

BEFORE THE APPEALS DECIDING OFFICER (RFO)

USDA FOREST SERVICE, INTERMOUNTAIN REGION

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)
Re: Notice of Appeal on the Record of)
Decision for the Payette National Forest:)
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)
)
)
NEZ PERCE TRIBE, NATIONAL)
WILDLIFE FEDERATION, IDAHO)
WILDLIFE FEDERATION, HELLS)
CANYON PRESERVATION COUNCIL,)
IDAHO CONSERVATION LEAGUE,)
WILD SHEEP FOUNDATION,)
IDAHO CHAPTER- WILD SHEEP)
FOUNDATION, OREGON CHAPTER-)
FOUNDATION FOR NORTH)
AMERICAN WILD SHEEP,)
WASHINTON CHAPTER-)
FOUNDATION FOR NORTH)
AMERICAN WILD SHEEP, THE)
WILDERNESS SOCIETY, THE IDAHO)
SPORTSMAN’S CAUCUS ADVISORY)
COUNCIL, AND THE SAFARI CLUB)
INTERNATIONAL-IDAHO CHAPTER)
)
)
Appellants)
)
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I. NOTICE OF APPEAL

A. Decision Appealed

The Nez Perce Tribe, National Wildlife Federation, Idaho Wildlife Federation, Hells Canyon Preservation Council, Idaho Conservation League, Wild Sheep Foundation, Idaho Wild Sheep Foundation, Oregon Chapter - Foundation for North American Wild Sheep, Washington Chapter - Foundation for North American Wild Sheep, the Idaho Sportman's Caucus Advisory Council, the Safari Club International – Idaho Chapter, and the Wilderness Society (collectively “appellants”) timely submit this notice of appeal, pursuant to 36 CFR Part 215, 36 CFR 219.14(b)(2), 36 C.F.R. 219.35(b) of the 2000 planning rule, 65 Fed. Reg. 67,514, and the 2001 Interpretive Rule, 66 Fed. Reg. 1864, seeking review of specific components of the Payette National Forest's (PNF) July 20, 2010 Record of Decision, signed by PNF Supervisor Suzanne Rainville, 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 (“2010 ROD”). The 2010 ROD was noticed in the *Idaho Statesman* on July 30, 2010.

As proposed, the 2010 ROD embraces Alternative 7O, but with implementation modifications designed to “phase-in” Alternative 7O over a 3-year period (Alternative 7O Modified). On the west side of the Payette National Forest, all of the Curren Hill, Boulder Creek, and Surdam Allotments will be designated as unsuited for domestic sheep grazing. The western 65 percent of the Smith Mountain Allotment and the western 15 percent of the Price Valley Allotment will be designated as unsuited for domestic sheep and goat grazing. On the east side of the Payette National Forest, all of the Shorts Bar, Grassy Mountain, Vance Creek, Hershey Lava, Little French Creek, French Creek, Josephine, Bear Pete, Marshall Mountain,

Victor-Loon, North Fork Lick Creek, and Lake Fork Allotments will be designated as unsuited for domestic sheep and goat grazing. The eastern 75 percent of the Twenty Mile and the northern 10 percent of the Jug Handle Allotments will be unsuited for domestic sheep and goat grazing. An estimated 31,592 acres are identified as suitable rangelands for domestic sheep and goat grazing. Trailing will not be authorized in areas designated as unsuited for domestic sheep and goat grazing as displayed in the FSEIS . Monitoring measures and Forest Plan direction will be implemented as described in Appendix O of the FSEIS.

Alternative 7O Modified will be implemented as follows: (1) 2010-Continue grazing as authorized in the 2010 Annual Operating Instructions for the remainder of the 2010 grazing season; (2) 2011-Implement management as described for Alternative 7P for one grazing season; (3) 2012-Implement management as described for Alternative 7N for one grazing season; and (4) 2013-Implement management as described for Alternative 7O.

B. Standing and Jurisdiction

1. Nez Perce Tribe

The Nez Perce Tribe is a federally-recognized Tribe that is based in Lapwai, Idaho on the Nez Perce Reservation. 67 Fed. Reg. 46,330. The Nez Perce Tribe will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. The Nez Perce Tribe has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864.

The Nez Perce Tribe has maintained strong cultural and subsistence ties to bighorn sheep since time immemorial. In 1855, the United States negotiated a treaty with the Nez Perce Tribe. Treaty of June 9, 1855, with the Nez Perce Tribe, 12 Stat. 957 (1859). In Article 3 of this treaty,

the Nez Perce Tribe explicitly reserved, among other guarantees, “the right of taking fish at all usual and accustomed places...together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed lands.” *Id.* The PNF is part of the vast territory ceded by the Nez Perce Tribe, on which the Tribe has treaty-reserved rights. The PNF provides irreplaceable habitat for tribal resources, including bighorn sheep, which is a resource subject to the exercise of the Tribe’s treaty-reserved rights. *See e.g., Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969), *aff’d*, *United States v. Oregon*, 529 F.2d 570 (9th Cir. 1976); *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979) (*Fishing Vessel*).

The treaty-reserved right to take fish, hunt and gather presumed the continued existence of those resources. *See Fishing Vessel* at 678–79. Thus, the treaty secures to the Nez Perce Tribe the continued existence of those biological conditions necessary for the resources that are the subject matter of the treaties. *See Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, 763 F.2d 1394 (9th Cir. 1985), *cert. denied*, *Sunnyside Valley Irrigation District v. United States*, 474 U.S. 1032 (1985).

Harm to bighorn sheep has and will continue to injure the Nez Perce Tribe. The Tribe’s reserved treaty rights include hunting bighorn sheep on Payette National Forest lands. Bighorn sheep also play a prominent role in Nez Perce cultural, subsistence, and lifeways. Fatal disease transmitted to bighorn sheep by domestic sheep that are permitted to graze within and adjacent to occupied bighorn sheep habitat on the Payette National Forest represents a clear threat to this revered animal. Providing adequate habitat, free of the threat of fatal disease transmission from domestic sheep, is critical in protecting and restoring bighorn sheep populations to viable levels necessary for Nez Perce treaty and cultural needs.

The Nez Perce Tribe submitted substantive comments on the Draft SEIS on February 27, 2009 and March 19, 2010. In addition, the Nez Perce Tribe participated as a Cooperator in the formulation of the Draft SEIS, and consulted formally and at staff-to-staff levels with the Forest Service on several occasions about the issue between 2007 and 2010.

2. *National Wildlife Federation*

The National Wildlife Federation (NWF) is a national member-supported non-profit conservation, education, and advocacy organization. WF will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. NWF has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864. NWF is associated with conservation organizations in 47 states and territories, including Idaho Wildlife Federation ("IWF") in Idaho. NWF is dedicated to conserving wildlife and other natural resources, and believes that hunting, fishing, and trapping are legitimate recreational pursuits and useful wildlife management practices. NWF works to promote responsible management of wildlife and wildlife habitat on public lands. NWF has worked for many years to promote bighorn sheep health and viability in the Payette National Forest ("PNF"). NWF and IWF provided comments on the Bighorn Sheep Viability DSEIS in 2009. NWF and IWF provided independent, extensive comment on the updated January 2010 DSEIS by letter dated March 22, 2010, commending the Forest Service for its science-based effort to protect the viability of Rocky Mountain Bighorn Sheep on the PNF and urging the Forest Service to ensure that disease transmission risk is eliminated to the greatest extent possible.

National Wildlife Federation and Idaho Wildlife Federation bring this appeal on behalf of their members, many of whom regularly enjoy and plan to continue enjoying the recreational,

educational, scientific, and aesthetic activities in and adjacent to the PNF. NWF and IWF members are thus harmed by the Forest Service's failure to ensure that the native ecosystem and bighorn sheep populations will not be jeopardized due to the continued grazing of domestic sheep and proper separation of bighorn and domestic sheep on PNF lands. Because of PNF's failure to implement a grazing Alternative that will immediately reduce the risk of disease outbreak in order to maintain viable populations of bighorn sheep; and the failure to provide adequate Forest Plan direction to implement Alternative 7O, bighorn sheep remain exposed to unnecessary contact with domestic sheep. These contacts would lead to extirpation of bighorn, thus harming NWF and IWF members' interest in PNF lands. The relief sought in this action, if awarded, will redress this harm by better protecting bighorn sheep, a highly sensitive species.

3. *The Wilderness Society*

The Wilderness Society's (TWS) mission is to protect wilderness and inspire Americans to protect our wild places. TWS will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. TWS has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864. Founded in 1935, TWS works to protect America's wilderness and wildlife and to develop a nationwide network of wild lands through public education, scientific analysis and advocacy. Our goal is to ensure that future generations will enjoy the clean air and water, wildlife, beauty and opportunities for recreation and renewal that pristine forests, rivers, deserts and mountains provide. TWS and its more than 500,000 members and supporters nationwide, including more than one thousand members in Idaho, have a long-established history of involvement and interest in public lands.

TWS members and staff use the lands within the Payette National Forest, Hells Canyon, and the Salmon River canyon for recreation, including hunting, and for an escape to natural places.

TWS has long been involved in management decisions affecting bighorn sheep in Idaho. TWS commented on the first land and resource management plan for the Payette National Forest in 1985, and in those comments expressed concern over disease issues between bighorn sheep and domestic sheep. Similar concerns were raised in TWS's comments on the second land and resource management plan for the Payette Forest in the late 1990s. TWS was a party to the 2003 appeal of the Payette Forest land and resource management plan that raised the issue of viability and bighorn sheep. The Chief of the Forest Service agreed with the claims of that appeal that the Payette Forest had failed to provide for viability of bighorn sheep and directed the Payette Forest to amend its land and resource management plan. TWS was a party to the out of court settlement that closed those domestic sheep allotments on the Payette that posed the greatest risk to bighorn sheep while the analysis for the forest plan amendment was conducted. TWS provided comments at all appropriate opportunities during the preparation of the forest plan amendment, and TWS members provided tens of thousands of comments to the Forest Service supporting recovery of bighorn populations and elimination of domestic sheep grazing in bighorn habitat. This issue has been featured in TWS's national newsletter. TWS supported listing bighorn sheep by the Forest Service as sensitive species. TWS provided financial assistance to the Nez Perce Tribe's bighorn sheep study in the Salmon River canyon. TWS submitted comments on the BLM's Cottonwood Draft RMP/EIS on December 14, 2006 raising concerns about bighorn sheep and domestic sheep disease issues. TWS was instrumental in the on-going closures of the Allison-Berg allotment on the adjacent Nez Perce National Forest and the Partridge Creek allotment administered by the BLM.

4. *Oregon Chapter - Foundation for North American Wild Sheep*

The Oregon Chapter-Foundation for North American Wild Sheep (OR-FNAWS) is a 501 (c) 3 non-profit, hunting, conservation, public education, and wild sheep advocacy group. OR-FNAWS will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. OR-FNAWS has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864. Our current membership is approximately 311 members, throughout the State of Oregon and typically adjacent states. Our sponsoring organization is the Wild Sheep Foundation, headquartered in Cody, Wyoming. OR-FNAWS is closely associated with other Wild Sheep Foundation and FNAWS chapters and affiliated organizations throughout the U.S.A. OR-FNAWS is dedicated to conserving all wild Bighorn sheep within the state of Oregon and enhancing wildlife habitat that will effectively support wild bighorn sheep.

OR-FNAWS was founded in 1998 and since then, has worked aggressively to promote bighorn sheep health and viability within the State of Oregon, adjacent states, and nationwide. We began closely monitoring wild sheep activities on the Payette National Forest, since 2005 and became directly involved in 2006.

OR-FNAWS provided extensive comments on the January 2010 DSEIS, by letter dated March 19, 2010, commending the Forest Service for its science-based effort to protect the viability of Rocky Mountain Bighorn Sheep on the PNF and urging the Forest Service to ensure that disease transmission risk is eliminated to the greatest extent possible. The membership of OR-FNAWS will be affected by the ROD decisions, as issued by the Forest Supervisor, by making the Bighorn sheep in the adjoining Oregon parts of Hells Canyon more susceptible to

potentially fatal communicable diseases directly and indirectly transmitted by domestic sheep, located on current grazing allotments.

5. *Idaho Conservation League*

As Idaho's leading voice for conservation solutions, the Idaho Conservation League represents over 9,500 members from across the state who have a deep interest in the health and management of our public lands and wildlife. ICL will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. ICL has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864. Since 1973, the Idaho Conservation League has worked to protect Idaho's clean water, Wilderness and quality of life. Many of our members live near, or recreate within the areas covered by the Bighorn Sheep Viability Analysis and have a vested interest in the protection of this native species. In particular, Idaho Conservation League members seek opportunities to view bighorn sheep in their native habitat for recreational, scientific, and aesthetic purposes and would be impacted by the decision to expose bighorn sheep to diseases introduced by domestic sheep.

The Idaho Conservation League was one of the original appellants that raised bighorn viability as an issue in the appeal of the 2003 Southwest Idaho Ecogroup Land and Resource Management Plans - Final Environmental Impact Statement and Record of Decision, in an appeal dated November 12, 2003. The Idaho Conservation League has demonstrated an ongoing commitment to ensuring necessary steps are taken to ensure bighorn sheep viability. Since then, we have continued to engage in every opportunity for public comment during the development of this EIS including comments on the DSEIS on March 22, 2010, and on March 2, 2009.

6. *Wild Sheep Foundation*

The Wild Sheep Foundation (WSF), formerly the Foundation for North American Wild Sheep, was founded in 1977 by sheep and mountain hunting enthusiasts and conservationists. WSF will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. WSF has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864. With a membership of more than 10,000 worldwide and a chapter network in North America including a chapter in Idaho, WSF is the premier advocate for wild sheep, wild goats, other mountain wildlife, and their habitat. Since forming in 1977, the Wild Sheep Foundation has raised and expended more than \$80 million on conservation, education and mission advocacy programs in North America, Europe and Asia.

The Wild Sheep Foundation is a non-profit, tax-exempt charitable organization as described in Section 501(c)(3) of the Internal Revenue Code with a stated mission "to enhance wild sheep populations, promote professional wildlife management, educate the public about wild sheep and the conservation benefits of hunting, and protect sportsmen's rights – while keeping administrative costs to a minimum."

Our purpose is "*To Put and Keep Sheep on the Mountain*[™]" and we have been actively involved and engaged on bighorn and domestic sheep interaction issues in the tri-state region of Idaho, Oregon and Washington and throughout the western United States and Canada. We have provided extensive comments on the DSEIS and have been actively engaged with numerous other stakeholders on bighorn/domestic interaction issues on the Payette National Forest (PNF).

Our members in Idaho, Washington and Oregon will be affected by the Payette ROD, as will our members throughout North America by our concern that the implementation schedule of

the Forest decision may negatively impact the viability of bighorn sheep on the PNF and adjoining regions.

7. *Idaho Wildlife Federation*

The Idaho Wildlife Federation (IWF) is an Idaho non-profit organization whose primary mission is to protect and preserve Idaho wildlife and wildlife habitat. IWF will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. IWF has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864. Our organization represents statewide membership and is an affiliate of the National Wildlife Federation. The IWF has been an advocate for wildlife in Idaho since 1936.

The issue of bighorn sheep viability, and threat of disease transmission, has been an issue of great concern to the Idaho Wildlife Federation. Our organization has worked with bighorn advocates, the Nez Perce Tribe, the National Wildlife Federation, and with domestic sheep industry representatives regarding the issue of the threat of disease transmission from domestic sheep grazing operations on public lands. The IWF is a member organization of the Bighorn Sheep/Domestic Sheep Collaborative in Idaho.

In conjunction with the National Wildlife Federation, the Idaho Wildlife Federation provided comments on bighorn sheep viability in 2009 and on the updated January 2010 DSEIS by letter dated March 22, 2010. The threat of bighorn sheep exposure to disease, through contact with domestic sheep grazing on public lands, threatens the viability of bighorn sheep populations in Idaho. The Idaho Wildlife Federation has a stake in providing sustainable bighorn sheep populations for future generations.

8. *Idaho Sportman's Caucus Advisory Council*

In March of 2005 twenty founding sportsmen's organizations, representing roughly 30,000 sportsmen in Idaho, adopted bylaws, elected officers and officially formed the Idaho Sportsman's Caucus Advisory Council (ISCAC). ISCAC will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. ISCAC has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864. The goal of the group is to engage conservation issues that affect Idaho wildlife. We seek science based solutions with the long-term welfare of wildlife in mind. ISCAC's mission statement is to protect and improve Idaho's wildlife heritage of hunting, fishing, and trapping, for present and future generations by: (1) providing an organization where Idaho's sportsmen's organizations can come together to seek consensus on issues important to sportsmen; (2) providing education to the Idaho sportsmen's organizations, the Idaho Legislature and other governmental entities on sportsmen's issues; and (3) being an information resource to the Legislature and other governmental entities on issues, legislation and rules affecting Idaho's wildlife heritage of hunting, fishing and trapping.

Our members are people who visit the Payette National Forest and use the wildlife resources found there that are affected by the Record of Decision. We submitted timely comments on the DSEIS. Organizations of the Council may submit additionally, of the 30 members, several are actively pursuing individual efforts.

9. *Washington Chapter - Foundation for North American Wild Sheep*

The Washington Chapter - Foundation for North American Wild Sheep (WAFNAWS), established in 1993 as a 501(c) 3 non-profit conservation group with a mission of supporting,

enhancing and establishing healthy bighorn sheep populations as well as habitat improvement and disease research, not just in Washington State but in all western states as well as Canada and Mexico. WAFNAWS will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. WAFNAWS has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864. Our board of directors are all volunteers working tirelessly in pursuit of the Chapter's mission by representing 225 active members from Washington as well as other western states and Canada. Our comments, sent to the Payette National Forest, March 22, 2010, represent the WAFNAWS strong interest in bighorn sheep management even in Idaho. Since the animals do not know boundaries and the Hells Canyon bighorn sheep populations represent one meta-population that stretches as far south as the Payette National Forest, what occurs there does and will impact the well being of bighorn sheep that are the focus of our members interests. Furthermore, our membership includes Idaho residents. Many of our members are interested in hunting on the Payette National Forest but opportunities are limited because of the bighorn sheep declines ongoing there.

10. *Safari Club International – Idaho Chapter*

The Safari Club International – Idaho Chapter (SCI) mission is to protect the freedom and opportunity to hunt worldwide, support wildlife conservation, and provide for education regarding the value and protection of wildlife resources. SCI has 100 members, most residing in south east Idaho. Safari Club International, our parent organization, has 50,000 members worldwide. Our comments regarding the Payette National Forest Plan were made as a member of the Idaho Sportsman's Caucus Advisory Council. SCI will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. SCI has a right to appeal the Forest

Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864.

Our members are hunters and conservationists. Any weakness in this plan will likely postpone the re-establishment of the Bighorn Sheep (BHS) and their full recovery or allow significant setbacks in that recovery. The full recovery of BHS is important to our members for the value we place on these animals as a species returning to their proper place as a part of Idaho's ecosystem. These BHS also provide, with full and prompt recovery, an opportunity to hunt these magnificent creatures that has been denied our members for over one hundred years due to their diminishment, likely due to the same diseases emanating from domestic sheep today. Our chapter members and our parent organization's national and international members are all harmed in that their hunting opportunities are denied due to the unrecovered status of the BHS on the Payette. Many of our international members travel the world hunting. The BHS are an icon species among all hunters and our in-state and international members would seek hunting these animals with great enthusiasm, spending significant dollars to the benefit of both the State of Idaho and the local economies of the local towns in the vicinities of the BHS range. Currently all of these opportunities are and have been denied due to the unrecovered status of the BHS. Any delay in this recovery will harm thousands of the ISCI members, both on the chapter level within the state of Idaho and the international members who would avail themselves of this hunting opportunity as soon as it becomes available.

11. *Idaho Chapter - Wild Sheep Foundation*

The Idaho Chapter - Wild Sheep Foundation (IWSF) is non-profit 501(3)(c) organization. IWSF will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702.

IWSF has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36 C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864. IWSF's mission is to provide funding for "*putting sheep on the mountain*". The non-profit conducts fund raising events which help fund research and management of bighorn sheep in Idaho. The interest in the Payette National Forest (PNF) management of habitat is to assure sufficient habitat is provided for viable populations of bighorn sheep. This activity has been ongoing since 1995 when IWSF, then known as the Foundation for North American Wild Sheep, became involved with supporting the Hells Canyon Initiative research and management project. IWSF has a membership of about 300 individuals most of whom live in Idaho, Oregon, Montana Washington and Utah.

IWSF submitted comments to the PNF during 2008, 2009 and 2010 regarding management of bighorns, separation of domestic sheep and goats and bighorns and bighorns and disease issues. IWSF foundation members were participants in all the Idaho Collaborative supporting the separation of bighorns and domestics during the years which the group, which was formed at the request of Governor Otter, attempted to resolve problems with bighorn disease on the PNF. All IWSF members have been and will continue to be harmed as long as disease continues to keep bighorn sheep populations suppressed in Hells Canyon and across the PNF. Both consumptive and non-consumptive uses of bighorns will be greatly reduced.

12. *Hells Canyon Preservation Council*

Hells Canyon Preservation Council ("HCPC") is a regional nonprofit corporation of approximately 1,000 members, based in La Grande, Oregon. HCPC will be adversely affected by this proposed action within the meaning of 5 U.S.C. § 702. HCPC has a right to appeal the Forest Supervisor's decision, and this appeal is brought pursuant to 36 C.F.R. § 215.11 and 36

C.F.R. § 219.35(b) of the 2000 Planning Rule, per the 2001 transitional interpretive rule, 66 Fed. Reg. 1864. For over thirty-five years, HCPC has involved itself in federal public land management issues and decisions that affect the Hells Canyon ecosystem, including conflicts between domestic sheep grazing and native bighorn sheep population health. HCPC's mission is the protection and restoration of the Hells Canyon-Wallowa and Blue Mountain ecosystems, which also includes the Salmon River area of the greater Hells Canyon ecosystem. HCPC, and its staff and members, actively use lands on the Payette National Forest in Idaho as well as the Hells Canyon National Recreation Area and adjacent lands on the Wallowa-Whitman and Nez Perce National Forests for recreational, economic, spiritual, and aesthetic purposes.

HCPC has for well over a decade been involved in efforts to address conflicts between domestic and bighorn sheep stemming from domestic sheep grazing on the above-referenced public lands, which affects the larger Hells Canyon ecosystem in Oregon and Washington as well as Idaho. HCPC has actively and consistently engaged Forest Service land management decisions affecting the above-referenced public lands through designated administrative comment periods, public meetings, field tours, conversations with and written letters to the Forest Service and other affected interests, as well as administrative appeals and litigation when necessary. HCPC was an original appellant of the Payette's Forest Plan revision decision in 2005, and since then has commented in each and every NEPA stage the Payette has conducted regarding its management of bighorn sheep. Through these processes, and since at least 1990, HCPC has actively advocated for separation of bighorn and domestic sheep throughout the Hells Canyon ecosystem and has consistently communicated this position with the Forest Service and affected interests.

C. Background

Prior to the mid-1800's, bighorn sheep were abundant and widely distributed throughout the western United States, including Idaho. Numbers of Rocky Mountain bighorn sheep (*Ovis canadensis canadensis*) in North America were estimated to be about 1.5 to 2 million sheep. Large declines in both abundance and distribution of bighorn sheep occurred during the late 1800s and early 1900s as a result of overharvest, habitat loss, competition for forage, and disease transmission from domestic sheep that grazed in bighorn sheep habitat. Today, despite recurring recovery efforts, bighorn sheep occur at less than 10% of historic numbers. The current distribution is estimated at less than 30 percent of historic distribution, with most existing within relatively small and isolated populations.

Only portions of two bighorn sheep metapopulations remain on the Payette National Forest, one within Hells Canyon of the Snake River and the other among the Salmon River Mountains. More than 10,000 bighorn sheep may have once lived in the Hells Canyon and surrounding mountains, but they were extirpated by the mid-1940s. Through reintroduction, 600 bighorn sheep have been transplanted into Hells Canyon since 1971. Seven die-offs have been reported since 1971. Today, the population is estimated at 850 animals. The Salmon River metapopulation was never extirpated. Winter population surveys conducted in 2001, 2003, and 2004 document at least 508 bighorn sheep within the various drainages of the Salmon River and 210 bighorn sheep in the South Fork Salmon River and Main Salmon River. Historic accounts of major die-offs of bighorn sheep in the Salmon River Mountains began in approximately 1870. The population has experienced periodic die-offs and population decline since that time. The current trend counts of bighorn sheep in hunting units in and around the Payette National Forest has decreased 47 percent since 1981.

During the late 19th and early 20th centuries, large numbers of domestic sheep were grazed on the Payette National Forest. In 1915, 174,445 sheep were permitted to graze on the Payette National Forest. This number declined throughout the 20th century to around 18,300 in 2009. Today, four permittees are authorized through term grazing permits to graze sheep on the Payette National Forest.

Extensive scientific literature supports the relationship between disease in bighorn sheep populations and contact with domestic sheep, although the mechanisms of disease transmission remain unclear. Field observations have associated bighorn sheep respiratory disease events when observed near domestic sheep, which has led to numerous independent research efforts. The results of this research provide strong evidence that bighorn sheep have a high probability of contracting fatal pneumonia following contact with domestic sheep. As a result, many federal land management agencies and state wildlife managers recommend eliminating shared use of ranges by bighorn and domestic sheep. ROD-6.

D. Procedural History

On March 9, 2005, the Chief of the Forest Service (Chief) issued a decision on appeal concurring that the effects analyzed and the discussion of cumulative effects pertaining to bighorn sheep presented in the 2003 Southwest Idaho Ecogroup Land and Resource Management Plan and Record of Decision (2003 FEIS) did not adequately address viability or the potential for disease transmission and reversed the Regional Forester's 2003 decision to approve revised management direction for the Hells Canyon Management Area (MA) as it pertained to bighorn sheep and its habitat. The Chief stated that allowing continued domestic sheep grazing in or near occupied bighorn sheep habitat could threaten the viability of bighorn sheep populations within the Hells Canyon area and across the Payette National Forest. The Chief instructed the Regional

Forester to reanalyze the potential impacts of domestic sheep grazing on bighorn sheep viability on the Payette National Forest to ensure habitat is available to support a viable population of bighorn sheep and support a determination of compliance with the HCNRA Act, supplementing the FEIS and to amend the Forest Plan as necessary to address habitat needs to maintain bighorn sheep viability. The 2010 FEIS supplements the 2003 FEIS by identifying suitable rangelands for domestic sheep and goat grazing, identifying vacant allotments on the PNF for closures, and amending the Forest Plan with direction to maintain habitat necessary to support viable populations of bighorn sheep. The 2010 FEIS compared 28 bighorn sheep management alternatives; the 2010 ROD selected Alternative 7O Modified for implementation.

II. STATEMENT OF REASONS

A. Purpose of the Appeal

Appellants would first like to thank the PNF for its commitment to protection of bighorn sheep habitat within its jurisdiction. Since the Chief of the Forest Service's 2005 appeal decision directing the PNF to correct inadequacies in the 2003 FEIS to address bighorn sheep viability threatened by disease from domestic sheep grazing on and adjacent to occupied bighorn sheep habitat, Supervisor Rainville and her staff have pursued this mandate with commendable resolve. Indeed, appellants are encouraged by Supervisor Rainville's stated goal to take "immediate measures" to protect the bighorn sheep populations on the PNF. The PNF's analysis (core herd home range, foray, risk of contact and disease spread analysis) represents the most comprehensive and quantitative risk assessment undertaken to date for bighorn sheep, and the use of best available science and PNF site-specific bighorn sheep data complement its strengths. Appellants also fully support PNF's application of the foray, population, and disease modeling

developed by experts at the University California-Davis. Based on this comprehensive quantitative analysis, appellants fully support PNF's determination that Alternative 7O (not modified) is the only alternative providing long-term bighorn sheep viability while maintaining domestic sheep grazing opportunities outside occupied bighorn sheep habitat where the risk of contact can be avoided.

For the reasons discussed below, however, appellants do not support Supervisor Rainville's determination modifying Alternative 7O with the 3-year phased implementation strategy. Although appellants are not opposed to the concept of a phased implementation culminating in implementation of Alternative 7O in 2013, we are opposed to the rationale used to justify the phased implementation in this decision. As written, this phased-in approach relies on the short-term implementation of strategies outlined in Alternatives 7P and 7N. As appellants' previous comments on the DSEIS have noted, these alternatives expose bighorns, a sensitive species, to unacceptable levels of risk of contact. Moreover, Supervisor Rainville's phased-in approach relies on monitoring to reduce risk – an invalidated theory that the Forest Service's own bighorn sheep expert has discounted.

Appellants also do not support the amended Forest Plan direction implementing Alternative 7O because they are vague, ambiguous, do not provide sufficient direction for land managers, and provide insufficient effectiveness monitoring. Appellants provided extensive written comments recommending strong but reasonable Forest Plan direction, but many of those recommendations were not adopted.

Appellants submit this appeal, accordingly, seeking redress of the following specific components of the 2010 ROD. First, by relying on management strategies in Alternatives 7P and 7N, as well as monitoring to reduce risk, PNF has failed to adequately support its determination

that a three-year, phase-in implementation strategy of Alternative 7O **modified** would sufficiently protect the viability of bighorn sheep populations. Second, the PNF has failed to provide explicit definition, clarification, and adaptive management planning in the Forest Plan direction. Appellants submit this appeal, accordingly, seeking redress of these specific deficiencies.

B. Discussion of Reasons

1. *The Forest Service has obligations to regulate national forest lands to ensure the viability of bighorn sheep, a sensitive species.*

The Forest Service must manage the national forests for “multiple uses” as defined in the Multiple-Use Sustained-Yield Act (MUSYA) of 1960, 16 U.S.C.A. §§528-531(Westlaw through 2010 amendments). The National Forests shall be administered for, among other things, wildlife. 16 U.S.C. §528 (“It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.”). Under the National Forest Management Act (NFMA), the Forest Service creates and sets-forth its multiple-use management policies through land management plans which “provide for multiple uses”, and “in particular, include coordination of . . . range . . . (and) . . . wildlife.” National Forest Management Act (NFMA) of 1976, 16 U.S.C.A. at §1604 (a), (e)(1)(Westlaw through 2010 amendments). Forest plans and regulations shall “provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives.” 16 U.S.C.A. § 1604(g)(3)(B).

Under the 1982 regulations implementing NFMA, the Forest Service is responsible for providing habitats that maintain viable populations of native and desired non-native species, in the planning area.” 36 CFR §219.19. A viable population is defined in the regulations as “one

which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area.” *Id.*

2. *Bighorn sheep are a designated sensitive species in Region Four.*

The Forest Service has heightened management responsibilities for sensitive wildlife species. Sensitive species are defined as those plant and animal species identified by a Regional Forester for which population viability is a concern, as evidenced by: (1) significant current or predicted downward trends in population numbers or density; or (2) significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution. FSM 2670. 5. It has obligated itself: (1) to manage national forests to maintain viable populations of desired nonnative wildlife; (2) to ensure that species do not become threatened or endangered because of Forest Service actions; and (3) to implement special management objectives for sensitive species. *Id.* at 2670.22, 2670.32. The Forest Service must avoid or minimize impacts to species whose viability has been identified as a concern. *Id.* On or around June 29, 2009 the Region Four Regional Forester designated bighorn sheep as a sensitive species. In making his determination, the Region Four Regional Forester cited bighorn sheep numbers being less than 10% of historic numbers and their distribution being reduced by 66%. *Id.* This designation triggered heightened Forest Service management responsibilities under the Forest Service Manual. *Id.* at 2672.1 (“sensitive species ... must receive special management...to ensure their viability and to preclude ... endangerment”). Any Forest Service action, including permitting domestic sheep grazing, must be closely scrutinized under this protective standard.

3. *Data strongly suggest that current bighorn populations on the PNF are not viable.*

In discussing population viability, the 2010 FEIS states: “Thompson (1991) describes population persistence as 99 percent of the population persisting for 1,000 years or 95 percent persisting over 100 years” (FSEIS, page 3-51); and “Viability is generally expressed using two components—number of individuals and time—which can be used to describe population persistence over time” (FSEIS, page 3-51); and “...a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area...habitat must be provided to support at least a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area” (NFMA – 36 CFR 219.19). These statements reflect three important core viability requirements, including: (1) long-term population persistence; viability requires long-term population persistence on the order of 100s or 1000s of years, (2) sustainable effective population size; viable population levels are expressed in terms of successful reproductive individuals, or effective rather than absolute population size, and (3) adequate distribution; population distribution allowing for freely interacting individuals is important.

Given current available information, the Salmon River bighorn sheep populations on and adjacent to the PNF are currently not viable as they do not meet viability criteria for maintaining sufficient numbers and distribution through time to insure long-term persistence. Identified Salmon River bighorn sheep populations within and adjacent to the PNF include the Main Salmon River, South Fork Salmon River, Upper Main Salmon River, and Big Creek (FSEIS, page 3-6). Of these populations, appellants are particularly concerned with the two Main Salmon River and South Fork populations as they are closer to areas grazed by domestic sheep.

Available population data is not consistent across all Salmon River populations. Recent Idaho

Department of Fish and Game (IDFG) trend surveys conducted within Game Management Units (GMUs) provide the best trend data available for these populations. The two Main Salmon and South Fork populations are encompassed within IDFG GMUs 14, 19, 19A, 20, 20A, and 23. The majority of bighorn sheep reside within and long-term data is available for GMUs 19, 20, and 20A. More detailed population data is available for the Main Salmon and South Fork populations through the Salmon River Bighorn Sheep Study. These 2 populations have been combined into the Main Salmon/South Fork population for data analysis purposes because currently, based on levels of observed interchange, we believe animals residing in these areas function as a single population.

Historically, as noted above, the Salmon River likely supported bighorn sheep populations numbering in the thousands. Current population levels are an order of magnitude below historic levels. IDFG trend data for the two Main Salmon and South Fork populations residing in GMUs 19, 20 and 20A indicate current low population numbers and a long standing downward trend. Bighorn sheep observed during surveys has declined every year since 1989. Numbers of sheep observed have declined by 70% during this period; from 411 in 1989 to 127 in 2007 (IDFG 2008). These continuing population declines are consistent with concurrent low lamb:ewe ratio estimates. Since 1989, late winter/early spring lamb:ewe ratios (recruitment) have varied between 0.10-0.40 (*mean* = 0.21; IDFG 2008). Singer et al. (2000) reported mean recruitment rates for diseased and declining populations of 0.27 compared to 0.59 for healthy populations. Recruitment estimates for the Salmon River populations over the past 20 years are below that required for population maintenance and consistent with those for declining populations.

The most recent data for the Main Salmon/South Fork combined population collected during the Salmon River Bighorn Sheep Study indicates similar concerns. The 2010 population count was 248 animals including 155 adult ewes, 20 lambs, and 67 adult rams (IDFG 2010). The increase in numbers of bighorn sheep counted in 2010 compared to previous trend surveys reflects a more intensive research effort, not a population increase. 2010 lamb recruitment was estimated to be 13 lambs:100 ewes, far below replacement levels and indicative of a declining population. Using these most recent data an ecological effective population size could be estimate at 87 animals $[(155 \text{ adult ewes} \times 0.13 \text{ recruitment}) + 67 \text{ adult rams}]$, far below that required for viability. The FSEIS states “Singer and Gudorf (1999) found no unequivocal minimum viable number for bighorn sheep, but suggest a minimum population size of 100 individuals if disease is not a factor and 300 individuals to buffer against the loss of genetic heterozygosity if severe or moderate epizootics are present (FEIS, page 3-51).

The distribution (of a species, metapopulation, or population) component of viability is important as it is the interactions of individuals within and between populations that maintain population structure, function, genetic diversity, and robustness through reproduction, dispersal, and recolonization. As distribution decreases, populations become more fragmented and isolated, less robust, and more susceptible to management impacts. We are concerned at current low population levels and recruitment estimates indicating continued declines, the 4 Salmon River populations will become increasingly fragmented and isolated, further reducing their effective population size below viable numbers. As an example, if current trends continue, the Main Salmon River and South Fork populations may become more isolated, functioning as two separate and smaller populations.

Given long-standing and continued declining population trends, past and current low recruitment levels below that required to maintain populations, and current low effective population size, appellants contend bighorn sheep within the Salmon River populations are currently *below* viable levels.

3. *Viability determination considerations for Alternatives 7P and 7N.*

Management direction for Alternatives 7P and 7N must provide for long-term population persistence of bighorn sheep across the forest if they are to be consistent with the viability requirements of the regulations implementing NFMA. In addition, the current viability status of the population(s) must be considered as population impacts of management actions vary depending on population status. As an example, a management action may have relatively greater population impacts when a population is reproductively unsuccessful and declining compared to one which is reproductively successful and increasing. Viability determinations must be based solely on the inherent risk of contact associated with the Alternatives (see monitoring to reduce risk below).

When assessing acceptable levels of risk, the PNF states, “we can assume that the alternatives that reduce the risk of contact the most also provide for increased viability of bighorn sheep. Reducing the potential for the risk of contact does not equate to an equal reduction in the risk to population viability – even limited contact between bighorn and domestic sheep can result in a risk to bighorn sheep viability due to disease transmission and prolonged population die-offs. (FSEIS, page 3-28). Citing work by Clifford et al. (2007), the PNF stated “a two percent risk of contact in their populations predicted a 50% probability of at least one respiratory disease outbreak causing greater than a 40% bighorn sheep mortality during the next 70 years. No population of any species can repeatedly lose nearly half its numbers and remain

viable (FSEIS, page 3-28). Based on the literature, the PNF concluded “the risk of contact must be absent or extremely low to ensure bighorn sheep viability across the Payette National forest...the potential risk of contact must be approaching a zero percent probability” (DSEIS, pages 3-28 to 3-29).

4. *Alternatives 7N and 7P are not viable.*

According to the analysis presented in the FSEIS, Alternatives 7P and 7N would result in a modeled disease outbreak frequency between 19-31 years given a probability of disease outbreak given contact of 0.25. The PNF maintains in the 2010 ROD these Alternatives can be safely implemented for a 2-year period because the modeled disease frequencies are greater than 2 years, and ostensibly because a disease outbreak would not occur within the first 19-31 years of implementation.

Assuming models are accurate, it is true that *on average*, repeated disease outbreaks would subscribe to a 19-31 year frequency. The reality is, however, that a disease outbreak can occur in *any* one year. Although disease frequency rates are helpful for understanding disease patterns through time and modeling long-term population impacts, they do not imply preclusion of disease outbreaks during any one year. The appellants are not as interested in long-term disease patterns as we are in preventing any single disease event, as a single disease event can have devastating, long-lasting, and at current population levels possibly irrecoverable population impacts. The risk of a disease outbreak for any one year is solely dependent upon the annual risk of contact; 12-20% for these alternatives, which is too great for any one year.

In addition, by implementing Alternative 7P instead of 7O for the 2011 grazing year, the PNF will increase the chance of disease outbreak by approximately 150% or more. According to the FSEIS, implementing management direction as outlined in Alternatives 7P would retain a

20% annual risk of contact, or one contact incident every 5 years across the forest. This level of risk is well outside of acceptable levels as outlined by the PNF, places bighorn sheep at needless risk for expiration, and fails to meet the Forest Service's mandate to "avoid or minimize impacts to species whose viability has been identified as a concern." Forest Service Manual 2670.32 - Sensitive Species, Policy. ROD-13.

In the FSEIS, the PNF predicts implementation of Alternative 7P would result in a disease outbreak every 20 years assuming a probability of disease outbreak given contact of 25%. Disease outbreaks commonly results in dramatic (>50%) and immediate all-age population die-offs followed by persistent (>5 years) low lamb recruitment. Of 48 population epizootics studied, Singer (2000) reported an average population mortality during epizootics of 69%. Singer also reported a chronic case of low lamb recruitment for more than 15 years following an epizootic in the San Juan –Needles-Lockhart metapopulation in Colorado. Because of the dramatic and long-lasting effects, diseased bighorn sheep populations may require decades to fully recover from a single disease outbreak.

A disease interval of 20 years does not provide sufficient recovery time and will more than likely preclude maintenance of viable populations. In addition, as we have previously argued in our public comments on the DSEIS, the probability of a disease outbreak given contact of 25% is more than likely low. A more realistic probability would be between 50-75%. Using a more realistic estimate of 50% probability of a disease outbreak given contact, a disease outbreak would occur every 10 years under Alternative 7P, a disease interval shorter than that required for population recovery which would more than likely result in population extirpation. Assuming a 50% chance of disease outbreak given contact, modeled probability of extirpation for the Main Salmon and Upper Hells Canyon populations are 37% and 69% respectively over the next 100

years; increasingly higher for longer periods of time. It is clear based on the analysis presented Alternative 7P would not provide for viable populations of bighorn sheep across the forest.

Implementing Alternative 7N instead of 7O for the 2012 grazing year, the Forest Service will increase the chance of disease outbreak in bighorn populations by approximately 33% and the risk of contact is outside that argued acceptable by the PNF. Alternative 7N will lead to a disease outbreak every 17-31 years, assuming a probability of disease outbreak given contact between 0.25-0.50. ROD-13, FSEIS 3-70. This disease interval is too frequent to allow for population recovery. Lastly, the probability of extirpation over the next 100 years, assuming a probability of disease outbreak given contact of 0.50, is predicted to be 24% for the Main Salmon/South Fork and 47% for the Upper Hells Canyon populations. FEIS 3-70.

In comparing Alternatives 7N and 7O, appellants advocated for Alternative 7O as the selected alternative in the ROD because the significant increased protections afforded bighorn sheep by this alternative outweigh the minor decrease in suited rangeland for domestic sheep. Although the trade-off between protected summer source habitat and loss of suited rangelands is minimal, only 2.5-3% between the two alternatives (Alternative 7O removes 2.5% more suited rangelands and adds 3% more summer source habitat than Alternative 7N), Alternative 7O reduces the risk of contact by 50%, (cuts the risk in half) for the Main Salmon South Fork herd and reduces the overall risk of contact for this alternative by 31% compared to Alternative 7N.

In other words, when considering Alternatives 7O versus 7N, a significant reduction (31-50%) in the risk of contact is gained through a minor loss (2.5-3%) in suited rangelands for domestic sheep. Additional significant protection afforded bighorn sheep by Alternative 7O includes an 83% increase (12-22 kilometers) in the distance between active domestic sheep allotments and core herd home range. Nez Perce Tribe Comments on *Update to the Draft*

Supplemental Environmental Impact Statement to the Final Environmental Impact Statement of the 2003 Payette National Forest Land and Resource Management Plan and an Update to the Draft Amendment to the Payette National Forest Land and Resource Management Plan.

6. Implementation of 7N and 7P increases risk of short and long-term contact.

Based on the analysis, Alternatives 7P and 7N clearly do not provide for viable bighorn sheep populations with high modeled risk of contact rates of 12-20%, likely short disease outbreak intervals of 10-17 years, and likely high probabilities of extirpation between 30-70% for the primary bighorn sheep populations across the forest. Two additional factors that should be considered highlight the uncertainty that these Alternatives would provide for viable populations. First, the time frame (100 years) used for predicting probabilities of extirpation, is minimal for population viability determinations. Given the risk of contact levels for these Alternatives, extirpation of the Main Salmon/South Fork, Upper Hells Canyon and other populations becomes almost certain over a more appropriate time frame for viability determination (250-500 years). Second, the likelihood of Alternatives 7P or 7N providing for a viable Main Salmon/South Fork population is significantly diminished by the fact that this population is already below viable levels. Any continued threats or impacts to this population, not matter how small, will contribute to its already imperiled status. Only Alternatives that provide substantial population benefits sufficient to arrest and reverse this population trajectory will have a chance for providing population viability.

7. PNF's assertion that monitoring will reduce risk of contact inherent in Alternatives 7P or 7N is unfounded and contrary to the Forest Service's own expert opinion.

Justification for implementing management as described in Alternatives 7P and 7N during 2011 and 2012 of the phased-in approach is based on 4 factors that purport to mitigate the

increased risk of contact with and disease transmission from domestic sheep associated with these two Alternatives. Factors include: (1) increased monitoring of bighorn sheep, (2) compliance with the amended Forest Plan direction, (3) Compliance with viability requirements under the National Forest Management Act, and (4) a no jeopardy Sensitive Species determination.

The appellants would prefer immediate implementation of Alternative 7O. Given the length of time this process has taken (7 years since the 2003 Payette Land and Resource Management Plan appeal) and continued imperiled status of bighorn sheep on and adjacent to the PNF (Forest Service Sensitive Species status, trend surveys indicating continued declining numbers, lamb survival rates below that required for population maintenance), we are concerned about any further delay in implementing needed habitat protections.

However, the Appellants understand Ms. Rainville's concerns and desire to mitigate impacts to affected permittees. Although the appellants are not categorically opposed to the concept of a phased-in approach, we respectfully disagree with the PNF's rationale used to justify its current phased-in approach.

As appellants have demonstrated above, Alternatives 7P and 7N are inherently not viable because both alternatives expose bighorn sheep to unacceptably high levels of risk of contact, even if the Alternatives are each implemented for just one year. In support of its contention that the phased implementation will ensure viability until Alternative 7O is implemented, however, the PNF also relies on the notion that increased monitoring for the presence of bighorn sheep will reduce the risk of contact and disease transmission associated with Alternatives 7P and 7N. In the 2010 ROD Ms. Rainville states, "[t]he investment in monitoring and compliance with Forest

Plan direction will decrease the risk of foray contact and potential of disease transmission and allow us to safely implement Alternative 70 modified” (ROD, page 14).

Although the appellants agree effectiveness monitoring is central for successful implementation of Alternative 70 (see below; reason no. 7: *The PNF Forest Plan direction must be clearly defined and sufficiently detailed to be an effective adaptive management tool*), we disagree that monitoring reduces risk of contact. The PNF’s theory that monitoring reduces risk distorts the purpose for which monitoring is used as a management tool, is not validated by any science, and in fact has been rejected as an effective management tool by the Forest Service’s own bighorn sheep expert.

First, monitoring does not reduce risk of contact, only management actions that ensure effective spatial separation can reduce risk of contact. Monitoring provides information to managers that can be used to assess whether management actions in place are sufficient for maintaining effective spatial separation, may provide a sense of the relative distributions of bighorn and domestic sheep, and may alert the PNF when management strategies for maintaining spatial separation have failed, if contact is detected. However, reliability of these data is extremely low because detections of bighorn sheep and their movements across the forest are very difficult. Detecting presence of bighorn sheep is extremely difficult because bighorn sheep can move extensive distances in short periods of time, expansive landscapes on the forest make observing bighorn sheep difficult (forested, inaccessible, remote, rough terrain), and monitoring will occur only during daylight hours while bighorn sheep can move day or night. Consequently, even with monitoring in place, presence of most bighorn sheep and contact with domestic sheep, if it occurs, will likely go undetected. Because of the low resolution (unreliable) nature of information obtained from monitoring, it is inappropriate to assume monitoring can reduce the

risk of contact or to rely on monitoring as a substitute for implementing management actions that provide effective spatial separation. Monitoring can be used to evaluate effectiveness of separation strategies, but should not substitute for them.

Second, appellants are not aware of any body of scientific literature validating the notion that monitoring reduces the risk of contact between bighorn and domestic sheep. Considering the voluminous scientific literature review the PNF performed in the area of disease transmission between bighorn and domestic sheep, there is no analysis presented in the Final Supplemental Environmental Impact Statement (2010 FSEIS) evaluating whether, or validating the extent to which, monitoring as proposed by the PNF would reduce risk of contact between bighorn and domestic sheep. This lack of analysis is recognized by Supervisor Rainville when she states, “None of the models considered the effect that implementing monitoring measures and Forest Plan direction would have on the probability of contact between the two species.” (ROD, page 14). Despite this acknowledgement, the PNF nevertheless included a monitoring component which it contends, without any basis, will reduce risk of contact.

Third, the notion that monitoring can reduce the risk of contact is contrary to the Forest Service’s own bighorn sheep expert, Tim Schommer. On pages 1-6 of Appendix F of the FSEIS, entitled *Evaluation of “Best Management Practices”*: *Position Statement Prepared by Tim Schommer, Wallowa-Whitman National Forest*, Mr. Schommer, states:

Monitoring bighorn sheep presence should be conducted in areas of high risk for contact. Based on my experience, the only significant reduction in risk of contact that I have witnessed is when BMPs (Best Management Practices) are implemented in open, gentle, non-bighorn sheep habitat where domestic sheep can be easily controlled and monitored, and a large buffer exists between the two species.... Bighorn sheep source habitat is usually in steep, open, rocky terrain as described above where tight control of domestic sheep is usually difficult and herder visibility is limited. In and around the Payette National Forest, high quality source habitat is not a limiting factor. Habitat is well connected and well

distributed across the Payette National Forest and no natural barriers exist to dissuade bighorn sheep from pioneering, colonizing, and exploring their landscapes as demonstrated by the telemetry and sighting data. This ease of movement for bighorns across the Payette National Forest leaves questions about the effectiveness of BMPs to successfully provide for avoiding contact or reducing the risk of contact between the two species. Bighorn sheep presence in habitat that is in or adjacent to an allotment makes developing effective BMPs even more difficult. Separation is highly unlikely, and if the allotment is within the herd home range of the bighorn sheep population, contact with the allotment is all but a guarantee. Last year's mixing of a radio-collared ram with domestics on the Allison-Berg Allotment, despite the implementation of BMPs, is an example of their limitations. When bighorn sheep habitat is high quality and continuous for many miles, keeping the two species separate is very difficult...On the Smith Mountain Allotment on the Payette National Forest, radio collar data showed bighorn sheep located within the allotment during the grazing season without detection by the permittee.”

Summarizing Mr. Schommer’s position statement, it is clear, based on landscape configurations on the forest, opportunity for comingling exists (particularly where domestic sheep are grazed in close proximity to bighorn sheep habitats), detection of bighorn sheep is extremely difficult, and implementation of BMPs is ineffective.

Fourth, field experience while collecting data on the Salmon River Bighorn Sheep Study provides an example of the difficulty to detect bighorn sheep. Research duties of Nez Perce Tribal employees include visually observing radiocollared bighorn sheep in the study area. It is common to fail to observe radiocollared study animals whose location is known by use of radiotelemetry equipment. Using radiotelemetry techniques the location of a study animal can be pinpointed to a relatively small area such as a hill side, cliff face, or small tributary drainage. Even with the knowledge of its location through radiotelemetry and seemingly unobstructed visibility, it is common to fail to observe the study animal even after many hours of intensive searching with the aid of binoculars and spotting scopes. If detection of radiocollared bighorn sheep is difficult for trained biologist using specialized equipment; then detections of uncollared

sheep even by trained biologist with ocular equipment is even more difficult; and detection of uncollared bighorn sheep by untrained personnel (herders, etc...) without ocular equipment and who are not focused on looking for bighorn sheep is extremely difficult.

6. *The PNF's assertion that compliance with the amended will reduce the risk of contact during the phased-in approach is also unsupported.*

The PNF contends compliance with standards and guidelines in the amended Forest Plan direction will reduce the risk of contact associated with Alternatives 7P and 7N as partial justification for the phased-in approach. As previously mentioned, in the ROD Supervisor Rainville states, "The investment in monitoring and compliance with Forest Plan direction will decrease the risk of foray contact and potential of disease transmission and allow us to safely implement Alternative 7O modified" (ROD, page 14).

The implication is that if bighorn and domestic sheep are observed in close proximity, adaptive management actions will be taken that insures effective spatial separation. Although appellants applaud the PNF for implementing an adaptive management approach, we respectfully disagree that adaptive management will reduce the risk of contact associated with management directions outlined in Alternatives 7P or 7N.

As argued above, the purpose of monitoring is to evaluate the effectiveness of an underlying management direction and provide corrective management actions, if needed; it does not reduce the inherent risk of contact of the underlying management direction. If an underlying management direction has a high risk of contact, adaptive management will not reduce the probability that contact will occur. Adaptive management is reactive; it will hopefully detect and correct when separation has failed, but will not reduce the risk of contact associated with the underlying management direction to prevent contact. Having an adaptive management approach

in place should not be used to justify implementing a management direction that has an inherently high risk of contact, because, as discussed above, the probability of detecting bighorn sheep presence, movements, and contact with domestic sheep is low. A low probability of detecting failure to maintain separation may result in unknowingly maintaining an ineffective management direction long after corrective action is needed with consequential negative impacts to bighorn sheep populations.

7. *The PNF Forest Plan direction must be clearly defined and sufficiently detailed to be an effective adaptive management tool.*

As discussed in the FSEIS and ROD, the purposes for the amended Forest Plan direction are to provide guidance in implementing Alternative 7O, establish an adaptive management approach for insuring effective spatial separation through time, and to provide added safeguards during the 2010-2013 phase-in period. The amended Forest Plan direction is provided in two different Forest Plan Chapters; Chapter III – Management Direction containing management Goals, Objectives, Standards, and Guidelines (Standards and Guidelines); and Chapter IV – Implementation of the Plan containing monitoring and evaluation strategies (Monitoring and Emergency Response Plans). The Appellants agree an adaptive management approach is needed to effectively implement Alternative 7O through time. We view Alternative 7O as an appropriate starting point for the rangeland suitability determination given currently depressed population levels of bighorn sheep on the forest. We anticipate management under Alternative 7O will result in recovery of bighorn sheep back to viable population levels with a concomitant increase in their numbers and distribution across the forest. An adaptive management approach, including a strong monitoring plan coupled with effective management actions, is needed to

insure continued effective spatial separation through time as recovering bighorn sheep populations increase their numbers and distribution across the forest.

To be an effective management tool, however, Forest Plan direction must be clear, comprehensive, and reasonably detailed. There are several opportunities that the appellants have identified for improving upon the current Forest Plan direction. Appendix O, Forest Plan Amendment, pp. III-2 and III-3. Key terms – “separation” and “monitoring” – in the Rangeland Resources standards RAST10, RAST11, and RAST12 require definitions so that Forest Service personnel can implement the standards and ranchers can adjust their grazing practices so as not to violate the standards.

RAST10 declares that “[a]ctions will be taken to ensure separation between bighorn sheep and domestic sheep or goats.” Appendix O, Forest Plan Amendment, p. III-2. Appellants’ concern is that by not defining “separation” interpretation of the term will be conducted ad hoc instead of in a uniform manner. Since RAST10 advocates implementing emergency actions when bighorn sheep presence is detected within 10 kilometers of active domestic sheep or goat grazing or trailing, it implies that separation is defined by 10 kilometers. According to recent research, effective buffers around bighorn sheep habitats can extend as far as 12 or 25 miles. E. Frances Cassirer & A.R. E. Sinclair, Dynamics of Pneumonia in a Bighorn Sheep Population, Journal of Wildlife Management, Vol. 71, Issue 4 (2007) 1086. However, to avoid confusion for Forest Service employees and ranchers, an exact definition for “separation” needs to be given.

The lack of a definition is further confused by the Rangeland Resources Guideline RAGU13. Appendix O, Forest Plan Amendment, p III-3. The guideline enumerates four potential emergency actions that could be implemented. The use of the word “could” potentially allows Forest Service employees to ignore all the options and implement another option.

Appellants recognize that retaining flexibility in the guideline is important for decisions that must be made on the ground in variable circumstances. But that flexibility could be maintained and the four enumerated emergency actions utilized by changing the language of RAGU13. Our suggestion is to rephrase guideline RAGU13 to state, “To maintain separation, when bighorn sheep are found within 10 kilometers of an active domestic sheep and goat allotment, implementation of emergency actions for domestic sheep and goat grazing *shall include, but not be limited to: . . .*” Because this guideline is the most prescriptive, we recommend this guideline should be elevated to a Forest Plan standard. We also recommend all emergency response actions should provide permanent, rather than temporary, protective habitat measures.

The standard RAST11 effectiveness also suffers from a lack of defining “separation.” RAST11 states, “Domestic sheep and goat grazing may only be permitted where separation from bighorn sheep can be maintained. If separation cannot be maintained, permitted domestic sheep and goat grazing shall be prohibited.” Appendix O, Forest Plan Amendment, p. III-2.

8. *Quantitative methods need to be assigned to the definition of separation*

To effectively implement and follow RAST11, quantitative methods need to be assigned to the definition of separation. Specifically, the number of contacts, the type of contacts, and the timeframe for contacts need to be addressed. A quantifiable parameter of number of contacts needs to be assigned so Forest Service employees and ranchers know when domestic sheep and goat grazing would be prohibited. As currently written, RAST11 should be interpreted to permit zero contacts between bighorn and domestic sheep, but the standard could also be interpreted to permit an unspecified number of contacts.

If the PNF does not apply a zero contact enforcement of RAST11, then the number of contacts should further be refined to reflect a timeframe when contacts take place. The requisite

level of enforcement for the number of contacts, if the quantity is not zero contacts, will also depend if there is a time element to the contact. Enforcement changes drastically if the specified time period is daily, weekly, monthly, or annually. The last element of RAST11 that needs to be addressed is determining the type of contact that would enact enforcement of the standard.

Telemetry observations made outside the core herd home range found in the Update to the Draft Supplemental Environmental Impact Statement, page 3-25, show that rams leave the core herd home range with a much greater frequency than ewes. Does the Forest Service intend to differentiate the type of contact if the contact is with a ram, ewe, ewe in estrous, or lamb?

Alternative 7O has a modeled 8% risk of contact. In the Draft Supplemental Environmental Impact Statement (DSEIS), Payette National Forest acknowledged that that risk of contact between bighorn and domestic sheep and goat must be “absent or extremely low to ensure bighorn viability.” DSEIS, page 3-28. Also, in the same document, the PNF referenced the University of California Davis report (Clifford et. al. 2007), which estimated through its modeling process that a 2% risk of contact would result in a 50% probability of at least one respiratory disease outbreak causing more than 40% bighorn sheep mortality during the next seventy years. DSEIS, page 3-28. Based on risk contact of 9% for alternative 7O and the potential impact on bighorn populations in the Payette National Forest as result of contact, appellants recommend that the number of contacts permitted before enforcing standard RAST11 should be zero contacts.

9. *The monitoring and evaluation strategy needs to be defined and clarified to ensure proper implementation of monitoring methods.*

The term “monitoring” in the RAST12 standard needs to be defined so Forest Service employees know when to enforce the strategy and ranchers know how to avoid violating the

strategy. RAST12 broadly states, “Domestic sheep and goat grazing only be permitted when identified monitoring for bighorn presence is conducted. If monitoring cannot be conducted, permitted domestic sheep and goat grazing shall be prohibited.” RAST12 suffers from the same lack of precision that RAST11 does. The term “monitoring” needs to be defined so Forest Service employees so know when to enforce the strategy and ranchers know how to avoid violating the strategy.

Advocating zero contacts may seem aggressive, but considering that the four monitoring elements recommended for detecting the presence and contact of bighorn and domestic sheep each have data reliability levels that begin at “low” and with a reporting period based on annual reports, zero monitored contacts is a reasonable starting place. As argued at length above, monitoring does not reduce risk and therefore cannot be used as a tool to ensure viability of the bighorn. Monitoring functions as a method to assess the level of risk, and not as a method for reduction of risk. Monitoring is an effective practice to identify contact between bighorn and domestic sheep and goats, but will render itself ineffective unless proactive measures are taken to maintain separation.

The enumerated methodologies to monitor for the presence of bighorn sheep or stray domestic sheep and goats, Appendix O, Forest Plan Amendment, p IV-1 and IV-2, contains 14 monitoring methods. RAST12 lacks specificity as to which, how many, and at what intensity monitoring methods must be used to satisfy RAST12. The enumerated list uses the conjunctive word “and,” which indicates that all 14 monitoring methods will be utilized. Because the role of monitoring is instrumental in determining whether the separation strategies are effective and re-evaluating strategies as needed, we believe all 14 monitoring methods need to be employed. If

any of the methods are not implemented, then the permitted domestic sheep and goat grazing must be prohibited.

10. *Monitoring methods need consistency across the Forest Plan direction guidelines, and strategies.*

On a related note, for consistency, the eleventh method in the enumerated list under the monitoring and evaluation subsection on page IV-1 in Appendix O of the Forest Plan Management should match the language used in guideline RAGU11. As currently written, the monitoring method lacks the specificity as described in the guideline RAGU11, which could result in confusion for Forest Service employees and ranchers. The method on page IV-1 in Appendix O should read: “The Payette National Forest will inform the permittees immediately of any known stray domestic sheep or goats *to be removed from the Payette National Forest within 24 hours by the Permittee.*” The current method lacks the italicized language and is therefore inconsistent with guideline RAGU11.

Also, the enumerated methodologies to monitor for the presence of bighorn sheep or stray domestic sheep and goats, Appendix O, Forest Plan Amendment, pp. IV-1 and IV-2, would benefit with a reference to the emergency actions described in standard RAST10 and guideline RAGU13 to guide the actions of Forest Service employees when they encounter a situation of contact between bighorn and domestic sheep.

11. *Tighter linkage needed between enumerated monitoring methods and annual monitoring elements*

Defining “monitoring” and linking the enumerated monitoring methods with emergency actions will improve greatly the efficacy of Table IV-2 Monitoring Elements. Appellants understand the fiscal, personnel, and geographical constraints of conducting monitoring measurements more frequently than on an annual basis and of achieving high rates of data

reliability of the monitoring methodologies. However, by recommending a measuring frequency of *annually*, the measurements represent a limited snapshot of what is occurring on the land. This perspective is exacerbated by the low ratings of data reliability attached to the annual monitoring elements.

Appellants advocate for tighter linkages between the 14 enumerated monitoring methods (listed under the Monitoring and Evaluation subsection on page IV-1 in Appendix O) and their associated RAGU13 emergency actions when separation fails, and the annual monitoring elements and reporting advocated in Table IV-2. The 14 enumerated monitoring methods provide a fuller picture of the effectiveness of the separation strategies than the Table IV-2 annual monitoring elements. By incorporating the more frequent enumerated monitoring methods into the annual monitoring elements as the data becomes available and as emergency actions take place, the annual monitoring elements of Table IV-2 will provide a more proactive response from the Forest Service between monitoring and separation strategies to maintain a viable bighorn population.

12. *Expand annual report requirement to include annual evaluation component.*

Table IV-2 requires annual reports, but the annual report requirement fails to indicate the components of the report. Our concern is that the low rating applied to data reliability for the Table IV-2 annual monitoring elements could lead to separation strategies that benefit neither the bighorn sheep nor ranchers unless the enumerated monitoring methods are incorporated into the monitoring element's metrics. We suggest that an annual re-evaluation of the effectiveness of separation strategies based on monitoring reports be a required component of the annual report. This annual re-evaluation component will provide insight into the effectiveness of the separation and monitoring strategies. While we do not equate monitoring with maintaining separation, an

annual re-evaluation will provide necessary data to determine effective separation strategies and impact on bighorn sheep population.

In addition to the above recommendations, appellants request that the PNF strengthen the current Forest Plan direction with the following:

- Provide definitions for the terms “separation” and “adaptive management” in the Glossary section of the FSEIS
- The PNF should commit to developing population and habitat management goals for bighorn sheep as a sensitive species as required under regulation.
- WIOB14; Change language to “Regularly reassess changes in bighorn sheep habitat use and reanalyze Core Herd Home Range (CHHR) and risk of contact using appropriate analysis tools such as those utilized in the SEIS effort as outlined in the monitoring plan; and implement appropriate permanent management actions to maintain long-term separation and provide for restoration of the species. Refer to figure E-0 in Appendix E for habitat map.”
- WIST08; Change to “Maintain separation between bighorn and domestic sheep and allow for bighorn sheep restoration. Reassess bighorn sheep distribution, CHHRs, and the risk of contact; and implement appropriate and permanent management actions to maintain long-term separation when bighorn sheep are located within previously undocumented areas or new herd units are documented, or when bighorn sheep are located within 10 km of domestic sheep or active domestic sheep allotments.
- WIST09; Change to “Regularly monitor for presence of bighorn sheep, as outlined in the Bighorn Sheep Monitoring Plan, to assess changes in distribution.

Emphasize efforts in identified high risk areas and when domestic sheep or goats are present on adjacent or nearby permitted allotments. Refer to Appendix E for maps of current high risk areas.

- RAST10; Change to “Implement emergency actions according to the Bighorn Sheep Emergency Response Plan whenManagement actions will be taken to ensure separation between bighorn sheep and domestic sheep or goats.”
- RAGU13; this guideline is vague and ineffective. Suggest language as recommended above and language that links this guideline to the Emergency Response Plan (see below).

13. *Bighorn and Domestic Sheep Monitoring Plan*

Effectiveness monitoring provides the foundation for an effective adaptive management strategy and is central to the successful implementation of Alternative 7O to insure separation through time. An effective monitoring plan must be included as a critical component of an adaptive management approach.

The appellants do not believe the Monitoring and Evaluation Strategy contained in the Amended Forest Plan direction is sufficient to provide the needed foundation of an effective adaptive management strategy, provide added safeguards during the phase-period, maintain long-term effective spatial separation, avoid undetected contact incidents, or ensure bighorn sheep restoration and range expansion for long-term viability.

The Monitoring and Evaluation Strategy does not include a monitoring plan; but rather a one page bulleted list identifying areas of monitoring emphasis, survey techniques, and coordination measures. The list is not integrated in any way to indicate how this list of areas,

survey techniques, and coordination measures would provide for long-term separation. Further it does not identify specific goals or objective; how and to what scale data would be collected, reported, or analyzed; level or intensity of needed monitoring; or identify how monitoring data would be used to trigger appropriate management actions to insure long-term separation.

Appellants suggest a comprehensive monitoring plan is essential for successful implementation of Alternative 7O to provide for viable bighorn sheep populations. We recommend such a plan should be developed at the forest level, coordinated and integrated between the wildlife and range programs, include monitoring of bighorn and domestic sheep, emphasize radiotelemetry for data collection, and implemented by professional biologists who are knowledgeable about the habits and habitats of bighorn sheep. We further recommend the plan include the following elements: (1) purpose(s); (2) goals and objectives; (3) Data collection and recording methods by objective including frequency, intensity, scale, recording, and techniques; (4) Data analysis method(s); (5) reporting requirements; (6) chain of command, coordination and communication protocols, and assignment of staff responsibilities; (7) Costs and effort assessments; and (8) clear protocols on how monitoring data will be used to trigger permanent management actions that ensure long-term spatial separation.

Appellants recommend the primary purpose of a Bighorn and Domestic Sheep Monitoring Plan should be to provide the foundation of an adaptive management approach for the successful implementation of Alternative 7O modified. We suggest primary goals of the plan should include (1) insure long-term spatial separation between bighorn sheep on and adjacent to the Payette National Forest and permitted domestic sheep grazing on the Payette National Forest, and (2) provide for the restoration of viable bighorn sheep populations across the forest. We suggest objectives should include:

1. *Data Collection*

- Monitor and assess frequency and extent of domestic sheep straying
- Monitor and document domestic sheep grazing routes
- Monitor for presence of bighorn sheep in areas of unknown occupancy, emphasizing areas of high risk of contact
- Monitor movements, distribution, and status of core bighorn sheep populations
- Document bighorn sheep recolonization of new habitats and assess changes in bighorn sheep distribution
- Detect and document in a timely fashion when domestic and bighorn sheep are located in close proximity (within 10 km) to insure timely corrective management actions according to the Bighorn Sheep Emergency Response Plan.

2. *Data Analysis and Reporting*

- Analyze monitoring data to recalculate CHHR and risk of contact to assess if changes in management direction is needed to maintain long-term separation
- Immediately report and respond to incidences of contact or when bighorn and domestic sheep are in close contact (within 10 km) according to the Bighorn Sheep Emergency Response Plan protocols
- Draft annual report of monitoring findings
- Chain of Command, Coordination and Communication
- Develop clear channel for chain of command and coordination and communication protocols to insure timely communication of monitoring results and implementation of management actions needed to insure long-term separation
- Report monitoring findings according to develop protocols

4. *Bighorn Sheep Emergency Response Plan*

As source habitats are contiguous across the forest it is highly likely, provided the opportunity, bighorn sheep will recolonize new areas expanding their range across available source habitats on the PNF. An effective Emergency Response Plan outlining appropriate corrective management actions in response to bighorn sheep observations in close proximity (within 10 km) to domestic sheep or active domestic sheep allotments should be an integral part of the adaptive management approach. Such a plan should be integrally linked with the Bighorn and Domestic Sheep Monitoring Plan.

The appellants could not find an emergency response plan in the FSEIS or ROD. We feel this is an important shortcoming which should be corrected. Although there is a reference to implementing emergency actions in RAST10, the ROD includes no plan for what emergency actions might or should be taken, or how an emergency action would be reported, determined, or implemented. The only references to emergency actions are contained in RAGU13 which list 4 possible emergency responses, but does not provide guidance on how or when or who or which should be implemented.

The Appellants suggest the PNF commit in the ROD to develop a Bighorn Emergency Response Plan that will insure prompt and permanent corrective actions to restore effective spatial separation when bighorn and domestic sheep are found in close proximity. We recommend such a plan be integrated with the standards and guides and monitoring plan; have clearly defined purpose, goals, and objectives; and include the following elements:

- Clear definitions of terminology used, to clearly understand when the response plan should be implemented and what the appropriate response should be

- Clearly identified internal and external coordination and communication protocols including internal and external points of contact and information flow.
- Clearly identified reporting protocols including how an emergency is reported and validated, what type of information should be collected and recorded, etc
- Clearly outlined recording and maintaining emergency response databases
- Clearly identified chain of command identifying who has decision authority for reporting and validating emergencies and determining proper response actions
- Clearly identified time frames for reporting and responding to emergencies
- Clearly identify pre-determined initial responses implemented on the ground by the permittee to avoid contact
- Clearly identify pre-determined triggers for corrective agency management responses
- Clearly identify pre-determined corrective agency management goals, objectives, and responses to anticipated potential emergency situations.

To allow for restoration of the species, we further suggest corrective emergency actions should be permanent solutions for long-term habitat protection. Temporary emergency actions such as moving domestic sheep out of an area for the current grazing season but allowing that area to be grazed again the following year will perpetuate the risk of contact, preclude recolonization of new habitats by bighorn sheep, and impact needed restoration of the species.

We suggest the presence of bighorn sheep located in a new area should be viewed as a recolonization event, and the area considered occupied and permanently protected as bighorn sheep source habitat.

III. RELIEF REQUESTED

The appellants do not seek a stay or other undue delay of the 2010 ROD. Rather, for the reasons stated above, appellants respectfully request the PNF modify the decision with the following corrective measures which appellants believe will not require additional NEPA review because the analysis underlying these measures is already in the 2010 FSEIS: (1) declare Alternatives 7P and 7N are not viable; (2) remove any language maintaining, directly or indirectly, that monitoring reduces the risk of contact; (3) withdraw the phased implementation (“Modified”) component of Alternative 70; (4) implement Alternative 70, either immediately or through a modified phase-in implementation plan to be completed no later than 2013, consistent with Forest Service bighorn sheep viability requirements; and (5) amend the current Forest Plan direction, consistent with appellants’ recommendations set forth in this appeal.

Respectfully submitted this 13th day of September, 2010.



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