

Marc D. Fink (ID Bar # 5367)
Center for Biological Diversity
4515 Robinson Street
Duluth, Minnesota 55804
Tel: 218-525-3884
Fax: 218-525-3857
mfink@biologicaldiversity.org

Todd Tucci (ID Bar # 6526)
Advocates for the West
P.O. Box 1612
Boise, Idaho 83701
Tel: 208-342-7024
Fax: 208-342-8286
ttucci@advocateswest.org

Counsel for Plaintiffs

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

CENTER FOR BIOLOGICAL DIVERSITY, and)
WESTERN WATERSHEDS PROJECT,)
)
 Plaintiffs,)
)
 v.)
)
 U.S. SHEEP EXPERIMENT STATION;)
 U.S. DEPARTMENT OF AGRICULTURE;)
 AGRICULTURAL RESEARCH SERVICE;)
 and U.S. FOREST SERVICE,)
)
 Defendants.)
_____)

Case No. 07-279

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief. Plaintiffs Center for Biological Diversity and Western Watersheds Project seek a declaration that Defendants have

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violated and continue to violate federal laws, under the causes of action alleged below, in authorizing, permitting, and allowing the grazing of sheep on roughly 100,000 acres of federal land utilized by the U.S. Sheep Experiment Station in eastern Idaho and southwest Montana. Plaintiffs also seek injunctive relief to redress the injuries caused by these violations of law.

JURISDICTION AND VENUE

2. Jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1346, because this action involves the United States as defendant, and arises under the laws of the United States, including the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*; the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701, *et seq.*, the Public Rangelands Improvement Act, 43 U.S.C., § 1901, *et seq.*; and applicable Forest Service and Bureau of Land Management regulations. An actual, justiciable controversy exists between Plaintiffs and Defendants. The requested relief is proper under 28 U.S.C. § 2201-02 and 5 U.S.C. §§ 705 & 706. The challenged agency actions are final and subject to this Court’s review under 5 U.S.C. §§ 702, 704, and 706.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, Defendants and the majority of the affected public lands and resources are located in this judicial district, and Plaintiffs have members in the district.

4. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 701.

PARTIES

5. Plaintiff Center for Biological Diversity is a non-profit corporation with over 35,000 members dedicated to the preservation, protection, and restoration of biodiversity and ecosystems throughout the world. The Center works to insure the long-term health and viability of animal and plant species across the United States and elsewhere, and to protect the habitat these species need to survive.

6. Western Watersheds Project is an Idaho non-profit conservation group, headquartered at its Greenfire Preserve located on the East Fork Salmon River, near Clayton in Custer County, Idaho. The Greenfire Preserve is a former cattle ranch, which Western Watersheds manages to promote the restoration of native habitats and protection of wildlife species there; to educate the public about native habitat restoration, wildlife protection, and other environmental issues; and to carry out science-based advocacy in the region.

7. Western Watersheds has over 1400 members plus additional volunteers and supporters, located in Idaho and around the United States; as well as professional staff in Idaho, Utah, and Wyoming. Western Watersheds, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout Idaho and the West, including the lands at issue here.

8. Plaintiffs' members use and enjoy the public lands of eastern Idaho and southwest Montana for hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, and recreational activities. Plaintiffs' members derive recreational, inspirational, religious, scientific, educational, and aesthetic benefit from their

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activities within these areas. Plaintiffs' members intend to continue to use and enjoy these areas frequently and on an ongoing basis in the future, including this summer.

9. The aesthetic, recreational, scientific, educational and religious interests of Plaintiffs' members have been and will continue to be adversely affected and irreparably injured if Defendants continue to authorize livestock grazing and related activities without conducting adequate environmental analyses or insuring proper protection for wildlife and other resources. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under NEPA, the Federal Land Policy and Management Act, agency regulations, and the APA. The injuries would be redressed by the relief sought.

10. Defendant United States Sheep Experiment Station ("USSES") is located in the upper Snake River plain at the foothills of the Centennial Mountains, approximately six miles north of Dubois, Idaho, which is the Clark County seat. The USSES headquarters comprises 27,930 acres of land in Clark County. USSES owns two additional ranch properties in Clark County that are used for sheep grazing: the 2,600-acre Humphrey Ranch and the 1,200-acre Henninger Ranch. USSES also has approximately 16,600 acres of land in the Centennial Mountains of Montana.

11. Defendant United States Department of Agriculture oversees the activities of the USSES, Agricultural Research Service and Forest Service.

12. Defendant Agricultural Research Service conducts research on locations across the country, including the USSES.

13. Defendant United States Forest Service is an agency of the Department of Agriculture.

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SUMMARY OF FACTS AND GENERAL ALLEGATIONS

The Greater Yellowstone Ecosystem

14. The region from Yellowstone National Park to the Yukon is widely recognized as comprising a vitally important stronghold for the world's remaining wildlands and biodiversity, and the Greater Yellowstone Ecosystem is a significant component of this region.

15. The Greater Yellowstone Ecosystem encompasses millions of acres across eastern Idaho, southwest Montana, and northwest Wyoming, including two national parks, seven national forests, a dozen wilderness areas, and the headwaters to several of the United States best known rivers. Over 75% of the Greater Yellowstone Ecosystem consists of federal, public lands.

16. The Greater Yellowstone Ecosystem is one of the few remaining places in the United States where nearly all the species of plants and animals that were here prior to the arrival of Europeans to North America still survive. The Greater Yellowstone Ecosystem contains the greatest concentration of large mammals in the lower 48 states, and is one of the few temperate ecosystems where ecological processes such as predator-prey interactions are still in place. Elk, bison, bighorn sheep, grizzly bears, lynx, wolves, and wolverines are all found in this Ecosystem.

17. One of the national forests included within the Greater Yellowstone Ecosystem is the Caribou-Targhee National Forest, which is located primarily in southeastern Idaho.

Vegetation on the Caribou-Targhee National Forest ranges from aspen, maple, Douglas-fir, and lodgepole pine forests to vast expanses of sagebrush steppe grasslands and mountain meadows. More than 334 vertebrate species reside on the Forest, including grizzly bears, lynx, wolves, wolverines, moose, and mountain goats.

18. From 1970 to 2000, the human population in the Greater Yellowstone Ecosystem increased by 61%. Increased human populations, limited land use planning, livestock grazing, proposed energy development, and increases in outdoor recreation all contribute to threaten the ecological integrity of the Greater Yellowstone Ecosystem, including the wildlife.

Grizzly Bears in the Greater Yellowstone Ecosystem

19. Grizzly bears presently remain in only about one percent of their historic range in the lower 48 states, with their population reduced from more than 50,000 to roughly 1,000 bears. What was once a large contiguous population of grizzly bears has been reduced to a few isolated populations in Idaho, Montana, Wyoming, and Washington.

20. In the Greater Yellowstone Ecosystem, approximately 400 to 600 bears remain in isolated habitat. For their long-term survival, the grizzly bears in the Greater Yellowstone Ecosystem must be able to migrate and intermix with other remaining grizzly bear populations in Idaho and Montana in order to maintain adequate genetic diversity.

21. The Caribou-Targhee National Forest in southeast Idaho provides vitally important habitat for the Greater Yellowstone grizzly bear population. The establishment and protection of corridors and linkage habitat between the Greater Yellowstone Ecosystem and the high quality habitat within central Idaho is essential for long-term grizzly bear viability.

22. The Centennial Mountain Range along the Idaho-Montana border provides a vital habitat connection for the large predators and wildlife of the Greater Yellowstone Ecosystem, including the grizzly bear.

23. The grizzly bears in the Greater Yellowstone Ecosystem face significant threats to their survival and recovery because of the small size of the population, the isolated habitat,

significant fluctuations in mortality rates, inadequate habitat protection, genetic risks, and major threats to key food sources. Nonetheless, in March, 2007, the United Fish and Wildlife Service announced that the Greater Yellowstone Ecosystem grizzly bear population is now recovered. This determination has been judicially challenged by Plaintiffs and other organizations.

Lynx in the Greater Yellowstone Ecosystem

24. Populations of Canada lynx are at low densities within the lower 48 states, and in 2000 the lynx was listed as a threatened species under the Endangered Species Act. The United States Fish and Wildlife Service determined that lynx are threatened by the inadequacy of existing regulatory mechanisms, including the management direction in current National Forest land and resource management plans. The lack of protection for lynx in the Forest Service's land and resource management plans render these plans inadequate to protect the species.

25. Federal land management assumes the largest single role in the conservation and recovery of the lynx in the lower 48 states because of the preponderance of lynx habitat types on Federal lands, particularly in the western United States.

26. The United States Fish and Wildlife Service has identified six core areas in the lower 48 states as essential to lynx recovery, including the Greater Yellowstone Ecosystem. Southwest Montana outside of the Greater Yellowstone area is also viewed by the Fish and Wildlife Service as a secondary area for lynx recovery.

27. According to the United States Fish and Wildlife Service, there are over a million acres of lynx habitat on the Targhee National Forest, which includes over 50% of the Forest.

28. According to the United States Fish and Wildlife Service, of the 145 grazing allotments on the Targhee National Forest, 100 are within lynx habitat.

29. Lynx have large home ranges and move long distances. Connected forested habitats are essential to allow lynx to move long distances in order to find food, cover, and mates.

Wolves in the Greater Yellowstone Ecosystem

30. Early settlers to the West severely depleted and in some instances extirpated the populations of bison, deer, elk, bighorn sheep, pronghorn antelope and moose, which had all been important prey for wolves. Wolves therefore also preyed on the domestic sheep and cattle that had been introduced into the West. In response, ranchers and federal agencies trapped, poisoned and dug wolf pups from their dens, leading to the wolf's near extinction in the lower 48 states in the early part of the 20th century.

31. Gray wolves were eventually listed under the Endangered Species Act as threatened in Minnesota and as endangered elsewhere in the lower 48 states.

32. By about 1930, the wolf population was extirpated from the Greater Yellowstone Ecosystem, with the last wolf killed east of the national park in 1940. In 1995, the United States Fish and Wildlife Service reintroduced gray wolves in the Yellowstone area, as well as central Idaho.

33. The Yellowstone and Idaho wolves were designated as "non-essential, experimental" under the Endangered Species Act, providing less protection for the endangered wolves.

34. Since their reintroduction, the gray wolf populations in the Greater Yellowstone Ecosystem have expanded, and the Ecosystem now supports approximately 300 wolves. The

United States Fish and Wildlife Service recently proposed to remove the gray wolf from the protections of the Endangered Species Act.

Bighorn Sheep in the Greater Yellowstone Ecosystem

35. Three subspecies of bighorn sheep are native to North America—California, desert, and Rocky Mountain. Rocky Mountain bighorn is the subspecies native to the Greater Yellowstone Ecosystem, and thus is the subspecies at issue here.

36. Bighorn sheep were once abundant and widely distributed across the western United States. In the late 1800's, bighorn populations severely declined, and their range was severely reduced, due to loss of habitat, overhunting, competition with livestock for forage, and diseases transmitted by domestic livestock. The total number of bighorn sheep in the western United States is now estimated at less than 10% of pre-settlement numbers, distributed over an area less than one-third of its pre-settlement distribution. Most existing herds are relatively isolated and small (less than 100 animals) and susceptible to extirpation, and at least half are the result of translocations.

37. Bighorns typically occur in a metapopulation structure, where a large metapopulation consists of discrete local populations, or herds, that interact through limited migratory movements between them. These movements provide benefits of creating opportunities for population augmentation, colonization of new areas, and enhancement of genetic diversity. At the same time, they can also facilitate the spread of diseases between local populations.

38. North America has already lost between 92 and 98 percent of its bighorn sheep population. Only 7,000 bighorn sheep survive in the entire Greater Yellowstone Ecosystem, and

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they persist only in small, isolated populations. By comparison, about 200,000 domestic sheep graze in the Greater Yellowstone Ecosystem.

Bighorn Sheep Behavior and Disease Transmission

40. Bighorn sheep prefer steep, remote, sub-alpine and alpine habitats with high visibility for predator avoidance. Suitable habitat contains forage, water sources, and adequate escape terrain and lambing areas such as talus slopes, rock outcrops, and cliffs. Some herds remain in a given area all year, while others have separate summer and winter ranges that could be many miles apart. Generally, summer range is at higher elevations and covers a large area to take advantage of forage availability. Winter range is usually much smaller and is constrained to lower elevation, snow-free areas.

41. Although bighorns generally occupy traditional ranges, individual or small groups of animals will move long distances outside of their home range during their migratory travels, which often brings them into contact with other populations. This is particularly true for young rams, which frequently wander outside of their normal range for many miles before returning to the location of their natal herd.

42. When bighorns are within their herd, they are socially gregarious, meaning that they prefer to be in groups. Adult rams live in bachelor groups apart from ewe-lamb subgroups. Rams establish and maintain a social hierarchy primarily through head butting rituals. There is little interaction between rams and ewes until the annual rut occurs in November and early December. Breeding takes place during this time, followed by a gestation period for ewes that lasts approximately 180 days and usually produces a single lamb in May or June.

43. Bighorn sheep are much more susceptible to diseases than other ungulates. Scientists have documented many bighorn die-offs caused by disease, historically up to the present, with most of these die-offs implicating bacterial pneumonia, likely from *Pasteurella* bacteria, as the cause of death. These die-offs often occur following contact with domestic sheep.

44. All ungulates, including bighorn sheep, naturally carry one or more strains of *Pasteurella* bacteria. Certain strains of *Pasteurella*, however, are fatal to bighorns but not to domestic sheep. Research has shown that the immune system of bighorns has a reduced capacity to kill bacteria as compared with domestic sheep immune function. In most of the documented bighorn die-offs linked to contact with domestic sheep, 75% to 100% of the bighorns died while the domestic sheep remained healthy.

45. In controlled experiments where bighorns were pastured with domestic sheep, virtually all of the healthy bighorns developed pneumonia and died just days or weeks following contact with healthy domestic sheep. The strain of *Pasteurella* bacteria isolated from the dead bighorns had not been found in them prior to their contact with the domestic sheep but was found in the domestics, indicating that these bacteria can be directly transmitted from domestic sheep to bighorn sheep. When bighorns were pastured together with other ungulates such as elk, deer, cattle, or llamas, however, it did not result in pneumonia in bighorn sheep.

46. In further experiments, bighorns inoculated with bacteria cultured from the respiratory tracts of healthy domestic sheep died in most cases, but domestic sheep inoculated with the same cultured bacteria remained healthy.

47. Similarly, in other nonexperimental situations, direct contact between domestic sheep and bighorn sheep was observed, followed shortly after by death of the bighorns from pneumonia. On at least two occasions, bighorns were captured by wildlife officials after they were seen co-mingling with domestic sheep. These bighorns died a few days later, and when autopsies were conducted, scientists diagnosed the cause of death as pneumonia. This pneumonia was caused by the same strain of *Pasteurella* bacteria found in the domestic sheep. Based on this, they concluded that the transmission of the *Pasteurella* bacteria occurred on the range during the co-mingling of the domestic and bighorn sheep. In two other situations, the bighorns were not removed and subsequently transferred the disease to other members of the herd. In one case, all 43 bighorns in the population died, while 13 of 14 died in another case.

48. Bighorn sheep may also experience death from disease that did not involve contact with domestic sheep, but these die-offs generally only kill 15-35% of the population rather than the 75-100% mortality exhibited after contact with domestic sheep.

49. When bighorn sheep experience a pneumonia episode, it normally results in high mortality of all age classes. Moreover, ewes that survive the outbreak likely carry the pathogen for several years and transfer the bacteria to their lambs, which then usually do not survive past three months of age. Low lamb survival rates usually last for three to five years, thereby resulting in negative or stagnant population growth and delaying population recovery for many years. Because of these impacts on both survival and recruitment of bighorn sheep, pneumonia outbreaks are known to have significant long-term impacts on bighorn populations.

50. Transmission of *Pasteurella* bacteria requires nose-to-nose contact or transfer of mucus through coughing or sneezing. Because bighorn sheep and domestic sheep are closely

related—both are in the genus *Ovis*—and are highly social and gregarious, they tend to be attracted to each other. Thus, the potential for contact and disease transmission is high.

51. Transmission of disease can occur even when domestic sheep do not directly overlap the normal home range of bighorn populations because of the tendencies of bighorns, particularly young rams, to wander outside of their home range. Once individual bighorns become infected through contact with domestic sheep, they spread the disease to the rest of the herd when they return and mingle with healthy bighorns. Moreover, domestic sheep often stray from their herds, and are also social and gregarious. When a stray domestic sheep joins a bighorn herd, it can infect the entire herd, and the results are generally catastrophic to bighorns.

52. Currently, despite numerous attempts, there is no known vaccine to prevent bighorns from developing pneumonia after contact with deadly pathogens. Furthermore, the availability of such a vaccine would likely not remedy the problem as it would be very difficult and expensive to administer to large numbers of wild bighorn sheep in their rugged habitat.

53. In Idaho metapopulations, interaction between domestic and bighorn sheep have caused die-offs of bighorn, and wildlife biologists charged with managing these bighorns, and scientists studying the die-offs, believe the cause to have been contact with domestic sheep. For instance, in the Hells Canyon area, seven bighorn die-offs have been reported since bighorn reintroductions began in 1971. Five of these die-offs were caused by pneumonia disease outbreaks linked to domestic sheep. A sixth pneumonia outbreak was linked to contact with a domestic goat. These die-offs eliminated one entire bighorn population, and significantly reduced the size of other populations.

54. Based on an abundance of research, anecdotal and experimental evidence, there is

consensus among wildlife biologists and veterinarians experienced in bighorn sheep management that domestic sheep and bighorn sheep must be kept separated in order to maintain healthy bighorn populations.

The U.S. Sheep Experiment Station and Associated Activities

55. Within the U.S. Department of Agriculture is the Agricultural Research Service, which is an in-house research agency that employs approximately two thousand scientists who work on over a thousand research projects at over one hundred locations across the country. The research conducted by the Agricultural Research Service is categorized into twenty-two National Programs, which each Program implemented through individual research projects.

56. One of the locations operated by the Agricultural Research Service is the U.S. Sheep Experiment Station (“USSES”), which was established in 1915 as a rangeland grazing and sheep breeding research facility.

57. The USSES has its headquarters located in the upper Snake River plain at the foothills of the Centennial Mountains, approximately six miles north of Dubois, Idaho, where it maintains a 27,930 acre ranch, including residential and office buildings, research facilities, and lands used for grazing.

58. USSES owns two additional ranch properties in Idaho - the 2,600 acre Humphrey Ranch near Monida, Montana, and the 1,200 acre Henninger Ranch near Kilgore, Idaho. USSES also owns about 16,600 acres in the Centennial Mountains of Montana, which it uses for summer grazing and rangeland research.

59. In addition, USSES grazes sheep on four allotments on the Caribou-Targhee National Forest totaling over 32,000 acres, and grazes sheep on a Bureau of Land Management

(“BLM”) allotment in the Upper Snake River District.

60. In total, USSES utilizes over 100,000 acres of publicly owned land, including about 48,000 acres managed directly by USSES and another 56,000 acres managed by the Forest Service and BLM. These lands are geographically diverse, including subalpine meadows, foothills, sagebrush steppe, and desert shrubland ecosystems. Over half of the 100,000 acres is located within the commonly used boundary of the Greater Yellowstone Ecosystem.

61. The USSES typically has approximately 3,000 mature sheep, plus young sheep for an approximate total of 6,500 sheep at the end of the annual lambing period. These sheep obtain most of their feed by grazing.

62. Much of the land managed and utilized by USSES is located in an ecologically important corridor on the west side of Yellowstone National Park that connects the Park with large wilderness and roadless areas in central Idaho. These lands occupy and fragment the southern portion of the only existing viable corridor between Yellowstone National Park and central Idaho for wolves, grizzly bears, lynx, and other wildlife species.

USSES Sheep Grazing on Lands Directly Administered by the USSES

63. Despite routinely authorizing significant sheep grazing across thousands of acres of public lands, the USSES has never prepared an environmental assessment or environmental impact statement pursuant to NEPA to assess the environmental impacts of the grazing and associated activities on grizzly bears, lynx, wolves, bighorn sheep, other wildlife species, and the fragile high desert ecosystem.

64. The USSES also has failed to conduct any public scoping to assess whether there may be any extraordinary circumstances or significant, environmental impacts regarding its

grazing related activities on these public lands.

65. Similarly, the USSES has not prepared an adequate written explanation to demonstrate that it has considered the environmental impacts and potential extraordinary circumstances prior to concluding that a more detailed environmental analysis is not necessary or required.

66. For the lands directly administered by USSES, USSES has also failed to prepare a biological assessment or consult with the United States Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act.

USSES Sheep Grazing on Lands Administered by the Forest Service

67. In addition to authorizing sheep grazing across the public lands that it directly administers, the USSES also grazes sheep on four allotments on the Caribou-Targhee National Forest in eastern Idaho: Meyers Creek, Kelly Canyon, Snakey Canyon and East Beaver.

68. The Forest Service and USSES entered in an interagency agreement in March, 2001, regarding the use of the Caribou-Targhee National Forest by USSES for sheep grazing. Pursuant to the agreement, the Forest Service authorized USSES to graze sheep on the Meyers Creek, East Beaver, Snakey Canyon and Kelly Canyon allotments for a five year term.

69. Prior to this agreement, the Forest Service and the USSES failed to prepare any NEPA documentation examining the ecological impacts of sheep grazing across these four allotments, and never consulted with the U.S. Fish and Wildlife Service over the impacts of sheep grazing on threatened, endangered, and sensitive species.

70. The March 2001, interagency agreement between the Forest Service and USSES has now expired. USSES, however, continues to graze sheep on the Meyers Creek, East Beaver, Snakey Canyon and Kelly Canyon allotments on the Caribou-Targhee National Forest.

71. The Forest Service admits that the Meyers Creek allotment “is not NEPA sufficient” and that “it does not have any NEPA documents such as an Environmental Assessment, Decision Notice, or Biological Assessment.” The Meyers Creek allotment also “does not have a current Allotment Management Plan.”

72. Similarly, the Forest Service has not prepared an environmental assessment or environmental impact statement for the Kelly Canyon and Snakey Canyon allotments on the Dubois Ranger District, and the allotment management plans for the Kelley Canyon and Snakey Canyon allotments were each prepared in 1964.

73. The Forest Service has also failed to prepare an adequate, up-to-date allotment management plan for the East Beaver allotment, and continues to rely on a management plan prepared in 1985.

74. In the 1995 Rescissions Act, Congress directed the Forest Service to establish and adhere to a schedule for the completion of NEPA analyses of grazing permits for all allotments for which NEPA analysis is needed. Public Law 104-19, Section 504 (1995). The Forest Service prepared a schedule pursuant to the 1995 Rescissions Act. This schedule states that the required NEPA analyses would be completed for the East Beaver allotment in 1996, and for the Kelly Canyon, Snakey Canyon, and Meyers Creek allotments in 2004. The Forest Service has failed to comply with this schedule.

USSES Sheep Grazing on Lands Administered by the BLM

75. The USSES also grazes domestic sheep on the Bernice Allotment, which is administered by the BLM's Upper Snake River District in Idaho. The allotment, which is 22,687 acres, is located approximately 4 miles north of Howe, Idaho, in Butte County.

76. Prehistoric Native American cultural properties are present in the Bernice allotment, as this area was used by Native Americans for over 10,000 years. Native American sites in the allotment include stone tool and flakes scatters, artifacts, rock shelters, and rock art panels.

77. The Bernice allotment is crucial pronghorn winter range. Portions of the allotment lie within 4-5 miles of winter habitat for a small herd of Rocky Mountain Bighorn sheep. A flight conducted in March, 2000, by the Idaho Department of Fish and Game found six bighorn sheep within the northern part of the Bernice Allotment.

78. The BLM prepared an environmental assessment for the Bernice allotment in 1999, and issued a three-year grazing permit for the allotment in 2000. BLM limited the permit to three years due to concerns raised by the Idaho Department of Fish and Game regarding the adverse impacts of domestic sheep on nearby bighorn sheep populations.

79. The grazing permit for the Bernice Allotment has expired, and BLM has not reissued the permit, nor has BLM conducted further NEPA analysis. USSES continues to graze sheep on the Bernice Allotment.

Potential Environmental Impacts of USSES' Domestic Sheep Grazing

80. The grazing of sheep as part of the USSES research activities may have adverse consequences for the Greater Yellowstone Ecosystem wildlife. Most directly, this grazing

removes land and millions pounds of forage that would otherwise be available for wildlife species.

81. Additional impacts from USSES sheep grazing include, but are not limited to, livestock fencing which interferes with wildlife movement and migration, diseases that can spread to wild animals such as bighorn sheep, the loss of cover for birds and small mammals, and adverse impacts to area streams.

82. Livestock grazing can be particularly dangerous for predators due to the predator “control actions” that may be undertaken by or on behalf of livestock interests. For instance, the leading cause of mortality for wolves in the northern Rocky Mountains is predator control.

83. Sheep are particularly susceptible to predators and predation. As a result, almost everywhere there is a sheep herd in the western United States, there is a high likelihood that individuals or agencies are attempting to prevent predation through setting traps and poison, and through aerial gunning. Even if predators have not often been directly linked to killing sheep at USSES, they may become habituated to sheep in these areas.

FIRST CLAIM FOR RELIEF

The U.S. Department of Agriculture, Agricultural Research Service and USSES Violated NEPA by Failing to Prepare an Environmental Assessment or Environmental Impact Statement Regarding the Annual Grazing of Sheep on USSES Lands.

84. Plaintiffs hereby incorporate by reference all preceding paragraphs.

85. NEPA requires federal agencies to prepare a detailed “environmental impact statement” (“EIS”) for every major federal action which may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).

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86. NEPA requires federal agencies to prepare an environmental assessment (“EA”) when necessary to determine whether to prepare an EIS. 40 C.F.R. § 1501.4. The EA must provide the decision maker and the public with adequate information, evidence, and analysis to determine whether an EIS is required. 40 C.F.R. § 1508.9.

87. The NEPA regulations provide that an agency may determine categories of actions “which do not individually or cumulatively have a significant effect on the human environment.” 40 C.F.R. § 1508.4. The agency must first adopt procedures identifying the actions that will have no significant effect, however, and then it must provide for “extraordinary circumstances” in which a normally excluded action may still have a significant environmental impact. *Id.*

88. USSES’s annual authorization and allowance of thousands of sheep to graze on federal land is a federal action pursuant to NEPA. The United States Department of Agriculture, Agricultural Research Service, and USSES have failed to prepare an EIS or EA to assess the environmental impacts of the grazing of sheep on USSES lands, in violation of NEPA. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. The agencies’ decision to allow and authorize the grazing activities is therefore arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law. 5 U.S.C. § 706(2). The agencies’ failure to prepare an EA or EIS for the annual grazing of sheep on USSES lands also constitutes agency action unlawfully withheld and unreasonably delayed pursuant to the Administrative Procedure Act. *Id.* at § 706(1).

89. The United States Department of Agriculture, Agricultural Research Service, and USSES also failed to follow the procedures that are required prior to categorically excluding an

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action under NEPA. The authorized grazing of sheep on USSES lands does not fit within an established categorical exclusion, there was no sufficient assessment of potential extraordinary circumstances, and no adequate explanation regarding the potential environmental consequences and decision to rely on a categorical exclusion. The agencies' decision to allow and authorize the grazing activities is therefore arbitrary, capricious, an abuse of discretion, and contrary to NEPA. 5 U.S.C. § 706(2).

SECOND CLAIM FOR RELIEF

The U.S. Department of Agriculture, Agricultural Research Service and USSES Violated the Federal Land Policy and Management Act, BLM Regulations, and Forest Service Regulations by Grazing Sheep on the Bernice, Meyers Creek, East Beaver, Snakey Canyon and Kelly Canyon Allotments Without Valid Permits or Agreements.

90. Plaintiffs hereby incorporate by reference all preceding paragraphs.

91. A permit is required in order to graze livestock on federal lands that are managed by the BLM and Forest Service, and the grazing of livestock without a valid permit is prohibited. *See* 43 U.S.C. §§ 1733(g), 1752; 43 C.F.R. §§ 4130.2, 4140.1, 4150.1; 36 C.F.R. § 222.3.

92. The permit issued by the BLM for the Bernice allotment has expired. The interagency agreement between USSES and the Forest Service to allow grazing on the Meyers Creek, East Beaver, Snakey Canyon and Kelly Canyon Allotments has expired.

93. The U.S. Department of Agriculture, Agricultural Research Service, and USSES have continued to graze sheep on the Bernice, Meyers Creek, East Beaver, Snakey Canyon and Kelly Canyon allotments without valid permits or interagency agreements, in violation of the Federal Land Policy and Management Act, 43 U.S.C. §§ 1733(g), 1752; BLM regulations, 43 C.F.R. §§ 4130.2, 4140.1, 4150.1, and Forest Service regulations, 36 C.F.R. § 222.3. The

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agencies' continued grazing of sheep on these allotments without a valid permit or agreement is arbitrary, capricious, an abuse of discretion, and contrary to law. 5 U.S.C. § 706(2).

THIRD CLAIM FOR RELIEF

The Forest Service Violated NEPA by Failing to Prepare an Environmental Assessment or Environmental Impact Statement for the Meyers Creek, Kelly Canyon and Snakey Canyon Allotments on the Caribou-Targhee National Forest

94. Plaintiffs hereby incorporate by reference all preceding paragraphs.

95. The Forest Service has failed to prepare an EIS or EA regarding the grazing of sheep on the Meyers Creek, Kelly Canyon, and Snakey Canyon allotments on the Caribou-Targhee National Forest, in violation of NEPA. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. The Forest Service's decision to allow USSES to graze sheep on these allotments is therefore arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law. 5 U.S.C. § 706(2). The Forest Service's failure to prepare an EIS or EA for these allotments also constitutes agency action unlawfully withheld and unreasonably delayed. *Id.* at § 706(1).

96. The Forest Service has not followed proper procedures to categorically exclude the Myers Creek, Kelly Canyon or Snakey Canyon allotments from NEPA review. The grazing authorized by these allotments does not fit within an established categorical exclusion, the Forest Service has not sufficiently analyzed the potential extraordinary circumstances, and the Forest Service has failed to provide an adequate explanation regarding the potential environmental consequences and its decision to rely on a categorical exclusion. *See* 40 C.F.R. § 1508.4. The Forest Service's decision to allow the grazing activities on these allotments is therefore arbitrary, capricious, an abuse of discretion, and contrary to NEPA. 5 U.S.C. § 706(2).

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

FOURTH CLAIM FOR RELIEF

The Forest Service Violated 36 C.F.R. § 222.2(b) By Failing to Develop, Approve, Implement, and Update Allotment Management Plans for the Meyers Creek, East Beaver, Kelley Canyon and Snakey Canyon Allotments on the Caribou-Targhee National Forest

97. Plaintiffs hereby incorporate by reference all preceding paragraphs.

98. The Forest Service is required to analyze each grazing allotment, and to develop an allotment management plan with the careful and considered consultation and cooperation of the affected permittees, landowners, grazing advisory boards, and State. 36 C.F.R. § 222.2(b). The allotment management plan must be approved and implemented. *Id.* The analysis and allotment management plans must also be updated as needed. *Id.*

99. The Forest Service has failed to analyze the Meyers Creek allotment, and has failed to develop, approve, and implement an allotment management plan for the Meyers Creek allotment, in violation of 36 C.F.R. § 222.2(b). The Forest Service's failure to comply with 36 C.F.R. § 222.2(b) for the Meyers Creek allotment constitutes agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1), and is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(2).

100. The Forest Service has failed to analyze and update the allotment management plans for the East Beaver, Kelley Canyon, and Snakey Canyon allotments, in violation of 36 C.F.R. § 222.2(b). The Forest Service's failure to comply with 36 C.F.R. § 222.2(b) for the East Beaver, Kelley Canyon and Snakey Canyon allotments constitutes agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1), and is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(2).

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that the U.S. Department of Agriculture, Agricultural Research Service, and USSES have violated NEPA by authorizing grazing on USSES lands without first taking a hard look at the ecological implications of domestic sheep grazing on grizzly bear, wolves, lynx, Rocky Mountain bighorn sheep, and other wildlife and vegetation communities across the Greater Yellowstone Ecosystem

B. Declare that the U.S. Department of Agriculture, Agricultural Research Service, and USSES violated the Federal Land Policy and Management Act, BLM regulations, and Forest Service regulations by allowing livestock grazing on the Bernice, Meyers Creek, East Beaver, Kelly Canyon and Snakey Canyon allotments without a valid permit;

C. Declare that the Forest Service violated NEPA by failing to prepare an EA or EIS for the Meyers Creek, Kelly Canyon, and Snakey Canyon allotments;

D. Declare that the Forest Service violated NEPA by improperly relying on a categorical exclusion and by failing to prepare an adequate evidentiary record and environmental analysis for the Kelly Canyon and Snakey Canyon allotments;

E. Declare that the Forest Service violated Forest Service regulations by failing to analyze, develop, approve, implement, and update the allotment management plans for the Meyers Creek, East Beaver, Snakey Canyon, and Kelly Canyon allotments on the Caribou-Targhee National Forest.

F. Grant Plaintiffs the necessary and appropriate injunctive relief pending the agencies' full compliance with applicable laws and regulations, in order to prevent undue harm to the environment and Plaintiffs' interests;

G. Allow Plaintiffs to recover costs, expenses, expert witness fees, and reasonable attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

H. Grant Plaintiffs such further relief as may seem to this Court to be just, proper, and equitable.

Dated this 25th day of June, 2007.

Respectfully submitted,

/s/ Marc Fink

Marc D. Fink
Todd Tucci
Counsel for Plaintiffs