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

IDAHO RIVERS UNITED, and	)	No. 3:16-cv-102-CWD
FRIENDS OF THE CLEARWATER,	)	
	)	
<i>Plaintiffs,</i>	)	<b>DECLARATION OF</b>
	)	<b>KEVIN L. LEWIS</b>
v.	)	
	)	
NEZ PERCE-CLEARWATER FOREST	)	
SUPERVISOR CHERYL F. PROBERT;	)	
UNITED STATES FOREST SERVICE;	)	
NOAA FISHERIES; and U.S. FISH AND	)	
WILDLIFE SERVICE,	)	
	)	
<i>Defendants.</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 12 years. 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. Founded in 1990, IRU is Idaho's only statewide nonprofit conservation organization dedicated to protecting and restoring Idaho's rivers and streams. IRU has about 3,500 members, many residing throughout Idaho, including myself. Additionally, many thousands of citizens from across the nation look to IRU to represent their Wild and Scenic River interests.

4. The members of IRU and thousands of citizens from across the nation have an expectation that the Wild and Scenic and other intrinsic values of the Selway and Middle Fork Clearwater river corridor are protected and enhanced. Even the knowledge that these values are at risk of degradation evokes feelings of sadness, loss, anger and stress; while actual degradation of values damages our personal experiences as irreparably as the physical act of clear-cutting a stand of ancient redwoods or flooding Yosemite's Hetch Hetchy Valley.

5. The protection and enhancement of Wild and Scenic River values is one of IRU's highest organizational priorities. IRU as an organization, and myself as an IRU staff member, individual member, and donor, work to protect all of Idaho's designated Wild and Scenic Rivers – including the Middle Fork Clearwater and Selway Rivers –

and to seek protection of additional river segments through federal Wild and Scenic River Act designation.

6. 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 of the Selway and Middle Fork Clearwater Rivers at issue in this case.

7. Since the passage of the Wild and Scenic Rivers Act in 1968, I have personally recreated on 32 Wild and Scenic Rivers in 7 states, including the Lochsa, Middle Fork Clearwater, and Selway Rivers. I have personally logged thousands of miles on Wild and Scenic Rivers via canoe, kayak, inflatable kayak and raft. I have also utilized these rivers for camping, hiking, photography and general relaxation.

8. I have been visiting the Selway, Lochsa and Middle Fork Clearwater Wild and Scenic Rivers 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 and Middle Fork Clearwater River corridor in October 2015, when I went there for IRU business – including inspecting conditions of lands in and adjacent to the river corridor impacted by the 2014 Johnson Bar fire – and for personal time to enjoy the quiet and spectacular scenery of the corridor.

9. On my visits to the Selway, Lochsa and Middle Fork Clearwater Wild and Scenic Rivers' corridor, I use the river corridor 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 Rivers' corridor.

10. I will continue to regularly visit the Selway, Lochsa, and Middle Fork Clearwater Wild and Scenic Rivers' corridor at least several times each year for the foreseeable future, including additional trips planned for spring and summer 2016, 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 additional fires in 2015), and other reasons.

11. In 1968, Congress designated the Selway, 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.

12. The protection of Wild and Scenic values is not limited to the river itself but includes the federally-designated river corridor of approximately 1/4 mile on each bank of the river. Additionally, lands adjacent to the corridor are protected.

13. In 1969, pursuant to the Wild and Scenic Rivers Act, the Forest Service adopted a River 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.

14. In 1986 amendments to Section 3(d) of the Wild and Scenic Rivers Act, Congress mandated that updated river corridor management plans be adopted within ten years for previously-designated Wild and Scenic Rivers, like the Selway, Lochsa and

Middle Fork Clearwater Rivers. *See* 16 U.S.C. § 1274(d)(1)-(2). However, the Forest Service has never updated the 1969 River Management Plan; and it remains the applicable river corridor management plan for the Selway, Lochsa and Middle Fork Clearwater Rivers' corridor.

15. The 1969 River Management Plan is a short plan which lacks fundamental elements required of a comprehensive river management plan under the 1986 amendments to Section 3(d) of the Wild and Scenic Rivers Act. 16 U.S.C. § 1274(d)(1). Congress specified in those amendments that each designated Wild and Scenic River segment must have a “comprehensive management plan . . . to provide for the protection of the river values,” including that such a comprehensive plan “shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this chapter.” *Id.*

16. IRU has repeatedly raised in comments and other communications with the Nez Perce-Clearwater National Forests the fact that the existing 1969 River Management Plan does not satisfy the requirements of Section 3(d) of the Wild and Scenic Rivers Act and needs to be updated, including in comments that IRU submitted in connection with the Johnson Bar Fire Salvage Project, at issue here. So far, our comments and requests to update the river plan have fallen on deaf ears at the Forest Service.

17. According to a 2014 Forest Plan Assessment issued by the Nez Perce-Clearwater National Forests, which I have reviewed, the Forest Service acknowledges that the 1969 River Management Plan does not comply with the requirements for a comprehensive river management as directed by Congress in the 1986 amendments to

the Wild and Scenic Rivers Act. A true and correct copy of excerpts from that Forest Plan Assessment is attached hereto as Exhibit 2.

18. In August 2014, the Johnson Bar wildfire burned portions of federal, state and private lands in and around the Middle Fork Clearwater and Selway Rivers' corridor. The burned areas include federal and state lands within the federally-designated Wild and Scenic River corridor, as well as adjoining lands upslope from the river corridor.

19. There has been extensive logging on private and state lands burned in the Johnson Bar wildfire in and around the area of Swiftwater Creek. These include at least three private land parcels that I am aware of (known as the Harrington, Kennedy, and Neil Trust properties), where the private lands were subject to scenic easements granted to the Forest Service (and paid for by the Forest Service, using taxpayer funds) pursuant to the Wild and Scenic Rivers Act and 1969 River Plan. They also include a State of Idaho endowment land parcel, discussed further below.

20. In each instance, the Forest Service gave approval for the logging on the private lands without ensuring the protection of scenic and other values associated with the Selway Wild and Scenic River corridor. True and correct copies of the Forest Service's approval for helicopter landings on the Harrington and Kennedy properties, the Forest Service's approval for timber harvest and log hauling for the Neil Trust properties, and the Neil Trust property scenic easement are attached hereto as Exhibit 3.

21. The Forest Service also gave approval to the Idaho Department of Lands ("IDL") to utilize what the Forest Service claimed to be a Forest Service road (road 652) across private land owned by IRU supporters, Dr. Morgan and Olga Wright, so that IDL

could construct a new 3-mile road up the steep slopes of the Selway River canyon and clearcut over 150 acres of IDLs within and adjoining the Wild and Scenic corridor. IRU and the Wrights challenged that Forest Service decision in related litigation before this Court, styled *Idaho Rivers United et al. v. Hudson et al.*, No. 1:15-cv-169-BLW (D. Idaho). In July 2015, Chief Judge Winmill enjoined that approval based, in part, on the massive sedimentation threatened into the Selway River from IDL's proposed logging and road-building. *See id.*, Memorandum Decision and Order dated July 10, 2015 (*ECF Docket No. 19*). Just last week, Chief Judge Winmill entered summary judgment for IRU in that case, confirming that the Forest Service acted arbitrarily and capriciously in failing to consider and protect Wild and Scenic values of the Selway River corridor, as required by the Wild and Scenic Rivers Act. *See id.*, Memorandum Decision and Order dated March 28, 2016 (*ECF Docket No. 41*).

22. The preliminary injunction entered by Chief Judge Winmill prohibited IDL from using Road 652 in connection with its salvage project; and IDL proceeded to clearcut most of its parcel using helicopter logging, leaving some "green strips" near the Selway River and along streams.

23. The extensive logging of these private and state land parcels in the lower Selway River watershed has resulted in a series of ugly clearcuts that are visible in and around the Selway River corridor, which in my opinion have impaired and compromised scenic, aesthetic and ecological values of the area.

24. Attached hereto as Exhibit 4 are photographs taken on March 31, 2016 of the private and state land logging described above, which accurately depict the current impacts of the logging on the scenic and aesthetic qualities of the Selway River corridor

as I have personally observed them in my recent visits there:

- Photo 1: View of the Harrington property clearcut. Driving upriver on the Selway River Road, this is the first clearcut that one sees from the 2014 Johnson Bar fire.
- Photo 2: View of the IDL clearcut with Swiftwater Bridge in the foreground over the Selway River.
- Photo 3: View of the Neil Trust clearcut just past the Swiftwater Bridge and the IDL parcel.
- Photo 4: Another view of the Neil Trust clearcut along the Selway River.
- Photo 5: Another view of the Neil Trust clearcut from along the Selway River.
- Photo 6: Photo taken from the Johnson Bar campground on the Selway River, with a view of the Neil Trust clearcut partially visible in the background across the Selway River.

25. The Johnson Bar fire burned much larger areas of Nez Perce National Forest Lands around these private and state land parcels, as well as further upstream on the Selway River. Based on my personal inspections and review of documents relating to the fire (including the Johnson Bar Fire Salvage Project FEIS, at issue here), I know that the Johnson Bar fire burned in a mosaic pattern that included many areas of green trees that were not burned or low to moderate intensity burns that did not kill all the trees within the fire areas.

26. Also part of Exhibit 4 are several photographs taken on March 31, 2016 showing the mosaic pattern of the burn on National Forest lands along the Selway River within the Johnson Bar Fire Salvage Project area not far from the private and state land parcels that were logged:

- Photo 7: Photo showing mosaic of burned and unburned trees within the Johnson Bar Fire Salvage Project area, on the lower edge of a ridge

near the mouth of the Selway River.

Photo 8: Another photo showing mosaic of burned and unburned trees along Selway River

Photo 9: View looking down the lower Selway River again showing scenic mosaic of burned and unburned tree.

27. The Johnson Bar Fire Salvage Project will result in many more acres of Forest Service lands being logged along the Selway River Wild and Scenic corridor, removing the natural mosaic of burned and unburned trees and further degrading scenic, aesthetic and environmental values of the Wild and Scenic River corridor and the Selway River watershed. Wild and Scenic values are not protected or enhanced by fire salvage logging. Fire is a natural part of the landscape and ecosystem. Clearcuts and tree plantations are a visual and ecological affront to users of Wild and Scenic Rivers. Additionally, newer science tells us that more damage often occurs from logging and replanting than simply letting nature take its own course.

28. The Court, through Chief Judge Winmill's decision in *IRU v. Hudson*, has already found that the Forest Service acted in dereliction of its duty to consider and protect Wild and Scenic values of the Selway River; yet the Forest Service has also abrogated its duties to protect the Selway and Middle Fork Clearwater Rivers and their Wild and Scenic values through approving the state and private land logging shown above as well as the Johnson Bar Project.

29. The fact that the Forest Service lacks an updated, comprehensive river management plan, as required by Section 3(d) of the Wild and Scenic Rivers Act, means that the agency cannot lawfully proceed with approval of the Johnson Bar Project, as it will certainly impair scenic, aesthetic and other values of the Wild and Scenic River

corridor and cause cumulative impacts in connection with the private and state logging already seen in the area. Without a comprehensive river management plan that includes the resource protection mandates established by Congress, the Forest Service has no sound basis for assessing the adverse impacts of proposed management actions, including the large Johnson Bar Fire Salvage Project, which will log about 34 million board feet of timber on top of the state and private land logging that has already occurred.

30. The 2016 Johnson Bar Record of Decision identifies a primary management objective of recovering commercial log values as opposed to its own management plan directive to place primary emphasis on protecting Wild and Scenic values and specifically prohibits commercial logging in Wild and Scenic areas. The Forest Service is attempting to evade its own management plans in its quest to conduct commercial logging. By prioritizing commercial logging over protection of the Wild and Scenic River corridor, the Forest Service is further violating its duties under Sections 10 and 12 of the Wild and Scenic Rivers Act as well as Section 3(d).

31. Idaho Rivers United, as an organization, and on behalf of its staff and members (including myself), is directly and adversely harmed by the Forest Service's multiple violations of the Wild and Scenic Rivers Act in approving the Johnson Bar Project. The extensive logging as well as construction or reconstruction of roads and helicopter landings – including at least one helicopter landing within the Selway Wild and Scenic corridor – will cause further impairment of scenic, aesthetic and environmental values of the Wild and Scenic River corridor and adjoining federal lands within the watershed, which will endure for decades if not longer. I am personally injured and will be irreparably harmed in my recreational and professional uses and

enjoyment of the area due to these legal violations.

32. In addition, a number of other wildfires burned in the Clearwater area during summer 2015, including at least two major fires along the Selway and Middle Fork Clearwater Rivers (called the Slide and Wash fires). The Forest Service is now proceeding with plans to conduct salvage logging on the 2015 burned areas, and I believe there will be additional private and state lands that have been or will be logged from the 2015 fires as well. These pose additional cumulative adverse impacts to the scenic, aesthetic and ecological values of the Selway and Middle Fork Clearwater Rivers and their Wild and Scenic River corridor. Again, the Forest Service cannot lawfully approve the Johnson Bar Project or other federal lands logging projects in and adjacent to the Wild and Scenic Rivers corridor unless and until it has a valid comprehensive river management plan that complies with Section 3(d) of the Wild and Scenic Rivers Act; and IRU and myself are directly and irreparably injured by the consequences of the Forest Service's legal violations here.

33. IRU and our co-Plaintiff Friends of the Clearwater participated extensively in the Forest Service's development of the Johnson Bar Fire Salvage Project, including by providing timely scoping comments and comments on the Draft Environmental Impact Statement (DEIS); and we filed an Objection on the proposed Final Environmental Impact Statement (FEIS) and Draft Record of Decision, as required by Forest Service regulations. Our comments and objections underscored the ecological harms and impairment of Wild and Scenic values threatened by the Forest Service's proposal, and cited scientific studies documenting that salvage logging impedes ecological recovery after a fire, including by disturbing burned soils, removing

vegetation and woody debris important for wildlife and fish, and increasing sedimentation threats. Our objections also addressed the 2015 fires and underscored the need for the Forest Service to conduct supplemental NEPA analysis to address these recent developments and their cumulative impacts.

34. An Objection Resolution meeting was conducted by the deputy Regional Forester on January 4, 2016 to address the Objections filed by IRU and co-plaintiff Friends of the Clearwater, in which I participated. The Objection Resolution official indicated that the Forest Service would need to prepare a Supplemental EIS in order to address potential impacts of the 2015 wildfires and other issues, because the proposed FEIS did not adequately address them.

35. The Objection Resolution Officer issued his written response on our objections on January 7, 2016, and agreed with many of our objection points, instructing the Forest Service to address numerous deficiencies and errors in the FEIS, including changed conditions as a result of the 2015 fires. The very next day, on January 8, 2016, the Forest Service released what it call an “updated” FEIS, which modified the proposed FEIS by adding approximately 25 pages of additional information and analysis. Yet the Forest Service did not provide any opportunity for IRU or FOC (as the objecting parties) to review and comment upon the changes in the FEIS, nor did it give public notice and opportunity for public comment on the changes to the FEIS.

36. Through our attorneys, IRU and FOC requested the Forest Service in writing to release the changes in the “updated” FEIS as a Supplemental EIS and allow public review and comment, in accordance with the requirements of NEPA; but the Forest Service has refused to do so, and has not allowed comment by the Plaintiffs or

the public on its “updated FEIS” despite the significant changes and additional made to the proposed FEIS.

37. The “updated FEIS” served as the basis for the Forest Service’s approval of the Record of Decision (ROD) for the Johnson Bar Fire Salvage Project on February 17, 2016; and yet the “updated FEIS” is obviously deficient and scientifically inadequate in numerous respects, including its evaluation of cumulative impacts from the 2015 wildfires, the adverse impacts of the Project along with other logging on private, state and federal lands following the 2014 and 2015 wildfire, projections of sedimentation risks and impacts to threatened fisheries in the area (salmon, steelhead and bull trout), and others.

38. As described in the Declarations of Dr. Jennifer Pierce and F. Al Espinosa, that IRU and FOC are filing in this matter, the Forest Service’s FEIS, ROD, and Endangered Species Act consultations over the Johnson Bar Fire Salvage Project are grossly deficient and misleading from a scientific perspective with respect to the likely adverse impacts of the Project’s road, helicopter landing and logging activities in causing likely sedimentation increases – including by elevating the risks of massive sedimentation events like mudslides, landslides and debris flows – into the streams and rivers of the Project Area, including the Selway and Middle Fork Clearwater Rivers. These streams and rivers are vital habitat for imperiled fish species (salmon, steelhead and bull trout) that IRU and its staff and members have long-standing interests in protecting.

39. IRU, as an organization and on behalf of its staff and members (including myself) is directly and irreparably harmed by the Forest Service’s refusal to release a

Supplemental EIS for public review and comment with respect to the Johnson Bar Project, because we have been deprived of the opportunity to let the Forest Service know that its analysis of direct, indirect and cumulative effects of the Johnson Bar Project along with the 2015 wildfires and other state and private land logging is scientifically inadequate and unsound.

40 Likewise, IRU as an organization and on behalf of its staff and members (including myself) is directly and irreparably harmed by the Forest Service's other violations of NEPA in relying on the grossly defective FEIS and ESA consultations to approve the ROD for the Johnson Bar Project, because substantial harms will occur to the public lands and waters of the area that we cherish and fight to protect. If the Court does not enjoin the Johnson Bar Project, the Forest Service will proceed with extensive road construction and reconstruction, helicopter landings, logging, and other activities that pose very serious threats of irreparable harm to the public lands, waters, fisheries, scenic and aesthetic values, and other uses of the Selway and Middle Fork Clearwater rivers and watersheds that we so highly prize and fight to protect. The Forest Service has already awarded the two timber sales associated with the project, known as "Hot Point" and "Peterson Point." Road work and timber harvesting is scheduled to begin on May 16, 2016.

41. If the Court does not enjoin the Johnson Bar Project while IRU's claims in this case are adjudicated, IRU and its staff and members face certain irreparable harms, including long-term if not permanent impairment of scenic and aesthetic values of the Selway Wild and Scenic River corridor, as well as impairment of water quality and fisheries resources.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct. Executed this 5th day of April, 2016 at Boise, Idaho.

/s/ Kevin L. Lewis  
Kevin L. Lewis