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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

WESTERN WATERSHEDS PROJECT,

Plaintiff,

No.

v.

COMPLAINT

(Declaratory and Injunctive Relief)

GENE BLANKENBAKER, in his official
capacity as Supervisor of the Tonto National
Forest; CHRIS KNOPP, in his official
capacity as Supervisor of the Apache-
Sitgreaves National Forest; and THE
UNITED STATES FOREST SERVICE

Defendants.

Plaintiff, by and through their attorney, Erik B. Ryberg, for their Complaint against
defendants allege as follows:

INTRODUCTION

1 This action challenges a decision by the United States Forest Service to permit
2 private livestock companies to drive approximately 8,000 domestic sheep across the Tonto
3 and Apache Sitgreaves National Forests in August and September of 2009. The sheep would
4 be herded from the Apache-Sitgreaves National Forest near Springerville, Arizona to the
5 northeastern corner of the Tonto National Forest near Heber, Arizona, and then diagonally

1 across the entirety of the Tonto National Forest to its southwestern edge near Mesa. The trip
2 takes about a month to complete.

3 2 Domestic sheep cause a number of environmental impacts to vegetation, soil
4 productivity, and water quality, but perhaps most important is the effect domestic sheep have
5 on wild bighorn sheep. Domestic sheep carry disease that is fatal to wild bighorn, and
6 transmission of disease from domestic sheep to wild bighorn sheep is a well-documented
7 occurrence that has devastated many bighorn sheep populations in the American West. The
8 sheep drive crosses directly through occupied wild bighorn habitat, and a single contact
9 between a wild bighorn and a domestic sheep could cause a substantial or even total die-off
10 of the local population of wild bighorns. Wild bighorn sheep are gregarious, curious animals
11 and are known to approach and make physical contact with domestic sheep.

12 3 Unfortunately, the Forest Service has for many years permitted this sheep drive
13 to occur, once in the spring (from south to north) and once in the fall (from north to south).
14 But the Forest Service has never completed an environmental analysis of the impacts of this
15 action as they are required to do under the National Environmental Policy Act ("NEPA").

16 4 Because this action presents obvious, immediate, and potentially devastating
17 harm to important and rare populations of wild bighorn sheep as well as the more common
18 impacts upon water quality, wildlife habitat, and soil productivity caused by livestock
19 grazing of this nature, an environmental assessment, at a minimum, is required. Federal
20 actions of this nature are not permitted to occur absent an environmental review under the
21 NEPA. Moreover, the continued use of this driveway is preventing proper management of
22 wild bighorn sheep and preventing their reintroduction in formerly occupied habitats.

23 5 Western Watersheds Project seeks declaratory and injunctive relief to remedy the
24 Forest Service's violations of law, to correct ongoing irreparable harm, and to prevent further
25 irreparable harm to the water quality, soil productivity, wildlife habitat, and wildlife populations
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1 resulting from the Forest Service's actions. Plaintiff Western Watersheds Project brings this
2 challenge under the National Forest Management Act ("NFMA") 16 U.S.C. § 1600 *et seq.* and its
3 regulations, the National Environmental Policy Act ("NEPA") 42 U.S.C. § 4331 *et seq.* and its
4 regulations, and the Administrative Procedure Act ("APA") 5 U.S.C. § 701 *et seq.*

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6 **JURISDICTION AND VENUE**

7 6 This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal
8 question jurisdiction), because this action arises under the laws of the United States, including the
9 National Environmental Policy Act, 42 U.S.C. § 4331 *et seq.*, the National Forest Management Act,
10 16 U.S.C. § 1600 *et seq.*, the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, the Declaratory
11 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Equal Access to Justice Act, 28 U.S.C. § 2214 *et*
12 *seq.* An actual, justiciable controversy now exists between the plaintiff and the defendant, and the
13 requested relief is proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-706.

14 7 This Court may grant the relief requested under 28 U.S.C. §§ 2201 and 2202
15 (declaratory and injunctive relief) and 5 U.S.C. § 701-706 (APA).

16 8 Venue is proper in the District Court for the District of Colorado pursuant to 28
17 U.S.C. § 1391(e)(2) because a substantial part of the events giving rise to Western Watersheds
18 Project's claims occurred in this district. The project occurs in and was authorized in this judicial
19 district.

20 **PARTIES**

21 9 Plaintiff WESTERN WATERSHEDS PROJECT ("WWP") is a non-profit
22 membership organization headquartered at the Greenfire Preserve in Custer County, Idaho, with
23 offices and staff in Salmon, Hailey, McCall and Boise, Idaho; and also in Arizona, California,
24 Montana, Wyoming, and Utah. WWP is dedicated to protecting and conserving the public lands and
25 natural resources of watersheds in the American West. WWP, as an organization and on behalf of
26 its 1,200-plus members, is concerned with and active in seeking to protect and improve the wildlife,

1 riparian areas, water quality, fisheries, and other natural resources and ecological values of
2 watersheds throughout the West, including Arizona. WWP is also active in monitoring ecological
3 conditions in Arizona, including the Tonto National Forest; in reviewing and commenting upon
4 agency grazing and other resource decisions; in advocating for the protection of wild populations of
5 bighorn sheep; and in publicizing the ecological effects of grazing in this region.

6 10 WWP has actively participated in management of livestock grazing on the Tonto
7 National Forest through letters, comments, field trips, and administrative appeals of Tonto National
8 Forest actions. WWP has taken many opportunities to express its concerns over management of the
9 Tonto National Forest. WWP, and its staff and members, use and enjoy the wildlife, public lands,
10 and other natural resources on the Tonto National Forest for many health, recreational, scientific,
11 spiritual, educational, aesthetic, and other purposes. WWP and its staff and members pursue
12 activities such as hiking, wildlife viewing, biological and botanical research, photography, and
13 spiritual renewal on the Tonto National Forest and on the areas this sheep driveway traverses. WWP
14 and its staff and members also derive personal enjoyment, educational, recreational, and aesthetic
15 benefits from observing wild bighorn sheep in their native habitat. Livestock grazing that degrades
16 this fragile ecosystem and threatens bighorn sheep populations impairs the use and enjoyment of this
17 public landscape by WWP staff and members.

18 11. WWP staff, members, and supporters will continue to visit the Tonto National Forest
19 and this sheep driveway area in the future for many purposes such as hiking, wildlife viewing,
20 photography, scientific study, spiritual renewal, and to otherwise enjoy the natural scenery and
21 beauty of the Tonto National Forest. WWP, both organizationally and on behalf of its staff,
22 members, and supporters, has an interest in the preservation and protection of the ecology of the
23 Tonto National Forest, which interest is directly harmed by Defendant's actions and inactions
24 challenged herein.

1 12. The above-described conservation, recreational, scientific, and aesthetic interests of
2 WWP and its staff, members and supporters have been, are being, and, unless the relief prayed for is
3 granted, will continue to be adversely affected and irreparably injured by Defendant's twice-annual
4 violations of law. WWP has no adequate remedy at law, and thus the requested relief is appropriate.

5 13 Defendant Gene Blankenbaker is named in his official capacity as the
6 Supervisor of the Tonto National Forest. Mr. Blankenbaker is the official responsible for
7 management actions carried out on the Tonto National Forest by the U.S. Forest Service –
8 including the sheep driveway challenged here.

9 14 Defendant Chris Knopp is named in his official capacity as the Supervisor of
10 the Apache-Sitgreaves National Forest. Mr. Knopp is the official responsible for
11 management actions carried out on the Apache-Sitgreaves National Forest by the U.S. Forest
12 Service – including the sheep driveway challenged here.

13 15 Defendant UNITED STATES FOREST SERVICE is an agency or instrumentality of
14 the United States, and is charged with managing the public lands and resources of the Tonto
15 National Forest, in accordance and compliance with federal laws and regulations.

16 **STATEMENT OF FACTS**

17 16 A "sheep driveway" is an area across which sheep are herded or driven to get
18 from one location to another, usually in between summer and winter ranges.

19 17 The two sheep driveways at issue here have been in existence since the late
20 1800's, and were historically used to move sheep up onto the forests above the Mogollon
21 Rim in the summer, and back down into the desert in the winter.

22 18 The Heber-Reno sheep driveway traverses the Apache-Sitgreaves and Tonto
23 National Forests from approximately Heber, Arizona southwest across the Tonto National
24 Forest approximately to Mesa. The Morgan sheep driveway traverses a narrow portion of
25 the Apache-Sitgreaves National Forest west of Springerville for approximately 30 miles.
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1 Both driveways are permitted for use twice a year; Heber-Reno by about 8,000 sheep, and
2 Morgan by about 4000 sheep.

3 19 The Tonto National Forest adopted its Land Resources and Management Plan,
4 or "Forest Plan" in 1985. The Forest Plan governs management of the Tonto National
5 Forest, including the portions across which the sheep driveway traverses.

6 20 The Apache-Sitgreaves National Forest adopted its Land Resources and
7 Management Plan, or "Forest Plan" in 1987. The Forest Plan governs management of the
8 Tonto National Forest, including the portions across which the sheep driveway traverses.

9 21 The National Forest Management Act requires all management decisions to be
10 consistent with the governing Forest Plan. 16 U.S.C. § 1604(i).

11 22 Both Forest Plans contain requirements to protect wildlife populations, wildlife
12 habitat, soil productivity, and water quality. The National Forest Management Act requires the
13 Forest Service to maintain viable populations of bighorn sheep across the planning areas of the
14 Tonto National Forest and Apache-Sitgreaves National Forest. 36 C.F.R. 219.19 (1982).

15 23 NEPA requires federal agencies to prepare a detailed Environmental Impact
16 Statement ("EIS") prior to taking any action that could "significantly" affect the quality of
17 the human environment. 42 U.S.C. § 4332(2)(C).

18 24 When it is not clear whether or not an action will require the preparation of an
19 EIS, applicable regulations direct agencies to prepare a document known as an
20 Environmental Assessment ("EA") in order to determine whether an EIS is required. 40
21 C.F.R. §§ 1501.4(b), 1508.9.¹

22 25 In addition to helping an agency determine whether or not to prepare an EIS,
23 an EA serves to help an agency comply with NEPA when no EIS is necessary by including a
24 discussion of the need for the action, the consideration of alternatives to the action as
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26 ¹ Executive order No. 11991 (1977) requires the Service to adhere to the NEPA
regulations published by the Council on Environmental Quality ("CEQ").

1 required by NEPA, the environmental impacts of the action, and a listing of the agencies and
2 persons contacted and consulted. 40 C.F.R. § 1508.9.

3 26 In this case, up to 8,000 sheep have been herded twice a year across portions of
4 the two national forest, and another 4,000 sheep across portions of the Apache-Sitgreaves
5 National Forest for many years without any environmental assessment or environmental
6 impact statement being prepared.

7 27 The sheep driveways will be used again in August and September of 2009.
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10 **FIRST CLAIM FOR RELIEF**

11 **(VIOLATION OF NEPA)**

12 **THIS ACTION MAY NOT OCCUR ABSENT DOCUMENTATION IN AN**
13 **ENVIRONMENTAL ASSESSMENT OR AN ENVIRONMENTAL IMPACT**
14 **STATEMENT**

15 28 Plaintiffs reallege and incorporate by this reference the allegations contained
16 above as though fully set forth herein.

17 29. The fundamental purpose of the National Environmental Policy Act is to ensure that
18 federal actions receive appropriately detailed environmental review. 42 U.S.C. § 4332. The NEPA
19 requires federal agencies to take a “hard look” at their actions, and to assess the environmental
20 impacts of those actions in a forthright and public manner. When analyzing projects that “may”
21 have a significant effect on the environment, agencies are to consider various alternatives to the
22 project that might be environmentally preferable to the original proposal. 42 U.S.C. § 4332(A); 40
23 C.F.R. § 1502.14.

24 30. NEPA requires federal agencies to prepare a detailed Environmental Impact
25 Statement (“EIS”) prior to taking an action that could “significantly” affect the quality of the human
26 environment. 42 U.S.C. § 4332(2)(C).

1 31. When it is not clear whether or not an action will require the preparation of an EIS,
2 the regulations direct agencies to prepare a document known as an Environmental Assessment
3 (“EA”) in order to determine whether an EIS is required. 40 C.F.R. §§ 1501.4(b), 1508.9.

4 32. Environmental Impact Statements are required to be prepared for actions that may
5 have a significant effect on the environment; they exist to show that the agency took a "hard look" at
6 the effects of its actions and revealed those actions to the public and the decision-maker.

7 33. The purpose of NEPA analysis is to ensure that the agency has conducted an adequate
8 assessment of the environmental impacts of a given project. In certain circumstances, an agency
9 may first prepare an EA to make a preliminary determination whether the proposed action will have
10 a significant environmental effect. If the EA establishes that the agency's action *may* have a
11 significant effect upon the environment, an EIS must be prepared. If not, the agency must issue a
12 FONSI accompanied by a convincing statement of reasons to explain why a project's impacts are
13 insignificant. Regardless of whether an EA or EIS is prepared, however, the agency must
14 demonstrate that it took a "hard look" at the environmental consequences of the proposed action and
15 that it considered all foreseeable direct and indirect impacts.

16 34. A party seeking to show that an agency should have prepared an EIS instead of a
17 FONSI need not demonstrate that significant effects will occur, but rather must show only that there
18 are substantial questions whether a project may have a significant effect on the environment. NEPA
19 requires federal agencies to prepare a detailed Environmental Impact Statement (“EIS”) prior
20 to taking any action that could “significantly” affect the quality of the human environment.
21 42 U.S.C. 4332(2)(C).

22 35 At no time has the Forest Service conducted the needed site-specific analysis
23 of the environmental effects of these sheep driveways.

24 36 In this case, there are many well-known dangers to herding domestic sheep
25 across fragile desert areas, particularly those already occupied by wild bighorn sheep.
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SECOND CLAIM FOR RELIEF

(VIOLATION OF THE NATIONAL FOREST MANAGEMENT ACT)

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4 37 Plaintiffs reallege and incorporate by this reference the allegations contained
5 above as though fully set forth herein.

6 38 The National Forest Management Act provisions applicable to the Apache-
7 Sitgreaves and Tonto National Forest require the Forest Service to "maintain viable
8 populations" of wild bighorn sheep across the two forests. 36 C.F.R. 219.19 (1982).
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10 39 Because the defendants persist in driving sheep through or near suitable
11 bighorn habitat, and because they do so without having developed suitable mitigation
12 measures or protocol, the Arizona Game and Fish Department has been unable to relocate
13 wild bighorn to these habitats on the Tonto and Apache-Sitgreaves National Forests.
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15 40 The continued driving of the sheep through occupied bighorn sheep habitat
16 without these protocols and mitigation measures is itself a violation of the Forest Service's
17 obligation to preserve viable populations of wild bighorn sheep.
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THIRD CLAIM FOR RELIEF

(VIOLATION OF THE NATIONAL FOREST MANAGEMENT ACT)

**THE PROJECT WILL IMPERMISSIBLY IMPAIR ECOLOGICAL CONDITIONS
IN VIOLATION OF THE RELEVANT FOREST PLANS**

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23 41 Plaintiffs reallege and incorporate by this reference the allegations contained
24 above as though fully set forth herein.
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Dated this ____ day of July 2007.

s/Erik B. Ryberg
Erik B. Ryberg

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Dated this 30th day of July 2009.

s/Erik B. Ryberg
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