

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS )  
PROJECT, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
U.S. FOREST SERVICE, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case Nos. CV-07-151-E-BLW  
CV-07-241-E-BLW

**MEMORANDUM  
DECISION AND ORDER**

SHIRTS BROTHERS SHEEP, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SECRETARY OF THE U.S. )  
DEPARTMENT OF AGRICULTURE; )  
CHIEF OF THE FOREST SERVICE; )  
REGIONAL FORESTER FOR THE )  
INTERMOUNTAIN REGION OF THE )  
FOREST SERVICE; FOREST )  
SUPERVISOR OF THE PAYETTE )  
NATIONAL FOREST OF THE FOREST )  
SERVICE; DISTRICT RANGER FOR )  
THE COUNCIL RANGER DISTRICT OF )  
THE FOREST SERVICE, )  
 )  
Defendants. )  
\_\_\_\_\_ )

## INTRODUCTION

The Court has before it a motion for partial summary judgment filed by the Shirts plaintiffs. The motion is fully briefed and at issue. For the reasons expressed below, the Court will deny the motion.

## ANALYSIS

The Shirts plaintiffs seek to set aside the Forest Service decisions modifying permits for sheep grazing on the ground that the agency violated the Federal Advisory Committee Act (FACA). A similar argument was made to this Court in *Idaho Farm Bureau Federation v. Babbitt*, 900 F.Supp. 1349 (D.Idaho 1995). There, plaintiffs challenged a decision of the Fish and Wildlife Service to list four mollusks under the Endangered Species Act. Plaintiffs claimed that the agency relied on a scientific review panel in violation of the FACA.

The Court held plaintiffs waited too long to make the challenge. Plaintiffs had been involved in the mollusk listing process from the beginning, and were fully aware of the scientific review panel. They were fully engaged in the public comment process, yet waited until the final rule was promulgated to seek injunctive relief under the FACA.

That is the case here, as well. The Forest Service put out the Risk Assessment for public comment, and the Shirts' plaintiffs filed public comments

on that Assessment. The Science Panel was convened in response to comments, including those of the Shirts, that the Assessment was not sufficient. Forest Service officials met with Mr. Ron Shirts to discuss the Science Panel results. Yet the Shirts plaintiffs failed to raise any complaint under the FACA or seek relief for its violation until this suit was filed.

The Court finds that the analysis contained in *Idaho Farm Bureau* applies here. The Court will accordingly deny the motion for partial summary judgment.

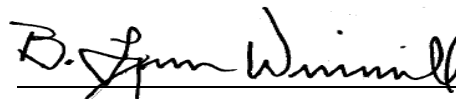
### **ORDER**

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion for partial summary judgment (Docket No. 105) is DENIED.

DATED: **November 26, 2008**



  
B. LYNN WINMILL  
Chief Judge  
United States District Court