



File Code: 1570-1

Date: May 21, 2007

Ronald W. Shirts
Shirts Brothers Sheep
1839 Weiser River Road
Weiser, ID 83672

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Dear Mr. Shirts:

We have received your Notice of Appeal and Request for Partial Stay of specified elements of the Smith Mountain Term Grazing Permit Modification #2 and 2007 Annual Operating Instructions (AOI) issued on May 8, 2007 by Council District Ranger Mary Farnsworth to Ron Shirts of Shirts Brothers Sheep. The appeal and request for stay have been properly filed within the required time frame. This letter acknowledges receipt of the appeal and responds to the Request for Partial Stay.

DISCUSSION ON REQUEST FOR PARTIAL STAY

The applicable regulations governing appeals of Forest Service decisions related to administration of term grazing permits provide that the Forest Service decision appealed may be implemented during the appeal process, unless the Reviewing Officer grants a stay of implementation (36 CFR § 251.91(a)). The Reviewing Officer shall not accept any request for a stay of a decision that is not scheduled to be implemented while the appeal is pending.

This appeal pertains to portions of the Smith Mountain Term Grazing Permit Modification #2 and the 2007 AOI for the Smith Mountain and Surdam On/Off S&G Allotments. (1) You have requested 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 Hells Canyon National Recreation Area (HCNRA) and on the west half of the Smith Mountain Allotment. (2) You have also requested a stay of provisions in the 2007 AOI. Specific items for which a stay has been requested include:

- (A) “Non Use” for portions of the Smith Mountain allotment, which precludes use by two of the three scheduled bands of sheep for the period between June 18, 2007 (sic) and October 15, 2007. Your appeal indicates you believe this beginning date is not correct. The Grazing Permit authorizes 1,200 ewe/lambs between May 16 and August 10;
- (B) Authorization of 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. Your appeal does not seek a stay of the authorized use of the one band, but seeks a stay of non use for the other portions of the Smith Mountain allotment.



- (C) Authorization of 27 head months within the Surdam allotment which equates to one band rather than the permitted two bands of sheep for the period 4/1 – 6/16. However, the Decision being appealed did not modify the grazing use in the Surdam Allotment. Your appeal does not seek a stay of the authorized use of the one band, but seeks a stay of any limitation on use of the Surdam allotment;
- (D) Authorization of trailing of one band of sheep via the Salmon River stock driveway off of the Payette National Forest for the period 10/1 – 10/10. Your appeal does not seek a stay;
- (E) Authorization of the thirteen management practices, identified in the April 19th letter by Shirts Brothers Sheep. Your appeal does not seek a stay;
- (F) Authorization of a pack string, but no authorization of horse use. The Decision did not modify the horse use in the Smith Mountain Allotment.

I will only consider stay requests (2) (A) and (2) (B). Stay Request (2) (D) is not accepted for consideration since the trailing of sheep will not begin until after the final appeal decision is issued. I am not considering Stay Request (2) (C) because the Decision being appealed does not alter your permitted use for the Surdam Allotment. I am not considering Stay Request (2) (F) because the District Ranger did not modify your permitted horse use.

Management Need to Preclude Sheep

The Payette National Forest has an urgent need to preclude domestic sheep from grazing on the very high risk areas within the Smith Mountain Allotment. The urgency is based upon the need to prevent contact between domestic sheep and bighorns which can reduce the risk of potential disease transmission from domestic sheep to bighorn sheep. Your appeal asserts that recent telemetry data does not show bighorn sheep in the Smith Mountain Allotment since 2002, and disputes the potential for disease transmission from domestic sheep to bighorn sheep. Also, you suggest that no changes should be made in grazing practices until formal environmental analyses have been completed. I will address each of these allegations in turn.

Notwithstanding the lack of telemetry data showing bighorns in the Smith Mountain Allotment in recent years, bighorns and signs of bighorn presence have been detected within the Smith Mountain Allotment by Forest employees this spring. Furthermore, the lack of recent telemetry data showing presence of bighorns in the Smith Mountain Allotment over the last few years does not mean that bighorns are not present it only means that radio collared bighorns are not present. Only a small percentage of the herd is fitted with radio collars, and the failure to detect collared bighorns does not demonstrate lack of presence. Past history shows significant use of the Smith Mountain Allotment by bighorns, and given the close proximity of the herd it is predicted that use will continue.

Also, a significant number of collared bighorns that were previously detected in the Smith Mountain Allotment have died, leaving an even smaller sample of collared bighorns to represent

patterns of use by the bighorn herd. Telemetry data show that bighorn sheep use of the western portion of the allotment overlaps use by domestic sheep, indicating a high probability of contact. In fact, the entire McGraw population of bighorns, which utilized habitat within the Smith Mountain Allotment, is now considered extirpated. The greatest declines in the Hells Canyon bighorn populations have been on those areas in close proximity to domestic sheep.

Although you have agreed to implement 13 additional management practices to try to prevent contact between domestic sheep and bighorns, past sheep herding practices have not been totally effective. Last winter, two strays from your bands remained on the allotment until February, and may have come in contact with bighorns. Although I recognize that you are willing to take on additional herding practices to maintain separation, the effectiveness of the additional practices has not been monitored and proven effective. Given the gregarious nature of bighorns and domestics, and the lack of information on the effectiveness of your proposed management practices, I believe it critical to ensure separation this season by precluding domestics from the western portion of the Smith Mountain Allotment. Moreover, if management practices are not effective in maintaining separation, there are no adequate contingencies in place to prevent bighorns that do come in contact with domestic sheep from returning to the bighorn herd where disease could be transmitted.

Science Panel's Review of Risk Analysis of Disease Transmission

The Science Panel that convened to review "The Risk Analysis of Disease Transmission between Domestic Sheep and Bighorn Sheep on the Payette National Forest" (Risk Analysis) agreed that 1a) "Scientific observation and field studies demonstrate that 'contact' between domestic sheep and bighorn sheep is possible under range conditions. This contact increases risk of subsequent bighorn sheep mortality and reduced recruitment, primarily due to respiratory disease." 1b) "The complete range of mechanisms/causal agents that lead to epizootic disease events cannot be conclusively proven at this point." 1c) "Given the previous two statements, it is prudent to undertake management to prevent contact between these species." After consideration of these three key points, I have concluded that the most prudent course of action is to maintain separation between the two species and thereby reduce the risk of disease transmission.

Forest Service Chief's Forest Plan Revision Appeal Decision

In his March 9, 2005 appeal decision on the revised Forest Plan, the Chief of the Forest Service found that the Payette National Forest did not complete a sufficient analysis to ensure compliance with wildlife viability requirements in regulations implementing the National Forest Management Act (NFMA), and with requirements of the Hells Canyon National Recreation Act (HCNRA) to protect wildlife, when authorizing domestic sheep grazing on the Forest. Regardless of commitments by the State of Idaho to not allow the introduction of bighorns to affect domestic sheep operations, the Forest Service is still required to comply with applicable Federal Laws. The Council District Ranger's decision to preclude grazing on the western portion of the Smith Mountain Allotment is consistent with the Chief's direction to the Payette National Forest to complete additional environmental analysis to insure compliance with these Federal Laws.

While this analysis is being completed this year, the steps being undertaken to insure separation between domestic sheep and bighorns are necessary to maintain the environmental status quo. The analysis will indicate the management direction that may be necessary to reduce or eliminate contact, thus decreasing the possibility of disease transmission. In the interim, insuring that separation is maintained provides assurance that serious damage to the bighorn population does not occur before the analysis can be completed to demonstrate the precise management practices required to protect the bighorn population in the long term. Given that the analysis completed for the Forest Plan Revision was found inadequate by the Chief of the Forest Service, the Payette National Forest is required to maintain the environmental status quo pending the completion of that analysis. While it is recognized that limiting domestic sheep use imposes substantial financial hardship on the permittee, there is potential for significant environmental damage to the bighorn population if grazing is allowed to continue as it has in the past, without the benefit of a complete environmental analysis.

The District Ranger's decision to not authorize domestic sheep grazing in very high risk areas within the Smith Mountain Allotment reduces potential for disease transmission between the two species pending completion of the Supplement to the 2003 Environmental Impact Statement for the Forest Plan Revision ordered by the Chief. The Analyses completed thus far in the Risk Analysis and by the Science Panel demonstrate a substantial risk to bighorn sheep, which warrants the measures undertaken by the District Ranger pending completion of the formal analysis.

DECISION ON REQUEST FOR STAY

Therefore, I am denying your request for stay from the District Ranger's Decision dated May 8, 2007. It is recognized that denial of the stay may preclude meaningful review of portions of the Decision, since the permittee will be affected by parts of the Decision before a final appeal decision is issued. However, the effects to the appellant are outweighed by the requirement to take steps to insure there are no adverse effects to bighorn sheep populations pending completion of the environmental analysis ordered by the Chief of the Forest Service in his Appeal Decision on the Revised Forest Plan. Final resolution of your appeal will continue in accordance with the time frames set forth in the appeal regulations at 36 CFR Subpart C. This denial of your request for stay may reviewed by the Regional Forester at his discretion under 36 CFR 251.91(k).

APPEAL PROCESS

Your appeal will be processed in accordance with the provisions of 36 CFR § 251. The Council District Ranger will complete a responsive statement by close of business, Friday, May 25, 2007, and a copy will be sent to you. You will have 20 days from the date the responsive statement is postmarked to file a reply with this office. You must send a copy of your reply to Appeal Reviewing Officer Suzanne Rainville and District Ranger Mary Farnsworth.

Questions regarding the processing of your appeal should be directed to Pete Grinde, Payette National Forest Range Program Manager, at (208) 348-0338.

Sincerely,

/s/ Suzanne C. Rainville
SUZANNE C. RAINVILLE
Forest Supervisor

cc: Jack G. Troyer, W. Alan Schroeder Esq., Mary Farnsworth, Pete Grinde, Priscilla McLain, Richard T Forsman, Janet Thorsted