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

WESTERN WATERSHEDS PROJECT,)
WILDEARTH GUARDIANS, and CENTER)
FOR BIOLOGICAL DIVERSITY,)
Plaintiffs,)
v.)
U.S. SHEEP EXPERIMENT STATION, and)
USDA AGRICULTURAL RESEARCH)
SERVICE,)
Defendants.)

No. 01:19-cv-065-REB

**DECLARATION OF KENNETH
COLE**

I, KENNETH COLE, state and declare as follows:

1. I am a resident of Boise, Idaho. I have personal knowledge of the facts set forth below, and if called as a witness I would and could truthfully testify to these facts.
2. I have a bachelor’s degree in biology from Idaho State University.
3. 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 WWP’s Idaho Director from January 1, 2015 until July 14, 2017.

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

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

6. 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 GPS records of my travels. I have generally spent at least 30-40 days in the field during an average field season each year.

7. 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 family and friends.

8. I am a blogger and editor of The Wildlife News, which is an online publication that reports on public lands, wildlife and other issues in the West. My responsibilities include writing commentary on environmental issues affecting western lands and wildlife, grazing issues, and stories concerning wildlife conservation.

9. I also love to recreate on public lands in my free time to find peace and solitude; search for, observe, and photograph wildlife and their signs; and howl for wolves and search for their tracks or and other signs.

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

11. I became more focused on the issues facing bighorn sheep when I started reading stories about 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 Forest Service maintain separation of domestic sheep and bighorn sheep in all areas where bighorn sheep occur on National Forest lands.

12. When I began working for WWP, I became a member of the Idaho Bighorn Sheep – Domestic Sheep Advisory Board (Advisory Board) and provided input on the Idaho Department of Fish and Game (IDFG) 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.

13. 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 *Manheimia*, *Bibersteinia*, and *Pasteurella* genera are often found in infected bighorn sheep.

14. When bighorn sheep and domestic sheep come into direct contact, these pathogens can easily be transmitted from domestic sheep to bighorn sheep. In many 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.

15. 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.

16. 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 in its Recommendations for Domestic Sheep and Goat Management in Wild Sheep Habitat recommends separation between the two species.

17. 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. Department of Agriculture Sheep Experiment Station (“Sheep Station”) would not sign the BMP documents presented to them by 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 sheep and bighorn sheep on and around Sheep Station lands. The only way to protect bighorn sheep is to close domestic sheep grazing within the range of bighorns.

18. While employed at WWP and currently as a WWP member, I have had a particular focus and interest in the Sheep Station and its grazing and research activities. This is because Sheep Station activities occur in important habitat for bighorn sheep, grizzly bears, sage-grouse, and other species of wildlife.

19. I have visited nearly all of the parcels used by the Sheep Station, including those at issue in this lawsuit. As part of a settlement between WWP and the Sheep Station, I was allowed to accompany the team conducting the National Environmental Policy Act (NEPA) monitoring for the Sheep Station environmental impact statement (EIS). I have visited the East Summer Range, West Summer Range, Henninger Ranch, Headquarters, and Humphrey Ranch parcels owned by the Agricultural Research Service (ARS).

20. I have visited the Centennial Mountains and surrounding areas multiple times in recent years and I intend to continue regularly visiting the Centennial Mountains and nearby areas impacted by the Sheep Station's grazing. I expect to return to these areas at least one or more times in 2020, and similarly in years beyond that.

21. Grazing domestic sheep as approved by the Sheep Station in its Record of Decision (ROD), supplemental information report (SIR), and EIS challenged in this case creates a risk of contact with bighorn sheep in the Centennial Mountains. Bighorn sheep frequently roam many miles outside of their home range and domestic sheep are frequently lost on the allotment. Because of this, and the fact that the two species seek each other out, scientists have determined bighorn and domestic herds should be kept well over ten miles apart.

22. The Lionhead herd of bighorn sheep, however, is less than 1.5 miles from the Sheep Station's East Summer Range, less than 3 miles from the Meyers Creek allotment, and less than 9 miles from the West Summer Range. This herd is connected to other herds and an infection could spread from the Sheep Station to numerous herds in Montana. If contact is made and disease is transmitted, there is no way to reverse it. The disease will run its course. The herd's population could struggle for years with disease and have its lambs fail to survive. It is also possible the herd or population could have a catastrophic die-off.

23. The Sheep Station claims its BMPs will sufficiently ameliorate these dangers, but in prior litigation on this subject the Sheep Station's BMPs have been repeatedly found to lack scientific support, be difficult to enforce, and be unable to ensure species separation even if they could be performed perfectly.

24. Thus, the domestic sheep grazing authorized by the ROD, SIR, and FEIS puts bighorn populations in the Centennial mountains at serious risk, which injures my interest in viewing and photographing bighorn sheep in the Centennial Mountains and in seeing populations there recover and repopulate. Recovery and repopulation will not occur if herds and/or populations are struggling to overcome a chronic pneumonia infection.

25. My interest in viewing and photographing grizzly bears, and interest in their recovery, is also injured by the Sheep Station. The Greater Yellowstone Ecosystem (GYE) grizzly bear is listed under the Endangered Species Act (ESA) as a "threatened" species because of its risk of becoming endangered. While GYE grizzly populations have grown in recent years in and around Yellowstone National Park, bears need to expand their range and link up with other bear populations for their long-term recovery. The critical importance of corridors linking GYE grizzly to other populations in order to support their recovery was confirmed recently in *Crow Indian Tribe v. United States*, 343 F. Supp. 3d 999 (D. Mont. 2018).

26. The Centennial Mountains are an important and unique east-west corridor of suitable grizzly habitat linking the Yellowstone area with suitable bear habitat to the west and northwest in Idaho and Montana. Currently, some GYE bears live in the Centennial Mountains; however, while grizzly numbers have grown and their ranges expanded in other directions from Yellowstone, grizzly populations in the western Centennials seem to be abnormally lower than the grizzly populations in the eastern Centennials and grizzlies have not expanded their range

further west beyond the Centennials. I worry that this is due, at least in part, to the Sheep Station's grazing in the Centennials causing a bottleneck.

27. As approved in the ROD, SIR, and FEIS, the Sheep Station will graze in the Centennial Mountains. This creates a risk of conflict which could harm the spread of the grizzly bear and impede the connectivity that is so crucial to their continued survival. Additionally, grizzly bears eating sheep, chasing herders, and being hazed away from the area could lead to serious conflicts when bears are discouraged from moving through the centennials or learn to rely on domestic sheep as a food source.

28. Such conflicts have occurred during past Sheep Station grazing, such as grizzlies chasing herders and grizzlies eating sheep, and there is some evidence of even more problematic conflicts as well. Commenters have stated that Sheep Station herders have confessed to poaching grizzlies when talking with local ranchers, and, in 2012, a grizzly's telemetry collar was found cut off and intentionally hidden in a creek on Sheep Station property. An investigation found the last known place the grizzly was alive was near Sheep Station sheep, found a freshly spent rifle casing at the nearby Sheep Station herder's campsite, and all identified suspects other than Sheep Station herders were exonerated.

29. For these reasons, the Sheep Station's grazing will injure me. I am less likely to observe grizzly and their sign, or have the chance to photograph them, when I visit the Centennial Mountains, and the GYE grizzly is less likely to recover and expand its range deeper into and beyond the Centennials where I also visit and hope to observe and photograph grizzly.

30. Finally, I am injured by the Sheep Station's decision under the ROD, SIR, and FEIS because of my interest in sage-grouse. Previously, as a WWP staff person, and now as a WWP member, I have a deep appreciation of and knowledge about sage-grouse.

31. In addition to the Centennial Mountains, I regularly visit the lower elevation areas of sage-grouse habitat near Sheep Station. I have observed sage-grouse and leks in these areas, and I hope to observe sage-grouse in these locations in the future, and would like to see sage-grouse and their habitat recover.

32. The Sheep Station threatens sensitive sage-grouse habitats by grazing sheep, having fences near leks and across movement corridors, and performing prescribed burns on the habitat. Sage-grouse instinctively avoid sheep grazed areas, and fences can be deadly obstacles for flying sage-grouse while providing perches for predators. But the ROD, SIR, and EIS rely on unsupported BMPs to claim grazing will benefit sage-grouse, and failed to address adverse impacts such as increased predation and sage-grouse abandoning nesting and brood-rearing habitats because of the proximity of fences. As a result, I am injured by the Sheep Station's inadequate NEPA analysis and its continued operations, as approved, which will harm sage-grouse and decrease my chances of observing and photographing them.

33. My injuries would be addressed if the court ordered a halt to the Sheep Station's grazing and ordered it to comply with NEPA. By adequately considering alternatives, effects, and BMPs, the Sheep Station will be able to make a more informed decision about whether or how to proceed in ways that better protect bighorn, sage-grouse, and grizzly bears.

34. The Sheep Stations' EIS, ROD, and other challenged decision documents do not fully or adequately address the likely adverse impacts to grizzly, bighorn, sage-grouse and other wildlife that I care about, and they deprive myself and other WWP members, and the public, of information on those impacts and alternative courses of action that the Sheep Station should fairly evaluate in order to reduce such conflict. A court order reversing the EIS and ROD, and ordering the Sheep Station to fully comply with its duties under NEPA is necessary to prevent

further injuries to myself and other WWP members, and protect the wildlife and habitats at risk from Sheep Station grazing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of December, 2019 in Boise, Idaho.

A handwritten signature in blue ink that reads "Ken Cole". The signature is written in a cursive, flowing style.

Kenneth Cole