

1 Elizabeth H. Potter (WSB # 44988)  
2 Lauren M. Rule (OSB #015174) *pro hac vice pending*  
3 ADVOCATES FOR THE WEST  
4 3701 SE Milwaukie Ave. Ste. B  
5 Portland, OR 97202  
6 (503) 914-6388  
7 epotter@advocateswest.org  
8 lrule@advocateswest.org

9 *Attorneys for Plaintiffs*

10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF WASHINGTON**

12 WILDEARTH GUARDIANS, and  
13 WESTERN WATERSHEDS  
14 PROJECT,

15 Plaintiffs,

16 v.

17 KRISTIN BAIL, Okanogan-  
18 Wenatchee National Forest, Forest  
19 Supervisor, and U.S. FOREST  
20 SERVICE,

Defendants.

No. 2:20-cv-440

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1  
2 1. Plaintiffs WildEarth Guardians and Western Watersheds Project  
3 challenge Defendant U.S. Forest Service’s authorization of domestic sheep grazing  
4 on seven allotments within the Okanogan-Wenatchee National Forest (collectively  
5 “the Wenatchee Allotments”). Grazing on these allotments poses a high risk that  
6 domestic sheep will come into contact with and transmit disease to bighorn sheep,  
7 which can happen quickly and lead to die-offs of bighorn sheep herds. This  
8 happened when a bighorn herd near Yakima was extirpated in 2013, shortly after  
9 domestic sheep strayed from the Wenatchee Allotments. This fall, concerns about  
10 more disease outbreaks arose after a bighorn sheep in the Cleman Mountain herd  
11 tested positive for the disease-causing bacteria and a stray domestic sheep was  
12 found wandering with bighorn sheep from the Quilomene herd. As a result, the  
13 Washington Department of Fish and Wildlife (WDFW) killed a dozen bighorn  
14 sheep to prevent the potential spread of disease and is monitoring the herds for  
15 additional evidence of an outbreak.

16 2. The Forest Service is well aware of these problems, and in 2016,  
17 completed a scientific analysis that concluded domestic sheep grazing on the  
18 Wenatchee Allotments poses a high risk to four herds that include about two-thirds  
19 of all bighorn sheep within the National Forest and nearly fifty percent of all  
20

1 bighorn sheep in Washington state. In other states, federal agencies have ceased  
2 authorizing grazing that posed such a serious threat to bighorn populations.

3       3.     The Okanogan-Wenatchee National Forest has long recognized that  
4 under the National Forest Management Act (NFMA)—which requires the agency  
5 to protect viable populations of sensitive species like bighorn sheep—it must  
6 reduce the risks of disease transmission from domestic sheep grazing on the  
7 Wenatchee Allotments. Nearly a decade ago, the agency proposed new  
8 management standards to ensure separation of these species but has failed to  
9 implement those standards on the Wenatchee Allotments. Under the Forest  
10 Service’s current schedule, it will likely be many more years before the agency  
11 even considers whether to adopt and implement such standards for the allotments.

12       4.     In the meantime, the Forest Service continues to issue annual  
13 authorizations that allow thousands of domestic sheep to graze on the high-risk  
14 Wenatchee Allotments each summer, even though it has the legal authority and  
15 duty to protect bighorn sheep now. The Wenatchee Forest Plan requires the  
16 agency to prevent livestock from introducing disease to bighorn sheep, and the  
17 grazing permit for the allotments can be cancelled *at any time* for resource  
18 concerns like this. By allowing domestic sheep to pose such a serious threat of  
19 disease transmission to bighorn sheep, the Forest Service is violating its duties  
20 under NFMA and other federal laws. Plaintiffs seek declaratory and injunctive

1 relief to prevent such continued violations of law that threaten irreversible harm to  
2 the viability of this iconic species across the National Forest and within the state.

### 3 **JURISDICTION AND VENUE**

4 5. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because  
5 this action arises under the laws of the United States, including the Administrative  
6 Procedure Act (APA), 5 U.S.C. § 701 *et seq.*; NEPA, 42 U.S.C. § 4321 *et seq.*;  
7 NFMA, 16 U.S.C. § 1600 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201  
8 *et seq.*; and the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2214 *et seq.* An  
9 actual, justiciable controversy exists between Plaintiffs and Defendants, and the  
10 requested relief is proper under 5 U.S.C. §§ 701–06 and 28 U.S.C. §§ 2201–02.

11 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a  
12 substantial part of the events or omissions giving rise to the claims herein occurred  
13 within this judicial district, and the public lands and resources in question are  
14 located in this district.

15 7. The Federal Government has waived sovereign immunity in this  
16 action pursuant to 5 U.S.C. § 702.

### 17 **PARTIES**

18 8. Plaintiff WILDEARTH GUARDIANS is a non-profit organization  
19 dedicated to protecting and restoring the wildlife, wild places, wild rivers, and  
20 health of the American West. Guardians has over 188,000 members and

1 supporters, many of whom have particular interests in bighorn sheep.

2 Headquartered in Santa Fe, New Mexico, Guardians maintains several other  
3 offices around the West, including in Washington state.

4 9. Plaintiff WESTERN WATERSHEDS PROJECT is a non-profit  
5 membership organization headquartered in Hailey, Idaho with over 12,000  
6 members and supporters, which is dedicated to protecting and conserving the  
7 public lands and natural resources of watersheds in the American West. WWP, as  
8 an organization and on behalf of its members, is concerned with and active in  
9 seeking to protect and improve the wildlife, riparian areas, water quality, fisheries,  
10 and other natural resources and ecological values of watersheds throughout the  
11 West, and in Washington state.

12 10. Plaintiffs, and their staff and members, have deep and long-standing  
13 interests in the preservation and protection of California bighorn sheep that are  
14 directly harmed by Defendants' actions challenged herein. Plaintiffs' staff and  
15 members use and enjoy the public lands in and around the Okanogan-Wenatchee  
16 National Forest, including the area at issue in this case, in order to observe,  
17 photograph, study, and enjoy bighorn sheep and other native species. Plaintiffs  
18 and their members derive recreational, scientific, aesthetic, spiritual, and  
19 commercial benefits from the existence in the wild of bighorn sheep through  
20 observation, study, photography, and other pursuits. Plaintiffs, and their staff and

1 members will continue to use public lands in and around the Okanogan-Wenatchee  
2 National Forest in 2020 and beyond for these purposes, and their enjoyment will be  
3 reduced if the bighorn sheep populations in that area are extirpated or remain at  
4 low numbers due to disease.

5 11. Plaintiffs have been long-time advocates for bighorn sheep in the  
6 West and have long-standing concerns about the threat to bighorn populations from  
7 domestic sheep grazing on public lands. Plaintiffs have engaged in public outreach  
8 and education, advocacy with agencies, agency administrative processes, and  
9 litigation to promote the protection of bighorn sheep from domestic sheep grazing  
10 on public lands. Plaintiffs have engaged with the Forest Service over the domestic  
11 sheep grazing allotments on the Okanogan-Wenatchee National Forest, expressing  
12 concerns about domestic sheep grazing on these allotments due to their high risk to  
13 the several bighorn populations in the area. The Forest Service's failure to  
14 evaluate and disclose these risks through a supplemental NEPA analysis for the  
15 Wenatchee Allotments has deprived Plaintiffs of information and an opportunity to  
16 participate in a public NEPA process. In turn, this has prevented Plaintiffs from  
17 fulfilling their missions and protecting their interests, which are described above.

18 12. Plaintiffs' interests in protecting and enjoying bighorn sheep on the  
19 Okanogan-Wenatchee National Forest are being directly harmed by Defendants'  
20 action. Plaintiffs' above-described interests have been, are being, and unless the

1 relief prayed for is granted, will continue to be adversely affected and irreparably  
2 injured by Defendants' violations of law.

3 13. Defendant KRISTIN BAIL is sued solely in her official capacity as  
4 the Forest Supervisor of the Okanogan-Wenatchee National Forest. The Forest  
5 Supervisor is one of the officials legally responsible for administering NEPA and  
6 NFMA and has delegated authority for carrying out the Forest Service's  
7 responsibilities under those statutes.

8 14. Defendant U.S. FOREST SERVICE is an agency or instrumentality of  
9 the United States and is charged with managing the public lands and resources of  
10 the Okanogan-Wenatchee National Forest in accordance and compliance with  
11 federal laws and regulations.

12 **LEGAL BACKGROUND**

13 **National Environmental Policy Act**

14 15. NEPA requires federal agencies to undertake a thorough and public  
15 analysis of the environmental consequences of a proposed federal action by taking  
16 a "hard look" at the action's consequences. The statute's twin objectives are to (1)  
17 ensure that agencies consider every significant aspect of the environmental impact  
18 of a proposed action, and (2) guarantee that relevant information is available to the  
19 public to promote well-informed public participation.

1           16. To accomplish NEPA’s purpose, Federal agencies must prepare a  
2 detailed environmental impact statement (EIS) for all major Federal actions  
3 significantly affecting the quality of the human environment. 42 U.S.C. §  
4 4332(2)(C)(i). Environmental information must be available to public officials and  
5 citizens before decisions are made and before actions are taken. 40 C.F.R. §  
6 1500.1(b).<sup>1</sup> An agency may prepare an environmental assessment (EA) to assist  
7 them in determining whether an action may have significant effects that require  
8 preparation of an EIS. *Id.* § 1508.9.

9           17. Even after an agency has completed an EIS or an EA, NEPA requires  
10 it to prepare a new or supplemental analysis where significant new information  
11 relevant to environmental concerns and bearing on the proposed action or its  
12 impacts arises. 40 C.F.R. § 1502.9(c)(1)(ii).<sup>2</sup>

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14 <sup>1</sup> Recent revisions to NEPA’s regulations should not apply to the NEPA claims at  
15 issue in this complaint because the EIS process at issue began prior to their  
16 September 14, 2020 effective date. 85 Fed. Reg. 43304, 43339 (July 16, 2020).  
17 This Complaint cites to the 1978 regulations that were in effect when that process  
18 began. *See* 84 Fed. Reg. 22432 (May 17, 2019) (announcing NEPA process).

19 <sup>2</sup> The new NEPA regulations do not meaningfully change this standard. *See*  
20 40 C.F.R. § 1502.9(d)(1).

1           **National Forest Management Act**

2           18.   NFMA governs the Forest Service’s management of the National  
3 Forests. 16 U.S.C. § 1600 *et seq.* The statute established a two-step process for  
4 forest planning. First, the Forest Service must develop, maintain, and revise Land  
5 and Resource Management Plans (“Forest Plans”) for each national forest. *Id.* §  
6 1604(a). The Forest Plan guides natural resource management activities forest-  
7 wide, setting desired conditions, objectives, and standards and guidelines for  
8 various forest resources, including wildlife. Forest Plans must provide for a  
9 “diversity of plant and animal communities.” *Id.* § 1604(g)(3)(B).

10          19.   Once a Forest Plan is in place, site-specific actions are planned and  
11 evaluated by the Forest Service. All site-specific decisions must be consistent with  
12 the broader Forest Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15.

13          20.   The Wenatchee National Forest Plan was adopted in 1990<sup>3</sup> under the  
14 Forest Service’s 1982 regulations implementing NFMA. These regulations  
15 implemented NFMA’s wildlife diversity provision by requiring that:

16               Fish and wildlife habitat shall be managed to maintain viable populations of

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17          <sup>3</sup> Subsequently, the Okanogan and Wenatchee National Forests were administratively  
18 combined into a single National Forest but are still governed by separate Forest Plans  
19 issued before the merger. The Wenatchee Allotments are governed by the  
20 Wenatchee National Forest Plan.

1 existing native and desired non-native vertebrate species in the planning  
2 area. For planning purposes, a viable population shall be regarded as one  
3 which has the estimated numbers and distribution of reproductive  
4 individuals to insure its continued existence is well distributed in the  
5 planning area. In order to insure that viable populations will be maintained,  
6 habitat must be provided to support, at least, a minimum number of  
7 reproductive individuals and that habitat must be well distributed so that  
8 those individuals can interact with others in the planning area.

9 36 C.F.R. § 219.19 (1982).

10 21. The Wenatchee National Forest Plan contains direction for  
11 implementing these requirements and sets overall objectives that include  
12 maintaining and improving wildlife habitat.

13 22. The Forest Plan directs the agency to maintain viable populations and  
14 distribution of suitable habitat for sensitive species for which viability is a concern  
15 due to downward trends in population numbers or density or habitat capability. It  
16 also describes a desired future condition for the Forest as one where the agency  
17 reduces activities that threaten sensitive species. The Forest Plan directs the Forest  
18 Service to evaluate the impact that activities may have on sensitive species, and  
19 recommend mitigation requirements, in conjunction with WDFW.

20 23. The Forest Service has identified bighorn sheep as a sensitive species.

21 24. The Forest Plan provides specific direction to protect bighorn sheep  
22 from the grave risks of disease transmission from domestic sheep. It directs the  
23 Forest Service to prevent introduction of disease from livestock into bighorn sheep

1 herds by identifying potential problem areas and developing a plan to mitigate the  
2 identified problems.

3 25. The Forest Plan also directs the agency to cooperate and coordinate  
4 with WDFW in the relocation of animals to areas where wildlife habitat is  
5 underutilized.

6 26. The Forest Service manages livestock grazing on an allotment by  
7 issuing a grazing permit; an Allotment Management Plan (AMP); and an annual  
8 operating plan or instruction (AOI). *Or. Natural Desert Ass'n ("ONDA") v. U.S.*  
9 *Forest Serv.*, 465 F.3d 977, 979 (9th Cir. 2006). Each of these is a site- specific  
10 action which must be consistent with the Forest Plan. *Buckingham v. Sec'y of U.S.*  
11 *Dept. of Ag.*, 603 F.3d 1073, 1077 (9th Cir. 2010).

12 27. An AMP is a planning document that prescribes the manner in, and  
13 extent to which, grazing operations will be conducted in order to meet multiple-use  
14 and other goals and objectives. 36 C.F.R. § 222.2.

15 28. Prior to each grazing season, the Forest Service issues an AOI with  
16 instructions for the permittee that responds to new developments or resource  
17 conditions, such as wildfire, drought conditions, water quality issues, compliance  
18 problems, or sensitive species concerns. AOIs are “final agency actions” that may  
19 be challenged under the APA. *ONDA v. U.S. Forest Serv.*, 465 F.3d at 979.

20

1 **STATEMENT OF FACTS**

2 **Domestic Sheep Transmit Disease to Bighorn Sheep.**

3 29. No dispute exists among scientists and wildlife biologists that  
4 domestic sheep can transmit pathogens to bighorn sheep that lead to pneumonic  
5 die-offs within bighorn populations. Domestic sheep are immune to these  
6 pathogens but bighorns have not developed an immunity yet because they are a  
7 newer species evolutionarily. Die-offs occur when a pathogen is transmitted from  
8 a domestic sheep to a bighorn sheep, and then that bighorn transmits it to other  
9 members of the same herd. Many bighorn die-offs from pneumonia reduce herd  
10 sizes by 75–100%.

11 30. Domestic sheep can carry multiple strains of pathogens. A bighorn  
12 herd that survives a die-off from one strain of a pathogen can experience another  
13 die-off if it is exposed to a different strain of a pathogen.

14 31. Female bighorns that are exposed to the disease but do not die  
15 transmit the disease to their lambs during pregnancy, and the lambs die within  
16 months of birth. Herds that have experienced die-offs often have low lamb  
17 recruitment for years following the disease outbreak. This keeps populations at  
18 low numbers, which makes them susceptible to extirpation from stochastic events  
19 or further disease impacts.

20

1           32.     Scientists thought that transmission of a pathogen from domestics to  
2 bighorns required direct physical contact between the species, but recent research  
3 indicates that pathogens can be transmitted through the air.

4           33.     The risk of contact between these species is high when they are using  
5 the same range because they are related—within the same genus—and both species  
6 are gregarious. Therefore, they seek each other out when in the same vicinity.

7           34.     Although bighorn populations have home ranges where they spend  
8 most of their time, individual rams and ewes make forays outside of their home  
9 ranges when looking for mates or seeking out new or additional habitat. Forays  
10 can occur miles away from the home range, with some bighorns traveling 20 miles  
11 or more. In particular, young rams will make forays during the rut in the fall to  
12 look for mates.

13          35.     Where a bighorn herd has a home range that is within foray distance  
14 of another bighorn herd, interactions between the herds can be common. An  
15 individual bighorn that forays into the home range of another herd can benefit both  
16 herds through genetic exchange and resulting genetic diversity. However, these  
17 forays allow for disease to spread from one herd to another.

18          36.     The ranges used by both bighorn sheep and domestic sheep are  
19 generally steep and rugged. Due to this topography, it is often very difficult to spot  
20 bighorn sheep on the landscape, and likewise difficult to find stray domestic sheep.

1 Most pneumonia disease outbreaks in bighorns have occurred without observing  
2 the actual contact between domestic and bighorn sheep.

3 37. It is common for domestic sheep to stray from their band while on an  
4 allotment, and they can remain on their own for weeks or months at a time. Stray  
5 domestic sheep have been documented miles away from their band or remaining  
6 on an allotment several months after the rest of the band had been removed.

7 Domestic sheep can also stray from their band when they are trailing to or from an  
8 allotment. The presence of predators—such as wolves or cougars—can also cause  
9 domestic sheep to scatter and stray.

10 38. Because of the difficulty seeing and tracking individual bighorn sheep  
11 and domestic sheep in steep and rugged terrain, and the likelihood that these  
12 species will seek each other out if they are using the same range, bighorn experts  
13 agree that best management practices such as using extra herders and dogs, and  
14 notifying agency personnel when a bighorn is seen near domestic sheep, are not  
15 sufficient to prevent contact.

16 39. Furthermore, if a bighorn is known to have made contact with a  
17 domestic sheep, it is not always possible to capture and remove the bighorn to  
18 prevent the spread of disease to the rest of the herd. For instance, several years ago  
19 Idaho Department of Fish and Game (IDFG) made three attempts to capture and  
20

1 remove a bighorn that was suspected of contacting domestic sheep but failed all  
2 three times.

3 40. Thus, the only way to prevent disease transmission is to keep the two  
4 species physically separated by long distances.

5 **The Federal Government Has Repeatedly Closed Domestic Sheep**  
6 **Allotments to Protect Bighorn Sheep.**

7 41. Due to the danger that domestic sheep pose to bighorn sheep,  
8 numerous Forest Service allotments have been closed to protect nearby bighorn  
9 sheep populations, often as a result of court litigation. After several groups filed a  
10 lawsuit in Idaho in 2007, the Forest Service closed domestic sheep allotments in  
11 Hells Canyon and along the Salmon River in Idaho because of the threat they  
12 posed to bighorn sheep populations. When the livestock permittees challenged  
13 some of the closures, the U.S. District Court for the District of Idaho upheld the  
14 closures, finding that the decisions were well-supported by the science and bighorn  
15 sheep experts. *W. Watersheds Project v. U.S. Forest Serv.*, 2007 WL 1729734,  
16 No. 4:07-cv-151-BLW (D. Idaho, June 13, 2007); *W. Watersheds Project v. U.S.*  
17 *Forest Serv.*, 2007 WL 3407679, No. 4:07-cv-151-BLW (D. Idaho, Nov. 13,  
18 2007).

19 42. After doing an in-depth analysis about the risk of disease transmission  
20 to bighorn sheep, the agency closed more allotments on the Payette National Forest  
in Idaho that were determined to present a very high, high, or moderate risk to

1 bighorn sheep. The Forest Service relied on a “risk of contact” model that it  
2 developed to analyze the risk of the two species coming into contact based on  
3 habitat, the location of bighorn home ranges, and the potential for bighorn sheep  
4 forays onto allotments. The livestock industry challenged the Payette National  
5 Forest’s analysis and decision but the U.S. District Court for the District of Idaho  
6 and the Ninth Circuit Court of Appeals both upheld them. *Idaho Wool Growers*  
7 *Ass’n. v. Vilsack et al.*, 7 F. Supp. 3d 1085 (D. Idaho 2014), *aff’d* 816 F.3d 1095  
8 (9th Cir. 2016).

9 43. Subsequently, the Forest Service adopted the Payette National  
10 Forest’s risk of contact model as its standard for addressing conflicts between  
11 bighorn and domestic sheep on national forests across the West. The Bureau of  
12 Land Management (BLM) has also adopted the model for similar uses on lands  
13 under its jurisdiction. For these and other reasons, the risk of contact model now  
14 represents the best available science for assessing the risk that federal allotments  
15 pose to bighorn sheep herds.

16 44. In 2017, the Plaintiffs here brought another lawsuit over two Forest  
17 Service allotments in southeast Idaho that the agency’s risk of contact model had  
18 shown were very high risk to bighorn sheep because of their proximity to the South  
19 Beaverhead Mountains bighorn population. After a court injunction temporarily  
20 closed the allotments, the Forest Service extended that closure and it remains in

1 effect. *W. Watersheds Project v. U.S. Forest Serv.*, No. 1:17-cv-434-CWD, 2017  
2 WL 5571574 (D. Idaho Nov. 20, 2017).

3 45. BLM in Idaho has also closed grazing allotments to domestic sheep  
4 due to threats to bighorn sheep populations. Initially, BLM refused to close an  
5 allotment that was adjacent to some of the high-risk allotments on the Payette  
6 National Forest. A court injunction in 2009 temporarily closed the allotment, and  
7 BLM extended that closure while it conducted a thorough analysis. *W. Watersheds*  
8 *Project v. BLM*, No. 4:09-cv-507-BLW, 2009 WL 3335365 (D. Idaho, Oct. 14,  
9 2009). The agency finished its analysis in 2017, which resulted in the permanent  
10 closure of that allotment and two others that BLM determined were high or  
11 moderate risk to bighorn sheep in central Idaho.

12 46. BLM has also closed three allotments in southeast Idaho near bighorn  
13 sheep populations, one in 2012 and two more in 2018, while it conducts an  
14 analysis of long-term management options.

15 47. Federal grazing allotments in other states around the West have  
16 likewise been closed to domestic sheep to protect bighorn populations. Forest  
17 Service allotments in California, Colorado, and Wyoming have been closed to  
18 domestic sheep to protect bighorn sheep, either through Forest Service actions or  
19 permittees voluntarily waiving their permits back to the agency (in exchange for  
20

1 compensation). These allotment closures have reduced the threat of disease for  
2 numerous bighorn sheep populations across the West.

3 **Bighorn Sheep within Washington and the Okanogan-Wenatchee**  
4 **National Forest.**

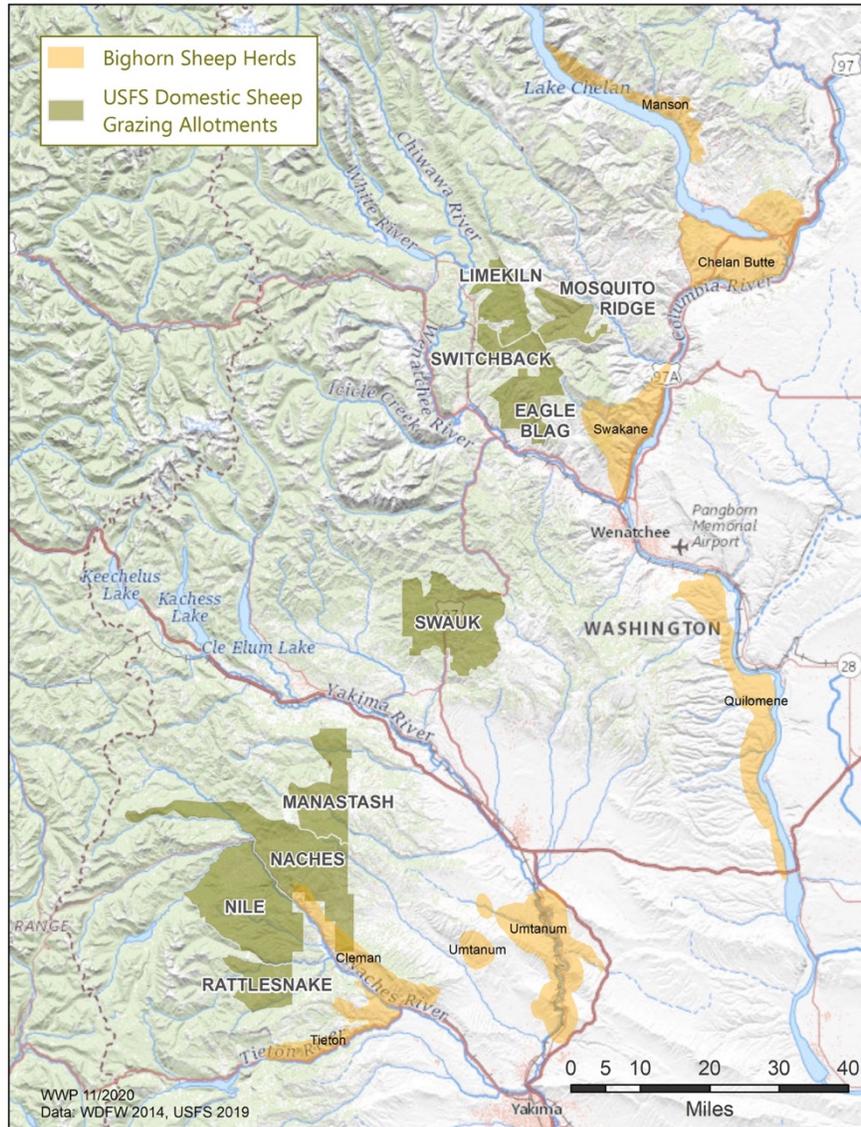
5 48. Bighorn sheep are native to Washington state but were extirpated in  
6 the early 1900's due primarily to disease and over-harvest. Animals have been re-  
7 introduced and now occupy only a fraction of their historic range in Washington  
8 state. Nearly 1,700 bighorn sheep across sixteen herds in the state remain.

9 49. The Washington Department of Fish and Wildlife (WDFW) has set  
10 statewide goals to preserve and protect bighorn sheep and to manage them for a  
11 variety of recreational, educational, and aesthetic purposes that include hunting,  
12 scientific study, cultural and ceremonial uses by Native American tribes, wildlife  
13 viewing, and photography. WDFW's management plan for the species explained  
14 that the "overwhelming management concern" is mortality and poor lamb  
15 recruitment due to pneumonia.

16 50. The Okanogan-Wenatchee National Forest provides some of the best  
17 remaining habitat in the state for the species.

18 51. Nine of the sixteen herds in the state have core home ranges that  
19 overlap with or are within foray distance of the National Forest. These herds make  
20 up roughly seventy-five percent of the state's total bighorn sheep population.

1 52. Four of these herds—the Chelan Butte, Swakane, Umtanum, and  
2 Cleman Mountain herds—along with the former Tieton herd, have core home  
3 range that overlaps with or is in close proximity to the Wenatchee Allotments  
4 within the Okanogan-Wenatchee National Forest, as illustrated below:



1           53. Collectively, these four herds represent roughly two-thirds of all  
2 bighorn sheep that inhabit the Okanogan-Wenatchee National Forest, and nearly  
3 half of all bighorn sheep within Washington state.

4           54. Each of these four herds are within fifteen miles of another herd,  
5 putting them easily within foray distance of each other. WDFW has documented  
6 several instances of bighorn forays from the core herd home range in the state.

7           55. WDFW and others have noted that bighorn sheep herds and their core  
8 home ranges in this area may be shifting and expanding, as bighorn sheep have  
9 been spotted more often near the Wenatchee Allotments in recent years.

10          56. A die-off within the Umtanum herd in 2009–2010 reduced the herd  
11 substantially, and low lamb recruitment continues to plague that herd to this day.  
12 It remains below the population objectives described in WDFW’s Game  
13 Management Plan and is still considered infected. Thus, future declines and poor  
14 recruitment from transmission of a new strain of pathogen would be devastating to  
15 this herd.

16          57. Recent population estimates of the Swakane, Cleman, and Chelan  
17 herds generally fall within the population management objectives. However, these  
18 objectives are set artificially low to minimize the risk of disease transmission.

19          58. A fifth herd, the Tieton herd, occupied habitat that was adjacent to the  
20 Wenatchee Allotments until it suffered a severe outbreak of pneumonia in 2013,

1 which WDFW determined was caused by domestic sheep and led to the herd's  
2 extirpation.

3 59. Bighorns from the nearby Cleman Mountain herd began moving into  
4 the range of the former Tieton herd, but given their proximity to domestic sheep on  
5 the Wenatchee Allotments, WDFW decided to lethally remove those bighorn sheep  
6 to prevent another disease event.

7 60. WDFW set an objective in its Game Management Plan to reestablish a  
8 herd into the former range of the Tieton herd by 2016. However, WDFW cannot  
9 achieve this objective until threats from domestic sheep grazing on the Wenatchee  
10 Allotments are abated. WDFW has repeatedly connected its inability to  
11 reintroduce bighorn sheep to the "substantial" or "unacceptably high risk" of  
12 disease transmission from domestic sheep grazing on the Wenatchee Allotments.

13 61. Other herds in the state have been infected with pneumonia and  
14 experienced die-offs. The herds in the Hells Canyon area have declined since the  
15 1990s due to pneumonia outbreaks and suffered from poor recruitment, but then  
16 rebounded once the agency closed nearby domestic sheep allotments on the Payette  
17 National Forest.

18 62. The Asotin herd in southeastern Washington suffered an all-age die-  
19 off in 2012 and subsequently tested positive for bacteria that cause pneumonia.

20

1           63. In May 2019, WDFW confirmed that a dead bighorn ram in the Mt.  
2 Hull herd at the northern edge of the Okanogan-Wenatchee National Forest tested  
3 positive for pneumonia and that other recent bighorn deaths in the area were  
4 suspicious.

5           64. In October 2020, WDFW received reports of sick bighorn sheep in the  
6 Cleman Mountain herd, after which a dead lamb tested positive for the disease-  
7 causing bacteria. WDFW announced it will closely monitor this herd for evidence  
8 of a disease outbreak in 2021.

9           **Domestic Sheep Grazing on the Okanogan-Wenatchee National Forest**  
10           **Threatens Bighorn Sheep Herds in Washington.**

11           65. The Forest Service allows one company to graze thousands of  
12 domestic sheep on nine allotments within the Okanogan-Wenatchee National  
13 Forest each summer. Seven of these allotments—Rattlesnake, Nile, Naches,  
14 Manastash, Eagle Blagg, Switchback, and Mosquito Ridge—overlap with, or are  
15 very near core herd home range for four bighorn herds.<sup>4</sup>

16           66. For years, the Forest Service has known that domestic sheep grazing  
17 on these allotments poses a serious risk of disease transmission to bighorn sheep  
18 herds that inhabit the Wenatchee National Forest.

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19           <sup>4</sup> The Forest Service also authorizes the company to graze on the Swauk and  
20 Limekiln Allotments, which are not at issue in this lawsuit

1           67. In 2012, it assessed the viability of bighorn sheep populations across  
2 the Okanogan-Wenatchee National Forest and the Colville National Forest in  
3 northeast Washington, producing a draft viability assessment. The assessment  
4 identified domestic sheep grazing as one of two major factors contributing to the  
5 decline of habitat capability—which it estimated to be at 57 percent of historical  
6 levels—and recommended reducing the risk of disease transmission between the  
7 species.

8           68. In 2013, the Forest Service completed draft modeling that suggested  
9 there was a high risk of contact between species due to grazing on the Wenatchee  
10 Allotments.

11           69. In 2016, the Forest Service quantitatively analyzed the risk that  
12 domestic sheep grazing on the Wenatchee Allotments poses to bighorn sheep. The  
13 Forest Service relied on its “Risk of Contact” model that the agency and BLM use  
14 to assess the risk that a bighorn sheep will come into contact with a domestic sheep  
15 allotment.

16           70. The Forest Service found that grazing on seven allotments carried a  
17 high risk of contact with four bighorn sheep herds: Swakane, Cleman Mountain,  
18 Umtanum, and Chelan Butte. The agency also found a high risk of contact for any  
19 bighorn sheep that use the core herd home range of the now-extirpated Tieton herd.  
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1           71. Under the Risk of Contact model, a high risk means that domestic  
2 sheep grazing on an allotment is likely to result in more than .08 contacts per year  
3 with bighorn sheep, which can lead to a disease outbreak within fifty years.  
4 Longer disease-free intervals are needed to maintain population viability.

5           72. As illustrated below, the Forest Service found that the risk of contact  
6 for seven of the Wenatchee Allotments was greater than its own 0.08 threshold for  
7 high risk allotments—often by a substantial amount:

<b>Risk of Contact estimates based on telemetry-derived core herd range</b>					
<u>Allotment</u>	<u>Chelan</u>	<u>Cleman</u>	<u>Swakane</u>	<u>(Former) Tieton</u>	<u>Umtanum</u>
<i>Naches</i>		Intersects		0.18	0.13
<i>Nile</i>		Intersects		0.12	
<i>Eagle-Blagg</i>			0.84		
<i>Rattlesnake</i>		0.68		0.17	
<i>Mosquito Ridge</i>	0.11		0.22		
<i>Manastash</i>		0.27			
<i>Switchback</i>			0.11		

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15 Source: Washington Conservation Science Institution, *Application of the Bighorn Sheep Risk of Contact Model on the Okanogan-Wenatchee National Forest: Final Report* (Feb. 2016).

16           73. These bighorn herds that are at high risk of disease transmission have  
17 core home range within fifteen miles of at least one other herd—easily within  
18 bighorn foray distance. Forays between these herds are more likely to occur  
19 because there is good habitat connectivity between their home ranges. Thus, if one  
20 herd becomes infected, there is a high likelihood that disease will spread, infect

1 multiple herds, and cause catastrophic die-offs to a substantial number of bighorns  
2 in the National Forest and the state.

3 74. WDFW has determined there is a substantial threat of disease  
4 transmission from domestic sheep grazing the Wenatchee Allotments to these four  
5 bighorn sheep herds plus any that re-inhabit the Tieton herd range. WDFW has  
6 noted that the permittee's domestic sheep have tested positive for pathogens  
7 associated with disease and die offs in bighorns and has documented interactions  
8 between the permittee's domestic sheep and bighorn sheep.

9 75. The Department has described the threat to the Cleman Mountain herd  
10 as particularly high due to the herd's use of areas near and within areas the Tieton  
11 herd used prior to its extirpation.

12 76. WDFW has repeatedly informed the Forest Service of this threat and  
13 its concerns about continuing domestic sheep grazing on these allotments. WDFW  
14 has stated that eliminating or reducing the risk of contact between domestic sheep  
15 and bighorn sheep is essential to the long-term viability and health of bighorns in  
16 the state.

17 77. In 2016, WDFW sent the Forest Service a letter stating that reducing  
18 the risk to bighorn sheep from these allotments remains a "high priority" for the  
19 state and offering to assist with any data or analysis needs.

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1           78. The Yakama Nation has also expressed serious concerns about the  
2 high risk of disease transmission that domestic sheep grazing on the Forest poses to  
3 the bighorn sheep herds in the area. In a letter dated May 2010, the Yakama  
4 Nation called for the Forest Service to immediately terminate domestic sheep  
5 grazing or move such grazing to allotments that are at least 35 miles from bighorn  
6 sheep habitat or foray areas to prevent contact.

7           79. Despite the Risk of Contact results and concerns raised by other  
8 sovereigns, the agency issued AOIs that authorized thousands of domestic sheep to  
9 graze the Wenatchee Allotments in 2016, 2017, 2018, 2019, and 2020, and will  
10 issue one for 2021 absent court intervention.

11           80. In recent years, the agency authorized a trial conversion from sheep to  
12 cattle on the Naches Allotment but has not made this conversion permanent.

13           81. For the remaining allotments, the Forest Service has generally  
14 authorized fewer sheep to graze than the maximum numbers permitted but has  
15 refused to implement the only measure known to prevent disease transmission—  
16 separation of *all* domestic sheep from bighorn sheep by substantial distances.

17           **Conditions on and Management of the Wenatchee Allotments Increase**  
18           **the Risk of Contact Between Domestic and Bighorn Sheep.**

19           82. The Forest Service's Risk of Contact model does not address the  
20 potential for domestic sheep to stray from their allotment—a common

1 occurrence—nor does it account for the natural attraction between the species, both  
2 of which create an even higher risk of disease transmission than the results suggest.

3 83. Conditions on the Wenatchee Allotments and surrounding area  
4 increase the risk that domestic sheep will stray from their bands and interact with  
5 bighorn sheep. The Forest Service’s own monitoring photos show domestic sheep  
6 entering densely forested and steep areas where they can easily be lost, wander,  
7 and enter bighorn core home range or encounter foraging bighorns.

8 84. Plaintiffs have also documented densely forested conditions that make  
9 it virtually impossible for herders to keep track of thousands of domestic sheep in  
10 this area. During site visits to the Nile and Mosquito Ridge allotments during  
11 summer 2020, a representative for Plaintiff Western Watersheds Project  
12 documented such conditions and observed a domestic sheep herd with no herder in  
13 sight.

14 85. The following photo, taken on the Nile Allotment in June 2020,  
15 illustrates thick vegetation and a rolling landscape that make it virtually impossible  
16 for a single herder to track. Domestic sheep are the almost imperceptible white  
17 dots spread across the middle of the hillside.



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86. These conditions also make it impossible for the permittee to follow the Forest Service’s “adaptive management” practices, which are supposed to re-route domestic sheep if bighorns are observed in the area. The densely forested, steep, and rugged area makes it difficult for sheep herders, members of the public, or government employees to observe and report bighorn sheep on the allotments.

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87. The permittee has admitted to the Forest Service that domestic sheep have been unaccounted for at the end of a grazing season on occasion and has often reported discrepancies between the number of sheep it allows on at the beginning of a season with those it removes at the end of the season.

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88. After the grazing season in 2012, the permittee reported that dozens of stray domestic sheep across multiple allotments were not removed at the end of the

1 season. Many domestic sheep remained in the area after the date that sheep were  
2 required to be off the allotments and the Forest. Some of the domestic sheep were  
3 never located. Months later, in 2013, the Tieton herd—whose core home range  
4 was located adjacent to the allotments—was extirpated due to pneumonia.

5 89. Cougars and wolves—which are predators of domestic sheep—inhabit  
6 the area and can cause sheep to run and scatter, further increasing the risks that  
7 domestic sheep will stray from the allotments. Similarly, predators can cause  
8 bighorn sheep to scatter from their core herd home range or influence their forays,  
9 which can further increase the risk of contact.

10 90. The permittee has repeatedly identified predators as the cause of lost,  
11 missing, or injured sheep during or after grazing seasons. For example, in August  
12 2018, several domestic sheep were reported dead, injured, or missing, and were  
13 found in a remote drainage away from the main band. Available evidence  
14 indicates wolves attacked the domestic sheep, and telemetry data confirmed wolves  
15 were in the vicinity on the day of the attack.

16 91. Similar problems arose during the 2019 grazing season. On the Nile  
17 allotment, the permittee was late removing 619 ewes and reported that seven sheep  
18 were unaccounted for at the end of the season. Predators were also a problem,  
19 killing or injuring 30 sheep on the Nile allotment, 19 on the Rattlesnake allotment,  
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1 10 on the Mosquito Ridge allotment, 5 on the Eagle-Blagg allotment, and 3 on the  
2 Manastash allotment.

3 92. During 2020, several problems arose. In May, the permittee found a  
4 bighorn sheep, likely from the Quilomene herd, mixed in with his domestic sheep  
5 band and killed the bighorn sheep as a result.

6 93. Months later, in October, WDFW was notified that a domestic  
7 sheep—reportedly from the permittee’s band—was found with seven bighorn  
8 sheep near the Quilomene Wildlife Area. After killing and testing the domestic  
9 sheep, WDFW confirmed it carried disease-causing bacteria. To determine  
10 whether the bacteria had spread to the nearby Quilomene herd—the state’s  
11 largest—WDFW killed 12 bighorn sheep for testing. Although the bighorn sheep  
12 tested negative for the bacteria, WDFW began systematic searches by helicopter  
13 and other means to watch for evidence of disease transmission to this herd.

14 94. Despite these high risks and repeated problems—and resulting costs  
15 to the public—the Forest Service has conducted minimal monitoring of domestic  
16 sheep grazing on the allotments, or of bighorn sheep and the species’ habitat.  
17 When the permittee self-reports missing or lost sheep at the end of the season, the  
18 agency has not documented follow-up investigations, confirmed that all sheep are  
19 accounted for, or determined whether domestic sheep strayed from the allotments  
20 into bighorn sheep core herd home range.

1           **The Forest Service’s Delays in Taking Action to Protect Bighorn Sheep.**

2           95. For nearly a decade, the Forest Service has recognized it must take  
3 action to address the conflict between bighorn sheep and domestic sheep grazing  
4 on the Wenatchee Allotments. But the agency has repeatedly delayed doing so.

5           96. The Forest Service last completed AMPs for these allotments in 2000  
6 and 2004, which were analyzed under NEPA through two EAs completed in 1999  
7 and 2004. The EAs recognized the threat that disease transmission from domestic  
8 sheep poses to bighorn sheep but did not assess or determine that the risk of  
9 contact was high and did not adopt meaningful restrictions on grazing to protect  
10 bighorn sheep.

11           97. By at least 2011, the Forest Service recognized that it needed to  
12 conduct a new analysis of domestic and bighorn sheep conflicts. It has stated  
13 numerous times it would do so, but has delayed and deprioritized the work.

14           98. In 2011, through the Federal Register, the Forest Service published a  
15 notice of intent to revise the Okanogan and Wenatchee Forest Plans and sought  
16 public comment on what alternative actions to evaluate in an environmental impact  
17 statement. At this time, the Forest Service had already identified, based on public  
18 input and its own work, a “proposed action” that included specific direction for  
19 managing conflicts between domestic sheep and bighorn sheep that would  
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1 “provide temporal or spatial separation between bighorn sheep and domestic sheep  
2 to reduce the risk of potential disease spread.”

3 99. In 2013, the agency issued a summary of public comments on its  
4 “proposed action” to revise the Forest Plan. The agency noted that “reviewers  
5 were concerned the proposed action didn’t adequately deal with the risk of disease  
6 transmission from domestic sheep to bighorn sheep.” Such concerns were raised  
7 by the Washington Department of Natural Resources and WDFW; those  
8 departments explained that “separation between domestic species is required to  
9 ensure long-term viability and prevent the risk of disease transmission, such as  
10 complete geographical separation within the bighorn sheep herd range and/or a  
11 buffer between the areas where bighorn sheep are known to frequent the grazing  
12 allotments on NFS lands.”

13 100. In 2013, the Forest Service announced it would only issue one-year  
14 grazing permits until a new NEPA analysis that addressed bighorn sheep conflicts  
15 was complete.

16 101. However, in 2014, without conducting *any* new NEPA analysis or  
17 making any new decisions, the Forest Service issued a new ten-year grazing permit  
18 that authorizes almost 7,000 domestic sheep to graze for approximately eight to ten  
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1 weeks between May and September on the seven Wenatchee Allotments.<sup>5</sup> The  
2 permit expressly allows the Forest Service to cancel the permit in whole or in part  
3 at any time due to changes such as resource conditions. It also states that the 2000  
4 and 2004 AMPs covering the seven high-risk allotments are incorporated into the  
5 permit, as well as the Wenatchee Forest Plan and each year's AOIs. The permit  
6 will not expire until December 31, 2023.

7 102. Since issuing the new permit in 2014, the Forest Service has  
8 authorized grazing through AOIs each spring. These AOIs acknowledge bighorn  
9 sheep conflicts but merely request that the permittees use best management  
10 practices to avoid those conflicts "to the best of their ability."

11 103. In May 2014, the Wenatchee Forest Supervisor informed WDFW that  
12 it planned to delay new analyses of domestic sheep grazing and bighorn sheep  
13 conflicts until after it completed a revision of the governing Forest Plan.

14 104. In 2015, the Forest Service publicly announced that it had put on hold  
15 its plans to revise the Okanogan-Wenatchee Forest Plans and informed WDFW  
16 that any NEPA process had been delayed.

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<sup>5</sup> The permit also covers the Limekiln and Swauk allotments that are not at issue in  
20 this complaint.

1           105. Shortly after completing its risk of contact analysis in 2016, the Forest  
2 Service prepared talking points for a stakeholder meeting that stated “[t]he Risk of  
3 Contact modeling has clearly displayed the need for the Forest to update our  
4 domestic sheep grazing NEPA Forest-wide....” At a meeting with the permittee  
5 and other agencies, a Forest Service representative made similar comments,  
6 explaining that the agency has “new info that must be used to supplement old  
7 NEPA” and that the agency “must consider new info about bighorn sheep” as the  
8 “[p]ossibility of an injunction appear high.”

9           106. In June 2016, the Forest Service announced it would begin a new  
10 NEPA process to address the domestic and bighorn sheep conflicts during the fall  
11 of that year. The agency repeated this intention at a public meeting in Ellensburg  
12 in August 2016. Subsequently, the Forest Service informed WDFW that staffing  
13 problems delayed the start of this process until 2017.

14           107. In 2017, the Forest Service established a NEPA Interdisciplinary  
15 Team and began internal scoping efforts to support a new NEPA analysis.

16           108. In April 2017, the Forest Supervisor informed the Eastern Washington  
17 Cascades Provincial Advisory Committee that despite the longstanding risk of  
18 disease transmission to bighorn sheep, the Forest Service had not made progress on  
19 how to manage the “situation” and how to prepare a new NEPA analysis.  
20

1           109. By 2018, the Forest Service decided to break the process into two  
2 parts, first amending the Forest Plan to add direction for addressing conflicts  
3 between the species, and then subsequently conducting site-specific analysis for  
4 the allotments to implement management changes. The Forest Service took some  
5 preliminary steps toward the Forest Plan amendment by entering into a work order  
6 for intra-agency assistance with the process. At that time, the agency estimated  
7 release dates for the draft EIS in July 2019 and a Final EIS and decision in  
8 February 2020. That year, the Forest Service also suggested in a letter that the  
9 Forest Plan amendment, when completed, will state that domestic sheep allotments  
10 will “not be permitted where a high risk of contact” with bighorn sheep exists  
11 based on an analysis done through the Risk of Contact model.

12           110. On May 17, 2019, the Forest Service officially announced to the  
13 public—through a publication in the Federal Register—that it intended to prepare  
14 an EIS and an amendment to the Wenatchee Forest Plan to provide direction for  
15 addressing conflicts between domestic sheep grazing and bighorn sheep. Through  
16 that notice, the agency requested comments from the public on the scope of the  
17 upcoming analysis. The agency estimated it would publish a draft EIS during the  
18 winter 2020 and issue a Final EIS in summer 2020.

1           111. The agency extended this timeline during the winter of 2020,  
2 indicating that it would release a draft Forest Plan and EIS and allow public  
3 comment in September 2020 and issue a final EIS and decision by summer 2021.

4           112. In September 2020, the Forest Service sent a letter to Plaintiff WWP  
5 showing that the process was several months behind schedule.

6           113. Just weeks later, in October 2020, the Forest Service announced that it  
7 was yet again delaying the process, stating that it now expects to release a draft  
8 Forest Plan and EIS and allow public comment in February 2021 and then issue a  
9 final EIS for the Forest Plan amendment in November 2021.

10           114. The Forest Service has only provided estimated release dates for the  
11 first step of its process: an EIS for the proposed Forest Plan amendment. It has not  
12 issued any estimated release dates—or even committed to completing—the second  
13 step of its process: a site-specific NEPA analysis and update to the AMPs or other  
14 grazing decisions for the Wenatchee Allotments.

15           115. The Forest Service does not plan to make any actual changes to  
16 grazing management on the Wenatchee Allotments as a result of the forthcoming  
17 Forest Plan amendment. Any delays in that Forest Plan process further delay site-  
18 specific NEPA analysis to update the AMPs and implement on-the-ground actions  
19 for the Wenatchee Allotments needed to create separation between the species.

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1 Thus, the agency is likely to continue authorizing domestic sheep grazing on those  
2 allotments under the same terms and conditions as existing AOIs for many years.

3 **FIRST CLAIM FOR RELIEF**  
4 **VIOLATION OF NATIONAL FOREST MANAGEMENT ACT**  
5 (Inconsistency with Wenatchee Forest Plan)

6 116. Plaintiffs reallege and incorporate by reference the preceding  
7 paragraphs.

8 117. This first claim for relief challenges the Forest Service's violation of  
9 the National Forest Management Act, 16 U.S.C. § 1600 et seq., and NFMA's  
10 implementing regulations, in authorizing domestic sheep grazing on the high-risk  
11 Wenatchee Sheep Allotments. Plaintiffs challenge the 2016–2020 AOIs, as well as  
12 the upcoming 2021 AOI, pursuant to the judicial review provisions of the APA, 5  
13 U.S.C. § 706.<sup>6</sup>

14 118. Under NFMA, the Forest Service must act consistently with direction  
15 in the applicable land management plan when authorizing any project or activity.  
16 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15.

17 119. The Wenatchee Forest Plan requires the agency to:  
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19 <sup>6</sup> Plaintiffs challenge the AOIs issued by the Forest Service after the 2016 risk of  
20 contact analysis determined that these allotments pose a high risk to bighorn sheep.

- 1 a. protect biodiversity and ensure viable populations of bighorn sheep  
2 exist throughout the National Forest;
- 3 b. consider the impact its grazing decisions have on bighorn sheep,  
4 create a plan to mitigate these impacts, and prevent domestic sheep  
5 from introducing disease to bighorn sheep; and
- 6 c. cooperate with WDFW in the relocation of wildlife to habitat that  
7 is underutilized.

8 120. The Forest Service has acted inconsistently with these directives from  
9 the Forest Plan by issuing AOIs that have authorized domestic sheep to graze on  
10 the Wenatchee Allotments each year from 2016 to 2020, and will again act  
11 inconsistently by issuing the 2021 AOI.

12 121. First, the agency's Risk of Contact Modeling and other data  
13 demonstrate that grazing on these allotments presents a high risk of contact and  
14 disease transmission between domestic sheep and four bighorn sheep herds: the  
15 Cleman Mountain, Chelan Butte, Swakane, and Umtanum herds. These herds  
16 constitute approximately two-thirds of all bighorn sheep that inhabit the  
17 Okanogan-Wenatchee National Forest. By allowing domestic sheep grazing on the  
18 Wenatchee Allotments to present a high and unacceptable risk of disease  
19 transmission to these bighorn sheep herds, the Forest Service is failing to ensure  
20 the viability of bighorn sheep across the National Forest.

1           122. Second, the agency has failed to create a plan to mitigate the high risk  
2 of disease transmission by repeatedly delaying any site-specific analysis for the  
3 Wenatchee Allotments after recognizing the Risk of Contact model results showed  
4 the need for such a plan. In similar situations, where the Forest Service determined  
5 a domestic sheep grazing allotment posed such a high risk, the agency has stopped  
6 grazing on the allotment because substantial physical separation of the species is  
7 the only way to ensure disease transmission does not occur. By failing to do so  
8 here, the agency has failed to “prevent” domestic sheep from transmitting disease  
9 to bighorn sheep.

10           123. Finally, domestic sheep grazing on the Wenatchee Allotments also  
11 poses a high risk of contact with any bighorn sheep that inhabit the former range of  
12 the Tieton herd. WDFW has repeatedly cited this high risk from grazing on the  
13 National Forest as the major impediment to its goal of relocating bighorn sheep  
14 into this area. By continuing to authorize grazing that prevents WDFW from  
15 relocating bighorn sheep to this area, the Forest Service is failing to cooperate with  
16 WDFW on relocating animals into this underutilized habitat.

17           124. Accordingly, the Forest Service’s 2016–2021 AOIs for the Wenatchee  
18 Sheep Allotments are arbitrary, capricious, an abuse of discretion, and not in  
19 accordance with NFMA, and therefore are unlawful and must be set aside pursuant  
20 to the APA, 5 U.S.C. § 706(2)(A).

1 WHEREFORE, Plaintiffs pray for relief as set forth below.

2 **SECOND CLAIM FOR RELIEF**  
3 **VIOLATION OF NATIONAL ENVIRONMENTAL POLICY ACT**  
4 (Failure to Complete Supplemental NEPA)

5 125. Plaintiffs reallege and incorporate by reference all preceding  
6 paragraphs.

7 126. The APA requires federal agencies to complete matters presented to  
8 them within a reasonable time, 5 U.S.C. § 555(b), and empowers federal courts “to  
9 compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §  
10 706(1).

11 127. NEPA requires the Forest Service to prepare an environmental impact  
12 statement for every major federal action that significantly affects the quality of the  
13 human environment. 43 U.S.C. § 4332(C). The agency must also prepare a new  
14 or supplemental analysis where significant new information relevant to  
15 environmental concerns and bearing on a major federal action or its impacts arises.  
16 40 C.F.R. § 1502.9(c)(1)(ii).

17 128. By at least 2011, the Forest Service recognized the need to protect  
18 bighorn sheep from the threat of disease transmission from domestic sheep grazing  
19 on the Wenatchee Allotments. After the Risk of Contact modeling showed seven  
20 allotments were high risk to bighorn sheep, the Forest Service identified the need  
to complete supplemental NEPA analysis for domestic sheep allotments on the

1 Forest. This process would update the 2000 and 2004 AMPs, which continue to  
2 govern management of the seven allotments, to address conflicts between the  
3 species.

4 129. For at least nine years, the Forest Service has repeatedly started and  
5 stopped its efforts, bifurcated the process into two steps, and continually postponed  
6 the site-specific analysis needed to implement actual changes in allotment  
7 management. In early 2020—before the pandemic—the agency announced that it  
8 would yet again delay the Forest Plan revision and EIS by several months. The  
9 agency has no estimate for when it will complete the second step of site-specific  
10 supplemental NEPA for the allotments to update the AMPs.

11 130. Preparing a supplemental NEPA analysis to update the AMPs to  
12 address specific threats from domestic sheep grazing on the Wenatchee Allotments  
13 is discrete agency action which the Forest Service must take under NEPA. The  
14 Forest Service has failed to complete this process at least nine years after it  
15 recognized the need to reduce the risk of contact between domestic sheep and  
16 bighorn sheep.

17 131. The consequences of the Forest Service's delay have been significant.  
18 After dozens of domestic sheep strayed from the Wenatchee Allotments in 2012,  
19 the nearby Tieton herd experienced a disease outbreak that led to the herd's  
20 extirpation. Since that time, domestic sheep have strayed from the allotments or

1 gone missing, contact between domestic and bighorn sheep has occurred, and  
2 bighorn sheep in multiple herds have tested positive for the disease-causing  
3 bacteria. Yet the Forest Service has continued to authorize grazing on these  
4 allotments under AOIs that implement the outdated 2000 and 2004 AMPs, despite  
5 increasing awareness of the risks that domestic sheep pose to bighorn sheep.

6 132. Plaintiffs are injured and substantially prejudiced by the Forest  
7 Service's failure to complete a supplemental NEPA analysis to update the AMPs  
8 for the Wenatchee Allotments and reduce the risk of disease transmission to  
9 bighorn sheep, as required under NEPA.

10 133. WHEREFORE, Plaintiffs pray for relief as set forth below.

11 **THIRD CLAIM FOR RELIEF**  
12 **VIOLATION OF NATIONAL ENVIRONMENTAL POLICY ACT**  
(Irreversible and irretrievable commitment of resources)

13 134. Plaintiffs reallege and incorporate by reference the preceding  
14 paragraphs.

15 135. This third claim for relief challenges the Forest Service's violation of  
16 the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and its  
17 implementing regulations, in authorizing domestic sheep grazing on the Wenatchee  
18 Sheep Allotments pursuant to the 2017–2021 AOIs.<sup>7</sup> The AOIs are final agency

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19  
20 <sup>7</sup> Plaintiffs challenge the AOIs issued by the Forest Service after it started working

1 action subject to judicial review under the APA, and Plaintiffs bring this claim  
2 pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

3 136. NEPA regulations require an agency to conduct the necessary  
4 environmental analysis early in the planning process so that it can contribute to the  
5 decision-making process and is not used simply to rationalize or justify a decision  
6 already made. 40 C.F.R. §§ 1501.2, 1502.2(g), 1502.5.

7 137. By 2016, the Forest Service recognized the need to complete  
8 supplemental NEPA analysis for the Wenatchee Allotments due to new  
9 information, including the Risk of Contact modeling that showed seven allotments  
10 are high risk to bighorn sheep. It initiated a process to fulfill this requirement but  
11 has not even begun the second step of site-specific allotment analysis.

12 138. Until it completes this process by updating the AMPs for the  
13 Wenatchee Allotments, the agency cannot take any action or make any  
14 commitment of resources that would have an adverse environmental impact or  
15 prejudice or limit the choice of reasonable alternatives. *Id.* §§ 1502.2(f),  
16 1506.1(a). In other words, an agency cannot make any irreversible or irretrievable  
17 commitment of resources before an environmental analysis is completed.

18  
19 \_\_\_\_\_  
20 on a new and/or supplemental NEPA process to address the threat to bighorn sheep  
posed by grazing on the high-risk allotments.

1 139. The Forest Service’s Risk of Contact modeling, along with other  
2 information, demonstrates that domestic sheep grazing on the Wenatchee  
3 Allotments poses a high risk of contact with bighorn sheep. Such contact would  
4 almost certainly lead to die-offs within one or more bighorn herds and poor lamb  
5 survival for years. This presents an unacceptable risk of irreversible harm to four  
6 bighorn sheep herds in the area. By authorizing grazing through the 2017–2021  
7 AOIs, the Forest Service has made and continues to make an irreversible or  
8 irretrievable commitment of resources.

9 140. Accordingly, the Forest Service’s 2017–2021 AOIs for the Wenatchee  
10 Allotments are arbitrary, capricious, an abuse of discretion, and not in accordance  
11 with NEPA, and therefore are unlawful and must be set aside pursuant to the APA,  
12 5 U.S.C. § 706(2)(A).

13 WHEREFORE, Plaintiffs pray for relief as set forth below.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs respectfully request that the Court:

16 A. Order, declare, and adjudge that the Forest Service’s 2016–2021 AOIs  
17 for the Wenatchee Sheep Allotments are arbitrary, capricious, an abuse of  
18 discretion, and/or violated NEPA and/or NFMA, and thus are unlawful under the  
19 judicial review standards of the APA, 5 U.S.C. § 706(2)(A);  
20

1 B. Order, declare, and adjudge that the Forest Service has unlawfully  
2 withheld and/or unreasonably delayed fulfilling its nondiscretionary duty under  
3 NFMA and NEPA to complete supplemental environmental analysis and updated  
4 Allotment Managements Plans for the Wenatchee Allotments, in violation of the  
5 APA, 5 U.S.C. § 706(1);

6 C. Vacate and set aside the 2016–2021 AOIs for the Wenatchee Sheep  
7 Allotments;

8 D. Enjoin the Forest Service from authorizing domestic sheep grazing on  
9 the Wenatchee Allotments until the agency completes its NEPA analyses and  
10 complies with NFMA and the Wenatchee Forest Plan;

11 E. Enter such other declaratory relief, and temporary, preliminary, or  
12 permanent injunctive relief as may be prayed for hereafter by Plaintiffs;

13 F. Award Plaintiffs their reasonable attorney fees, costs, and litigation  
14 expenses under EAJA, and/or any other applicable provision of law; and

15 G. Grant such further and additional relief as the Court deems just and  
16 proper in order to remedy the violations of law alleged herein and to protect the  
17 interests of Plaintiffs, the public, wildlife, and the lands at issue.

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19 Dated: November 30, 2020

Respectfully submitted,

20 s/ Elizabeth H. Potter  
Elizabeth H. Potter (WSB # 44988)

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s/ Lauren M. Rule  
Lauren M. Rule (OSB #015174) *pro*  
*hac vice pending*

ADVOCATES FOR THE WEST  
3701 SE Milwaukie Ave. Ste. B  
Portland, OR 97202  
(503) 914-6388  
epotter@advocateswest.org  
lrule@advocateswest.org

*Attorneys for Plaintiffs*