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PAYETTE NF
SUPERVISOR'S OFFICE

UNITED STATES DEPARTMENT OF AGRICULTURE

UNITED STATES FOREST SERVICE

INTERMOUNTAIN REGION

FRANK SHIRTS, JR., SHIRTS BROTHERS	)	In the Matter of Forest Supervisor
SHEEP, RONALD & LESLIE SHIRTS,	)	Suzanne Rainville's Record of
	)	Decision dated July 20, 2010, for the
Appellants.	)	Final Supplemental Environmental
	)	Impact Statement and Forest Plan
	)	Amendment Identifying Suitable
	)	Rangeland for Domestic Sheep and
	)	Goat Grazing to Maintain Habitat for
	)	Viable Bighorn Sheep Populations
	)	(hereinafter referred to as "2010 PNF-
	)	ROD-BHS" and its associated "2010
	)	PNF-FSEIS-BHS")
)	

APPELLANTS' NOTICE OF APPEAL
AND
STATEMENT OF REASONS

W. Alan Schroeder
Schroeder & Lezamiz Law Offices, LLP
447 W. Myrtle Street
P.O. Box 267
Boise, Idaho 83701-0267
Telephone: (208) 384-1627, Ext. #2
Telecopy: (208) 384-1833
Email: alan@schroederlezamiz.com

Attorney for the Appellants

September 13, 2010

I. Notice of Appeal; Name, Address, Telephone Number of the Appellants; Identification of the Decision being appealed; Identification of the document in which the Decision is contained.

Appellants administratively appeal the foregoing document in accordance with 36 C.F.R. 219.14(b)(2) (7-1-2009 Edition), 36 C.F.R. Part 215 (7-1-2001 Edition), 36 C.F.R. 219.33 (7-1-2001 Edition), and 36 C.F.R. 219.35(b) (7-1-2001 Edition). This appeal is filed by Frank Shirts, Jr., Shirts Brothers Sheep, and Ronald & Leslie Shirts (hereinafter referred to as “Appellants” unless otherwise stated).¹ The names, addresses, and telephone numbers of the Appellants are:

Frank Shirts, Jr.
P.O. Box 393
Wilder, Idaho 83676
208-482-7392

Shirts Brothers Sheep
Ronald & Leslie Shirts
1839 Weiser River Road
Weiser, Idaho 83672
208-549-0391

Frank Shirts, Jr. holds domestic sheep grazing permits in the Payette and Boise National Forests. See Appellants’ comments dated February 27, 2009 and dated March 22, 2010. Shirts Brothers Sheep holds a domestic sheep permit in the Payette National Forest. Id. Appellants have other interests as well and depend upon the National Forest System lands within the PNF for many other purposes unrelated to livestock grazing, including observing and experiencing wildlife. Id.

Appellants timely commented on February 27, 2009 and March 22, 2010. See also 2010 PNF-FEIS-BHS, Appendix A, at page A-14.

II. Identification of the specific portion of the Decision to which the Appellants object.

Appellants object to the 2010 PNF-ROD-BHS and its associated 2010 PNF-FSEIS-BHS to the extent it amends the 2003 Forest Plan for the PNF as to the following:

- Determining as non-suitable domestic sheep grazing on certain National Forest System lands within the Smith Mountain, Surdam, Curren Hill, Price Valley, Boulder Creek, Fall/Brush Creek, Lake Fork, and Victor Loon Allotments;

¹ This appeal is filed by the Appellants *without prejudice* to their other claims against the USFS and others, including the claims made in *Idaho Woolgrowers Association, Inc., et al. v. State of Idaho, et al.*, CV 2010-2567 (District Court of the Third Judicial District of the State of Idaho, in and for the County of Adams).

- Determining as non-suitable domestic sheep grazing on certain National Forest System lands along the Salmon River Driveway, from Lick Creek Mountain area within the Smith Mountain Allotment south to the Forest Boundary of the Payette National Forest;
- Determining that domestic sheep grazing on certain National Forest System lands within the Smith Mountain, Curren Hill, Price Valley, Boulder Creek Allotments (to the extent applicable) is not compatible with the Hells Canyon National Recreation Act; and
- Closing in whole or in part domestic sheep grazing on certain National Forest System lands within the Smith Mountain, Surdam, Curren Hill, Price Valley, Boulder Creek, Fall/Brush Creek, Lake Fork, and Victor Loon Allotments, Payette National Forest.

III. Reasons for the Appellants' objection.

Appellants stated in their comments dated February 27, 2009 and dated March 22, 2010, various reasons why the above identified allotments and Trail/Driveway are suitable for domestic sheep grazing and are compatible with the HCNRA, as well as why the above identified allotments and Trail/Driveway should remain open to domestic sheep grazing as authorized in their existing Grazing Permits.

A. Appellants incorporate by reference IWGA appeal.

Appellants reference and incorporate by reference herein the Notice of Appeal and Statement of Reasons dated September 10, 2010, filed by the *Idaho Woolgrowers Association, et al.*, to the 2010 PNF-ROD-BHS, and its associated 2010 PNF-FSEIS-BHS (hereinafter referred to as "2010 IWGA NOA-SOR")

B. USFS failed to respond to the Appellants' specific comments.

The USFS failed to respond to the Appellants' specific comments dated February 27, 2009 and March 22, 2010. 40 C.F.R. 1503.4(a) (7-1-2009 Edition). The USFS purported to respond to the Appellants' comments at 2010 PNF-FSEIS-BHS, Appendix A, at pages A-62, A-70 to A-71, A-78 to A-79, A-129, A-135, A-168 to A-169, A-198, A-207, but these responses were unresponsive to the Appellants' specific comments dated February 27, 2009 and March 22, 2010.

This failure to respond is particularly true to one of the comments in the Appellants' comments dated March 22, 2010, as to the sister Amendment and EIS process proceeding before the Boise National Forest as related to a Wildlife Conservation Strategy for the Boise National Forest. See Appendix "A", which is attached hereto and incorporated herein and which is a copy of the Appellants' Notice of Appeal and Statement of Reasons to the 2010 BNF-ROD-WCS and its associated 2010 BNF-FEIS-WCS.

C. USFS failed to consider a new circumstance/information relative to interactions between bighorn sheep and domestic sheep.

Beyond what was stated in the 2010 IWGA NOA-SOR, the USFS failed to consider “significant new circumstances or information” associated with the availability of domestic sheep allotments within the Boise National Forest to mitigate the closure (in whole or in part) the Smith Mountain, Surdam, Curren Hill, Price Valley, Boulder Creek, Fall/Brush Creek, Lake Fork, and Victor Loon Allotments within the Payette National Forest. 40 C.F.R. 1502.9(c)(1)(ii) (7-1-2009 Edition). The alternative or the consideration to open certain allotments in the Boise National Forest to domestic sheep grazing to the Appellants -- as referenced in the Appellants’ comments dated March 22, 2010, and as discussed in Appendix “A” – could have mitigated the accepted alternative and/or would have been a reasonable alternative to consider to the closure of the above named allotments. However, the USFS failed in such alternative or consideration. See also 36 C.F.R 219.12(a)(1) (7-1-09 Edition) (wherein the “responsible official, as appropriate, shall identify areas within a National Forest System unit as generally suitable for uses that are compatible with desired conditions and objectives for that area”).

D. USFS failed to mitigate domestic sheep use in adopting the accepted alternative.

Beyond what was stated in the 2010 IWGA NOA-SOR, the USFS failed to mitigate domestic sheep use in adopting the accepted alternative. 40 C.F.R. 1508.20 (7-1-2009 Edition).

Given the USFS’s belief, particularly as now decided by the 2010 PNF-ROD-BHS, the USFS should have at least considered in their planning process to amend the 2003 PNF Forest Plan – which intended to prescribe management directions for the interaction between bighorn sheep and domestic sheep -- to:

“establish and adopt management direction to open or reopen (i.e. declare as suitable) the National Forest System lands in the Boise National Forest, north of the South Fork of the Payette River, to domestic sheep grazing, as well as other parts of such National Forests, that are not home (or should be home) to any bighorn sheep ... **[so as] to provide temporary and permanent mitigation** and allotments to those domestic sheep operators/allotments that the USFS seems intent upon closing/displacing due to [wildlife conflicts, like bighorn sheep].”

See Appendix “A”, citing the 2010 BNF-FEIS-WCS, Volume 2, Appendix 7, at pages 45-46 (emphasis supplied). See also 36 C.F.R 219.12(a)(1) (7-1-09 Edition) (wherein the “responsible official, as appropriate, shall identify areas within a National Forest System unit as generally suitable for uses that are compatible with desired conditions and objectives for that area”).

There are nineteen (19) allotments north of the *South Fork of the Payette River* within the BNF that are available and/or could be available for domestic sheep grazing, as discussed and illustrated in Appendix “A”. Each of these allotments include acres/areas within the Management Prescription Categories for *Rangeland Resources* (“MPCs”) for the BNF – even as amended by the 2010 BNF-ROD-WCS – that would have allowed for domestic sheep grazing.

Either the consideration of a management direction (or of an alternative) to open or reopen (i.e. declare as suitable) or the adoption of management direction (and an alternative) to open or reopen (i.e. declare as suitable) these nineteen (19) allotments would have been consistent with the commitment made by the USFS to the Appellants. Specifically, the USFS committed in the 2010 PNF-ROD-BHS at page ROD-31 that the:

“Forest Service will continue to assist in determining if vacant allotments can be made available to our permittees.”

Appellants must accept at face value such commitment by the USFS (even though the Appellants continue to legally and factually question the need for separation between bighorn sheep and domestic sheep). As such, it is without question that the USFS should have at least considered a management direction (or of an alternative) to open or reopen (i.e. declare as suitable) these nineteen (19) allotments (to the extent any of these allotments are not already Active Allotments).

IV. Identification of specific change(s) in the Decision that the Appellants seeks.

The Decision should be reversed and remanded to the Payette National Forest Supervisor to the extent the Decision:

- failed to consider management direction or failed to consider an alternative in the EIS to maintain the permitted use in the the existing domestic sheep allotments identified above and the trail/driveway identified above; and/or
- failed to consider management direction or failed to consider an alternative in the EIS to open or reopen (i.e. declare a suitable) certain domestic sheep allotments north of the South Fork of the Payette River within the BNF (to the extent not already an Active Allotment) so as to provide temporary and permanent mitigation and allotments to those domestic sheep operators/allotments that the USFS seems intent upon closing/displacing due to wildlife conflicts, such as conflicts between bighorn sheep and domestic sheep. See 36 C.F.R. 219.12(a)(1) (7-1-2009 Edition); 40 C.F.R. 1503.4(a)(1), (a)(2), (a)(3), (a)(4), (a)(5) (7-1-2009 Edition); 40 C.F.R. 1508.20 (7-1-2009 Edition).

If you have any questions whatsoever, please write.

Respectfully submitted this 13th day of September, 2010.

SCHROEDER & LEZAMIZ LAW OFFICES, LLP

By 
W. Alan Schroeder
Attorney for Appellants

Certificate Of Service

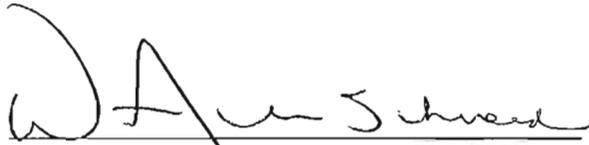
I hereby certify that on this 13th day of September, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Intermountain Regional Forester
USDA-Forest Service
324 25th Street
Ogden, UT 84401

- U.S. Certified Mail, Return
- Receipt Requested
- Hand Delivered
- Overnight Mail
- Telecopy (Fax)
- E-mail

Forest Supervisor, Payette National Forest
USDA-Forest Service
800 W. Lakeside Ave.
McCall, ID 83638

- U.S. Certified Mail, Return
- Receipt Requested
- Hand Delivered
- Overnight Mail
- Telecopy (Fax)
- E-mail



for SCHROEDER & LEZAMIZ LAW OFFICES,
LLP

APPENDIX "A"

**Frank Shirts, Jr.
P.O. Box 393
Wilder, Idaho 83676
208-482-7392**

**Shirts Brothers Sheep
Ronald & Leslie Shirts
1839 Weiser River Road
Weiser, Idaho 83672
208-549-0391**

August 23, 2010

Via Certified Mail, Return Receipt Requested:

Regional Forester of the Intermountain Region
USDA - Forest Service
324 25th Street
Ogden, Utah 84401

Re: Notice of Appeal to the *Record of Decision for the Final Environmental Impact Statement and Forest Plan Amendments to Facilitate Implementation of the 2010 Plan Scale Wildlife Conservation Strategy: Phase 1 - Forested Biological Community* for the Boise National Forest dated July 1, 2010 by the Boise National Forest Supervisor, Cecilia R. Seesholtz ("2010 BNF-ROD-WCS"), and its associated *Final Environmental Impact Statement for the Forest Plan Amendments Proposed to Facilitate Implementation of the 2009 Plan-Scale Wildlife Conservation Strategy, Phase 1: Forested Biological Community* for the Boise National Forest ("2010 BNF-FEIS-WCS").

Dear Regional Forester:

I. Notice of Appeal; Name, Address, Telephone Number of the Appellants; Identification of the Decision being appealed; Identification of the document in which the Decision is contained.

We administratively appeal the foregoing document in accordance with 36 C.F.R. 219.14(b)(2) (7-1-2009 Edition), 36 C.F.R. Part 215 (7-1-2001 Edition), 36 C.F.R. 219.33 (7-1-2001 Edition), and 36 C.F.R. 219.35(b) (7-1-2001 Edition). This appeal is filed by Frank Shirts, Jr., Shirts Brothers Sheep, and Ronald & Leslie Shirts (hereinafter referred to as "Appellants")

unless otherwise stated).¹ The names, addresses, and telephone numbers of the Appellants are stated above. Frank Shirts, Jr. holds domestic sheep grazing permits in the Payette and Boise National Forests. Shirts Brothers Sheep holds a domestic sheep permit in the Payette National Forest. Appellants have other interests as well and depend upon the National Forest System Lands within the BNF for many other purposes unrelated to livestock grazing, including observing and experiencing wildlife. Appellants timely commented on March 17, 2010, to the *Draft Environmental Impact Statement for the Wildlife Conservation Strategy Phase I: Forested Biological Community* for the Boise National Forest (“2010 BNF-DEIS-WCS”). See 2010 BNF-FEIS-WCS, Volume 2, Appendix 7, at pages 44-46.

II. Identification of the specific portion of the Decision to which the Appellants object.

Appellants object to the 2010 BNF-ROD-WCS and its associated 2010 BNF-FEIS-WCS to the extent it amends the 2003 Forest Plan for the BNF relative to the following:

- Establishment of Forest-wide multiple-use goals and objectives;
- Establishment of Forest-wide standards and guidelines to fulfill the requirements of NFMA applying to future activities; and
- Establishment of management areas and directions applying to future activities in those management areas.

Specifically, the 2010 BNF-ROD-WCS and its associated 2010 BNF-FEIS-WCS seek to delete and replace a Forestwide wildlife standard with a more comprehensive and diverse set of management directions that (purport to) rely on accepted conservation concepts and principles for wildlife conservation. However, the ROD and FEIS fail in these management directions to even consider a management direction (or an alternative) to:

“establish and adopt management direction to open or reopen (i.e. declare as suitable) the National Forest System lands in the Boise National Forest, north of the South Fork of the Payette River, to domestic sheep grazing ... [so as] to provide temporary and permanent mitigation and allotments to those domestic sheep operators/allotments that the USFS seems intent upon closing/displacing due to [wildlife conflicts, like bighorn sheep].”

See 2010 BNF-FEIS-WCS, Volume 2, Appendix 7, at pages 45-46.

¹ This appeal is filed by the Appellants *without prejudice* to their other claims against the USFS and others.

There are nineteen (19) grazing allotments north of the *South Fork of the Payette River* within the BNF that are Active Allotments, Vacant Allotments, or Closed Allotments. The administrative boundaries of these allotments are illustrated on the Geo Communicator Website (<http://www.geocommunicator.gov/GeoComm/index.shtml>) (which is a Website partnership between the BLM and the USFS); these illustrations are attached as Exhibit "A". In addition, the administrative status of these allotments are discussed in Exhibit "A". In summary, the allotments and the administrative status are as follows:

- Anderson Creek Allotment - Conditionally Closed Allotment
- Bear Valley Allotment - Closed Allotment via an apparent agreement
- Blue Bunch Allotment - Vacant Allotment
- Bull Trout Allotment - Conditionally Closed Allotment
- Clear Creek Allotment - Unknown, though apparently a Closed Allotment
- Deadwood West Allotment - Unknown, though apparently a Closed Allotment
- Deadwood East Allotment - Conditional Closed Allotment
- Deer Creek Allotment - Closed Allotment via an apparent agreement
- Eight Mile Allotment - Conditionally Closed Allotment
- Elk Creek Allotment - Closed Allotment via an apparent agreement
- Fir Creek Allotment - Conditionally Closed Allotment
- Five Mile Allotment - Conditionally Closed Allotment
- Hanson Creek Allotment - Active Allotment
- Lightning Creek Allotment - Unknown, though apparently a Closed Allotment
- Middle Fork North Allotment - Active Allotment
- Middle Fork South Allotment - Active Allotment
- Sand Creek Allotment - Vacant Allotment
- Tranquil Basin Allotment - Unknown, though apparently a Closed Allotment
- Whitehawk Allotment - Conditionally Closed Allotment

III. Reasons for the Appellants' objection.

Appellants stated in their comments to the *Draft Environmental Impact Statement for the Wildlife Conservation Strategy Phase I: Forested Biological Community for the Boise National Forest* ("BNF-DEIS-WCS") to open or reopen (i.e. declare as suitable) National Forest System Lands north of the *South Fork of the Payette River* which is inclusive of NFSL within the administrative boundaries of the allotments listed above, as well as illustrated and discussed in Exhibit "A". Appellants specifically commented that:

"The DEIS for the Wildlife Conservation Strategy ("WCS") seems to desire to implement a tri-forest strategy, which is inclusive of the Payette, Boise and Sawtooth National Forests. If such a broad

eco-system approach is being consider to maintain the viability of wildlife (such as bighorn sheep) in relation to livestock grazing (such as domestic sheep), reason would dictate that **such a strategy also establish and adopt management direction to open or reopen (i.e. declare as suitable) the National Forest System lands in the Boise National Forest, north of the South Fork of the Payette River, to domestic sheep grazing, as well as other parts of such National Forests, that are not home (or should be home) to any bighorn sheep.** The purpose of this management direction would be to provide temporary and permanent mitigation and allotments to those domestic sheep operators/allotments that the USFS seems intent upon closing/displacing due to bighorn sheep conflicts (regardless of the merits of such conflicts). ... We are not saying that such mitigation and alternatives would negate the on-going injury/damages caused to us by this conflict, but this seems necessary given the (erroneous) view of the USFS (and State Wildlife Agencies and others) of the bighorn-domestic sheep conflict.”

2010 BNF-FEIS-WCS, Volume 2, Appendix 7, pages 45-46. Emphasis supplied.

A. USFS failed to respond to the Appellants’ specific comment.

The USFS failed to respond to the Appellants’ specific comment. 40 C.F.R. 1503.4(a) (7-1-2009 Edition). See 2010 BNF-FEIS-WCS, Volume 2, Appendix 7, at pages 45-46. While the USFS generally responded by stating that it would prepare separate EISs for the Boise, Payette, and Sawtooth National Forests (Id. at 44, 45), such general response was unresponsive to the Appellants’ specific comment. The USFS said nothing about why it would not (at least) consider to:

“establish and adopt management direction to open or reopen (i.e. declare as suitable) the National Forest System lands in the Boise National Forest, north of the South Fork of the Payette River, to domestic sheep grazing, as well as other parts of such National Forests, that are not home (or should be home) to any bighorn sheep ... [so as] to provide temporary and permanent mitigation and allotments to those domestic sheep operators/allotments that the USFS seems intent upon closing/displacing due to [wildlife conflicts, like bighorn sheep].”

Id. at 44-46. In fact, the USFS was inexplicitly clear in refusing to consider such comment when in the 2010 BNF-FEIS-WCS, Appendix 5, at page 3, the USFS stated that “The proposed Forest Plan amendment would **not** result in any change to the number of acres identified as suitable rangeland.” Emphasis supplied. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition) (wherein the “responsible official, as appropriate, shall identify areas within a National Forest System unit as generally suitable for uses that are compatible with desired conditions and objectives for that area”).

B. USFS failed to consider a new circumstance/information associated with (purported) accepted conservation concepts and principles for wildlife conservation relative to interactions between bighorn sheep and domestic sheep.

The USFS failed to consider “significant new circumstances or information” associated with (purported) accepted conservation concepts and principles for wildlife conservation relative to interactions between bighorn sheep and domestic sheep. 40 C.F.R. 1502.9(c)(1)(ii) (7-1-2009 Edition).

The consideration (or alternative) to “establish and adopt management direction to open or reopen (i.e. declare as suitable)” certain NFSs in the BNF was within the mix of the amendment planning process and should have been considered (if not adopted). The 2010 BNF-ROD-WCS at pages 4-5, *generally stated* that it amended the 2003 Forest Plan for the BNF relative to, among others, the following:

- Establishment of Forest-wide multiple-use goals and objectives;
- Establishment of Forest-wide standards and guidelines to fulfill the requirements of NFMA applying to future activities; and
- Establishment of management areas and directions applying to future activities in those management areas.

The 2010 BNF-ROD-WCS at pages 5-9, *more specifically* stated that it amended the 2003 Forest Plan for the BNF to prescribe a more comprehensive and diverse set of management directions that (purport to) rely on accepted conservation concepts and principles for wildlife conservation.

It is apparent that (at least) the USFS believes that one of the “accepted conservation concepts and principles for wildlife conservation” for bighorn sheep is to separate bighorn sheep and domestic sheep and to move domestic sheep operations to other allotments. See *Record of Decision for the: Final Supplemental Environmental Impact Statement and Forest Plan Amendment Identifying Suitable Rangeland for Domestic Sheep and Goat Grazing to Maintain Habitat for Viable Bighorn Sheep Populations* for the Payette National Forest dated July 20, 2010 (2010 PNF-ROD-BHS”) (which is available at

http://www.fs.fed.us/r4/payette/publications/big_horn/index and which closes a number of domestic sheep allotments within the Payette National Forest to purportedly negate wildlife conflicts with bighorn sheep and to purportedly maintain the viability of bighorn sheep). However, the USFS failed to consider such significantly new circumstance or information in deciding to delete and replace a Forestwide wildlife standard with a more comprehensive and diverse set of management directions that (purport to) rely on accepted conservation concepts and principles for wildlife conservation. See also 36 C.F.R 219.12(a)(1) (7-1-09 Edition) (wherein the “responsible official, as appropriate, shall identify areas within a National Forest System unit as generally suitable for uses that are compatible with desired conditions and objectives for that area”).

C. USFS failed to mitigate domestic sheep use in adopting (purported) accepted conservation concepts and principles for wildlife conservation relative to interactions between bighorn sheep and domestic sheep.

The USFS failed to mitigate domestic sheep use in adopting (purported) accepted conservation concepts and principles for wildlife conservation relative to interactions between bighorn sheep and domestic sheep. 40 C.F.R. 1508.20 (7-1-2009 Edition).

Given the USFS’s belief, particularly as now decided by the 2010 PNF-ROD-BHS, the USFS should have at least considered in their planning process to amend the 2003 BNF Forest Plan – which intended to prescribe management directions that relied on (purported) accepted conservation concepts and principles for wildlife conservation -- to:

“establish and adopt management direction to open or reopen (i.e. declare as suitable) the National Forest System lands in the Boise National Forest, north of the South Fork of the Payette River, to domestic sheep grazing, as well as other parts of such National Forests, that are not home (or should be home) to any bighorn sheep ... **[so as] to provide temporary and permanent mitigation** and allotments to those domestic sheep operators/allotments that the USFS seems intent upon closing/displacing due to [wildlife conflicts, like bighorn sheep].”

See 2010 BNF-FEIS-WCS, Volume 2, Appendix 7, at pages 45-46 (emphasis supplied). See also 36 C.F.R 219.12(a)(1) (7-1-09 Edition) (wherein the “responsible official, as appropriate, shall identify areas within a National Forest System unit as generally suitable for uses that are compatible with desired conditions and objectives for that area”).

///

There are nineteen (19) allotments north of the *South Fork of the Payette River* within the BNF that are available and/or could be available for domestic sheep grazing, as follows:

- Anderson Creek Allotment - Conditionally Closed Allotment
- Bear Valley Allotment - Closed Allotment via an apparent agreement
- Blue Bunch Allotment - Vacant Allotment
- Bull Trout Allotment - Conditionally Closed Allotment
- Clear Creek Allotment - Unknown, though apparently a Closed Allotment
- Deadwood West Allotment - Unknown, though apparently a Closed Allotment
- Deadwood East Allotment - Conditional Closed Allotment
- Deer Creek Allotment - Closed Allotment via an apparent agreement
- Eight Mile Allotment - Conditionally Closed Allotment
- Elk Creek Allotment - Closed Allotment via an apparent agreement
- Fir Creek Allotment - Conditionally Closed Allotment
- Five Mile Allotment - Conditionally Closed Allotment
- Hanson Creek Allotment - Active Allotment
- Lightning Creek Allotment - Unknown, though apparently a Closed Allotment
- Middle Fork North Allotment - Active Allotment
- Middle Fork South Allotment - Active Allotment
- Sand Creek Allotment- Vacant Allotment
- Tranquil Basin Allotment - Unknown, though apparently a Closed Allotment
- Whitehawk Allotment - Conditionally Closed Allotment

The specific location of these allotments are illustrated in Exhibit "A", and the specific status of these allotments are also discussed in Exhibit "A".

Each of these allotments include acres/areas within the Management Prescription Categories for *Rangeland Resources* ("MPCs") – even as amended by the 2010 BNF-ROD-WCS – that would have allowed for domestic sheep grazing, had the USFS amended in their planning process to amend the 2003 BNF Forest Plan to open or reopen (i.e. declare as suitable) these allotments. Compare 2010 BNF-FEIS-WCS, Appendix 5, at page 3, including Exhibit "B" (which lists the applicable MPCs for *Rangeland Resources*), with 2010 BNF-FEIS-WCS, Appendix 3, including Exhibit "B" (which identifies the applicable MPCs on a Map).

Either the consideration of a management direction (or of an alternative) to open or reopen (i.e. declare as suitable) or the adoption of management direction (and an alternative) to open or reopen (i.e. declare as suitable) these nineteen (19) allotments would have been

///

consistent with the commitment made by the USFS to the Appellants (and other permittees). Specifically, the Payette National Forest Supervisor recently committed in the 2010 PNF-ROD-BHS at page ROD-31 that the:

“Forest Service will continue to assist in determining if vacant allotments can be made available to our permittees.”

Appellants must accept at face value such commitment by the USFS (even though the Appellants continue to legally and factually question the need for separation between bighorn sheep and domestic sheep). As such, it is without question that the USFS should have at least considered a management direction (or of an alternative) to open or reopen (i.e. declare as suitable) these nineteen (19) allotments (to the extent any of these allotments are not already Active Allotments).

IV. Identification of specific change(s) in the Decision that the Appellants seeks.

The Decision should be reversed and remanded to the Boise National Forest Supervisor to the extent the Decision failed to consider management direction or failed to consider an alternative in the EIS to open or reopen (i.e. declare a suitable) the nineteen (19) allotments north of the South Fork of the Payette River within the BNF (to the extent not already an Active Allotment) so as to provide temporary and permanent mitigation and allotments to those domestic sheep operators/allotments that the USFS seems intent upon closing/displacing due to wildlife conflicts, such as conflicts between bighorn sheep and domestic sheep. See 36 C.F.R. 219.12(a)(1) (7-1-2009 Edition); 40 C.F.R. 1503.4(a)(1), (a)(2), (a)(3), (a)(4), (a)(5) (7-1-2009 Edition); 40 C.F.R. 1508.20 (7-1-2009 Edition).

If you have any questions, please call or write us. Otherwise, please also copy W. Alan Schroeder, P.O. Box 267, Boise, Idaho 83701, with any correspondence relative to this appeal.

Very truly yours,

Frank Shirts, Jr.

Shirts Brothers Sheep
Ronald & Leslie Shirts

by _____
Frank Shirts, Jr.

by _____
Ron Shirts

Attachments: Exhibit “A”
Exhibit “B”

Regional Forester of the Intermountain Region
USDA - Forest Service
August 23, 2010
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cc: w/ Attachments:

Forest Supervisor, Boise National Forest
USDA - Forest Service
1249 South Vinnell Way, Suite 200
Boise, Idaho 83709

via Certified Mail,
Return Receipt Requested

Forest Supervisor, Payette National Forest
USDA - Forest Service
800 West Lakeside Avenue
McCall, Idaho 83638-3602

via First Class Mail

Ron Kay - Program Manager - Rangeland Management
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P. O. Box 790
Boise, Idaho 83701-0790

via First Class Mail

Senator Mike Crapo
Attn: Layne Bangerter, State Director for Natural Resources
Idaho State Office
251 East Front Street, Suite 205
Boise, Idaho 83702

via First Class Mail

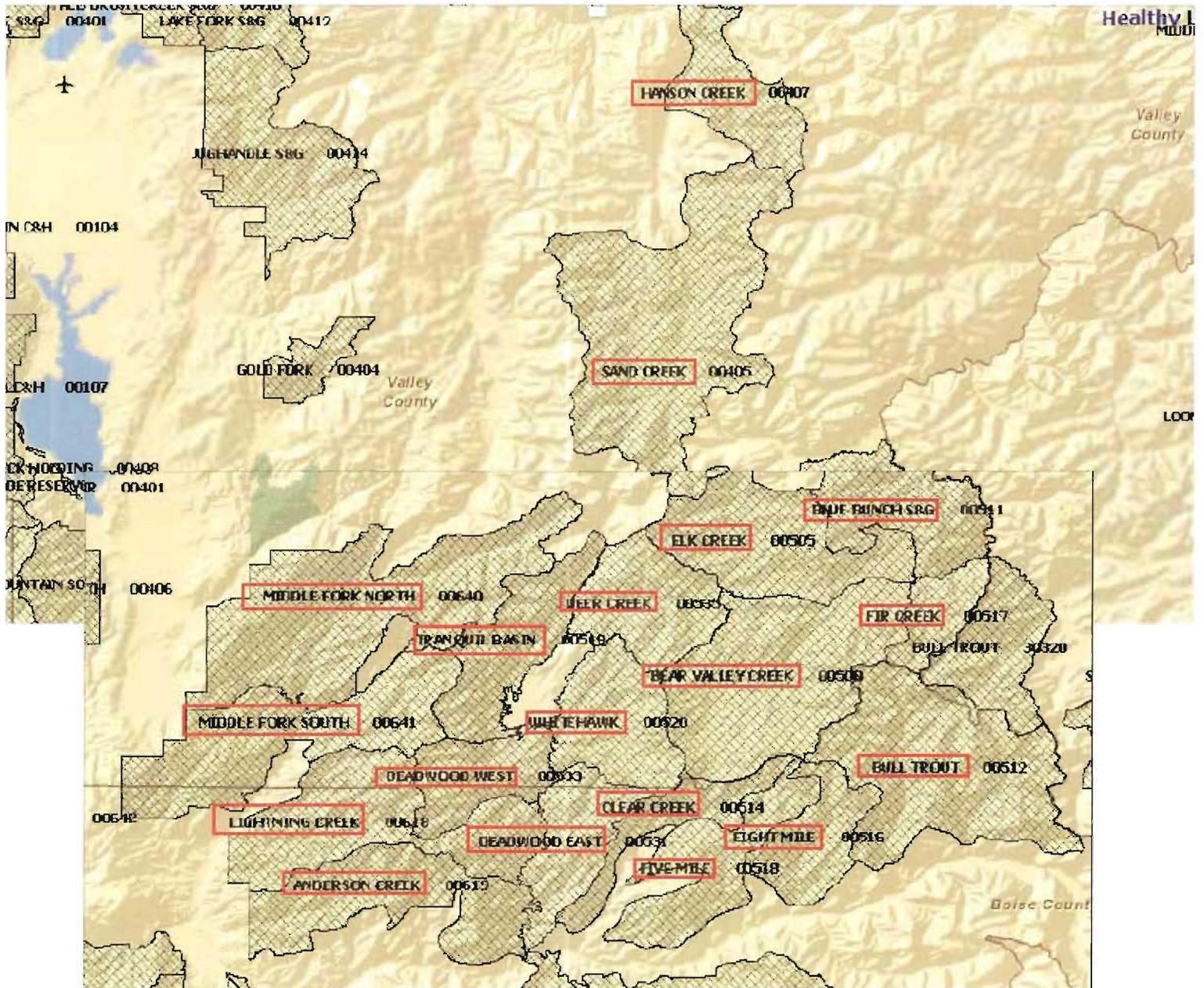
Senator James E. Risch
Attn: Mike Roach - State Natural Resource Director
350 North 9th Street, Suite 302
Boise, Idaho 83702

via First Class Mail

Regional Forester of the Intermountain Region
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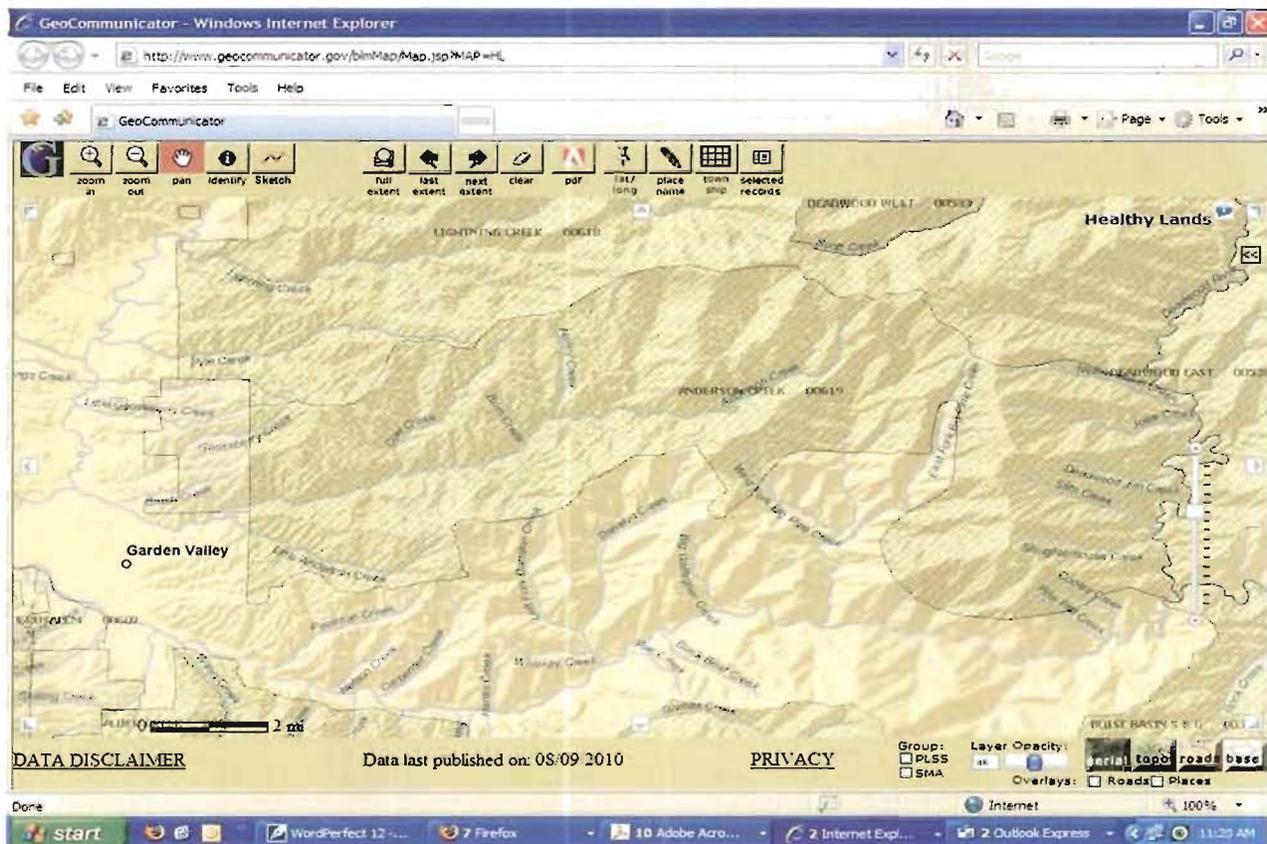
EXHIBIT “A”

GENERAL MAP OF THE NINETEEN (19) ALLOTMENTS ILLUSTRATED AND DISCUSSED IN EXHIBIT "A"

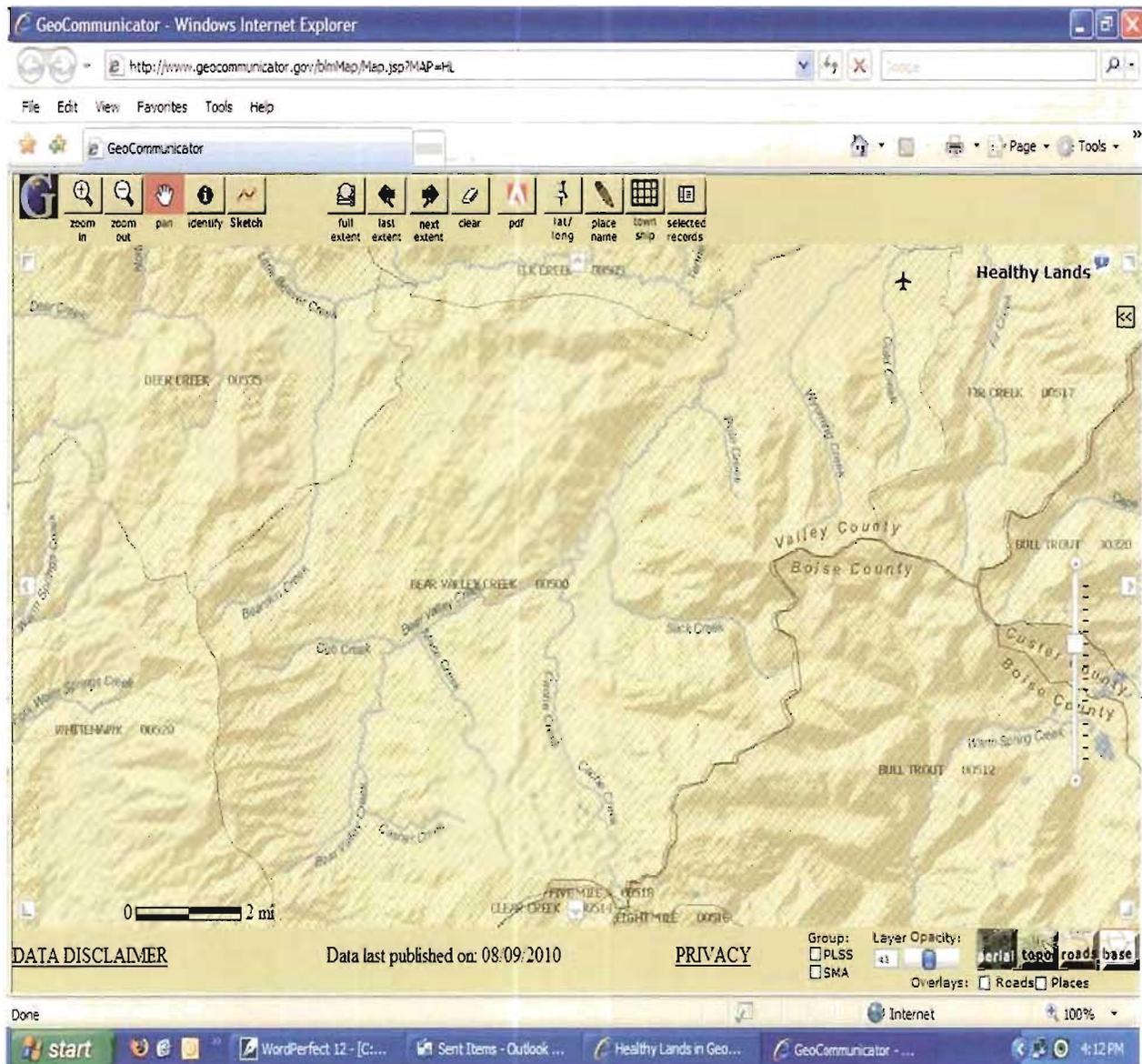


(1) **ANDERSON CREEK (00619) ALLOTMENT, BOISE NATIONAL FOREST** - Closed via the *Record of Decision* for the FEIS and Revised Plan for the Boise National Forest dated July 25, 2003, at pages ROD-9 and ROD-13. See also Errata #2 at pages 10 and 11, which clarified that the Closure was 8 allotments, not 6 allotments. See also 2003 BNF-FEIS Table RR-6 at page 3-671 and page 3-677, which listed the 8 allotments as inclusive of the Anderson Creek Allotment. However, the 2003 BNF-FEIS at page 3-677 (relating to “Rangeland Resources”) conditioned or otherwise qualified the Closure, stating:

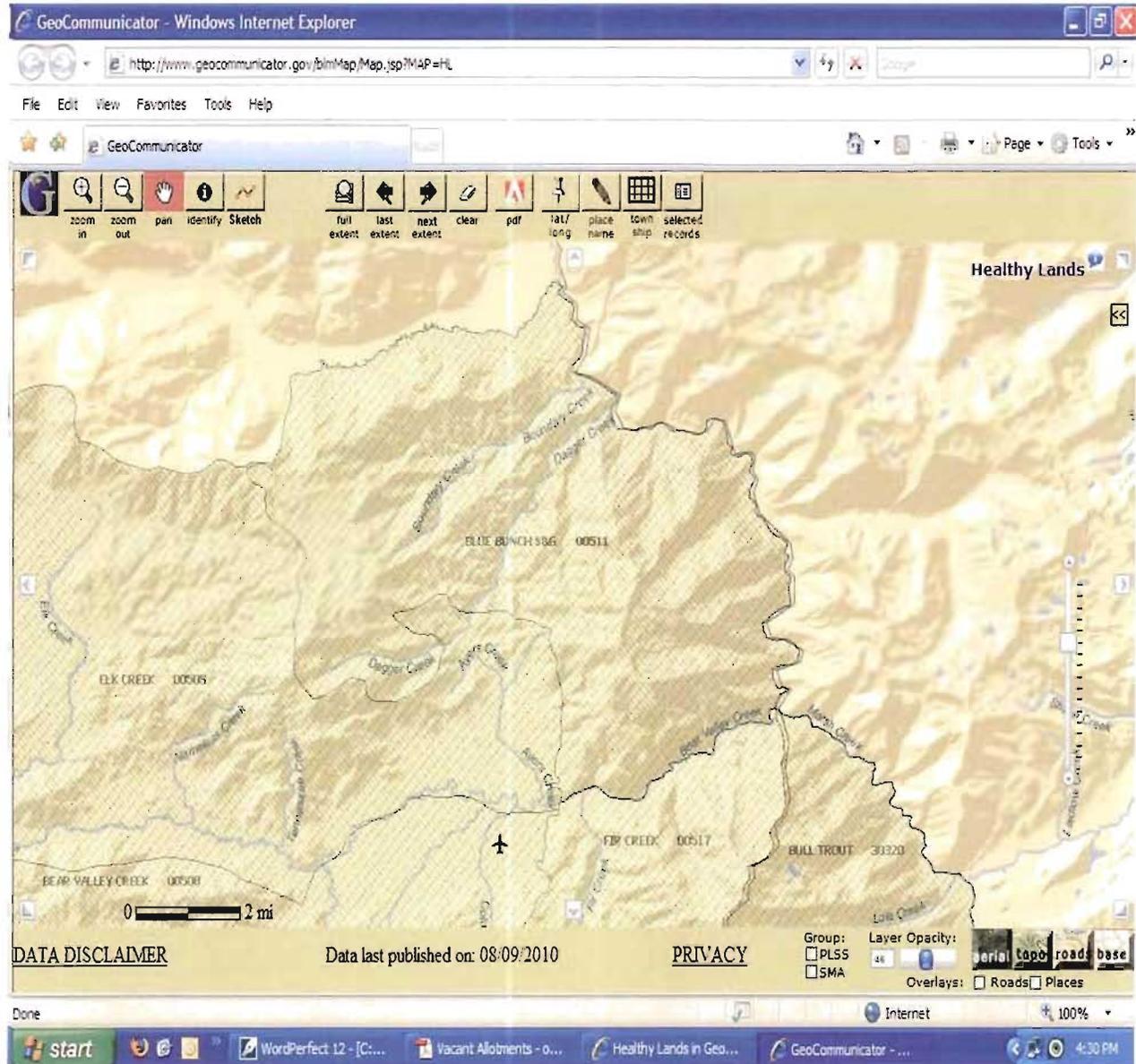
“Vegetation management options with livestock would not necessarily be precluded with the closing of allotments. Permits could still be issued for other purposes (FSM 2234, Livestock Use Permits), such as vegetation management, research, and livestock transportation or crossing access. Nor would closing the vacant allotments automatically reduce head months currently permitted. However, closures could potentially reduce future management flexibility by eliminating the possibility of using the allotments to resolve future conflicts between livestock grazing and other resources on active allotments, or to provide alternative forage in drought years.” Emphasis supplied.



(2) BEAR VALLEY CREEK (00500), BOISE NATIONAL FOREST - No evidence of explicit closure of this allotment via any Forest Planning and NEPA process, including via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition). However, it would appear that the USFS closed this allotment based upon “negotiations ... among all the parties”. See SWIE Technical Report #3, relating to Rangeland Resources, dated July 15, 2003, at page 13 of 68, which was cited in the 2003 BNF-FEIS at pages 3-669, 671, 675, 676.

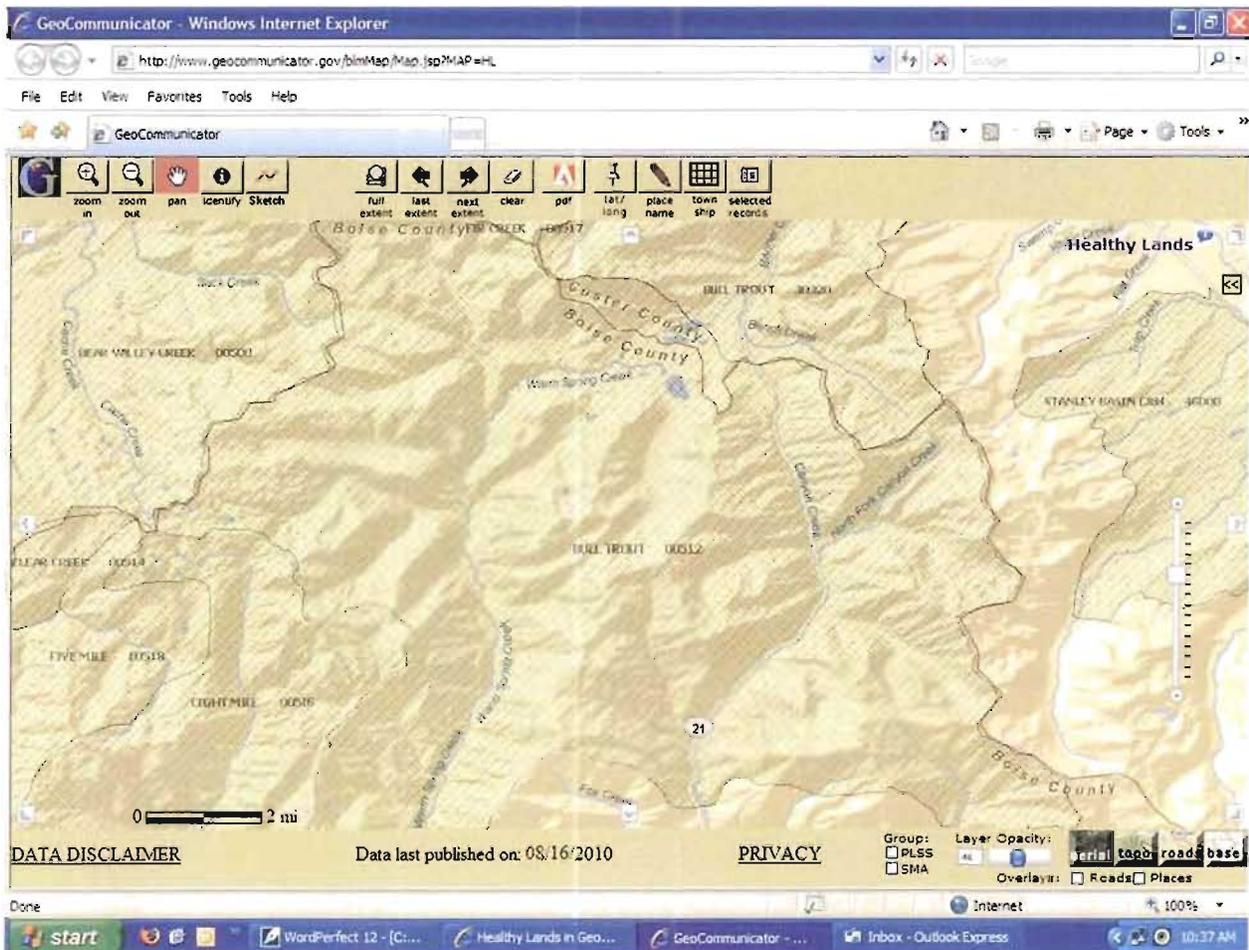


(3) BLUE BUNCH (00511) ALLOTMENT, BOISE NATIONAL FOREST - Vacant Allotment. No evidence of closure of this allotment via any Forest Planning and NEPA process, including via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition).

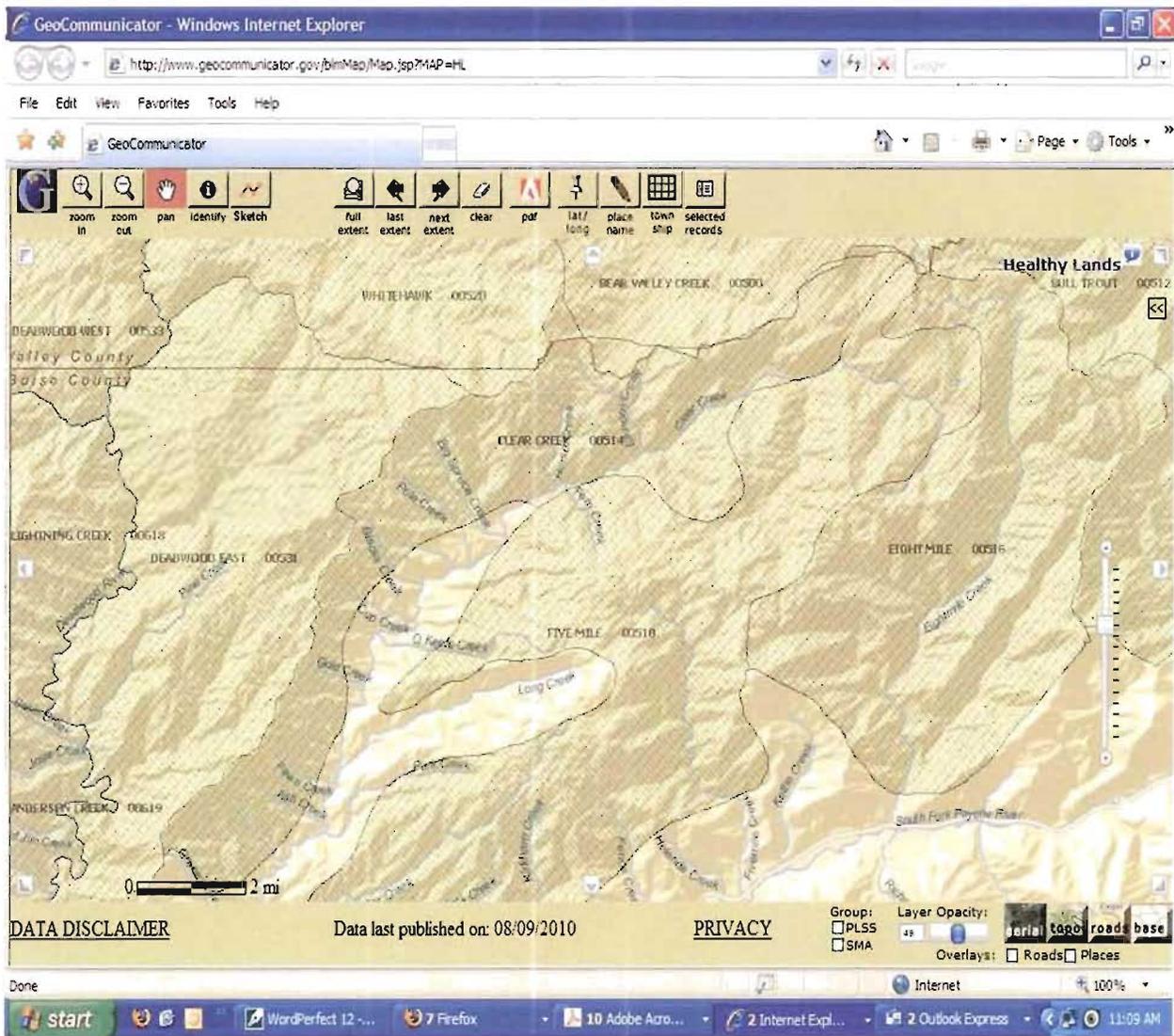


(4) BULL TROUT (00512) ALLOTMENT, BOISE NATIONAL FOREST - Closed via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003, at pages ROD-9 and ROD-13. See also *Errata #2* at pages 10 and 11, which clarified that the Closure was 8 allotments, not 6 allotments. See also 2003 FEIS Table RR-6 at page 3-671 and page 3-677, which listed the 8 allotments as inclusive of the Bull Trout Allotment. However, the 2003 BNF-FEIS at page 3-677 (relating to “Rangeland Resources”) conditioned or otherwise qualified the Closure, stating:

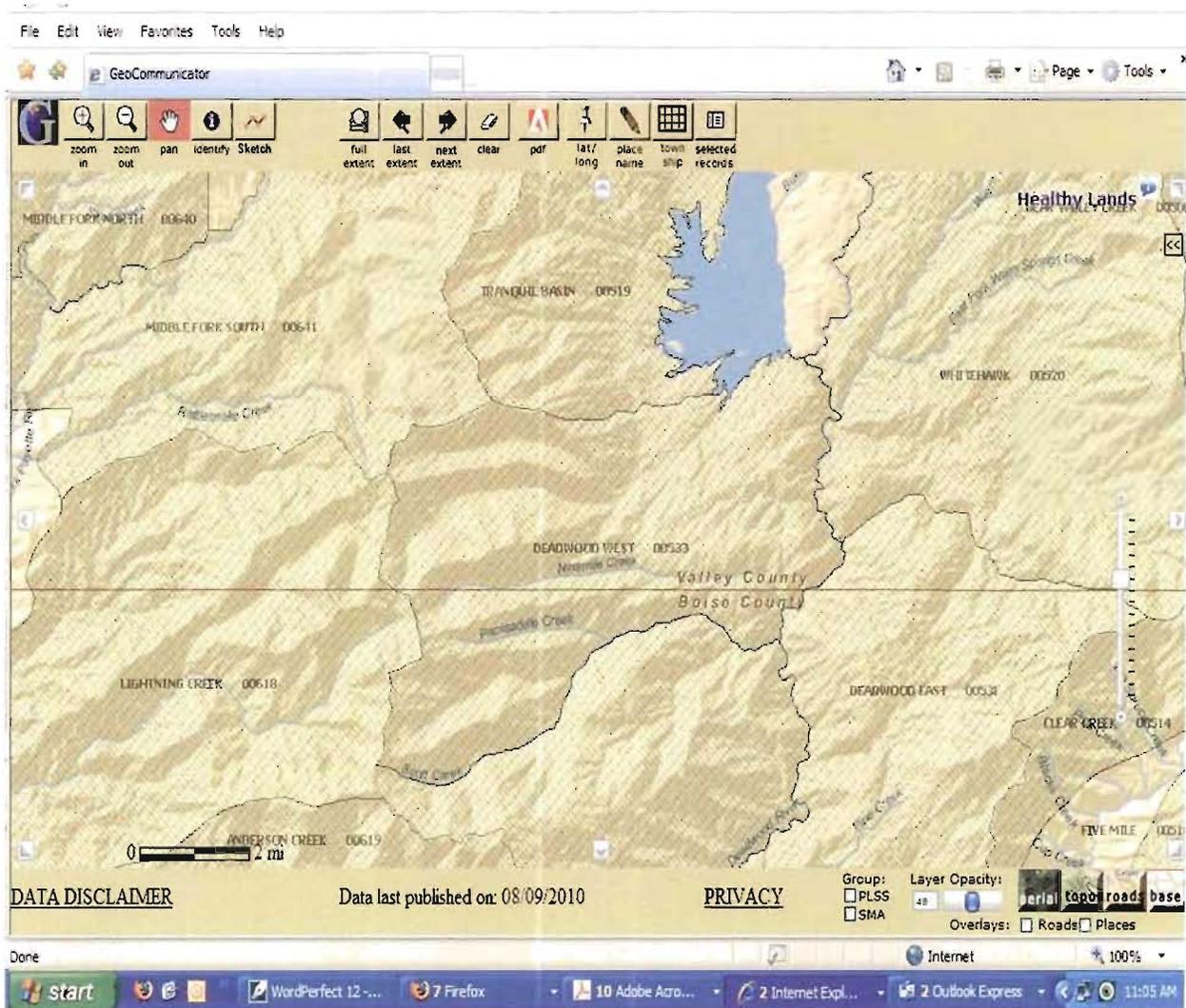
“Vegetation management options with livestock would not necessarily be precluded with the closing of allotments. Permits could still be issued for other purposes (FSM 2234, Livestock Use Permits), such as vegetation management, research, and livestock transportation or crossing access. Nor would closing the vacant allotments automatically reduce head months currently permitted. However, closures could potentially reduce future management flexibility by eliminating the possibility of using the allotments to resolve future conflicts between livestock grazing and other resources on active allotments, or to provide alternative forage in drought years.” Emphasis supplied.



(5) CLEAR CREEK (00514) ALLOTMENT, BOISE NATIONAL FOREST - No evidence of explicit closure of this allotment via any Forest Planning and NEPA process, including via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition). However, it would appear that the USFS simply did not include the acres of this allotment in the “Capable Acres” and “Suitable Acres” within the 2000 BNF-DEIS at Table RR-8 at page 3-329, thereby apparently defacto closing this allotment. See also 2000 BNF-DEIS, Table RR-11 at page 3-331.

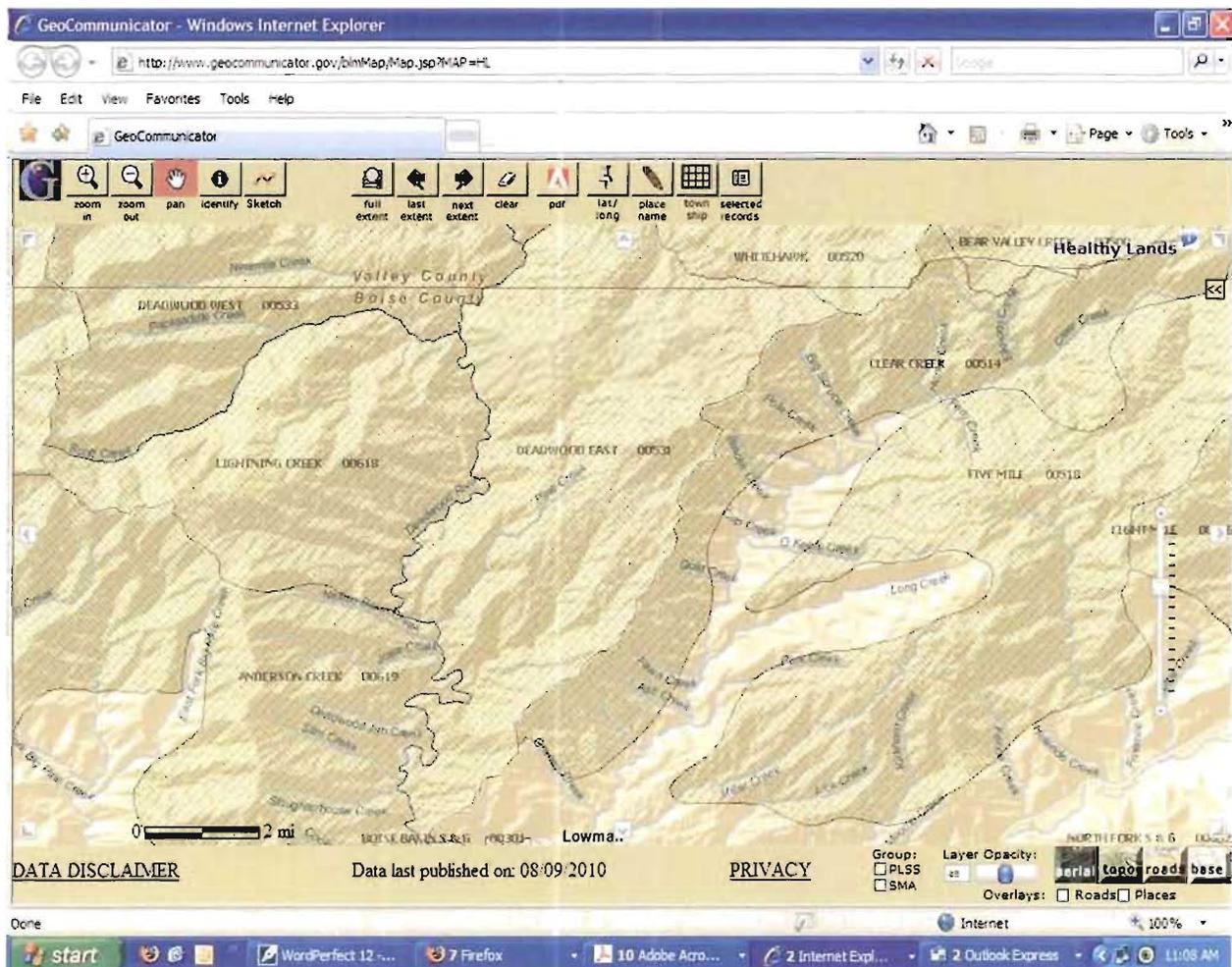


(6) DEADWOOD WEST (00533) ALLOTMENT, BOISE NATIONAL FOREST - No evidence of explicit closure of this allotment via any Forest Planning and NEPA process, including via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition). However, it would appear that the USFS simply did not include the acres of this allotment in the “Capable Acres” and “Suitable Acres” within the 2000 BNF-DEIS at Table RR-8 at page 3-329, thereby apparently defacto closing this allotment. See also 2000 BNF-DEIS, Table RR-11 at page 3-331.

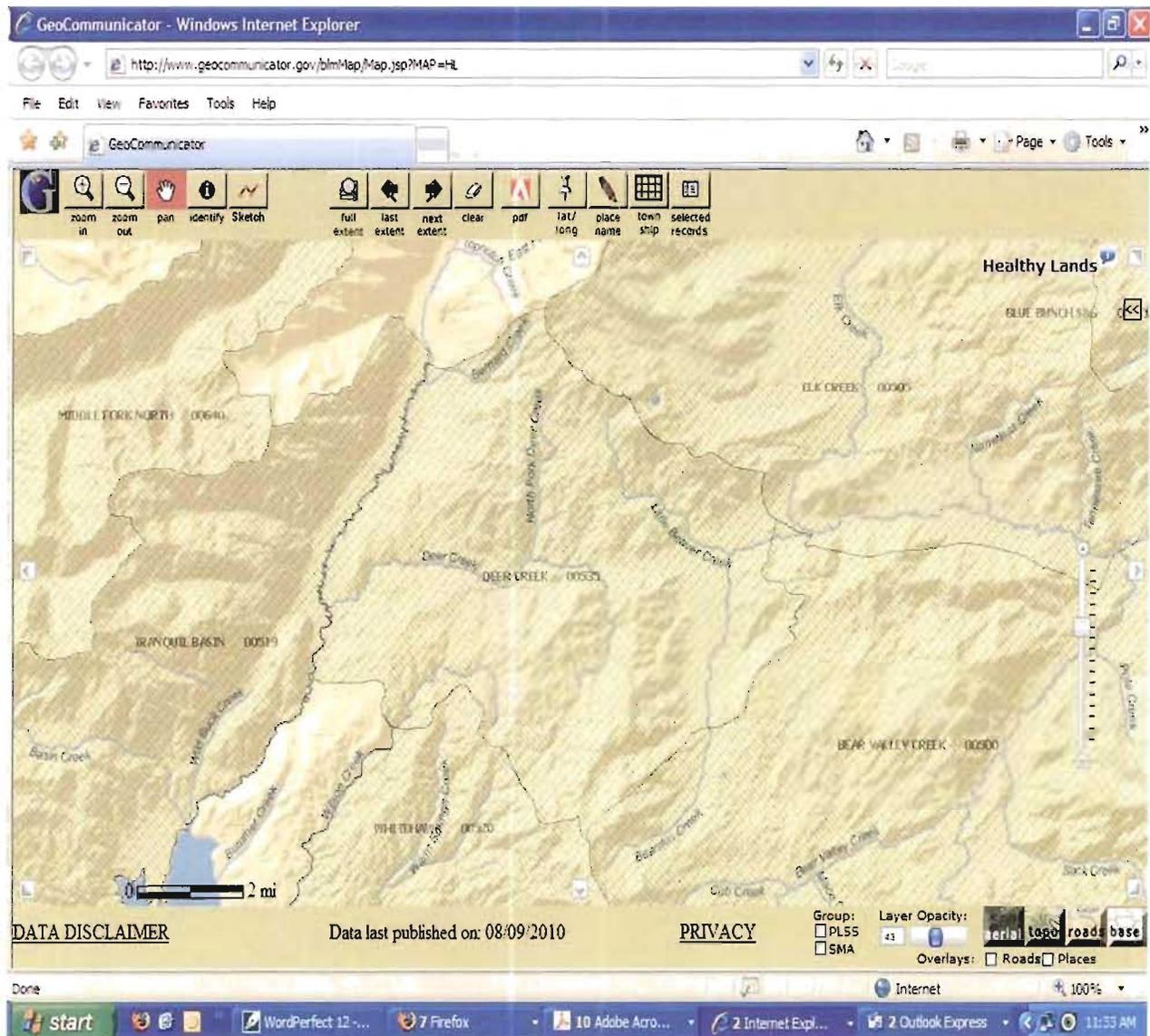


(7) **DEADWOOD EAST (00531) ALLOTMENT, BOISE NATIONAL FOREST** - Closed via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003, at pages ROD-9 and ROD-13. See also Errata #2 at pages 10 and 11, which clarified that the Closure was 8 allotments, not 6 allotments. See also 2003 BNF-FEIS Table RR-6 at page 3-671 and page 3-677, which listed the 8 allotments as inclusive of the Deadwood East Allotment. However, the 2003 BNF-FEIS at page 3-677 (relating to “Rangeland Resources”) conditioned or otherwise qualified the Closure, stating:

“Vegetation management options with livestock would not necessarily be precluded with the closing of allotments. Permits could still be issued for other purposes (FSM 2234, Livestock Use Permits), such as vegetation management, research, and livestock transportation or crossing access. Nor would closing the vacant allotments automatically reduce head months currently permitted. However, closures could potentially reduce future management flexibility by eliminating the possibility of using the allotments to resolve future conflicts between livestock grazing and other resources on active allotments, or to provide alternative forage in drought years.” Emphasis supplied.

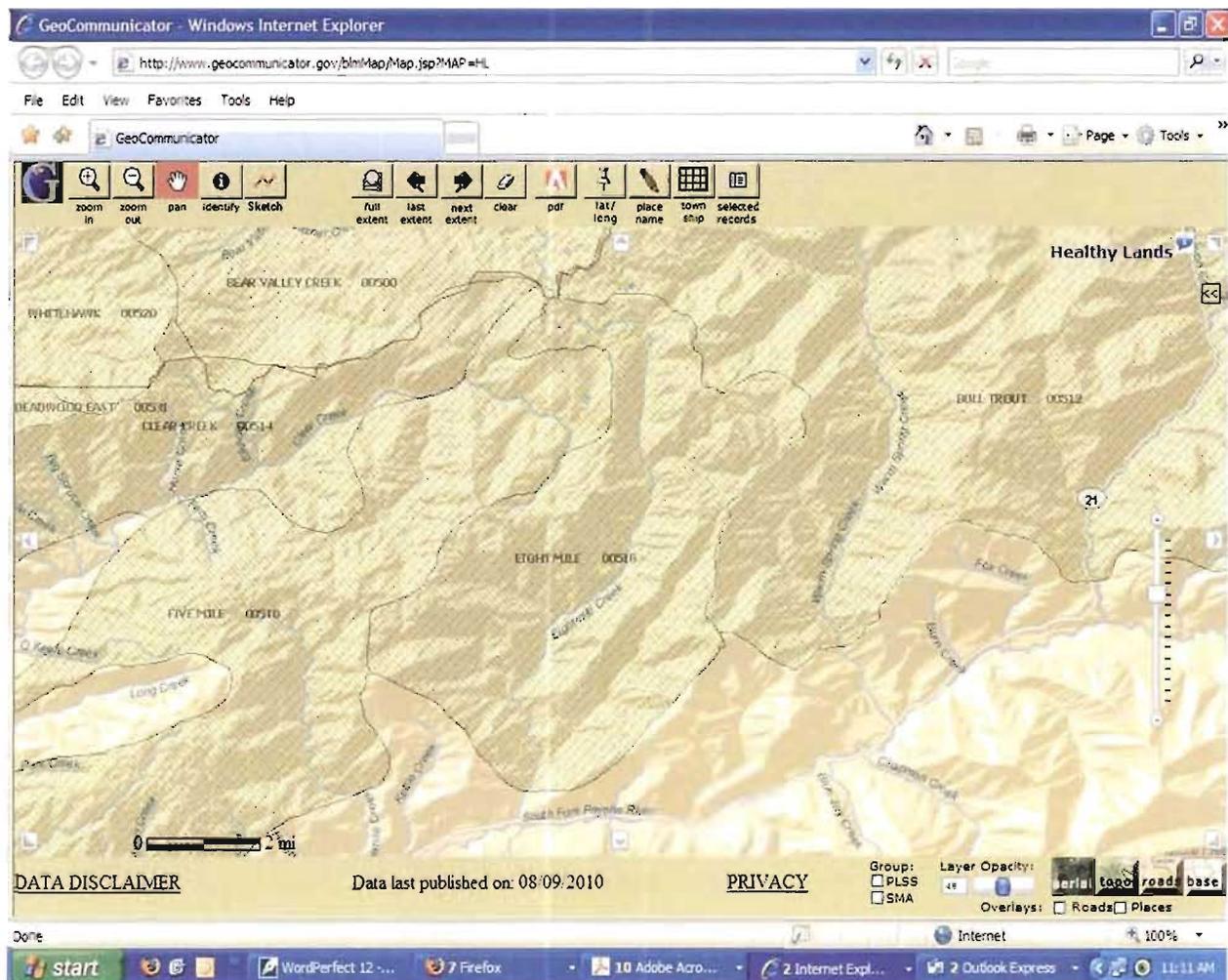


(8) DEER CREEK (00535) ALLOTMENT, BOISE NATIONAL FOREST - No evidence of explicit closure of this allotment via any Forest Planning and NEPA process, including via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition). However, it would appear that the USFS closed this allotment based upon “negotiations ... among all the parties”. See SWIE Technical Report #3, relating to Rangeland Resources, dated July 15, 2003, at page 13 of 68, which was cited in the 2003 BNF-FEIS at pages 3-669, 671, 675, 676.

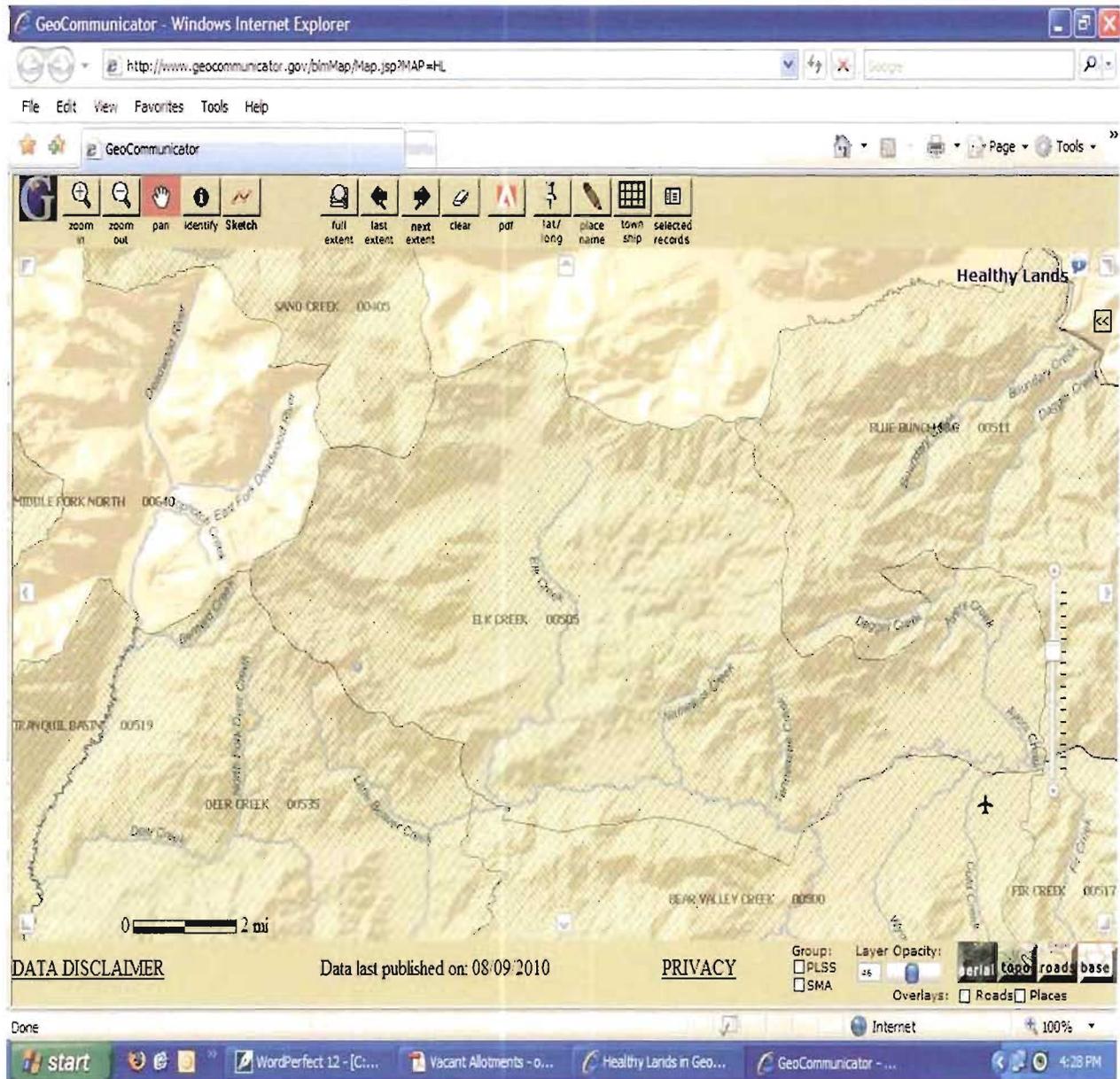


(9) EIGHT MILE (00516) ALLOTMENT, BOISE NATIONAL FOREST - Closed via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003, at pages ROD-9 and ROD-13. See also *Errata #2* at pages 10 and 11, which clarified that the Closure was 8 allotments, not 6 allotments. See also 2003 BNF-FEIS Table RR-6 at page 3-671 and page 3-677, which listed the 8 allotments as inclusive of the Eight Mile Allotment. However, the 2003 BNF-FEIS at page 3-677 (relating to “Rangeland Resources”) conditioned or otherwise qualified the Closure, stating:

“Vegetation management options with livestock would not necessarily be precluded with the closing of allotments. Permits could still be issued for other purposes (FSM 2234, Livestock Use Permits), such as vegetation management, research, and livestock transportation or crossing access. Nor would closing the vacant allotments automatically reduce head months currently permitted. However, closures could potentially reduce future management flexibility by eliminating the possibility of using the allotments to resolve future conflicts between livestock grazing and other resources on active allotments, or to provide alternative forage in drought years.” Emphasis supplied.

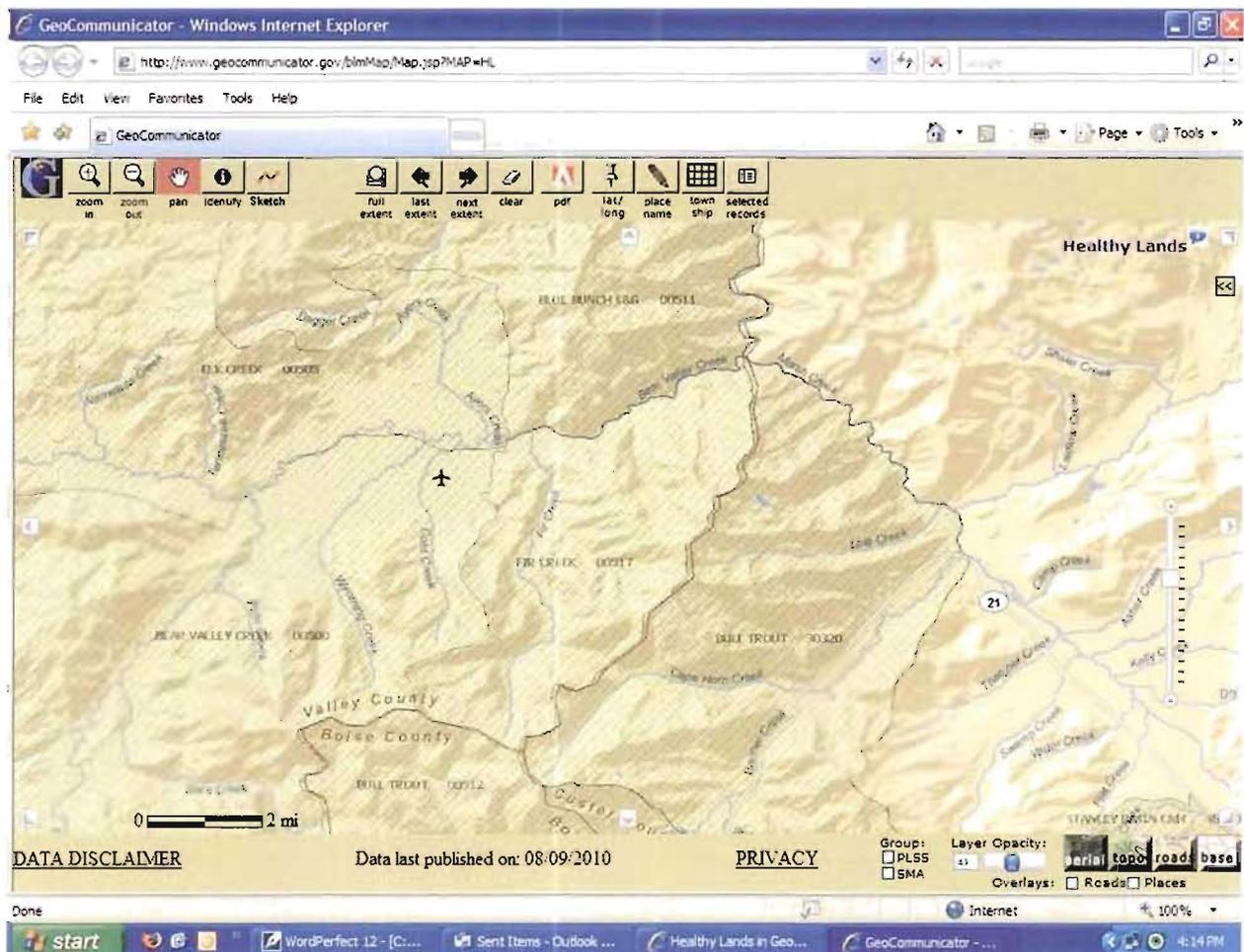


(10) ELK CREEK (00505) ALLOTMENT, BOISE NATIONAL FOREST - No evidence of explicit closure of this allotment via any Forest Planning and NEPA process, including via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition). However, it would appear that the USFS closed this allotment based upon “negotiations ... among all the parties”. See SWIE Technical Report #3, relating to Rangeland Resources, dated July 15, 2003, at page 13 of 68, which was cited in the 2003 BNF-FEIS at pages 3-669, 671, 675, 676.

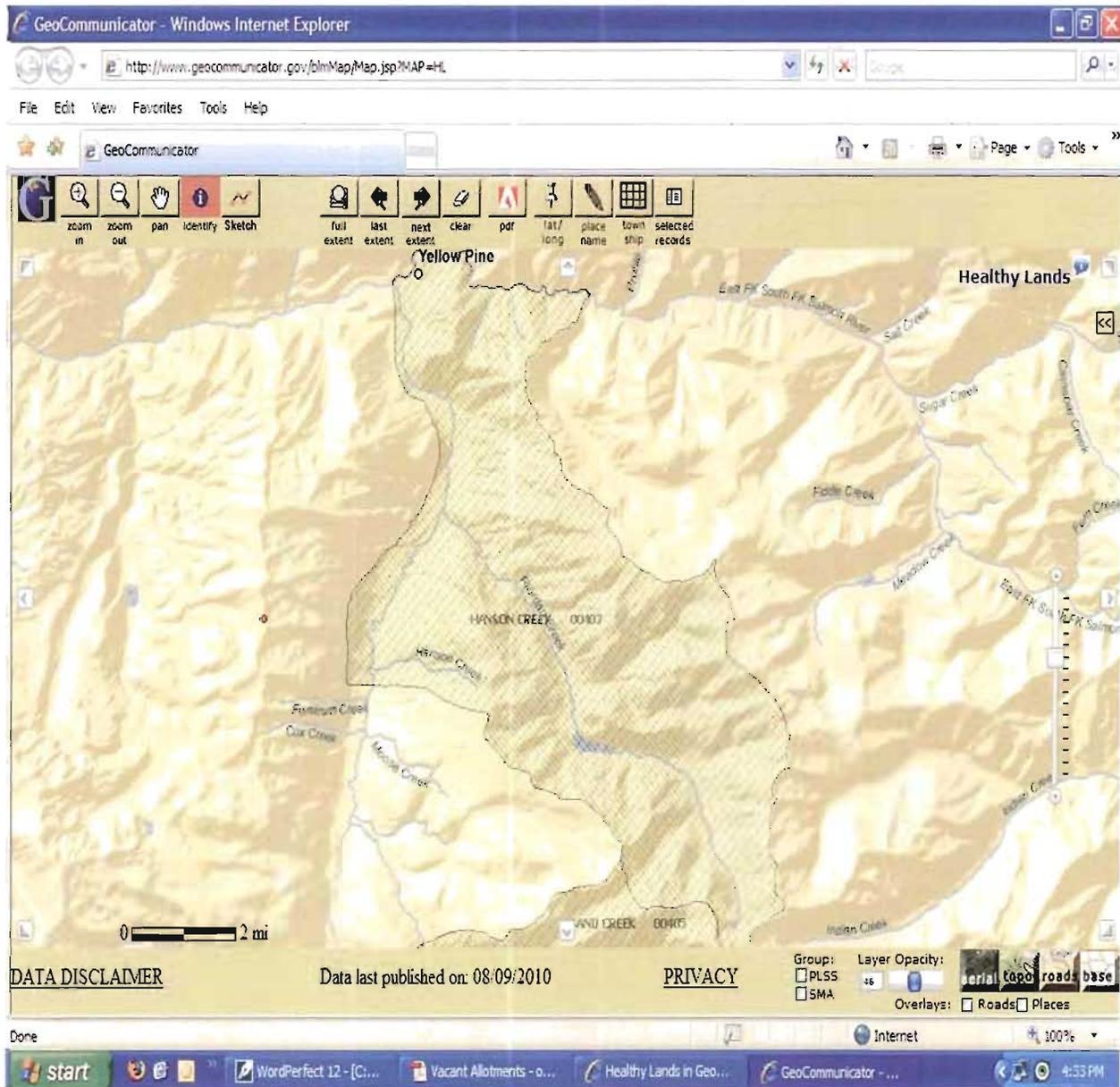


(11) FIR CREEK (00517) ALLOTMENT, BOISE NATIONAL FOREST - Closed via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003, at pages ROD-9 and ROD-13. See also Errata #2 at pages 10 and 11, which clarified that the Closure was 8 allotments, not 6 allotments. See also 2003 BNF-FEIS Table RR-6 at page 3-671 and page 3-677, which listed the 8 allotments as inclusive of the Fir Creek Allotment. However, the 2003 BNF-FEIS at page 3-677 (relating to “Rangeland Resources”) conditioned or otherwise qualified the Closure, stating:

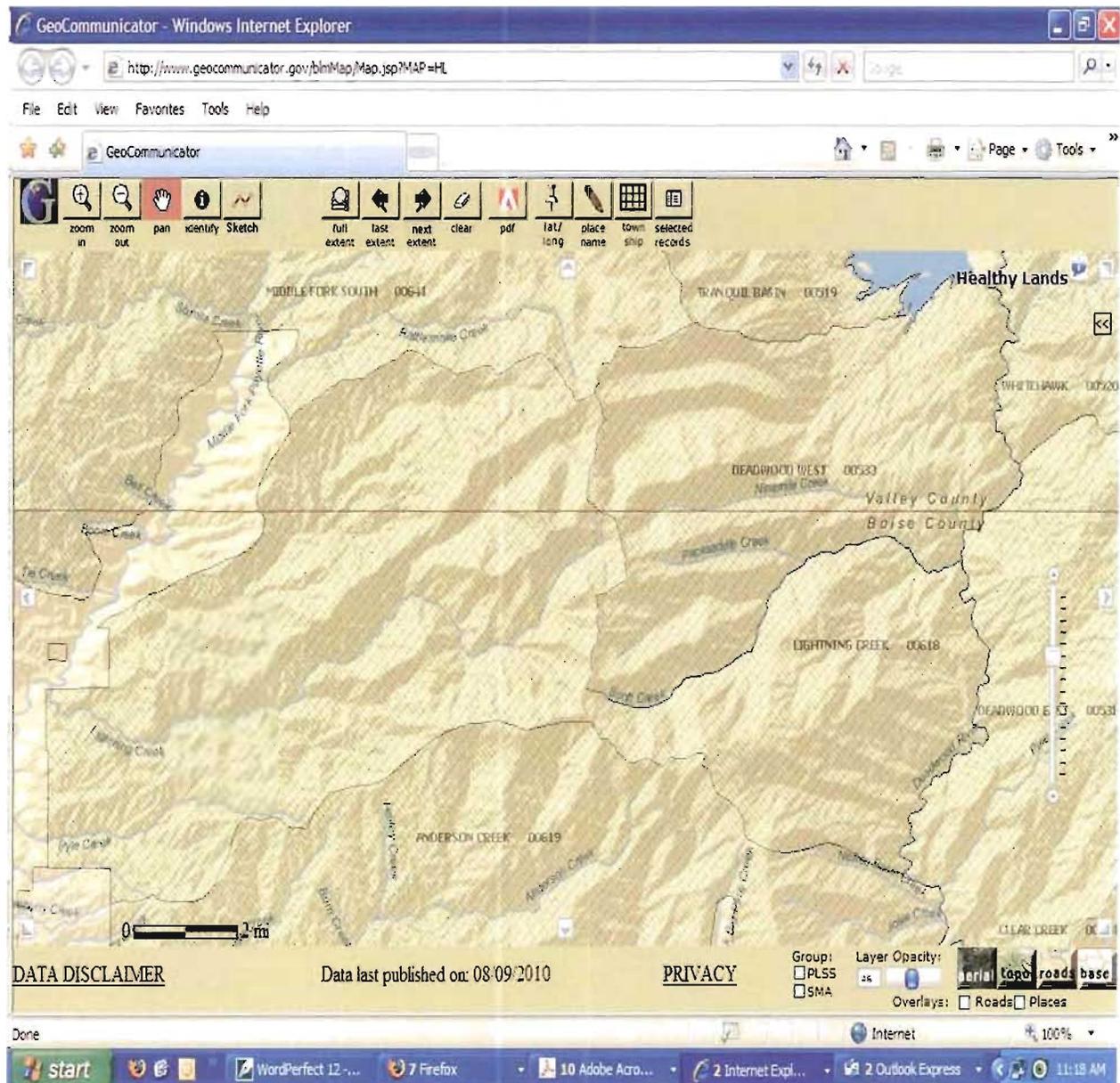
“Vegetation management options with livestock would not necessarily be precluded with the closing of allotments. Permits could still be issued for other purposes (FSM 2234, Livestock Use Permits), such as vegetation management, research, and livestock transportation or crossing access. Nor would closing the vacant allotments automatically reduce head months currently permitted. However, closures could potentially reduce future management flexibility by eliminating the possibility of using the allotments to resolve future conflicts between livestock grazing and other resources on active allotments, or to provide alternative forage in drought years.” Emphasis supplied.



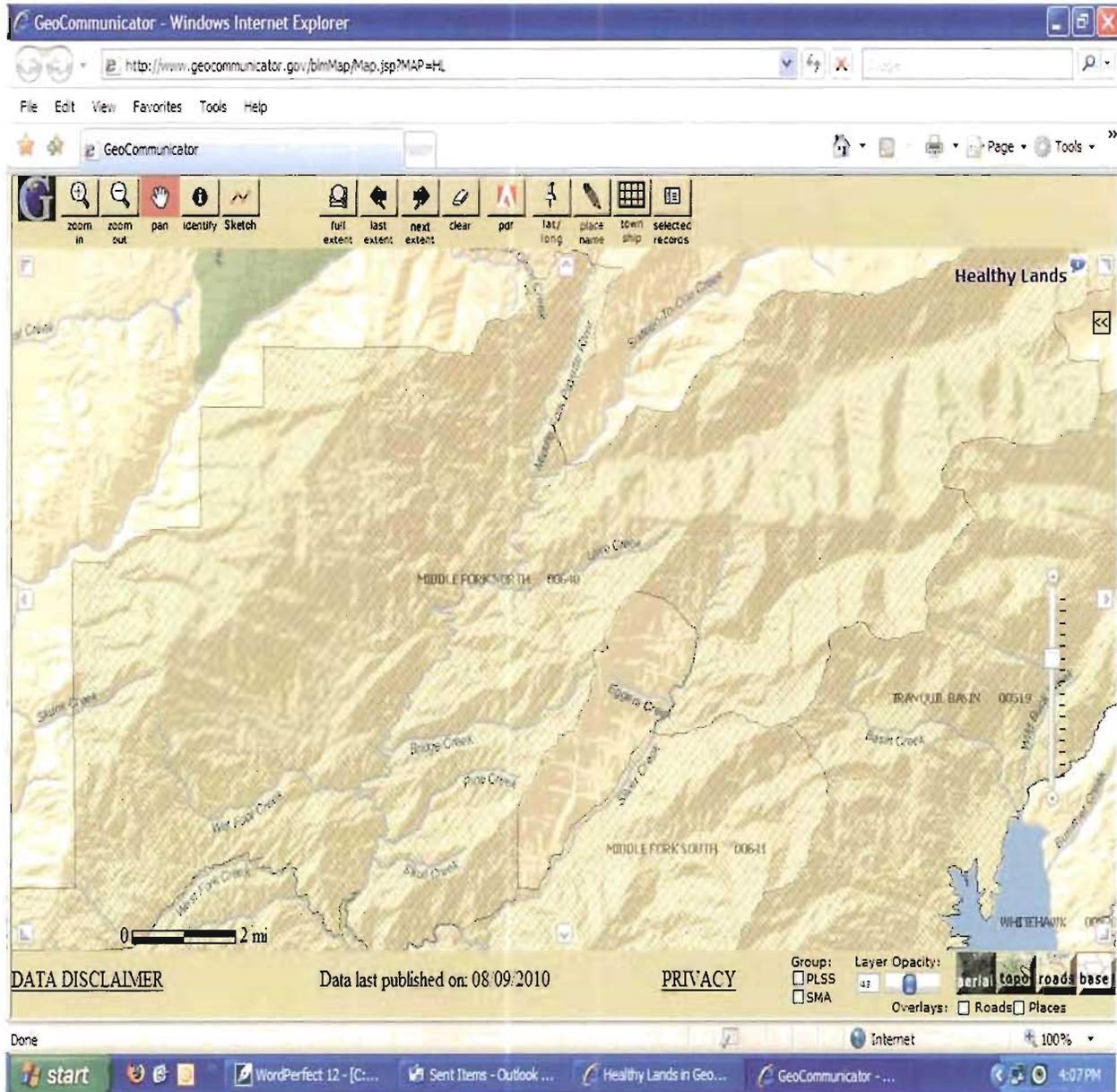
(13) **HANSON CREEK (00405) ALLOTMENT, BOISE NATIONAL FOREST** - Active Allotment. No evidence of explicit closure of this allotment via any Forest Planning and NEPA process, including via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition).



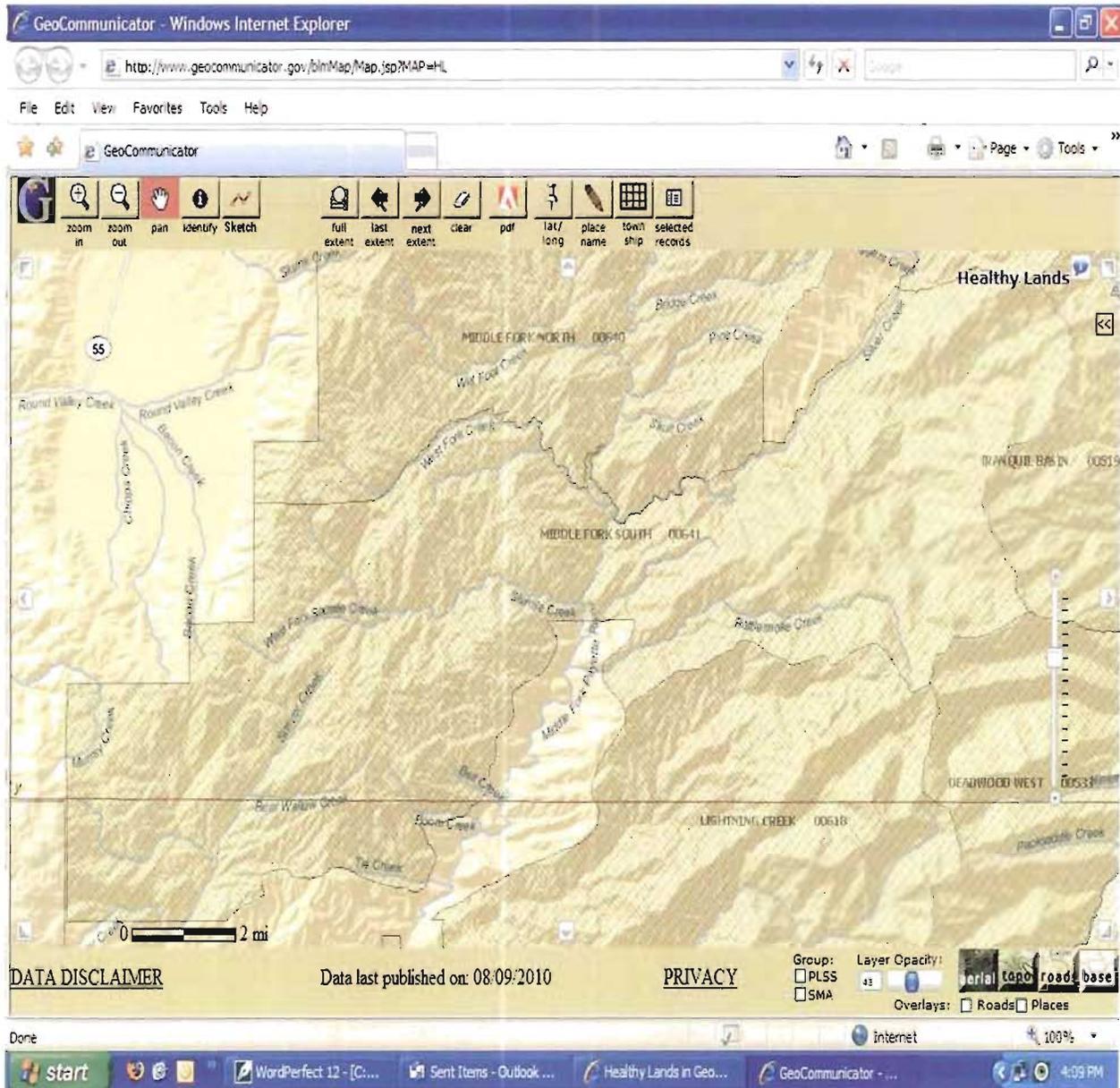
(14) LIGHTNING CREEK (00618) ALLOTMENT, BOISE NATIONAL FOREST - No evidence of explicit closure of this allotment via any Forest Planning and NEPA process, including via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition). However, it would appear that the USFS simply did not include the acres of this allotment in the “Capable Acres” and “Suitable Acres” within the 2000 BNF-DEIS at Table RR-8 at page 3-329, thereby apparently defacto closing this allotment. See also 2000 BNF-DEIS, Table RR-11 at page 3-331. [Note that this illustration of the Lightning Creek Allotment is not accurate, since part of this allotment was included in the Middle Fork South Allotment].



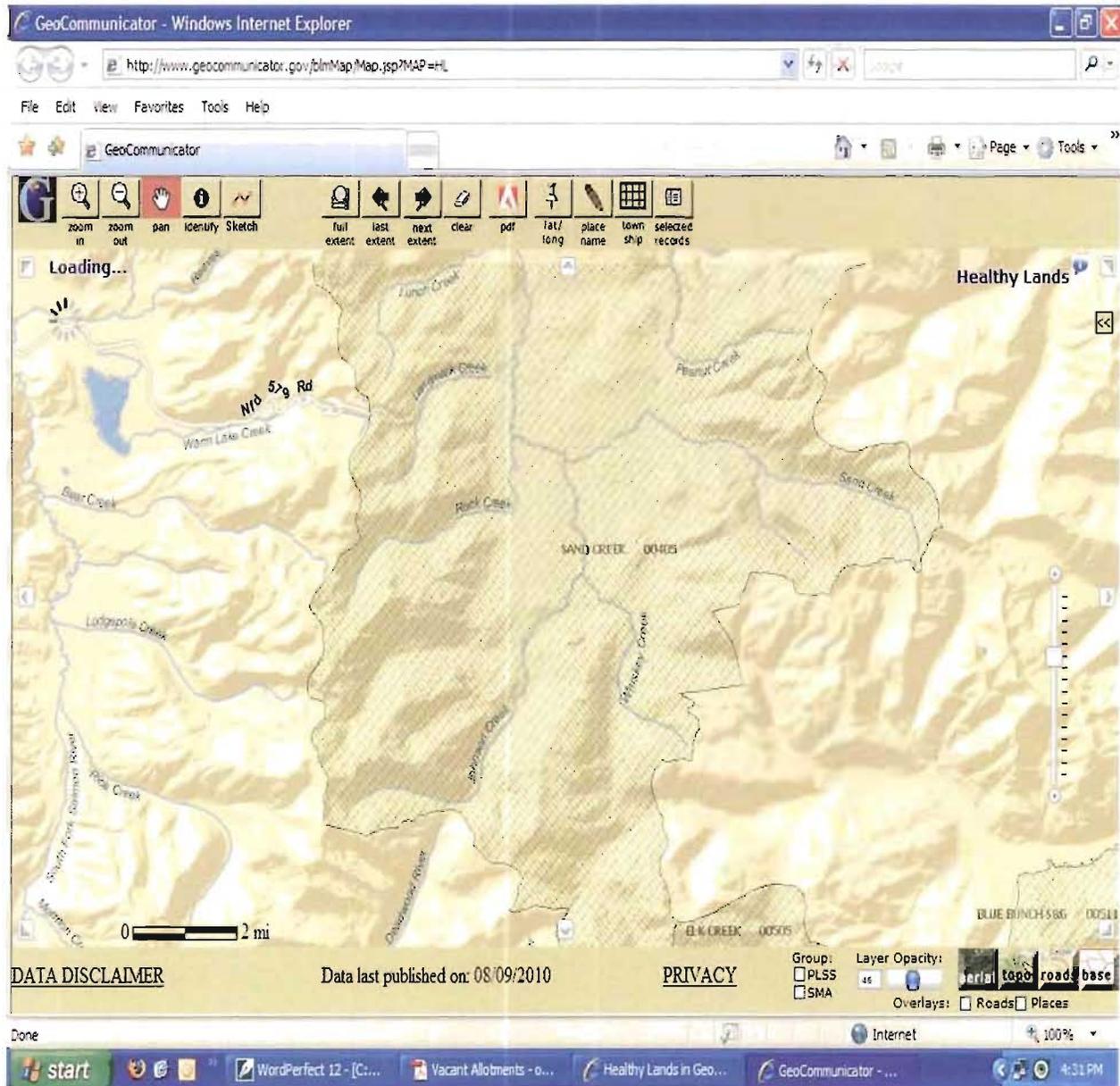
(15) MIDDLE FORK NORTH (00640) ALLOTMENT, BOISE NATIONAL FOREST -
Active Allotment authorized to Frank Shirts, Jr.



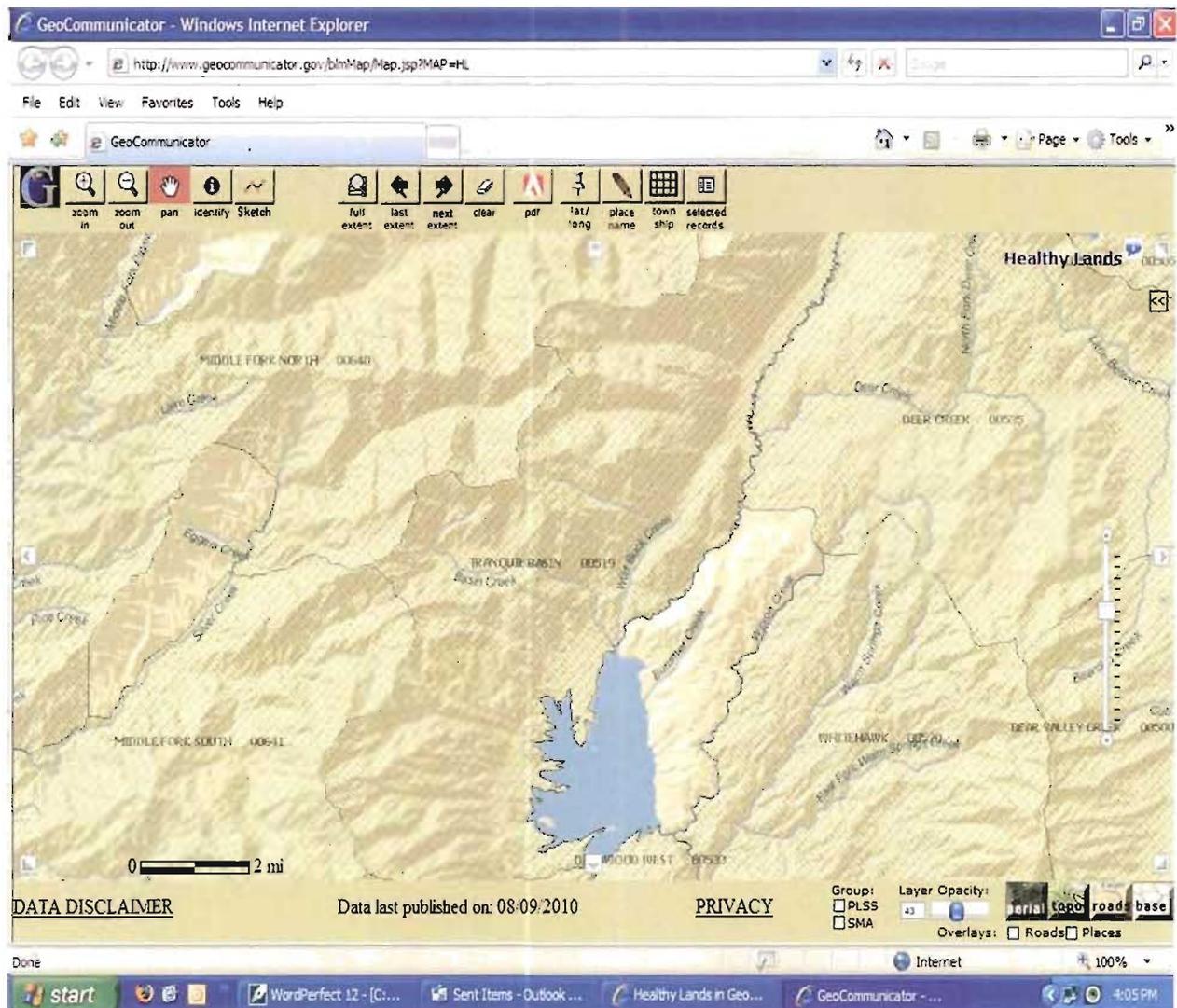
(16) MIDDLE FORK SOUTH (00641) ALLOTMENT, BOISE NATIONAL FOREST -
Active Allotment authorized to Frank Shirts, Jr. [Note that this illustration of the Middle Fork South Allotment is not accurate, since part of the Lightning Creek Allotment was included in this Allotment].



(17) SAND CREEK (00405) ALLOTMENT, BOISE NATIONAL FOREST - Vacant Allotment. No evidence of explicit closure of this allotment via any Forest Planning and NEPA process, including via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition).



(18) TRANQUIL BASIN (00519), BOISE NATIONAL FOREST - No evidence of explicit closure of this allotment via any Forest Planning and NEPA process, including via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003. See 36 C.F.R 219.12(a)(1) (7-1-09 Edition). However, it would appear that the USFS simply did not include the acres of this allotment in the “Capable Acres” and “Suitable Acres” within the 2000 BNF-DEIS at Table RR-8 at page 3-329, thereby apparently defacto closing this allotment. See also 2000 BNF-DEIS, Table RR-11 at page 3-331.



(19) WHITEHAWK (00520) ALLOTMENT, BOISE NATIONAL FOREST - Closed via the *Record of Decision* for the FEIS and Revised Plan for the BNF dated July 25, 2003, at pages ROD-9 and ROD-13. See also *Errata #2* at pages 10 and 11, which clarified that the Closure was 8 allotments, not 6 allotments. See also 2003 BNF-FEIS Table RR-6 at page 3-671 and page 3-677, which listed the 8 allotments as inclusive of the Whitehawk Allotment. However, the 2003 BNF-FEIS at page 3-677 (relating to “Rangeland Resources”) conditioned or otherwise qualified the Closure, stating:

“Vegetation management options with livestock would not necessarily be precluded with the closing of allotments. Permits could still be issued for other purposes (FSM 2234, Livestock Use Permits), such as vegetation management, research, and livestock transportation or crossing access. Nor would closing the vacant allotments automatically reduce head months currently permitted. However, closures could potentially reduce future management flexibility by eliminating the possibility of using the allotments to resolve future conflicts between livestock grazing and other resources on active allotments, or to provide alternative forage in drought years.” Emphasis supplied.

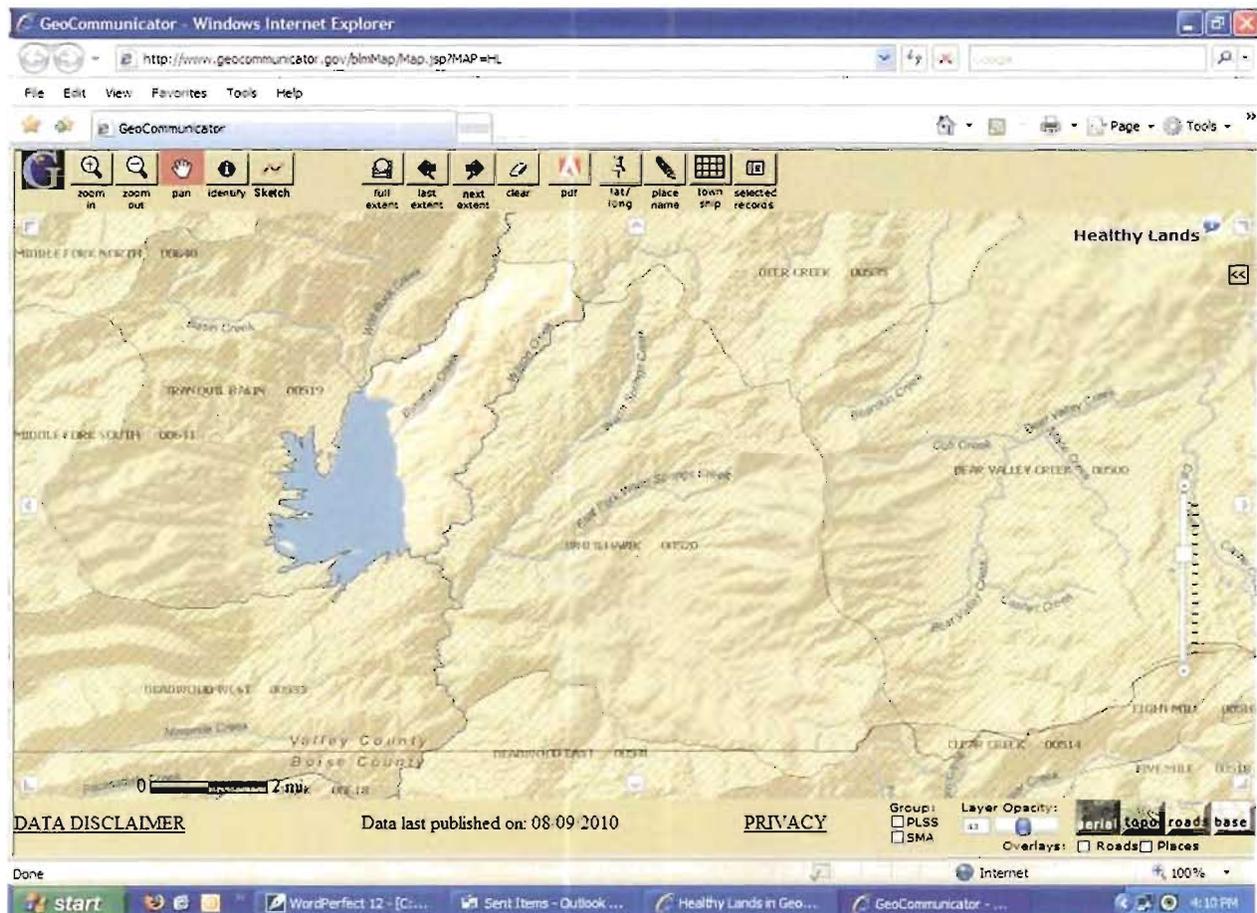
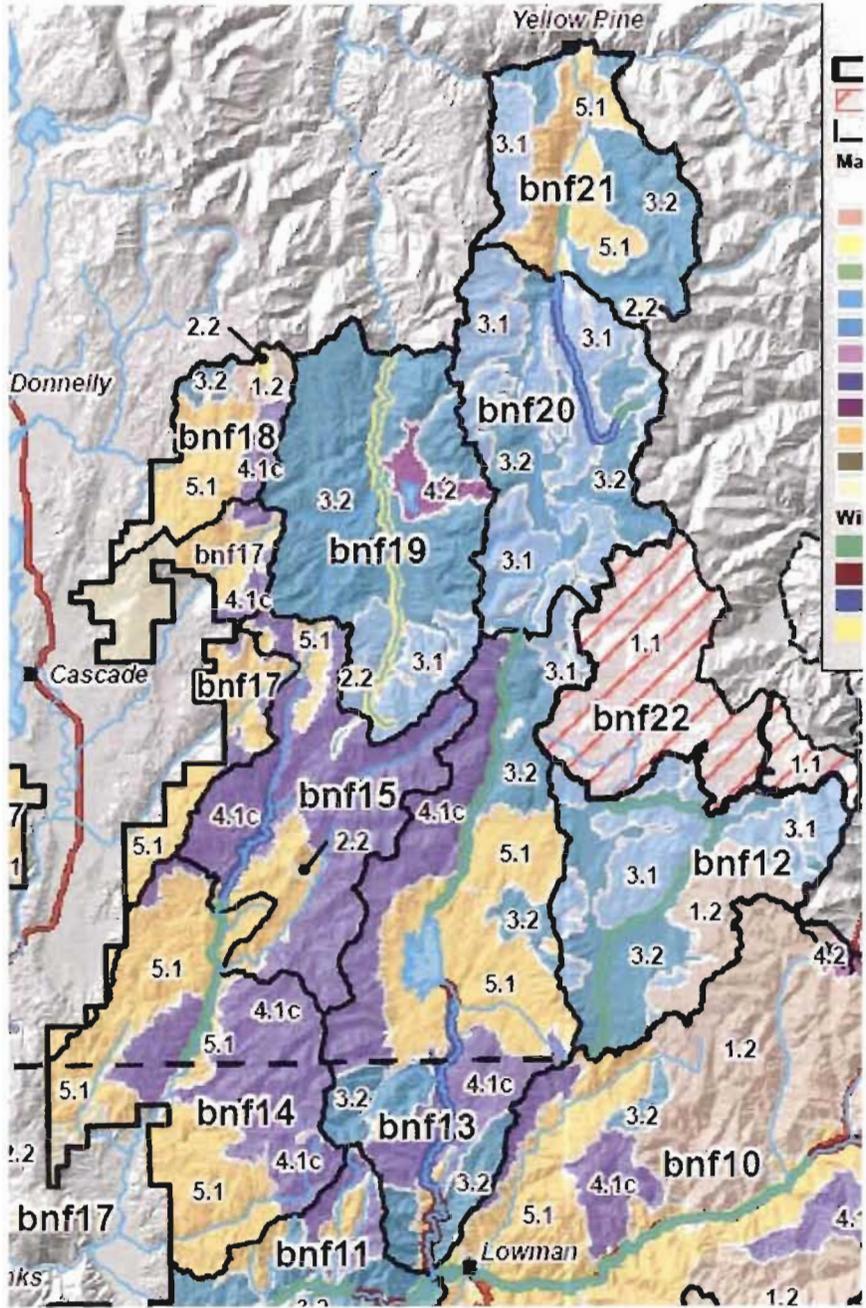
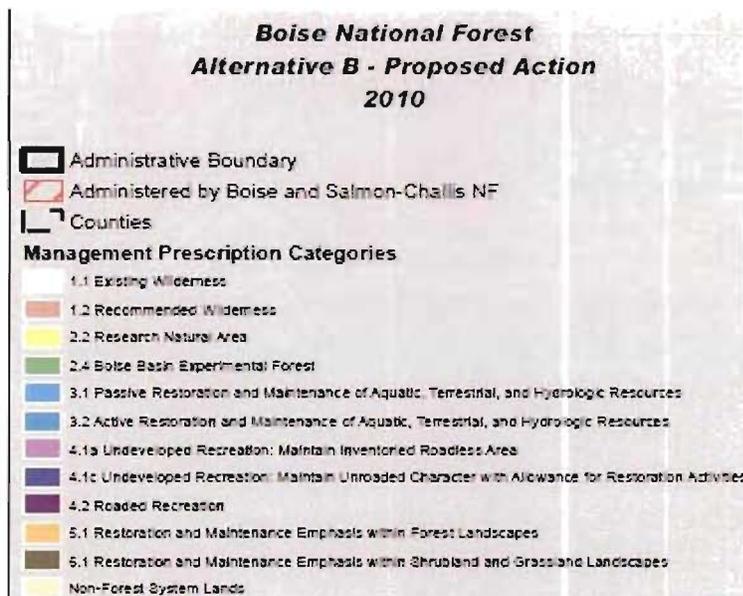


EXHIBIT “B”



bnf10	Upper South Fork Payette River
bnf11	Lower South Fork Payette River
bnf12	Bear Valley Creek
bnf13	Deadwood River
bnf14	Lower Middle Fork Payette River
bnf15	Upper Middle Fork Payette River
bnf16	Sagehen Reservoir
bnf17	North Fork Payette River
bnf18	Cascade Reservoir
bnf19	Warm Lake
bnf20	Upper Johnson Creek
bnf21	Lower Johnson Creek
bnf22	FC-RONR Wilderness



- Areas where livestock grazing management is more restrictive; MPCs 1.1, 1.2, 2.1, 2.4, 3.1, 3.2 and 4.3.
- Areas where livestock grazing management is less restrictive; MPCs 4.1, 4.2, 5.1, 5.2, 6.1, 6.2.