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Attorneys for Plaintiffs

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

WESTERN WATERSHEDS PROJECT, and
WILDEARTH GUARDIANS,

Plaintiffs,

v.

U.S. FOREST SERVICE,

Defendant.

DECLARATION OF KENNETH COLE

I, Kenneth Cole, declare as follows:

1. I am a resident of Boise, Idaho. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

Personal Background

2. I have a bachelor's degree in biology from Idaho State University.

3. I am employed as the Executive Director for Buffalo Field Campaign.

4. I am a current member of Western Watersheds Project ("WWP"). I have been a member since the summer of 2008. I was an employee of WWP for nearly a decade and served as the Idaho Director from January 1, 2015 until July 14, 2017. While employed at WWP, I learned how to use version 10.2 of ESRI ArcGIS Desktop software to create maps.

5. From 2000 to 2008, I worked for Idaho Department of Fish and Game ("IDFG") as a fisheries technician.

6. I have extensive experience with reviewing federal agency land and wildlife management proposals, submitting comments on behalf of WWP, and otherwise participating in the public comment process for federal public land and wildlife management decisions across Idaho. I have commented on scores of agency decisions, and filed administrative protests and appeals for many federal public lands decisions issued in Idaho.

7. I have conducted numerous site visits to public lands, during which I have routinely observed the conditions of the uplands, riparian areas, and wildlife habitat. I take many photographs and keep a GPS record of my travels so that I know where I have been. I upload many of my photos onto Picasa, a photo-sharing website. I have generally spent at least 30-40 days in the field during an average field season each year.

8. I am also an avid photographer. I regularly travel around the West to take photographs of the wildlife and scenery I observe. I particularly enjoy taking photographs of wildlife, native fish, and plants. I often post my photos online where I can share them with my friends and family.

9. I am a blogger and editor of The Wildlife News. My responsibilities include writing commentary on environmental issues affecting western lands and wildlife, grazing issues and stories concerning wildlife conservation.

10. I also love to recreate on public lands in my free time, for the purposes of finding peace and solitude, searching for, observing and photographing wildlife and their signs, howling for wolves and searching for tracks or other signs.

Interest in Bighorn Sheep

11. For years, I have had a particular interest in bighorn sheep.

12. Since I was a child, I have had an interest in all native wildlife, but bighorn sheep have become a particular interest of mine. I enjoy seeing bighorn sheep and have photographed them many times. I have seen bighorn sheep in Idaho, Montana, Wyoming, Nevada, Oregon, Alberta, and British Columbia. I have also been fortunate enough to see Dall sheep, a closely related species, in Alaska. Some of my most memorable wildlife experiences have been made while watching bighorn sheep. I once watched bighorn sheep in Yellowstone National Park escape from a pack of wolves by climbing into a steep, rocky area that the wolves could not access. I still seek out bighorn sheep in areas where I know they still inhabit and enjoy watching them.

13. I became more focused on the issues facing bighorn sheep when I started reading about stories of mass die-offs due to pathogens transmitted from domestic sheep that result in

pneumonia. Shortly before I started working for WWP, the Payette National Forest began revising its land management plan to address the issue of separation between domestic sheep and bighorn sheep on the National Forest. This process was very interesting and I felt it was important that the U.S. Forest Service maintain separation of domestic sheep and bighorn sheep in all of the areas where bighorn sheep occur on National Forest lands.

14. When I began working for WWP, I was a member of the Idaho Bighorn Sheep – Domestic Sheep Advisory Board (Advisory Board) and provided input on the Idaho Department of Fish and Game Bighorn Sheep Management Plan. As part of the Advisory Board, I was provided with many documents, including scientific articles about the pathogens involved in the pneumonia outbreaks and scientific articles about experiments with bighorn sheep, domestic sheep, and the pathogens thought to be involved in pneumonia outbreaks. I was also provided with maps of occupied bighorn sheep habitats across the West and the information used to develop the Risk of Contact modelling tool developed for the Payette National Forest process.

15. I became very familiar with the issue of disease transmission from domestic sheep to bighorn sheep. I understand that there are several pathogens that play a role in disease outbreaks. *Mycoplasma ovipneumoniae*, a pathogen that most domestic sheep carry, predisposes bighorn sheep to infection to other pathogens by degrading the cilia in the trachea of bighorn sheep. This allows the other pathogens to travel into the lungs and result in pneumonia. *Pasteurellaceae* pathogens belonging to the *Mannheimia*, *Bibersteinia*, and *Pasteurella* genera are often found in infected bighorn sheep.

16. When bighorn sheep and domestic sheep come into direct contact, these pathogens can easily be transmitted from domestic sheep to bighorn sheep. In many of the disease outbreaks, there have been all-age die offs where 90% of the bighorn sheep have been

lost. After the initial die-off takes place, the pathogens often persist in the remaining population and cause new lambs to die-off for many years. This can result in a situation where there are not enough new lambs to replace the adults that die and the herd can eventually completely die off. When there is a persistent infection in a herd that causes low recruitment of lambs, managers often choose to depopulate the entire herd.

17. I have seen this phenomenon occur many times during my career. During the winter of 2009-2010 there were outbreaks in 6 western states that killed over 1000 bighorn sheep. Since that time, there have been several other outbreaks. One notable outbreak that took place in the winter 2015-2016 was in the Montana Mountains of Nevada and resulted in the depopulation of the entire herd. In 2012, I commented on a domestic sheep grazing permit renewal near the Montana Mountains called the Bilk Creek Allotment. I asked the BLM to address the risk of contact on the allotment but the agency disregarded my concerns. I appealed the permit renewal to the Interior Board of Land Appeals but lost. This was frustrating to me but, more importantly, the outbreak and depopulation effort resulted in the loss of about 100 bighorn sheep.

18. I have maintained an interest in policies to maintain separation between domestic sheep and bighorn sheep. The science and the recommendations from wildlife professionals overwhelmingly recommends maintaining separation between bighorn sheep and domestic sheep. The Western Association of Fish and Wildlife Agencies (“WAFWA”), in its Recommendations for Domestic Sheep and Goat Management in Wild Sheep Habitat¹ recommends effective separation between the two species.

¹http://www.wafwa.org/Documents%20and%20Settings/37/Site%20Documents/Working%20Groups/Wild%20Sheep/Publications/Rec_For_DS_and_GT_Management_in_WS_Habitat.pdf

19. When there are situations with a risk of contact between domestic sheep and bighorn sheep, managers often resort to Best Management Practices (“BMPs”) to reduce the risk of contact. In 2009, when I was part of the Idaho Bighorn Sheep/Domestic Sheep Advisory Group, I was informed that the U.S. Sheep Experiment Station would not sign the BMP documents presented to them by the IDFG, which makes me concerned that the Sheep Station will resist implementing BMPs. Even if the Sheep Station does, BMPs have not been proven to be effective, so I am gravely concerned BMPs will not prevent contact between domestic and bighorn sheep. The only way to protect bighorn sheep on these allotments is to close domestic sheep grazing on the allotments.

Specific Interest and Activities in South Beaverhead Population and the Sheep Station Allotments

20. While employed at WWP and currently, I had a particular focus and interest in the U.S. Department of Agriculture Sheep Experiment Station (“Sheep Station”) and its associated public lands allotments including Snakey Canyon and Kelly Canyon. This is because the domestic sheep grazing conducted by the Sheep Station occurs on important habitat for grizzly bears, bighorn sheep, sage-grouse, and pygmy rabbits.

21. I have visited nearly all of the parcels used by the Sheep Station, including the Snakey Canyon and Kelly Canyon allotments. As part of the settlement agreement made between the Sheep Station and WWP, I was allowed to accompany the team who was conducting the National Environmental Policy Act (“NEPA”) monitoring for the Sheep Station Environmental Impact Statement (“EIS”). I have visited the East Summer Range, the West Summer Range, Henninger Ranch, Headquarters, and Humphrey parcels owned by the Agricultural Research Service (“ARS”).



Figure 1. Photo I took on the East Summer Range parcel of the U.S. Sheep Experiment Station.

22. As part of my and WWP’s interest in this area, on May 22, 2015, I submitted scoping comments on behalf of WWP for the Caribou-Targhee National Forest’s Kelly Canyon/Indian Creek Grazing Analysis, which encompassed the Snakey Canyon and Kelly Canyon allotments. I explained in those comments that the Forest Service needed to carefully consider the risks of grazing domestic sheep on the Tendoy herd and South Beaverhead populations of bighorn sheep.

23. As part of those comments, using the Forest Service Risk of Contact tool, which I obtained from the U.S. Forest Service through FOIA, I analyzed the risk of contact between bighorn sheep of the South Beaverhead Herd and of the allotments at issue, including Snakey Canyon and Kelly Canyon. I obtained the shapefiles for the Core Herd Home Ranges (“CHHRs”) of nearby bighorn sheep herds from the IDFG website. I presented and described my

results for the Snakey Canyon and Kelly Canyon in map form in those comments. Because the Core Herd Home Range of the South Beaverhead Herd overlaps the Snakey Canyon and Kelly Canyon allotments, the annual risk of contact is 100% which is, of course, as high risk as the model can calculate and is an unacceptably high risk. The Bighorn Sheep Risk of Contact Tool v2 User Guide² refers the user to the Payette EIS for examples of how results from the model may assist decision makers. In the Payette Record of Decision³, the Forest rejected alternatives that resulted in an annual rate of contact of greater than 7%.

24. I have reviewed the Intermountain Region BHS/Domestic Sheep-Risk Assessment for Region 4 National Forests Idaho Forests Results of Analysis: DRAFT FOR FOREST REVISION, 4 April, 2016 which summarized the draft results of a risk of contact analysis for Idaho bighorn sheep. This report also showed that there is overlap of the South Beaverhead bighorn sheep CHHR with the allotments.

25. The Forest Service has never followed up on that NEPA scoping process by issuing a draft NEPA document on the Kelly Canyon/Indian Creek Grazing Analysis.

26. In June 2016, I commented on a Draft EIS the ARS is preparing for the operations of the Sheep Station on behalf of WWP (with a partner group). Again, I explained the high risks of contact on these allotments, including the Snakey Canyon and Kelly Canyon allotments, and depicted the results in maps.

27. To my knowledge, this risk remains the same or similar now.

28. I visited the Snakey Canyon allotment in June 11, 2015 to look at conditions and look for bighorn sheep. While I did not see any bighorn sheep, I did enjoy the landscape and took some photos.

² https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd527641.pdf

³ https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5238683.pdf



Figure 2. A photo I took on the Snakey Canyon allotment in 2015

29. Because the allotments are near my preferred route to the Buffalo Field Campaign headquarters near West Yellowstone, I intend to continue to visit the allotments and the area at least twice yearly, and search for bighorn sheep, for as long as I am able. In fact, I visited both the Snakey Canyon and the Kelly Canyon allotments on Friday, October 13 on my way home from West Yellowstone where the headquarters of Buffalo Field Campaign are located.

Concerns About the Forest Service’s Authorization of Grazing on Snakey-Kelly

30. As just described, grazing domestic sheep on the Snakey Canyon and Kelly Canyon allotments has a high risk of contact with the South Beaverhead bighorn sheep herd. There is no separation on these allotments as WAFWA recommends because there is overlap of the CHHR and the allotments.

31. Because of this overlap, I was extremely concerned when I heard that the Forest Service issued Annual Operating Instructions (“AOI”) that authorizes domestic sheep grazing on the allotments starting this November.

32. Grazing domestic sheep on the Snakey Canyon and Kelly Canyon allotments for any length of time this winter poses a high risk of contact occurring between domestic sheep and wild bighorn sheep. As described, such contact could have devastating consequences on the Tendoy herd and the entire South Beaverhead Population. Even a few weeks of grazing would risk such contact.

33. Of course, after such contact has been made, and the disease has been transmitted, there is no way to reverse it. The disease will run its course.

34. At a minimum, the population could struggle with disease for years, and have its lambs fail to survive. But it is also entirely foreseeable that the herd or population could have a catastrophic die-off.

35. Thus, the authorized grazing will greatly injure the South Beaverhead population in this fashion and in turn, my interest in viewing bighorn sheep in the Beaverhead Mountain region, and seeing the herd and population recover and repopulate the Beaverhead Mountains. That will simply not occur if the herd and/or population is struggling to overcome a chronic pneumonia infection.

36. The Forest Service’s authorization of grazing on the Snakey-Kelly allotment harms my interest in bighorn sheep and my ability to observe bighorn in the South Beaverhead population in Idaho. If the Forest Service continues to authorize grazing, it will continue to harm those interests.

37. My interest in recovery of the South Beaverhead bighorn population is also harmed by the Forest Service's failure to finalize the NEPA process for the Kelly Canyon/Indian Creek Grazing Analysis. The Forest Service has never finished analyzing the risks of authorizing domestic sheep grazing on the allotments, nor solicited input from groups such as WWP that have significant expertise and interests in these issues. By authorizing grazing before doing so, the Forest Service has deprived me, WWP, and other members of the public of vital information and our right to participate in the NEPA process. If the Forest Service finalized this process, I would count on WWP to represent my interests in the process. It would upset me greatly for the Forest Service to graze these high-risk allotments such as Snakey Canyon and Kelly Canyon before finishing the NEPA analysis on what the risk is, and whether grazing there even makes sense—putting the population at risk of serious injury or even extirpation. It would violate the very purpose of NEPA—looking before the agency leaps. Such a violation is particularly tragic here where a single season of grazing could cause a die-off of the entire South Beaverhead bighorn sheep population, which would prevent me from seeing bighorn sheep in or near the Snakey Canyon and Kelly Canyon allotments during my visits. It is also particularly frustrating to me because NEPA prohibits the Forest Service from taking action that could have such irreversible consequences before finishing the NEPA process. The Forest Service's failure to abide by this prohibition when authorizing domestic sheep grazing has injured me and will continue to injure me until the agency stops authorizing grazing until a NEPA process is complete.

38. These concerns would be addressed if a court ordered a halt to domestic sheep grazing on the Snakey Canyon and Kelly Canyon allotments this season.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of October, 2017, in Boise, Idaho.

A handwritten signature in blue ink that reads "Ken Cole". The signature is written in a cursive style with a large, prominent "K" and "C".

Kenneth Cole