 11th Decision has already cost *Shirts Brothers Sheep* an additional **$13,000** because *Shirts Brothers Sheep* had to find alternative pasture for the 700 ewe/lamb pairs that would otherwise be staged within the Surdam Allotment area for turnout into the Smith Mountain Allotment. In order to make use of a portion of a pasture that will hold these sheep for approximately a ten-day period, *Shirts Brothers Sheep* had to agree to build a significant stretch of fence for an associate through rough rocky terrain, at a cost that will total about $5,000. It also will cost *Shirts Brothers Sheep* an additional $8,000 to truck this band of sheep to said pasture and off again. Obviously, these expenses will greatly increase after this ten-day pasture use is completed as *Shirts Brothers Sheep* still needs to find a place for these sheep until June 18, the date they would normally enter the Smith Mountain Allotment. *Ronald W. Shirts Decl.* ¶ 37.

Also, if the sheep do not leave enough forage in this temporary pasture for the associate to feed 30 cattle for two months latter in the 2007 grazing season, *Shirts Brothers Sheep* will have to feed such cattle for him which will cost *Shirts Brothers Sheep* at least an additional **$4,000**. Given the low forage production in such pasture, this is a contingency *Shirts Brothers Sheep* is planning for. *Ronald W. Shirts Decl.* ¶ 38.

The shortened season of use for the single band of sheep that will be authorized to use the Smith Mountain Allotment under the May 11th Decision will cost *Shirts Brothers Sheep* a total of

$17,100 to $22,100 in extra expenses, if *Shirts Brothers Sheep* can find additional pasture until June 6, or will cost at least **$37,332** in extra expenses if *Shirts Brothers Sheep* is forced to feed this band from May 26 until June 6. Since the May 11th Decision delays turnout onto the Smith Mountain Allotment by 21 days, *Shirts Brothers Sheep* will need to find a way to carry this band of sheep elsewhere for 21 days . This will cost an additional $15,000 to $20,000 in lease fees and trucking costs, assuming *Shirts Brothers Sheep* can find pasture somewhere on such short notice. Otherwise, it will cost an additional $35,232 to feed 1200 ewe/lamb pairs for 21 days, $29,232 in feed at a cost of $1.16/head day ($0.36 for corn + $0.80 for hay), plus an additional $6,000 to lease 15 acres of land upon which to feed the band, land that would otherwise be put into corn production. The cost to feed the dry ewes from this band of sheep for the additional 5 days that they will be required to leave the Smith Mountain Allotment early under the May 11th Decision will be an additional $2,100 at a cost of $0.35/head day for hay. *Ronald W. Shirts Decl.* ¶ 40.

B. Adverse Effects Associated with the Two Bands not Authorized to Graze

With respect to the other two bands of sheep that will not be authorized to graze within the Smith Mountain Allotment under the May 11th Decision, *Shirts Brothers Sheep* will be forced to either liquidate these sheep or place them into a feedlot type situation until the lambs are weaned, then feed the breeder ewes for the rest of the period that they would otherwise graze within the Payette National Forest. For the past several years *Shirts Brothers Sheep* has looked for additional pasture land to lease for other purposes, and find none available. Being forced to either liquidate these two sheep bands or feed them for the balance of the 2007 grazing season will wipe out all the assets that *Shirts Brothers Sheep* has worked to save and will bankrupt the entire domestic sheep operation. *Ronald W. Shirts Decl.* ¶ 41.

C. Additional Costs to Liquidate Two Bands.

If *Shirts Brothers Sheep* is forced to liquidate these two sheep bands, *Shirts Brothers Sheep* will suffer an additional **economic loss of at least $392,900** in 2007. About 3170 lambs from these two bands will sell at a $70/head discount due to their difference in weight this spring versus this fall, for a loss of $221,900. *Shirts Brothers Sheep's* 1900 mature ewes will sell for $50/head this spring, rather than $140/head in the fall (including $10/head worth of wool that would be ready for shearing), for a discount of $90/head representing a loss of $171,000. Thus, *Shirts Brothers Sheep's* losses in 2007 just from the sale of these two sheep bands at discounted values under the May 11th Decision will total $392,900. *Ronald W. Shirts Decl.* ¶ 42.

Shirts Brothers Sheep will also suffer additional economic losses of an unknown amount because *Shirts Brothers Sheep* will have to absorb the excess overhead and/or depreciation on equipment and facilities that were recently purchased for the *Shirts Brothers Sheep's* operation which will not be needed to run a single band of sheep, including a bunkhouse with kitchen and laundry facilities constructed in 2005 to house 7 employees, a 2006 Ford Diesel F250, and a 2002 Ford Diesel F250. *Ronald W. Shirts Decl.* ¶ 43.

If *Shirts Brothers Sheep* is forced to liquidate two sheep bands in 2007, it will be unable to simply replace such sheep the following year. *Shirts Brothers Sheep* spent 30 years carefully selecting and breeding sheep that are uniquely adapted to the environment and grazing program that it currently uses. *Shirts Brother Sheep* has selected and bred sheep with unique genetic adaptations which allow them to thrive in the environment of the Smith Mountain Allotment in the summer, as well as in our winter pastures and holding facilities. During its 30-year history, *Shirts Brothers Sheep* has developed its own unique variety of sheep which produce some of the

highest quality wool in Idaho, produce lambs which demand a premium at market, and produce ewes lambs which are unheralded in their ability to breed in their first year. *Ronald W. Shirts Decl.* ¶ 45.

Shirts Brothers Sheep has had phenomenal success in getting its ewe lambs to breed the first year because of its long-term commitment to careful selection of outstanding heritable characteristics in its sheep, and because of the exceptional quality of the late-summer and fall forage available in the Deep Creek and Echols Butte Units within the Smith Mountain Allotment. Without the high quality forage found in the Deep Creek and Echols Butte Units at the precise time that the ewe lambs need it to successfully breed in their first year, our pregnancy rates in such ewe lambs would drop from better than 80% to 20% or less, thereby effectively eliminating the primary factor that has made the sheep operation sustainable and profitable. *Ronald W. Shirts Decl.* ¶ 46.

D. Additional Costs to Feed Two Bands through the 2007 Grazing Season.

If *Shirts Brothers Sheep* is forced to place two of its sheep bands on feed until the lambs are weaned, then continue feeding the breeder ewes for the rest of the 2007 grazing season when they would otherwise be within the Smith Mountain Allotment, *Shirts Brothers Sheep* will suffer an **economic loss of nearly $503,000** in 2007, as the following illustrates:

> (1) If *Shirts Brothers Sheep* is forced to feed two bands of sheep (1900 ewes with lambs) from June 18 until weaning on about July 18, the extra expense will total $66,120 at a cost of $1.16/head day ($0.36 for corn + $0.80 for hay).
>
> (2) During this period of close confinement the death loss of lambs will increase by at least 5%, for an excess loss of 143 lambs from these two bands which would otherwise be worth $115/head by fall, for a loss of $16,445.

(3) Approximately 2707 remaining lambs will be sold at a $65 discount based upon their weight on about July 18 (rather than mid-August when they would normally be sold), a loss of $175,955.

(4) Because *Shirts Brothers Sheep's* sheep have annually used the high-mountain areas in the Payette National Forest during the summer months, they have developed little or no immunity to bluetongue. Thus, if they are confined in a feedlot situation at low elevations during the hot summer period, they will be very susceptible to bluetongue. If confined and fed in 2007, death loss among the 1900 dry ewes will be at least 25%, for a loss of at least 475 ewes that would otherwise be worth $140/head in the fall, a loss of $66,500.

(5) These two bands will start with 1900 dry ewes, but end with about 1425 after death loss due to bluetongue, for an average of 1663 ewes that will be fed from July 18 to Oct. 15 at a cost of $31/head ($0.35/day for hay x 89 days) + $50 slaughter value forgone for an overall cost of $81/head, a loss of $134,703.

(6) *Shirts Brothers Sheep* will incur additional costs in 2007 if *Shirts Brothers Sheep* is forced to feed two sheep bands throughout the period they would otherwise graze within the Smith Mountain Allotment. In order to conduct such a summer feed operation, *Shirts Brothers Sheep* will need to purchase a tractor of at least 90 horsepower, a cost (used) of approximately $30,000. *Shirts Brothers Sheep* will need to lease 25 acres at $400/acre for feed grounds which are otherwise used for corn production, a cost of $10,000. *Shirts Brothers Sheep* will also need to feed 10 pack animals (horses/mules) that would otherwise graze within the Smith Mountain Allotment, a cost for 150 days at $2.13/head/day of $3,195.

Thus, if *Shirts Brothers Sheep* is forced to feed two sheep bands throughout the 2007 grazing season the total economic loss in 2007 will be nearly $503,000, which does not include any unknown extra costs, like the necessary borrowing of capital (at a current interest rate of about 8.5%). *Ronald W. Shirts Decl.* ¶ 47.

In addition, if *Shirts Brothers Sheep* must feed two sheep bands throughout the 2007 grazing season, *Shirts Brothers Sheep* would continue to suffer losses **of at least $209,440** in 2008, even if *Shirts Brothers Sheep* is entitled to graze these sheep within the Payette National Forest again in 2008. Due to bluetongue losses during the 2007 summer period, ewe numbers in

these two bands will be reduced to 1425 at most. These remaining ewes will breed less successfully due to the added stress, reduced nutrition, and reduced fitness levels associated with the confined feeding operation. The remaining 1425 ewes at a reduced 95% lambing rate will produce approximately 1354 lambs in 2008, about 1496 fewer lambs than the 2850 that would likely be produced by 1900 ewes at a 150% lambing rate if grazing occurred as scheduled under the Grazing Permit without modification in 2007. 1496 fewer lambs in 2008 at a market value of $140 equals an additional loss of $209,440 in 2008 if we must feed two sheep bands throughout the 2007 grazing season. *Ronald W. Shirts Decl.* ¶ 48.

III. 36 C.F.R. 251.91(c)(3)(ii)(B): The harmful site-specific impacts or effects on the resources in the area affected by the actions to be stopped.

If the May 11th Decision is stayed, as requested, no harmful site-specific impacts or effects on the resources in the area will occur.

(1) The local economy would be sustained by the granting of a stay, as requested. However, if *Shirts Brothers Sheep* is forced to liquidate two sheep bands in 2007, the local economy would suffer an **economic loss of at least $319,000** in 2007. Losses to the local economy will include: support and services that would otherwise be expended to maintain the *Shirts Brothers Sheep's* operation at its pre-decision level in 2007, an estimated loss to the local economy of about $175,000; the loss of 6 jobs (4 herders and 2 pack string/camp tenders) that *Shirts Brothers Sheep* would otherwise provide in 2007, a direct loss to the local economy of about $142,000 (including wages, room, and board); and, lost grazing fees to the U.S. Forest Service, a direct loss of over $2,000. Thus, the total estimated loss to the local economy if *Shirts*

Brothers Sheep is forced to liquidate two bands of sheep in 2007 is at least $319,000. *Ronald W. Shirts Decl.* ¶ 44, 49.

(2) Bighorn sheep would not be adversely effected by the granting of a stay, as requested.

The "Radio telemetry data" indicate that the bighorn sheep have not been documented within the HCRNA and other portions of the Smith Mountain Allotment essentially within the last 4 grazing season and even now. See discussion above in Third Claim for Relief. Based thereon, there is no "*risk for disease transmission to bighorn sheep*".

In addition, the "*risk for disease transmission to bighorn sheep*" due to contact between bighorn sheep and domestic sheep is not likely, since it is not supported by noted *Pastuerella* research scientists. See discussion above in Third Claim for Relief.

In addition, even assuming a "*risk for disease transmission to bighorn sheep*" due to contact between bighorn sheep and domestic sheep, the risk is managed. *Shirts Brothers Sheep* offered and the May 11th Decision accepted thirteen (13) management actions that were designed to be consistent with an objective "*to undertake management to prevent contact between (bighorns and domestics)*". See Exhibit "A", pp. 10-11; Exhibit "H", pp. 5-7. See discussion above in Third Claim for Relief.

In addition, the standard herding and animal husbandry practices of *Shirts Brothers Sheep* and the threat of wolf predation that has effectively deterred bighorn sheep from entering the Smith Mountain Allotment since 2003 has reduced the potential for contact between bighorn sheep and domestic sheep to an inconsequential level within the Smith Mountain Allotment. In 28 years of experience grazing domestic sheep in the Payette National Forest, *Shirts Brothers Sheep* has observed only one bighorn sheep intermingle with its domestic sheep in about 1980. It

is significant to note that this bighorn was a tagged ram that had been recently transplanted, and that the incident took place before *Shirts Brothers Sheep* began using guard dogs, and before wolf reintroduction projects made predation in the Smith Mountain Allotment a significant threat to bighorn sheep. *Ronald W. Shirts Decl.* ¶ 51.

In addition, prohibiting domestic sheep grazing within the portion of the Smith Mountain Allotment affected by the May 11th Decision will not eliminate all potential contact between the Hells Canyon bighorn sheep and domestic sheep because there is substantial private acreage within the boundaries of said Allotment that will continue to be leased and grazed by domestic sheep, and there are other state and private lands adjacent to the Hells Canyon complex in other localities were domestic sheep grazing continues. *Ronald W. Shirts Decl.* ¶ 54.

There is no demonstrable risk that domestic sheep will contact bighorn sheep if the May 11th Decision is stayed, as requested, nor is their reliable evidence that overlapping use areas or actual contact with domestic sheep in free-ranging situations poses a risk of disease transmission to bighorn sheep. Thus, there is no imminent or irreparable injury to bighorn sheep if the May 11th Decision is stayed. *Ronald W. Shirts Decl.* ¶ 55.

IV. 36 C.F.R. 251.91(c)(3)(ii)(C): How the cited effects and impacts would prevent a meaningful decision on the merits.

To impose the conditions set forth under the May 11th Decision will bankrupt *Shirts Brothers Sheep* this year, essentially destroying any opportunity they now have to succeed in protecting their statutory and regulatory entitlements, and other non-economic interests, based upon the merits of its administrative appeal. *Ronald W. Shirts Decl.* ¶ 53.

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REQUEST RELATING TO THE ADMINISTRATIVE RECORD

The Reviewing Officer is required to base her Decision upon the appeal record, and upon the laws, regulations, orders, policies and procedures in effect at the time of the decision. 36 C.F.R. 251.99(a). See also 36 C.F.R. 251.81, 251.98. Because of this requirement, Appellant have a right to know the writings upon which the Decision is going to be, or was, based so Appellant can adequately respond. Additionally, Appellant has a right to know the writings upon which the Decision is ultimately based so Appellant can review whether the ultimate Decision was supported by the appeal record/administrative record.

Because of the above stated requirements, Appellant requests the employees, officers and agents of the USDA-United States Forest Service: (1) to serve a copy upon Appellant of every document reviewed, relied upon, and considered in issuing the Decision at issue; (2) to serve a copy upon Appellant of every document filed in the Appeal Record/Administrative Record and every document which the Reviewing Officer reviews and considers in reaching her Decision; (3) to notify Appellant of every ex parte communication between the District Ranger (or her staff), the Forest Supervisor (or her staff), and Regional Forester (or his staff) relating to this appeal; (4) to provide Appellant with a specific inventory at the time of the Oral Presentation and Reviewing Officer's decision of every writing which the Reviewing Officer claims is filed with her as part of the appeal record/administrative record, including every writing which the Forest Supervisor claims she reviewed or considered in making her decision.

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FILING

On May 15, 2007, the original of this document is filed with the Reviewing Officer, and a copy is simultaneously filed with the Deciding Officer. Filing is being accomplished by personal delivery to:

REVIEWING OFFICER: Forest Supervisor
Payette National Forest
800 West Lakeside Avenue
McCall, Idaho 83638

DECIDING OFFICER: District Ranger
Council Ranger District
P.O. Box 567
Council, Idaho 83612

36 C.F.R. 251.90(b)(8): CONCLUSION

Appellant urges that the Reviewing Officer to immediately stay the effect of the May 11th Decision, as requested herein, and in due course to "reverse" the May 11th Decision, as requested herein, for any of the stated Claims for Relief. 36 C.F.R. 251.90(a).

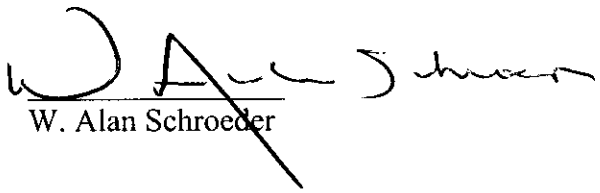
Respectfully submitted, May 15, 2007.

SCHROEDER & LEZAMIZ LAW OFFICES, L.L.P.

by _____
W. Alan Schroeder, Esq.
the lawyer for *Shirts Brothers Sheep*, Appellant

CERTIFICATE OF FILING UNDER 36 C.F.R. 251.88

On May 15, 2007, I had hand delivered the foregoing document to the places identified in the foregoing document, paragraph **Filing**.



W. Alan Schroeder

EXHIBIT "A"

USDA United States Department of Agriculture | Forest Service | Payette National Forest Council R.D. | PO Box 567 Council ID 83612 208 253-0100

File Code: 2230
Date: May 11, 2007

CERTIFIED MAIL – RETURN RECEIPT REQUESTED #7002 0860 0008 7711 6188

RON SHIRTS
SHIRTS BROTHERS SHEEP
1839 WEISER RIVER ROAD
WEISER, ID 83672

Dear Ron:

The enclosed Term Grazing Permit Modification describes the actions (and reasons for the actions) being taken to reduce contact between the domestic and bighorn sheep. This one year modification is hereby made part of Term Grazing Permit Number 00339-1, I issued to you on April 3, 2007. It is hereby attached to and incorporated in your Term Grazing Permit as Modification #2. The 2007 grazing season authorized use on the Smith Mountain S&G Allotment is for one band of 1,200 ewe/lamb pairs from June 6 through October 10, as range conditions allow.

Please review the modification and if in agreement sign and return to me. However, your signature is not required for the modification to be valid, if you choose not to sign go ahead and keep this copy for your files.

You have the right to appeal this modification under the 36 CFR 251, Subpart C authority. If you need another copy of these regulations, please contact Maura Laverty.

We appreciate the additional management practices you are committed to implementing this season on the Smith Mountain Allotment in an effort to ensure separation between the domestic and bighorn sheep. We know the requests, including the modification of your Term Grazing Permit, are causing you emotional and financial hardship, but we need to take steps towards maintaining the separation between your domestic sheep and the bighorn sheep. These efforts provide us reasonable assurance we are reducing the risk of contact, and possible disease transmission, between domestic and bighorn sheep.

If you have any questions, please feel free to call Maura Laverty at 253-0114 or Pete Grinde at 347-0338.

Sincerely,

maura Laverty

for MARY FARNSWORTH
District Ranger

Enclosures

Payette National Forest
Council Ranger District

TERM PERMIT MODIFICATION #2
(Ref. FSH 2209.13, Sec. 16.1)

1. Grazing Permit Number 00339-1, issued to Ron Shirts on April 4, 2007, by Mary Farnsworth, District Ranger is hereby modified as follows for the 2007 grazing season, superceding Modification #1 dated 4/11/07:

    a. Term Grazing Permit, Part 1, area permitted for livestock use. The portion of the Smith Mountain S&G Allotment that lies within the Hells Canyon National Recreation Area (HCNRA) is not authorized for livestock use, in addition to the following 6th Order Hydrologic Units: Deep Creek, Kinney Creek, McGraw Creek, Herman Creek, Indian Creek, Bear Creek, and Upper Rapid River. The area not authorized for use is within the Deep Creek, Echols Butte, Snake River/Indian Creek, and the north & west portions of the Smith Mountain pastures. Attached map dated 5/4/07.
    b. The authorized season of use is for one band of 1,200 ewe/lamb pairs from June 6 through October 10, 2007, as range conditions allow.

2. This permit is being modified for the following reasons:

    a. The HCNRA Act directs the Secretary of Agriculture to protect wildlife habitat and to continue traditional uses of the HCNRA which are compatible with provisions of the Act itself.

    b. HCNRA land use regulation 36 CFR 292.48(b) states:
    "Where domestic livestock grazing is incompatible with the protection, restoration, or maintenance of fish and wildlife...the livestock use shall be modified as necessary to eliminate or avoid the incompatibility."

    c. Radio telemetry data indicate bighorn sheep have been documented within the HCNRA and other portions of the Smith Mountain S&G Allotment that are a part of this modification. Not authorizing livestock grazing in this portion of the allotment will reduce the risk of contact between bighorn sheep and domestic sheep, thereby reducing the risk for disease transmission to bighorn sheep.

3. This modification is hereby made a part of and should be attached to your Term Grazing Permit. The modification to your Term grazing Permit is authorized in the Term Grazing Permit Part 1 number 3, which states, " ...This permit can also be.... otherwise modified, at any time during the term to conform with needed changes brought about by law, regulation, Executive order, allotment management plans, land management planning, numbers permitted or seasons of use necessary because of resource conditions, or the lands described otherwise

being unavailable for grazing..." Modification of the Term Grazing Permit is also authorized in Part 2 - General Terms & Conditions number 8 Range & Livestock Management (b) which states, "The number, kind, and class of livestock, period of use, and grazing allotment specified in the permit may be modified when determined by the Forest Officer in charge to be needed for resource protection...."

Changes in grazing permits is authorized by 36 CFR 222.4 (a) (7) & (8) which state, "Modify the terms and conditions of a permit to conform to current situations brought about by changes in law, regulation, executive order, development or revision of an allotment management plan, or other management needs," and "Modify the seasons of use, numbers, kind, and class of livestock allowed or the allotment to be used under the permit, because of resource condition, or permittee request..."

4. I have reviewed this modification and concur with the changes contained in it.

_____ _____

Permittee Date

5. This modification has been discussed with the permittee and is recommended.

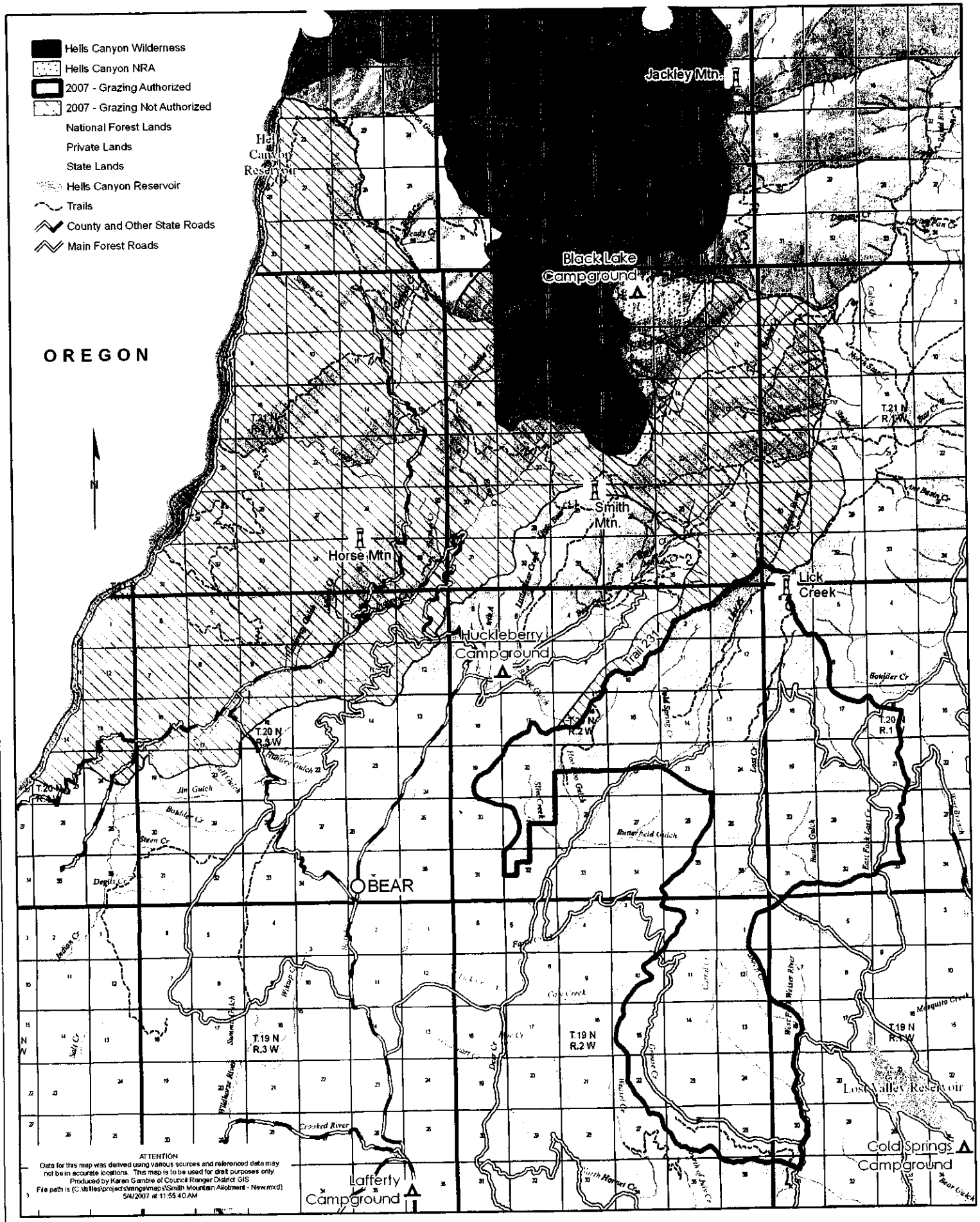
maura Lavery 5/8/2007

Recommending Forest Officer Date

6. Approved:

[signature] District Ranger 5/8/07

Approving Forest Officer Date



SMITH MOUNTAIN SHEEP ALLOTMENT - COUNCIL RANGER DISTRICT

2007 ANNUAL OPERATING INSTRUCTIONS
FOR THE
SMITH MOUNTAIN and SURDAM on/off S&G ALLOTMENTS

These Annual Operating Instructions are for grazing management of the **Smith Mountain and Surdam on/off S&G Allotments** for the 2007 grazing season. This plan was developed with participation of the livestock permittee at the Annual Operating Instruction meeting held at the Weiser Ranger District Office on May 7th, 2007. This plan is made part of the Term Grazing Permits as specified in Part 2, Number 8 (a) of the permit.

Sheep grazing will not be authorized in 2007 in Hells Canyon NRA (Deep Creek & Echols Butte pastures) or on the west half of the Smith Mountain Allotment (Snake River/Indian Creek & the north and west half of the Smith Mountain pastures). The area not authorized for grazing in 2007 includes portions of the following 6th Order Hydrologic Units within the Smith Mountain Allotment: Deep Creek, Kinney Creek, McGraw Creek, Herman Creek, Indian Creek, Bear Creek, and Upper Rapid River.

These instructions are a guideline for grazing management. It is necessary to contact the Forest Service if there are any changes or additions to these instructions through out the grazing season. Refer to Part 2 of your term grazing permit for general terms and conditions, which apply to these Annual Operating Instructions.

Grazing fees of $ 0.27/HM must be paid before livestock are authorized to enter the National Forest. Grazing fees must be paid prior to livestock entering the National Forest. Payment must be made to: USDA Forest Service, P.O. Box 894183, Los Angeles, California 90189-4183. The Council District Office must receive confirmation from Lockbox that payment has been made prior to sheep entering the Forest.

2007 AUTHORIZED USE:

Band #	Allotment	Livestock Numbers	Season
	Surdam on/off Allotment	27 Head Months	4/1 – 6/16
Band #1 & 2	Non Use	1900 ewe/lamb	6/18-10/15
Band #3	Unload at Lost Creek		
	Sheep Creek pasture	1200 ewe/lamb	6/6 – 6/27
	Lost Creek pasture	1200 ewe/lamb	6/28 – 8/14
	Ship lambs from Railroad Saddle		8/15
	East ½ Smith Mountain pasture	1200 dry ewes	8/21 – 10/1
	Trail off Forest on Salmon River	stock driveway	10/1 - 10/10

TERMS AND CONDITIONS PERTAINING TO SEASON OF USE AND LIVESTOCK NUMBERS:

The District Ranger may modify the season of use and livestock numbers permitted on any given year. The season of use is especially dependent upon weather conditions (annual precipitation) which influences annual forage production and range readiness. Range readiness is measured by soil moisture and plant growth. Soils may be damp, but not saturated. They should be firm to avoid excessive compaction by livestock. Grass species other than bulbous bluegrass and cheatgrass must be a minimum of 6 inches in height. Arrowleaf balsamroot should be in bloom or past bloom. The District Ranger's authority to modify term grazing permitted use is further described in Part 2, Section 8 (b) & (c) of your permit. Ten days are permitted for trailing sheep off the National Forest starting October 1, 2007.

These dates are tentative and may vary according to range conditions and utilization levels.

Notify the Forest Service at least 3 days before you turn onto the allotment.

Actual Use: The permittee is **required** to complete an "Actual Use" form which includes a record of livestock losses and the permittee's maintenance costs. Any format that provides the information requested is acceptable.

Credits: All requests for refunds or credits for unused portion of grazing fees for Forest System Lands must be received in the Council Ranger District office by March 1, following the grazing season.

GRAZING PRESCRIPTION AND LIVESTOCK ROTATIONS:

The grazing prescriptions are designed to meet the resource needs of the soils and vegetation. Additionally, Fisheries Biologists have completed Biological Assessments on the grazing prescriptions. The known or potential problem areas have been identified below, along with the respective mitigation measures designed to eliminate each adverse effect.

Resource Concern: 30% utilization on all upland sites.

- **Monitoring:** Upland monitoring will occur in each grazing unit throughout the grazing season. Forage utilization will be based on height/weight measurements on key grass species. These include Mountain brome and Columbia needlegrass. Monitoring forage utilization on upland sites will begin two weeks after sheep enter the first grazing unit and will progress through the grazing season until the proper use criteria is reached or the term grazing season is over. This is estimated to be once every two weeks.

Resource Concern: 30% utilization on all riparian sites, or 4-6 inch stubble height or 10% maximum stream bank trampling.

- **Monitoring:** Riparian monitoring will occur on key riparian areas where sheep graze. Additional sites will be monitored during the grazing season. Streams not accessible to sheep

will not be monitored for use. Monitoring will be conducted using stubble height, utilization and/or stream bank stability methods. Forage utilization in riparian areas will be based on key forage species. The method for collecting stubble height is at specified intervals, measure the stubble height of the key species nearest to the toe of the right foot and record on the Stubble Height form. Measurements will be taken along both sides of the stream. Key plant species to be measured include Water sedge and Tufted hairgrass. In addition to forage utilization in riparian areas, the impacts of sheep use along stream banks will be monitored. This is generally referred to as trampling damage or mechanical damage of the stream bank. A maximum of 10% (of natural level) of the stream bank is allowed to be disturbed. Pace transects along the stream bank will be used to monitor stream bank disturbance.

Allowable Use Standards

Allowable use on uplands and riparian areas is 30%, which generally is equivalent to once over grazing. When the permittee observes proper use standards being reached, the sheep will be moved to the next unit /pasture or off the Forest, and the permittee will notify the Forest Service. The permittee is responsible for not exceeding the proper use criteria.

One time bedding and watering per location are authorized.

Salting Requirements

Salting is restricted to the following:

- No less than ¼ mile from water, and not be placed in meadow bottoms.
- Only at bed grounds.
- Placed at a minimum distance of 100 yards from roads and out of sight from roads, if possible.
- At least 1/4 mile from NIDGS sites.
- Should be moved yearly unless present salt ground is located in a rocky area where no vegetation grows.
- Must be contained and not placed directly on the ground.
- Unconsumed salt will be removed from the site.
- 1/4 mile from timber plantations with trees less than 15 feet tall. If this can't be accomplished, the District Range and Reforestation personnel will work with you to find acceptable locations.

Sheep Creek Unit:

Band #3 will unload off trucks on Lost Creek on 6/6. Sheep will move throughout the Sheep Creek Unit and into the Lost Creek Unit approximately 6/27, not exceeding 30% use.

Lost Creek Allotment:

Band #3 will move to the Lost Creek Unit approximately 6/28 and graze throughout the unit, not exceeding 30% allowable use, until lambs are shipped at Railroad Saddle approximately 8/15.

After shipping lambs, the sheep will move through the Lost Creek Unit to the east half of the Smith Mountain Unit.

Smith Mountain Allotment:
Avoid all Northern Idaho ground squirrel sites in Butterfield Gulch, Hoo Hoo Gulch, Cold Springs Creek, and Lick Creek Lookout.

After shipping lambs, the band of dry ewes will cross over from the Lost Creek Unit below the Lick Creek Lookout and graze the east side of the Smith Mountain Allotment east of Trail 231 until 10/1, following the Salmon River stock driveway off the forest through the Lick Creek, North Hornet, Mill Creek, Johnson Creek, Wildhorse/Crooked River, and East Pine/Rush Creek allotments. You are required to have all sheep off National Forest Lands by October 10, 2007.

MAINTENANCE OF RANGE IMPROVEMENTS:

All range improvements must be maintained prior to turning livestock into the unit scheduled for use. If an existing range improvement has been properly maintained but requires reconstruction, a cooperative effort can be made between the Forest Service and permittee to reconstruct the development. Those projects to which the permittee contributes normally receive higher priority for funding by the Forest Service.

Maintenance of structural range improvements is the responsibility of the permittee. Standards to which your assigned improvements are to be maintained are explained in Part 3 of your Term Grazing Permit and are attached to this annual operating plan. Improvements in the unit to be grazed must be maintained prior to cattle entering the unit. The fences need to be maintained prior to cattle being on either side of the fence. Nonuse does not relieve a permittee from maintenance responsibility. If an existing range improvement has been properly maintained but requires reconstruction, a cooperative effort may be made between the Forest Service and the permittee to reconstruct the development, depending on the availability of materials. Those projects to which the permittee contributes, normally receive higher priority for funding by the Forest Service.

Maintenance of spring developments is vitally important to the health of your livestock and to the grazing allotment. If you are aware of spring developments that require reconstruction or extensive maintenance, please discuss this with Maura Laverty, your Rangeland Management Specialist.

You will need to work around the downfall trees at the head of Cold Springs Creek and are not authorized to cut a path through, as this is designated as lynx habitat.

Portable corrals will be utilized at Railroad Saddle for shipping.

MONITORING OF THE ANNUAL LIVESTOCK GRAZING ACTIVITY:

We are requiring you to report actual use information for each unit grazed because we are required to report this grazing use to the National Marine Fisheries Service (NMFS) and the US

Fish and Wildlife Service (FWS). If you have any questions completing the form, please call Maura at 208-253-0100. **These forms need to be returned no later than November 1, 2007.**

MULTIPLE USE REQUIREMENTS:

All plantation grazing must be coordinated with the Forest Service Plantation Guards prior to grazing the plantations. The permittee is responsible for contacting the Forest Service prior to livestock accessing an area with plantations.

If there is damage to Forest System trails by the permittee's livestock, the permittee will need to repair or pay for the damage to be repaired.

SPECIAL MANAGEMENT:

Several known populations of the ESA threatened Northern Idaho Ground Squirrel (NIDGS) ares located on the Smith Mountain Allotment. These sites must be avoided, as well as other sites in the vicinity, including Hoo Hoo Gulch, Butterfield Gulch, and west of Cold Springs Creek. Mitigation of livestock grazing effects includes avoiding grazing, bedding, or trailing through these areas, as well as no salting within ¼ mile of these sites. All Terrain Vehicles (ATVs) or Off Highway Vehicles (OHVs) are not authorized off roads near NIDGS sites. These sites will be shown to your sheepherders to prevent any accidental use of the areas. There is also a site near the Lick Creek Lookout and you will need to avoid the area around the lookout when trailing.

In the event a designated mitigation measure fails to protect a species listed under the Endangered Species Act, a change in the authorized grazing activity will occur. If proper utilization levels are reached, then livestock will be moved to the next grazing area or off the forest. If livestock grazing does not comply with the terms and conditions of these Annual Operating Instructions, then the Forest Service policy and procedures dealing with administrative permit actions will be followed.

We ask you or your employees to report the date, time, and location of each bighorn sheep seen to the Council Ranger District immediately following the siting.

You are responsible for ensuring your herders are informed and understand the standards, guidelines, and other management direction in this plan.

Hay/Straw: The weed seed free program for National Forests in Idaho is in effect. All hay, straw or mulch used on the National Forest must be certified by cooperating Idaho State Department of Agriculture officials as being noxious weed or noxious weed seed free.

In addition to these instructions, you identified additional management practices you will be implementing for the 2007 grazing season, in your letter to me dated April 19, 2007. The management practices you identified are:

1. Perform a careful health inspection of all domestic sheep and remove any old, unthrifty, or sick animals from the band prior to turnout onto the Forest. Cull any old, unthrifty, or sick animals from the band as soon as they are identified throughout the grazing season and when the lambs are shipped.

2. Double the number of guard dogs for each band of sheep (2 guard dogs per band).

3. Double the number of herders for each band of sheep (2 herders per band). Each herder typically has at least one sheepdog, so there will typically be at least 4 dogs tending each band of sheep (2 guard dogs and 2 sheepdogs per band).

4. Each band of sheep will have its own pack string, rather than a single pack string to service all three bands. Each pack string will camp immediately adjacent to its band of sheep each night. Having two herders and a dedicated pack string for each band of sheep will allow for continuous supervision of all three bands for the entire time they are on the Forest, 24 hours a day (even if an individual herder must temporarily leave service).

5. Each pack string will carry a cell phone to maintain direct communication with the permittee for the entire grazing season. This will allow more frequent reporting to the owner regarding herd health and death losses. It will also allow for the coordination of more frequent and accurate counts of an entire band each time it moves through areas where such counts are feasible.

6. Herders will count marker sheep (black, horned, belled, etc.) daily to assure that no small groups of sheep have separated from the main band.

7. Each pack string will carry binoculars to improve their ability to spot bighorn sheep.

8. If the herders or pack strings spot any bighorn sheep within the Smith Mountain S&G Allotment, they will adjust their grazing path or haze the bighorns out of the area to minimize the possibility of direct contact with the domestic sheep.

9. The permittee will immediately report any bighorn sheep sightings within the Smith Mountain S&G Allotment to the USFS and the Idaho Department of Fish and Game.

10. Ewes with mastitis (blue bag) will not be left behind to recover and catch back up to the band later, but will be removed from the band or killed.

11. Predator attacks, primarily wolf attacks, create the most significant risk for stray domestic sheep because they cause sheep to scatter from the main band. In such cases, the permittee will immediately notify the USFS, Idaho Department of Fish and Game, and

Idaho wildlife services and begin efforts to identify the sheep that were killed and to locate and re-gather any scattered sheep.

12. In 28 years of experience, Shirts Brothers Sheep have never observed a bighorn sheep intermingle with their domestic bands. However, we are willing to implement the IDFG's *Emergency Response Plan* which allows representatives of the IDFG or a permittee to kill any bighorn sheep that come into contact with domestic sheep on a grazing allotment. See letter from IDFG to Hells Canyon Preservation Council dated August 12, 2004 (wherein the *Emergency Response Plan* is referenced). This will ensure that if we observe any intermingling between a bighorn sheep and a domestic sheep, then the bighorn sheep will be killed and not allowed to return to its home herd. We certainly will immediately advise you and IDFG if the authority exercised in this *Emergency Response Plan* is implemented.

13. Shirts Brothers Sheep will allow the IDFG to remove or kill its domestic sheep which are located outside of private lands or permitted public land grazing allotments, or are located within public land grazing allotments outside of the permitted season of use (hereafter referred to as offending livestock), provided that the following conditions have been met: a) the offending livestock are found to be in immediate association with bighorn sheep and pose a health risk to said bighorn sheep; and, b) reasonable but unsuccessful attempts have been made over a 5-day period to notify Shirts Brothers Sheep regarding the offending livestock so they can remove said livestock; or, c) Shirts Brothers Sheep is notified and agrees that IDFG field personnel can remove or kill the offending livestock; or, d) Shirts Brothers Sheep is notified, but fails to remove the offending livestock within 10 days of said notification; and, e) the IDFG makes a reasonable attempt to notify the office of the Idaho state veterinarian prior to any removal action, or as soon as possible after the removal action is taken if the attempt at prior notification fails; and, f) the IDFG immediately turns over to Shirts Brothers Sheep or to the Idaho State veterinarian any offending livestock removed or killed pursuant to the preceding provisions.

Approved by Mary Farnsworth
Council District Ranger

5/8/07
Date

A1

EXHIBIT "B"

USDA-Forest Service

FS-2200-10 (12/99)

TERM GRAZING PERMIT - PARTS 1 AND 2 (Reference FSM 2230)	Page 1 of 12 Permittee Number SHIRTS, BR Permit Number 00339-1

PART 1

Shirts Brothers Sheep of 1839 Weiser River Rd, Weiser, ID 83672 hereinafter
(Name of Permittee) *(Post Office Address, Including Zip)*
called the permittee, is hereby authorized to graze livestock owned by the permittee upon designated lands administered by the Forest Service within the Payette (X appropriate box)
[X] National Forest [ ] National Grassland under the following terms and conditions:

1. Description of range. The livestock shall be grazed only upon the area described as follows: described on attached page and/or delineated on the attached map dated 4/7/97 & 9/16/03, which is part of this permit. (Strike out item or items not applicable.)

2. The number, kind, and class of livestock, period of use, and grazing allotment on which the livestock are permitted to graze are as follows, unless modified by the Forest Service in the Bill for Collection:

LIVESTOCK			PERIOD OF USE		GRAZING ALLOTMENT
NUMBER	KIND	CLASS	FROM	TO	
1200	sheep	ewe/lamb	5/16	8/10	Smith Mountain S&G
1200	sheep	dry ewes	8/17	10/15	Smith Mountain S&G
1900	sheep	ewe/lamb	6/18	8/10	Smith Mountain S&G
1900	sheep	dry ewes	8/17	10/15	Smith Mountain S&G
1900	sheep	ewe/lamb	4/1	6/30	Surdam S&G (on/off) 5% Forest
15	horses	mature	5/16	10/15	Smith Mountain S&G

3. It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued thereunder; or for knowingly and willingly making a false statement or representation in the permittee's grazing application, and amendments thereto; or for conviction for failure to comply with Federal laws or regulations or State and local laws relating to livestock control and to protection of air, water, soils and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit. This permit can also be cancelled, in whole or in part, or otherwise modified, at any time during the term to conform with needed changes brought about by law, regulation, Executive order, allotment management plans, land management planning, numbers permitted or seasons of use necessary because of resource conditions, or the lands described otherwise being unavailable for grazing. Any suspension or cancellation action may be appealed pursuant to 36 CFR 251, Subpart C.

4. This permit supersedes permit April 4, 1997 to Shirts Brothers Sheep issued

I HAVE REVIEWED AND ACCEPT THE TERMS OF THIS PERMIT

SIGNATURE OF PERMITTEE OR HIS AUTHORIZED AGENT			DATE
Ron Shirts			3/20/07
SIGNATURE OF FOREST OFFICER	**NAME (PRINT)**	**TITLE**	**DATE**
	Mary Farnsworth	District Ranger	4/3/07

COPY

PART 2 - GENERAL TERMS AND CONDITIONS

1. Validation of Permit. The issuance of a Bill for Collection, payment of fees and actual turning on at least 90 percent of livestock the first grazing season after the permit is issued will validate this permit for the number, kind, and class of livestock, grazing allotment, and period of use for the particular year.

2. Bill for Collection. Each year, after validation and prior to the beginning of the grazing season, the Forest Service will send the permittee a Bill for Collection specifying for the current year the kind, number, and class of livestock allowed to graze, the period of use, the grazing allotment, and the grazing fees. This bill, when paid, authorizes use for that year and becomes part of this permit.

3. Payment of Fees. The permittee will not allow owned or controlled livestock to be on Forest Service-administered lands unless the fees specified in the Bill for Collection are paid.

4. Administrative Offset and Credit Reporting. Pursuant to 31 USC 3716 and CFRPart 3, Subpart B, any monies that are payable or may become payable from the United States, under this permit, to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or legal entity owes to the United States. Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owed the United States shall be disclosed to consumer or credit reporting agencies.

5. Interest, Penalty, and Administrative Costs. Pursuant to 31 USC 3717 and 7 CFR Part 3, Subpart B, interest shall be charged on any payment or fee amount not paid within 30 days from the date the payment was due. Interest shall be charged using the most current rate prescribed by the United States Department of the Treasury Fiscal Requirements Manual (TFRM-6-8020.20). Interest shall accrue from the date the payment was due. In addition, in the event the account becomes delinquent, administrative costs may be assessed. A penalty of 6 percent per year shall be assessed on any payment or fee amount overdue in excess of 90 days from the date the first billing was due. Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments falls on a non-workday, the charges shall not apply until the close of business on the next workday.

6. Term of Permit. This permit is effective until 12/31/2016 unless waived, cancelled, or otherwise terminated as provided herein. The permittee has first priority for receipt of a new permit at the end of the term subject to modification deemed necessary by the Forest Service.

In order to update terms and conditions, this permit may be cancelled at **any time** provided **a new permit** is **issued** to the existing permit holder for a new term of 10 years **following this update.**

7. Ownership Requirement

(a) Only livestock owned by the permittee are authorized to graze under this permit. To exercise use of the permit, the permittee will furnish all evidence of ownership requested by the Forest Service. Livestock purchased and subsequently sold back to the original owner, or to an agent, assignee, or anyone representing or acting in concert with the original owner, within a 24-month period without prior written approval by the Forest officer in charge will not be considered valid ownership of the livestock.

(b) Base property owned and used by the permittee to qualify for a term grazing permit must meet minimum base property requirements approved by the officer in charge.

8. Range and Livestock Management

(a) The allotment management plan for the land described on page 1, Part 1 is part of the permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest officer in charge for the area under permit and will require employees, agents, and contractors and subcontractors do likewise.

(b) The number, kind, and class of livestock, period of use, and grazing allotment specified in the permit may be modified when determined by the Forest Officer in charge to be needed for resource protection. Except in extreme emergencies where resource conditions are being seriously affected by livestock use or other factors, such as fire, drought, or insect damage, notice of a scheduled reduction of numbers of livestock or period of use under a term permit will be given one (1) full year before a modification in permitted numbers or period of use becomes effective. This does not apply to annual adjustment in grazing as provided for in Section 8(c).

(c) When, in the judgment of the Forest Officer in charge, the forage is not ready to be grazed at the beginning of the designated grazing season, the permittee, upon request of the Forest officer, will defer placing livestock on the grazing allotment to avoid damage to the resources. The permittee will remove livestock from Forest Service-administered lands before the expiration of the designated grazing season upon request of the Forest officer when it is apparent that further grazing will damage the resources.

(d) The permittee will allow only the numbers, kind, and class of livestock on the allotment during the period specified in Part 1 hereof or the annual Bill for Collection, including any modifications made as provided for in Section 8(c). If livestock owned by the permittee are found to be grazing on the allotment in greater numbers, or at times or places other than permitted in Part 1 hereof, or specified on the annual Bill for Collection, the permittee shall be billed for excess use at the unauthorized use rate and may face suspension or cancellation of this permit.

(e) The permittee will not allow owned or controlled livestock to be upon any area of Forest Service-administered lands not described in either Part 1 hereof or the annual Bill for Collection.

(f) The Forest officer in charge may, at any time, place or fasten or require the permittee to place or fasten upon livestock covered by this permit appropriate marks or tags that will identify them as livestock permitted to graze on lands administered by the Forest Service. When requested by the Forest officer, the permittee will, at any time during the permitted period of use, including entry and removal dates, gather permitted livestock to enable an accurate count to be made thereof. The Forest Service may, at its option, gather and hold for counting all livestock grazing on the allotment.

(g) Only livestock marked, tagged, or branded as shown in the application upon which this permit is based, and as may be required under Section 8(f), will be allowed to graze under this permit unless the permittee has advance written approval from the Forest officer in charge to do otherwise.

(h) The permittee will pay the costs of, perform, or otherwise provide for the proportionate share of cooperative improvements and management practices on the permitted area when determined by the Forest officer in charge that such improvements and practices are essential to proper protection and management of the resources administered by the Forest Service.

(i) This permit is issued and accepted with the provision that the permittee will maintain all range improvements, whether private or Government-owned, that are assigned for maintenance to standards of repair, orderliness, and safety acceptable to the Forest Service. Improvements to be maintained and acceptable to maintenance are specified in Part 3 of this permit. The Government may maintain or otherwise improve said improvements when, in its opinion, such action will be to its advantage.

9. Nonuse. At least 90 percent of the livestock permitted must be grazed each year, unless the Forest officer in charge approves nonuse. Failure to place livestock on the allotted range/pasture without approved nonuse may result in cancellation of the term grazing permit in whole or in part.

10. Protection. The permittee, or the permittees' agents and employees, when acting within the scope of their employment, and contractors and subcontractors will protect the land and property of the United States and other land under jurisdiction of the Forest Service covered by and used in conjunction with this permit. Protection will include taking all reasonable precautions to prevent, make diligent efforts to suppress, and report promptly all fires on or endangering such land and property. The permittee will pay the United States for any damage to its land or property, including range improvements, resulting from negligence or from violation of the provisions and requirements of this permit or any law or regulation applicable to the National Forests System.

11. General.

(a) The Forest officer in charge may at any time require the permittee to give good and sufficient bond to insure payment for all damage or costs to prevent or mitigate damages sustained by the United States through the permittee's failure to comply with the provisions and requirements of this permit or the regulations of the Secretary on which it is based.

(b) This permit will be cancelled, in whole or in part, whenever the area described in this permit is withdrawn from the National Forest System by land exchange, modification of boundaries, or otherwise, or whenever the area described in this permit is to be devoted to a public purpose that precludes grazing.

(c) The permittee will immediately notify the Forest officer in charge of any change in control of base property, ownership of livestock, or other qualifications to hold this grazing permit.

(d) The permanent improvements constructed or existing for use in conjunction with this permit are the property of the United States Government unless specifically designated otherwise or covered by a cooperative agreement. They will not be removed nor compensated for upon cancellation of this permit, except in the National Forests in the 16 contiguous Western States when cancelled, in whole or in part, to devote land to another public purpose including disposal. In the event of such cancellation on the National Forests in the 16 Contiguous Western States, the permittee will be compensated for the adjusted value of approved range improvements installed or placed by him.

(e) The permittee may not transfer, assign, lease, or sublet this permit in whole or part.

(f) This permit includes the terms and conditions of Part 3 hereof, consisting of page 5 through 6 which follow.

USDA - FOREST SERVICE	Page 5 of 12
GRAZING PERMIT - PART 3 (Reference FSM 2230)	Permittee Number **SHIRTS, BR** Permit Number 00339-1

Special Terms and Conditions

Responsibilities for Construction and Maintenance of Structural Improvements or for Range Rehabilitation. (List the specific responsibilities of the permittee; or incorporate into the permit the cooperative agreement, management plan or other document which sets forth these responsibilities in detail. Fully identify the particular document or documents.)

All improvements will be maintained to the standards listed below. Maintenance of improvements will be performed prior to livestock turn on in accordance with the Annual Operating Instructions schedule.

A. Fence Maintenance Standards:

Maintain fences to original construction standards or as near as possible.

Repair broken wires with a splice.

Replace rotten posts, staples, or broken ties (stays).

Restretch wires as needed.

Replace badly rotted or broken sections of pole fences or braces.

Straighten or replace metal posts where necessary.

Fasten wire onto metal posts with clips.

B. Trough Development Maintenance Standards:

Remove sediment and foreign objects from headbox and ensure a headbox cover is in place.

Install and maintain a wildlife escape ramp in each water trough.

Maintain fence around spring source, according to standards listed above for fence maintenance.

Replace cracked or broken pipes leading from headbox to trough.

Replace cracked or broken inlet and outlet pipes.

Bury all inlet and outlet pipes to prevent damage from trampling.

Clean out sediment from bottom of trough.

If algae problem is present add copper sulfate.

If erosion is occurring under the trough, place rocks or planks under it. Drain and reset, if necessary.

Drain troughs at end of season and remove sediment.

C. Ponds

Clear dikes of trees and brush.

Remove debris and sediment from spillways.

USDA - FOREST SERVICE **GRAZING PERMIT - PART 3** (Reference FSM 2230)	Page 6 of 12 Permittee Number **SHIRTS, BR** Permit Number 00339-1

Special Terms and Conditions

Responsibilities for Construction and Maintenance of Structural Improvements or for Range Rehabilitation. (List the specific responsibilities of the permittee; or incorporate into the permit the cooperative agreement, management plan or other document which sets forth these responsibilities in detail. Fully identify the particular document or documents.)

Improvement #	Name	Length	Location
108S02	East Indian Creek Spring		T20N R3W sec.10 SWSW
108S09	Ladder Spring		T21N R3W sec. 35 SWSE
108S05	Towsley Spring		T21N R3W sec. 13
108S03	School Section Spring		T20N R3W sec. 11 NESE

USDA - FOREST SERVICE	Page 7 of 12
GRAZING PERMIT - PART 3 (Reference FSM 2230)	Permittee Number **SHIRTS, BR** Permit Number **00339-1**

Special Terms and Conditions

Management Practices. (List the specific management practices required of the permittee, such as salting, riding and movement of cattle, herding or bedding of sheep; or incorporate into the permit the specific allotment management plan or other document which outlines these practices in detail. If you need additional space, use next page.)

The following standards outlined in the Payette National Forest Land and Resource Management Plan are a part of this Term Grazing Permit.

1. Management actions shall be designed to avoid or minimize adverse effects to listed species and their habitats (TEST06). The following specific mitigations, actions, or restrictions have been identified through consultation with NOAA-Fisheries and USFWS.
    a. No construction of handling facilities within RHCAs and assure that existing facilities within RHCAs do not prevent or retard attainment of RMOs.
    b. Limit livestock trailing, bedding, watering, salting, loading, and other handling to those areas and times that will not prevent or retard attainment of RMOs.
    c. Salt is not to be placed in meadows or bottoms, where livestock congregate and should be placed no less than 0.25 miles from water.
    d. Once over grazing equivalent to 30% allowable use in riparian and upland areas, or 4-6 inch stubble height or 10% maximum stream bank trampling.
    e. One time watering per location.
    f. One time bedding per location.
    g. Grazing around all high mountain lakes is prohibited.
    h. One time grazing per area, no re-grazing or trailing over an area that has been grazed.
    i. No bedding within 300 feet of the main stem of Rapid River. One crossing of sheep on the meadow in the head of Rapid River is authorized. One crossing is authorized lower in the drainage to access the Smith Mountain Allotment. Use is limited to 30% use on all types. Rapid River will be inspected one week following use in conjunction with the permittee. Sheep will be moved dependent upon the inspection finding.
    j. Sheep crossing on or below F.S. Trail #187 is not authorized. Use in the basin at the head of Granite Fork Creek is limited to one week. One crossing is authorized in the drainage to access the Deep Creek Allotment. This will be inspected once sheep enter the drainage.
    k. Use is restricted to the upper basin area of the Deep Creek subwatershed. Watering in the head of Copper Creek is limited to one time per location. This will be inspected once sheep enter the area. Bank stability will be monitored in Copper Creek and Deep Creek. Sheep use is not authorized in Indian Creek and it's tributaries in section 29, the south halves of sections 19 and 20, and the north half of section 30 in Township 21 North, Range 2 West, after the 15th of August.

Management Practices.*Continued...)*

2. Maximum forage utilization of representative areas within each pasture shall not exceed the values shown at the end of the growing season. Variation in utilization standards in order to achieve specific vegetative management objectives shall occur with a site-specific or project-level decision according to direction in FSM 1922.5 (RAST01). Although the Forest Plan allows 45% utilization in riparian areas, use in these areas is limited by the consultation requirements indicated above.

    a. Riparian Areas: Maximum 45% use or retain a minimum 4-inch stubble height of hydric greenline species, whichever occurs first.
    b. Upland Vegetative Cover Types: Early season or season long pastures 40% use. Vegetative slow growth, after seed ripe conditions, or late season pastures 50% use.

3. Only certified noxious weed-free hay, straw, or feed is allowed on National Forest System lands (NPST01).

4. Livestock trailing, bedding, watering and other handling efforts shall be limited to those areas and times that maintain or allow for restoration of beneficial uses and native and desired non-native fish habitat. (RAST02).

5. Livestock salting will be prohibited in RCAs. Sheep will be salted only at bed grounds. Salt will be placed in containers and moved with the sheep (RAST04).

6. Only one night/one time use of bed grounds is allowed. (RAST05).

7. Only open or loose sheep herding will be practiced, except where site-specific vegetation management (e.g., noxious weed control or reforestation) is needed and has been prescribed (RAST06).

8. Only annual once-over sheep grazing will be allowed, with the exception of designated sheep driveways, travel routes, or where specifically authorized (RAST07).

9. Bedding of sheep and salting of livestock in plantations will be prohibited until plantation trees have grown to a size that reduces their susceptibility to damage from livestock (RAST08).

10. New, reconstructed, or replaced livestock water developments must provide access and escape to and from water for all types of wildlife. (RAST09).

Management Practices.*Continued...)*

11. After completing vegetation treatments, livestock grazing practices (for example salting locations, rest, temporary closure of stock water, herding, season of use, duration, and temporary-electric fencing) may be altered as needed to hasten or enhance site recovery or treatment (RAGU03).

12. Sheep should be routed to avoid slopes with loose soil conditions, active gullies, and snowbank areas that have low productivity, soil puddling, and compaction conditions (RAGU08).

13. On all lands outside of designated travel ways, motorized use shall be prohibited unless otherwise authorized (REST04).

14. Damage to or loss of Forest System trails from ..., livestock grazing, ..., should be repaired or mitigated by the appropriate party (REGU23).

Other. (List the provisions and requirements deemed desirable pertaining to sheep band sizes, counting, tagging, dye branding, lambing, bucking, specific fire protection measures, etc.)

GRAZING PERMIT - PART 3

(Reference FSM 2230 and FSH 2209.13)

Permittee Number
SHIRTS, BR

Permit Number
00339-1

Special Terms and Conditions This is for the Surdam S&G Allotment.

On and Off. This permit provides for grazing a total 1900 head of - ewe/lamb for the grazing period 4/1 to 6/30 on Forest Service administered land and land controlled by the permittee which together form a natural grazing unit. The use by these livestock will be approximately 5 percent on Forest Service administered land and 95 percent on the lands controlled by the permittee. NTE 27 HMs.

The livestock will graze only upon the specified grazing allotment and only during the permitted grazing period. Any grazing use in excess of that authorized will be treated as a violation of the terms and conditions of the permit.

The land described below or shown on the attached map constitute the "off" portion of this permit.

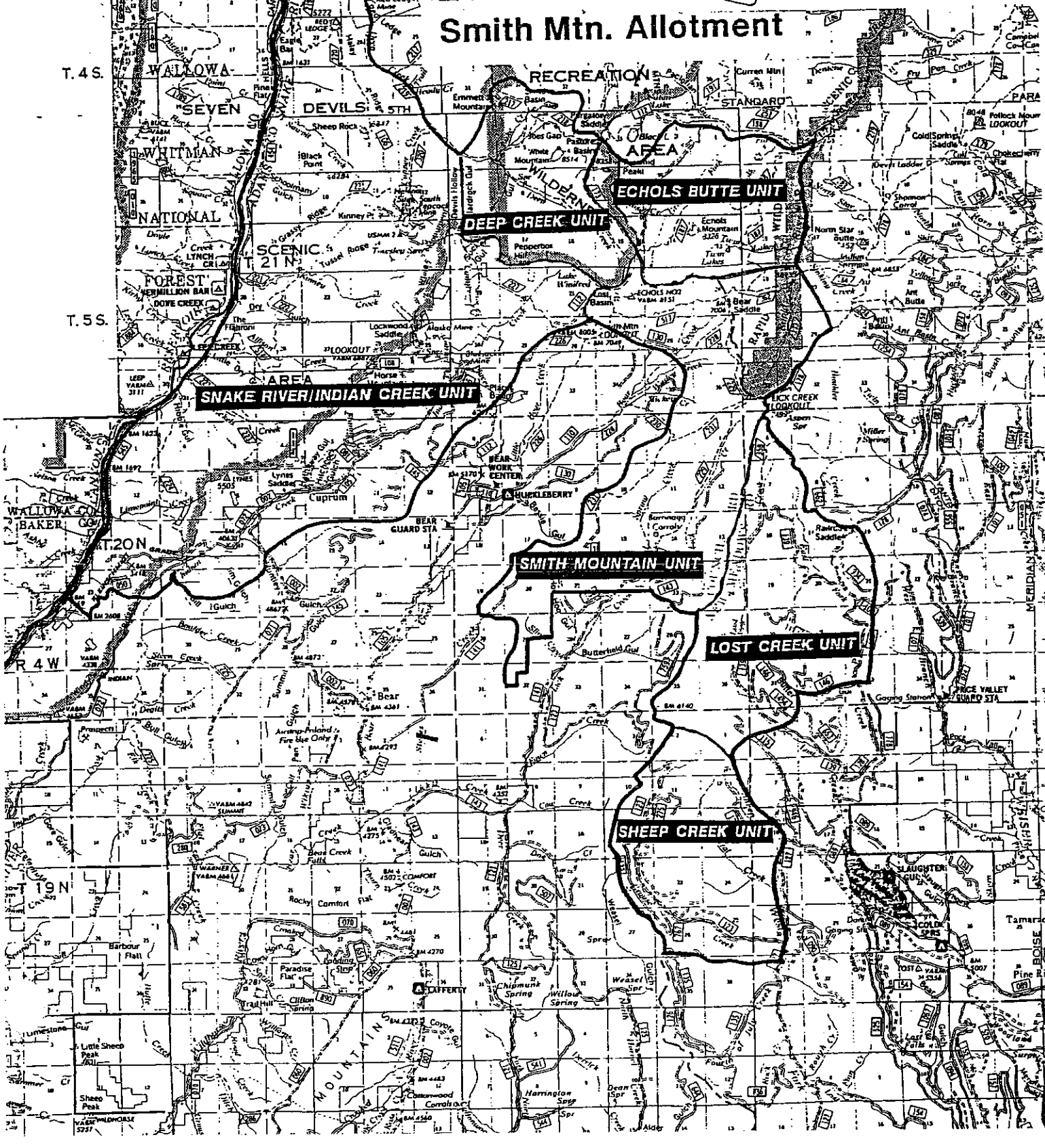
WEST

COUNCIL RAN[illegible] DISTRICT
PAYETTE NATIONAL FOREST

SMITH MOUNTAIN ALLOTMENT - Term Grazing Permit for SHIRTS BROTHERS, SHEEP

DISTRICT RANGER

4/7/97
DATE



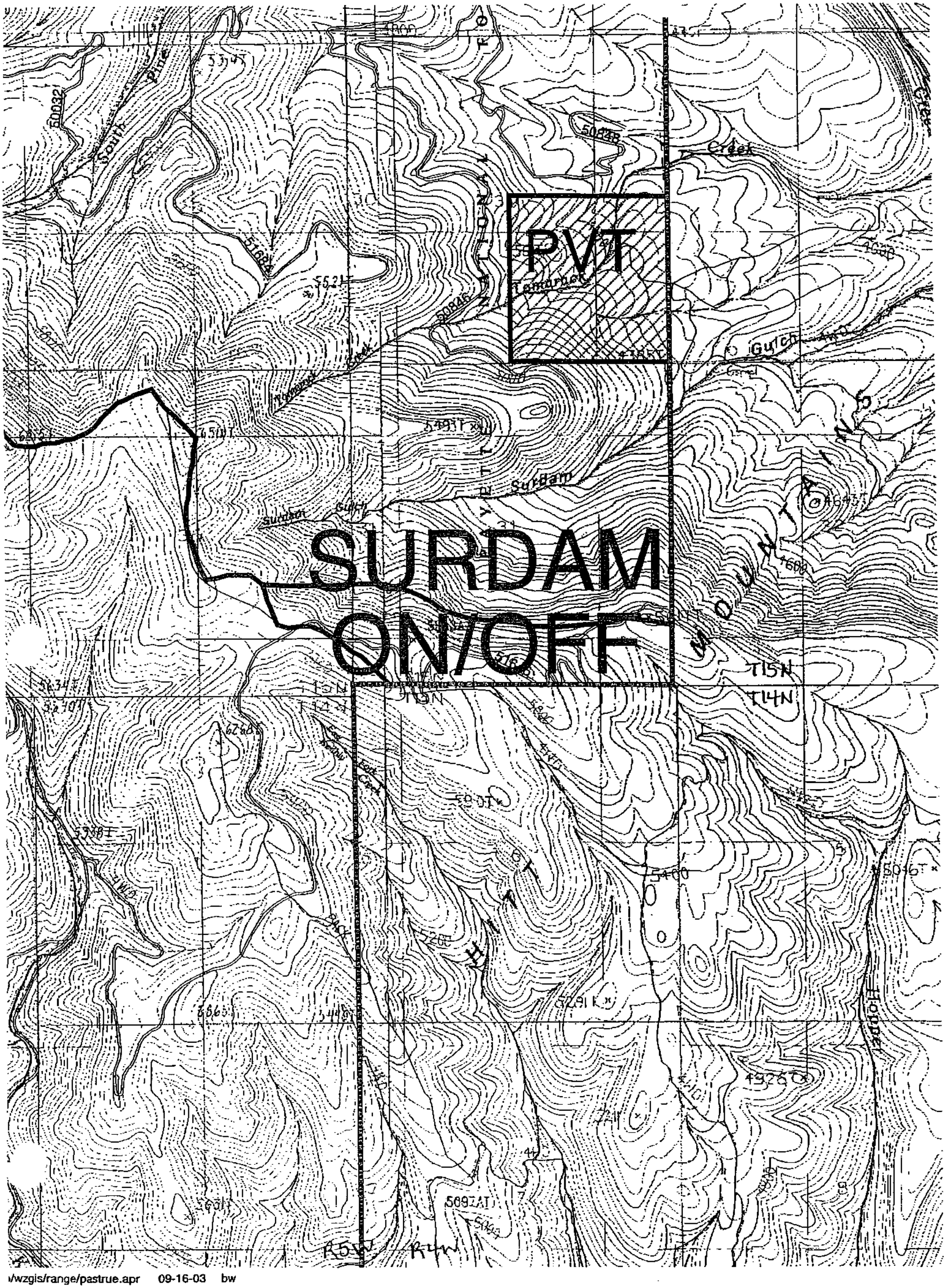

PVT
SURDAM
ON/OFF
Surdam
Gulch
Creek
Tamarack
T15N
T14N
R5W
R4W
MOUNTAINS
5400
5200

EXHIBIT "C"

DECLARATION OF RONALD W. SHIRTS

I, Ronald William (Ron) Shirts, with full knowledge of the penalties for perjury, declare as follows:

Personal background.

1. I reside in Weiser, Idaho. I have a wife and two young children, with another child on the way. I am an owner of *Shirts Brothers Sheep*. *Shirts Brothers Sheep* is currently a partnership between myself and my brother, John Timothy (Tim) Shirts.

2. I am the youngest of a family of seven boys and three girls. My parents owned and operated their own ewe/lamb operation. While my parents once owned and operated a domestic ewe/lamb ranch in their younger years, *Shirts Brothers Sheep* independently began their own domestic sheep operations in about 1977. I did not inherit any part of this sheep operation from my parents or any other family member (other than my love for animal husbandry, the skillful management of natural resources, and dedication to hard work).

3. I began helping my brothers run their ewe/lamb operation when I was only 13 years old, about 3 years after they purchased their first sheep around 1977. That early experience with *Shirts Brothers Sheep* taught me invaluable lessons about every aspect of running a ewe/lamb operation, including aspects of animal health, husbandry, nutrition, and reproduction. During those early years I gained much experience by working as a herder caring for several bands of sheep throughout the year, including the period of time that such bands grazed within the Payette National Forest under Grazing Permits administered by the U.S. Forest Service.

4. I attended college from 1986 to 1991, graduating from the *University of Idaho* with a Bachelor of Science degree in Education and a minor in consumer economics.

5. I am active in the *Idaho Wool Growers Association*, *American Sheep Industry*, and *Western Range Association*.

***Shirts Brothers Sheep's* ewe-lamb operation.**

6. I have spent the majority of my life effort building and operating a sheep ranch known as *Shirts Brothers Sheep*. This sheep ranch is a year-long, 365-day, ewe-lamb operation, which means that we maintain a base herd of ewes that (after culling) we annually breed to raise lambs which we will market in the fall. Plans are made at least 1-year in advance to sustain this ewe-lamb operation.

7. This ewe-lamb operation is dependant upon the use of the *National Forest System lands* within the Payette National Forest to provide the necessary annual forage base for its ewes/lambs between May 16 and October 15. The remainder of the year, *Shirts Brothers Sheep* is dependent upon the use of other public, state, and private lands to provide the necessary annual forage base for its ewe/lambs between October 16 and May 15.

8. *Shirts Brothers Sheep* is also dependant upon the use of *National Forest System lands* within the Payette National Forest for scientific, educational, spiritual, aesthetic, and recreational purposes.

9. The loss of *any* use of these lands, including the *National Forest System lands* within Payette National Forest, not only adversely, but immediately and irreparably impacts this annual dependency, since the loss of any use of, for example, the *National Forest System lands* within the Payette National Forest, places a gap, hole in the year-long operation.

***Shirts Brothers Sheep's* Grazing Permit.**

10. In about 1979, *Shirts Brothers Sheep* first purchased a Term Grazing Permit within the Payette National Forest from George Speropolous. That Grazing Permit authorized use by approximately 1,200 ewe/lamb pairs in the Snake River/Indian S&G Allotment.

11. In about 1982, *Shirts Brothers Sheep* expanded their grazing authorizations within the Payette National Forest by purchasing the Grazing Permit for the Deep Creek and the Echols Butte S&G Allotments from the Stringer Brothers. These additions allowed *Shirts Brothers Sheep* to graze a total of approximately 1,800 ewe/lamb pairs within the Payette National Forest from late-spring through mid-fall.

12. In about 1983, *Shirts Brothers Sheep* again expanded their grazing within the Payette National Forest by purchasing the Grazing Permit for the Smith Mountain, Lost Creek, and Sheep Creek S&G Allotments (and the Surdam "on/off" permit) from Jack Barrinaga, enlarging the Payette National Forest authorization to a total of approximately 3,100 ewe/lamb pairs from late-spring through mid-fall.

13. In April 1997, the U.S. Forest Service consolidated for permit administration the Snake River/Indian Creek, Deep Creek, Echols Butte, Smith Mountain, Lost Creek, and Sheep Creek into different grazing units within one allotment, i.e. the Smith Mountain S&G Allotment. See Grazing Permit dated April 10, 1997.

14. On April 3, 2007, the U.S. Forest Service renewed the Grazing Permit for *Shirts Brothers Sheep*. This Grazing Permit speaks for itself, but this renewed permit continued the *annual* authorization to graze within the Smith Mountain Allotment by 1,200 ewe/lamb pairs from May 16 through July 17, by 3,100 ewe/lamb pairs from July 18 through August 10, by

3,100 dry ewes from August 17 through October 15, and by 15 horses from May 16 to October 15, and within the Surdam S&G Allotment by 1,900 sheep from April 1 to June 30, subject to the terms and conditions expressed in the Grazing Permit. This Grazing Permit remains effective through December 31, 2016.

1997 Agreement and Idaho Code.

15. On January 1, 1997, the *Idaho Department of Fish and Game* notified the *Idaho Wool Growers Association* that within two weeks it planned to transplant 50 to 100 Rocky Mountain Bighorn Sheep from British Columbia into portion of Hells Canyon in Oregon, Washington, and Idaho. The *Idaho Wool Growers Association* objected strenuously to the short notice and lack of industry input associated with the planned transplant and began pursuing legislation and a restraining order and/or injunction to protect the sheep industry's interests.

16. In order to proceed with the Hells Canyon Initiative without restrictions on the planned bighorn sheep transplants, an agreement with the *Idaho Wool Growers Association* dated January 16, 1997, was signed by the U.S. Forest Service, Idaho Department of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, Bureau of Land Management, and Foundation for North American Wild Sheep ("1997 Agreement").

17. The 1997 Agreement speaks for itself, but the U.S. Forest Service, Idaho Department of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, Bureau of Land Management, and Foundation for North American Wild Sheep promised that they would "*assume the responsibility for bighorn loses and further disease transmission*" and would "*reduce further losses of bighorn sheep without adversely impacting existing domestic sheep operators.*" Also, the 1997 Agreement promised that the Hells Canyon

Bighorn Sheep Restoration Committee "*recognizes the existing domestic sheep operations in or adjacent to the Hells Canyon complex, on both National Forest and private lands, and accepts the potential risk of disease transmission and loss of bighorn sheep when bighorns invade domestic sheep operations.*" (Underlined emphasis added).

18. On March 24, 1997, legislation was passed and signed into law to add provisions to Section 36-106 of the Idaho Code requiring, among other things, that bighorn sheep transplants "*into areas they do not now inhabit or a transplant to augment existing populations*" must include written confirmation to "*affected federal or state land grazing permittees or owners or leaseholders of private land*" from the state wildlife department (signed by all federal, state, and private entities responsible for the transplant) certifying that "*the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted*" by the entities responsible for such transplant or population augmentation projects.

2007 grazing authorization process.

19. On January 18, 2007, I met with the District Ranger of the Council Ranger District, as well as other members of the U.S. Forest Service. It was represented to me at this meeting that my permitted grazing use would not be modified for the 2007 grazing season.

20. In early March, 2007, I was informed by the District Ranger or a member of her staff that the U.S. Forest Service was considering an idea to modify my permitted grazing use for the 2007 grazing season. The idea was to impose a 1-year non-use for the Deep Creek and Echols Butte Units of the Smith Mountain Allotment. I understood that the concern was that any

permitted use within the Deep Creek and Echols Butte Units was perhaps not compatible with the *Hells Canyon National Recreation Area Act*.

21. In response to this idea, on March 8, 2007, I sent a letter to the U.S. Forest Service, explaining that any permitted use within the Deep Creek and Echols Butte Units was compatible with the *Hells Canyon National Recreation Area Act* per the *Hells Canyon National Recreation Area Comprehensive Management Plan, Record of Decision*, dated July 21, 2003. My March 8th letter speaks for itself.

22. The U.S. Forest Service never answered my March 8th letter.

23. Notwithstanding my March 8th letter, on April 5, 2007, the District Ranger of the Council Ranger District issued a Decision to implement a 1-year modification of the *Shirts Brothers Sheep* Grazing Permit that intended, among other things, to prohibit *Shirts Brothers Sheep* from grazing its domestic sheep "*within the Deep Creek and Echols Butte*" grazing units in 2007 ("April 5th Decision"). This Decision advanced three reasons for the 1-year modification. Two of the three reasons related to the need to be compatible with the *Hells Canyon National Recreation Area Act*. The third reason related to radio telemetry data indicating the bighorn sheep have been documented within the Hells Canyon National Recreation Area portion of the Smith Mountain Allotment, and that not authorizing livestock grazing within this portion of the allotment will reduce the risk of contact between bighorn sheep and domestic sheep.

24. I was surprised at the receipt of the April 5th Decision, considering the prior representations that I received on January 18, 2007, and considering the comments that I provided on March 8, 2007.

25. Notwithstanding the April 5th Decision, on April 19, 2007, *Shirts Brothers Sheep* proffered to the U.S. Forest Service an idea for not grazing the Deep Creek and Echols Butte Units for the 2007 grazing season, as well as thirteen other management practices designed to prevent contact with any bighorn sheep during the 2007 grazing season. At the time, I made this proffer with the understanding that I could otherwise remain whole even though any non-use of these two Units would materially and adversely impact our 2007 grazing use and our 2007 bucking. I also made this proffer *before* I obtained a *year-by-year account* of all of the telemetry data relative to the areas upon and adjacent to the Smith Mountain Allotment.

26. The District Ranger did not accept *Shirts Brothers Sheep's* April 19th proffer. No grazing billing was issued, as requested in the April 19th letter.

27. On May 7, 2007, *Shirts Brothers Sheep* withdrew its proffer to not graze the Deep Creek and Echols Butte Units for the 2007 grazing season. This withdraw was premised upon several reasons, but most importantly, it was based upon the fact that on or about May 1, 2007, I became privy to the *year-by-year account* of all of the telemetry data relative to the areas upon and adjacent to the Smith Mountain Allotment. This information disclosed to me that while some presence of bighorn sheep were disclosed between May and October within the western part of the Smith Mountain Allotment in 1999, in 2000, in 2001, in 2002, no telemetry data disclosed any bighorns within the Smith Mountain Allotment:

* in 2003 (except in the northwestern corner within the Snake River/Indian Creek Unit);

* in 2004;

* in 2006; and,

* so far in 2007.

Note that I understand that no telemetry data was collected in 2005. I have reason to believe that this change in movement patterns of the bighorn sheep within the Smith Mountain Allotment was due to and continues to be due to the expanded presence of wolves. The wolves are keeping and pushing the bighorn sheep to the westside of the Snake River, to the north of the Smith Mountain Allotment, and to the south of the Smith Mountain Allotment. See 2006 and 2007 telemetry maps.

28. On May 8, 2007, I was informed by the District Ranger or a member of her staff that she was going to issue to Shirts Brothers Sheep a 2007 grazing authorization which was going to be even worse than what was in the April 5th Decision.

29. I again objected to any modification to my Grazing Permit, though I ratified my willingness to conform to the thirteen management practices proffered in the April 19th letter during the 2007 grazing season. I urged the District Ranger and members of her staff to advise me of their decision as soon as possible, considering that *Shirts Brothers Sheep* had already staged to turnout upon the Smith Mountain Allotment on May 16, 2007, for at least one of our three bands.

30. Three-days later, on May 11, 2007, the District Ranger of the Council Ranger District issued a Decision to implement a 1-year modification of the *Shirts Brothers Sheep* Grazing Permit that, among other things, prohibited any livestock use in "*the portion of the Smith Mountain S&G Allotment that lies within the Hells Canyon National Recreation Area (HCNRA)*" and also prohibited any livestock use in "*the following 6th Order Hydrological Units: Deep Creek, Kinney Creek, McGraw Creek, Herman Creek, Indian Creek, Bear Creek, and Upper Rapid River*" ("May 11th Decision"). This May 11th Decision noted that the "*area not authorized*

for use is within the Deep Creek, Echols Butte, Snake River/Indian Creek, and the north & west portions of the Smith Mountain pastures." This May 11th Decision also noted that it superceded the April 5th Decision.[1]

31. This Decision advanced the *same* three reasons for the 1-year modification as previously advanced in the April 5th Decision. Two of the three reasons related to the need to be compatible with the *Hells Canyon National Recreation Area Act*. The third reason related to radio telemetry data indicating the bighorn sheep have been documented within the Hells Canyon National Recreation Area portion of the Smith Mountain Allotment, and that not authorizing livestock grazing within this portion of the allotment will reduce the risk of contact between bighorn sheep and domestic sheep.

32. This Decision also includes the 2007 Annual Operating Instructions, which implements the consequence of the 1-year modification for the 2007 grazing season. See the 2007 Annual Operating Instructions [which states that "*Sheep grazing will not be authorized in 2007 in Hells Canyon NRA (Deep Creek & Echols Butte pastures) or on the west half of the Smith Mountain Allotment (Snake River/Indian Creek & the north and west half of the Smith Mountain pastures). The area not authorized for grazing in 2007 includes portions of the following 6th Order Hydrologic Units within the Smith Mountain Allotment: Deep Creek, Kinney Creek, McGraw Creek, Herman Creek, Indian Creek, Bear Creek, and Upper Rapid River*"]. The

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[1] The District Ranger stated that the May 11th Decision "supercede(s)" the "Modification #1 dated 4/11/07 (sic.)". The Modification #1 was dated April 5, 2007.

2007 Annual Operating Instructions, among other things, implements the following that are pertinent to the Administrative Appeal and Request for Partial Stay:

> (A) "Non Use" for two of the three scheduled bands of sheep for the period 6/18-10/15. I don't know the basis for the beginning date of "Non Use" of 6/18, since the beginning authorization date is May 16 in the Grazing Permit. I believe this is a typographical mistake.
>
> (B) Authorizes only one of the three scheduled bands of sheep for the period 6/6-10/1 within only certain Units/Pastures of the Smith Mountain Allotment.
>
> (C) Authorizes only one of the two scheduled bands of sheep for the period 4/1-6/16 within the Surdam Allotment. I don't know the basis for limiting the authorization in the Surdam Allotment to just 1 band, since an authorization of "27 Head Months" for the period 4/1-6/16 at "5% Forest" only equates to approximately 1,200 sheep. The May 11th Decision stated no reason to modify the grazing use in the Surdam Allotment.
>
> (D) Authorizes the trailing off of the Payette National Forest of the one band of sheep via the Salmon River stock driveway for the period 10/1-10/10.
>
> (E) Authorizes the thirteen management practices, identified in the April 19th letter by *Shirts Brothers Sheep*.

Adverse Effects if the May 11th Decision is Not Stayed

33. If the May 11th Decision is not stayed, as requested in the Request for Partial Stay by *Shirts Brothers Sheep*, domestic sheep grazing by Shirts Brothers Sheep will not only be adversely effected, but immediately and irreparably harmed beginning May 16, 2007. The Request for Partial Stay needs to be granted immediately to avoid this effect/harm.

34. We are authorized in our Grazing Permit, we have historically grazed, we planned, and we scheduled to graze 3 bands of sheep during the 2007 grazing season in the following manner:

> * 1 band of sheep (1,200 in band) from May 16, 2007 to October 15, 2007, within certain units/pastures of the Smith Mountain Allotment;

* 2 bands of sheep (950 in each band) from at least May 16, 2007 to June 17, 2007, within the Surdam Allotment;

* 2 bands of sheep (950 in each band) from June 18, 2007 to October 15, 2007, within certain units/pastures of the Smith Mountain Allotment.

It was planned and scheduled that the specific unit/pasture rotation within the Smith Mountain Allotment would conform to the 2005 rotation, since historically the Forest Service requested that we annually alternate our grazing pattern. See 2005 and 2006 Annual Operating Instructions.

35. Notwithstanding our Grazing Permit, our historical use, our planned use, and our scheduled use, the May 11th Decision only authorizes us to graze 1 band of sheep (1,200 in band) from June 6, 2007 to October 1, 2007, and authorizes us to trail this 1 band of sheep (1,200 in band) off of the Payette National Forest via the Salmon River Driveway from October 1, 2007 to October 10, 2007.

36. The adverse effect and the immediate and irreparable consequence of the May 11th Decision is that *Shirts Brothers Sheep* has no home for:

* 700 sheep between *at least* May 16, 2007 and June 17, 2007, which should otherwise be authorized in the Surdam Allotment;

* 1,200 sheep between May 16 and June 5, 2007, and between October 11 and October 15, 2007, which should otherwise be authorized in the Smith Mountain Allotment;

* 1,900 sheep between June 18, 2007 and October 15, 2007, which should otherwise be authorized in the Smith Mountain Allotment.

Additional Costs for the Single Band Authorized to Graze

37. The delay in the dates *Shirts Brothers Sheep* can start using the Surdan Allotment and the Smith Mountain Allotment under the May 11th Decision has already cost us an additional

$13,000 because we had to find alternative pasture for the 700 ewe/lamb pairs that would otherwise be staged within the Surdam Allotment area for turnout into the Smith Mountain Allotment. In order to make use of a portion of a pasture that will hold these sheep for approximately a ten-day period, we had to agree to build a significant stretch of fence for an associate through rough rocky terrain, at a cost to us that will total about $5,000. It also will cost us an additional $8,000 to truck this band of sheep to said pasture and off again. Obviously, these expenses will greatly increase after this ten-day pasture use is completed as we still need to find a place for these sheep until June 18, the date they would normally enter the Smith Mountain Allotment.

38. Also, if our sheep do not leave enough forage in this temporary pasture for our associate to feed 30 cattle for two months latter in the 2007 grazing season, we will have to feed such cattle for him which will cost us at least an additional **$4,000**. Given the low forage production so far this season, this is a contingency we are planning for.

39. Intentionally omitted.

40. The shortened season of use for the single band of sheep that will be authorized to use the Smith Mountain Allotment under the May 11th Decision will cost *Shirts Brothers Sheep* a total of **$17,100 to $22,100** in extra expenses, if we can find additional pasture until June 6, or will cost us at least **$37,332** in extra expenses if we are forced to feed this band from May 26 until June 6. Since the May 11th Decision delays our turnout onto the Smith Mountain Allotment by 21 days, we will need to find a way to carry this band of sheep elsewhere for 21 days . This will cost us an additional $15,000 to $20,000 in lease fees and trucking costs, assuming we can find pasture somewhere on such short notice. Otherwise, it will cost us an additional $35,232 to

feed 1200 ewe/lamb pairs for 21 days, $29,232 in feed at a cost of $1.16/head day ($0.36 for corn + $0.80 for hay), plus an additional $6,000 to lease 15 acres of land upon which to feed the band, land that would otherwise be put into corn production. The cost to feed the dry ewes from this band of sheep for the additional 5 days that they will be required to leave the Smith Mountain Allotment early under the May 11th Decision will be an additional $2,100 at a cost of $0.35/head day for hay.

Adverse Effects Associated with the Two Bands not Authorized to Graze

41. With respect to the other two bands of sheep that will not be authorized to graze within the Smith Mountain Allotment under the May 11th Decision, *Shirts Brothers Sheep* will be forced to either liquidate these sheep or place them into a feedlot type situation until the lambs are weaned, then feed the breeder ewes for the rest of the period that they would otherwise graze within the Forest. For the past several years we have looked for additional pasture land to lease for other purposes, and find none available. Being forced to either liquidate these two sheep bands or feed them for the balance of the 2007 grazing season will wipe out all the assets I have worked to save and will bankrupt the entire domestic sheep operation I have labored all of my adult life to establish.

Additional Costs to Liquidate Two Bands

42. If we are forced to liquidate these two sheep bands, we will suffer an additional **economic loss of at least $392,900** in 2007. About 3170 lambs from these two bands will sell at a $70/head discount due to their difference in weight this spring versus this fall, for a loss of $221,900. Our 1900 mature ewes will sell for $50/head this spring, rather than $140/head in the fall (including $10/head worth of wool that would be ready for shearing) , for a discount of

$90/head representing a loss of $171,000. Thus, our losses in 2007 just from the sale of these two sheep bands at discounted values under the May 11th Decision will total $392,900.

43. We will also suffer additional economic losses of an unknown amount because we will have to absorb the excess overhead and/or depreciation on equipment and facilities that were recently purchased for the *Shirts Brothers Sheep* operation which will not be needed to run a single band of sheep, including a bunkhouse with kitchen and laundry facilities constructed in 2005 to house 7 employees, a 2006 Ford Diesel F250, and a 2002 Ford Diesel F250.

44. If we are forced to liquidate two sheep bands in 2007, the local economy would also suffer an **economic loss of at least $319,000** in 2007. Losses to the local economy will include: support and services that would otherwise be expended to maintain the *Shirts Brothers Sheep* operation at its pre-decision level in 2007, an estimated loss to the local economy of about $175,000; the loss of 6 jobs (4 herders and 2 pack string/camp tenders) that *Shirts Brothers Sheep* would otherwise provide in 2007, a direct loss to the local economy of about $142,000 (including wages, room, and board); and, lost grazing fees to the US Forest Service, a direct loss of over $2,000. Thus, the total estimated loss to the local economy if we are forced to liquidate two bands of sheep in 2007 is at least $319,000.

45. If *Shirts Brothers Sheep* is forced to liquidate two sheep bands in 2007, it will be unable to simply replace such sheep the following year. *Shirts Brothers Sheep* spent 30 years carefully selecting and breeding sheep that are uniquely adapted to the environment and grazing program that it currently uses. We have selected and bred sheep with unique genetic adaptations which allow them to thrive in the environment of the Smith Mountain Allotment in the summer, as well as in our winter pastures and holding facilities. During its 30-year history, *Shirts Brothers*

Sheep has developed its own unique variety of sheep which produce some of the highest quality wool in Idaho, produce lambs which demand a premium at market, and produce ewes lambs which are unheralded in their ability to breed in their first year.

46. *Shirts Brothers Sheep* has had phenomenal success in getting its ewe lambs to breed the first year because of its long-term commitment to careful selection of outstanding heritable characteristics in its sheep, and because of the exceptional quality of the late-summer and fall forage available in the Deep Creek and Echols Butte grazing units within the Smith Mountain Allotment. Without the high quality forage found in the Deep Creek and Echols Butte units at the precise time that the ewe lambs need it to successfully breed in their first year, our pregnancy rates in such ewe lambs would drop from better than 80% to 20% or less, thereby effectively eliminating the primary factor that has made our sheep operation profitable.

Additional Costs to Feed Two Bands through the 2007 Grazing Season

47. If we are forced to place two of our sheep bands on feed until the lambs are weaned, then continue feeding the breeder ewes for the rest of the 2007 grazing season when they would otherwise be within the Smith Mountain Allotment, we will suffer an **economic loss of nearly $503,000** in 2007. An unknown proportion of the extra costs associated with feeding these sheep would have to be financed with borrowed capital (at a current interest rate of about 8.5%), and the interest on such borrowed capital would further inflate these extra costs. If we are forced to feed two bands of sheep (1900 ewes with lambs) from June 18 until weaning on about July 18, the extra expense will total $66,120 at a cost of $1.16/head day ($0.36 for corn + $0.80 for hay). During this period of close confinement the death loss of lambs will increase by at least 5%, for an excess loss of 143 lambs from these two bands which would otherwise be worth $115/head by

fall, for a loss of $16,445. Approximately 2707 remaining lambs will be sold at a $65 discount based upon their weight on about July 18 (rather than mid-August when they would normally be sold), a subtotal loss of $175,955. Because our sheep have annually used the high-mountain areas in the Payette National Forest during the summer months, they have developed little or no immunity to bluetongue. Thus, if they are confined in a feedlot situation at low elevations during the hot summer period, they will be very susceptible to bluetongue. If confined and fed in 2007, death loss among the 1900 dry ewes will be at least 25%, for a loss of at least 475 ewes that would otherwise be worth $140/head in the fall, a loss of $66,500. These two bands will start with 1900 dry ewes, but end with about 1425 after death loss due to bluetongue, for an average of 1663 ewes that will be fed from July 18 to Oct. 15 at a cost of $31/head ($0.35/day for hay x 89 days) + $50 slaughter value forgone for an overall cost of $81/head, a loss of $134,703. We will incur additional costs in 2007 if we are forced to feed two sheep bands throughout the period they would otherwise graze within the Smith Mountain Allotment. In order to conduct such a summer feed operation, we will need to purchase a tractor of at least 90 horsepower, a cost (used) of approximately $30,000. We will need to lease 25 acres at $400/acre for feed grounds which are otherwise used for corn production, a cost of $10,000. We will also need to feed 10 pack animals (horses/mules) that would otherwise graze within the Smith Mountain Allotment, a cost for 150 days at $2.13/head/day of $3,195. Thus, if we are forced to feed two sheep bands throughout the 2007 grazing season our total economic loss in 2007 will be nearly $503,000.

48. In addition, if we must feed two sheep bands throughout the 2007 grazing season, *Shirts Brothers Sheep* would continue to suffer losses **of at least $209,440** in 2008,even if we are entitled to graze these sheep within the Payette National Forest again in 2008. Due to bluetongue

losses during the 2007 summer period, ewe numbers in these two bands will be reduced to 1425 at most. These remaining ewes will breed less successfully due to the added stress, reduced nutrition, and reduced fitness levels associated with the confined feeding operation. The remaining 1425 ewes at a reduced 95% lambing rate will produce approximately 1354 lambs in 2008, about 1496 fewer lambs than the 2850 that would likely be produced by 1900 ewes at a 150% lambing rate if grazing occurred as scheduled under the Grazing Permit without modification in 2007. 1496 fewer lambs in 2008 at a market value of $140 equals an additional loss of $209,440 in 2008 if we must feed two sheep bands throughout the 2007 grazing season.

49. If *Shirts Brothers Sheep* is forced to feed its sheep throughout the 2007 grazing season rather than graze the Smith Mountain Allotment, the US Forest Service will lose at least **$2,000** in grazing fees.

Other Adverse Effects if Two Bands are not Authorized to Graze

50. If domestic sheep grazing within a majority of the Smith Mountain Allotment is stopped in 2007, the risk of environmental injury will increase, including an increased risk of injury to the very bighorn sheep populations that the May 11th Decision intends to safeguard. Removing domestic sheep from a majority of the Smith Mountain Allotment in 2007 will result in a buildup of fuel, substantially increasing the fire risk within the area, thereby increasing the environmental risk to all of the area's resources, including bighorn sheep habitat and associated bighorn sheep populations. Removing domestic sheep from a majority of the Smith Mountain Allotment in 2007 will eliminate the service they perform in controlling weeds, increasing the environmental risk to all of the area's resources that is associated with weed invasion. Removing domestic sheep from a majority of the Smith Mountain Allotment in 2007 will increase the risk

of bighorn sheep loses to predation (particularly from wolves) which has otherwise occurred within the domestic sheep bands in recent years. Predation by wolves upon domestic sheep has greatly increased in and adjacent to the Smith Mountain Allotment. Wolf sightings and attacks on domestic sheep in the region have been intensifying and moving progressively westward, extending into the Smith Mountain Allotment. During the 2006 grazing season, domestic sheep operations in the Payette National Forest experienced approximately 500 losses to wolves. If domestic sheep are removed from a substantial portion of the Smith Mountain Allotment in 2007, westward migration of wolves will undoubtedly be accelerated and a large proportion of such wolf attacks will be transferred into bighorn sheep populations throughout the Hells Canyon complex.

Failure to Stay the May 11th Decision would Prevent a Meaningful Decision on the Merits

51. Our standard herding and animal husbandry practices and the threat of wolf predation that has effectively deterred bighorn sheep from entering the Smith Mountain Allotment since 2003 has reduced the potential for contact between bighorn sheep and domestic sheep to an inconsequential level within the Smith Mountain Allotment. In 28 years of experience grazing domestic sheep in the Payette National Forest, *Shirts Brothers Sheep* has observed only one bighorn sheep intermingle with its domestic sheep in about 1980. It is significant to note that this bighorn was a tagged ram that had been recently transplanted, and that this incident took place before *Shirts Brothers Sheep* began using guard dogs and before wolf reintroduction projects made predation in the Smith Mountain Allotment a significant threat to bighorn sheep.

52. *Shirts Brothers Sheep* is willing to voluntarily implement 13 additional interim management practices during the 2007 grazing season within the Smith Mountain Allotment to

further reduce the already unlikely chance that contact between bighorn sheep and domestic sheep might occur.

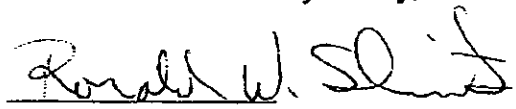
53. To impose the conditions set forth under the May 11th Decision will bankrupt *Shirts Brothers Sheep* this year, essentially destroying any opportunity they now have to succeed in protecting their statutory and regulatory entitlements based upon the merits of their case.

54. Ultimately, prohibiting domestic sheep grazing within the portion of the Smith Mountain Allotment affected by the May 11th Decision will not eliminate all potential contact between the Hells Canyon bighorn sheep and domestic sheep because there is substantial private acreage within the boundaries of said Allotment that will continue to be leased and grazed by domestic sheep, and there are other state and private lands adjacent to the Hells Canyon complex in other localities were domestic sheep grazing continues.

55. There is no demonstrable risk that domestic sheep will contact bighorn sheep if the May 11th Decision is stayed, nor is their reliable evidence that overlapping use areas or actual contact with domestic sheep in free-ranging situations poses a clear and present danger of disease transmission to bighorn sheep. Thus, there is no imminent or irreparable injury to bighorn sheep if the May 11th Decision is stayed. Conversely, if the May 11th Decision is not stayed, *Shirts Brothers Sheep* will suffer immediate and irreparable injury and will effectively be prevented from even having the opportunity to protect their entitlements and argue the merits of their case.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 15th day of May, 2007.



RONALD W. SHIRTS

EXHIBIT "D"

USDA

United States
Department of
Agriculture

Forest Service

Pacific
Northwest
Region

July 2003

Hells Canyon National Recreation Area Comprehensive Management Plan

Forest Plan Amendment #29

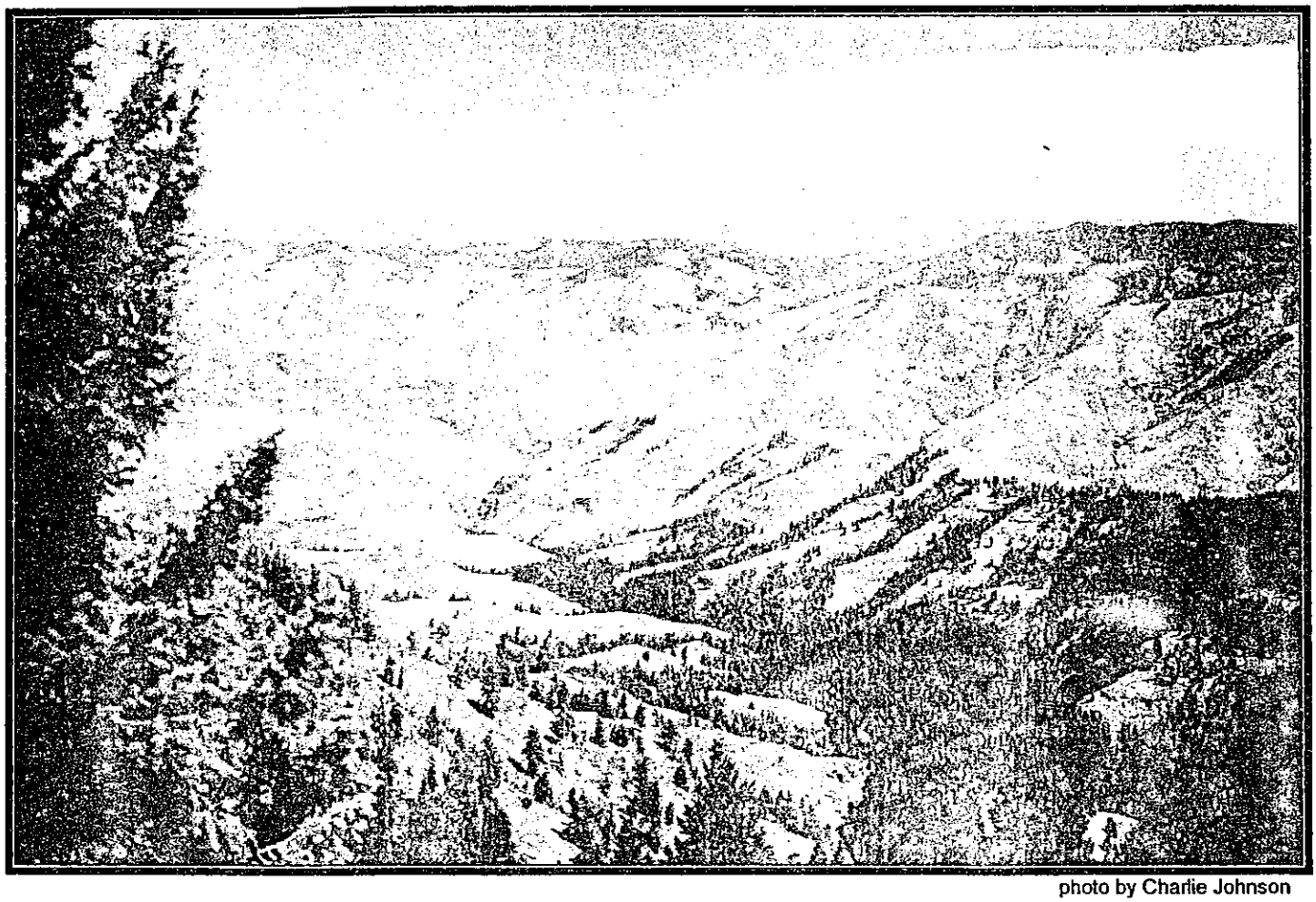


photo by Charlie Johnson

Record of Decision

Wallowa-Whitman National Forest
Hells Canyon National Recreation Area
Baker and Wallowa Counties in Oregon
Adams, Idaho, and Nez Perce Counties in Idaho

Record of Decision

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RECORD OF DECISION
AND
FOREST PLAN AMENDMENT #29

Introduction

This *Record of Decision* (ROD) documents my decision and rationale for the selection of Alternative E-modified from the *Final Environmental Impact Statement* (FEIS) (United States Department of Agriculture [USDA] 2003) to be implemented as the amended *Comprehensive Management Plan* (CMP) for the Hells Canyon National Recreation Area (HCNRA). The ROD also determines the *National Forest Management Act* (NFMA) level of significance for amending the *Wallowa-Whitman National Forest Land and Resource Management Plan* (*Forest Plan*). The full text of the FEIS and appendices is located on the compact disc at the end of this document.

Background and History

When Congress established the HCNRA on December 31, 1975 by the *Hells Canyon National Recreation Area Act* (*HCNRA Act*) also referred to as PL 94-199 (Public Law), the development of a CMP was one of the requirements created. The Chief of the Forest Service (FS) approved the existing CMP on April 30, 1982, and it was amended by subsequent appeal decisions in 1983 and 1984 (USDA 1982 as amended).

In 1990, the existing CMP was incorporated without modification into the *Forest Plan* (USDA 1990). The *Forest Plan* has also been subsequently amended (refer to **Chapter 1, pages 18-20, Table 1: Summary of Existing Management Direction for the HCNRA**). The existing CMP is an integrated part of the *Forest Plan* and subject to the procedures for modifying management direction found in the NFMA regulations (36 Code of Federal Regulations [CFR] 219).

More than 20 years have passed since the existing CMP was approved and over 10 years since the *Forest Plan* incorporated it. In December 1993, the Forest Supervisor of the WWNF at that time initiated a process to assess the need for adjusting direction due to changes in conditions or demands from the public (36 CFR 219.10). A combination of factors including concerns raised through monitoring and evaluation reports, changes in regulations for public and private lands in the HCNRA, new scientific information, and public comments indicating changing social values, use patterns, and resource conditions led me to re-initiate the process in 1998.

Based upon the assessment of the need for adjustment, I proposed to amend the *Forest Plan* to change management direction for the HCNRA where necessary. Some management direction will not change. Any changes in management direction will reflect the intent of the *HCNRA Act*; *Public and Private Land Use Regulations* (*Public and Private LURs*) (36 CFR 292, USDA 1994); FS directives; changing social values; agency emphasis on ecosystem sustainability; new information and research findings; and results from monitoring and evaluation.

This amendment process follows the implementing regulations of the NFMA (36 CFR 219.10 (e) and (f)), FS Manual [FSM] 1922.51 and 1922.52, and FS Handbook [FSH] 1909.12, Chapter 5.32. This FEIS documents the planning process, as required by the *National Environmental Policy Act* (NEPA) and in accordance with Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR, Parts 1500-1508).

The FS is in the process of developing changes to the 1982 federal planning rule to guide the forest planning process. A new planning rule was adopted in November 2000 that established requirements for the implementation, monitoring, evaluation, amendment and revision of land and resource management plans.

Based on a review of the 2000 rule, the FS undertook a number of changes based on questions regarding implementation. In May 2001, the public had an opportunity to comment on the effects of extending the compliance date for the new rule (66 FR 01-12384; May 15, 2001). An interim rule was issued in May 2002 to extend the date by which all land and resource management plan amendments and revisions would otherwise be subject to the planning regulations adopted in November 2000 (67 FR 02-12508; May 17, 2002).

This amendment process was initiated in 1993 under the 1982 regulations and the RDEIS was available for public review in March 2000. The amendment process will continue to be managed pursuant to the 1982 planning regulations. A new CMP will be prepared to replace the existing CMP.

Area Location and Description

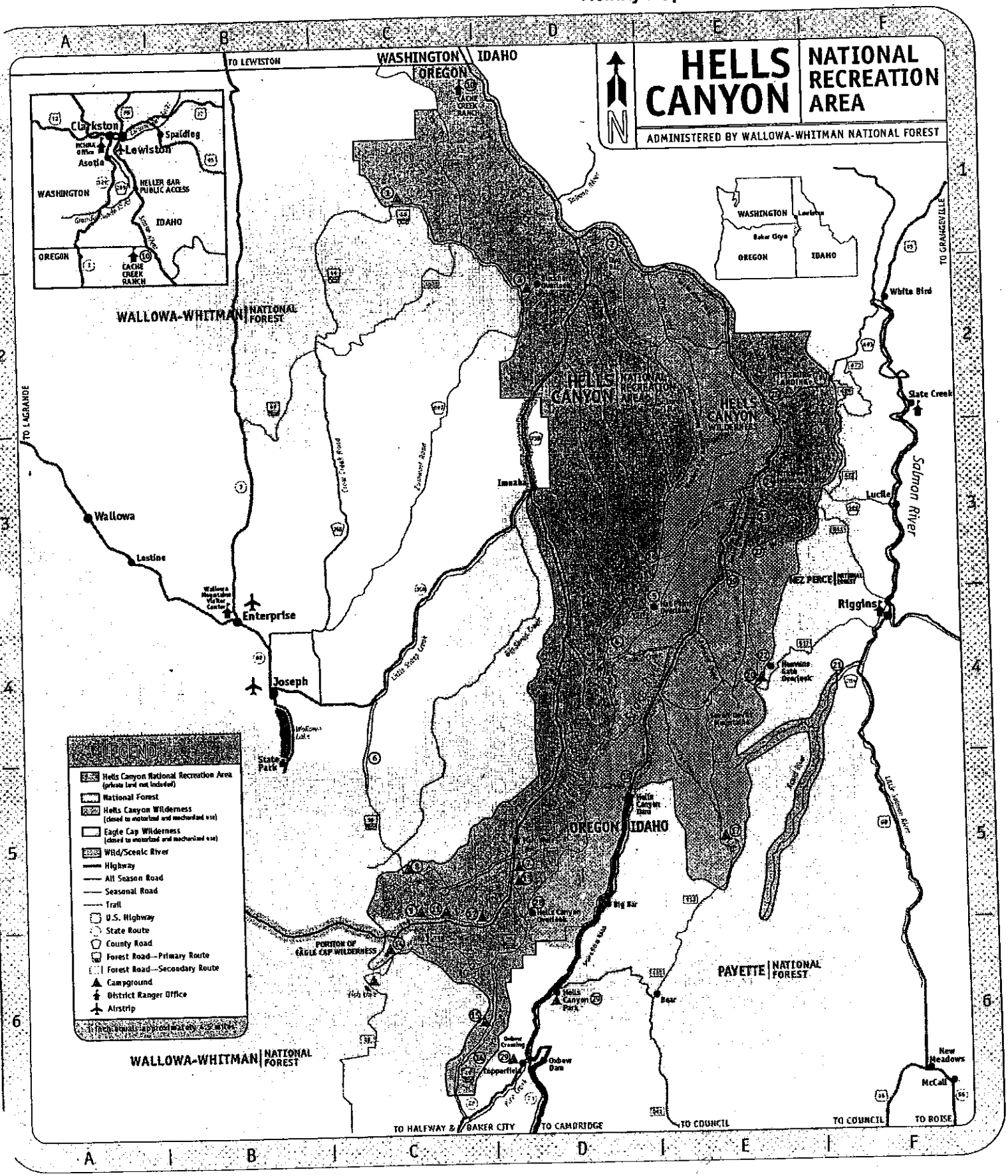
The HCNRA is located in west central Idaho and the northeast corner of Oregon on portions of the Wallowa-Whitman, Nez Perce, and Payette National Forests. The entire HCNRA is administered by the Wallowa-Whitman National Forest (WWNF). There are 652,488 acres within the HCNRA boundary, approximately 28 percent of the land under the administration of the WWNF, including approximately 33,000 acres of privately owned land. Approximately 117,073 acres of the Nez Perce and 24,000 acres of the Payette National Forests occur in the HCNRA.

It lies within Baker and Wallowa Counties in Oregon, and Adams, Idaho and Nez Perce Counties in Idaho and near the border of Asotin County in Washington. Baker County comprises four percent of the HCNRA, Wallowa County 74 percent, Adams four percent, Idaho County 18 percent, and Nez Perce County less than one percent. Principal nearby communities in Oregon include Imnaha, Joseph, Enterprise, Halfway and Richland. Baker City and La Grande are also nearby. In Idaho, principal nearby communities include Riggins, Grangeville and Lewiston. The Boise/Caldwell/Nampa area is also near the HCNRA. Asotin and Clarkston in Washington are also nearby. See **Figure 1** for a map of the vicinity.

The principal physical feature of the HCNRA is Hells Canyon. Measuring 7,993 feet deep from mountain peaks to the river and, at places, 10 miles from rim to rim, it forms the deepest river canyon in North America. The HCNRA comprises an exceptional richness, diversity, and productivity of vegetation that combines with unique geology (uplands, benchlands, canyonlands, and mountains) to support a diversity of fish and wildlife. Where developed areas exist, they are rustic in nature and are often associated with homesteads or old mining sites.

The economy of the surrounding area has historically been based on wood products and ranching. However, in recent years tourism and recreation-related activities have grown and become increasingly important to the local economy.

Figure 1
Hells Canyon National Recreation Area
Vicinity Map



Purpose and Need

The need for the proposed action is derived from several actions and findings. Using the authority delegated to the Forest Supervisor through 36 CFR 219.10 and FSM 1950, Environmental Policy and Procedures, a CMP adjustment strategy was established. A monitoring and evaluation report was completed that consolidated information from 1984 through 1993 and identified several items needing change (USDA 1994). For example, results indicate that desired conditions for visitor management and recreation use need to be defined better to protect and maintain recreation experiences than provided for under the existing CMP and *Forest Plan* (as amended).

Based on these findings, the team responsible for conducting the planning recommended an adjustment to the existing CMP through an amendment to the *Forest Plan*. The team recommended adjustments in the management direction for the following sixteen resource areas in terms of goals, objectives, standards, guidelines, monitoring and evaluation, and management area (MA) direction:

- recreation settings, experiences, and opportunities, including Wilderness and scenery;
- access and facilities;
- forested vegetation, grasslands, and forest understory;
- vacant allotments disposition and satisfactory range conditions;
- heritage resources;
- federal trust responsibilities;
- soils;
- Wild and Scenic Rivers;
- biologically unique species, habitats, and ecosystems;
- fire and air quality;
- riparian/aquatic habitat and water quality;
- wildlife habitat;
- scientific research;
- geologic resources;
- minerals; and
- land management and special uses.

I reviewed these recommendations and determined the changes in direction needed for each of the resource areas as described in detail in **Chapter 1 (pages 5-14)** of the FEIS. In summary, I determined that the overall need for change is based on: 1) the results of WWNF monitoring and evaluation reports indicating areas needing change such as defining desired conditions for visitor management and recreation use (USDA 1994); 2) the standards set forth in the *Private and Public LURs* approved in 1994 (36 CFR 292) for the use of motorized and mechanical equipment; the protection and preservation of cultural and paleontological resources; mining; private land use; timber harvesting; and grazing activities; 3) the potential need to set clearly defined desired conditions for Wilderness settings; and 4) new scientific information from the Interior Columbia Basin Ecosystem Management Project (ICBEMP).

The underlying purpose of the action is to amend some elements of the programmatic direction for these sixteen resource areas and also for monitoring and evaluation within the existing CMP and the *Forest Plan* (as amended). My decision aligns management goals, objectives, standards, and guidelines; MA direction; and monitoring and evaluation with the intent of better achieving the objectives of the *HCNRA Act* (PL 94-199), which established the HCNRA, the Hells Canyon Wilderness, and the Rapid and Snake Wild and Scenic Rivers; with the *Oregon Wilderness Act* (PL 98-328); the *Omnibus Oregon Wild and Scenic Rivers Act* (PL 100-552); *Private* and *Public LURs* (36 CFR 292); *Forest Plan* content regulations (36 CFR 219.11); and FSM 1920.

If action is not taken to amend the programmatic management direction in the existing *Forest Plan* and the existing CMP, objectives set forth in Section 7 of the *HCNRA Act* may not be met:

> Section 7. Except as otherwise provided in Sections 2 and 3 of this Act, and subject to the provisions of Section 10 of this Act, the Secretary shall administer the recreation area in accordance with the laws, rules, and regulations applicable to the national forests for public outdoor recreation in a manner compatible with the following objectives:
>
> 1) the maintenance and protection of the free flowing nature of the rivers within the recreation area;

2) conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit;
3) preservation, especially in the area generally known as Hells Canyon, of all features and peculiarities believed to be biologically unique including, but not limited to, rare and endemic plant species, rare combinations of aquatic, terrestrial, and atmospheric habitats, and the rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated therewith;
4) protection and maintenance of fish and wildlife habitat;
5) protection of archeological and paleontologic sites and interpretation of these sites for the public benefit and knowledge insofar as it is compatible with protection;
6) preservation and restoration of historic sites associated with and typifying the economic and social history of the region and the American West; and
7) such management, utilization, and disposal of natural resources on federally owned lands, including, but not limited to, timber harvesting by selective cutting, mining and grazing and the continuation of such existing uses and developments as are compatible with the provisions of the Act.

Recreation settings, experiences, and opportunities provide an example where existing management direction is inadequate and needs changed. The existing CMP provides management direction to respond to increases in recreation use by increasing development of facilities and moving toward more developed recreation settings and opportunities. However, public surveys and scoping conducted as part of the planning process indicate people want the developed areas to remain the way they are and they do not want to provide for large increases in use or changes in the undeveloped settings. Also, existing CMP direction does not clearly define desired conditions regarding the acceptable levels of social encounters, thresholds for effects from visitor use, and appropriate strategies for managing visitor use.

A change in management direction is needed to ensure acceptable levels of social encounters and visitor effects to ensure meeting the intent of Section 7 of the *HCNRA Act.* If the existing CMP and *Forest Plan* is not amended, desired recreation settings and opportunities for the HCNRA may not be met as well as under the existing direction because recreation use now and in the future may exceed social encounter thresholds that are acceptable to the recreating public and create user conflicts. Lack of specific direction and strategies for managing use at defined thresholds may lead to resource effects such as wildlife displacement, increased number and size of dispersed recreation sites, soil compaction, and vegetative changes. Because these desired conditions and thresholds for acceptable visitor encounters and resulting effects, are not clearly defined, a change in management direction is needed.

The existing management direction and change needed for each of the sixteen resource areas is described in detail in **Chapter 1 (pages 5-14)** of the FEIS.

Summary of Existing Management Direction for the HCNRA

Legislative Direction

I have thoroughly reviewed and studied the *HCNRA Act*, the principal legislation that guides management of the HCNRA. Several sections clarify the intent for the HCNRA. Section 1(a) of the *HCNRA Act* explicitly states that the HCNRA was created to assure that this area would be preserved for this and future generations, and that the recreational and ecological values and public enjoyment of the area are thereby enhanced. Section 7 of the *HCNRA Act* states that the recreation area will be administered for public outdoor recreation in a manner compatible with seven objectives. Section 8 directs the development of a CMP to provide for a broad range of land uses and recreation opportunities. Section 10 directs that rules and regulations will be promulgated for public and private lands. Section 13 addresses the recognized traditional and valid uses of the recreation area. I also reviewed and considered the *Public and Private LURs*, the *Wilderness Act*, the *Wild and Scenic Rivers Act* and the *Treaty of 1855* with the Nez Perce Tribe. All of these documents are located in **Appendix A** of the FEIS.

Forest Plan Direction for the HCNRA

When Congress established the HCNRA, the boundary included portions of the Nez Perce, Payette and Wallowa-Whitman National Forests in Regions 1, 4, and 6, respectively. The Chief of the FS decided that the HCNRA

would be managed as one administrative unit in Region 6 by the Forest Supervisor of the WWNF. The WWNF is responsible for establishing programmatic direction for the management of the HCNRA and completing consultation in accordance with the *Endangered Species Act* (*ESA*) for programmatic decisions.

The *Forest Plan* for the WWNF, as amended, provides guidance through its established goals, objectives, desired future conditions, forest-wide standards and guidelines, and specific MA direction. The *Forest Plan* incorporates the existing CMP, subsequent *Forest Plan* amendments, and terms and conditions related to consultation in accordance with the *ESA* to provide existing management direction for the HCNRA. A number of resource specific changes in direction have occurred including the Regional Forester's amendment establishing riparian, ecosystem, and wildlife standards (Eastside Screens), public and private land use regulations for the HCNRA, *Wild and Scenic Snake River Recreation Management Plan*, adoption of strategies for managing anadromous and inland native fish (PACFISH and INFISH), and termination of domestic sheep grazing in the HCNRA. Several fish, wildlife, and plant species have been listed in the last ten years and changes in management activities have occurred to provide protection under the *ESA*. **Chapter 1, Table 1-1 (pages 18-20),** of the FEIS summarizes the existing direction for activities in the HCNRA. All activities in the HCNRA are managed in compliance with this direction. I did not reconsider these previous decisions unless specifically addressed in the proposed action or if scoping and/or the analysis process identified new issues not resolved. These decisions may be reconsidered during the *Forest Plan* revision scheduled to begin in October 2003.

Management Areas

As part of my review of the existing direction for the HCNRA, I also considered the *Forest Plan* multiple-use direction established for the HCNRA. Nine MAs that have similar objectives and common management prescriptions and the *Forest Plan* provides multiple use direction for managing these specific areas. The following briefly describes each MA. Refer to the *Forest Plan*, pages 4-63 through 4-98 for additional discussion. See **Figure 2** below for a map of MAs.

Management Area 4 – Wilderness: The management intent of these areas is to preserve the wilderness qualities. These areas will be managed in accordance with the *Wilderness Act*, the *HCNRA Act* (establishing the Hells Canyon Wilderness), the *Oregon Wilderness Act*, and the FSM 2320. The intent of the *Wilderness Act* is to preserve and protect the natural condition and characteristics of designated lands and to provide for current and future public enjoyment of these areas and their wilderness character. These areas are to remain essentially unaltered and undisturbed by man, with natural ecological processes (including the natural role of fire) permitted to function with a minimum of human interference (**approximately 220,000 acres**).

Management Area 7 – Imnaha and Rapid Wild and Scenic Rivers: Management in this area is intended to protect and enhance the special values of those rivers or river segments (meaning the river plus its associated corridor) which are part of the National WSR System. Management of lands will not diminish the rivers free flow, water quality, and outstandingly remarkable values (**approximately 35,474 acres**).

Management Area 8 – Wild and Scenic Snake River: This area includes the 67.5-mile Wild and Scenic River corridor along the Snake River. The primary management emphasis is to protect and enhance the values for which the river was designated Wild and Scenic under the *WSR Act* (**approximately 14,535 acres**).

Management Area 9 – Dispersed Recreation/Native Vegetation: In these areas, all activities will be managed to provide many opportunities for dispersed recreation and to enhance native vegetation. It is envisioned that these areas will eventually be almost entirely occupied by native plant species. Rangelands will be managed to maintain satisfactory range condition that will be achieved and maintained primarily by nonstructural means. These areas provide a mix of primitive, semi-primitive nonmotorized, and semi-primitive motorized recreation opportunities (**approximately 161,078 acres**).

Management Area 10 – Forage Emphasis: This area lies within the grasslands interwoven with timbered stringers in the HCNRA. The grassland portions of these areas will be managed to provide maximum forage production with rangeland maintained in satisfactory condition (desired ecological status) and structural improvements being rustic in nature. Timbered portions will provide old-growth habitat at approximately current levels. These areas provide both semi-primitive motorized and semi-primitive nonmotorized opportunities (**approximately 123,029 acres**).

Management Area 11 – Dispersed Recreation/Timber Management: These areas combine dispersed recreation with timber management on the more productive sites within the HCNRA. The management objective is to provide a variety of tree species, a diversity of healthy timber stands, and ample dispersed recreation opportunities. These areas provide both semi-primitive motorized and semi-primitive nonmotorized opportunities (**approximately 70,706 acres**). Timber volume removal from the HCNRA is classified as unregulated and does not contribute to the WWNF allowable sale quantity (*Public LURS,* USDA 1994*).*

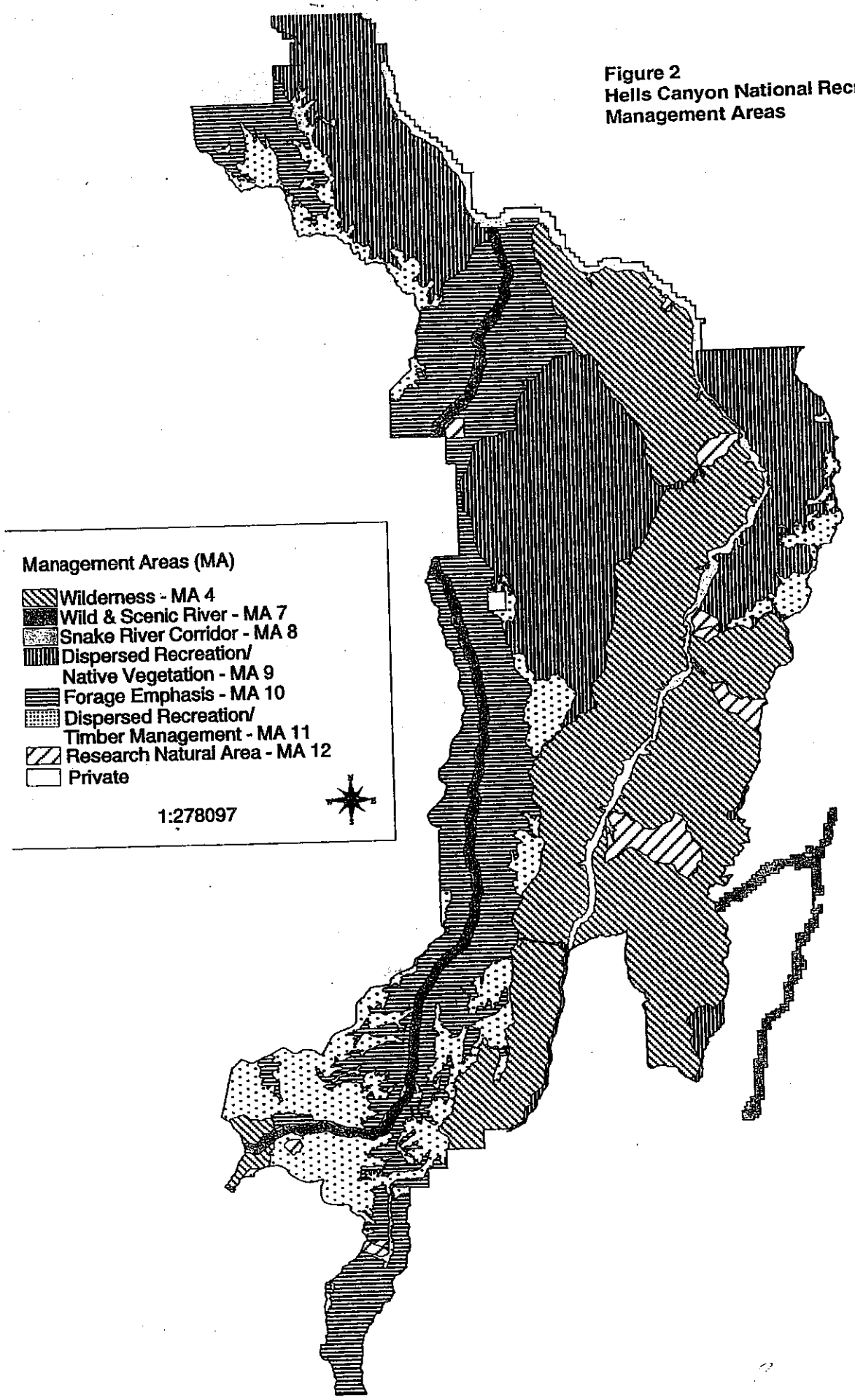
Management Area 12 – Research Natural Areas: The objectives for establishing Research Natural Areas (RNAs) are to preserve examples of all significant natural ecosystems for comparison with those influenced by humans, to provide educational and research areas for ecological and environmental studies, and to preserve gene pools for typical and rare and endangered plants and animals (**approximately 11,640 acres**).

Management Area 16 – Administrative and Recreation Sites: These areas include sites such as fire lookouts, permitted ranch headquarters, campgrounds, and other areas which are occupied by facilities for administration, public recreation, or features of cultural significance.

Management Area 17 – Power Transportation Facility Retention: These areas are presently used for the transport of electricity. Through proper design and management, optimum use will be made of those lands allocated to power facilities. To the extent possible, use will be made compatible with other uses of the forest including consideration of scenery management objectives.

Inventoried Roadless Areas – This environmental impact statement covers all inventoried roadless areas in the HCNRA. Inventoried roadless areas were identified in the *Forest Plan* and are also listed in the set of inventoried roadless area maps, contained in the *Forest Service Roadless Area Conservation, FEIS, Volume 2,* (USDA 2000). These maps are located at the Washington Office in Washington, D.C. Thirteen areas occur wholly or partially within the HCNRA. They total 44 percent of the HCNRA. See **Figure 3** for a map of roadless areas (**approximately 290,158 acres**).

Figure 2
Hells Canyon National Recreation Area
Management Areas



Decision

Using the authority delegated to me through 36 CFR 219.10 and FSM 1950, Environmental Policy and Procedures and FSM 1920 Land and Resource Management Planning, I selected Alternative E-modified as written in the FEIS for the amended programmatic direction for the HCNRA subject to existing rights, contracts, previous plan amendments and specific direction established by law. My decision constitutes a collection of small, focused changes in the long-range strategy for the HCNRA for specific resources areas needing change.

Refer to the compact disc at the end of this document for the full text of Alternative E-modified management direction as described in **Appendix C (pages 1-249)** of the FEIS. This table provides a detailed description of the existing CMP direction and the new goals, objectives, standards and guidelines for Alternative E-modified that would replace or supplement the existing direction. Alternative E-modified management direction also includes sections of **Appendix F, G,** and **H** of the FEIS as referenced in **Appendix C, Table C-1 (pages 1-150).**

Scope of the Decision

My decision provides programmatic goals, objectives, standards, guidelines and MA direction based on the decisions I identified for each of the specific resources areas needing change (**Chapter 1, pages 14-17**). Standards and guidelines, the restrictions and recommendations that govern on-the-ground management practices, are the key to successful implementation of the amended direction through site-specific projects. They must be properly applied to projects that emanate from this change in direction.

My decision also includes five site-specific seasonal road closures on 27 miles of road described below under Access and Facilities. Monitoring and evaluation are key factors in determining whether standards and guidelines are effective in meeting the intent of the *HCNRA Act* for the areas where management direction has changed. I have included monitoring and evaluation items in my decision to gauge whether the amended direction is adequate and to evaluate changes in direction to ensure compliance with the *HCNRA Act.*

It is important to state what my decision does not do. It does not:

- Maximize any single resource use or public service.
- Propose recreational use levels beyond the biological capability of the HCNRA to support that use.
- Propose management of the HCNRA based solely on values in the market place.
- Direct site-specific management activities such as constructing a trail or a campground, or harvesting timber at specific locations. Future projects will be based on the direction in my decision with further site-specific analysis (except as noted below under Access and Facilities).
- Dictate day-to-day administrative activities needed to carry out the internal operations (i.e., personnel matters, law enforcement, fleet equipment, or organization).

Amended Management Direction

My decision replaces or supplements the existing CMP, as amended, and supplements and/or modifies *Forest Plan* direction for MAs 4, 7, 8, 9, 10, 11, 12, 16, and 17 relative to the HCNRA. My decision provides new, amended, supplemented, or modified goals, objectives, standards, guidelines, and monitoring tied specifically to achieve the objectives of the *HCNRA Act* (PL 94-199), which established the HCNRA, the Hells Canyon Wilderness, and the Rapid and Snake Wild and Scenic Rivers; *Oregon Wilderness Act of 1984* (PL 98-328); the *Omnibus Oregon Wild and Scenic Rivers Act* (PL 100-552); *Public and Private LURs* (36 CFR 292); *Forest Plan* content regulations (36 CFR 219.11); and FSM 1920.

In summary, my decision amends management direction for the following resource areas needing change and provides 'new' direction as discussed previously under Purpose and Need:

Forested Vegetation, Grasslands, and Forest Understory

Desired Vegetative Conditions

- Provides direction to manage the HCNRA as a healthy ecosystem that is an integral component of a larger biological region.
- Establishes a goal of managing forested vegetation to achieve HRV for structural stages.
- Establishes a goal of managing grassland communities to achieve their potential natural community (PNC) recognizing the HRV as a reference condition. Also recognizes that the potential for some grassland communities to achieve their PNC may already be altered and therefore unattainable without active restoration methods (**Appendix C, Table C-1, pages 31-34**).

Vegetative Practices

- Provides specific direction to allow forest and grassland vegetation to function in a nearly natural manner by using wildland fire use for resource benefits (WFU) as the primary method to achieve desired vegetative conditions in MAs 4, 8, 9, and 12 (Wilderness, Wild and Scenic Snake River, Dispersed Recreation/Native Vegetation, and RNAs).
- Provides for prescribed fire (PF) from planned ignitions to facilitate WFU to maintain, restore, and sustain healthy forests and grasslands.
- Provides specific direction to maintain viable and healthy ecosystems using forested vegetation treatments and PF from planned ignitions as primary methods to replicate the naturally-occurring process which shape the character of the landscape in MAs 7, 10, and 11 (Wild and Scenic Imnaha and Rapid Rivers, Forage Emphasis, and Dispersed Recreation/Timber Management).
- Emphasizes PF from planned ignitions in MA 10 (Forage Emphasis) to maintain, restore, and sustain healthy forests and grasslands (**Appendix C, Table C-1, pages 34-41**).

Vacant Allotments Disposition and Satisfactory Range Conditions

Satisfactory Range Conditions

- Provides a specific definition for satisfactory condition for rangeland vegetation and soils in terms of ecological status (**Appendix C, Table C-1, pages 42-46**).
- Provides direction to manage for at least mid-seral ecological status with an upward trend or better based on PNC. For sites identified in unsatisfactory condition, management practices will be designed to improve ecological status to a satisfactory condition.

Grassland Vegetative Conditions

- Provides direction for the purpose of maintaining and restoring grassland vegetation with the goal of moving toward PNC while recognizing the HRV.
- Establishes site-specific rates of recovery during the allotment management planning process to achieve the goals for ecological status, soil conditions, and riparian management objectives in conjunction with other resource standards and guidelines (**Appendix C, Table C-1, pages 44-53**).

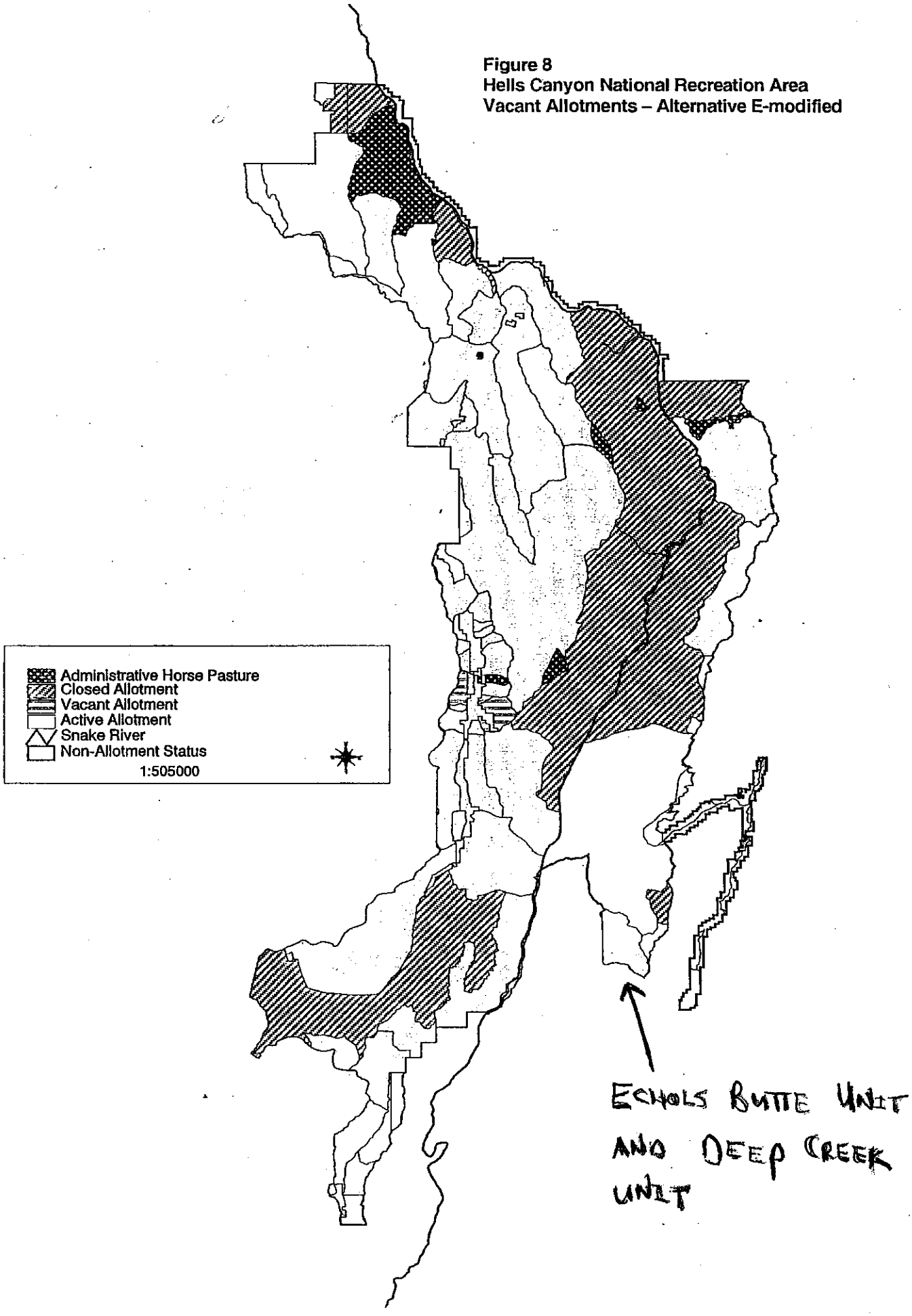
Utilization Standards

- Provides direction for fall, winter, and spring forage utilization specific to the HCNRA based on plant phenology, climate, and plant responses to grazing (**Appendix C, Table C-1, pages 47-49**).

Vacant Allotments and Administrative Horse Pastures

- Incorporates one percent (3,641 acres) of vacant allotments (Hope and Turner) into active allotments. Site-specific analysis will occur before restocking allotments (**Appendix C, Table C-1, pages 54-58**).
- Closes 92 percent (245,782 acres) of the vacant allotments (see **Figure 8**).
- Establishes seven percent (18,083 acres) of vacant allotments as administrative horse pastures.
- Retains the same level of active sheep and cattle grazing as currently exists (298,905 acres).

Figure 8
Hells Canyon National Recreation Area
Vacant Allotments – Alternative E-modified



Water Use Management and Cultivated Areas

- Maintains existing water rights and obtains new water rights to meet current and foreseeable water needs for HCNRA facility and resource management objectives (**Appendix C, Table C-1, pages 58-63**).

Recreation Use and Livestock Grazing Interactions

- Provides direction that livestock grazing practices will minimize evidence and/or interaction with recreationists at high-use recreation sites and corridors (**Appendix C, Table C-1, pages 64**).

Biological Soil Crusts

- Provides management direction to maintain, enhance, and facilitate restoration of biological soil crusts (**Appendix C, Table C-1, pages 64-66**).

Noxious Weeds

- In addition to the current WWNF *Integrated Noxious Weed Management Plan* (USDA 1992) establishes direction to reduce impacts on plants, wildlife, and other resources using a combination of integrated weed management processes of prevention, restoration, eradication, control, and containment.
- Adds direction to evaluate the extent of nonnative invasive plants, their relative impacts and potential for restoration and factors contributing toward the spread of nonnative invasive plants and implement prevention strategies during implementation of projects.
- Provides guidelines relative to PF and containment or control of aggressive noxious weeds.
- Prevents further noxious weed introduction and spread by implementing prevention measures in the form of seed testing and requirement for the use of pelletized or certified weed-free feed in all areas of the HCNRA. Emphasizes active restoration including the use of native seed where appropriate, closure or restrictions on use where appropriate (**Appendix C, Table C-1, pages 67-68**).

Heritage Resources

- Provides direction for managing and protecting heritage resources including development of a heritage resource management plan
- Protects prehistoric sites in low recreation-use areas and inside the Wilderness by managing for self-discovery interpretation opportunities.
- In high recreation-use areas and outside the Hells Canyon Wilderness, prehistoric sites will be protected by custodial maintenance of existing interpretation opportunities.
- The most significant historic structures inside or outside the Wilderness will be maintained, stabilized, or restored.
- Other historic structures will not be maintained or stabilized and will be allowed to deteriorate following appropriate data collection.
- Nonhistoric structures and facilities outside the Wilderness will be evaluated for stabilization, restoration, or maintenance based on potential historical value.
- Retains all sites and structures in Wilderness used in administration of the Wilderness resource and permitted livestock operations.
- Manages interpretative opportunities based on a thematic approach relative to: prehistoric settlement, self-discovery, historic mining, historic American Indian, Forest Service and fire management, historic ranching, homesteading, and traditional use depending on the Recreation Analysis Area (**Appendix C, Table C-1, pages 69-76**).

Federal Trust Responsibilities

- Provides specific direction for government-to-government relationships to ensure meeting federal trust responsibilities and treaty rights specified in the *Treaty of 1855* with the Nez Perce Tribe.
- Emphasizes consultation and coordination with the Nez Perce Tribe in the planning and implementation of resource projects and the monitoring of treaty rights and projects.

viewpoints and knowledge that I considered in reaching an informed and balanced decision. I weighed each alternative's resolution of the significant issues summarized in **Chapter 2 (pages 5-25)** and in further detail in **Appendix C (pages 1-249)** against the physical, biological, social and economic consequences of the alternatives disclosed in **Chapter 3 (pages 1-482)**.

My decision to select Alternative E-modified from the FEIS as the amended direction for the HCNRA stems from my conclusion that it responds best to the significant issues and provides the needed change in direction to better meet the intent of the *HCNRA Act* and other acts. My decision was strongly influenced by information from the purpose and need for change and the issues in **Chapter 1** of the FEIS, the legislated requirements of the *HCNRA Act* (PL 94-199); the *Oregon Wilderness Act* (PL 98-328); the *Omnibus Oregon Wild and Scenic Rivers Act* (PL 100-552); *Public and Private LURs* (36 CFR 292); *Forest Plan* content regulations (36 CFR 219.11); and FSM 1920.

Compatibility with Section 7 of the HCNRA Act

A concern expressed by the public and agency personnel throughout this planning process has been the compatibility of motorized recreation, timber, and grazing activities with the objectives of Section 7 of the *HCNRA Act*. This concern has been the focus of many ongoing activities and recent site-specific project proposals. My objective throughout this planning process has been to establish management direction that will resolve these issues of compatibility at the programmatic level. Further, there is a need to establish direction on how to address compatibility of future site-specific projects based on my decision.

I realized that I would not be able to satisfy all of the public concerns to their fullest extent because many of them are mutually exclusive. In making this decision, I carefully reviewed the *HCNRA Act* and considered my understanding of compatibility in light of recent court cases on management issues in the HCNRA. In 1993, a court order (Cv. No. 92-1432-ST) stated the purpose of the *HCNRA Act* and its Congressional mandates require the Secretary to do more than simply maintain the status quo in the HCNRA. In addition, they strongly imply that users of public lands in the HCNRA are the intended beneficiaries of requirements of the *HCNRA Act*, and that the intended benefit to those users is an enhancement of "recreational and ecologic values" unique to the HCNRA. Other interests, while being recognized as valid uses, are subordinate to this overriding concern (**Chapter 3, page 6**). Additionally, in 1996, a court opinion (Cv. No. 94-1347-AS) stated that the *HCNRA Act* requires the WWNF to allow the continuation of livestock grazing only if grazing is compatible with other provisions of the *HCNRA Act*. The court further stated that if Congress had intended to favor grazing in the manner asserted by interveners, it would not have conditioned the continuation of grazing in the HCNRA on its compatibility with the specified purposes of the *HCNRA Act*, including the protection and maintenance of wildlife.

I concluded based on my review and these findings that compatibility means that timber harvesting by selective cutting, mining (on the valid existing claims), livestock grazing as stated in Section (7) and a broad range of recreation opportunities can occur so long as they meet the objectives of *HCNRA Act*, Section 7(1-6). This provided the basis for my review of each of the alternatives management direction and their resulting environmental consequences (**Chapter 3, pages 1-482**) in reaching my decision to select Alternative E-modified to resolve this significant issue.

Alternatives A and B do not propose specific management direction for making a compatibility determination and would lead to questions about whether uses and projects were compatible with the intent of the *HCNRA Act* and would not resolve this concern (**Appendix C, page 6**).

Alternatives E-modified and W propose management direction that would establish a process to determine the compatibility of ground-disturbing management activities with management direction. When recreation, livestock grazing, timber harvest, and mining (activities listed in Sections 7 and 13 of the *HCNRA Act*) occur on public land, and meet the goals, objectives, standards, and guidelines, the use is programmatically compatible with the intent of the *HCNRA Act* (**Appendix C, page 6**). This establishes the fundamental concept that an outright exclusion of any of these uses does not meet the intent of the *HCNRA Act* (**Chapter 3, page 22**).

Alternative N proposes management direction that emphasizes the priorities mandated through Section 7(1-6) of the *HCNRA Act* and that human activities would be undertaken which have no adverse impact or the least impact to the ecosystem. The direction further emphasizes that activities and human users must be measurable and

held accountable for attaining these goals. All ongoing and proposed human activities that pose a potential for adverse impact would be continued only if they are publicly monitored and determined compatible (**Appendix C, page 6**).

Although Alternative W would lead to resolution of issues of compatibility with the *HCNRA Act*, it would result in overall higher levels of livestock grazing and timber harvesting that may lead to site-specific incompatibilities. I find Alternative E-modified preferable to Alternative W because it provides additional direction for project-level planning decisions to disclose a finding of compatibility with the goals, objectives, standards and guidelines and to include monitoring elements that would ensure compatibility through project implementation (**Chapter 3, page 23**). This direction demonstrates my commitment to link monitoring with project implementation, thereby ensuring each project's compatibility with the management direction of Alternative E-modified. My decision also provides a process for resolving any site-specific incompatibilities through public participation processes; memorandums of understanding, as needed, with affected county, state, federal, and tribal governments; and the appropriate level of environmental analysis.

Fundamentally, my decision reinforces that uses are programmatically compatible with the intent of Section 7(1-6) of the *HCNRA Act* if they meet goals, objectives, standards and guidelines for resource protection (**Appendix C, page 6**). Although Alternative N emphasizes Section 7(1-6), I do not believe that Alternative N meets the overall intent of the *HCNRA Act* based on its management direction that would result in significant reductions in the level of motorized recreation, access, livestock grazing, and timber harvesting (**Chapter 3, page 23**). In my review of the *HCNRA Act*, it is clear that Congress intended that the recreation and ecological values and public enjoyment of the area be enhanced, and that traditional and valid uses in Section 7(7) be allowed to continue as long as they are compatible with the resource objectives of Section 7(1-6). I believe that implementation of the amended management direction provide by my decision will meet this intent (**Chapter 3, page 23**).

I also considered other factors in reaching my decision to select Alternative E-modified to balance the diverse and competing uses of the HCNRA. The management direction in Alternative E-modified is designed to specifically meet the intent of the *HCNRA Act*, Section 7 and the *Public LURs* (36 CFR 292.40). The goal statements for each resource area are written to articulate the intent of a particular objective under Section 7. Thus, the objectives, standards, guidelines, and monitoring are designed to guide site-specific implementation to achieve those goals, particularly in terms of ongoing uses that are compatible with Section 7(1-7). As part of my decision, I am directing that the Area Ranger for the HCNRA make a site-specific compatibility determination during project-level planning based on the management direction embodied in Alternative E-modified. If site-specific incompatibilities are identified with a project proposal, then the project will need to be changed or mitigated to avoid the incompatibility.

It is my determination, following a thorough review of the FEIS and its appendices, that as long as site-specific activities, both ongoing and proposed, meet the goals, objectives, standards, and guidelines of Alternative E-modified then they are compatible with meeting the objectives of Section 7(1-7) of the *HCNRA Act*. Thus, my decision resolves this significant issue. My specific reasons for selecting Alternative E-modified are listed for the other significant issues and resource areas described in the following sections.

Recreation Settings, Experiences, and Opportunities

Social Encounters, Visitor Management, Visitor Impacts, and Management Strategies

To facilitate my decision for recreation settings, experience, and opportunities, I directed the Interdisciplinary Team to use the ROS as established by FS directives. FS policy requires the use of ROS as an aid in determining an adequate mix of recreation opportunities to ensure the protection of the physical and social attributes of National Forest System (NFS) lands. Although delineation of the ROS classes assists in quantifying the extent of the areas, other factors influence a person's perception of an area (such as remoteness and naturalness) and overall experience. The strength of utilizing ROS is that it provides a range of diverse opportunities from primitive to more roaded to give recreationists a choice based on their preferences. In developing the standards for the ROS settings, the Interdisciplinary Team delineated the HCNRA into 33 Recreation Analysis Areas where seven ROS setting indicators (access, remoteness, scenery [naturalness/visual quality], social encounters, visitor management, visitor impacts, and facilities) will apply. See **Figure 4** for a map of Recreation Analysis Areas. Recreation Analysis Areas were identified to characterize the 'sense of place'

Vacant Allotments Disposition and Satisfactory Range Conditions

Satisfactory Range and Grassland Vegetative Conditions

Alternative E-modified establishes a satisfactory condition definition of 'mid-seral ecological status with an upward trend as the minimum standards for available forage where domestic grazing may be authorized, pursuant to the *Public LURs* (36 CFR 292.48). In considering these standards for implementation, I carefully reviewed the environmental consequences in **Chapter 3 (pages 163-184)** of the FEIS. The analysis demonstrates that the management direction in Alternative E-modified for satisfactory conditions in conjunction with the goal to achieve PNC for grasslands will lead to an improvement toward desired rangeland vegetation, soils, and riparian habitat over the next decade. Because existing direction (Alternative A) is expressed in terms of range forage condition to meet a 'good' condition which has not been clearly defined and has different interpretations, it does not provide the clarification needed pursuant to the *Public LURs*. Alternatives A, B, and W would continue to provide direction based on range forage condition which evaluates health through analysis of primarily forage conditions. This analysis measures the browse and herbaceous material available to grazing animals and employs a slightly different rating scale than ecological status which measures vegetative and soil health relative to the PNC of the site. Alternative N would be similar to Alternative E-modified in terms of meeting objectives for satisfactory range forage condition, but it does not specifically establish a definition for satisfactory condition as required by the *Public LURs*.

I believe because Alternative E-modified defines satisfactory condition with specific standards in terms of ecological status of overall rangeland vegetation this provides a more relevant approach to achieving PNC. It reconciles the definition of satisfactory conditions with the concept of HRV as part of my decision for overall desired vegetative conditions and considers other ecological factors such as soils and riparian vegetation in the same context. My decision does not mean that all sites will meet the satisfactory condition defined as mid-seral status with an upward trend or better because no lower seral stages would be present and HRV would not be attained. This condition is neither naturally occurring nor desirable (Hobbs and Huenneke 1992, Miller et al 1994). Most species, both plant and animal, occurring in the grasslands evolved with disturbance regimes (**Chapter 3, page 179**). Some sites, due to past disturbances, have altered site potentials and will likely remain in earlier seral stages or a disclimax (a climax community that has been disturbed by various influences, especially by humans and domestic animals, such as a grassland community that has been altered by overgrazing). In addition, many noncapable or unsuitable range sites will continue to be affected by other disturbances and would be more representative of HRV.

Grazing capacity for allotments will be based only on capable and suitable rangelands in satisfactory conditions. For grasslands in unsatisfactory condition, livestock grazing will be authorized as long as the projected rate of recovery is at least 70 percent of the rate of recovery absent livestock grazing (**Chapter 3, page 177**). The clarified definition for satisfactory condition in combination with the goal for PNC addresses grassland communities where the site potential is not being achieved. For those sites in unsatisfactory condition, management practices will be designed to improve ecological status to a satisfactory condition. This management direction will also result in improvements in range and riparian conditions for sites that are currently less than satisfactory because management practices will be designed to improve ecological status to a satisfactory condition. My decision sets forth direction to make these determinations through the allotment management planning process.

My decision also provides for more rapid recovery than the other alternatives primarily due to an increased focus on restoration, on prevention and management of noxious weeds and invasive species, and on the closure of larger acreages of vacant allotments. This could result in up to a full condition level improvement on sites in mid-seral status and a movement to late-seral status with a stable trend on sites currently in satisfactory condition. In addition, as restoration techniques are developed and refined, they will be applied to the earlier seral sites with emphasis on those sites that would be most capable of responding to treatment. These sites will include the deeper soil benches and bottoms where noxious weeds or other invasive plants are being controlled or would be capable of being controlled. This response will be predicated on successful restoration of sites occupied by invasive species, and on big-game impacts remaining constant or decreasing (**Chapter 3, page 181**).

These conditions are measurable and attainable because my decision provides specific standards and guidelines with established agency protocols. My decision provides the minimum acceptable factors for meeting satisfactory conditions and meets the intent of the *Public LURs* (36 CFR 292.48). In addition, it meets the need for change to

achieve desired vegetative grassland conditions relative to HRV and ecological status as stated in **Chapter 1 (page 9)** of the FEIS, and resolves this significant issue.

Utilization Standards

Incorporation of fall, winter, and spring forage utilization standards will allow for the maintenance of satisfactory vegetative conditions while addressing the unique plant phenology, climate, and plant responses associated with fall, winter, and spring grazing as disclosed in **Chapter 3 (page 146)** of the FEIS. Alternatives A and N do not incorporate standards specific to these seasons. Although Alternatives B, E-modified, and W define specific utilization standards based on seasons, I concluded that Alternative E-modified is a better selection because it also incorporates an effective means for defining and measuring satisfactory conditions for grasslands. These features together make this alternative the best approach to meeting the need to supplement *Forest Plan* standards that apply to summer ranges only and do not reflect plant and habitat needs associated with other seasons as described in the need for change in **Chapter 1 (page 9)**.

Vacant Allotments and Administrative Horse Pastures

The Interior Columbia Basin has experienced increased fragmentation and loss of connectivity between habitats isolating some habitats and reducing the ability of wildlife populations to move across the landscape. The HCNRA is an area that provides potential recovery for some terrestrial species in the greatest need of habitat restoration (USDA 2000, Quigley and Arbelbide 1997). Because of this concern, my decision closes the majority of the currently vacant allotments (245,782 acres). The remaining 49 percent (316,988 acres) of the HCNRA will be maintained as active allotments or administrative horse pastures. None of the existing active allotments will be closed. See **Figure 8** for a map of the vacant allotments that will be closed. Closure of the vacant allotments will maintain relatively large blocks of intact, native grasslands (greater than 300,000 acres including areas previously considered not suitable or capable for grazing) where connectivity for terrestrial habitat will be maintained. These areas provide a diversity of habitat and edges between cold forest, moist forest, dry grass and to a lesser extent dry shrub and riparian woodlands. Maintaining these habitat types will improve connectivity while locally reducing fragmentation (**Chapter 3, page 175**).

As part of my consideration, I reviewed the reasons these allotments initially became vacant. They have been difficult to stock in the past as evidenced by their history due to their remote location and difficulty of terrain which caused economic hardships for the permittee. Most of these term grazing permits were waived back to the government for economic or personal reasons. Some of these allotments have been vacant for more than 20 years (**Chapter 3, page 164**). Alternative A does not fully resolve the issue of vacant allotments because it retains 50 percent of them as vacant and does not establish administrative horse pastures that are currently being grazed in vacant allotments. Alternatives B and W establish administrative horse pastures but leaves 50 percent of the allotments vacant for future consideration. Alternatives A, B, and W incoporate vacant allotments at varying degress to provide greater management flexibility for existing allotments but would not increase the level of animal units months (AUMs). In fact, grazing levels are expected to decrease gradually (7%) over the next decade following implementation of the management direction to meet the compatibility standards of Section 7(1-7) of the *HCNRA Act* regardless of incorporating additional acres.

My decision may cause a slightly greater decline in AUMs (-10%) to meet the satisfactory conditions for grasslands, rest and recovery guidelines following fire, and the other resource objectives specified for Section 7 of the *HCNRA Act*. Alternative N proposes management direction that will reduce if not eliminate livestock grazing in the HCNRA. However, I find that there will be only minor differences in achieving vegetation conditions between Alternative N and Alternative E-modified because vacant allotments have been vacant for a number of years and current and proposed livestock management will improve vegetative conditions on active allotments only at a slower rate than Alternative N (**Chapter 3, page 175**).

Furthermore, my review of the environmental consequences leads me to conclude that the active allotments are and will continue to be managed on capable and suitable lands in a manner that is compatible with the objectives of the *HCNRA Act* (**Chapter 3, page 176**). The standards and guidelines from my decision for desired vegetative conditions and other resource objectives (**Appendix C, Table C-1, pages 1-249**) will be incorporated into site-specific allotment management plans. These amended management plans will achieve the PNC with flexibility for active improvement or restoration on current sites where feasible and meet the resource objectives specified by Section 7 of the *HCNRA Act*. My decision places a high priority on managing existing active allotments to meet the intent of the *HCNRA Act* through this amended direction.

I do not believe that Alternative N's reductions or closure of active allotments is consistent with maintaining traditional and valid uses as specified in the *HCNRA Act*. Many of the property owners within the HCNRA are dependent on NFS lands for grazing. Cancellation of these term grazing permits will likely result in the loss of economic viability of some operators, and substantially reduce viability for others particularly those that rely on forage from the HCNRA. Reliance on forage from the HCNRA is particularly evident along the middle and lower portions of the Imnaha River where allotment boundaries were established during the homesteading era. These permitted areas include steep terrain, grassy bench lands, and cliffs that act as natural barriers in conjunction with adjoining private land. Several small landowners along the middle portion of the Imnaha River rely on these allotments to sustain their livelihood. Along the lower portion of the Imnaha River, larger tracts of private property along streams and bench lands are intermixed with NFS land. With the loss of economic viability, some ranches will likely be sold to other ranching operators or for recreational or residential uses. As a result, permittees will not sustain their economic viability, thus affecting the local communities surrounding the HCNRA. This will not be consistent with the *Imnaha Wild and Scenic River Management Plan* that provides for traditional use/lifestyle adaptation associated with the ranching community as an outstandingly remarkable value for the Imnaha River **(Chapter 3, pages 257; 455-456)**.

I included the vacant sheep allotments in my decision to close vacant allotments because current research since the release of the RDEIS in 2000 indicates that the development of a vaccine to protect bighorn sheep from disease transmitted by domestic sheep seems unlikely based on the current research **(Chapter 3, pages 167; 420)**. Although this eliminates these allotments for future sheep grazing unless changed through another planning process, my decision will maintain healthy bighorn sheep populations in the long term by eliminating the known incompatibility between domestic sheep and bighorn sheep **(Chapter 3, pages 164; 167; 176)**. Since these vacant allotments are currently not stocked, closure of them will not decrease grazing levels or management of active allotments and does not directly threaten traditional and valid uses as part of the *HCNRA Act*. All vacant allotment acres closed under my decision will be classified as unsuitable for permitted livestock grazing.

Alternative E-modified will allow two vacant allotments (Hope and Turner) in the Imnaha River drainage to be considered for active grazing following site-specific NEPA analysis through development of allotment management plans. I believe that these vacant areas may also provide flexibility for future grazing on a temporary basis where fire, flood damage, or other unforeseen situations may displace permittees on currently active allotments. However, these areas (3,641 acres) will need to be evaluated prior to any stocking. Administrative horse pastures will be officially established as part of my decision as to maintain administrative use of FS stock. The FS utilizes saddle and pack stock for use in backcountry trail maintenance, field surveys, and other administrative purposes. These pastures are centrally located on pastures with winter and summer forage and are essential to reduce transportation costs, aid in availability during administrative activities, and maintain the health and physical condition of the stock. Grazing practices on administrative horse pastures will comply with direction regarding grassland, forest understory, and riparian/aquatic habitats, including the *Forest Plan* as amended by PACFISH, INFISH, and terms and conditions from the related BOs **(Chapter 3, page 176)**.

More than half of the HCNRA will remain ungrazed by domestic livestock over the next decade. These actions, taken as a whole, will promote the restoration of sites in less than satisfactory condition and will improve the biological status and importance of the HCNRA grasslands ecosystem within the Interior Columbia Basin **(Chapter 3, pages 175; 183; 399-402)**. Closure of the vacant allotments will continue to maintain existing recreation experiences and social values associated with solitude in ungrazed areas of the Hells Canyon Wilderness and the Wild and Scenic Snake River corridor **(Chapter 3, pages 167; 175-176)**. Social values and economic benefits associated with livestock grazing as part of the traditional lifestyles in the Imnaha Wild and Scenic River corridor will also be maintained.

I believe my decision provides a balanced approach to meeting the Section 7 objectives of the *HCNRA Act* while providing for compatible livestock grazing to maintain traditional and valid uses in the HCNRA as specified in Section 13. This resolves the significant issue over whether all or part of allotments should be used to increase management flexibility of existing allotments and administrative horse pastures as described in the need for change **(Chapter 1, pages 9-10)**.

Water Use Management and Cultivated Areas

Alternative E-modified will provide management direction for the maintenance of water rights on administrative sites, in addition to providing guidelines for managing cultivated fields at historic homesteads and administrative sites. This direction meets the intent of state laws to maintain water rights and allows for raising limited agricultural crops or feed for wildlife or other opportunities that continue the traditional uses as compatible with Sections 7(6) and 13 of the *HCNRA Act*. The focus of this decision is on maintaining water rights that provide flexibility for restoring native and introduced plant species where possible.

All alternatives would retain water rights except Alternative E-modified emphasizes retaining water rights for future opportunities at existing sites. My decision also emphasizes restoring native species where possible. Alternative N would minimize the use of water rights for irrigating livestock pasture (such as at Thorn Creek Guard Station and Kirkwood Historic Ranch) or exotic lawns (for example at Kirkwood Historic Ranch and Pittsburg Administrative Sites) to that needed for resource protection, and would maximize use of the water rights for restoring native plant species and aquatic habitat. Because no irrigation would occur at any of the eight sites or at any other sites where the FS has maintained water rights, existing pastures or hayfields for either permitted or administrative use would be eliminated. In many areas, as the irrigated plants died out, they would be replaced with annuals and other weedy species unless significant efforts were taken to revegetate with native species (**Chapter 3, page 189**). I believe the use of these sites is an appropriate way to maintain water rights for existing and future uses at recreation and administrative sites. My decision provides the needed direction to maintain water rights as noted in the need for change (**Chapter 1, pages 9-10**).

Recreation Use and Livestock Grazing Interactions

My decision provides management direction to resolve existing incompatibilities between domestic livestock grazing and high-use recreation areas. I believe that implementation of these objectives to minimize encounters or evidence of grazing in high-use areas will ensure the grazing activities meet the test of compatibility with Section 7 of the *HCNRA Act* and with 36 CFR 292.48. Alternatives A, B, and W would provide some level of resolution of these incompatibilities (**Chapter 3, page 191**). Alternative N provides no direct process for resolving potential or existing incompatibilities between livestock grazing and recreational activities, but indirectly reduces conflicts by reducing or eliminating grazing. I've concluded that the standards and guidelines in Alternative E-modified will resolve conflicts by minimizing interface between domestic livestock and recreationists through controlling the timing of use, reducing extensive evidence of feeding, and eliminating on-site evidence of cattle in specific, high use areas (**Chapter 3, page 192**). Although local incompatibilities between social values associated with recreation and livestock grazing may arise, they will be addressed through site-specific planning processes, pursuant to the compatibility direction contained in Alternative E-modified. These measures provide the needed change in direction for livestock management within or adjacent to high recreation use areas to resolve social incompatibilities as described in the need for change (**Chapter 1, pages 9-10**).

Biological Soil Crusts

My decision integrates specific objectives, standards and guidelines for protection and maintenance of biological soil crusts into the decision-making process for grazing management, PFs, and following wildfires. Biological soil crusts are most sensitive to effects due to trampling, erosion, and fire. The HCNRA provides an area within the Interior Columbia Basin where crusts have had relatively low effects as compared with other geographic areas such as the Palouse (conversion to agriculture) or high desert (grazing effects and conversion to agriculture and urbanization). The other alternatives do not provide direction specifically for the protection of this resource. Because my decision incorporates new standards and guidelines for grasslands and crusts into the allotment management planning process, I concluded that Alternative E-modified reduces the risk to biological soil crusts the most and will provide the greatest improvement in crusts over time and the best opportunity to provide an area with high ecological status within the Interior Columbia Basin (**Chapter 3, page 204**). My decision provides the change in direction need for direction for biological soil crusts to ensure their maintenance in some specific communities across the landscape commensurate with their HRV as described in the need for change (**Chapter 1, pages 9-10**).

Noxious Weeds

Although I did not identify noxious weeds as a significant issue in the FEIS, they continue to be a serious management concern to the HCNRA. Alternative E-modified recognizes the legal status of noxious weeds and

provides supplemental management direction to the existing *Integrated Noxious Weed Management Plan.* My decision provides the needed programmatic direction to manage noxious weeds and specifically focuses on identifying nonnative, invasive plant species in addition to legally classified noxious weeds. I recognize that successful restoration techniques are still being developed, but my decision provides for efforts to move susceptible sites, for example those in very-early to early-seral status, toward their PNC. My emphasis on maintaining or restoring ecological status of native grasslands to PNC will focus evaluation on the extent and persistence of native species and their contribution to restoring sites to PNC.. This will be accomplished though treatment projects under the *Integrated Noxious Weed Management Plan* combined with actions to re-establish native perennial grasses and other site-adapted species.

I carefully reviewed the environmental consequences of the alternative approaches to preventing and controlling noxious weeds. Alternatives A, B, and W would continue using the *Integrated Noxious Weeds Management Plan* which provides adequate emphasis and direction to ensure proper management of noxious weeds in the HCNRA. Nonetheless, I've concluded that Alternative E-modified's emphasis on nonnative and invasive plant species will assist native grassland sites in mid-seral or earlier status to resist vegetation and occupancy by noxious weeds. Alternative N would focus on invasive and noxious weeds, but many of its objectives, standards, and guidelines potentially make the noxious weed program difficult to implement. For example, the requirement to have species management guides for any species which may be adversely affected by noxious weed or invasive plant management programs essentially means that virtually all "special species" would require management guides before a weed control program would be implemented. Noxious weeds are widespread and may occupy many "special species" habitats throughout the HCNRA. The requirement that only "nonpersistent, nonbio-accumulative herbicide formulations" be used eliminates a major portion of the few herbicides currently available for use in Region 6, which are effective on many of the most problematic weeds. Restrictions regarding treatment in the Wilderness greatly increases costs and significantly reduces effectiveness. Therefore, even if control efforts would be undertaken in the HCNRA under this alternative, the costs would be much greater, and program effectiveness would be less than under other alternatives (**Chapter 3, page 208**).

My decision continues to emphasize public education as an important element of controlling noxious weeds and increases efforts to provide a reporting method for the public to report new weed sites. My decision also implements prevention measures in the form of seed testing, requirement for the use of pelletized or certified weed-free feed in all areas of the HCNRA, restrictions on livestock management, emphasis on native seed, and closure and restoration of roads. My decision to limit motorized vehicles including all-terrain vehicles to designated routes, dispersed campsites or areas, or Special Fuelwood Areas will also enable stricter control of use areas, improve enforcement, and minimize the spread of noxious weeds. Closing the majority of the vacant allotments including the vacant sheep allotments as described previously will maintain less than 50 percent of the HCNRA for livestock grazing and prevent any spread into vacant areas due to livestock grazing. Other natural and human-caused vectors of disturbance such as fire, floods, recreation use, pack stock, wildlife, and nonmotorized access will continue to have some influence on increase of noxious weeds (**Chapter 3, page 210**).

The net effect of these prevention, detection, control, restoration, and monitoring practices in addition to the current *Integrated Noxious Weed Management Plan* will help prevent the spread and control of noxious weeds. These actions will reduce sites susceptible to infestation, although noxious weeds and other invasive plants will continue to occur on the HCNRA. My decision provides the greatest emphasis on prevention, treatment, and restoration and would likely provide the best opportunity to retain the HCNRA as an area within the Interior Columbia Basin that has relatively low impacts from noxious weeds. Seeking partnerships for funding and cooperative management of noxious weeds with affected landowners and other interested parties will continue to be a major program emphasis area for the HCNRA. My decision for managing noxious weeds and nonnative plant species provides the needed change in direction to maintain biodiversity, threatened and endangered species, wildlife habitat, and recreation experiences as described in the need for change (**Chapter 1, page 10**).

Heritage Resources

My decision will replace existing CMP management direction and supplement *Forest Plan* management direction. The management goal is designed to specifically meet the intent of the *HCNRA Act*, Sections 7(5 and 6) and articulate the intent of the *Public LURs* (36 CFR 292.43). The objectives, standards, guidelines, and monitoring will guide site-specific implementation to achieve these goals.

Procedures for Change During Implementation

The new CMP, as incorporated into the *Forest Plan*, may be amended or revised to respond to changing needs and opportunities including resource management innovations and information developed during monitoring and evaluation of the *Forest Plan*. I have considered that scientific assessments such as the *Assessment of Ecosystem Components in the Interior Columbia Basin* (Quigley and Arbelbide 1997) may provide new information that may be used during revision of the *Forest Plan*. I have also considered that planning processes such as the *Invasive Plants EIS* may amend the *Forest Plan*, encompassing the new CMP, with long-term management direction for preventing and managing invasive plants. I directed the Interdisciplinary Team to incorporate the ICBEMP science to ensure compatibility of the new CMP management direction relative to the scope of this new information including invasive plants.

As Forest Supervisor, I am authorized to implement an amendment to the existing CMP in accordance with the requirements of 36 CFR 219.10 (e) and (f), FSM 1922.51 and 1922.52, and FSH 1909.12, 5.32.

Detailed explanations of each step in the amendment process are located in the analysis file. The FEIS contains summaries from the analysis files and includes references to the records that are on file in the Forest Supervisor's Office in Baker City, Oregon. Refer to the Contact Person listed below to review these records.

Site-specific Analysis and Proposed Projects

Other aspects of the new CMP will be implemented "as soon as practicable" as provided by NFMA through site-specific NEPA analysis, public involvement, and consultation under the *ESA* for proposed projects. The new CMP influences the determination of management activities and projects by establishing clear management goals (desired future conditions) for the HCNRA. The new CMP does not establish schedules for project actions. This approach provides flexibility for the Area Ranger to adapt program and project selection as budgets, resource capabilities, and management priorities change.

The projections of probable outcomes in the FEIS were used to estimate the environmental effects of Alternative E-modified. This amendment purposefully avoids determining activity schedules. Likely future recreation proposals, potential vegetation treatments, and prescribed fire provide examples of actions that may be proposed in the future to support the goals for the HCNRA following site-specific analysis. Implementation of site-specific projects will lead towards accomplishing goals, objectives, and desired future conditions described in the CMP.

When allotment management plans are prepared, the new direction will be evaluated and incorporated as necessary into the new permit. Other "uses and occupancy" agreements will be reviewed to determine whether or when the Area Ranger for the HCNRA should exercise discretion to bring them into compliance with the new CMP. All activities, many of which are interdependent, may be affected by annual budgets.

Appeal Rights

This decision including the five site-specific seasonal road closures is subject to appeal in accordance with 36 CFR Part 217. A *Notice of Appeal* must be submitted in writing and clearly state that it is a *Notice of Appeal* filed pursuant to 36 CFR Part 217. The 45-day appeal period begins the day after the date the legal notice of this decision is published in the *Baker City Herald*, Baker City, Oregon; the official newspaper of record. This period is not extendable. The *Notice of Appeal* must be filed (two copies) with the Reviewing Officer (Regional Forester):

Linda Goodman, Regional Forester
ATTENTION: 1570 Appeals
P.O. Box 3623
Portland, Oregon 97208-3623

The *Notice of Appeal* must include sufficient narrative evidence and argument to show why this decision should be changed or reversed (36 CFR 217.9). The written *Notice of Appeal* at a minimum must:

- State that the document is a *Notice of Appeal* filed pursuant to 36 CFR part 217;

- List the name, address, and telephone number of the appellant;
- Identify the decision about which the requester objects;
- Identify the document in which the decision is contained by title and subject, date of the decision, and name and title of the Forest Supervisor, Karyn L. Wood;
- Identify specifically that portion of the decision or decision document to which the requester objects;
- State the reasons for objecting, including issues of fact, law, regulation, or policy, and if applicable, specifically how the decision violates law, regulation, or policy; and
- Identify the specific change(s) in the decision that the appellant seeks.

For a period not to exceed 20 days following the filing of a *Notice of Appeal*, the Reviewing Officer shall accept requests to intervene in the appeal from any interested or potentially affected person or organization (36 CFR 217.14(a)).

Contact Person

If you would like more information regarding appeal rights, or would like to review the analysis file, please contact:

Katie Countryman, Environmental Coordinator
Wallowa-Whitman National Forest
P.O. Box 907
Baker City, Oregon 97814
(541) 523-1264

Signature and Date

Karyn L. Wood — July 21, 2003

KARYN L. WOOD
Forest Supervisor

EXHIBIT "E"

Map Legend

Hells Canyon National Recreation Area within the Payette National Forest

Closed Allotment (from Figure 8 of the Hells Canyon National Recreation Area Comprehensive Management Plan Record of Decision)

SMITH MOUNTAIN – Domestic Sheep Allotment

Deep Creek – Grazing unit in the Smith Mtn. Allot.

1 = Smith Mt. Allot.

2 = Curren Hill Allot

EXHIBIT "F"

Frank Shirts, Jr.
P.O. Box 393
Wilder, Idaho 83676

Shirts Brothers
c/o Ron Shirts
1839 Weiser River Road
Weiser, Idaho 83672

March 8, 2007

Pattie Soucek, Forest Planner
Payette National Forest
800 West Lakeside Avenue
P.O. Box 1026
McCall, Idaho 83638
Telephone: 208-634-0812
Telecopy: 208-634-0744
Email: psoucek@fs.fed.us

Re: Supplemental comments to the *"Risk Analysis of Disease Transmission between Domestic Sheep and Bighorn Sheep on the Payette National Forest"* dated February 6, 2006 ("RADT"), and comments to the PNF ongoing process to conform to the *"Decision for Appeal"* in #04-13-00-0016, 18, 19, 20, 21, dated March 9, 2005 ("Decision for Appeal")

Dear Ms. Soucek:

These comments are submitted by Frank Shirts, Jr. and Shirts Brothers (aka Ron Shirts).

These comments supplement our previous comments submitted on July 17, 2006, and these comments also provide comment to the Payette National Forest ongoing process to conform to the "*Decision for Appeal*" in #04-13-00-0016, 18, 19, 20, 21, dated March 9, 2005. You are urged to share these comments with the Suzanne C. Rainville, Forest Supervisor.

Summary of these Comments:

* The 2003 Payette NF, *Land and Resource Management Plan*, has jurisdiction over the National Forest System lands in the Payette NF, and has no jurisdiction over the Hells Canyon National Recreation Area (HCNRA).

* Domestic sheep grazing within the HCNRA of the Smith Mountain Allotment is *compatible* with the *Hells Canyon National Recreation Act*. No part of the Curren

Hill Allotment, nor any other allotments which Frank Shirts, Jr. and Shirts Brothers graze domestic sheep are within the HCRNA.

Discussion of these Comments:

(1) Curren Hill Allotment not within the HCNRA.

Our previous comments dated July 17, 2006, mistakenly stated that "*a very minor portion of ... the Curren Hill Allotment is within the Hells Canyon National Recreation Area*". No part of the Curren Hill Allotment is within the HCNRA. The Curren Hill Allotment is entirely within the PNF.

(2) Omitted three allotments in our comments. These three allotments are not within the HCNRA.

Our previous comments dated July 17, 2006, mistakenly omitted three other allotments that Frank Shirts, Jr. is authorized to graze within the PNF; namely, the Fall/Brush Creek, Lake Fork, and Victor Loon Allotments. See Permit Number 04001.

These three (3) allotments are within the eastern portion of the PNF, as illustrated in Figure 2, at page 38, of the RADT, which is commonly referred to in the RADT as the "East Side" or "Salmon River bighorn sheep populations". See also Figures 1, at page 37 of the RADT.

In addition, of these three (3) allotments, the RADT identifies in Figure 1, at page 37, that the "*Ranges of bighorn sheep populations*" are not inclusive of any of these three (3) allotments, which demonstrates a continued fallacy in the RADT (and its subsequent clarification).

In addition to no acreage shared between these three (3) allotments and the "*Ranges of bighorn sheep populations*", the RADT identifies in Table 1, at page 27, that the time periods are limited upon which domestic sheep are upon these three allotments. Ewe/lambs or dry ewes are only on selected areas of the three allotments during specific time periods, as follows:

Fall/Brush Creek Allotment	July 1 - August 25
Lake Fork Allotment	July 1 - August 25
Victor Loon Allotment	August 26 - October 10

In short, domestic sheep are not upon the allotments on a yearlong basis, but only for a portion of the year.

Based upon the foregoing, no explicit discussion or consideration is given in the RADT (or its subsequent clarification) to the fact that no acreage is shared in these three (3) allotments between the domestic sheep and the "*Ranges of bighorn sheep populations*"; no explicit discussion or consideration is given in the RADT to the restricted time period in which the domestic sheep owned by Frank Shirts, Jr. are upon the Allotments; no explicit discussion or consideration is given in the RADT to the various "Special Terms and Conditions" within the Term Grazing Permit and related management actions by Frank Shirts, Jr. to further mitigate or abate contact with bighorn sheep.

(3) Domestic sheep grazing within the HCNRA, as authorized by the 2003 HCNRA Plan, is compatible with the *Hells Canyon National Recreation Act*.

Our previous comments dated July 17, 2006, correctly stated that a "*minor portion of ... the Smith Mountain Allotment is with the Hells Canyon National Recreation Area*", but omitted in stating that:

> (1) such "*minor portion*" is only in parts of 2 of 7 pastures/units of the Smith Mountain Allotment; and,
>
> (2) such area (or "*minor portion*") was declare "*compatible*" under Section 7 of the *Hells Canyon National Recreation Act* for the grazing of domestic sheep thereon (see HCNRA CMP ROD dated 7/22/03, pp. 33-34).

See also HCNRA CMP ROD dated 7/22/03, p. 19 (Map of "Active Allotment", which includes the area described herein as the "*minor portion*"). **The continued grazing of domestic sheep within the Deep Creek Unit/Pasture and the Echols Butte Unit/Pasture of the Smith Mountain Allotment, as within the HCNRA, is consistent with the HCNRA CMP ROD (aka 2003 HCNRA Plan).**

The "*Decision on Appeal*" does not dispute the foregoing. The "*Decision on Appeal*" only decided at page 15 that

> "*The Payette NF LRMP ... **may not** be in compliance with the Hells Canyon NRA Act and its implementing regulations*".

Bold Emphasis supplied. This "***may not***" statement appears only predicated upon an earlier statement in the "*Decision on Appeal*" at page 14 that noted "*documented movement of bighorn sheep between the NRA and the Payette NF*". However, the "*Decision on Appeal*" cites nothing in the 2003 Payette NF LRMP, cites noting in the 2003 HCNRA Plan, and cites nothing in the

law or regulations, that the *Hells Canyon National Recreation Act* applies outside of the HCNRA, even assuming movement of bighorn sheep between the HCNRA and the Payette NF. In other words, a mere movement of bighorn sheep between the NCNRA and Payette NF, does not legally mean that the legal requirements of *The Hells Canyon National Recreation Act* expand outside of the HCNRA into the Payette NF.

While the "*Hells Canyon Management Area*" (Management Area 01) of the 2003 Payette NF LRMP purports to cover part of the HCNRA (see 2003 Payette NF LRMP, p. III-90), the 2003 Payette NF LRMP explicitly deferred to the Plan covering the HCNRA as "*provid(ing) analysis and direction for those unique portions of the Forest*". See 2003 Payette NF LRMP, p. I-4. The 2003 Payette NF LRMP stated that:

> "*there are three areas within the proclaimed boundaries of the (Payette National) Forest that are administered by adjacent National Forests. Analysis and management direction for these areas can be found within the Forest Plan prepared for each of those Forests. These areas are: ... The Hells Canyon National Recreation Areas ... The Wallowa-Whitman National Forest administers these areas. Direction for the NRA is in the Comprehensive Management Plan for the Hells Canyon National Recreation Area*".

See 2003 Payette NF LRMP, p. I-4. No part of the "*Hells Canyon Management Area*" intends to cover he HCNRA. See "*Decision for Appeal*", p. 14 (wherein the Reviewing Officer of the Chief recognized/stated that the "Hells Canyon Management Area" was "*not specifically included within the Hells Canyon NRA Act*").[1] Accordingly, the issue of "capability" is not or should not be relevant to your ongoing process to conform to the "*Decision for Appeal*".

---

[1] The "*Decision for Appeal*" quotes at page 10 one of the appellants' statements that "*The Hells Canyon Recreation Act ... requires livestock grazing to be compatible with native wildlife protection ... the selected alternative fails to address the issues of ongoing conflicts of domestic sheep grazing and wild bighorn sheep in a way that assures the ultimate survival of the bighorn population and in a manner sufficient to meet its obligations under the HCNRA Act*". However, as noted, while this statement is correct that livestock grazing must be compatible under the HCNRA Act, the remainder of this statement is clearly erroneous. First, the 2003 Payette NF LRMP explicitly did not cover the HCNRA. Second, the 2003 HCNRA Plan determined that grazing of domestic sheep within the HCNRA, as allowed therein, was "compatible". It is apparent that the Payette NF never advised the Reviewing Officer for the Chief of the content 2003 HCNRA Plan.

If you have any questions, please call or write us. Otherwise, please be advised that we desired to be kept informed on a continual basis of all meetings, letters, memos, emails related to this matter. We look forward to working with you and the Forest Service.

Very truly yours,

Frank Shirts, Jr.

by _____
Frank Shirts, Jr.

Shirts Brothers

by _____
Ron Shirts

EXHIBIT "G"

USDA United States Department of Agriculture | Forest Service | Payette National Forest Council R.D. | PO Box 567 Council ID 83612 208 253-0100

File Code: 2230
Date: April 5, 2007

RON SHIRTS
SHIRTS BROTHERS SHEEP
1839 WEISER RIVER ROAD
WEISER, ID 83672

Dear Ron:

The enclosed Term Grazing Permit Modification describes the actions (and reasons for the actions) being taken to reduce contact between the domestic and big horn sheep. This one year modification is hereby made part of Term Grazing Permit Number 00339-1 issued to you on the 3rd day of April, 2007 by me. It is hereby attached to and incorporated in the permit as pages 13 and 14.

Please sign and return both copies of the modification for our files. I will mail you an approved copy, signed by me, for your files.

You have the right to appeal this modification under the 36 CFR 251, Subpart C authority. I have enclosed a copy of these regulations.

We appreciate you adding the additional herder to each band who will bed with the sheep at night, and adding the additional guard dogs for management of the bands on the Smith Mountain Allotment. We know the requests, including the modification of your Term Grazing Permit, are causing you emotional and financial hardship, but we need to take steps towards maintaining the separation between your domestic sheep and the big horn sheep. We appreciate everything you are doing. These efforts provide us reasonable assurance we are reducing the risk of contact, and possible disease transmission, between domestic and big horn sheep.

If you have any questions, please feel free to call Maura Laverty at 253-0114 or Pete Grinde at 347-0338.

Sincerely,

MARY FARNSWORTH
District Ranger

Enclosures

Payette National Forest
Council Ranger District

TERM PERMIT MODIFICATION
(Ref. FSH 2209.13, Sec. 16.1)

1. Grazing Permit Number 00339-1, issued to Ron Shirts on April 4, 2007, by Mary Farnsworth, District Ranger is hereby modified as follows for the 2007 grazing season:

    a. Term Grazing Permit, Part 1, area permitted for livestock use. The portion of the Smith Mountain S&G Allotment that lies within the Hells Canyon National Recreation Area (HCNRA) is not authorized for livestock use. The area not authorized for use is within the Deep Creek and Echols Butte pastures.

2. This permit is being modified for the following reasons:

    a. The HCNRA Act directs the Secretary of Agriculture to protect wildlife habitat and to continue traditional uses of the HCNRA which are compatible with provisions of the Act itself.

    b. HCNRA land use regulation 36 CFR 292.48(b) states:
    "Where domestic livestock grazing is incompatible with the protection, restoration, or maintenance of fish and wildlife...the livestock use shall be modified as necessary to eliminate or avoid the incompatibility."

    c. Radio telemetry data indicate bighorn sheep have been documented within the HCNRA portion of the Smith Mountain S&G Allotment. Not authorizing livestock grazing in this portion of the allotment will reduce the risk of contact between bighorn sheep and domestic sheep, thereby reducing the risk for disease transmission.

3. This modification is hereby made a part of and should be attached to your Term Grazing Permit. The modification to your Term grazing Permit is authorized in the Term Grazing Permit Part 1 number 3, which states, " ...This permit can also be.... otherwise modified, at any time during the term to conform with needed changes brought about by law, regulation, Executive order, allotment management plans, land management planning, numbers permitted or seasons of use necessary because of resource conditions, or the lands described otherwise being unavailable for grazing..." Modification of the Term Grazing Permit is also authorized in Part 2 - General Terms & Conditions number 8 Range & Livestock Management (b) which states, "The number, kind, and class of livestock, period of use, and grazing allotment specified in the permit may be

modified when determined by the Forest Officer in charge to be needed for resource protection...."

Changes in grazing permits is authorized by 36 CFR 222.4 (a) (7) & (8) which state, "Modify the terms and conditions of a permit to conform to current situations brought about by changes in law, regulation, executive order, development or revision of an allotment management plan, or other management needs," and "Modify the seasons of use, numbers, kind, and class of livestock allowed or the allotment to be used under the permit, because of resource condition, or permittee request..."

4. I have reviewed this modification and concur with the changes contained in it.

_____ _____

Permittee Date

5. This modification has been discussed with the permittee and is recommended.

_____ _____

Recommending Forest Officer Date

6. Approved:

_____ _____

Approving Forest Officer Date

EXHIBIT "H"

Shirts Brothers Sheep
c/o Ron Shirts
1839 Weiser River Road
Weiser, ID 83672

April 19, 2007

Mary Farnsworth, District Ranger
Payette National Forest, Council Ranger District
P.O. Box 567
Council, Idaho 83612

Surdam and Smith Mountain S&G Allotments
2007 Grazing Season

Dear Ms. Farnsworth,

This letter details our use for the Surdam and Smith Mountain S&G Allotments for the 2007 grazing season consistent with our Grazing Permit. While we appreciate that this explanation is unnecessary and is not required by our Grazing Permit, it is provided as a courtesy to you. After receipt of this letter, please issue us a grazing billing.

Introduction

Shirts Brothers Sheep intends to graze during the 2007 grazing season under the terms and conditions specified within our Term Grazing Permit Number 00339-1 (Permit) dated April 3, 2007, as modified by the Term Grazing Permit Modification dated April 5, 2007 (see Footnote [1]). Said Permit allows for 1200 sheep to use the Smith Mountain S&G Allotment between 5/16 and 6/17 and for up to 3100 sheep to use the Smith Mountain S&G Allotment between 6/18 and 10/15. Said Permit also allows 15 horses to use the Smith Mountain S&G Allotment from 5/16 through 10/15, and allows 1900 sheep to graze the Surdam S&G Allotment (5% Forest) from 4/1 through 6/30 under 'on/off' provisions.

Our 2007 grazing use within the Smith Mountain S&G Allotment will be conducted in compliance with the general terms and conditions specified in Part 2 of our Permit on pages 2-4 and the special terms and conditions specified in Part 3 of our Permit on pages 5-12. We will work closely with our Rangeland Specialist and our herders to assure compliance with the applicable proper use criteria. We will notify the Forest Service at least 3 days before turning sheep into the allotments. We will complete an "Actual Use" report, including a record of livestock losses and our maintenance costs, after the 2007 grazing season is completed and submit it to the Forest Service no later than November 1, 2007.

We intend to follow the grazing system outlined below during the 2007 grazing season. See attached map for the generalized grazing pattern for the 2007 grazing season in the Smith Mountain S&G Allotment. Such grazing system is within the livestock

numbers and season of use authorized by our Permit for the Smith Mountain S&G Allotment, as modified[1]. Note that the general dates associated with various areas of use outlined below include up to a ten-day overlap because the grazing system is intended to depict a pattern of use within the Smith Mountain S&G Allotment as the grazing season progresses and is not intended to specify exact dates upon which movement from one area to another will occur. These dates vary according to range conditions and use levels.

Please prepare our 2007 billing associated with Permit Number 00339-1 for a grand total of 12,290 sheep head months at $0.27 per head month = $ 3,318.30.

Grazing System				Head Months
No Bands	Deep Creek/Echols Butte Units	1-year non-use[1]		
Band #1&3	Surdam on/off Allotment	1900 ewe/lamb	4/1 – 6/30	284
Band #1	Smith Mountain Unit, Sheep Creek Unit			3,623
	Unload at Grouse Creek			
	Sheep Creek Unit	950 ewe/lamb	6/18 – 7/15	
	Smith Mountain Unit	950 ewe/lamb	7/5 – 8/25	
	Ship lambs from Cuprum		8/15 – 8/30	
	Smith Mountain Unit	950 ewe/lamb	8/25 – 10/15	
	Trail home along the Salmon River Driveway			
Band #2	Lost Creek Unit			3,353
	Unload at East Fork Lost Creek			
	Lost Creek Unit	1200 ewe/lamb*	6/18 – 8/25	
	Ship lambs from Railroad Saddle		8/20 – 8/30	
	Lost Creek Unit, use until 9/15 or until utilization limits are reached, then truck to fall/winter pasture.	1200 dry ewes	8/25 – 9/15	
	* (mostly yearling ewes with single lambs)			
Band #3	Snake River/Indian Creek Unit			4,653
	Unload at Kleinschmidt Grade			
	Snake River	950 ewe/lamb	5/16 – 6/10	
	Lower Indian Creek	950 ewe/lamb	6/1 – 7/10	
	Horse Mtn.	950 ewe/lamb	7/1 – 7/20	
	Kinney Pt./Camp Creek	950 ewe/lamb	7/10 – 8-20	
	Ship lambs from Cuprum		8/10 – 8/25	
	Upper Indian Creek	950 dry ewes	8/20 – 10/15	
	Trail home along the Salmon River Driveway			

[1] We acknowledge receipt of the one-year modification to our Grazing Permit to not graze the Deep Creek Unit/Pasture and the Echols Butte Unit/Pasture of the Smith Mountain Allotment, though this acknowledgment is made without prejudice and without waiving any rights.

Pack Strings (1 horse = 5 sheep for Head Months)	15 horses/mules	5/16 - 10/15	377
	Total Head Months =		12,290

Revised Forest Plan

The 2003 Revised Payette National Forest Land and Resource Management Plan (Revised Forest Plan) contains management area descriptions for Hells Canyon (Management Area 1) and Snake River (Management Area 2) which establish wildlife resource objectives (objectives 0118 and 0247 respectively) to "*Coordinate with Idaho Department of Fish and Game, Oregon Department of Fish and Wildlife, and domestic sheep permittees to reduce the risk of disease transmission between domestic and wild sheep.*"

While I appreciate that the "*Decision for Appeal*" in #04-13-00-0016, 18, 19, 20, 21, dated March 9, 2005, remanded such objectives to the Forest Service for further consideration, which the Forest Service is now in the process of completing, I am compelled to remark that the concept of such objectives still remain a part of the management, since they are codified in the Idaho Code and agreed to in an agreement signed by the Idaho, Oregon, and Washington state wildlife departments, signed by the U.S. Forest Service, signed by the Bureau of Land Management, and signed by the Foundation for North American Wild Sheep, and provided to the Idaho Wool Growers Association on January 16, 1997 (1997 Agreement).[2]

The 1997 Agreement with the Idaho Wool Growers Association holds existing domestic sheep operators "*in or adjacent to the Hells Canyon complex, on both National Forest and private lands*" harmless with respect to "*the potential risk of disease transmission*

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[2] There is a statement in the "*Decision for Appeal*" at page 13 that the "*(1997) agreement does not cover the Payette NF portion of Hells Canyon*". However, this statement is clearly erroneous, as even one of the Appellants in that appeal knew. The Hells Canyon Preservation Council (HCPC) sent a letter to the Idaho Department of Fish and Game dated August 2, 2004, specifically asking at its question 19 "*Did IDFG and/or the Hells Canyon Bighorn Sheep Restoration Committee formally or informally agree to limit management activities reducing disease transmission between bighorn and domestic sheep to such activities that would not adversely impact sheep operators* ***in the Payette N.F.***" Emphasis supplied. The IDFG answered said letter on August 12, 2004, stating as to question 19 that "*In March 1997, the committee signed an agreement with the Idaho Woolgrowers Association acknowledging that bighorns could come into contract with domestic sheep on existing grazing allotments, and that this could result in disease and death of bighorns. The wildlife agencies of Idaho, Oregon, and Washington agreed to assume responsibility for the bighorn losses should this occur, and to take action to reduce further losses of bighorn sheep without adversely impacting existing domestic sheep operators. This agreement was signed to allow the Hells Canyon Initiative project to proceed without restrictions on transplants that the Woolgrowers threatened to pursue in the Idaho state legislature.*" It is also relevant to note that the "Hells Canyon Initiative project" geographically covers an area significantly larger than the Hells Canyon National Recreation Area, covering other private land, state land, Tribal land, public land (BLM), and National Forest system lands (FS), including within the Payette N.F.

and loss of bighorn sheep when bighorns invade domestic sheep operations". Underlined emphasis supplied. See Footnote [3] to view the quotations in their full context.

Legislation was passed and signed into law on March 24, 1997 to add provisions to Section 36-106 of the Idaho Code requiring, among other things, that "*any transplant of bighorn sheep into areas they do not now inhabit or a transplant to augment existing populations*" must include written confirmation from the state wildlife department to "*affected federal or state land grazing permittees or owners or leaseholders of private land*" recognizing "*existing sheep or livestock operations in the area*" and certifying that "*the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted*" by the entities responsible for the transplants. See Footnote [4] to view these quotations from Section 36-106 of the Idaho Code in context.

The bighorn sheep that are now invading or otherwise pioneering into the domestic sheep allotments of the Payette N.F. adjacent to Hells Canyon are the byproduct of transplants into previously uninhabited areas or transplants to augment existing (previously transplanted) bighorn sheep populations in the Hells Canyon area. Bighorn sheep that are "*straying into currently active (domestic) sheep allotments*" are subject to the requirements detailed in the 1997 Agreement and Idaho Code 36-106 5(D). Thus, whatever action is taken to reduce the risk of disease transmission to the bighorn sheep must not adversely impact existing domestic sheep operators.

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[3] "The Committee understands that bighorns may occasionally migrate outside of their designated range and come into contact with domestic sheep. These bighorns will be considered "at risk" for potential disease transmission and death. There is also the potential for an exposed bighorn to leave the area and spread disease to other bighorn sheep. Under these conditions, the Idaho Department of Fish and Game, the Oregon Department of Fish and Wildlife, and the Washington Department of Wildlife will **assume the responsibility for bighorn losses and further disease transmission** in their respective states. The three Departments will also take **whatever action is necessary** to reduce further losses of bighorn sheep **without adversely impacting existing domestic sheep operators.** The enclosed map clearly delineates the project area within the Hells Canyon complex. Bighorns straying into currently active sheep allotments will be considered "at risk" by all of the Committee entities. This means that **the Committee recognizes the existing domestic sheep operations** in or adjacent to the Hells Canyon complex, on both **National Forest** and private lands, and **accepts the potential risk of disease transmission and loss of bighorn sheep when bighorns invade domestic sheep operations.**" See January 16, 1997 Agreement provided to the Idaho Wool Growers Association by the Hells Canyon Bighorn Sheep Restoration Committee: Emphasis supplied.

[4] "Upon any transplant of bighorn sheep into areas they do not now inhabit or a transplant to augment existing populations, the department shall provide for any affected federal or state land grazing permittees or owners or leaseholders of private land a written letter signed by all federal, state and private entities responsible for the transplant stating that the existing sheep or livestock operations in the area of any such bighorn sheep transplant are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted." See Idaho Code, Section 36-106 5(D).

Management Practices for the 2007 Grazing Season

Despite the fact that Idaho's existing domestic sheep operators are to be held harmless and all of the responsibility for disease transmission, if any, to bighorn sheep in a given area is expressly placed upon the entities responsible for bighorn sheep transplants and population augmentation projects, Shirts Brothers Sheep agrees to implement the following Management Practices for the 2007 Grazing Season within the Smith Mountain S&G Allotment which are consistent with our Grazing Permit. We plan to implement these practices during the 2007 grazing season in order to "*prevent contact*" between our domestic sheep and any bighorn sheep[5] that may stray into the Smith Mountain S&G Allotment, thereby providing the Payette N.F. additional time within which to complete its three-step decision process to address bighorn sheep viability across its planning area.

1. Perform a careful health inspection of all domestic sheep and remove any old, unthrifty, or sick animals from the band prior to turnout onto the Forest. Cull any old, unthrifty, or sick animals from the band as soon as they are identified throughout the grazing season and when the lambs are shipped.
2. Double the number of guard dogs for each band of sheep (2 with all 3 bands, for a total of 6 guard dogs).
3. Double the number of herders for each band of sheep (2 with all 3 bands, for a total of 6 herders). Each herder typically also has at least one sheepdog, so there will typically be at least 4 dogs tending each band of sheep (2 guard dogs and 2 sheepdogs per band).
4. Each band of sheep will have its own pack string, rather than a single pack string to service all three bands. Each pack string will camp immediately adjacent to its band of sheep each night. Having two herders and a dedicated pack string for each band of sheep will allow for continuous supervision of all three bands for the entire time they are on the Forest, 24 hours a day (even if an individual herder must temporarily leave service).
5. Each pack string will carry a cell phone to maintain direct communication with the permittee for the entire grazing season. This will allow more frequent reporting to the owner regarding herd health and death losses. It will also allow for the coordination of more frequent and accurate counts of an entire band each time it moves through areas where such counts are feasible.
6. Herders will count marker sheep (black, horned, belled, etc.) daily to assure that no small groups of sheep have separated from the main band.

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[5] We have taken issue (and continue to take issue) with your RADT dated February 6, 2006, as well as with the refinement of your RADT in a document entitled "*Summary of the Science Panel Discussion*" dated November 2, 2006. However, we acknowledge that "*Summary*" stated that "*it is prudent to undertake management to **prevent contact** between these species*". Emphasis supplied.

7. Each pack string will carry binoculars to improve their ability to spot bighorn sheep.
8. If the herders or pack strings spot any bighorn sheep within the Smith Mountain S&G Allotment, they will adjust their grazing path or haze the bighorns out of the area to minimize the possibility of direct contact with the domestic sheep.
9. The permittee will immediately report any bighorn sheep sightings within the Smith Mountain S&G Allotment to the USFS and the Idaho Department of Fish and Game.
10. Ewes with mastitis (blue bag) will not be left behind to recover and catch back up to the band latter, but will be removed from the band or killed.
11. Predator attacks, primarily wolf attacks, create the most significant risk for stray domestic sheep because they cause sheep to scatter from the main band. In such cases, the permittee will immediately notify the USFS, Idaho Department of Fish and Game, and Idaho wildlife services and begin efforts to identify the sheep that were killed and to locate and re-gather any scattered sheep.
12. In 28 years of experience, Shirts Brothers Sheep have never observed a bighorn sheep intermingle with their domestic sheep bands. However, we are willing to implement the IDFG's *Emergency Response Plan* which allows representatives of the IDFG or a permittee to kill any bighorn sheep that come into contact with domestic sheep on a grazing allotments. See letter from IDFG to Hells Canyon Preservation Council dated August 12, 2004 (wherein the *Emergency Response Plan* is referenced). This will ensure that if we observe any intermingling between a bighorn sheep and a domestic sheep, then the bighorn sheep will be killed and not allowed to return to its home herd. We certainly will immediately advise you and IDFG if the authority exercised in this *Emergency Response Plan* is implemented.
13. Shirts Brothers Sheep will allow the IDFG to remove or kill its domestic sheep which are located outside of private lands or permitted public land grazing allotments, or are located within public land grazing allotments outside of the permitted season of use (hereafter referred to as offending livestock), provided that the following conditions have been met: a) the offending livestock are found to be in immediate association with bighorn sheep and pose a health risk to said bighorn sheep; and, b) reasonable but unsuccessful attempts have been made over a 5-day period to notify Shirts Brothers Sheep regarding the offending livestock so they can remove said livestock; or, c) Shirts Brothers Sheep is notified and agrees that IDFG field personnel can remove or kill the offending livestock; or, d) Shirts Brothers Sheep is notified, but fails to remove the offending livestock within 10 days of said notification; and, e) the IDFG makes a reasonable attempt to notify the office of the Idaho state veterinarian prior to any removal action, or as soon as possible after the removal action is taken if the attempt at prior notification fails; and, f) the IDFG immediately turns over to Shirts Brothers Sheep or to the Idaho state veterinarian any offending livestock removed or killed pursuant to the preceding provisions.

The management practices detailed above will be followed during the entire grazing season within the Smith Mountain S&G Allotment, and while trailing home along the portion of the Salmon River Driveway that is located within the Payette National Forest. Furthermore, Shirts Brothers Sheep notes that the portion of the Salmon River Driveway that it uses is located well south and east of any areas within the west side sheep allotments that have been identified as bighorn habitat. Portions of the Seven Devils Driveway near the corner where the Curren Hill, Deep Creek, and Echols Butte grazing unit boundaries all meet are located near identified bighorn habitat. Because the Deep Creek and Echols Butte grazing units will not be used at all during the 2007 grazing season, Shirts Brothers Sheep bands will not use these portions of the Seven Devils Driveway in 2007. Given the lack of identified bighorn habitat along the portion of the Salmon River Driveway used by Shirts Brothers Sheep, our experience and intensive sheep herding practices, including the other 2007 management practices, we are confident that these actions will "*prevent contact*" between its sheep and bighorn sheep along the Salmon River Driveway.

If you have any questions whatsoever, please call or write. Otherwise, please issue us a grazing billing.

Very truly yours,

SHIRTS BROTHERS SHEEP

by _____
Ron Shirts

WEST

COUNCIL RANGER DISTRICT
PAYETTE NATIONAL FOREST

SMITH MOUNTAIN ALLOTMENT - Term Grazing Permit for SHIRTS BROTHERS, SHEEP

DISTRICT RANGER

4/7/97
DATE

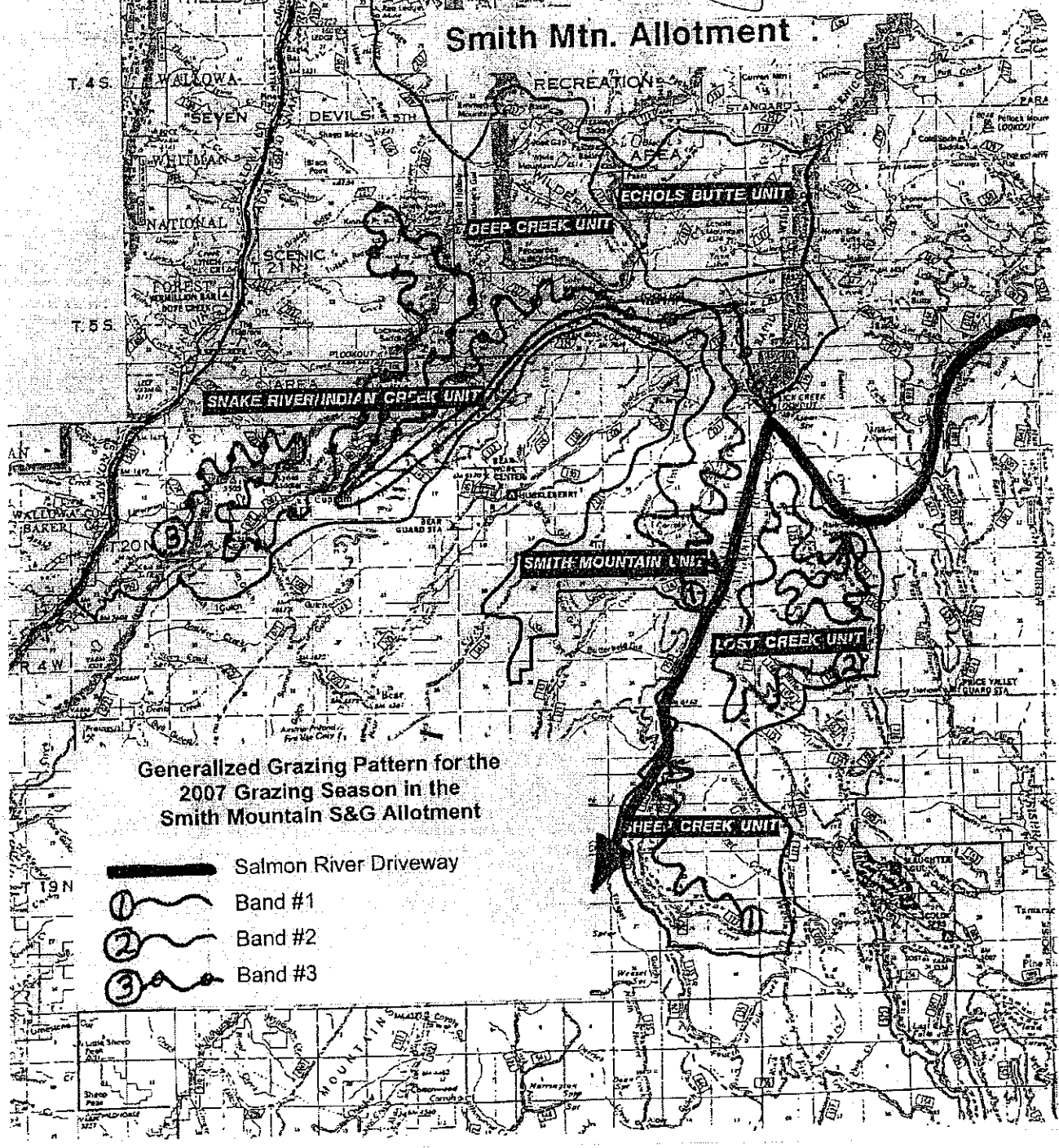


EXHIBIT "I"

Shirts Brothers Sheep
c/o Ron Shirts
1839 Weiser River Road
Weiser, Idaho 83672

May 7, 2007

Mary Farnsworth, District Ranger
Payette National Forest, Council Ranger District
P.O. Box 567
Council, Idaho 83612

Smith Mountain S&G and Surdam S&G Allotments
2007 Grazing Season

Dear Ms. Farnsworth,

This letter supplements my letter to you dated April 19, 2007.

I standby my proffer as to the thirteen management practices made in my letter dated April 19, 2007. However, I withdraw my proffer as to the non-use on the Deep Creek Unit and Echols Butte Unit of the Smith Mountain Allotment.

If you have any questions whatsoever, please call or write.

Very truly yours,

SHIRTS BROTHERS SHEEP

by _____
Ron Shirts

EXHIBIT "J"

DECLARATION OF JOSEPHINE HATTON

I, Josephine Hatton, with full knowledge of the penalties for perjury, declare as follows:

1. I am employed by *Artemis Technologies, LLC*, which is located in Weiser, Idaho.

2. I obtained a copy of the bighorn sheep telemetry data and related mapping data from *Northwest Natural Resource Group, LLC*, who received the data from *Idaho Fish & Game Department*. Neither I nor the members of *Northwest Natural Resource Group, LLC*, make any claim as to the completeness or accuracy of these data. I understand that I have a copy of all this data for the period of time between January 1, 1998 and May 4, 2007.

3. I am educated, trained, and familiar with the computer technology that is necessary to review the data described in paragraph 2, and to relate the data to maps.

4. Based upon such data, I related the telemetry data points to each watershed in or adjacent to the administrative boundaries of the Smith Mountain Allotment, i.e. the Herman Creek watershed, the Kinney Creek watershed, the Indian Creek watershed, the Deep Creek watershed, the Upper Rapid River watershed, and the McGraw Creek watershed.

5. I attach a Map of such watersheds in or adjacent to such allotment for 2007. The colored dots noted on the Map relate to all the telemetry data points for the period between January 1, 2007 to April 30, 2007. The red dots noted on the Map relate to all the telemetry data points from the period between May 1, 2007 and May 4, 2007.

6. I attach a Map of such watersheds in or adjacent to such allotment for 2006. The red dots on the Map relate to all the telemetry data points for the period between May and July for the **2006 calendar year**. The blue dots on the Map relate to all the telemetry data points for the period between August and October for the **2006 calendar year**.

7. I am not aware of any telemetry data for the **2005 calendar year**.

8. I attach a Map of such watersheds in or adjacent to such allotment for 2004. The red dots on the Map relate to all the telemetry data points for the period between May and July for the **2004 calendar year**. The blue dots on the Map relate to all the telemetry data points for the period between August and October for the **2004 calendar year**.

9. I attach a Map of such watersheds in or adjacent to such allotment for 2003. The red dots on the Map relate to all the telemetry data points for the period between May and July for the **2003 calendar year**. The blue dots on the Map relate to all the telemetry data points for the period between August and October for the **2003 calendar year**.

10. I attach a Map of such watersheds in or adjacent to such allotment for 2002. The red dots on the Map relate to all the telemetry data points for the period between May and July for the **2002 calendar year**. The blue dots on the Map relate to all the telemetry data points for the period between August and October for the **2002 calendar year**.

11. I attach a Map of such watersheds in or adjacent to such allotment for 2001. The red dots on the Map relate to all the telemetry data points for the period between May and July for the **2001 calendar year**. The blue dots on the Map relate to all the telemetry data points for the period between August and October for the **2001 calendar year**.

12. I attach a Map of such watersheds in or adjacent to such allotments for 2000. The red dots on the Map relate to all the telemetry data points for the period between May and July for the **2000 calendar year**. The blue dots on the Map relate to all the telemetry data points for the period between August and October for the **2000 calendar year**.

13. I attach a Map of such watersheds in or adjacent to such allotment for 1999. The red dots on the Map relate to all the telemetry data points for the period between May and July for the **1999 calendar year**. The blue dots on the Map relate to all the telemetry data points for the period between August and October for the **1999 calendar year**.

14. I attach a Map of such watersheds in or adjacent to such allotment for 1998. The red dots on the Map relate to all the telemetry data points for the period between May and July for the **1998 calendar year**. The blue dots on the Map relate to all the telemetry data points for the period between August and October for the **1998 calendar year**.

15. The Herman Watershed (green color on the Maps) appears to be partially within the southwestern portion of the Snake River/Indian Creek Unit of the Smith Mountain Allotment.

16. The Kinney Creek Watershed (gray color on the Map) appears to be partially within the western and northwestern portion of the Snake River/Indian Creek Unit of the Smith Mountain Allotment.

17. The Indian Creek Watershed (purple color on the Map) appears to be partially within the eastern portion of the Snake River/Indian Creek Unit of the Smith Mountain Allotment.

18. The Deep Creek Watershed (blue color on the Maps) appears to be partially within the northern portion of the Snake River/Indian Creek Unit and the Deep Creek Unit of the Smith Mountain Allotment. I previously said the Deep Creek Watershed was only in the Deep Creek Unit, but I believe that previous statement was not entirely correct.

19. Upper Rapid River Watershed (brown color on the Maps) appears to be partially within the Echols Butte Unit of the Smith Mountain Allotment, to be partially within the northern portion of the Smith Mountain Unit of the Smith Mountain Allotment.

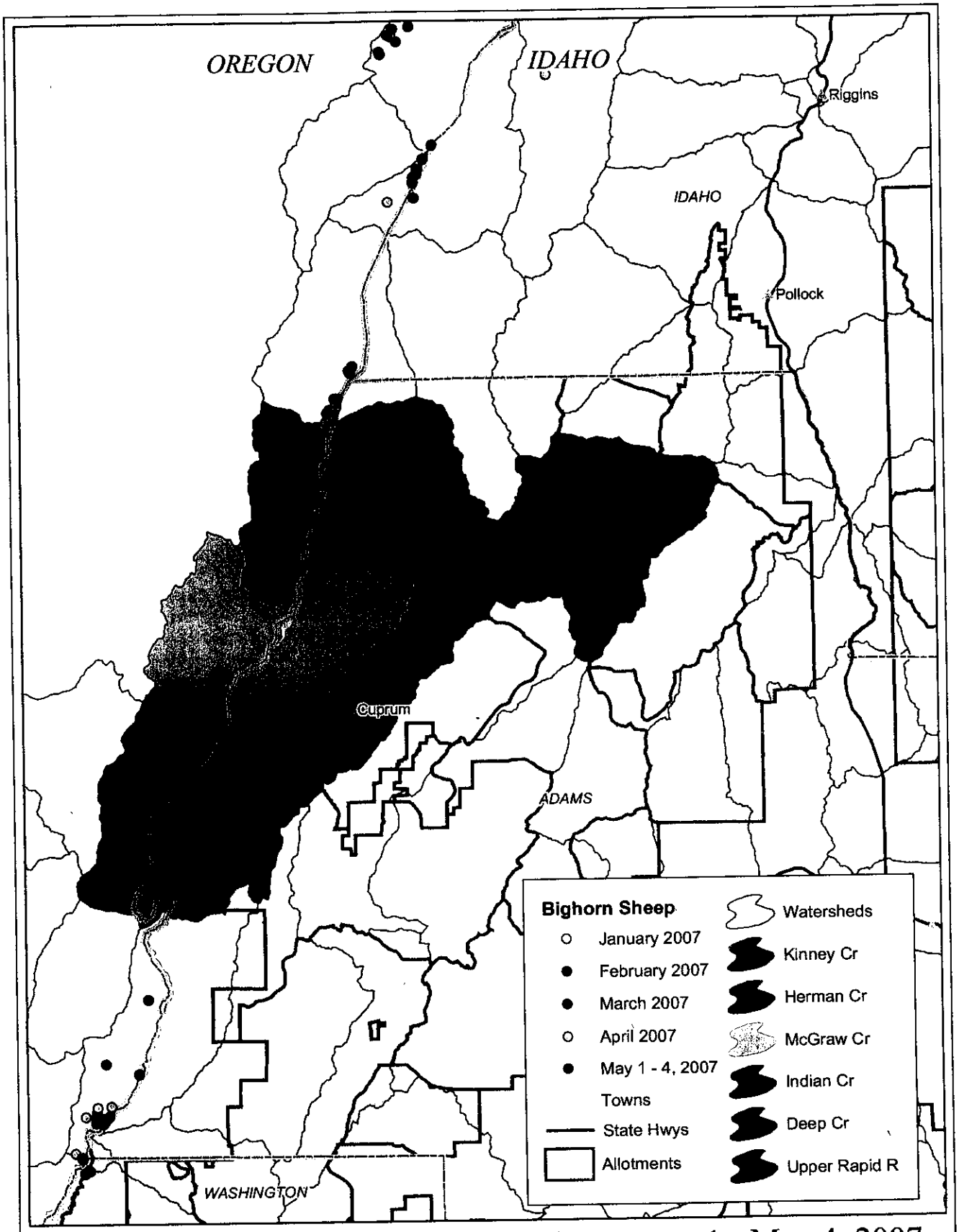
20. The McGraw Creek Watershed (pink color on the Maps) appears to be partially within the central portion of the Snake River/Indian Creek Unit of the Smith Mountain Allotment. I previously said the McGraw Creek Watershed was not in the Smith Mountain Allotment, but I believe that previous statement was not entirely correct.

I declare under penalty of perjury that the foregoing is true and correct.

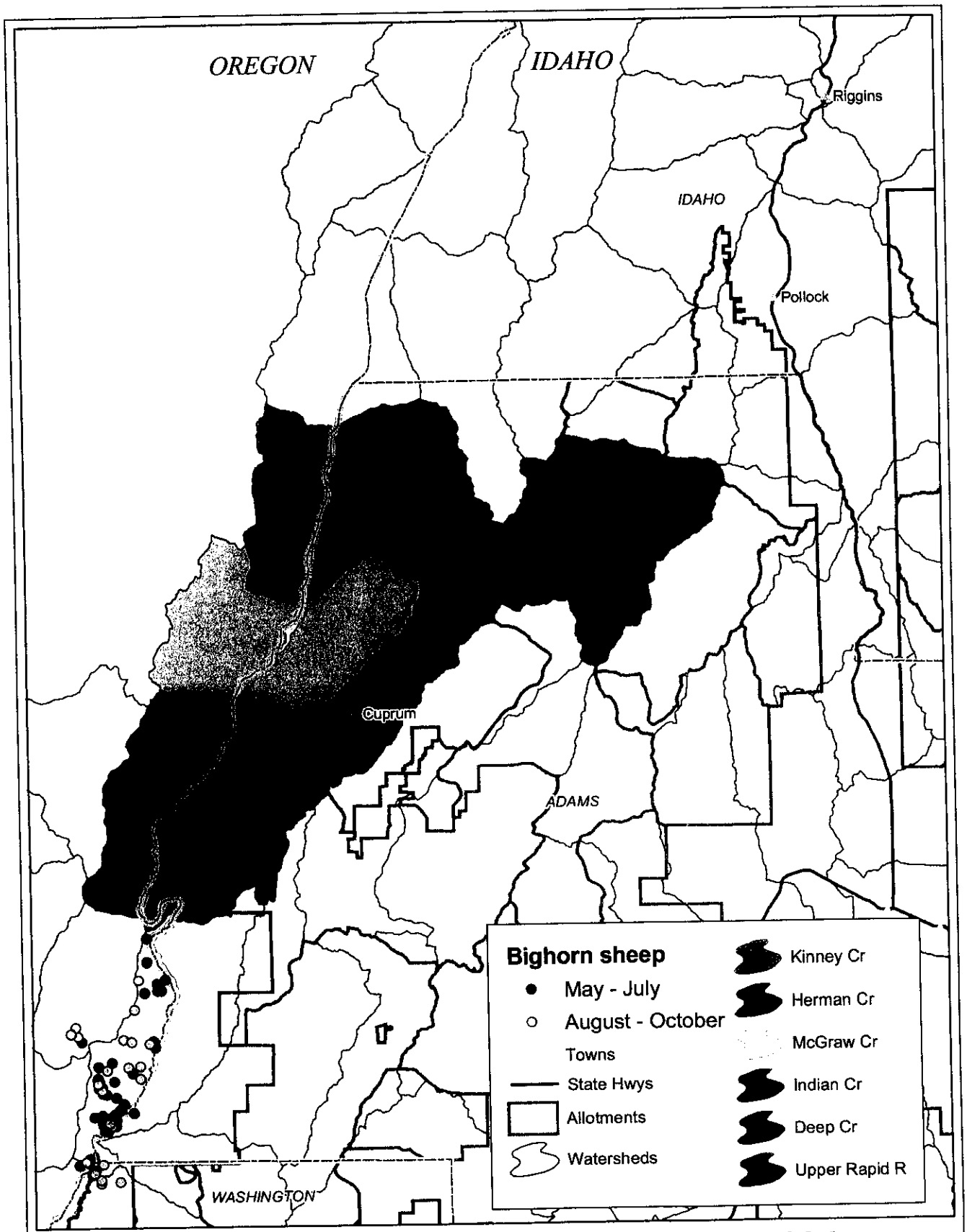
EXECUTED this 14th day of May, 2007.

Josephine Hatton

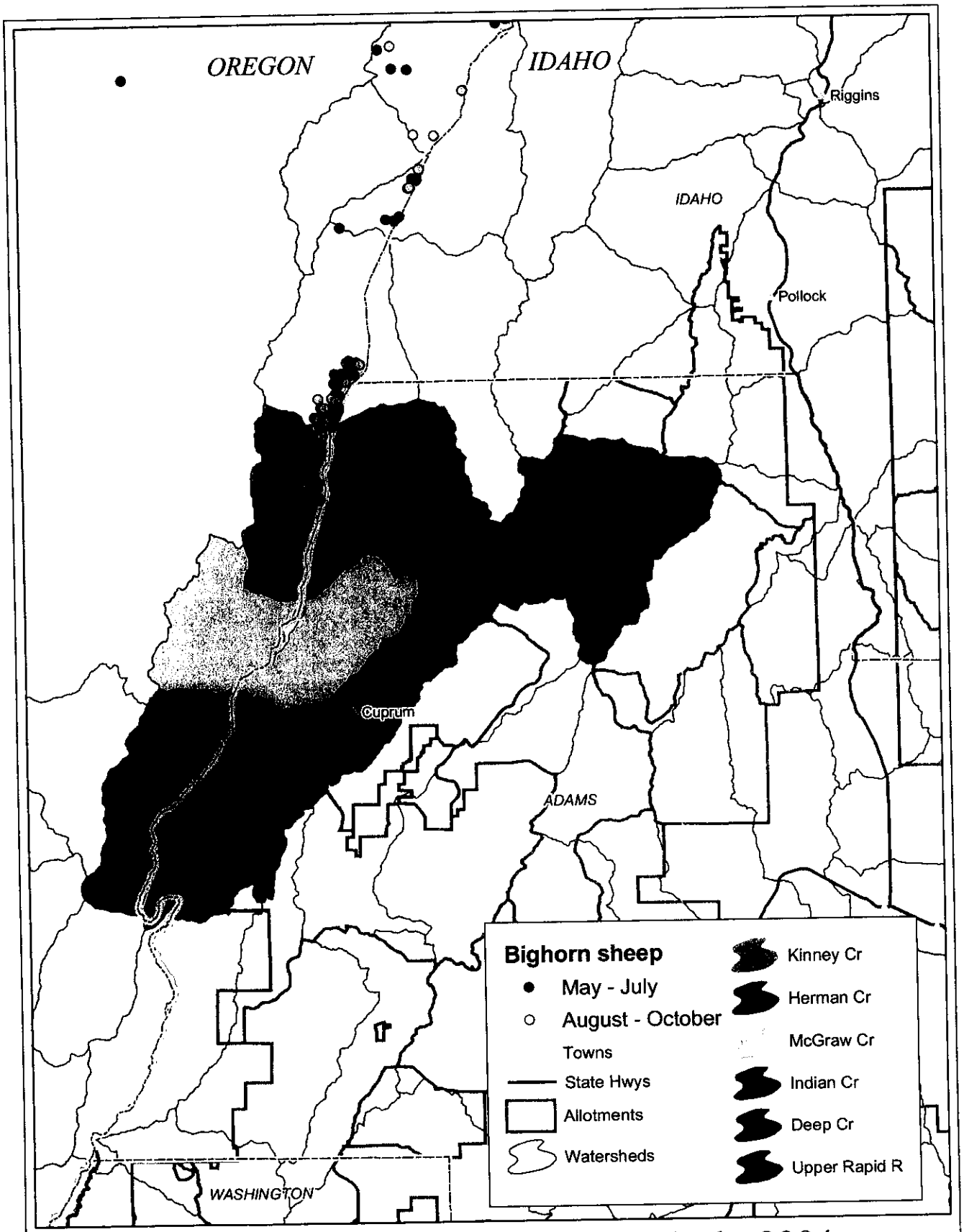
JOSEPHINE HATTON



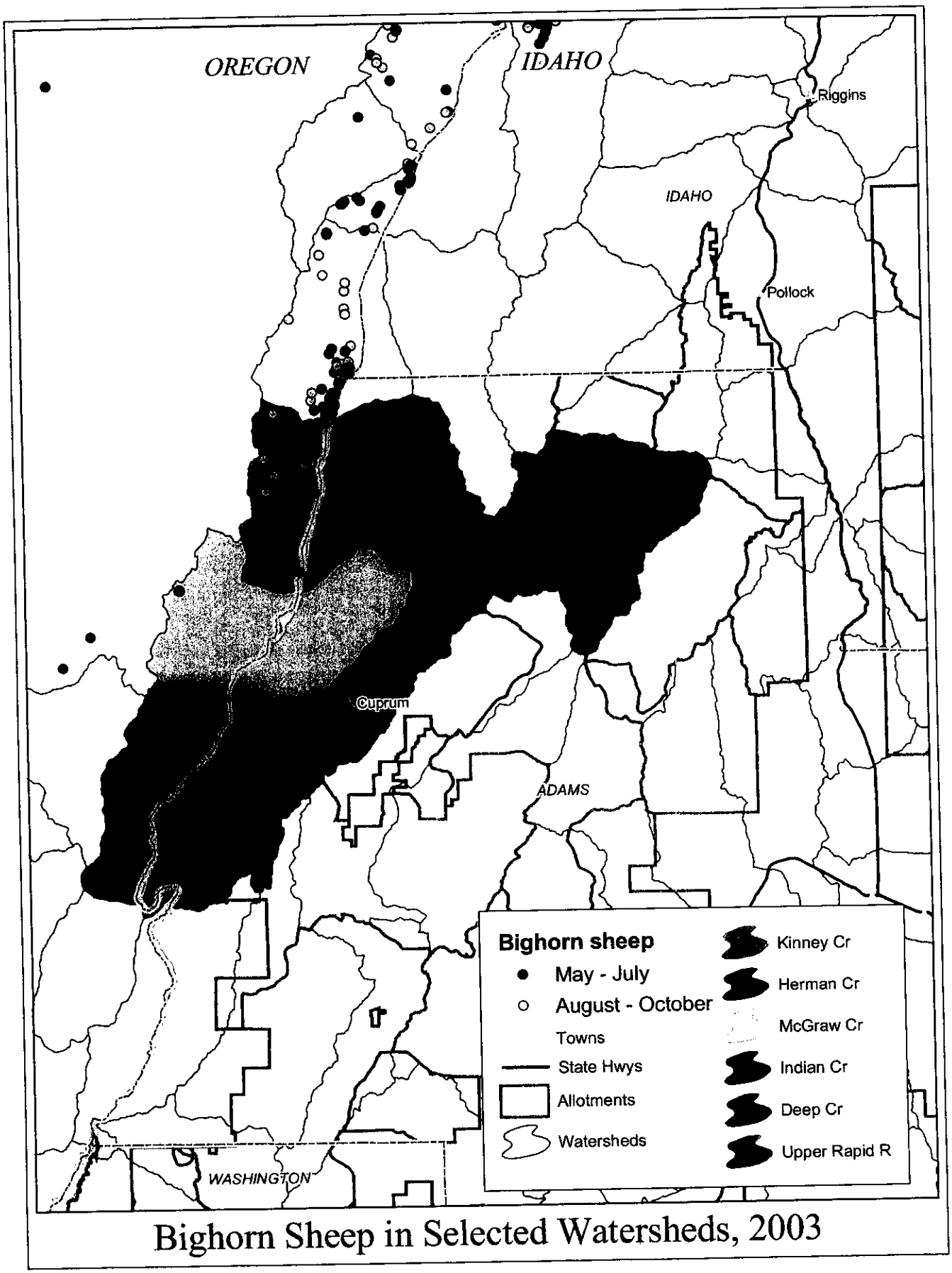
Bighorn Sheep in Selected Watersheds, January 1 - May 4, 2007



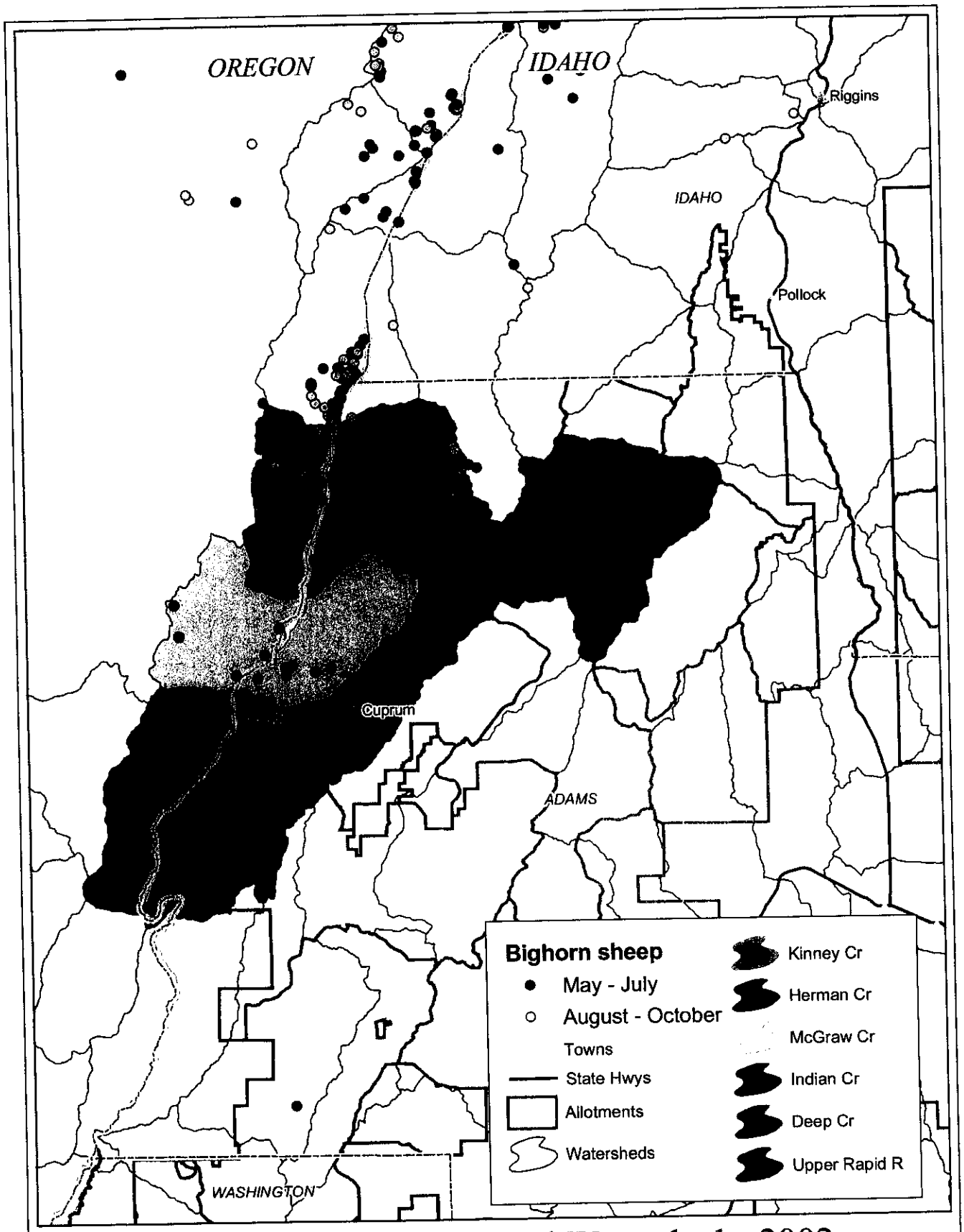
Bighorn Sheep in Selected Watersheds, 2006



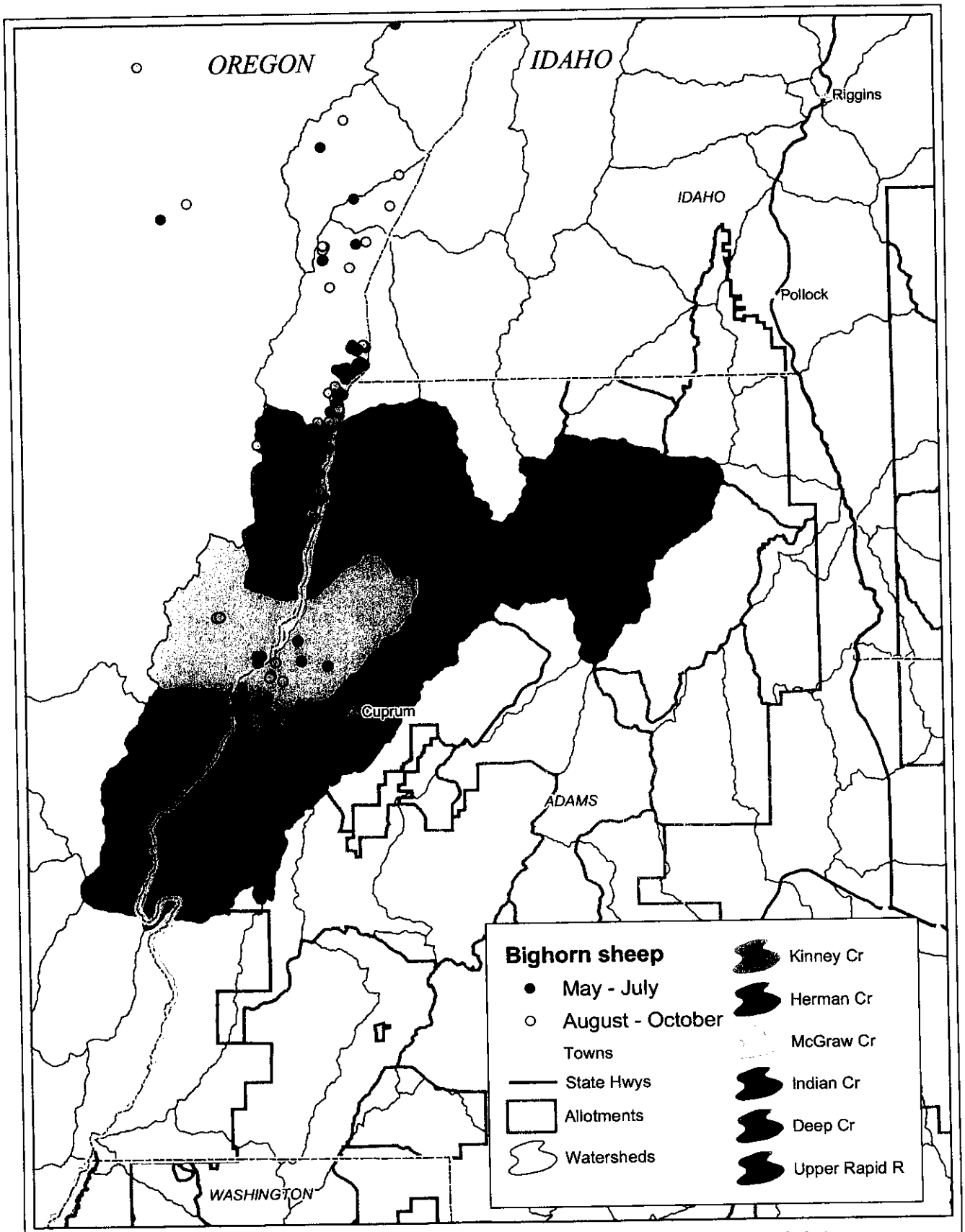
Bighorn Sheep in Selected Watersheds, 2004



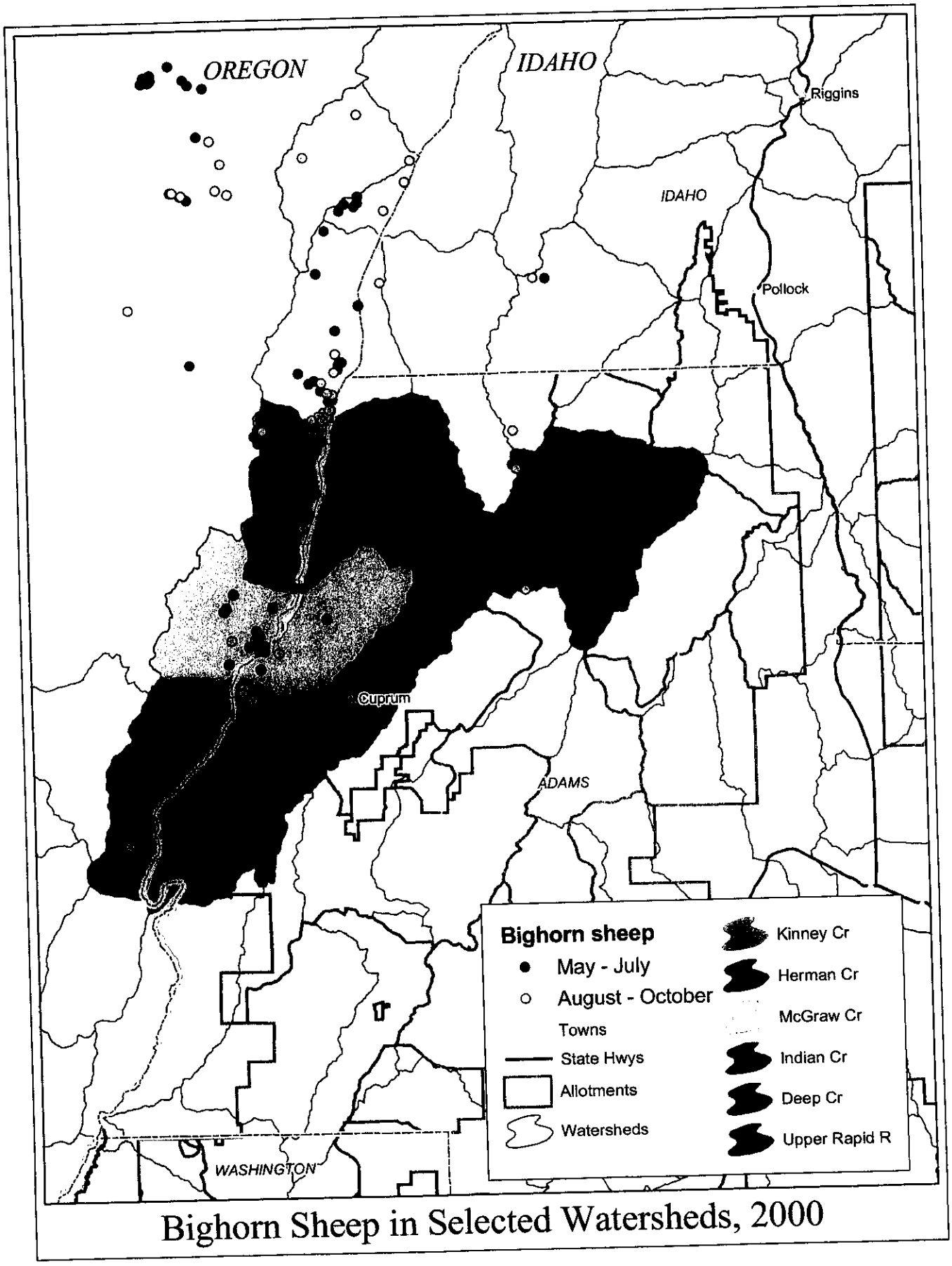
Bighorn Sheep in Selected Watersheds, 2003



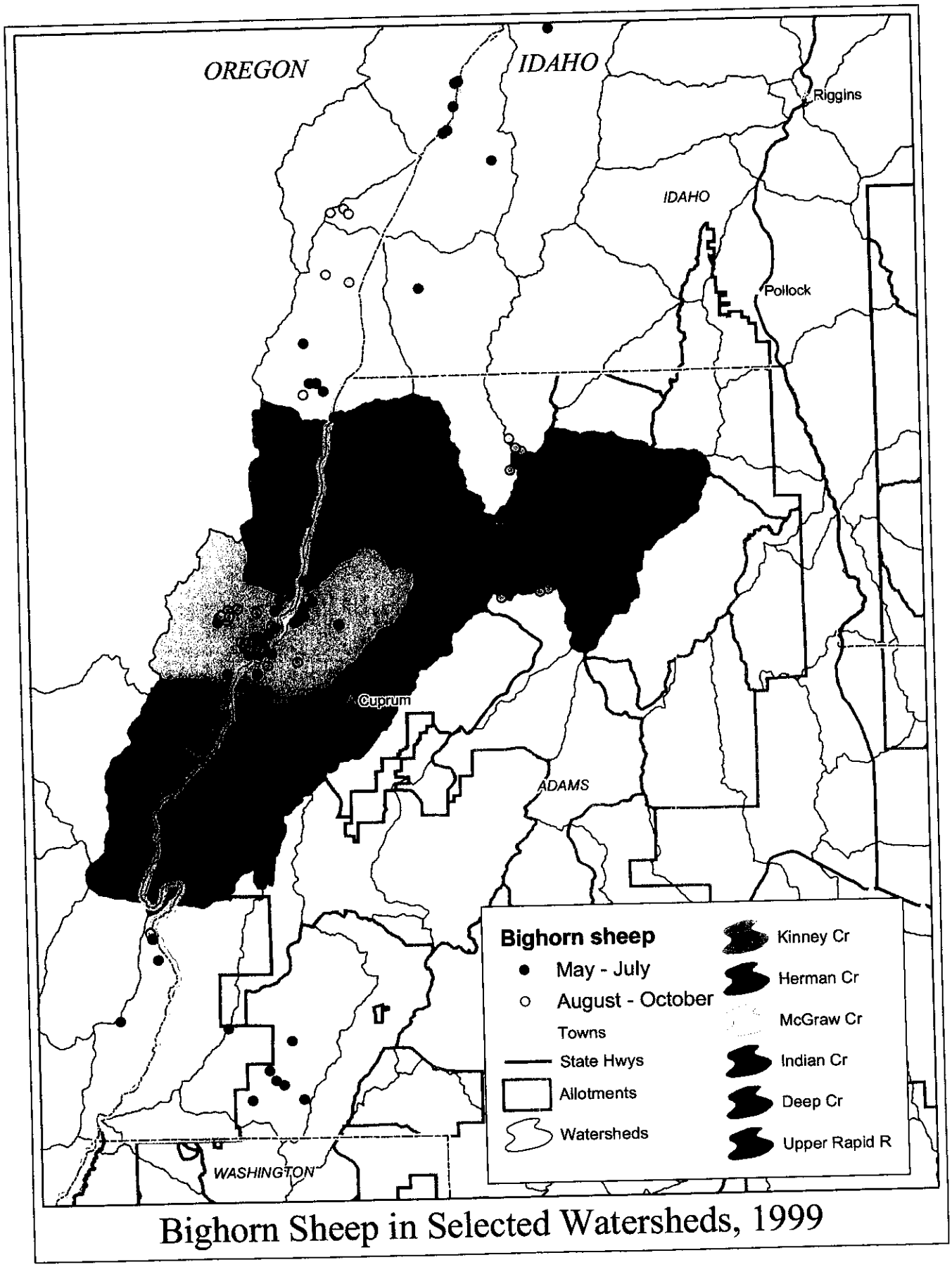
Bighorn Sheep in Selected Watersheds, 2002



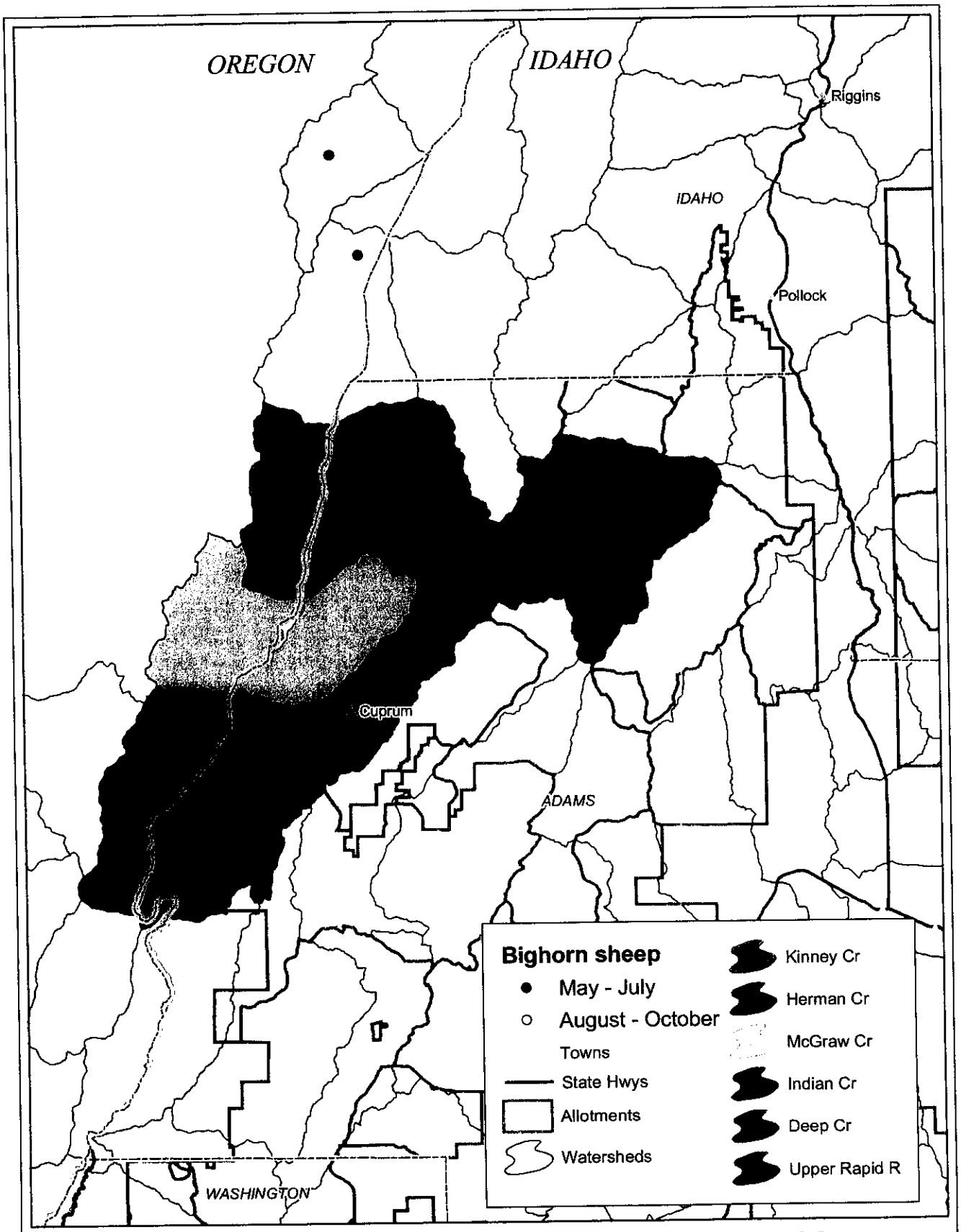
Bighorn Sheep in Selected Watersheds, 2001



Bighorn Sheep in Selected Watersheds, 2000



Bighorn Sheep in Selected Watersheds, 1999



Bighorn Sheep in Selected Watersheds, 1998

EXHIBIT "K"

Comments on the 'Risk Analysis of Disease Transmission between Domestic Sheep and Bighorn Sheep on the Payette National Forest, 2006'

Anette Rink, DVM, PhD; Laboratory Supervisor, Animal Disease and Food Safety Laboratory, 350 Capitol Hill Avenue, Reno NV 89502-2923, Phone: (775) 688-1182, Ext. 232, Fax: (775) 688-1198, Email: arink@govmail.state.nv.us

Currently the main concern amongst the majority of Wildlife Biologists tasked with the management of Bighorn Sheep (BHS) populations throughout the western US is that of disease transmission from domestic livestock, primarily sheep, to BHS. The perception is that any contact between domestic sheep (DS) and BHS will invariably lead to disease and death in the BHS. For more than a century this legend was perpetuated until in the 1990s a scientific approach was attempted to rule DS in or out as a cause for BHS disease events and die-offs. To date not a single report has been published where disease transmission from DS to BHS was proven to be the cause for morbidity and mortality in BHS in their natural habitat. Both the Sierra Nevada Bighorn Sheep Recovery Plan and the Payette NF Risk Assessment completely ignore this fact. Both plans are almost identical in several sections.

In the literature review section many of the statements are very familiar, but have never been adequately documented. Where are accurate historical accounts to be found on these mass die-offs in the 1800s and early 1900 hundreds? Historical sources about wildlife in the Western US differ greatly in their statements about the abundance of wildlife. The only ever documented mass die-off of wildlife and domestic livestock took place in Southern Africa in 1898 after the introduction of Rinderpest through a shipment of cattle. Sir Arnold Theiler can be credited with documenting the event and diagnosing the cause of this disaster.

In the chapter on 'Effects of Disease in Bighorn Populations' I find another statement which even though completely hypothetical is often touted as a dogma. Against 'common' believe no domestic livestock species has ever been selected for disease resistance. Selection parameters were fertility, muscle mass, milk yield, fiber length and quality etc. Undoubtedly domestic livestock species have adapted to pathogens in their environment, and so have wildlife species. We are all familiar with the concept of natural selection. The mechanism of adaptation of mammalian immune systems should be similar if not identical for livestock and wildlife; particularly in those cases where species are closely phylogenetically related. With regard to this observation it is clearly troubling to read that BHS polymporphonuclear leukocytes are highly susceptible to leukotoxins secreted by Mannheimia haemolytica (Silflow & Foreyt, 1994; Liu et al., 2006). Even though the authors do not present conclusive evidence that one ligand (CD18) and its expression level (which was not studied) would result in the observed cellular response *in vitro*, the question arises as to when an organism/species should be considered (partially) genetically immuno-compromised. What are the consequences for BHS conservation if the BHS is indeed genetically immuno-compromised?

The authors of the Payette NF Risk assessment state that the all-age losses of BHS in the late 1800s and early 1900s coincided with the introduction of DS for grazing. The

authors fail to mention that BHS have their own species of Psoroptic mites which they harbor until today, whereas in DS Psoroptic mange has been eradicated. The authors cite several *Pasteurella* pneumonia transmission studies and state that BHS and DS must be kept separated in order to maintain health BHS. The studies quoted used captive BHS. Bighorn Sheep do not adapt well to captivity, which is the reason they do not breed well in captivity and their stress levels should be considered to be elevated throughout captivity (Jack Ryan, USDA-WS, personal communication). One of the most frequently cited studies on disease transmission in most papers (Foreyt et al., 1994) used 5.3 x 10(8) to 8.6 x 10(11) colony forming units to inoculate BHS. Seven of eight inoculated bighorn sheep died from acute pneumonia within 48 hr of inoculation. The infectious dose for the majority of bacterial pathogens lies somewhere in the order of 1 x 10(1) to 10(4).

The chapter on 'Management of BHS disease issues' is entirely dedicated to risks associated with BHS/DS interactions. It should be reasonably clear by now that BHS carry a sufficient number of virulent *Pasteurellacea* and other pathogens in their respiratory tract to be prone to pneumonia in the absence of DS contact. It is obvious that the majority of the populations described in this document have had die-offs which were passed on to adjacent populations; which is to be expected, since a virulent *Pasteurellacea* will be passed on to susceptible individuals and populations no matter if it was contracted from or evolved in a BHS or a DS. Why does this risk assessment mention nothing about a thorough investigation into the endemic risk of disease transmission within a metapopulation even though several of these disease events are described later in this document? How much longer are wildlife managers willing to ignore the single most import risk factors for BHS population, the endemic disease risk?

In BHS/DS disease transmission studies in Nevada between 2002 and 2004 several hundred *Pasteurella* isolates were cultured from BHS (sick and healthy) and DS. To date more than 200 strains of *Pasteurella multocida* and *trehalosi*, as well as *Mannheimia hemolytica* have been genotyped using Amplified Fragment Length Polymorphism. Genetic diversity is significant in both BHS and DS derived isolates. None of the isolates were shared between BHS and DS (Rink et al, unpublished).

Pasteurella pneumonia in domestic livestock is called 'Shipping fever'. The upper respiratory tract of most domestic and wild ungulates is colonized by Pasteurella spp (Ward et al., 1997), under stressful conditions, such as shipping; the pathogen can overwhelm the host's immune system. Drs. ACS Ward and GC Weiser, Caine Veterinary Teaching and Research Center, The Caine Pasteurella Research Laboratory, Caldwell, Idaho have published widely on prevalence, phylogenetic diversity, pathogenicity, transmission and identification of *Pasteurellacea*. Just like in both versions of the Sierra Nevada BHS recovery plan their work has been ignored during the preparation of this risk assessment!

On page 8, the final paragraph in the section on the Hells Canyon metapopulation states: Disease, primarily pneumonia initiated by contact with DS, has been identified as the key factor limiting bighorn restoration in Hells Canyon. Who proved it, how and where is it published? Statements like this are not only false, but the biggest obstacle to a rational, science based approach to BHS management and restoration! Eliminating

domestic sheep grazing will probably have zero impact on the health status of Bighorn Sheep populations in the Western United States.

As to the panelists review of 'risk', it leaves me confused and bewildered. The entire risk assessment is based on one unproven and most likely false assumption, that of inevitable disease transmission on BHS/DS contact. In the 15th and early 16th century many a conclave was held and all attendees, mostly highly educated men, decided that the earth was a disk. This document is oddly reminiscent of reports from these councils.

On a more positive note I have to mention that the approach to investigating the currently ongoing disease outbreak in Hells Canyon (July 2006) is a giant leap in the right direction. The outcome of this investigation will be eagerly awaited and very significant for both the Sheep Industry and Bighorn Sheep restoration.

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EXHIBIT "L"

Outline of Concerns relating to the perception of disease transmission issues at the Livestock/Wildlife interface in the Western United States

By Don Knowles, DVM, PhD and Anette Rink DVM, PhD.

Abstract:
The following document is a synopsis of opinions and data derived from the current literature addressing the risk domestic sheep represent concerning pneumonia of big horn sheep. The summary below acknowledges that domestic sheep have been shown, in some situations, including experimental mixing to share certain pathogens. What is not known is the true risk domestic sheep present to big horn sheep or the contributions of a multitude of other risk factors such as carrier big horns, other wildlife, other domestic animals and big horn sheep genetics, especially immunogenetics.

Introduction:
The issue is not whether the current literature provides data pointing to domestic sheep as one potential risk factor to big horn sheep under experimental conditions; the issue is that of the actual risk which domestic sheep present to big horn sheep under natural-range conditions. As is summarized below, *Pasteurella* spp. require physical contact for efficient transmission and the threshold (infectious dose and other factors) for transmission of Pasteurella under natural conditions of range are not known. Furthermore the risk of disease transmission from other animals such as wild cervids, bison, cattle, and other wildlife to big horn sheep health is present but not yet defined. Also, the contributions of big horn genetics in terms of their susceptibility to disease and or carrier status of pathogens are also not known. The current outcome of enforcing buffers between domestic and wild sheep populations is based on limited surveillance of a multitude of potential risk factors with the focus and current recommendations intended to minimize an unknown degree of risk presented by domestic sheep to bighorn sheep. These recommendations have not taken into account well-established knowledge concerning the need for extreme close contact between an infected and naïve animal for effective transmission of *Pasteurella* spp. under natural range conditions. Neither do they take into account the numerous management techniques which are applied by range sheep operations to prevent contact between domestic sheep and wildlife.

Historically there are numerous examples where conclusions, based on limited data and personal bias, have been drawn concerning causal infectious disease relationships. Decisions were made and press releases issued which had significant economic and/or emotional impact only to find years later that the information used to make these decisions was incomplete and the conclusions reached did not hold up to the test of time and research. Examples include:

- the conclusion that scrapie was the cause of BSE;
- canine distemper virus was the cause of multiple sclerosis;

- domestic sheep were the source of scabies (mites) in big horn die-offs, and
- adenovirus was the primary cause of deaths in Arabian foals.

All attempts to reproduce BSE in cattle with scrapie from domestic sheep have failed; canine distemper virus and the measles virus of humans are closely related and able to induce cross reactive antibodies (which led to the initial conclusion and confusion), however careful molecular studies have shown the presence of measles virus components in patients with multiple sclerosis, but components of canine distemper virus have not been found; attempts to transmit scabies (*Psoroptes* spp.) mites among different species have failed to show domestic sheep were the source for big horn sheep, and the true underlying cause of the susceptibility of Arabian foals to adenovirus was shown to be a genetic deficiency in immune response. Analysis of each of these examples show historical economic and/or emotional loss and pain which could have been avoided by careful examination of the basic principles of causation in infectious diseases and transmission.

The literature (some peer reviewed and some not) regarding management concerns of big horn sheep populations in the Western United States is voluminous. There are many opinions as to the cause(s) of the inability of big horn sheep to thrive in some locations. Whether a group or individual believes that domestic sheep are part of the decline experienced by some big horn sheep populations or not, a survey of the literature allows one to find a statement or statements in support of their bias. There is general agreement as summarized by the Desert Bighorn Council that the difficulties big horn sheep apparently face in enhancing their populations fall into the following areas. (1) Comparatively lower tolerance to poor range conditions; (2) Interspecific competition (competition between two or more species for limited resources); (3) Excessive hunting; (4) loss of habitat, and (5) enhanced susceptibility to diseases, especially pneumonia, relative to domestic sheep and to other wildlife species in the Bovidae family.

There is no disagreement that infectious causes of pneumonia, in particular bacteria such as *Pasteurella haemolytica* (recently renamed to *Mannheimia haemolytica*) and other bacteria such as *Pasteurella multocida* and *Pasteurella trehalosi* are isolated from diseased big horn sheep. Recent discussions call into question the frequency or epidemiological importance of *Mannheimia haemolytica*. Often left out of the discussions is that these bacteria don't form spores and are extremely labile (easily broken down or rendered non-infectious) in the environment and therefore require close contact both in terms of distance and time for transmission. In fact in Foreyt, et. al. the authors state "*Pasteurella haemolytica* is a relatively labile bacterium and generally requires direct physical contact between animals for transmission".

- ❖ While it is known that this bacterium and some related strains can be isolated from domestic sheep, the role of the domestic sheep, if any, under natural range conditions in the transmission of these bacteria to big horn sheep is not known. The importance of this point can not be over emphasized. Important to this point as quoted in references by Martin and Ward "Evaluation of samples from Idaho and Alaska bighorn sheep has conclusively demonstrated that free roaming

bighorn sheep which have not had contact with domestic sheep are not free of *P. Haemolytica*". To date only one report has been published which found that BHS and domestic sheep shared the same *Pasteurella* isolates (Ward et al., 1997), all animals sampled in this study were healthy. In the Hell's Canyon BHS disease outbreak in 1995-6 a domestic goat was initially implicated because she shared a *Pasteurella* isolate with several BHS. This die-off involved BHS herds in 3 states and a variety of different Pasteurella were subsequently isolated, none corresponding to the very localized, goat associated Pasteurella strain. Not one single report from any disease investigation has established a direct link to domestic sheep as the origin of the pathogen, be that viral, bacterial or parasitic.

- Secondly, and of equal importance the possibility of other animal sources, including big horn sheep, of these bacteria or other infectious diseases for transmission to big horn sheep under natural range conditions is also not known. Research published by D. K. Onderka and colleagues in 1988 within the Canadian Journal of Veterinary Research shows this point clearly. Bighorn sheep were inoculated with *Pasteurella haemolytica* unique to wild bighorns, with *Pasteurella haemolytica* isolated from clinically normal domestic sheep or with *P. haemolytica* through a cattle vaccine. All three inoculations caused bronchopneumonia within the bighorn sheep; even the cattle vaccine.

Summary:
In summary it is premature and inappropriate based upon the complete body of literature and current research investigations to allow domestic sheep to be the focus as a major cause of Big Horn disease and herd decline. Critical to the point are the other parameters found in multiple documents which indicate that there are bighorn sheep die-offs due to pneumonia that have occurred without any association with domestic sheep (quoted in Martin et. al.) and other factors with potential involvement are the presence of bacteria such as *P. haemolytica* and *P. multocida*, types indigenous to bighorn sheep, the presence of stress from sources such as depleted forage or human disturbance, the presence of lungworms, and the presence of viruses. Several BHS population management practices should also come under review; 1) the practice of transferring animals from one herd to another without a complete diagnostic work-up, 2) including a genetic profile of the transplants; 3) the occurrence of BHS disease and major die-offs are often associated with BHS herds reaching peak population (Monello et al., 2001). 4) Stagnant BHS populations in the presence of other 'protected' or 'desirable' wildlife such as wolves or mountain lions. All of these factors affect BHS populations permanently, not just temporarily, like domestic sheep in an adjacent allotment. It is time to allow research to continue and to remove domestic sheep from the focus of bighorn sheep health issues and to make land use decisions based on what is really known under natural conditions and not what is believed to be true.

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EXHIBIT "M"

DECLARATION OF MARIE S. BULGIN

I, Marie S. Bulgin, with full knowledge of the penalties for perjury, declare as follows:

My professional, academic and research background.

1. I am the Coordinator of the *Caine Veterinary Teaching Center* (CVTC), a *University of Idaho* off-campus unit which is part of the Washington-Idaho Veterinary Teaching Program dedicated to teaching senior Veterinary Student food animal medicine. As a *University of Idaho* faculty, I also am involved in research of food animal diseases. I am a full professor and have worked for the *University of Idaho* since 1977.

2. I have been involved with Bighorn Sheep Research since 1988 when Dr. Alton Ward of the CVTC first headed up a research Program with the intent of identifying and typing the *Pastuerella spp.* isolated from both dead and healthy bighorn sheep. This Project began as a result of a $100,000 per year grant from the *Idaho Fish and Game Department* to study disease interactions between domestic and wild animals. That Project has worked on bighorn sheep pneumonia for 18 years. Researchers that have worked in our Laboratory with Dr. Ward include: Dr. Glenn Weiser, Dr. Karen Rudolph, and Dr. Martha Jaworski.

3. I am also a researcher in the area of domestic sheep disease and have been involved in the eradication of ram epididymitis and of ovine foot rot from most Idaho sheep flocks as well as control of such diseases as *Campylobacter* abortion, caseous lymphadenitis, neonatal lamb mortality and scrapie.

4. I attach to this Declaration as Exhibit A my *Curricula Vita.*

My agricultural background.

5. Independent of my academic and research background, my partner and I have successfully raised sheep for over 20 years, and I, personally, have been involved in raising sheep for over 30 years. We own approximately 450 head of sheep which are grazed on private land. I am exceedingly familiar with the habits, management and nutrition of domestic sheep.

6. I am one of the very few scientists involved with the study of disease interactions between domestic and wild animals, particularly domestic sheep and bighorn sheep, that has a working knowledge of the management, habits, and diseases of the domestic sheep.

Some unequivocal facts relative to the family Pastuerellaceae as related to bighorn sheep.

7. There are some unequivocal facts relative to the members of the family Pastuerellaceae as related to bighorn sheep. We know, for example, that:

A. All researchers and biologists agree that members of the family Pastuerellaceae are part of the normal flora that colonize the mucosa of the upper respiratory tracts of ruminant mammals as well as many other animals including avian, reptile species and bighorn sheep.

B. Researchers and most biologists agree that commensal Pastuerellaceae can (and do) cause disease in their host including bighorn sheep as opportunistic pathogens when natural host barriers to disease are compromised.

C. Researchers and most biologist will agree that several factors have to be present for respiratory disease to result. These would be the following:

(1) The presence in the upper respiratory tract of an organism which has the potential ability to produce disease.

(2) Stress which is defined as anything that lowers an animal's immunity, such as exposure to smoke, excessive dust or noise, poor nutrition, extreme environmental conditions, and should also include capture and translocation to a strange environment.

(3) Other microorganisms such as lungworms, viruses, chlamydia or mycoplasma. There is agreement among researchers and biologist that bighorn sheep are particularly susceptible to pneumonia caused by members of the Pasteurellaceae family. For one thing, there has been some good research suggesting that toxins produced by *some* members of this family of bacteria are much more toxic to bighorn leukocytes (white cells) than leukocytes of other ruminant species.

D. If the disease (i.e. *pneumonia*) results, bighorns will die.

E. Treatment with antibiotics has not been helpful.

F. Vaccination with current available vaccines has not shown efficacy in preventing disease (i.e. *pneumonia*).

The source of the *Pasteurella* in bighorn sheep.

8. Even with the foregoing unequivocal facts, researchers do not agree on *how bighorn sheep become infected by the Pasteurella/Manheimia spp that are able to produce pneumonia.* Some bighorn biologists believe that the source is domestic sheep.

9. The common concept that *Pasteurella* spp is transmitted from domestic sheep to bighorn sheep is based largely on assumption, as opposed to the application of the *scientific method.*

10. One of the most frequently cited articles used to support the assumption is that of Foreyt and Jessup (1982). However, this article clearly states that the assumption of transmission was based on circumstantial evidence. No bacteria were isolated from the bighorn sheep that died in the Washington group of bighorn sheep discussed in that article. *Pasteurella multocida* was isolated from one and a nonspecieated *Pasteurella* organism was isolated from another of the California bighorn sheep that died in that enclosure, but the authors provided no scientific evidence that the domestic sheep were the source of those bacteria. Further, *P. multocida* strains

are ubiquitous in both wild and domestic animal populations (including mule deer [Jaworski et al., 1998]; and pronghorn [Dunbar et al., 2000]).

11. There are several other articles that have been written in support of the assumption discussed above in paragraph 10, but these articles equally lack scientific merit for the same reasons, since no cultures and biotyping was done to support the assumption. In fact, in no case during the last 18 years has the CVTC documented the sharing of organisms by dying bighorns and domestic sheep. The type A2 *Pasteurella* carried by some domestic sheep that Schlegal and the paper by Kevin Martin claim is killing bighorn sheep in the Hell's Canyon area has yet to be found in any dead bighorns of Hell's Canyon.

12. *Pasteurella* researchers who have actually isolated, identified, worked and studied the organisms isolated from bighorn sheep and domestic sheep believe that disease in the free ranging bighorn sheep is caused by their own endogenous *Pastuerella* flora.

The family Pastuerellaceae.

13. Members of the family *Pastuerellaceae* are normal commensal organisms that colonize the mucosa of the upper respiratory tracts of the vast majority, if not all, land mammals as well as many avian and reptile species. Commensals are defined as those "*living on or within an other, but not causing injury to the host.*" However, many commensal bacteria can (and do) cause disease in their host as opportunistic pathogens when natural host barriers to disease are compromised. For example, *Staphylococcus aureus* is very common in the environment and colonizes the skin of 90% of human infants by 10 days of age and continues to exist as a commensal on the skin and/or in nasal passages of approximately 60% of adults without causing

disease. However this same organism is capable of causing serious and often fatal infections when skin or mucosal surfaces are compromised and the bacteria and/or toxins penetrate.

Research by the CVTC on the family Pastuerellaceae as related to bighorn sheep, including bighorn sheep within the Hells Canyon area.

14. Since December of 1988, a time when bighorn sheep in central Idaho were experiencing a pneumonic epizootic, numerous *Pastuerella* samples were collected from the bighorn sheep then and the following years and submitted to CVTC. That began extensive research on organisms isolated from bighorn sheep and other wild ruminants including developing the media to carry the sample through the mail so that these fragile organisms didn't die during transport. These samples came from 13 of the lower western United States, Alaska, and British Columbia and Alberta, Canada and represent healthy populations as well as disease outbreaks. During the past 18 years over 6,000 genetically diverse *Pasteurellaceae* isolates have been identified and archived by Dr. Ward, who recently retired, but his work in the *Pastuerella* Lab has continued under the present supervision of Dr. Glen Weiser. This work continues to provide valuable services to those monitoring bighorn sheep populations for potentially pathogenic microorganisms and testing for compatibility of herds based on the organisms that they carry.

15. Early on in Dr. Ward's work, serotyping procedures previously used to identify and differentiate types of *Pasteurellaceae*, e.g. *Pasteurella haemolytica* and *Pasteurella trehalosi,* from domestic livestock were found to be inadequate for differentiation of most isolates from wild ruminants (Ward et al., 1990, Ward et al., 1997). Thus, he and coworkers developed procedures and applied them to differentiate isolates by biochemical means into >100 different

biovariants, greatly increasing our ability to detect differences between and similarities of isolates (Jaworski et al., 1998).

16. Additionally, DNA fingerprinting procedures used in human epidemiological studies were developed and applied to detect transmission of specific strains of Pasteurella species (Snipes et al., 1992; Jaworski et al., 1993; Ward et al., 1997; Rudolph et al., 2003; Weiser et al., 2003). At this point in time, the CVTC laboratory is one of two laboratories (to my knowledge) that uses this or any system to identify Pastuerellaceae to a point where accurate epidemiological studies following the transmission and movement of these organisms can be done.

17. The CVTC has also isolated beta-hemolytic *P. trehalosi*, like that described by Onderka and Wishart (1988), from samples collected from free-ranging bighorn sheep in central Idaho. Using biochemical utilization and DNA fingerprinting test procedures, the CVTC demonstrated that the organism isolated from transtracheal samples collected from caesarian derived (bighorn) lambs that developed pneumonia following exposure to their (bighorn) dams was identical to that previously isolated from adult (bighorn) sheep at the time of capture (Jaworski et al., 1993). *Pasteurella trehalosi* with the identical biochemical and DNA fingerprints were subsequently isolated from samples collected a decade later from bighorn sheep in Central Idaho (unpublished laboratory records) and bighorn sheep in Hells Canyon (Rudolph et al., in print). It is this kind of testing based on genetic markers that is required for scientific validation of transmission that has not been done in articles cited by Coggins and others in their declarations.

18. Dr. Anette Rink, of Nevada Animal Disease and Food Safety Laboratory, another researcher scientist, has isolated more than 200 strains of *Pasteurella* from bighorns and

domestic sheep. She has used the latest genotyping technique of Amplified Fragment Length Polymorphism and reports in the transcript of the 2005 Bighorn Meeting in Reno that none of the isolates studied to date were shared between the two species.

The family Pastuerellaceae includes strains that are unique to bighorn sheep that can and have caused death in bighorn sheep.

19. Bighorn sheep populations do have die-offs *without* exposure to domestic sheep and some have even been documented. Onderka and Wishart (1984) reported a major die-off of bighorn sheep not associated with domestic sheep. They attributed the disease to a strain of *P. haemolytica* unique to bighorn sheep.

Bighorn sheep have died *in the absence* of domestic sheep.

20. Buechner (1960), Spraker et al., 1984 and Bailey (1986) reported die-offs in bighorn sheep populations *without* known exposure to domestic sheep. Data gathered by Goodson (1982) provided information for bighorn sheep population trends in areas of Colorado *without* domestic sheep grazing. Trends during the 10-year period evaluated indicated that the number of bighorn sheep in some herds remained essential stable while some increased and others decreased. Some bighorn sheep populations fail to thrive in the absence of domestic sheep grazing.

21. There have been plenty of incidences in which domestic sheep and bighorn sheep have not been in contact in the wild with resulting disease, as the follow examples illustrate:

> A. In Nevada, The Dutch Creek enclosure was established in 1967-1968 to hold desert bighorn sheep for the purpose of providing progeny for transplanting. Bighorn sheep numbers in the enclosure did not increase despite additions to the original stocking. Most losses were considered to be caused by disease. No contact with domestic sheep was reported. (Taylor, Disease losses in Nevada Bighorn, *Desert bighorn Council Transactions 1973).*

B. California bighorn sheep were returned to the lava beds of California. Two rams and 8 ewes were introduced in 1972 and increased to 22 head by 1975. Then the herd was suddenly reduced to 15 due to bluetongue virus (and most likely *Pasteurella*, a squeala of Bluetongue) that fall. No contact with domestic sheep was reported. (Blaisdell, Lava Beds Bighorn Project — So who Worries?, *Desert Bighorn Council Transactiosn, 1976.*)

C. Onderka and Wishart (1984) reported a major die-off of bighorn sheep not associated with domestic sheep. They attributed the disease to a strain of *P. haemolytica* unique to bighorn sheep. Buechner (1960), Spraker et al., 1984 and Bailey (1986) also reported die-offs in bighorn sheep populations without known exposure to domestic sheep.

D. The Dall Sheep in Alaska have never had domestic sheep contact, yet they carry *Pasteurella* and have periodic die-offs due to pneumonia.

Bighorn sheep have survived *in the presence* of domestic sheep.

22. There are bighorn sheep that have known contact with domestic sheep that have not suffered die-offs after more than a few years of intermittent contact. The Sierra herd in California has had remarkable recovery of the population since 1999. Actually they have not had a reported die-off in that region for at least 25 years although the bighorn sheep numbers have dipped. Dr. John Wehausen studied that herd for 30 years and stated that he had never seen so much as a snotty nose. However, predation has been noted to be as high as 54.5% at times. They have gone from 100 to over 400 head in the last 7 years and there has always been domestic sheep on that range according to the accounts of Dr. Anette Rink and Dr. John Wehausen taken from the Bighorn Meeting Transcript, February 25, 2005 at Reno, Nevada .26.

23. There have been plenty of incidences in which domestic sheep and bighorn sheep have been been in contact in the wild with no resulting disease, as the follow examples illustrate:

A. In the one instance, when Dr. Ward was able to show sharing of a *Pastuerella* organism between bighorn sheep and domestic sheep, it was in a Nevada bighorn herd. A *Pastuerella* was found in one bighorn sheep that was

identical to one in a domestic sheep that was close by. No disease was occurring at the time and no disease occurred later.

B. Bighorn sheep have routinely come down for years into the flocks of Fred Fulstone of Nevada. This bighorn herd has had multiple contact with domestic

sheep. There have yet to be a die-off in the Nevada bighorn herds that have had contact with his domestic sheep, to my knowledge.

Bighorn sheep have died *in the presence* of domestic sheep in experimental circumstances, though these deaths are without foundation.

24. Information for the transmission is based on experimental exposure of bighorn sheep to domestic and exotic sheep breeds and inoculation of bighorn sheep with Pasteurella strains isolated from domestic sheep. These cases have been reported to result in respiratory disease and death of bighorn sheep (Foreyt, 1989; Onderka and Wishart, 1988; Onderka et al., 1988; Callan et al., 1991). In some of those studies, it was concluded that the bighorn sheep used in the experiments were free of *Pastuerella* because cultures conducted on nasal swab samples were negative for those organisms. However, nasal swab samples have been demonstrated to be less reliable for detection of *Pasteurella* species than oropharyngeal swab samples. Another common cause for failing to isolate *Pasteurella* species from nasal samples is excessive ageing of the samples prior to inoculation of bacterial culture media. It is one thing to take poor samples in the field when one is working under time pressures with wild bighorns miles from civilization and another to take inappropriate samples following a preplanned protocol next door to your laboratory.

25. Interestingly, another article cited as evidence of disease transmission to bighorn sheep from domestic sheep (but not llamas, domestic goats, mountain goats and cattle) is Foreyt (1992). Cattle, llamas, mountain goats, and llamas were housed together with bighorn sheep in

0.4-0.8 HA outside enclosures. However, the 2 adult domestic sheep and 2 adult bighorn sheep were housed *inside* together in a 4 by 7 meter pen, i.e. an enclosure smaller than most business offices. The bighorns died! One might think that this experiment was set up for a certain outcome.

26. Other penned experiments have been equally questionable. Onderka and Wishart 1988, specifically state in their discussion that "The intimate contact between the two species of sheep in the experimental design rarely occurs in the wild. Close contact, however, was necessary for the possible transfer of *Pasteurella spp* since this organism does not persist in the environment."

27. In another of the studies a beta-hemolytic P. haemolytica biotype T (currently identified as P. trehalosi) was isolated from tissues of a bighorn that died after contact with domestic sheep. Like organisms were subsequently isolated from tonsil samples of domestic sheep which had not tested positive for these organisms prior to contact with the bighorn sheep. Considering that information, one would generally conclude that the beta hemolytic strain was transmitted from the bighorn to the domestic sheep. However, the conclusion was that the transmission was from domestic sheep to bighorn sheep! This conclusion was not scientifically validated nor even logical.

28. In spite of the lack of scientific documentation, most scientists will agree that it is likely that direct contact between bighorn sheep and domestic sheep will occur in penned experiments. However, being in a small pen day in and out without any means to separate themselves is not the normal bighorn/domestic interaction. In spite of statements made by a few, bighorn sheep are not normally attracted to domestic sheep bands which are always accompanied

by dogs and man. Interestingly, herders say they seldom ever see bighorn sheep, even at a distance. Since bighorns prefer high steep slopes to escape from predators and prefer open terrain so they can see predators (dogs equal predators to a bighorn sheep), domestic sheep don't graze the same areas. Camp wagons require less rugged country. Grazing allotments are large tracts of land. The fact that bighorn sheep are on the same allotment does not suggest in any way that bighorn sheep have or will come into contact with domestic sheep.

The claims that bighorn sheep have died *in the presence* of domestic sheep in non-experimental circumstances are without foundation.

29. Lloyd Oldenburg recently stated that a bighorn sheep die-off in the Pine Creek area of the Salmon River started immediately after 200 domestic sheep were brought into a Boy Scout Camp on the Salmon River. This is one case that I personally was directly involved in and I was the one that sampled the domestic sheep by taking tonsillar biopsies. None of the domestic sheep carried the organisms that were isolated from the dead bighorns.

The claims that bighorn sheep have died *due to the presence* of domestic sheep in the Payette National Forest (or adjacent to the PNF within the Hells Canyon National Recreation Area) are without foundation.

30. There has been several pneumonic epizootic in the Hells Canyon area since 1971, and some of related them to assumed contact with domestic sheep in the Payette National Forest. In fact, George Keister recently stated that the repeated outbreaks of pneumonia in the McGraw Creek bighorn herd (which is inclusive of part of the Smith Mountain Allotment) is due to repeated contact with domestic sheep. However, there were no cultures done to prove these theories.

31. There was no known transfer of bacteria between Hells Canyon bighorn sheep and domestic sheep associated with the 1995-96 pneumonic epizootic (Cassirer et al., 1996; Rudolph et al., 2003; Rudolph et al., in press), in spite of extensive sampling and culturing. Six domestic sheep on private land near the area were cultured. None carried organisms isolated from the dead and sick bighorn sheep. Multiple strains of *P. multocida,* differentiated by biochemical utilization tests and DNA fingerprinting were isolated from the lungs of bighorn sheep that died. (Cassirer et al 2006, Weiser et al., 2003; Rudolph et al, accepted for publication). There was no evidence that any one of those strains had been transmitted from domestic sheep (or other domestic livestock). Such organisms may be carried as commensals and cause disease in their host and become opportunistic pathogens when the host's disease defenses are compromised. The great diversity of *Pasteurella* species isolated from the bighorn sheep in that die-off was not indicative of a single point source but was more indicative of involvement of multiple opportunistic pathogens present in that bighorn sheep population.

32. Although a feral goat was detected with a small group of bighorn sheep in the early phase of that 1995-96 epizootic, strains of *Pasteurella* sp. isolated from the goat were isolated from only 3 bighorn sheep that subsequently died due to the disease (Rudolph et al., 2003). Three hundred and twenty seven bighorn sheep died in that epidemic. Ninety seven bighorn sheep were cultured. A *Pasteurella multocida* strain and a *Pasteurella (Mannheimia) haemolytica* strain isolated from that goat were also cultured from samples of two and one bighorn sheep, respectively, that were in contact with the goat but not from any of the other 94 bighorn sheep associated with the epizootic that had cultures taken. Although Rudolph et al. (2003) state that "evidence suggests transmission … from goats to bighorn sheep" "direction of

transmission could not be established." Note that transmission was not "demonstrated" as is stated by some biologists nor was the whole die-off caused by the goat. Cassirer, et al 2006, states "in most cases, *Pasteurella* bacteria isolated from the bighorn sheep exhibited a high degree of genetic variation."

33. Overlooked by all of the biologist's in their declarations is the effect of introducing new populations and their "bugs" into the region.The **Hells Canyon Initiative** provides records of 492 bighorn sheep moved from 11 different source population into Hells Canyon since 1971. (Cassirer 2006). Coggin's declaration suggests that number is closer to 600. Odenburg documents the origin of the transplants: Alberta, British Columbia Wyoming, Montana Idaho Salmon River drainage including Bernard Creek, Cow Creek, Oregon, Craig Mountain Idaho, Hass Ridge, Oregon, Three Creek, Idaho, Big Canyon, Idaho, Kirkwood Creek, Idaho.

34. Each of these transplants introduced new *Pastuerella spp* into the herds of Hell's Canyon. Dr. Ward and others have evaluated samples from bighorn sheep populations, from Alaska to Arizona and California to the Dakotas, during the past 18 years and found multiple strains of *Pasteurella* and *Pasteurella/Mannheimia* species that differed between bighorn populations. Some of these are known cytotoxin producers. Many of the transplanted bighorns were cultured before being brought in and were shown to be carrying numerous strains of known *Pasteurella*.

35. The numerous translocations of bighorn sheep into Hells Canyon from multiple sources, some of which had previously experienced die-offs (Buechner 1960), have introduced over the years many, many strains of *Pastuerella* and probably a variety of other bacteria and viruses as well with the very real potential of contributing to disease. We know that the

"commensals" *Pastuerella* spp carried by healthy bighorn also kill bighorns during times of stress. Onderka and Wishart (1984) Buechner (1960), Spraker et al., 1984 and Bailey (1986). These multitudes of translocations have added additional strains of Pastuerellaceae into the Hell's Canyon bighorns over time. (We can document this as many of these translocated animals had been sampled and subsequently cultured by CVTC at the time of capture).

36. Telemetry data have indicated that intermingling of the bighorn populations occur within the Hells Canyon area. (Coggins, Weyhausen, Cassier). At least 6 pneumonic episodes have occurred between 1972 and 1996 in this population as documented by Cassirer 2006. Although there have been domestic sheep in the area, transmission from the domestic sheep has not been documented and the prolonged contact needed for transmission is far more likely to occur between bighorns than between bighorn sheep and domestic sheep.

37. Managers of domestic animals know the value of "closed" herds, where no new animals are introduced into an existing herd and thus the possibility of introduction of disease is nonexistent. The bighorn sheep managers in Hell's Canyon have broken the most basic of biosafety rules by introducing so many small groups of bighorn sheep into Hell's Canyon from different population. Removal of domestic sheep will not remove the low level of disease in these herds. It has been there since 1971. In fact the Hell's Canyon bighorn pose much more of a risk to other bighorns to the East in the Idaho Salmon River area than the domestic sheep.

38. The pneumonic episodes in the Hells Canyon bighorn herds undoubtedly reflect transmission of the more pathogenic bighorn organisms from bighorn to bighorn. It is most likely that the heterogenous bighorn *Pastuerella* population in the region is the reason for the failure of

some of the Hells Canyon herds to thrive. Removing the domestic sheep and the rare possibility of their contact with bighorn sheep will not change this dynamic.

Habitat and Populations are significant considerations to the health of bighorn sheep.

39. Dr. Keith Aune of Montana Department of Fish Wildlife and Parks tells in the transcript of the Reno Bighorn Meeting of 2005 about the Highlands bighorn sheep herd in Montana, a very successful herd with a lot of what sportsmen call "trophy animals". A domestic sheep flock resides in the middle of its winter range. There were some interaction known to occur but no disease happened for 20 years. Then they had a severe die-off and lost most of the herd. Was it the fault of the domestic sheep after 20 years of interaction?

40. Dr. Aune points out that "in Montana, spatial separation won't work for them because there are so many domestic sheep on private land." In spite of the fact their bighorn sheep are not separated, an article appeared on March 8, 2007, in the Tribune Outdoor Editor entitled The battle of the bighorns. The article stated:

> "Wildlife officials struggle to balance populations, habitat and hunter demand. Wildlife managers in Montana this winter trapped and transplanted more than 200 bighorn sheep to try and keep the highly prized big game animals within population objectives. But sending Montana sheep - many of them pregnant ewes - to states like North Dakota, Nebraska, Wyoming and Utah puts the fur up on hunters and some sheep fanciers alike."

However, population numbers should concern the wildlife officials since populations numbers have been positively correlated with bighorn deaths. *Ecological correlates of pneumonia epizootics in bighorn sheep herds* is an article quoted by many biologists. (Monello et al, *Can. J. Zool.* 2001; 79: 1423-1432) . They report that herds found in proximity to domestic sheep *tended* to be more susceptible to die-off; however the most striking finding their analysis revealed was

that **88% of pneumonia-induced die-offs occurred at or within 3 years of peak population numbers.** They suggest that density-dependent forces such as food shortage or stress is the principal contribution to bighorn sheep susceptibility to pneumonia.

Management is available to prevent contact between bighorn sheep and domestic sheep.

41. Most biologists and producers agree that the most common interactions by domestic sheep and bighorn sheep, though relatively rare, are during breeding season when domestic ewes are in estrus. This type of interaction can be managed.

42. Some worry that given the fact that sheep herders manage over a thousand sheep, they cannot always see when a bighorn sheep comes into contact with a domestic sheep within the rugged terrain of these allotments. It is highly unlikely that a momentary contact will transfer enough organisms to cause disease. Disease depends on dose, immunological competency of the host and pathogenicity of the organism. The reason the penned experiments work, if indeed they do, is because the dose of organisms received by the bighorn sheep is augmented by constant contact. This doesn't happen in the wild.

43. Domestic sheep are only on the allotments for several months in the summer.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 15th day of May, 2007.

__/s/ Marie S. Bulgin_____
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CURRICULUM VITAE

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EDUCATION AND TRAINING:

1956-1958	Diploma	Boise Jr. College, Boise, ID
1958-1960	BA	University of California, Berkeley, CA
1963-1967	DVM	University of California, Davis, CA
1987-1995	MBA	Boise State University, Boise, ID

EXPERIENCE:

Teaching and Research:

1989-present	Professor, Microbiologist, Clinical Pathologist, and Small Ruminant Clinician, Veterinary Medicine, University of Idaho, Caine Veterinary Teaching Center, Caldwell, ID
1984-1989	Associate Professor, Clinical Pathologist, Veterinary Medicine, University of Idaho, Caine Veterinary Teaching Center, Caldwell, ID
1979-1984	Assistant Professor, Clinical Pathologist, Veterinary Medicine, University of Idaho, Caine Veterinary Teaching Center, Caldwell, ID
1977-1979	Instructor, Veterinary Medicine, University of Idaho, Caine Veterinary Teaching Center, Caldwell, ID
1975-1977	Idaho Racing Commission Veterinarian
1972-1975	Clinical Veterinarian, self-employed, Caldwell, ID
1971-1972	Clinical Veterinarian, Humphreys Animal Hospital, Oxnard, CA

1968-1971	Head, Clinical Medicine, Veterinary Section-Radiobiology Lab., University of California, Davis, CA
1963-1967	Laboratory Technician, University of California, Davis, CA
1963-1971	Part time - Medical Technologist, Woodland Memorial Hospital, Woodland, CA
1960-1963	Public Health Microbiologist, Martinez, CA

Administration:

Head of Clinical Pathology Laboratory
Responsible for sheep flock
Head of Clinics and Outside Facilities

Major Committee Assignments: Since 1990)

Western Regional Research Committee W-112 on Reproductive Diseases, 1986-93.
Western Regional Coordinating Committee on Ram Epididymitis (WRCC-46), 1982-1991. Secretary 1983-84. Chairman 1988-89, 1992-1993
Chairman and Program Coordinator: Small Ruminant Disease and WRCC-46 Symposium held at Boise, Idaho, June 1-3, 1989, Jackson Hole, WY, 1993.
Idaho Woolgrowers Stud Ram Show Committee, 1986-90.
Teaching Program Change Committee, Chairman, 1990.
College of Agriculture Task Force for Departmental Reorganization, 1990.
Search Committee for department head, Department of Animal and Veterinary Science, 1990-1991.
Ram Evaluation Committee, Chairman, Society of Theriogenology, 1991-92.
Research and Outreach Committee, Small Ruminant Association, 1989-1993.
WOI Curriculum Committee, 1990-present.
Chairman, Education Committee, Treasure Valley Wool Growers, 1990-present.
Sheep and Goat Committee, U. S. Animal Health Assoc 1991-94.
Animal Health Committee, American Sheep Industry Assn. 1992-present
Canyon County 4-H Sheep Advisory Committee, 1984-present.
The Small Ruminant Female Reproduction Committee, Society for Theriogenology. 1992-1993
IR4 Committee (Approval of Drugs for Minor Species) Sheep advisor. 1992-94
Chairman and Program Coordinator: Farm Flock Disease and Production Symposium. Idaho
Education chairman, Treasure Valley Chapter of the Idaho Wool Growers, 1985-present.
Chairman, ,Idaho Scrapie Certification Program Board, 1993-present.
Caine Veterinary Teaching Center Advisory Board, 1993
Member, Search Committee, Director, Caine Center, 1994
Member, Search Committee, Dairy Specialist, Caine Center, 1995, 1999, 2001, 2005

National Scrapie Certification Oversight Committee 2002-present
State Idaho State Department of Agriculture Animals Industries Task Force 2004-2006
Chairman, Search Committee, Dairy Specialist, Caine Center, 2007

OTHER PROFESSIONAL:

Membership in Professional and Scholarly Organizations:

American College of Veterinary Microbiologists (Diplomate)
American Veterinary Medical Association, 1967-91
American Association of Small Ruminants Practitioners - Western Regional Director, 1988-1993.
Idaho Veterinary Medical Association, 1977-present
Southwest Idaho Veterinary Medical Association, 1978-present; Secretary-Treasurer, 1978-79, 1979-80
Current License for practicing veterinary medicine in the State of Idaho
Board of Pharmacy license-current
Current License for the use of controlled drugs

OTHER EXPERIENCE:

Community and Service:

President, Treasure Valley Chapter of Idaho Wool Growers, 1987-89
Canyon County 4-H sheep Carcass Contest Committee, 1988-90
Idaho Wool Growers Stud Ram Show Committee, 1986-88
Chairman, Idaho Wool Growers Farm Flock Symposium committee, 1986-92
Canyon County 4-H Sheep Advisory Committee, 1984-92
Education Chairman, Treasure Valley Chapter of the Idaho Wool Growers 1990-1994, 1996-present
Canyon County Fairboard 1988-95
Treasure Valley Sheep Growers Ewe Lamb project Committee 1990-1996
Treasure Valley Sheep Grower, President 1994-1996
Woolgrowers Assoc. Board of Directors, 2000-2005.
Director, Idaho Wool Growers Association 2000-2005
Vice President, Idaho Woolgrowers Assn 2005-2007
President, Idaho Woolgrowers Assn. 2005-2007

INSTRUCTION - Formal Courses Taught:

VMS 576, Food Animal Medicine and Surgery/Caldwell Special Small Ruminant Block, Feb. '88; Feb., Mar. '89 (Coordinator)
VMS 578, Food Animal Preventive Medicine and Advance Surgery/Caldwell, 8-12 hours per week contact time. 1977-present

Vet Sci 404, Animal Diseases (night class) 1983-1988
Vet Med Science 462, 3 lecture given at Washington State University, Pullman, WA. 1989-1996
AVS 471 Large Animal Management. Team taught, 3 hrs/week. Long distance education. Fall 2000
AVS Sheep Management Course, 2 lectures. 4-7 PM, College of Southern Idaho, Apr. 4 and Apr. 11, 2001.
Beginning Sheep Disease Management Course, 8-3hr lectures, Sponsored by the Treasure Valley Sheep Growers November 2000-February 2001.

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"Starvation in lambs", March 1995
"Coccidiosis, a major cause of economic loss in the sheep industry", June 1995.
"Ram breeding evaluations", September 1995
"Parasites in sheep", May 1996

Bulgin, M. S. Contribusions to Farm tiems, a monthly Ag Newspaper.

"Abortion in ewes, Part I", October 1995
"Abortion in ewes, Part II", November 1995
"Abortion in ewes, Part III", December 1995
"Preventing calf deaths", January 1996
"Saving baby lambs", February 1996
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"Parasites in sheep", April 1996
"Acidosis: How to prevent it", May 1996
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"Choosing a ram", August 1996

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2005 June
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President's Letter: Idaho Wool Growers Bulletin. Jul-Aug 2006.
President's Letter: Idaho Wool Growers Bulletin. Jul-Aug 2006.
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Response to the Payette National Forest Risk Assessment concerning disease transmission from domestic to big horn sheep. 7/5/2006.

CHAPTERS IN BOOKS: (Since 1990)

Bulgin, M. S.: "Weight Loss and Failure to Thrive in Beef Cows". In Veterinary Gastroenterology, edited by Neil Anderson, Lea & Febiger, Philadelphia, 1992.

Bulgin, M. S.: "Ram Epididymitis". In Veterinary Clinics of North America, Food Animal Practice, edited by Mary Smith, Saunders, Philadelphia, November 1990.

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Bulgin, M. S.: "Ovine production management and preventative medicine." In Current Veterinary Therapy 3: Food Animal Practice, edited by Jimmy L. Howard. Philadelphia, WB Saunders Co, 1993, pp 153-159.

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RESEARCH GRANTS

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The Use of Citrulline in the prevention or control of hyperammonemia--a sequelae of nonprotein nitrogen intoxication in ruminants. Patricia A. Talcott, Marie Bulgin, Jerry Exon. 1992. $5,200.00

Development and application of a bench-top test system for detection of bovine coronavirus. Part of Hatch Project. Marie Bulgin, Alton Ward, Walter DeLong. 1992. $4,200

Study of transmission of ovine progressive pneumonia from domestic sheep to captive bighorn sheep. Part of the Domestic-Wildlife Disease Transmission Grant from Idaho Fish and Game. 1992. $5,000.00

Study of tranmission of ovine progressive pneumonia, W112 Project. $4000/yr for 5 year study.

Effect of feeding eggs with high antibody titer against calf scours organisms to calves for the prevention of scours. USDA/ACSRS Animal Health and Diseae 1433 Funds, FY94-95. $6,750.00

Effect of feedings eggs with high antibody titer against calf scours organisms to calves for the prevention of scours. United Dairymen of Idaho, 1995-96. $1,000.00

Subcontract under Proposal BAA/RFP No. NIH-NINDS-99-II, Development of Assay for Creutzfeldt-Jakob Disease submitted by Baltimore Research and Education Foundation. Inc. $398,836 over 5 yrs. (In the fifth of 5 years.)

Memorandum of Agreement with Abbott Laboratories. Development of test for abnormal prions in blood of scrapie inoculated sheep. July 2001-July 2004. $232,012.

Subcontract under Proposal DAMD17-03-04746. Efficient and Rapid Development of Transgenic Hamster Models of TSE's Using a Radical New Technology. $125,691 over 2 yrs. 2005-2007

Wildlife Reseach Committee. One of 5 Researchers sharing a $100,000 Grant from Idaho Fish and Game Department 2006-2007

EXHIBIT "N"

Final Report and Recommendations

from the

Wyoming

State-wide Bighorn/Domestic Sheep Interaction

Working Group

September 2004

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Introduction

For the past several years, conflict and confrontation relative to interaction between bighorn sheep and domestic sheep has escalated. Most notable of the issues that have arisen is the potential transfer of disease between these species, but other concerns relative to habitat and other issues have also been raised. A variety of strategies have been used to stabilize or enhance wild sheep populations, including transplant of sheep for new herds, analysis of nutritional needs, and implementation of prescribed fire and other vegetative treatments to enhance or expand habitat. At the same time, Wyoming's domestic sheep industry has been severely impacted by numerous factors, and the economic, biological and social implications of that recession are of equal concern to the State as is the welfare of its bighorn sheep herds. Domestic sheep producers have attempted to stabilize their industry through marketing initiatives, maintenance of the forage base, and reductions in costs of operation. A combined result of efforts to enhance bighorn sheep populations and stabilize the domestic sheep industry is that, in some specific areas, the interaction between domestic and wild sheep has led to considerable consternation, and a general sense that the options for resolution are an "either-or" alternative.

In response to these conflicts, Governor Jim Geringer and United States Senator Craig Thomas asked interested parties to consider a statewide approach to developing collaborative recommendations and actions that would address these issues and hopefully, lead to long-term stabilization of both wild sheep herds and the domestic sheep industry. A meeting of interested parties was held on 8 February 2000, in Pinedale, Wyoming, with 52 people attending. Among these were federal and state land and wildlife management agencies, domestic sheep producers, Congressional staff, county officials, environmental organizations, agricultural producer groups, and media. At that meeting, the participants agreed:

It is the goal of the Wyoming Bighorn/Domestic Sheep Interaction Working Group to maintain healthy bighorn sheep populations while sustaining an economically viable domestic sheep industry in Wyoming.

The Group identified issues of concern related to interactions between bighorn and domestic sheep, prioritized them, and established four categories of issues for further examination and discussion. Five subcommittees were established to analyze the current base of information (two of the five subcommittees were later combined into one), and those groups developed potential solutions, as well as recommendations to state and federal wildlife and habitat managers *(see Appendix A, Working Group Meeting Report,* 2/8/00 *meeting).* The primary areas of concern evolved into the following categories:

1. The role, myths, and science of inter-species disease transmission and bighorn sheep stressors: a review of existing scientific literature on the subject, and development of a future research agenda on these issues. Two subcommittees worked in this area initially: (Disease and Stresses, Research), but were combined into a single Disease, Stresses and Research subcommittee at a later date.
2. Management of bighorn and domestic sheep habitat and the political will to manage that. A Habitat and Management Protocols subcommittee was formed to address these issues.
3. Compatibility of bighorn sheep herds and an economically viable domestic sheep industry. The Economic Viability, Loss of Allotments, and Distrust of Agencies subcommittee addressed these issues.

4. Public Perceptions and opinions of sheep, their management, and the domestic sheep industry. The Information Flow/Education subcommittee was charged with both Working Group and general public education and information responsibilities.

In addition, participants agreed to continue meeting and seeking resolution of these issues in a manner consistent with the stated goal. Additional representation was sought where needed, and the group expanded to accommodate that representation. Over the course of the following 3.5 years, the group met more than nine times in locations around the state, usually with subcommittee meetings preceding the Working Group meeting. Presentations, given or arranged for by members, were frequently made at both subcommittee and Working Group meetings, exploring issues such as current knowledge about wild sheep disease, taxonomy of wild sheep, domestic sheep practices, bighorn and domestic sheep habitat needs, and a variety of other pertinent topics. As subcommittees developed recommendations, they were forwarded to the statewide group for further discussion. The process relied on consensus-based decision-making, and all subcommittees were inclusive of representation from the full variety of members on the Working Group. The first item of agreement was a list of "guiding principles" for bighorn sheep/domestic sheep interactions. The list (which follows) is not prioritized.

Terms of Agreement

- The domestic sheep industry is important to Wyoming and should be protected; this includes protection and stability of grazing allotments and management changes only on a willing permittee basis, not under a sense of urgency or duress.
- Bighorn sheep are important to Wyoming and should be protected and enhanced in terms of numbers, health, and distribution.
- Diseases may be interchanged between domestic and bighorn sheep; in Wyoming, *Pasteurella* spp.-induced pneumonia is the most important.
- Pasteurellosis in sheep is a very complex issue that needs better understanding by all concerned individuals, agencies, and organizations.
- A variety of stressors play important roles in inducing pasteurellosis in sheep.
- Hybridization between bighorn and domestic sheep should be discouraged.
- There is a need to better define the role of predation in bighorn sheep dynamics.
- Zero risk of disease is unattainable, but management can reduce risk and stress.
- Core native bighorn herds are those populations that have never been extirpated and repopulated; this includes the Targhee herd, the entire Absaroka Range (five herds), the Whiskey Basin herd, and the Jackson herd.
- There is a need to develop Wyoming-based, multi-disciplinary research and solutions. These could also serve as models for other states.
- Research conducted in Wyoming is preferable, but quality, balanced research conducted, and solutions developed, elsewhere should be recognized and used, where applicable.
- Use balanced scientific information.
- Use adaptive management to resolve problems.

- ❖ There is a need for open, non-inflammatory communication. There is a risk of disease transmission, but rhetorical dialogue and interchange among all parties on degrees of risk is not beneficial or desirable.
- ❖ Existing and/or potential conflicts between domestic and both core native and transplanted bighorn sheep should not be used as surrogate issues to force or effect resource management decisions; the retirement, reduction, or removal of grazing allotments and management changes should be only on a willing permittee basis, not under a sense of urgency or duress.
- ❖ No net loss of domestic sheep industry AUMs in Wyoming is an important goal. While that may not be achievable in every given retirement, reduction, or removal of grazing allotments or management change, an honest effort to achieve that goal will be made in every case, with the economic viability of the individual permittee and the industry as the foremost concerns.

RECOMMENDATIONS

Disease, Stress, and Research Committee

– All parties to the Wyoming Bighorn/Domestic Sheep Interaction Working Group recognize that:

  - o There are some disease agents that occur in both domestic sheep and bighorn sheep. There is evidence that if Bighorn and domestic sheep are in close contact, health problems and die-offs may occur. Some disease agents may be transmitted between both species;
  - o There are Bighorn sheep die-offs that occur with no apparent relationship to contact with domestic sheep;
  - o The above observations are both valid and not mutually exclusive;
  - o Bacterial pneumonias are not the only diseases of concern, although perhaps they (especially Pasteurella sop.) are the most catastrophic;
  - o The risks of disease transmissions are often unknown; they may, however, be site-specific; and
  - o Reasonable efforts must be made by domestic sheep producers, permittees, and wildlife and land management agencies to minimize the risk of disease transmission, and to optimize preventive medical and management procedures to ensure healthy populations of Bighorn and domestic sheep.

– In recognition of the above factors, when recommendations of the Wyoming Bighorn/Domestic Sheep Interaction Working Group have been followed and/or a cooperative agreement has been reached by affected agencies, permittees, and landowners, participants will be held harmless in the event of disease impacting either Bighorn or domestic sheep. While this is more a social and professional clause than a

legal one, all parties agree to publicly acknowledge what happened, but to not point fingers. Affected parties can decide to try again.

- Priority for protection of Bighorn sheep should be on native core populations.

- Removal of Bighorn sheep or domestic sheep from areas of current overlap should not be an immediate and unilateral objective. The use of separation as one management tool, if possible and desirable, should be achieved through negotiation between affected parties and willing permittee(s). This means that this group will not say that separation must be made immediately, or that it is the only possible response. We recognize that separation and removal are not synonymous.

- Cooperative efforts should be undertaken to quickly notify the permittee or producer and the appropriate agency to remove any stray domestic or Bighorn sheep in areas that would allow contact between domestic and Bighorn sheep. Bighorn and domestic sheep strays should be removed with a common sense approach.

- The Wyoming Game & Fish Department will prepare a map showing distribution of occupied habitat for native core and reintroduced Bighorn sheep populations.

- The Wyoming Wildlife/Livestock, Disease Research Cooperative should be formally established and funded with the goal of becoming the pre-eminent entity of its kind, and all parties agree to work toward this goal.

- This group encourages the Animal Damage Management Board to solicit and consider predator research as it might relate to Bighorn sheep.

Additional issues arose over the course of meeting discussions. The Group agreed that some, such as the scientifically-accepted taxonomy of the various subspecies of wild sheep, were important considerations but beyond control of any of the participants. [This concern was lessened by the recent taxonomic separation of British Columbia-derived California bighorn sheep (*Ovis canadensis canadensis)* preferred by WGFD for reintroductions in some portions of Wyoming for acclimation reasons from Sierra Nevada California bighorn sheep (*O. canadensis californiana,* now *O. canadensis sierrensis)* which is federally listed as threatened That could decrease the possibility of reintroduced populations being petitioned for listing as threatened or endangered.] Other issues, such as the need for a successful public process design for bighorn sheep reintroduction projects, were assigned to standing or ad hoc subcommittees for consideration.

The Group gave its full support to existing efforts to establish and fund the Wyoming Wildlife/Livestock Disease Research Partnership. The establishing Memorandum of Understanding (MOU) has been signed, and the Board of Directors and officers have been selected. The Partnership is a joint effort among the Wyoming Game and Fish Department, the Wyoming Department of Agriculture, the Wyoming Livestock Board, the University of Wyoming, and the Wyoming State Veterinary Laboratory. The intent is to implement a disease investigation program for mutual or shared wildlife and domestic livestock diseases. The research program will address "the growing need to understand, manage, control, and hopefully pre-empt diseases of wildlife and livestock that significantly impact the other in the State."

Monies to provide research grant funding have been solicited from Federal and local governments and private sources to match the $200,000 committed by the Wyoming State Legislature. The Wyoming Congressional delegation has been instrumental in obtaining over one half million dollars in Federal research money for the Partnership. Pasteurellosis is not the Partnership's only research funding focus, but is one of its top priorities. The Partnership and the American Sheep Industry Association mutually support each other's bighorn and domestic sheep vaccination research.

In an example of proactive contact with land management agencies, the Working Group sent a letter to Shoshone National Forest Supervisor Rebecca Aus requesting implementation of a prescribed burn on the Jim Mountain/North Fork Shoshone River. The Forest had to postpone a planned prescribed burn there when a federal burn moratorium was put in place after the Los Alamos/Cerro Grande fire in the spring of 2000. Because of the anticipated benefits of the burn to the habitat of a core native bighorn sheep herd in that area, the Working Group urged that the prescribed burn be implemented in 2001 or as soon as conditions allow.

In addition, the following recommendations were developed by subcommittees and approved by the statewide Working Group. Those recommendations are the essence of this report. The recommendations are more fully explained later in the report.

Recommendations to Decision-Makers, Management Agencies, and Industry

Recommendations to the Wyoming Game and Fish Commission, Wyoming Board of Agriculture, and Wyoming Livestock Board

1. Develop capture/testing protocols that will reduce capture stress
2. Develop preconditioning protocols that will enhance survivability of translocated bighorns
3. Pursue joint funding of infrared remote sensing technology for wildlife surveys
4. Take advantage of remote sensing for vegetative condition when possible
5. Cooperate, together with Wildlife Services, in developing appropriate predator management protocols
6. Work to identify vacant suitable habitat and its vegetative condition/trend
7. Compile/develop GIS map layers
    a. core native bighorn herd management areas with seasonal use indicated
    b. transplanted bighorn herd management areas with seasonal use indicated
    c. active domestic sheep allotments with seasonal use/management strategies (rotation, etc.) indicated
    d. vacant and closed domestic sheep allotments
    e. sheep allotments currently permitted for cattle)
8. Work with Federal agencies and permittees to identify replacement AUMs
9. Support research on vaccines/delivery systems, preconditioning techniques, and stress testing through fecal sampling
10. Manage human interactions to reduce stress
11. Manage hunting to reduce stress and maintain herd objectives

12. Help develop, fund, and deliver bighorn and domestic sheep education/outreach programs to the public
13. Pursue additional State/Federal/private funding for the Wyoming State Veterinary Laboratory
14. Assist with multi-interest efforts to secure funding for the Wyoming Wildlife/Livestock Disease Research Partnership
15. Pursue bighorn sheep translocations using the Group's recommendations for public process *(see Appendix L)*
16. Use some of the wildlife revenues for habitat enhancement projects that will serve both bighorn and domestic sheep
17. Work with Wyoming FNAWS and others to develop a public marketing strategy for bighorn sheep management activities that will also benefit domestic sheep
18. As much as possible, follow the recommendations of the Wyoming State-wide Bighorn/Domestic Sheep Interaction Working Group and utilize expertise and experience of Working Group participants where planning local bighorn sheep management

Recommendations to Federal Agencies

1. Extend non-use beyond 3 years for domestic sheep allotments (Forest Service)
2. Take advantage of remote sensing for vegetative condition when possible
3. Pursue joint funding of infrared remote sensing technology for wildlife surveys
4. Assist WGFD in identifying vacant suitable bighorn habitat and vegetative condition/trend therein
5. Assist WGFD in developing/compiling GIS map layers
6. Support the research agenda for bighorn and domestic sheep
7. Help develop, fund, and deliver bighorn and domestic sheep education/outreach programs to the public
8. Coordinate management of bighorn stress factors with WGFD
9. Make identification of replacement AUMs a standard practice when considering closure or vacation of domestic sheep allotments
10. Assess currently vacant and closed allotments for suitability to re-open for active use, or to use as emergency 'grassbanks'
11. Assess non-use suspended AUMs and sheep AUMs being used by wild horses, to determine if any domestic sheep use can be re-opened
12. Pursue additional State/Federal/private funding for the Wyoming State Veterinary Laboratory
13. Assist with multi-interest efforts to secure funding for the Wyoming Wildlife/Livestock Disease Research Partnership
14. Use some of the wildlife revenues for habitat enhancement projects that will serve both bighorn and domestic sheep
15. Work with Wyoming FNAWS and others to develop a public marketing strategy for bighorn sheep management activities that will also benefit domestic sheep
16. Standardize allotment administration to the greatest extent possible within agency units and between agencies
17. As much as possible, follow the recommendations of the Wyoming State-wide Bighorn/Domestic Sheep Interaction Working Group and utilize expertise and experience of Working Group participants when planning local bighorn sheep management

Recommendations to the Domestic Sheep Industry

1. Take advantage of remote sensing for vegetative condition when possible
2. Pursue joint funding of infrared remote sensing technology for wildlife surveys
3. Assist Federal and State agencies in identifying vacant suitable bighorn habitat and vegetative condition/trend therein
4. Support research on vaccines/delivery systems, preconditioning techniques, and stress testing through fecal sampling
5. Support making identification of replacement AUMs a standard practice when considering closure or vacation of domestic sheep allotments
6. Pursue grazing management strategies that will reduce impacts and enhance bighorn survival
7. Help develop, fund, and deliver bighorn and domestic sheep education/outreach programs to the public
8. Pursue additional State/Federal/private funding for the Wyoming State Veterinary Laboratory
9. Assist with multi-interest efforts to secure funding for the Wyoming Wildlife/Livestock Disease Research Partnership
10. As much as possible, follow the recommendations of the Wyoming State-wide Bighorn/Domestic Sheep Interaction Working Group and utilize expertise and experience of Working Group participants when planning local bighorn sheep management
11. Work with Wyoming FNAWS, WWGA, WSGA, and others to develop a public marketing strategy for bighorn sheep and habitat management activities that will also benefit domestic sheep
12. Encourage voluntary allotment monitoring by permittees in conjunction with Federal and State agencies

Recommendations for No Net Loss of Wyoming Domestic Sheep AUMs on public lands (sustaining domestic sheep industry capacity)

1. Reconfigure domestic sheep allotment boundaries to avoid overlap with bighorn habitat
2. Determine the number of domestic sheep AUMs overlapping on bighorn sheep habitat; industry and Federal agencies work together to locate potentially available replacement AUMs
3. Assess domestic sheep industry desire for additional AUMs; industry and federal agencies work together to locate potentially available AUMs to meet that need
4. Identify difference in management styles between federal agency units, and between agencies, and those impacts on bighorn and domestic sheep management

Recommended Prioritization of Ongoing and Needed Research

Disease/Health Research

1. Effective preventative vaccines/outbreak-control antibiotics/parasite control, and delivery systems
2. Effective bighorn sheep translocation preconditioning techniques including long-term sedatives, vaccination, and low-level exposure to resident bighorn sheep before release
3. Bighorn sheep capture protocols, including typing *Pasteurella* spp. and banking isolates Genetic resistance
4. Domestic sheep blood serum sample collection and banking, sheep lambing management styles
5. Remote stress detection through fecal coliform sampling, development of long-term sedatives

NutritionlHabitat/Predation Research

1. Monitor bighorn sheep nutritional requirements, especially micronutrients
2. Monitor bighorn habitat selection and habitat nutritional carrying capacity
3. Determine impacts of predation on bighorn sheep, including lamb recruitment and disruption leading to commingling
4. Determine target predator species and effectiveness of control programs
5. New Technology: Remote sensing vegetative and animal surveying technology

Recommendation for the Future of the State-wide Bighorn/Domestic Sheep Interaction Working Group

The Group should meet at least annually, more often as needed, to review research and management results from the past year and use adaptive management methods to make additional recommendations to the Commissions, Federal agencies, and the domestic sheep industry. Responsibility for convening a meeting of the Work Group at least annually will rest with the Wyoming Game and Fish Department.

Detailed Recommendations Developed by Subcommittees and Adopted by the Working Group

Recommendations to Address Disease, Stressors, and Research

I. Disease Management Tools

A. PREVENTION OF PASTEURELLOSIS (and secondarily, other diseases)

1. Bighorn sheep translocations should:
    a. Use only monitored source herds
    b. Develop disease-monitoring protocols that include periodic capture and testing for diseases of concern
    c. Pre-condition source herds with antibiotics and vaccinations
2. Precondition bighorn sheep to be transplanted
    a. Pre-condition transplant sheep with appropriate antibiotics and vaccinations
    b. Pre-condition transplant sheep with feed/nutritional supplements if appropriate
3. Manage for appropriate population densities (to reduce the risk of density-dependent disease outbreaks/transmission and likelihood of ram dispersal)
    a. Establishment of population objectives should include disease and stress considerations
    b. Adhere to population objectives.
        i. If herd is below objective, consider habitat enhancements, predator management, ram-only hunting seasons
        ii. If herd is above objective, consider ewe harvests or periodic removals of sheep through trapping
4. Nutrition -poor nutrition contributes to disease susceptibility
    a. Monitor to determine if bighorn sheep are getting minimum levels of energy, macronutrient, and micronutrient needs

b. Consider habitat improvement projects (or supplements) when habitat is not providing minimum levels of nutritional needs

5. Stress is an important contributor to disease susceptibility
    a. Identify human disturbances and manage to minimize that stressor
    b. Customize the upcoming Northern Wild Sheep and Goat Council standardized capture protocol (designed to minimize capture/monitoring/pre-conditioning stressors) for use in Wyoming
    c. Predators cause stress that contributes to disease susceptibility
        i. Monitor predator impacts
        ii. Implement predator control when appropriate
6. Separation of bighorn sheep from domestic sheep
    a. Use techniques and options developed and agreed upon cooperatively by wildlife and land managers and permittees; including:
        i. Geographic/topographic barriers
        ii. Seasonal or spatial separation through domestic sheep grazing management
        iii. Habitat enhancements that attract wild sheep away from domestic sheep areas
        iv. Evaluate re-stocking of vacant allotments to minimize commingling potential
        v. Evaluate translocations to minimize commingling potential
        vi. Evaluate allotments to identify opportunities to convert those allotments with high commingling potential to cattle and open vacant allotments or convert from cattle to sheep allotments where commingling potential is lower
        vii. Negotiate financial incentives for permittees to waive domestic sheep allotments with high commingling potential back to the appropriate land management agency
    b. Develop a commingling response protocol that includes the following:
        i. Removal of wandering bighorn sheep (transfer to Sybille or Wyoming State Veterinary Lab)
        ii. Immediate, two-way notification of commingling sightings
        iii. Meetings between WGFD field personnel and domestic sheep permittees with allotments in/near core native bighorn sheep herds, to develop a sensible post turn-off stray removal protocol
        iv. Development of outreach materials by WGFD and USFS, asking recreational forest users to immediately notify USFS of stray domestic sheep or bighorn sheep in unusual locations
        v. Instruction for domestic sheep herders to not leave sick domestic sheep behind when trailing or moving from or between allotments
7. Veterinary techniques to prevent *Pasteurella* outbreaks in bighorn sheep
    a. Vaccinate bighorn and domestic sheep against *Pasteurella* and pre-disposing bacteria and viruses as antibiotics/vaccines and delivery techniques are developed
    b. Use wormers with bighorn and domestic sheep to eliminate pre-disposing conditions; lungworms are of particular concern, could be treated with medicated feed

c. Institute an anthelmintic program to control mites in bighorn and domestic sheep
8. Identify and test sheep that appear to have genetic resistance to certain diseases
9. Develop methods to analyze sheep for chronic stress
10. Monitor populations to insure genetic heterozygosity (prevent in-breeding)

B. CONTROL OF DISEASE OUTBREAKS

1. Customize the upcoming Northern Wild Sheep and Goat Council standardized disease outbreak control protocol for use in Wyoming
2. Accurately diagnose cause of death with necropsy
3. Remove diseased sheep
   a. Euthanize and necropsy
   b. Transport to a holding facility for quarantine and/or treatment
4. Research the outbreak-control effectiveness of newly-developed drugs
5. Insure isolation of diseased herds and individuals from disease-free herds
6. Minimize stress on herds experiencing or recovering from a disease outbreak
7. Investigate the effectiveness of vaccination to control outbreaks
8. Consider the effect of other factors such as water availability, temperature or other environmental extremes, etc. Manage to avoid, minimize, or mitigate when possible

C. MANAGEMENT FOR HEALTHY BIGHORN SHEEP

1. Manage and improve the habitat to enhance nutritional status, encourage use of unoccupied suitable areas, increase physical separation from domestic sheep, and discourage commingling
   a. Maintain or re-establish migration corridors unless that will facilitate commingling with domestic sheep
   b. Prevent/reduce timber encroachment on bighorn sheep habitat, especially crucial winter ranges and lambing areas, through either commercial removal or prescribed burns
   c. Identify bighorn sheep habitats where fire is needed to manage for desired vegetation; then design and implement fire management programs in those areas (public and private lands)
   d. Enhance appropriate forage production using
      i. prescribed burns
      ii. pitting and other mechanical treatments to create micro-habitats, manipulate vegetative competition, and enhance water retention
      iii. seeding desired forage species
      iv. fertilizing for desired forage species
      v. noxious weed control
   e. Manage domestic sheep grazing timing, intensity, and frequency to enhance bighorn sheep forage
   f. Consider water developments to enhance bighorn sheep distribution and to move competing wildlife and livestock away from preferred bighorn sheep foraging areas
2. Control populations to maintain numbers at or below herd objectives
3. Provide nutritional and mineral supplementation when appropriate, to enhance health or to assist in creating physical separation between bighorn and domestic sheep
4. Determine an appropriate recruitment rate for each herd

5. Develop predator control protocols that will help achieve bighorn sheep herd recruitment goals and be most effective while minimizing stress on bighorn sheep

II. Stress Management Tools

A. MONITORING

1. Environmental factors such as persistent high or low precipitation, snow depths, and temperatures, because they affect disease susceptibility, reproductive success, and growth
2. Habitat quality including nutritional quality and mobility/visibility impairments that affect bighorn sheep health, seasonal mobility, escape from predators, and inclination to pioneer new habitats
3. Disturbances that affect feeding and movement patterns and can introduce additional stress
4. Monitor other ungulates in the area for potentially-transmissible diseases

B. MANAGEMENT

1. Control predators, if appropriate
2. Minimize human/pet interactions, if appropriate
3. Adopt capture protocols that minimize stress
4. Adopt survey protocols that minimize stress, including such considerations as minimizing flight heights and time spent surveying, and optimizing weather conditions
5. Control pre-disposing diseases and internal/external parasites
6. Prevent interactions with other ungulates, when possible, if there are potentially negative behavioral or health impacts on bighorn sheep
7. Minimize stress during the summer when bighorn sheep are putting on their winter fat (strategies could include shortening hunting seasons, limiting human access on summer/fall ranges, etc.)

III. Predation Management Tools

A. MONITORING

1. Lamb survivability and recruitment, both numbers and causes
2. Influence of predators on herd disruption/dispersals and commingling potential
3. The biological effects of control methods on non-target species
4. The effects of weather on various control methods
5. Results of predator control activities

B. MANAGEMENT

1. Evaluate effectiveness of past predator control efforts in Whiskey Basin and elsewhere
2. Conduct a literature review of predation impacts on Bighorn sheep
3. Design and implement area-specific and species-specific predator control programs as appropriate
4. Develop a list of lethal and non-lethal methods of controlling each predator target species
5. Determine if those methods are practicable, applicable, and meet local/State/Federal standards on their respective lands
6. Determine the economic feasibility of methods, and funding availability

7. Determine if applicable agencies have the necessary personnel, equipment, and funding

IV. Research Agenda

A. DISEASE/HEALTH

1. Veterinary tools and techniques
   a. Develop vaccines and delivery techniques for *Pasteurella* pneumonia for both domestic and wild sheep (there was a pilot study in Colorado, Sybille may be the site of a second pilot project. It appears that vaccination spreads to herd- mates just like infections do, so self-vaccination may be feasible. Live vaccines don't eliminate the bacteria, it changes the resident strain to a less-lethal type.)
   b. Develop vaccines and delivery techniques for other viral diseases that threaten domestic and wild sheep, as they're identified
   c. Develop effective methods of treating wild sheep parasites (possibly with medicated feed or licks)
   d. Develop effective treatments and delivery methods for antibiotic treatments of bighorn sheep during disease outbreaks
   e. Test delivery methods such as oral delivery, biobullets, inhalants, and using domestic sheep to plant self-vaccinating medications
2. Preconditioning of translocated bighorn sheep
   a. Determine if there is a benefit from being held in captivity for preconditioning
   b. Develop long-term sedatives to decrease capture/translocation stress
   c. Develop vaccines and delivery techniques for use during the preconditioning period
   d. Develop protocols for thorough disease monitoring (by sampling blood and feces) during preconditioning
   e. Determine if there is a benefit to exposing bighorn sheep transplantees to a few resident bighorn sheep or domestic sheep during preconditioning to provide a low-level exposure to indigenous diseases
3. Stress
   a. Develop methods to analyze sheep for chronic stress
   b. Determine whether or not fecal cortisol is an effective method for determining stress in free-roaming herds
   c. Develop and test long-term tranquilizers as a means of reducing capture and translocation stress. This is a low priority in research right now
4. Predation
   a. Determine the species of predator responsible for bighorn sheep predation
   b. Identify the seasonal timing of predation
   c. Evaluate the stress to bighorn sheep from predation.
   c. Determine public perceptions of predator control to enhance bighorn sheep survival
5. Disease sampling and banking of isolates
   a. Develop a standard protocol detailing uniform methods for routinely collecting samples from captured bighorn sheep, for disease analyses

b. Type the varieties of *Pasteurella* pneumonia species in both bighorn sheep and domestic sheep
c. "Bank" a variety of *Pasteurella* spp. isolates from captured bighorn sheep for future reference and research
d. "Bank" samples of domestic sheep serum for future testing and research
e. Locate and list all bighorn and domestic sample "banks"
f. Summarize information on past domestic and bighorn sheep sample collections

6. Genetics and management techniques
   a. Determine if certain breeds of domestic sheep are more/less likely to carry diseases of concern for bighorn sheep
   b. Monitor shed lambing vs range lambing to determine if there are any effects on infectious disease-related issues

B. NUTRITION/HABITAT/PREDATION

1. Determine what micronutrients are essential for healthy immune systems in bighorn sheep, and how to best insure the sheep obtain adequate amounts in the wild
2. Develop and test protein/mineral supplement blocks for bighorn sheep
3. Determine how habitat improvements influence nutritional status and health in bighorn sheep, to help determine accurate carrying capacities of specific herd habitats
4. Radio-collar translocated bighorn sheep and monitor closely, to understand habitat and forage selection by the newly-released bighorns
5. Conduct a literature review of predation impacts on bighorn sheep (it appears that mountain lions are the biggest predator problem, much more so than coyotes, wolves, or grizzly bears (no Whiskey Basin bighorn sheep have been lost to wolves or grizzlies)
6. Determine the potential for predators to spread diseases important to bighorns
7. Understand the balance and interaction between predators and bighorn sheep diseases and how the balance/imbalances affect population health and numbers.

C. NEW TECHNOLOGY

1. Test applicability of remote sensing techniques for determining forage types and extents of sheep ranges
2. Use GPS (Global Positioning System) collars to accurately document bighorn sheep movements.
3.

Habitat & Management Protocols Subcommittee

I. Monitoring

A. HABITAT QUALITY

1. Conifer encroachment
2. Vegetative changes in both community composition and productivity
3. Utilization, by bighorns and/or domestic sheep
6. Cumulative habitat fragmentation -by roads/travel ways, fences, wildfire, etc.
7. Nutritional quality of various ranges

B. MIGRATION BARRIERS
C. DISPLACEMENT -by predators, recreationists, wildfire, etc.
D. COMPETITION with other wildlife and domestic livestock -forage, water, space, behavioral, etc.
E. HERD GENETIC VARIABILITY
F. EFFECTIVENESS OF HABITAT ENHANCEMENT PROJECTS

II. Management

A. CONDUCT VEGETATIVE MANAGEMENT PROJECTS, such as on the North Fork of the Shoshone, to improve productivity and open migration corridors
B. ENCOURAGE PIONEERING of unused suitable habitats by opening migration corridors, developing water sources, placing mineral/supplement blocks, etc.
C. BETTER DELINEATE CRUCIAL RANGES -summer, winter, lambing, migratory corridors
D. ESTABLISH REALISTIC HERD OBJECTIVES
E. MAINTAIN HERDS AND HERD OBJECTIVESAT OR SLIGHTLY BELOW carrying capacity
F. MANAGEMENT STRESSORS, where possible, to avoid, minimize, or mitigate effects on bighorn sheep

III. Research

A. INVESTIGATE NUTRITIONAL REQUIREMENTS **of Bighorns, especially micronutrients**
B. IDENTIFY VACANT HABITAT **that is suitable**
C. DETERMINE THE CONDITION AND TREND **of potential, suitable but vacant habitat**
D. DEVELOP GIS MAP LAYERS of bighorn sheep herd management areas, active and vacant and closed domestic sheep allotments, bighorn sheep seasonal use patterns where domestic sheep allotments overlap bighorn herd management areas, rotation patterns and on-off dates where domestic sheep allotments overlap bighorn sheep herd management areas, and sheep allotments currently permitted for cattle

Recommendations to Address Economic Viability, Loss of Allotments, and Distrust of Agencies

I. Management Operating Principles for All Stakeholders

A. COLLECTIVELY WORK to maintain healthy Bighorn sheep herds
B. COLLECTIVELY WORK to maintain the domestic sheep industry in Wyoming
C. DO NOT USE BIGHOM/DOMESTIC SHEEP INTERACTIONS as a surrogate for removing domestic sheep from public lands, or other land use decisions
D. DECISIONS REGARDING CLOSING and/or retiring sheep allotments should be made only on a willing permittee basis
E. REPLACEMENT OF LIKE AUMS should be a goal whenever domestic sheep allotments are vacated or closed

II. Communication Operating Principles for All Stakeholders

A. WE ALL COMMIT TO SUPPORT each other's roles in Bighorn sheep management
B. WE ALL AGREE TO INFORM each other about Bighorn/domestic issues at the earliest possible Opportunities
C. WE ALL AGREE TO WORK TOGETHER to resolve conflicts
D. WE ALL AGREE TO STOP MISINFORMATION as soon as we hear it
E. WE ALL COMMIT TO SEEKING common ground

F. **WE ALL COMMIT TO BRINGING** everyone together to talk, most particularly when a conflict occurs

Recommendations to Address Information Flow/Education

I. **ASSESS PUBLIC PERCEPTIONS** regarding bighorn sheep management

II. **DEVELOP** outreach strategies

III. **DEVELOP** marketing strategies

Appendices

A. Working Group Meeting Report -2/8/00

B. Working Group Meeting Report -3/31/00

C. Working Group Meeting Report -6/29/00

D. Working Group Meeting Report -8/18/00

E. Working Group Meeting Report -12/14/00

F. Working Group Meeting Report -4/4/01

G. Working Group Meeting Report -5/31/01

H. Working Group Meeting Documents -1/7 /02

- ACTION ITEMS
- BIGHORN SHEEP NECROPSY PROTOCOL
- Designing a protocol: What should you do if you are faced with a bighorn sheep die-off?
- Meeting participants

I. Working Group Meeting Report 6/29/04

J. A Review of *Pasteurella* Pneumonia in Domestic and Wild Sheep

K. Subcommittee Final Report – Bighorn Sheep Disease/Stress/Predators/Research

L. Public Process Design for Bighorn Sheep Reintroduction

- New Bighorn Sheep Transplant Proposals in Cooperative Review Areas
- Bighorn Sheep Supplemental Transplant Proposals in Existing Herd Units
- Public Process Recommendations

M. DEFINITIONS – BIGHORN SHEEP MANAGEMENT AREAS

N. Map – Statewide Bighorn Sheep Management Areas

O. A Review of Predation on Bighorn Sheep (*Ovis Canadensis*)

P. Habitat Subcommittee Meeting (9/13/01)

EXHIBIT "O"

United States Department of Agriculture
Forest Service
Wallowa-Whitman National Forest
P. O. Box 907
Baker City, OR 97814

Reply to: 2210

Date: January 16, 1997

Idaho Woolgrowers Association
Mr. Stan Boyd, Executive Director.
P. O. Box 2596
Boise, ID 83701

Dear Mr. Boyd:

The effort to transplant bighorn sheep into historic habitat in Hells Canyon is a cooperative project involving the States of Idaho, Oregon, and Washington, The Foundation for North American Wild Sheep, the Forest Service, and the Bureau of Land Management. The Hells Canyon Bighorn Sheep Restoration Committee (the committee) is interested in having the support of the woolgrowers industry for this effort to repopulate parts of Hells Canyon with bighorn sheep.

The Committee understands that bighorns may occasionally migrate outside of their designated range and come into contact with domestic sheep. These bighorns will be considered "at risk" for potential disease transmission and death. There is also the potential for an exposed bighorn to leave the area and spread disease to other bighorn sheep. Under these conditions, the Idaho Department of Fish and Game, the Oregon Department of Fish and Wildlife, and the Washington Department of Wildlife will assume the responsibility for bighorn losses and further disease transmission in their respective states. The three Departments will also take whatever action is necessary to reduce further losses of bighorn sheep without adversely impacting existing domestic sheep operators. The enclosed map clearly delineates the project area within the Hells Canyon complex. Bighorns straying into currently active sheep allotments will be considered "at risk" by all of the Committee entities. This means that the Committee recognizes the existing domestic sheep operations in or adjacent to the Hells Canyon complex, on both National Forest and private lands, and accepts the potential risk of disease transmission and loss of bighorn sheep when bighorns invade domestic sheep operations.

The Committee will make every effort to keep interested parties informed about actions being considered by the Committee in its effort to repopulate Hells Canyon with bighorn sheep. We will provide all health information gathered on bighorn sheep to the woolgrowers industry and other interested parties.

Sincerely,

B M Richmond — Jan. 16, 1997
USDA Forest Service, Wallowa-Whitman NF — Date

Tom Rusch — Jan 23, 1997
Idaho Dept. of Fish and Game — Date

James W. Greer — Feb. 26, 1997
Oregon Dept. of Fish and Wildlife — Date

Dan C. Budd — Feb 21, 1997
Washington Dept. of Fish and Wildlife — Date

Allan E. Thomas — Jan. 24, 1997
Bureau of Land Management — Date

Duncan B. Gilchrist — March 4, 1997
Foundation for N. American Wild Sheep — Date

Enclosure

cc: Forest Supervisor, Payette NF
Forest Supervisor, Nez Perce NF

EXHIBIT "P"

WILLIAM G. MYERS III (ISB #5598)
HOLLAND & HART LLP
Suite 1400, U.S. Bank Plaza
101 South Capitol Boulevard
Post Office Box 2527
Boise, Idaho 83701
Telephone: (208) 342-5000
Facsimile: (208) 343-8869
wmyers@hollandhart.com

Attorneys for Amici Curiae
Idaho Wool Growers Association and Public Lands Council

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, et al. Plaintiffs, vs. U.S. FOREST SERVICE, Defendant.	Civil Action No. 4:07-cv-00151-BLW DECLARATION OF ROBERT M. RICHMOND

I, Robert M. Richmond, declare, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct:

1. I was employed by the United States Forest Service for 36 years until my retirement on March 28, 1997 at which time I was the Forest Supervisor of the Wallowa-Whitman National Forest. I had served in that capacity for nine and one-half years prior to my retirement.

2. I graduated from the University of Idaho with a Bachelor of Science degree in Forestry in 1961. I spent much of my career in range management on national grasslands and national forests in North Dakota, Montana, and Oregon, including service as Director of Range Management for the United States Forest Service Region 6.

3. In my capacity as the Wallowa-Whitman National Forest Supervisor, I signed a letter to the Idaho Wool Growers Association dated January 16, 1997, attached hereto as Exhibit 1. The intent of that letter was to hold domestic sheep operations harmless from any risk associated with the introduction of bighorn sheep into the Hells Canyon complex. The parties that signed the letter accepted any and all risk associated with disease transmission and death from domestic sheep and bighorn sheep interaction and that domestic sheep operators would not be held accountable or liable for any such disease transmission or death.

4. As stated in the letter, "This means that the Committee recognizes the existing domestic sheep operations in or adjacent to the Hells Canyon complex, on both National Forest and private lands, and accepts the potential risk of disease transmission and loss of bighorn sheep when bighorns invade domestic sheep operations." We inserted this language with the intention of including not only bighorn sheep and domestic sheep that might interact on grazing allotments on the Wallowa-Whitman National Forest but also on those portions of the Payette National Forest and Nez Perce National Forest within or adjacent to the Hells Canyon complex.

5. I was one of six signatories to the letter, Exhibit 1, and the only signatory on behalf of the Forest Service. The letter was copied to the Forest Supervisors for the Payette National Forest and Nez Perce National Forest. The reason that I was the only signatory on behalf of the three National Forests was because the Forest Service had decided around 1980 that the Forest Supervisor of the Wallowa-Whitman National Forest would supervise the Hells

Canyon National Recreation Area regardless of the fact that it covers land within the jurisdiction of other national forests in three different regions of the U.S. Forest Service. I was, therefore, authorized to sign the letter on behalf of the Nez Perce and Payette National Forests and did so knowing that the letter and its "hold harmless" language was intended to and in fact did apply to those national forests.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 26th day of April, 2007.

/s/ Robert M. Richmond
Robert M. Richmond

United States Department of Agriculture
Forest Service
Wallowa-Whitman National Forest
P. O. Box 907
Baker City, OR 97814

Reply to: 2210

Date: January 16, 1997

Idaho Woolgrowers Association
Mr. Stan Boyd, Executive Director
P. O. Box 2596
Boise, ID 83701

RECEIVED
MAR 1 1 1997
I. W. G. A.

Dear Mr. Boyd:

The effort to transplant bighorn sheep into historic habitat in Hells Canyon is a cooperative project involving the States of Idaho, Oregon, and Washington, The Foundation for North American Wild Sheep, the Forest Service, and the Bureau of Land Management. The Hells Canyon Bighorn Sheep Restoration Committee (the committee) is interested in having the support of the woolgrowers industry for this effort to repopulate parts of Hells Canyon with bighorn sheep.

The Committee understands that bighorns may occasionally migrate outside of their designated range and come into contact with domestic sheep. These bighorns will be considered "at risk" for potential disease transmission and death. There is also the potential for an exposed bighorn to leave the area and spread disease to other bighorn sheep. Under these conditions, the Idaho Department of Fish and Game, the Oregon Department of Fish and Wildlife, and the Washington Department of Wildlife will assume the responsibility for bighorn losses and further disease transmission in their respective states. The three Departments will also take whatever action is necessary to reduce further losses of bighorn sheep without adversely impacting existing domestic sheep operators. The enclosed map clearly delineates the project area within the Hells Canyon complex. Bighorns straying into currently active sheep allotments will be considered "at risk" by all of the Committee entities. This means that the Committee recognizes the existing domestic sheep operations in or adjacent to the Hells Canyon complex, on both National Forest and private lands, and accepts the potential risk of disease transmission and loss of bighorn sheep when bighorns invade domestic sheep operations.

EXHIBIT
1

The Committee will make every effort to keep interested parties informed about actions being considered by the Committee in its effort to repopulate Hells Canyon with bighorn sheep. We will provide all health information gathered on bighorn sheep to the woolgrowers industry and other interested parties.

Sincerely,

R M Richmond
USDA Forest Service, Wallowa-Whitman NF — Jan. 16, 1997 Date

Tom Rennick
Idaho Dept. of Fish and Game — JAN 23, 1997 Date

James W. Green
Oregon Dept. of Fish and Wildlife — Feb. 26, 1997 Date

Washington Dept. of Fish and Wildlife — Feb 21, 1997 Date

Allan E. Thomas
Bureau of Land Management — Jan. 24, 1997 Date

Duncan B. Gilchrist
Foundation for N. American Wild Sheep
Secretary — March 4, 1997 Date

Enclosure

cc: Forest Supervisor, Payette NF
Forest Supervisor, Nez Perce NF

EXHIBIT "Q"

2005 ANNUAL OPERATING INSTRUCTIONS FOR THE SMITH MOUNTAIN, SNAKE RIVER/INDIAN CREEK, DEEP CREEK, ECHOLS BUTTE, LOST CREEK, & SHEEP CREEK S&G ALLOTMENTS

These Annual Operating Instructions are a guide for implementing grazing management activities on the **Smith Mountain, Snake River/Indian Creek, Deep Creek, Echols Butte, Lost Creek, and Sheep Creek S&G Allotments** for the 2005 grazing season. This plan was developed with participation of the livestock permittee at the Annual Operating Instruction meeting held at the Council Ranger District Office on March 15, 2005. This plan is made part of the Term Grazing Permit as specified in Part 2, Number 8 (a) of the permit.

These instructions are a guideline for grazing management. Any changes in management from these instructions require approval by the Forest Service prior to implementation. Refer to Part 2 of your term grazing permit for general terms and conditions, which apply to these Annual Operating Instructions.

Grazing fees of $ 0.36/HM must be paid before livestock are authorized to enter the National Forest. Payment must be made to: USDA Forest Service, P.O. Box 894183, Los Angeles, California 90189-4183. The Council District Office must receive confirmation from the Citibank Lockbox that payment has been made prior to sheep entering the Forest.

AUTHORIZED USE:

Band #	Allotment	Livestock Numbers	Season
Bands #1& 2	Surdam on/off Allotment	1900 ewe/lamb	4/1 – 6/10
Band #1	Unload at Grouse Creek		
	Sheep Creek	950 ewe/lamb	6/14 - 7/13
	Smith Mountain	950 ewe/lamb	7/14 – 8/13
	Private Land	950 dry ewes	8/20 - 8/24
	Ship lambs from Cuprum		8/25
	Smith Mountain	950 dry ewes	8/26 - 10/2
Band #2	Unload at East Fork Lost Creek		
	Lost Creek	950 ewe/lamb	6/15 – 7/16
	Head of Rapid River	950 ewe/lamb	7/17 – 8/19
	Ship lambs from Railroad Saddle		8/20
	Private Land	950 dry ewes	8/21 - 8/25
	Smith Mountain	950 dry ewes	8/26 - 10/2

Band #3	Unload at Kleinschmidt		
	Snake River/Indian Creek	1200 ewe/lamb	5/6 – 7/31
	Deep Creek	1200 ewe/lamb	8/1 – 8/14
	Ship lambs from Cuprum		8/15
	Private Land	1200 dry ewes	8/16 – 8/20
	Smith Mountain	1200 dry ewes	8/21 – 10/15

TERMS AND CONDITIONS PERTAINING TO SEASON OF USE AND LIVESTOCK NUMBERS:

The District Ranger may modify the season of use and livestock numbers permitted on any given year. The season of use is especially dependent upon weather conditions (annual precipitation) which influences annual forage production and range readiness. The District Ranger's authority to modify term grazing permitted use is further described in Part 2, Section 8 (b) & (c) of your permit.

Turnout will not occur prior to range readiness. Range readiness is measured by soil moisture and plant growth. Soils may be damp, but not saturated, and should be firm to avoid excessive compaction due to livestock. Grass species must be a minimum of 6 inches in height and out of the boot stage. Arrowleaf balsamroot should be in bloom or past bloom. All animals must be off the Forest by October 15, 2005.

The use area move dates are tentative and may vary according to range conditions and utilization levels.

Notify the Forest Service at least 3 days before you turn onto the allotments.

Actual Use: The permittee is **required** to complete an "Actual Use" form, which is enclosed, and includes a record of livestock losses and the permittee's maintenance costs. The form accompanying this plan is for convenience. Any format that provides the information requested is acceptable.

Credits: All requests for refunds or credits for unused portion of grazing fees for Forest System Lands must be received in the Council Ranger District office by March 1, following the grazing season.

GRAZING PRESCRIPTION AND LIVESTOCK ROTATIONS:

The grazing prescriptions are designed to meet the resource needs of the soils and vegetation. The known or potential problem areas have been identified below, along with the respective mitigation measures designed to eliminate each adverse effect.

1. **Resource Concern:** Sheep use in the main stem of Rapid River. The meadow at the headwaters is of primary concern.

- **Mitigation Measure:** No bedding within 300 feet of the main stem of Rapid River. One crossing of sheep on the meadow in the head of Rapid River is authorized. One crossing is authorized lower in the drainage to access the Smith Mountain Allotment. Use is limited to 30% use on all types. Rapid River will be inspected one week following use in conjunction with the permittee. Sheep will be moved dependent upon the inspection finding.
- **Monitoring:** Range personnel and permittee will inspect utilization and stream crossings prior to grazing and one week after use. Inspect approximately 7/18 and 8/1 annually.

2. **Resource Concern:** Sheep use in the main stem of Granite Fork Creek. Of most concern is the crossing on F.S. Trail #187.
- **Mitigation Measure:** Sheep crossing on or below F.S. Trail #187 is not authorized. Use in the basin at the head of Granite Fork Creek is limited to one week. One crossing is authorized in the drainage to access the Deep Creek Allotment. This will be inspected once sheep enter the drainage.
- **Monitoring:** Range personnel will inspect utilization and Trail #187 crossing. Use limit of one week in drainage. Inspect approximately 8/15 annually.

3. **Resource Concern:** Sheep use in Copper Creek, Deep Creek and Indian Creek.
- **Mitigation Measure:** Use is restricted to the upper basin area of the Deep Creek subwatershed. Watering in the head of Copper Creek is limited to one time per location. This will be inspected once sheep enter the area. Bank stability will be monitored in Copper Creek and Deep Creek. Sheep use is not authorized in Indian Creek and it's tributaries in section 29, the south halves of sections 19 and 20, and the north half of section 30 in Township 21 North, Range 2 West, after the 15th of August.
- **Monitoring:** Range personnel will inspect utilization, amount of times sheep come to water, and stream bank stability, annually.

4. **Resource Concern:** 30% utilization on all upland sites.
- **Monitoring:** Range personnel will map utilization using height/weight methods.

Upland monitoring will occur in each grazing unit throughout the grazing season. Forage utilization will be based on height/weight measurements on key grass species. These include Mountain brome and Columbia needlegrass. Monitoring forage utilization on upland sites will begin two weeks after sheep enter the first grazing unit and will progress through the grazing season until the proper use criteria is reached or the term grazing season is over. This is estimated to be once every two weeks.

5. **Resource Concern:** 30% utilization on all riparian sites, or 4-6 inch stubble height or 10% maximum stream bank trampling.
- **Monitoring:** Riparian monitoring will occur on key riparian areas where sheep graze. Additional sites will be monitored during the grazing season. Streams not accessible to sheep will not be monitored for use. Monitoring will be conducted using stubble height, utilization and/or stream bank stability methods. Forage utilization in riparian areas will be based on key forage species. The method for collecting stubble height is at specified intervals, measure the stubble height of the key species nearest to the toe of the right foot and record on the Stubble Height form. Measurements will be taken along both sides of the stream. Key plant species to

be measured include Water sedge and Tufted hairgrass. In addition to forage utilization in riparian areas, the impacts of sheep use along stream banks will be monitored. This is generally referred to as trampling damage or mechanical damage of the stream bank. A maximum of 10% (of natural level) of the stream bank is allowed to be disturbed. Pace transects along the stream bank will be used to monitor stream bank disturbance.

Allowable Use Standards

Allowable use on uplands and riparian areas is 30%, which generally is equivalent to once over grazing. If proper use of 30% on forage is reached, the sheep will be moved to the next permitted grazing area or off the forest if all permitted areas have been grazed. The permittee is responsible for not exceeding the proper use criteria.

One time bedding and watering per location are authorized.

Areas of concern on the Smith Mountain allotment outside of anadromous drainages are along the trail between Bear Saddle and Smith Mountain. Avoid trailing along the Government trail in this area.

Salting

Salting is restricted to the following:

- No less than ¼ mile from water, and not be placed in meadow bottoms.
- Only at bed grounds.
- Placed at a minimum distance of 100 yards from roads and out of sight from roads, if possible.
- At least 1/4 mile from NIDGS sites.
- Should be moved yearly unless present salt ground is located in a rocky area where no vegetation grows.
- Must be contained and not placed directly on the ground.
- Unconsumed salt will be removed from the site.
- 1/4 mile from timber plantations with trees less than 15 feet tall. If this can't be accomplished, the District Range and Reforestation personnel will work with you to find acceptable locations.

Sheep Creek Allotment:

Band #1 will unload off trucks on upper Grouse Creek on 6/14. Sheep will not exceed 30% use moving throughout the allotment then move to the Smith Mountain Allotment approximately 7/13.

Lost Creek Allotment:

Band #2 will unload off trucks on the East Fork of Lost Creek on 6/15. Sheep will utilize available forage at 30% use throughout the Lost Creek Allotment then move into the head of Rapid River on the Smith Mountain Allotment approximately 7/16. The head of Lost Creek may be utilized, avoiding trailing and bedding on the slopes.

Smith Mountain Allotment:
Band #1 approximately 7/13 will cross over from the Sheep Creek Allotment at Town Creek Saddle to the Lick Creek Allotment and follow Forest Service Road 759 (avoiding the Northern Idaho Ground Squirrel sites in Butterfield Gulch, Hoo Hoo Gulch, and Cold Springs Creek) onto the Smith Mountain Allotment to Barrinaga Corrals, and over to the ridge between Lick Creek and Bear Creek, no further south than the new division fence between the Smith Mountain and Lick Creek allotments. The band will then move up the ridge into Cold Springs Creek, onto the Bear Creek drainage side of the ridge, onto Bear Saddle. **After August 15 use in the Bear Creek drainage will be restricted to the very headwaters. Sheep will be allowed to drink at the first water holes from the top of the drainage.** The band will then move into Lost Basin below Smith Mountain, and onto the ridge near Tripod Saddle, and trail down the ridge to Cuprum for shipping of lambs approximately 8/25.

Avoid all northern Idaho ground squirrel sites in Butterfield Gulch, Hoo Hoo Gulch, and Cold Springs Creek.

Band #2 will cross over from the Lost Creek Allotment at the head of Lick Creek into the head of Rapid River approximately 7/16. This band will use the headwaters of Rapid River following the mitigation measures prescribed for this drainage. This band will graze up towards Bear Saddle and then trail over to Railroad Saddle for shipping of lambs approximately 8/20.

After shipping lambs, all 3 bands of dry ewes will be combined west of Lost Basin, and graze the east side of the Smith Mountain Allotment until 10/2, following the sheep driveway off the forest through the Lick Creek, North Hornet, Mill Creek, Johnson Creek, Wildhorse/Crooked River, and East Pine/Rush Creek allotments.

Echols Butte Allotment:
This allotment will not be grazed in 2005.

Snake River/Indian Creek Allotment:
Use in Indian Creek will not be permitted below Trail #227 after August 15. Instead of using Section boundaries, the herder will keep sheep upstream of Trail #227 in the vicinity of Indian Creek to avoid affecting bull trout. This will result in the sheep crossing Indian Creek above Trail #227. Bull trout have not been located in this reach of Indian Creek, only downstream, near Bluejacket Mine. To ensure that sheep crossing in this stream reach will not adversely affect spawning bull trout, the Forest Service will survey the potentially affected reach a few days before sheep will cross the stream. If bull trout are located upstream of Trail #227 in Indian Creek, the Forest Service will ensure that the sheep cross upstream of any locations in which they might adversely affect bull trout. Regardless of whether or not bull trout are present upstream of Trail #227, the herder will ensure that the herd moves as rapidly as possible through the RHCA of Indian Creek. That is, they will ensure that sheep impacts to the RHCA are minimized.

Band #3 will be unloaded at Kleinschmidt Grade on 5/6. This band will move up the ridge system between Indian Creek and Hells Canyon Reservoir. The band will follow the ridge to Placer Basin then move over to the area south of Horse Mountain and stay on the Indian Creek

side of the ridge using the Camp Creek, Pepperbox Hill, and Smith Mountain areas. Then they will enter the Deep Creek Allotment and graze for approximately 2 weeks. Exiting Deep Creek, they will follow the route back to Horse Mountain and on to Lynes Saddle and ship lambs from Cuprum approximately 8/15. Grazing of plantations in the Indian Creek drainage will be monitored and coordinated with the Rangeland Specialist, permittee, and Silviculture representative.

Deep Creek Allotment:
Band #3 will enter this allotment coming over the ridge north of Lake Winifred. The band will use the upper reaches of Deep Creek, using the areas between the High Dive and Ritchie Gulch, and then they join bands 1 and 2.

MAINTENANCE OF RANGE IMPROVEMENTS:

All range improvements must be maintained prior to turning livestock into the unit scheduled for use. If an existing range improvement has been properly maintained but requires reconstruction, a cooperative effort can be made between the Forest Service and permittee to reconstruct the development, depending on material availability. Those projects to which the permittee contributes normally receive higher priority for funding by the Forest Service.

Maintenance of spring developments is vitally important to the health of your livestock and to the grazing allotment. If you are aware of spring developments that require reconstruction or extensive maintenance, please discuss this with your Rangeland Management Specialist.

You will need to work around the downfall trees at the head of Cold Springs Creek and are not authorized to cut a path through, as this is designated as lynx habitat.

MONITORING OF THE ANNUAL LIVESTOCK GRAZING ACTIVITY:

We are requiring you to report actual use information for each unit grazed because we are required to report this grazing use to the National Marine Fisheries Service (NMFS) and the US Fish and Wildlife Service (FWS). If you have any questions completing the form, please call Maura at 208-253-0100. **These forms need to be returned no later than November 1, 2005.**

MULTIPLE USE REQUIREMENTS:

All plantation grazing must be coordinated with the Forest Service Plantation Guards prior to grazing the plantations. The permittee is responsible for contacting the Forest Service prior to livestock accessing an area with plantations.

SPECIAL MANAGEMENT:

The permittee will be required to work closely with the Rangeland Specialist and herders to assure all proper use criteria are not exceeded. Additional time and effort will be required when sheep enter Rapid River, Granite Fork and Copper Creek. Any deviation from use requirements in this plan will result in immediate removal of sheep from the drainage.

Sheep and cattle will be allowed to graze in common in the Placer Basin to Smith Mountain areas and from Windy Ridge to the Snake River. Coordination is needed between the permittees to prevent miscommunications.

One known population of the ESA threatened Northern Idaho Ground Squirrel (NIDGS) is located on the Smith Mountain Allotment, east of Cold Springs Creek. This site must be avoided, as well as other sites in the vicinity, including Hoo Hoo Gulch, Butterfield Gulch, and west of Cold Springs Creek. Mitigation of livestock grazing effects includes avoiding grazing, bedding, or trailing through these areas, as well as no salting within ¼ mile of these sites. All Terrain Vehicles (ATVs) or Off Highway Vehicles (OHVs) are not authorized off roads near NIDGS sites. These sites will be shown to your sheepherders to prevent any accidental use of the areas.

In the event a designated mitigation measure fails to protect a species listed under the Endangered Species Act, a change in the authorized grazing activity will occur. If proper utilization levels are reached, then livestock will be moved to the next grazing area or off the forest. If livestock grazing does not comply with the terms and conditions of these Annual Operating Instructions, then the Forest Service policy and procedures dealing with administrative permit actions will be followed.

You are responsible for ensuring your herders are informed and understands the standards, guidelines, and other management direction in this plan.

EXHIBIT "R"

2006 ANNUAL OPERATING INSTRUCTIONS FOR THE SMITH MOUNTAIN, SNAKE RIVER/INDIAN CREEK, DEEP CREEK, ECHOLS BUTTE, LOST CREEK, & SHEEP CREEK S&G ALLOTMENTS

These Annual Operating Instructions are a guide for grazing management of the **Smith Mountain, Snake River/Indian Creek, Deep Creek, Echols Butte, Lost Creek, and Sheep Creek S&G Allotments** for the 2006 grazing season. This plan was developed with participation of the livestock permittee at the Annual Operating Instruction meeting held at the Council Ranger District Office on March 27, 2006. This plan is made part of the Term Grazing Permits as specified in Part 2, Number 8 (a) of the permit.

These instructions are a guideline for grazing management. It is necessary to contact the Forest Service if there are any changes or additions to these instructions through out the grazing season. Refer to Part 2 of your term grazing permit for general terms and conditions, which apply to these Annual Operating Instructions.

Grazing fees of $ 0.31/HM must be paid before livestock are authorized to enter the National Forest. Grazing fees must be paid prior to livestock entering the National Forest. Payment must be made to: USDA Forest Service, P.O. Box 894183, Los Angeles, California 90189-4183. The District office in Council must receive confirmation from Lockbox that payment has been made prior to sheep entering the Forest.

AUTHORIZED USE:

Band #	Allotment	Livestock Numbers	Season
Bands #1& 2	Surdam on/off Allotment	1900 ewe/lamb	4/1 – 6/16
Band #1	Unload at Grouse Creek		
	Sheep Creek	950 ewe/lamb	6/10 - 7/18
	Echols Butte	950 ewe/lamb	7/19 – 8/3
	Deep Creek	950 ewe/lamb	8/4 – 8/19
	Ship lambs from Cuprum		8/20
	Indian Creek	950 dry ewes	8/21 - 10/2
Band #2	Unload at East Fork Lost Creek		
	Lost Creek	950 ewe/lamb	6/18– 7/18
	Smith Mountain	950 ewe/lamb	7/19– 8/5
	Head of Rapid River	950 ewe/lamb	8/6 – 8/24
	Ship lambs from Railroad Saddle		8/25
	Smith Mountain	950 dry ewes	8/26 - 9/14
	Indian Creek	950 dry ewes	9/15 - 10/2
Band #3	Unload at Kleinschmidt		
	Snake River Breaks	1200 ewe/lamb	5/5 – 6/30
	Indian Creek	1200 ewe/lamb	7/1 – 8/14

Ship lambs from Cuprum		8/15
Deep Creek	1200 dry ewes	8/16 – 8/20
Smith Mountain	1200 dry ewes	8/21 – 10/15

TERMS AND CONDITIONS PERTAINING TO SEASON OF USE AND LIVESTOCK NUMBERS:

The District Ranger may modify the season of use and livestock numbers permitted on any given year. The season of use is especially dependent upon weather conditions (annual precipitation) which influences annual forage production and range readiness. Range readiness is measured by soil moisture and plant growth. Soils may be damp, but not saturated. They should be firm to avoid excessive compaction by livestock. Grass species other than bulbous bluegrass and cheatgrass must be a minimum of 6 inches in height. Arrowleaf balsamroot should be in bloom or past bloom. The District Ranger's authority to modify term grazing permitted use is further described in Part 2, Section 8 (b) & (c) of your permit.

These dates are tentative and may vary according to range conditions and utilization levels.

Notify the Forest Service at least 3 days before you turn onto the allotments.

Extensions: Any requests for extension must be made two weeks before the off date. If forage is determined by the Forest Service to be available, an extension may be granted. Grazing fees for the extended time must be paid prior to the beginning of the extension.

Actual Use: The permittee is **required** to complete an "Actual Use" form, which is enclosed, and includes a record of livestock losses and the permittee's maintenance costs. The form accompanying this plan is for convenience. Any format that provides the information requested is acceptable.

Credits: All requests for refunds or credits for unused portion of grazing fees for Forest System Lands must be received in the Council Ranger District office by March 1, following the grazing season.

GRAZING PRESCRIPTION AND LIVESTOCK ROTATIONS:

The grazing prescriptions are designed to meet the resource needs of the soils and vegetation. The known or potential problem areas have been identified below, along with the respective mitigation measures designed to eliminate each adverse effect.

1. **Resource Concern:** Sheep use in the main stem of Rapid River. The meadow at the headwaters is of primary concern.

- **Mitigation Measure:** No bedding within 300 feet of the main stem of Rapid River. One crossing of sheep on the meadow in the head of Rapid River is authorized. One crossing is

authorized lower in the drainage to access the Smith Mountain Allotment. Use is limited to 30% use on all types. Rapid River will be inspected one week following use in conjunction with the permittee. Sheep will be moved dependent upon the inspection finding.

- **Monitoring:** Range personnel and permittee will inspect utilization and stream crossings prior to grazing and one week after use. Inspect approximately 7/18 and 8/1 annually.

2. **Resource Concern:** Sheep use in the main stem of Granite Fork Creek. Of most concern is the crossing on F.S. Trail #187.

- **Mitigation Measure:** Sheep crossing on or below F.S. Trail #187 is not authorized. Use in the basin at the head of Granite Fork Creek is limited to one week. One crossing is authorized in the drainage to access the Deep Creek Allotment. This will be inspected once sheep enter the drainage.
- **Monitoring:** Range personnel will inspect utilization and Trail #187 crossing. Use limit of one week in drainage. Inspect approximately 8/15 annually.

3. **Resource Concern:** Sheep use in Copper Creek, Deep Creek and Indian Creek.

- **Mitigation Measure:** Use is restricted to the upper basin area of the Deep Creek subwatershed. Watering in the head of Copper Creek is limited to one time per location. This will be inspected once sheep enter the area. Bank stability will be monitored in Copper Creek and Deep Creek. Sheep use is not authorized in Indian Creek and it's tributaries in section 29, the south halves of sections 19 and 20, and the north half of section 30 in Township 21 North, Range 2 West, after the 15th of August.
- **Monitoring:** Range personnel will inspect utilization, amount of times sheep come to water, and stream bank stability, annually.

4. **Resource Concern:** 30% utilization on all upland sites.

- **Monitoring:** Range personnel will map utilization using height/weight methods.

Upland monitoring will occur in each grazing unit throughout the grazing season. Forage utilization will be based on height/weight measurements on key grass species. These include Mountain brome and Columbia needlegrass. Monitoring forage utilization on upland sites will begin two weeks after sheep enter the first grazing unit and will progress through the grazing season until the proper use criteria is reached or the term grazing season is over. This is estimated to be once every two weeks.

5. **Resource Concern:** 30% utilization on all riparian sites, or 4-6 inch stubble height or 10% maximum stream bank trampling.

- **Monitoring:** Riparian monitoring will occur on key riparian areas where sheep graze. Additional sites will be monitored during the grazing season. Streams not accessible to sheep will not be monitored for use. Monitoring will be conducted using stubble height, utilization and/or stream bank stability methods. Forage utilization in riparian areas will be based on key forage species. The method for collecting stubble height is at specified intervals, measure the stubble height of the key species nearest to the toe of the right foot and record on the Stubble Height form. Measurements will be taken along both sides of the stream. Key plant species to be measured include Water sedge and Tufted hairgrass. In addition to forage utilization in riparian areas, the impacts of sheep use along stream banks will be monitored. This is generally

referred to as trampling damage or mechanical damage of the stream bank. A maximum of 10% (of natural level) of the stream bank is allowed to be disturbed. Pace transects along the stream bank will be used to monitor stream bank disturbance.

Allowable Use Standards

Allowable use on uplands and riparian areas is 30%, which generally is equivalent to once over grazing. If proper use of 30% on forage is reached, the sheep will be moved to the next permitted grazing area or off the forest if all permitted areas have been grazed. The permittee is responsible for not exceeding the proper use criteria.

One time bedding and watering per location are authorized.

Areas of concern on the Smith Mountain allotment outside of anadromous drainages are along the trail between Bear Saddle and Smith Mountain. Avoid trailing along the Government trail in this area.

Salting

Salting is restricted to the following:

- No less than ¼ mile from water, and not be placed in meadow bottoms.
- Only at bed grounds.
- Placed at a minimum distance of 100 yards from roads and out of sight from roads, if possible.
- At least 1/4 mile from NIDGS sites.
- Should be moved yearly unless present salt ground is located in a rocky area where no vegetation grows.
- Must be contained and not placed directly on the ground.
- Unconsumed salt will be removed from the site.
- 1/4 mile from timber plantations with trees less than 15 feet tall. If this can't be accomplished, the District Range and Reforestation personnel will work with you to find acceptable locations.

Sheep Creek Allotment:

Band #1 will unload off trucks on upper Grouse Creek on 6/10. Sheep will not exceed 30% use moving throughout the allotment then move through the Lost Creek Allotment to the Echols Butte Allotment approximately 7/18.

Lost Creek Allotment:

Band #1 will move through the Lost Creek Allotment approximately 7/18, and begin grazing the Echols Butte Allotment.

Band #2 will unload off trucks on the East Fork of Lost Creek on 6/18. Sheep will utilize available forage at 30% use throughout the Lost Creek Allotment then move into the head of

Lick Creek on the Smith Mountain Allotment approximately 7/18. The head of Lost Creek may be utilized, avoiding trailing and bedding on the slopes.

Smith Mountain Allotment:
Avoid all Northern Idaho ground squirrel sites in Butterfield Gulch, Hoo Hoo Gulch, and Cold Springs Creek.

Band #2 will cross over from the Lost Creek Allotment at the head of Lick Creek approximately 7/19. The head of Lick Creek will be utilized, avoiding trailing and bedding on west slopes, then moved into the head of Rapid River by 8/6. **After August 15, use of the Bear Creek drainage will be restricted to the very headwaters. Sheep will be allowed to drink at the first water holes from the top of the drainage.** This band will use the headwaters of Rapid River from approximately 8/6 through 8/24, following the mitigation measures prescribed for this drainage. This band will trail over to Boulder Creek for shipping of lambs.

After shipping lambs, all 3 bands of dry ewes will be combined west of Lost Basin, following prescribed mitigation measures for use of Indian Creek, and graze the east side of the Smith Mountain Allotment until 10/1, following the sheep driveway off the forest through the Lick Creek, North Hornet, Mill Creek, Johnson Creek, Wildhorse/Crooked River, and East Pine/Rush Creek allotments.

Echols Butte Allotment:
Band #1 will graze this allotment 7/19 through 8/3, following prescribed mitigation measures. Approximately 8/4 they will move to the Deep Creek Allotment.

Snake River/Indian Creek Allotment:
Use in Indian Creek will not be permitted below Trail #227 after August 15. Instead of using Section boundaries, the herder will keep sheep upstream of Trail #227 in the vicinity of Indian Creek to avoid affecting bull trout. This will result in the sheep crossing Indian Creek above Trail #227. Bull trout have not been located in this reach of Indian Creek, only downstream, near Bluejacket Mine. To ensure that sheep crossing in this stream reach will not adversely affect spawning bull trout, the Forest Service will survey the potentially affected reach a few days before sheep will cross the stream. If bull trout are located upstream of Trail #227 in Indian Creek, the Forest Service will ensure that the sheep cross upstream of any locations in which they might adversely affect bull trout. Regardless of whether or not bull trout are present upstream of Trail #227, the herder will ensure that the herd moves as rapidly as possible through the RHCA of Indian Creek. That is, they will ensure that sheep impacts to the RHCA are minimized.

Band #3 will be unloaded at the bottom of Kleinschmidt Grade on May 5. This band will graze the ridge system between Indian Creek and Hells Canyon Reservoir (Snake River breaks). The band will use the Windy Point, Ross Basin, Lime Point and Indian Creek areas, crossing Indian Creek at Cuprum, using the East side of Indian Creek. They will cross Indian Creek back over to the west side at Land Ore, and graze Horse Mountain. Lambs will be shipped from Cuprum 8/15. The dry ewes will then move to the Deep Creek Allotment approximately 8/16.

Deep Creek Allotment:
Band #1 will move into this allotment approximately 8/4 and graze until 8/19, following prescribed mitigation measures. Approximately 8/20 the sheep will move to Cuprum for shipping.

Band #3 will enter this allotment coming over the ridge north of Lake Winifred. The band will use the Six Lake Basin and Rose Basin areas until 10/1, following prescribed mitigation in the Granite Creek headwaters, and then they join bands 1 and 2.

MAINTENANCE OF RANGE IMPROVEMENTS:

All range improvements must be maintained prior to turning livestock into the unit scheduled for use. If an existing range improvement has been properly maintained but requires reconstruction, a cooperative effort can be made between the Forest Service and permittee to reconstruct the development. Those projects to which the permittee contributes normally receive higher priority for funding by the Forest Service.

Maintenance of structural range improvements is the responsibility of the permittee. Standards to which your assigned improvements are to be maintained are explained in Part 3 of your Term Grazing Permit and are attached to this annual operating plan. Improvements in the unit to be grazed must be maintained prior to cattle entering the unit. The fences need to be maintained prior to cattle being on either side of the fence. Nonuse does not relieve a permittee from maintenance responsibility. If an existing range improvement has been properly maintained but requires reconstruction, a cooperative effort may be made between the Forest Service and the permittee to reconstruct the development, depending on the availability of materials. Those projects to which the permittee contributes, normally receive higher priority for funding by the Forest Service.

Maintenance of spring developments is vitally important to the health of your livestock and to the grazing allotment. If you are aware of spring developments that require reconstruction or extensive maintenance, please discuss this with Maura Laverty, your Rangeland Management Specialist.

You will need to work around the downfall trees at the head of Cold Springs Creek and are not authorized to cut a path through, as this is designated as lynx habitat.

MONITORING OF THE ANNUAL LIVESTOCK GRAZING ACTIVITY:

We are requiring you to report actual use information for each unit grazed because we are required to report this grazing use to the National Marine Fisheries Service (NMFS) and the US Fish and Wildlife Service (FWS). If you have any questions completing the form, please call Maura at 208-253-0100. **These forms need to be returned no later than November 1, 2006.**

MULTIPLE USE REQUIREMENTS:

All plantation grazing must be coordinated with the Forest Service Plantation Guards prior to grazing the plantations. The permittee is responsible for contacting the Forest Service prior to livestock accessing an area with plantations.

SPECIAL MANAGEMENT:

The permittee will be required to work closely with the Rangeland Specialist and herders to assure all proper use criteria are not exceeded. Additional time and effort will be required when sheep enter Rapid River, Granite Fork and Copper Creek. Any deviation from use requirements in this plan will result in immediate removal of sheep from the drainage.

Sheep and cattle will be allowed to graze in common in the Placer Basin to Smith Mountain areas and from Windy Ridge to the Snake River. Coordination is needed between the permittees to prevent miscommunications.

One known population of the ESA threatened Northern Idaho Ground Squirrel (NIDGS) is located on the Smith Mountain Allotment, east of Cold Springs Creek. This site must be avoided, as well as other sites in the vicinity, including Hoo Hoo Gulch, Butterfield Gulch, and west of Cold Springs Creek. Mitigation of livestock grazing effects includes avoiding grazing, bedding, or trailing through these areas, as well as no salting within ¼ mile of these sites. All Terrain Vehicles (ATVs) or Off Highway Vehicles (OHVs) are not authorized off roads near NIDGS sites. These sites will be shown to your sheepherders to prevent any accidental use of the areas.

In the event a designated mitigation measure fails to protect a species listed under the Endangered Species Act, a change in the authorized grazing activity will occur. If proper utilization levels are reached, then livestock will be moved to the next grazing area or off the forest. If livestock grazing does not comply with the terms and conditions of these Annual Operating Instructions, then the Forest Service policy and procedures dealing with administrative permit actions will be followed.

You are responsible for ensuring your herders are informed and understands the standards, guidelines, and other management direction in this plan.

Hay/Straw: The weed seed free program for National Forests in Idaho is in effect. All hay, straw or mulch used on the National Forest must be certified by cooperating Idaho State Department of Agriculture officials as being noxious weed or noxious weed seed free.