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

IDAHO RIVERS UNITED and)
MORGAN AND OLGA WRIGHT,)
)
 Plaintiffs,)
)
 vs.)
)
 DISTRICT RANGER JOE)
 HUDSON, in his official capacity,)
 And UNITED STATES FOREST)
 SERVICE,)
)
 Defendant.)
 _____)

No. 3:15-cv-00169-BLW

**DECLARATION OF MORGAN
WRIGHT IN SUPPORT OF
PLAINTIFF’S MOTION FOR A
TEMPORARY RESTRAINING
ORDER/PRELIMINARY
INJUNCTION**

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. I am an avid river rafter and long-time member of co-Plaintiff Idaho Rivers United, and have enjoyed running the Selway, Lochsa, Clearwater and other rivers for decades. Because of my love for the Selway River and its outstanding scenic, recreational and other values, I purchased a property adjacent to the Selway River twenty five years ago, and built and maintain a home there, with my wife, Olga Wright.

3. The address of our property is 111 Swiftwater Road, Kooskia, Idaho. It is located on the south side of the Selway River, immediately to the east of where the Swiftwater Bridge crosses the Selway River, 2.8 miles upstream from the Selway's confluence with the Lochsa River at Lowell, Idaho. The access to our property is via forest road 652, which is a short spur road off forest road 470, an improved road which crosses over the Swiftwater Bridge.

4. Our property lies entirely within the one-quarter mile Wild and Scenic corridor of the Selway River, which was protected by Congress when it adopted the Wild and Scenic Rivers Act in 1968. This area features very steep slopes; and adjoining property held by the State of Idaho is up-slope from my property, in part.

5. When I purchased the property, I understood that it was encumbered by two easements held by the Forest Service. The first is a 1977 Wild and Scenic easement held by the U.S. Forest Service to protect and maintain wild and scenic values on the property. The second is a 1937 right-of-way for a forest road. True and correct copies of these easements are attached hereto as Exhibits 1 and 2, respectively.

6. Based on my purchase of the property and interactions with the Forest Service about it, I am aware that the Forest Service paid \$160,000.00 from public funds in 1977 to obtain the Wild and Scenic easement (Exhibit 1) over our entire property

and other parcels near it, for the purpose of protecting the wild and scenic values of the Selway River corridor. As the language of Exhibit 1 shows, the Wild and Scenic easement covers our entire property, including where forest road 652 crosses our property.

7. As Exhibit 1 also shows, the Forest Service's 1977 Wild and Scenic easement strictly limits development and activities on our property, including a prohibition on all industrial or commercial activity, changes to the topography, the number and design of all structures, and removal of vegetation.

8. I understood that I would have to comply with these extensive restrictions on the development and use of the property when I purchased it, and have also strived diligently to do so. I also appreciated that the Wild and Scenic easement would legally protect and preserve the remarkable scenic, recreational and historic values of the Selway River within the Wild and Scenic River corridor for my family, and for all Idahoans, now and in the future, as the restrictions run with the deed in perpetuity.

9. Because of the 1977 Wild and Scenic easement, before we could build our home, we submitted a detailed written proposal to the Forest Service's Scenic Easement Review Board on the Lochsa Ranger District in 2005. We then began an extensive design review and approval process, at considerable expense, to comply with the restrictions of the Wild and Scenic easement. Three features of our site plan were denied, because they involved placement of a small amount of fill in low level areas. The Forest Service determined that the easement prohibited even this minor change in topography.

10. As Exhibit 2 shows, the 1937 easement conveyed a 30-foot right-of-way to the Forest Service “for the construction, repair, maintenance, and operation of a common, main, or State public highway and as a connecting link in the . . . Goddard Point Road #289 Project.” This right-of-way is where forest road 652 crosses approximately 740 feet of our property.

11. However, the Forest Service never built the Goddard Point Road #289 Project for which the 1937 easement was obtained; and the Forest Service did not improve forest service road 652 beyond a native-surface dirt track, which I understand to have been made by the Civilian Conservation Corps in the 1930’s.

12. Today, forest road 652 remains a short unimproved spur road that parallels the Selway River within the federally-designated Selway Wild and Scenic River corridor. It is not passable by four-wheel standard passenger cars for most of its length, other than the short stretch maintained by us across our property.

13. At our own expense, we have maintained the short section of the spur road for access to our home. Neither the Forest Service nor any other public or private entity maintains the road that crosses our property or any portion of it beyond our property. The road is a rough dirt track beyond our home.

14. In fact, the Forest Service has maintained a locked gate for approximately thirty years on forest service road 652 about a quarter mile from our property, where it leaves the adjoining state land and enters the next private parcel, a short distance upriver from our home. The Forest Service maintains a key to that locked gate.

15. Last year, the Forest Service approved our request for signage at the

beginning of forest road 652 on our property that states: “Dead End. No Turn Around”, because RV campers often turned into the road, quickly realized it was a dead end and not maintained beyond our property, and then attempted to turn around, backing up perilously close to our home. It was necessary to obtain Forest Service approval because we cannot erect even a small sign on our property without Forest Service approval under the terms of the 1977 Wild and Scenic easement.

16. I was shocked to learn last fall, in connection with IDL’s proposed timber sale, that the Forest Service District Ranger Joe Hudson for the first time was designating forest service road 652 as a “public road”. Forest road 652 does not even appear in the 2007 Forest Service Road & Trail Access Guide, and it is shown only as an unimproved dirt track (without a road number) on the Nez Perce Forest map.

17. IDL’s proposed Selway Fire timber sale on the state lands adjacent to our home calls for constructing over 3 miles of new road up extremely steep, unstable and erosive slopes, many of which are between 40 to 80 percent in slope. IDL plans to clearcut about 142 acres within and adjacent to the Selway Wild and Scenic River corridor, yielding over 6.89 million board feet of timber. Constructing the new roads for the IDL sale will require extensive heavy equipment use over our property on forest road 652. Likewise, well over 1,000 logging trucks will cross our property on forest road 652 to remove the timber. The equipment and truck traffic across our property will seriously interfere with and harm our use and enjoyment of our home and property.

18. Additionally, based on my own inspections of the area and consultation with a road engineer who previously worked with the Forest Service in this area, I believe that the planned IDL timber harvest and road building will create a serious risk

of physical harm to us and our property, from the potential for mass erosion and resulting landslides from the road and logging activities. IDL has rejected any suggestion of helicopter logging to avoid these serious risks.

19. IDL has relied on District Ranger Hudson's November 20, 2014 determination that forest road 652 is a "public road" in proceeding with its plans to conduct its planned Selway Fire timber sale on the state lands adjacent to our property, utilizing forest road 652 through our property to access the sale, construct the new roads, and remove the logged timber.

20. To my knowledge, no road construction engineering plan has been developed by IDL. According to IDL sale documents that I have reviewed, road construction will require wasting 18,520 cubic yards of native rock and soil on site, essentially creating a waste area in the Selway Wild and Scenic River corridor. IDL also intends to install twenty-six culverts in streams that feed directly into the Selway River. In addition to the new road building, approximately 0.39 miles of forest road 652 will be reconstructed to a sixteen-foot travel way.

21. IDL has also advised me that the contractor who is awarded the sale may request permission from IDL to build other additional roads in connection with the sale, to increase the contractor's ability to access all the trees for the clearcut in this very steep terrain.

22. I was never informed that the Forest Service approved IDL's use of forest road 652 through my property for the proposed salvage sale without requiring any special use permit; I only discovered this fact after Idaho Rivers United received documents from the Forest Service under the Freedom of Information Act this winter.

23. The Forest Service has never previously designated forest road 652 as a public road open to all public use, without restriction; and it has not undertaken the required NEPA analysis for any such decision.

24. Based on the November 20, 2014 determination by District Ranger Hudson that forest road 652 is a “public road” open to all public use without restriction, the Forest Service has approved IDL’s use of forest road 652 for the IDL salvage sale without requiring a special use permit pursuant to Forest Service regulations and requirements. Accordingly, the Forest Service has conducted no analysis under NEPA or the Wild and Scenic Rivers Act to assess IDL’s proposed use of road 652 and its road building and logging activities for consistency with the Forest Service’s river corridor management plan, Forest Plan, Wild and Scenic easement, or other requirements. Neither has the Forest Service assessed the serious potential impacts of this project, including how the extensive truck traffic may affect Wild and Scenic values or the potential for mass erosion affecting either my property or the Selway River and its fisheries and other values.

25. Both my wife and I have been deprived of the opportunity to participate in the Forest Service’s decision to allow an activity that will very likely result in significant harm not only to the Selway Wild and Scenic River corridor but also to our personal residence and property.

26. The Forest Service’s authorization of the use of forest service road 652 across my property in connection with IDL’s project is in direct violation of the Wild and Scenic easement encumbering my property, by allowing industrial and/or commercial activities – i.e., extensive use of heavy equipment and logging trucks to

carry out the IDL sale – within the Selway River wild and scenic corridor, which the easement was created to protect.

27. Despite efforts by my counsel to advise the Forest Service of its legal violations in allowing IDL to use forest road 652 across my property without requiring any special use permit, and the filing of the complaint in this action, the Forest Service has been unwilling to change its position; and is allowing IDL to proceed with its planned salvage sale. Unless the Court enters injunctive relief, I and my wife will experience irreparable harms in many ways, including substantial interference with the quiet enjoyment of our property, breach of the 1977 Wild and Scenic easement, and deprivation of our rights to participate in the Forest Service's decision. Unfortunately, in light of the Forest Service's and IDL's insistence on proceeding with the proposed salvage sale without any Forest Service analysis or special use permit, injunctive relief from this Court is the only way to prevent these irreparable harms from occurring to myself, my wife, and the Wild and Scenic corridor.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct. Executed this 20th day of June, 2015.

/s/ Morgan Wright
Morgan Wright