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Attorneys for Plaintiffs

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

WOLF RECOVERY FOUNDATION, and)
WESTERN WATERSHEDS PROJECT)
)
Original Plaintiffs,)
)
and)
)
THE WILDERNESS SOCIETY, GREAT OLD)
BROADS FOR WILDERNESS, IDAHO)
CONSERVATION LEAGUE, WINTER)
WILDLANDS ALLIANCE, WILDERNESS)
WATCH, and SIERRA CLUB,)
)
Co-Plaintiffs On Third Claim For Relief)
)
v.)
)
U.S FOREST SERVICE and USDA APHIS)
WILDLIFE SERVICES,)
)
)
Defendants.)

No. 09-cv-686-BLW

**DECLARATION OF
ROY HEBERGER**

I, Roy Heberger, with full knowledge of the penalties for perjury, declare as follows:

1. I am a retired U.S. Fish and Wildlife Service (“USFWS”) biologist, and I currently reside in Boise, Idaho. I worked for USFWS for 33 years until my retirement in July 2000. After wolves were reintroduced in central Idaho, I spent a significant part of my time with USFWS managing the wolf recovery program in Idaho in conjunction with other cooperators and agencies.

2. I earned an Associates Degree in Forestry from Paul Smith’s College of the Adirondacks (1965), and Bachelor of Science (1967) and Master of Science (1973) degrees in Fishery Biology and Aquatic Ecology, respectively, from the School of Natural Resources at the University of Michigan. I was employed at the USFWS Great Lakes Fishery Research Laboratory from 1967-1979 as a fishery biologist-research.

3. In 1979, I transferred within the USFWS to the Snake River Basin Office of the USFWS and was employed there until my retirement in 2000. I served in various capacities: fish and wildlife biologist-general, fishery-biologist-general, coordinator of permits and licenses, and Assistant Field Supervisor for the USFWS Snake River Basin Office as well as Idaho Wolf Recovery Coordinator.

4. Concurrent with my duties as Assistant Field Supervisor for the Snake River Basin Office, I oversaw the wolf recovery program for the Central Idaho Wolf Recovery Area, which includes the Frank Church River Of No Return Wilderness, from 1995 until I retired. The Nez Perce Tribe was a cooperator with the U.S. Government in wolf recovery efforts and, under a contract with USFWS, monitored wolf population trends and distribution to determine whether wolves were moving toward their recovery goals under the Endangered Species Act. My

position as wolf recovery coordinator for USFWS included oversight of the contract USFWS had with the Nez Perce Tribe to monitor wolf recovery and conduct recovery actions.

5. This position also entailed coordinating with other federal agencies such as USDA Wildlife Services and the Forest Service, state agencies, non-governmental organizations, Congressional staffs, the Idaho Governors Office, county commissioners, ranchers, sheep producers, outfitters, and other interested individuals on matters related to wolf management and wolf recovery.

6. During the course of my tenure as wolf recovery coordinator, the idea arose of using aircraft to assist with the capture and collaring of wolves in the Frank Church River Of No Return Wilderness. I had discussions with the Nez Perce Tribe and USDA Wildlife Services on this topic and subsequently contacted the Forest Service to inquire about this possibility. I was not aware of the stringent requirements of the Wilderness Act at this time. The collar information would be used to locate packs or track movements of individual wolves as well as estimate total number of wolves. Collar information could also be used to locate wolves for management or wolf control actions.

7. The federal agencies and Nez Perce Tribe held a series of meetings at the USFWS office in Boise that I organized to discuss this proposal. At the initial meeting, USFWS, Wildlife Services, and the Nez Perce Tribe presented to the Forest Service the concept of using aircraft to capture and collar wolves in the Wilderness as well as the methods used to collar wolves. All parties agreed that they needed to look into the requirements of the Wilderness Act, and the Forest Service stated that it would bring in some of its own Wilderness specialists to the conversation.

8. The next meeting included Forest Service specialists in Wilderness management from within Region 4, who explained the requirements for managing wilderness, as laid out in the Wilderness Act. This included the general prohibition on landing aircraft in Wilderness. We discussed that aircraft “landings” under the Wilderness Act includes landing an aircraft, dropping something from an aircraft to the ground, shooting a projectile (such as a bullet, net, or dart) to the ground from an aircraft, and having a human jump or otherwise deploy from an aircraft to the ground. Forest Service experts stated that landings in Wilderness for the purpose of capturing and collaring wolves are prohibited by the Wilderness Act unless they fell within one of the Act’s exceptions.

9. The Forest Service Wilderness experts also stated that using an exception to allow landings in the Frank Church River Of No Return Wilderness would require preparation of an environmental impact statement (EIS) under the National Environmental Policy Act, and none of the other parties disputed that conclusion.

10. After these meetings and further internal discussions, I recommended to the USFWS Field Supervisor of the Snake River Basin Office that USFWS not pursue the use of aircraft to capture and collar wolves in Wilderness. My recommendation was based on the premise that wolf recovery must be conducted in a manner compatible with the Wilderness Act and wilderness values. USFWS then reported to the Forest Service that it would not pursue this activity and the topic never arose again while I was wolf recovery leader.

11. The landing of aircraft in the Frank Church River Of No Return Wilderness for the purpose of capturing and collaring wolves is not necessary for management of wolves. Before wolves were considered recovered under the Endangered Species Act, the USFWS determined that it was not necessary to use aircraft to capture and collar wolves in the

Wilderness to monitor, manage, and enhance their recovery. Prior to and after my retirement, Tribal biologists successfully accessed the Wilderness by foot or horse pack train, trapped and collared wolves, and later monitored their location and used those collared animals to estimate minimum abundance. It is my opinion that the successful efforts on the part of Tribal biologists clearly demonstrate that the minimum tools required for wolf monitoring do not involve helicopter landings in Wilderness. Given the increase in both number of wolves and number of wolf packs in the Frank Church River Of No Return Wilderness and higher density of pack territories, this suggests that the minimum tools used by Tribal biologists are still usable today for the same purposes.

12. Less intrusive and less disruptive methods can and have been used in Wilderness to monitor wolves. These methods include conducting howling surveys and aerial surveillance to monitor locations and distribution of wolves, as well as using on-the-ground traps to capture and collar wolves. When speaking with wolf and trapping expert Carter Niemeyer on January 16, 2010, Mr. Niemeyer informed me that a relatively new application of evolving DNA research is being applied to wolf monitoring. Scat collections may be used for wolf DNA analysis. This approach has been used successfully in France and is being evaluated for use in this country. In 2006, I spoke with Joe Fontaine, then a USFWS biologist in Helena, Montana, about their successful use of traps to capture and collar wolves in the Bob Marshall Wilderness. Joe stated that USFWS used horses to access and pack-in the traps and gear necessary to capture and collar wolves in the Wilderness.

13. I have read the annual reports of progress prepared by the Nez Perce Tribe's Idaho Wolf Recovery Program as well as answers to questions posed to them about their trapping efforts in wilderness and other backcountry areas. I have also read the October 11, 2009

comments to the Forest Service from trapper Isaac Babcock noting Mr. Babcock's experience trapping wolves with on-the-ground leg-hold traps in wilderness areas. I have also talked to Carter Niemeyer, who took over as wolf recovery coordinator after I retired and previously had decades of experience in Montana and Idaho trapping wolves and other animals for Wildlife Services. The information from these sources, as well as my own knowledge and experience from when I was wolf recovery coordinator, demonstrate that trapping wolves on the ground in wilderness has been done and is a reasonable alternative to the use of helicopters to capture and collar wolves in the Frank Church River Of No Return Wilderness.

14. The Nez Perce Tribe's annual progress reports on wolf recovery contain information on the distribution of wolves in Idaho. These reports reference trapping in Wilderness and also contain maps showing distribution of wolf packs across Idaho both inside and outside of Wilderness, indicating that Tribal biologists were able to successfully collar and monitor location, pack territory, and a minimum estimate of wolf abundance without the benefit of helicopter landings in Wilderness. The 1999-2001 report noted that trapping consistently produced wolf captures. It required substantial time and effort but that in Wilderness, trapping was the only option. Despite the challenges of trapping, however, they still averaged 24 wolf captures per year in 1998 and 1999. This number dropped in 2000 and 2001 to 14.5 captures per year because of decreased trapping efforts. These annual reports make numerous additional references to wolf packs using Wilderness and collaring activities within those packs. The Forest Service did not mention any of this information in its Decision Memo.

15. In a letter sent to the Forest Service commenting on the proposal to issue a special use permit for helicopters to capture and collar wolves in the Frank Church River Of No Return Wilderness, trapper Isaac Babcock contradicted the Forest Service's conclusions on the need for

use of helicopters. *See Ex. A attached hereto.* Mr. Babcock was employed as a wolf trapper by the Nez Perce Tribe prior to and after my retirement. I had met Isaac and visited with him and other Tribal staff about the wolf recovery effort on numerous occasions before I retired. Isaac makes the point in his letter that he and other Tribal staff successfully trapped wolves in the Frank Church River Of No Return Wilderness in the course of his 14-year employment with the Tribe. He noted that the Forest Service's statements that trapping in wilderness had been unsatisfactory and unsuccessful, that helicopters were necessary to do this research, and that agencies had not been able to effectively collect data from the Frank Church Wilderness were "misleading and incomplete to say the least, if not partially false." *Id.*

16. Mr. Babcock explained that the Nez Perce Tribe had made more than thirty successful wolf captures for radio collaring and monitoring by using ground traps that were packed in to backcountry areas on foot or horse. *Id.* He made 15 of those captures himself. *Id.* Mr. Babcock stated that those methods were both successful and humane to the wolves given new trapping methodology. *Id.* He also explained that there had been "much lower emphasis" on collaring wolves in the Frank Church Wilderness, and that with increased effort and emphasis, "the number of captures and collars could be greatly increased." *Id.* He concluded that helicopter use was not necessary because ground trapping via foot and horseback can meet collaring objectives and management goals. *Id.*

17. The Nez Perce Tribe confirmed that thirty-two wolves were trapped in designated Wilderness in Idaho, twenty-nine of which were trapped in the Frank Church Wilderness. *See Exhibit B attached hereto.* An additional sixteen wolves were trapped in other primitive backcountry areas in Idaho. *Id.* This trapping occurred using leg-hold traps on the ground, which were carried via backpack or horseback, along with other work and personal gear, to the

sites and then checked at least daily on foot or horseback for usually 14 days or less. *Id.* The Tribe also stated that other methods, although they may be more costly, less efficient, and result in less precise data, can be used to monitor wolves, such as visual signs, scat and hair surveys, habitat modeling, howling surveys or howl boxes, rub pads, or hunter information. *Id.*

18. I also spoke with Carter Niemeyer who, as USFWS wolf recovery coordinator and a trapper with Wildlife Services, has extensive experience managing and trapping wolves. Mr. Niemeyer has trapped many wolves in backcountry areas, including in the Frank Church River Of No Return Wilderness. He described his method of packing in on foot four to six traps as well as other equipment and gear. He was aware of other people using pack animals to set traps in backcountry areas. He said that packing on foot limits the number of traps that can be carried; but that he has more success setting just four to six traps, because it limits the effects of human presence and scent that make wolves wary.

19. Mr. Niemeyer stated that his backcountry trapping efforts were successful, in part, because of his experience and knowledge about how to set and check traps without alerting the wolves to his presence. This entailed setting the traps in proper locations, such as in meadows away from trails and upwind from human scent, as well as avoiding walking directly to the traps each day and instead observing them remotely from a distance. He also explained that other methods can be used to monitor wolves such as howling for wolves to determine presence, visual counts from aerial surveys or on-the-ground counts, or collecting scat.

20. Clearly, using helicopters to capture and collar wolves in the Wilderness is not necessary to enhance the wolf population or insure continued recovery of wolves when there are other monitoring techniques that are possible to use and less degrading to Wilderness values.

USFWS had sufficient monitoring information to manage wolf recovery for more than a dozen years without resorting to using helicopters in wilderness.

21. There is also no reason that use of an exception in the Wilderness Act to allow helicopters to land to capture and collar wolves would not now need an environmental analysis under NEPA when the agencies all concurred that use of an exception for this activity would require an EIS when the issue first arose prior to my retirement.

22. This decision may set a precedent that opens up threats to Wilderness values from other motorized intrusions and aircraft landings. For instance, agencies might want to use aircraft to conduct animal control activities in Wilderness that would involve shooting animals on the ground from an aircraft, which is a form of landing in Wilderness. The Forest Service should have considered the precedent of this authorization in an EIS.

23. In sum, during wolf recovery while I was coordinator and thereafter, Tribal biologists and Tribal trappers used minimum tools—backpacks and horses—to access Wilderness for the purpose of placing collars on wolves. This worked successfully to monitor and manage wolves during wolf recovery, and I see no reason why it can't work successfully post-recovery. Nor is there any reason why the requirement to do an EIS no longer applies. Helicopter landings are not required to meet the challenges of wolf monitoring and will not serve to preserve the Wilderness or its values.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 2nd day of February, 2010

s/Roy Heberger
Roy Heberger

Exhibit A: Letter from Isaac Babcock to William Wood, Salmon-Challis National Forest Supervisor, commenting on proposal for helicopter permit (Oct. 11, 2009).

Exhibit B: Letter from Nez Perce Tribe answering questions about wolf trapping in Idaho Wilderness and other backcountry areas (Feb. 1, 2010).

Nez Perce Tribe Annual Progress Reports for Idaho Wolf Recovery Program found at:

1999-2001:

<http://www.nezperce.org/Official/PDF/Wolf%20Recovery%20book.pdf>

2002:

<http://www.nezperce.org/Wolf/Wolf%20Project%20Report%202002.pdf>

2003-2004:

<http://www.nezperce.org/Wolf/Wolf%20Recovery%20Progress%20Report%202003.pdf>

2004:

<http://www.nezperce.org/Wolf/Wolf%20Report%202004.pdf>

2005:

<http://www.nezperce.org/Official/PDF/2005%20Annual%20Report.pdf>

2006:

http://www.nezperce.org/Official/PDF/ID_2007_Wolf_Report_FINAL_3_1_08.pdf

2007: http://www.nezperce.org/Official/PDF/ID_2007_Wolf_Report_FINAL_3_1_08.pdf