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Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS**

IDAHO WOOL GROWERS
ASSOCIATION, INC., an Idaho corporation,
individually and on behalf of its members;
FRANK SHIRTS, JR., individually and as a
member of the Idaho Wool Growers
Association; RONALD W. SHIRTS,
LESLIE SHIRTS and JOHN T. SHIRTS,
individually and d/b/a SHIRTS BROTHERS
SHEEP and as members of the Idaho Wool
Growers Association,

Plaintiffs,

vs.

STATE OF IDAHO; IDAHO FISH &
GAME COMMISSION; IDAHO
DEPARTMENT OF FISH & GAME; CAL
GROEN, Director of Idaho Department of
Fish and Game.

Defendants.

Case No. *CV-2010-2567*

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Filing Fee: \$88.00

Category: A

ORIGINAL

COME NOW the Plaintiffs, Idaho Wool Growers Association, Inc., Frank Shirts, Jr., and Ronald W. Shirts and Leslie Shirts, husband and wife, and John T. Shirts d/b/a Shirts Brothers Sheep, by and through their counsel of record, Samuel A. Diddle of the firm Eberle, Berlin, Kading, Turnbow & McKlveen, Chartered, and for a cause of action against the Defendants hereby allege and complain as follows.

I.

PARTIES

1. Idaho Wool Growers Association, Inc. ("IWGA") is a non-profit association incorporated in Idaho with its principal place of business in Boise, Ada County, Idaho.

2. Frank Shirts, Jr. ("Shirts") raises sheep and is a member of IWGA. He has grazed sheep in the Payette National Forest since 1977. His principal place of business is in Wilder, Canyon County, Idaho.

3. Ronald W. Shirts and Leslie Shirts, husband and wife, and John T. Shirts operate Shirts Brothers Sheep ("Shirts Brothers") and are members of IWGA. Shirts Brothers raises sheep. Shirts Brothers' principal place of business is Weiser, Washington County, Idaho. Shirts Brothers has grazed sheep in the Payette National Forest since 1979.

4. The Idaho Fish and Game Commission is a duly constituted entity of the State of Idaho pursuant to Idaho Code § 32-102.

5. The Idaho Department of Fish and Game is a duly constituted entity under the supervision, management and control of the Idaho Fish and Game Commission.

6. Cal Groen is the Director of the Idaho Department of Fish and Game.

II.

JURISDICTION AND VENUE

7. Venue is proper in Adams County pursuant to Idaho Code § 5-402.
8. Jurisdiction is appropriate pursuant to Idaho Code § 5-514 and Article I, Section 8 and Article V, Section 20 of the Idaho Constitution.

III.

FACTUAL BACKGROUND

9. Paragraphs 1 through 8 above are incorporated herein by this reference as though fully set forth.

10. Prior to 1997, domestic sheep grazing was permitted upon National Forest Systems lands of the Payette National Forest within the Hells Canyon area, and Shirts and Shirts Brothers were permitted to graze their sheep on certain allotments in the Payette National Forest at different times during the year.

11. These grazing permits were and are essential to the success and viability of the Shirts' and Shirts Brothers' grazing operations.

12. While Bighorn Sheep were historically abundant in the Hells Canyon area of Idaho and Oregon, they were extirpated from the area by around 1945.

13. In approximately 1996/1997, various federal agencies, wildlife agencies of other states, and the Idaho Department of Fish and Game all reached an understanding regarding cooperation among the governmental agencies to reintroduce Bighorn Sheep to the Hells Canyon area.

14. In or around 1996/1997, the federal and state agencies mentioned above announced their intention to institute the transplant program.

15. On or about January 1, 1997 the Idaho Department of Fish and Game notified the IWGA that several dozen head of Bighorn Sheep would be transplanted to the Hells Canyon area within a few weeks.

16. The IWGA and several of its members were concerned that this transplant program would disrupt domestic sheep operations and/or lead to the cancellation or termination of federal land or state land domestic sheep grazing allotments in or around Hells Canyon. Among those members who were concerned were Frank Shirts, Jr. and Ronald Shirts and John T. Shirts d/b/a Shirts Brothers Sheep.

17. In the late 1996/early 1997 time period, the IWGA on behalf of its members and the Shirts objected to the Bighorn reintroduction plan and threatened to object to the plan and seek legislation in the Idaho Legislature opposing the reintroduction.

18. As a result of the threatened opposition from IWGA and its members, and in an effort to resolve the dispute and eliminate IWGA's and its members' objections and resistance to the reintroduction of the Bighorn Sheep, the member governmental entities of the Hells Canyon Bighorn Sheep Restoration Committee, including the Idaho Department of Fish and Game, signed a Letter Agreement and sent it to the IWGA. A true and correct copy of that Letter Agreement is attached hereto as Exhibit A.

19. The Letter Agreement provided that the state wildlife agencies would take "whatever action is necessary to reduce further losses of Bighorn Sheep without adversely impacting existing domestic sheep operators" and recognizes "the existing domestic sheep

operations in or adjacent to the Hells Canyon Complex, on both National Forest and private lands”

20. The intent of the Letter Agreement was that domestic sheep operators not only would not be held responsible for losses of Bighorn Sheep, but that the state wildlife agencies, including the Idaho Department of Fish and Game, would take whatever action was necessary so that Idaho domestic sheep operations and operators would not be harmed as a result of the reintroduction of Bighorn Sheep in Hells Canyon.

21. As a result of the agreement with the wildlife agencies, and based on the execution of the Letter Agreement, the IWGA and its members forbore from objecting to the reintroduction of the Bighorn Sheep in Hells Canyon.

22. Based on this Agreement, on March 24, 1997 the Idaho Legislature enacted Idaho Code § 36-106(e)(5)(D), which among other things required that the Department of Fish and Game give notice of Bighorn sheep transplants to any affected federal grazing permittees stating that the existing sheep operations in the area of any such Bighorn Sheep transplant “are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted.”

23. For several years all parties to this agreement honored their commitment. The Idaho Department of Fish and Game sent notices to Frank Shirts, Jr. and Ron and John T. Shirts d/b/a/ Shirts Brothers Sheep regarding reintroduction pursuant to Idaho Code § 36-106(e)(5)(D).

24. In or around April of 2007, however, the Forest Service reneged on its commitment in the Letter Agreement and began to modify various grazing permits in 2007, 2008, 2009 and 2010, including those of Shirts and Shirts Brothers.

25. The Idaho Department of Fish and Game took no action to block the Forest Service from modifying the grazing allotments for Shirts and Shirts Brothers and took insufficient action to prevent Shirts and Shirts Brothers from being harmed from these decisions.

26. As the result of the prior and continuing grazing permit modifications, IWGA, Shirts and Shirts Brothers have suffered significant economic losses and will continue to suffer economic losses.

IV.

FIRST CAUSE OF ACTION

(Breach Of Contract)

27. Paragraphs 1 through 26 above are realleged and incorporated herein by this reference as though fully set forth.

28. The Letter Agreement constitutes a contract between the Idaho Department of Fish and Game and the IWGA and its members, specifically Shirts and Shirts Brothers.

29. The Idaho Department of Fish and Game has breached its contractual commitments.

30. As a proximate result of this breach, the IWGA, Shirts and Shirts Brothers have suffered economic loss in an amount to be proven at trial.

V.

SECOND CAUSE OF ACTION

(Breach Of The Covenant Of Good Faith And Fair Dealing)

31. Paragraphs 1 through 30 above are realleged and incorporated herein by this reference as though fully set forth.

32. Every contract in Idaho includes an implied covenant of good faith and fair dealing.

33. The Idaho Department of Fish and Game has breached the covenant of good faith and fair dealing towards IWGA, Shirts and Shirts Brothers.

34. This breach of the covenant of good faith and fair dealing has proximately resulted in significant economic damages to IWGA, Shirts and Shirts Brothers in an amount to be proven at trial.

VI.

THIRD CAUSE OF ACTION

(Violation Of Statute)

35. Paragraphs 1 through 34 above are realleged and incorporated herein by this reference as though fully set forth.

36. Idaho Code § 36-106(e)(5)(D) requires the Idaho Department of Fish and Game to protect domestic sheep operations from economic harm caused by the reintroduction of Bighorn Sheep.

37. Shirts and Shirts Brothers are domestic sheep operators who have been harmed by the reintroduction of Bighorn Sheep.

38. The Idaho Department of Fish and Game is obligated under the statute to remedy any harm caused to Shirts and Shirts Brothers by the reintroduction of Bighorn Sheep, but has failed to do so.

39. This failure has caused significant economic losses to Shirts and Shirts Brothers in an amount to be proven at trial.

VII.

CLAIM FOR ATTORNEY FEES

40. Plaintiffs have been required to retain attorneys to prosecute this action and have agreed to pay said attorneys a reasonable attorney's fee which Plaintiffs are entitled to recover pursuant to Idaho law, including Idaho Code §§ 12-117, 12-118 and 12-120.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiffs hereby demand judgment from Defendants as follows:

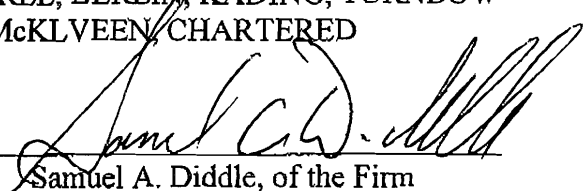
1. On each of Plaintiffs' claims for relief, damages in an amount to be proven at trial;
2. For costs, disbursements and attorney fees incurred by Plaintiffs in bringing this action;
3. For pre- and post-judgment interest; and
4. For such other and further relief as this Court may deem just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues pursuant to Idaho Rule of Civil Procedure 38(b).

DATED this 31 day of March, 2010.

EBERLE, BERLIN, KADING, TURNBOW
& McKLVEEN, CHARTERED

By: 
Samuel A. Diddle, of the Firm
Attorneys for Plaintiffs