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

IDAHO RIVERS UNITED and)	
MORGAN AND OLGA WRIGHT,)	No. 3:15-cv-00169-BLW
)	
<i>Plaintiffs,</i>)	DECLARATION OF KEVIN L.
)	LEWIS IN SUPPORT OF
vs.)	PLAINTIFF’S MOTION FOR A
)	TEMPORARY RESTRAINING
DISTRICT RANGER JOE)	ORDER/PRELIMINARY
HUDSON, in his official capacity,)	INJUNCTION
And UNITED STATES FOREST)	
SERVICE,)	
)	
<i>Defendant.</i>)	

I, Kevin L. Lewis, hereby declare and state as follows:

1. My name is Kevin L. Lewis and I reside in Boise, Idaho. The following matters are personally known to me and, if called as a witness, I could and would testify truthfully thereto.

2. I am employed as the Conservation Director of Plaintiff Idaho Rivers United (IRU), a position I have held for over a decade. I oversee the development and implementation of IRU's conservation program work in accordance with the goals and objectives of IRU's strategic plan; develop organizational conservation policy positions; supervise staff and volunteers; lobby at state and federal levels; engage and educate our members, supporters and the general public on conservation issues; and work directly on conservation program issues.

3. IRU is Idaho's only statewide conservation organization dedicated to protecting and restoring Idaho's rivers, streams, and lakes. IRU has about 3,500 members, many residing throughout Idaho, including myself. Additionally, many thousands of citizens across the nation look to IRU to represent their river conservation interests.

4. The protection and enhancement of Wild and Scenic River values is one of IRU's greatest organizational priorities. IRU as an organization, and myself as an IRU staff and member, work to protect all of Idaho's designated Wild and Scenic Rivers – including the Selway River – and to seek protection of additional river segments through Wild and Scenic designation.

5. As both staff and a member of IRU, I rely on the organization to represent my personal and professional interests in protecting and restoring the rivers of Idaho, including protecting Wild and Scenic River values.

6. I have been visiting the Selway Wild and Scenic River corridor for nearly 35 years. From 1982 to 2004, I visited the area every two to three years; and from 2004 to present, I have visited the area three to five times per year. I last visited the Selway

corridor on March 24-25, 2015, when I went there for IRU business – including inspecting conditions of lands in and adjacent to the river corridor impacted by last summer’s Johnson Bar fire – and for some personal time enjoying the quiet and spectacular scenery of the Selway River and its corridor.

7. On my visits to the Selway Wild and Scenic River corridor, I use the river and the surrounding area for recreational, aesthetic, spiritual, and conservation purposes. I have enjoyed camping, hiking, kayaking, rafting, photography, relaxing and connecting with nature within the Wild and Scenic River corridor.

8. I will continue to regularly visit the Selway Wild and Scenic River corridor at least several times each year for the foreseeable future, including additional trips planned for summer and fall 2015, both for professional and personal reasons, including river rafting, enjoyment of the wild, scenic and recreational values of the corridor, engaging with local IRU members and other residents, monitoring conditions (including the status of burned lands from the Johnson Bar fire of 2014), and other reasons.

9. In 1968, Congress included the Selway River, along with the Lochsa and Middle Fork Clearwater Rivers, as the nation’s first protected rivers under the Wild and Scenic Rivers Act. The Act was passed, in part, to prevent the construction of new dams on some of America’s finest remaining free-flowing rivers. Additionally, Wild and Scenic designation requires federal land managers to identify and then protect and enhance the “Outstandingly Remarkable Values” which led to the Wild and Scenic designation.

10. The protection of Wild and Scenic values is not limited to the river itself

but includes the federally-designated river corridor of approximately ¼ mile wide on both banks of the river. Additionally, in some instances, activities that degrade Wild and Scenic values outside of the corridor may also be regulated.

11. In 1969, pursuant to the Wild and Scenic River Act, the Forest Service adopted a river corridor management plan for the Selway, Lochsa and Middle Fork Clearwater Rivers. A true and correct copy of that River Management Plan is attached hereto as Exhibit 1. Notably relevant here, the 1969 River Management Plan established that “[a]ccess roads to serve private lands are to be controlled by scenic easements to ensure compatibility with development of the special planning area and with river environment protection.” *Id.*, p. 9 (emphasis added). Although the 1986 amendments to the Wild and Scenic Rivers Act mandated that updated river corridor management plans be adopted for previously-designated Wild and Scenic Rivers, like the Selway, the Forest Service has never updated the 1969 River Management Plan; and it remains the applicable river corridor management plan for the Selway River.

12. According to a recent Forest Plan Assessment issued by the Nez Perce-Clearwater National Forests, which I have reviewed, the Forest Service has used taxpayer money to acquire some 186 Wild and Scenic easements which encumber about 4,000 acres of non-federal land within the Selway, Lochsa, and Middle Fork Clearwater Wild and Scenic river system. *See* NEZ PERCE-CLEARWATER NATIONAL FORESTS, FOREST PLAN ASSESSMENT (June 2014), ch. 15, p. 20. These include the 1977 Wild and Scenic easement which covers Forest Road 652 on the Wright’s property, at issue here, and which is addressed in more detail in the accompanying Morgan Wright declaration.

13. In August 2014, the Johnson Bar Fire burned portions of federal, state and

private lands in the Clearwater and Selway River areas. The burned areas include portions of federal and state lands within the federally-designated quarter-mile Wild and Scenic River corridor, as well as adjoining lands upslope from the river corridor.

14. I personally, and IRU as an organization, have been concerned about post-fire salvage logging plans affecting lands in and adjacent to the Selway and Middle Fork Clearwater Wild and Scenic corridors. As noted above, I have taken trips to the area in the past year to inspect fire burned areas and post-fire restoration and salvage logging activities.

15. I personally, and IRU as an organization, are very concerned that post-fire salvage activities not cause impairment of the scenic, aesthetic, recreational, and other values of the Selway and Middle Fork Clearwater Wild and Scenic Rivers and the designated Wild and Scenic Rivers corridor, such as through inappropriate road construction and excessive salvage logging. Such activities pose threats of long-term if not permanent impairment of the Wild and Scenic values that are federally protected via the Wild and Scenic Rivers Act and management requirements, such as the 1969 River Plan.

16. In early December 2014, through communications with IRU's long-time member and supporter Morgan Wright, who owns adjoining land and has a home on the Selway River that I have visited many times, I became aware of efforts by the Idaho Department of Lands (IDL) to utilize Forest Service Road 652, adjacent to the Selway River near the Swiftwater Bridge, for industrial and/or commercial purposes related to salvage logging of a state land parcel located within and upslope from the Selway Wild and Scenic River. Further investigation raised my concern that the Forest Service was

making management decisions without consideration of possible effects on Wild and Scenic values.

17. On December 17, 2014, I filed a Freedom of Information Act (FOIA) request with the Forest Service (USFS) requesting copies of communications between the USFS and IDL regarding IDL's proposed use of Forest Road 652 in connection with IDL's proposed Selway Fire salvage sale (as it is termed by IDL).

18. On approximately February 14, 2015, I received a FOIA response from the USFS (2015-FS-R1-01158) via certified U.S. mail. The FOIA response 2015-FS-R1-01158 contained numerous email exchanges between Forest Service personnel, between the Forest Service and the National Marine Fisheries Service, and between the Forest Service and IDL, regarding IDL's proposed Selway Fire sale and use of Forest Road 652. These include the following documents of which true and correct copies are attached hereto as the Exhibits identified below:

- Exhibit 2: Email from Nick Carter to Lawson Tate (Sept. 2, 2014);
- Exhibit 3: Email from Roberta Morin to Lawson Tate (Sept. 2, 2014);
- Exhibit 4: Email from Roberta Morin to Eric Barclay (Sept. 3, 2014);
- Exhibit 5: Email from Heather Berg to Joe Hudson (Sept. 26, 2014);
- Exhibit 6: Email from Joe Hudson to Andrew Schmidt (Oct. 16, 2014);
- Exhibit 7: Email from Joe Hudson to Allison Johnson (Oct. 31, 2014);
- Exhibit 8: Email from Joe Hudson to Kenneth Troyer (Nov. 5, 2014);
- Exhibit 9: Email from Peter Zimmerman to Joe Hudson (Nov. 14, 2014);
- Exhibit 10: Email from Joe Hudson to Zoanne Anderson (Nov. 20, 2014).

19. Through the emails listed above, I learned that the Forest Service and IDL

began the process in September 2014 of completing a special-use authorization for use of Forest Road 652. That process identified the need for public participation, analyzing the impacts of IDL's timber sale as a connected action under NEPA, and Endangered Species Act consultation.

20. However, these statutorily required procedures were abruptly cast aside when USFS District Ranger Joe Hudson, in the November 20, 2014 email listed above (Exhibit 10), determined that Forest Road 652 is supposedly a "public road," and informed IDL that no permit was necessary for their commercial and industrial use of the road in connection with the IDL Selway Fire sale.

21. The term "public road" – *i.e.*, the designation used by the District Ranger in the November 20, 2014 determination regarding Forest Road 652 – is not defined in Forest Service statutes or regulations. However, the Forest Service Manual defines "public road" as "available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration." See Forest Service Manual 7730.5. A true and correct copy of this part of the Forest Service Manual is attached hereto as Exhibit 11.

22. The Forest Service's November 20, 2014 determination that Forest Road 652 is a "public road" failed to address these definitions under the Forest Service Manual and the facts showing that Forest Road 652 does not qualify as a "public road" under those definitions – including because Forest Road 652 is not passable by four-wheel standard passenger cars for most of its length (other than the short stretch

maintained by the Wrights across their property); has been gated and locked by the Forest Service for many years past the Wrights' property; is not listed as an open road on the Nez Perce National Forest's 2007 (or prior) road access guides; and is covered by the 1977 scenic easement.

23. On February 26th, 2015, I visited IDL's Selway Fire timber sale area and photographed the condition of Forest Road 652. True and accurate copies of those photos are attached hereto as Exhibit 12. The first photo (Photo #1) shows Forest Road 652 within IDL's timber sale area, shortly after crossing the Wright/IDL property line. This is approximately the location where IDL will begin building new switchbacks up the hillside. The second photo (Photo #2) is looking uphill from Road 652 within IDL's sale area. This photo shows a slump in the hillside which had water flowing from the toe. IDL's new road will climb the hillside from right to left immediately above this slump area. The third photo (Photo #3) was taken looking north/east on Road 652 within IDL's timber sale area. This photo shows that Road 652 is not passable with a standard passenger car. The fourth photo (Photo #4) was taken where Road 652 leaves State land, passes through a locked gate, and re-enters private property. The last photo (Photo #5) shows that the Forest Service maintains a lock on the gate shown in Photo #4. The lock on the right is inscribed with the initials "U.S."

24. Prior to District Ranger Joe Hudson's November 20, 2014 determination, Forest Road 652 had never been classified by the Forest Service, or any other agency, as a "public road." The official 2013 forest map for the Nez Perce National Forest shows Forest Road 652 as an "Unimproved Dirt" road without a road number. A true and accurate copy of the 2013 Nez Perce National Forest map is attached hereto as Exhibit

13. (Exhibit 13 was created by taking computer screen shots from a digital copy of the map). Forest Road 652 is shown as a double-dashed line in the center of the map, just above the Johnson Bar Campground label and entirely within the Wild and Scenic corridor; but is not numbered. Notably, Forest Road 652 is not shown on this map as a “highway” or “Primary Access Route – Normally Suitable for Automobile Traffic.”

25. Likewise, the 2007 Road Access Guide for the Nez Perce National Forest does not list Forest Road 652 as open for any motor vehicle use. The Nez Perce National Forest is in the process of conducting its Travel Planning but has not finalized its official motor vehicle use map (“MVUM”) through that process. Until the MVUM is finalized, the Forest has established that the 2007 Road Access Guide is the official motor vehicle use designation. A true and accurate copy of the 2007 Road Access Guide with an explanatory document from the Forest’s website is attached hereto as Exhibit 14.

26. In addition, the November 20, 2014 determination is erroneous because the Forest Service failed to acknowledge the presence of the 1977 scenic easement covering the entire Wright’s property, including the section of Forest Road 652 on their land, which prohibits commercial and industrial activities within the easement area.

27. Because the Forest Service is the federal agency responsible for preserving the Wild and Scenic values of the Selway River, IRU and its members, including myself, rely on the Forest Service to protect these values for their continued enjoyment of this very special place.

28. The members of IRU and thousands of other citizens from across the nation have an expectation that the Wild and Scenic and other intrinsic values of the

Selway river corridor are protected and enhanced. Even the knowledge that these values are at risk of degradation evokes feelings of sadness, anger and stress; while actual degradation of these values damages our personal experiences as irreparably as the physical act of clear-cutting a stand of ancient redwoods or filling a wetland destroys those areas.

29. For over fifty years, I have been fortunate to experience many of America's great rivers. The Selway River certainly qualifies as one of our national treasures. From my first visit in 1982 until the present, the Selway has provided great meaning to my life and nourishment for my soul. Whether I'm testing myself on the Selway's whitewater, photographing its winter solitude or just sitting on a rock and watching the river flow by, these experiences help counter the stresses of my everyday life and add to my general well-being.

30. IRU and its staff and members, including myself, are already harmed by the Forest Service's failure to protect the Selway River's Wild and Scenic corridor and its outstanding scenic, aesthetic, recreational, fisheries and other values, due to the Forest Service's November 20, 2014 determination that Forest Road 652 is supposedly a "public road" and thus the Forest Service is not requiring IDL to obtain a special use permit for use of the road in connection with IDL's Selway Fire sale. Had the Forest Service maintained its earlier position – as stated in the emails identified above – that a special use permit was required for IDL to use Forest Road 652, the Forest Service would have been obligated to notify the public of the proposed use and allowed public comment via the NEPA process; and its failure to undertake any NEPA review, or provide any public notice or comment regarding its November 20, 2014 determination

have irreparably injured the procedural and substantive interests of IRU and its staff and members, including myself.

31. In addition, IRU and its staff and members are harmed by the Forest Service's failure to consider relevant Wild and Scenic protections arising under the 1969 River Plan, the Clearwater-Nez Perce Forest Plans, the 1977 Wild and Scenic Easement on the Wrights' property (where Forest Road 652 passes), the Endangered Species Act, and other substantive protections of the river's many values.

32. I am aware through monitoring IDL's website that it auctioned off the Selway Fire sale on June 19, 2015; and I understand that IDL plans to imminently commence moving heavy equipment on Forest Road 652 to begin clearing the site and for road construction activities associated with the sale, to be followed shortly by clearcutting operations on the IDL lands.

33. If the Court does not enjoin these activities while IRU's claims in this case are adjudicated, IRU and its staff and members face certain irreparable harms, including permanent deprivation of our procedural rights to participate in the Forest Service's required special use permit process via NEPA; long-term if not permanent impairment of scenic and aesthetic values of the Selway Wild and Scenic River corridor; and the potentially catastrophic impacts of mass erosion into the Selway River as a result of IDL's proposed road construction and clearcutting activities.

34. A Forest Service memo describing inherent soil stability problems in the area confirms my concerns about the landslide risks from IDL's timber sale. I received a copy of this memo from a retired Nez Perce National Forest employee, who obtained it from Forest Service historical files for the area. A true and accurate copy of that

memo is attached hereto as Exhibit 15. The Selway District Ranger wrote this memo to the Forest Supervisor in 1964 to explain why the Forest should not proceed with a planned timber sale on Road 652. In the memo, the District Ranger described serious soil stability problems in the “entire area” surrounding Road 652, and that “serious slides and slumps may occur due to road construction and accelerated erosion may result from logging.” The letter also recommended an “impact study” on the effects of the proposed timber sale on the Selway River.

35. The potential for such mass erosion (landslides, debris flows, mass wasting, etc) is very real, in my opinion. I have viewed the IDL state land parcel personally, and observed that it is very steep and the proposed road to be constructed as part of IDL’s Selway Fire sale will require numerous switchbacks crossing one or more small streams. Based on my personal and professional experience, my knowledge of the landslide-prone slopes of the Clearwater watershed, and the Forest Service’s 1964 memo describing the unsuitability of the area for road building and timber harvesting, I believe there is substantial risk that mass erosion impacting the Selway River will occur if the Court does not issue the requested injunctive relief.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct. Executed this 24th day of June, 2015.

/s/ Kevin L. Lewis
Kevin L. Lewis