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**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>	)	<b>PLAINTIFFS’ RESPONSE</b>
	)	<b>BRIEF OPPOSING IDL’S</b>
vs.	)	<b>MOTION TO DISSOLVE</b>
	)	<b>OR MODIFY PRELIMINARY</b>
DISTRICT RANGER JOE HUDSON	)	<b>INJUNCTION</b>
in his official capacity, and UNITED	)	<i>(Docket No. 26)</i>
STATES FOREST SERVICE,	)	
	)	
<u>Defendants.</u>	)	

Plaintiffs respectfully respond to and oppose Defendant-Intervenors’ “Motion To Dissolve Or Modify Preliminary Injunction” (*Docket No. 26*) as follows:

**I. THE COURT SHOULD FIRST RESOLVE THE PENDING MOTIONS FOR CROSS-SUMMARY JUDGMENT.**

IDL moves to dissolve or modify the preliminary injunction saying it has given up its plan to construct a 3-mile road on its parcel up the steep slopes of the Selway River

corridor, and instead will use helicopter logging to remove timber. It thus contends there is no need for a preliminary injunction any longer; or that it should be allowed to Road 652 for administrative purposes to oversee the helicopter logging operations. *See* IDL Brief in Support of Motion to Dissolve/Modify Injunction (*Docket No. 26-1*), pp. 3-6.

It is welcome news to Plaintiffs that IDL is now proceeding with helicopter logging instead of bulldozing the poorly-designed 3-mile road on its parcel, which threatened serious irreparable harm to the Selway River and its fisheries and scenic values. However, IDL's helicopter logging now entails landing and unloading the helicopters on private lands within the Wild and Scenic corridor so that logging trucks can load and transport the timber logged from IDL's land to IFG's Grangeville mill. *See* 2<sup>nd</sup> Groeschl Declaration (*Docket No. 26-2*), ¶¶ 3-10. Those private properties are encumbered by the same 1977 scenic easement as encumbers the Wrights' property – and that scenic easement prohibits use of the properties for commercial or industrial purposes, as Plaintiffs have previously briefed.

Plaintiffs have thus raised concerns to the Forest Service about Defendant Hudson's August 3, 2015 approval of IDL's helicopter landings on the private properties, which failed to address the easement's prohibitions on commercial and industrial activities on the properties. *See id.*, Ex. E (*Docket No. 26-7*). Meanwhile, IDL is proceeding rapidly to log its parcel, having begun logging on August 6; and all trees will evidently be cut before the end of this week. *Id.*, ¶¶ 6-7.

These activities, and IDL's motion to dissolve or modify the injunction, come as the parties are currently engaged in expedited cross-motions for summary judgment to resolve this case on the merits. *See Docket No. 23* (expedited briefing order). Plaintiffs

are filing their final summary judgment response/reply brief concurrently herewith; and Respondents will file their final summary judgment replies just a week from now. The case will thus be fully briefed and ready for oral argument and decision in the very near future.

Moreover, IDL's motion to dissolve or modify the injunction reiterates the same erroneous legal position that IDL is asserting in its summary judgment motion – namely that it has rights of access to its property using Road 652 under ANILCA and the Forest Service's special use regulations regarding landowner ingress/egress to inholdings under 36 C.F.R. §§ 251.50(d)(1) & 251.110(e). *See* IDL Brief, p. 6-7. As explained in Plaintiffs' Combined Response/Reply Brief on Cross-Motions For Summary Judgment, submitted herewith, this argument is legally and factually mistaken. The IDL parcel is not an inholding subject to ANILCA access rights: it is bordered mostly by other private properties, including the Wrights' land. And Idaho itself sold that land to the Wrights' predecessor without reserving any easement or right-of-way to access the IDL parcel. IDL cannot claim it has ANILCA guaranteed rights of access to its land across the Wrights' property under these facts. Moreover, Road 652 does not qualify as a "public road," yet IDL continues to insist that it is such in its motion to dissolve or modify the injunction. *Id.*

The legal underpinnings to IDL's motion to dissolve or modify the injunction thus remain sharply disputed by the parties; and the Court will soon be resolving those disputed issues. Plaintiffs do not believe that IDL has shown an urgent and compelling need to dissolve or modify the preliminary injunction in the short timeframe before a decision is rendered on the merits. The Court's resolution of the cross-motions for

summary judgment is important to establish the parameters of the parties' legal positions. Once the Court has decided the merits, it can then evaluate potential equitable relief or remedies, including whether to dissolve or modify the injunction.

Plaintiffs thus respectfully submit that the Court should deny the IDL motion to dissolve or modify the injunction; and the parties and Court can address potential equitable relief or remedies after the Court has decided the pending cross-motions for summary judgment.

## **II. DISSOLVING OR MODIFYING THE INJUNCTION IS UNWARRANTED AT PRESENT.**

Plaintiffs are also concerned that IDL's motion to dissolve or modify the preliminary injunction fails to present a full and complete picture of the current situation to the Court, which underscores that dissolving or modifying the injunction is unwarranted at the present time.

The Court issued the Preliminary Injunction Order on July 10, 2015, and specifically ordered that the "State Defendant-Intervenors are hereby enjoined from using Forest Road 652 for any purpose connected to the timber salvage sale." *See Docket No. 19*, p. 7. Plaintiffs are concerned that IDL has recently undertaken extensive work widening and improving Road 652 on the IDL state land parcel, in possible violation of the injunction.

As described in the accompanying Second Wright Declaration, a severe thunderstorm dropped nearly an 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 Forest Road 652. The culvert failed, sending water over the road into the creek bed, but also streaming down the road onto the Wrights'

property. This flash flood material overwhelmed their perimeter house drains, and water with ash ponded in their south driveway, flowed into their garage, and flushed through their north driveway before draining in the Selway River. *See* 2<sup>nd</sup> Wright Decl., ¶ 9 & Ex. D, photos #1 and #2.

After the Wrights notified IDL of the culvert failure and flooding, IDL responded on July 17 to advise that it would conduct “culvert repairs” on Monday, July 20, 2015. *Id.*, ¶ 13. However, the Wrights were awakened at 6 am on Sunday, July 19, 2015, by a large red excavator rumbling up Road 652, which shook their home that is located only a few feet from Road 652. Construction work started early Monday July 20 with a large bulldozer traveling up Road 652, again causing their house to shake as it passed by. *Id.*

While IDL did repair the failed culvert by replacing it with a ford, the work that IDL performed on Road 652 far exceeded just repairing the blown-out culvert. *See* 2<sup>nd</sup> Wright Decl., ¶ 15-16 & Ex. D (photos). During the 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 road surface and helped widen the road, as shown in the photo below (2<sup>nd</sup> Wright Decl., Ex. D photo #3):



Although IDL claims it simply engaged in culvert repair, this work that substantially widened and improved Road 652 over the IDL parcel appears to be far more work than needed for just culvert repair. It literally paves the way for IDL to now use Road 652 for new purposes including allowing heavy vehicles to access the site, park, and turn around in conjunction with the ongoing Selway Salvage project.

Yet IDL's motion to dissolve or modify the injunction does not even mention this road improvement work – even while asking the Court to allow IDL to use Road 652 for purposes of administering its revised Selway Salvage project. Whether IDL comes into the Court with unclean hands in seeking to dissolve or modify the injunction is not yet clear, but the uncertainty weighs against granting IDL's motion to dissolve or modify the injunction, at least until after the Court has decided the merits of the case.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that this Court deny IDL's motion to dissolve or modify the preliminary injunction, at least until the Court has resolved the pending cross-motions for summary judgment, at which time it will be more appropriate to consider equitable relief or remedies.

DATED: August 17, 2015. Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of August, 2015, I caused the foregoing PLAINTIFFS' RESPONSE OPPOSING IDL MOTION TO DISSOLVE OR MODIFY INJUNCTION 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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