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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

IDAHO RIVERS UNITED and)	
MORGAN AND OLGA WRIGHT,)	No. 1:15-cv-00169-BLW
)	
<i>Plaintiffs,</i>)	SECOND DECLARATION OF
)	MORGAN WRIGHT
vs.)	
)	
DISTRICT RANGER JOE)	
HUDSON, in his official capacity,)	
And UNITED STATES FOREST)	
SERVICE,)	
)	
<i>Defendant.</i>)	
)	

I, Morgan Wright, hereby declare and state as follows:

1. I am a Plaintiff in this action, along with my wife Olga. I have personal knowledge of the matters stated in the declaration and could and would competently testify to these facts.

2. As described in my prior declaration filed in this matter, my wife Olga and I own a property on the Selway River located just past the Swiftwater Bridge, which is

accessed by Road 652. When I purchased the land parcel on July 1, 1990, that road was a single-lane rutted dirt track, requiring a high clearance vehicle to reach the northern gate area by Unnamed Creek. At that time the road was even more rutted on the 300 feet toward the southern property line. While a brown wooden sign on the NW side of Swiftwater Bridge announced "Entering Private Lands," no sign existed on the easement road. At that time the 652 road was drivable by high clearance vehicles to the Neil Trust gate.

3. By the mid 1990's, the 652 road section through the IDL endowment parcel deteriorated, with the unnamed creek on the northern edge of the Neil Trust land spilling water and debris down the FS 652 road, creating an impassable/undriveable gully 100 yards or so from that gate. In the early 2000s I notified Heather Berg, the Forest Service (FS) employee who administers the Wild and Scenic easements, more than once about the creek/culvert failure. I also informed IDL personally at the Maggie Creek office.

4. In 2004, I began thinking of constructing a house on my property. To the best of my knowledge in the fourteen years since purchase, the entire FS 652 road, from its origin at FS470 to Elk City Creek on the Neil Trust land, had never been graded, repaired, or maintained by any government agency or landowner. See letter to Heather Berg, July 29, 2004, attached as Exhibit A.

5. In 2005, we retained a contractor and architect to build a residence, and entered into discussions with the FS regarding approval of site improvement and residential structures, consonant with the 1977 Wild and Scenic easement. Three proposed topographic changes were specifically denied by the FS, under clause 2(i) of the

1997 W & S easement. *See* letters from Cynthia Lane, District Ranger dated September 10, 2004 attached as Ex. B, and letter dated October 5, 2005 as Ex. C. I was encouraged to grade the driveway with for dust abatement, as noted in the October 5, 2005 communication. No mention was made of the access FS 652 road at that time, but in 2006 I paid for minor grading and graveling on the FS 652 road to the new southern ingress of the property (where a gate is now present).

6. In the summer of 2006, IDL had a team inspecting their endowment land, and performed cruise data. Rimrock Consulting of Moscow completed a survey in September 2006, and property boundary lines were posted. Despite spending about a week inspecting the acreage, preparatory to a potential sale/salvage, IDL did not attempt to fix the gully or improve their road to make it passable for car/truck travel.

7. Our house was completed and ready for occupancy in May 2008. Driving more frequently to my residence caused further surface rutting and dust production of the FS 652 road, and demanded improvement to allow standard vehicles access to my house. In 2010, I contracted with Wayne Jackson of Kooskia to grade the portion the road on my property, and surface it with 2 inches of 5/8 minor gravel. I did not improve the hard-pack dirt base or perform engineering studies of the road, as I felt that this improvement would totally satisfy my minimal transport needs. I did not seek separate FS approval for this, as I felt that this correction was covered by the October 5, 2005 letter as well as clause 2(e) of the 1977 Wild and Scenic easement, which allows maintenance of any existing road. The improved gravel surface terminated at my southern egress, and not at the southern property line bordering IDL land.

8. After construction of my residence in 2008, the FS 652 road continued to be undriveable by standard passenger cars through the IDL parcel, until the outbreak of the Johnson Bar Fire in August 2014. Moreover, in the 2000s, the FS 652 road through the Neil Trust land beyond their gate was undriveable because of trees and other vegetation growing in the road.

9. A dramatic thunderstorm dropped 0.94 inch of rain in the Johnson Bar Fire burned area over a two-hour period on July 13, 2015. Sediment and debris completely blocked the Burned Creek Culvert on IDL property on FS 652. The culvert failed, sending water over the road into creek bed, but also streaming down the FS 652 road onto my property at 111 Swiftwater Road, Kooskia, Idaho 83539. This flash flood material overwhelmed the perimeter house drains, and water with ash ponded in the south driveway, flowed into my garage, and flushed through my north driveway before draining in the Selway River. *See photos #1 and #2, attached as Exhibit D.*

10. The FS 652 gravel road surface between my driveways is 10 feet wide. Photographs (Exhibit D) taken at the time of the culvert failure on July 13, 2015 illustrate the similar width of the FS 652 dirt-track road, also 10 feet wide, on both the north as well as south sides of the Burned Creek culvert. FS 652 continues as a 10 foot wide road to its south terminus.

11. My wife Olga and I mitigated some of the flood effects that Monday night by diverting the stream onto IDL land, and soon thereafter, the storm abated. I telephoned Zoanne Anderson of IDL to inform her of the failed Burned Creek Culvert on IDL endowment land July 14, 2015 at 8:30 am. (On December 12, 2014, in IDL's Maggie Creek office, she had informed me of the planned replacement of this culvert in

conjunction with expanding the FS 652 road width to 16 feet for its timber sale). Later that day she called to say that the IDL team would be on-site early July 15 to inspect. IDL employee Nick Carter and his engineer arrived at 7 am July 15, 2015, and evaluated Burned Creek and its failed culvert.

12. I drove to the Fenn Ranger Station Visitor Center at 9:30 am July 14 to tell District Ranger Joe Hudson of the event. He was not available, so I left a message about what had happened. He called back 3 hours later, having spoken to Zoanne Anderson, and told me that he would be sending his engineer to inspect. I met the FS Engineer on site at 1pm, and relayed information of the flash flood. He looked at the failed culvert on IDL land. Neither at that time, nor at any other time, did I request that the FS repair the rutting effects the flash flood produced on FS652 on my property.

13. Friday July 17 at 4pm Zoanne Anderson telephoned and left a message to let me know that “culvert repairs” would begin Monday morning July 20. However, my wife Olga and I were awakened at 6 am Sunday July 19, 2015, by a large red Excavator rumbling up FS 652, and shaking our home. Construction work started early Monday July 20 with a large bulldozer traveling up the FS 652, again causing our house to shake as it passed by. Our house has a concrete foundation with radiant floor heating installed, and is quite vulnerable to large transmitted stresses from the passage of heavy equipment and/or logging trucks. FS 652 is not engineered to withstand heavy loads as would be expected by logging trucks carrying timber. District Ranger Hudson’s conclusion that “no damage” will occur if logging truck use FS 652 is plainly not accurate.

14. Trucks laden with replacement metal culverts were brought in as well to rehab Burned Creek rehab and replace the failed culvert.

15. IDL also widened the road, removing soil from the cutbank moved to the eastern side of the road by the excavator, doing far more road work than was necessary to repair the culvert. *See* photo #3, attached as Exhibit D. During that week of July 20, 2015, multiple dump truck loads of small and large rock were brought in for road surface work as well as cut-bank reinforcement. The bulldozer graded the surface and helped widen the road. The Burned Creek replacement culvert was put in place, with a ford on the road surface. The FS 652 road width expanded from 12 feet to 36 feet at the Burnt Creek culvert. *See* photo #4, attached as Exhibit D.

16. Other culverts were put in place to the south of the failed culvert, and the road width now is minimally 16 feet, with some areas 20 feet wide. The road surface has changed within the last month from hard dirt with grass growing at the prism, to compacted small and large gravel on the northern half, to heavily compacted dirt on the southern half of FS 652. *See* photo #5, attached as Exhibit D.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed the 16th day of August 2015.

/s/Morgan Wright
Morgan Wright

CERTIFICATE OF SERVICE

I hereby certify that on this 17rd day of August, 2015, I caused the foregoing SECOND DECLARATION OF MORGAN WRIGHT (and all attachments thereto) to be electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the counsel of record listed below:

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/s/ Laird J. Lucas
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