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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT,
et al.,

Plaintiffs,

v.

DAVID BERNHARDT, Acting
Secretary of Interior; JOSEPH R.
BALASH,* Assistant Secretary of
Interior; BUREAU OF LAND
MANAGEMENT; and U.S. FOREST
SERVICE,

Defendants.

Case No. 1:16-cv-00083-BLW

DECLARATION OF ANDY KERR

** Official Defendant automatically substituted
per Fed. R. Civ. P. 25(d)*

I, Andy Kerr, declare as follows:

1. The following facts are personally known to me, and if called as a witness

I would and could truthfully testify to these facts.

2. My home is in Ashland, Oregon, although I spend a good deal of the year in Washington, DC. I have lived in Oregon all of my nearly 64 years.

3. I am a member and supporter of the Center for Biological Diversity.

4. In 1972, while in high school, I first read *Silent Spring* by Rachel Carson (Houghton Mifflin, 1962). While the book is most remembered as a clarion call against the dangers of the chemical DDT for its harmful effects on wildlife, the book also addressed other chemical poisons including those sprayed on sagebrush on public lands in the American West so as to favor the production of domestic livestock. Reading *Silent Spring*, I first learned of the sage grouse and the habitat upon which it depends. I was deeply moved by her description of sage grouse, including:

In time there were two as perfectly adjusted to their habitat as the sage. One was a mammal, the fleet and graceful pronghorn antelope. The other was a bird, the sage grouse – the ‘cock of the plains’ of Lewis and Clark....

...in the sagebrush lands of the West....the natural landscape is eloquent of the interplay of the forces that have created it. It is spread before us like the pages of an open book in which we can read why the land is what it is and why we should preserve its integrity. But the pages lie unread.

5. The majesty of the sage grouse and the harms that humans were doing to species was a major impetus for me to dedicate my life to the conservation and restoration of nature.

6. Through my consulting firm, The Larch Company, I consult and advise a variety of conservation organizations whose missions include the conservation and/or restoration of the public lands and wildlife, including greater sage-grouse.

7. I authored *Oregon Desert Guide: 70 Hikes* (The Mountaineers Books, 2000). Still in print, the book is a plea for the conservation of the Oregon’s Sagebrush

Sea, in the guise of a hiking guide. In the book, I reference sage grouse in 23 different places.

8. I first personally enjoyed viewing greater sage-grouse in the late 1970s on public lands administered by the Bureau of Land Management in Harney County, Oregon near the Malheur National Wildlife Refuge. We arose well before dawn and drove approximately 30 minutes to be in position to witness sage grouse mating rituals that began with the rising of the sun. I write of the ritual in *Oregon Desert Guide: 70 Hikes*:

The mating ritual is fascinating to observe. In the early spring, the larger and more strikingly marked males congregate each dawn at leks (assembly areas for courtship), where they undertake elaborate rituals of display to entice the females to mate with them. All will gather again in the evening and often will pull an all-nighter when the moon is bright.

The leks are small openings (0.1 to 10 acres) in the sagebrush that are used only for display and copulation, never for eating and nesting. The males strut among the females with tailfeathers fully erect and fanned, and head and neck held high. The yellow comb over each eye is expanded, the sagging chest sac partly filled with air, and the wings drooping slightly. The grouse take in, and rapidly exhale, a large volume of air and make a unique and unforgettable sound (one authority has described it as swish-swish-coooo-poinh) while exposing yellowish skin patches on the chest. Males also do a "dance" in which they aggressively brush each other.

So as not to disturb the birds, we stayed in our vehicles.

9. I have extensively hiked in Oregon's Sagebrush Sea on federal and state public lands in Harney, Malheur, Lake, Baker, Crook, Deschutes, and other Oregon counties since the early 1970s and continue to do so and intend to do so until I cannot. I expect to be hiking in Oregon's Sagebrush Sea this coming summer. While hiking among the sagebrush I have observed sage grouse while they were on the ground hidden among the bunchgrass between the sagebrush or sunning themselves at higher elevations on rocks that rise above the low sagebrush found at higher elevations. While hiking I have

often observed sage grouse in flight. Each time I see sage grouse, it feels that my heart flutters a bit.

10. I have also recreated in many of the 13 Research Natural Areas (RNAs) where BLM's 2019 Plan Amendments have eliminated the prohibition on grazing enacted by the 2015 Plans. Just last summer I used and enjoyed the Rahilly-Gravelly RNA. I've also visited in my past several of the other RNAs, including Fish Creek Rim, Guano Creek-Sink Lakes, East Fork Trout Creek, Dry Creek Penchants, Toppin Creek Butte, South Ridge Bully Creek, North Ridge Bully Creek, Mahogany Ridge and Foster Flat. I am pondering doing a revision of my Oregon Desert Guide, and part of the process of consideration is visiting many areas in the Oregon Desert again, including these RNAs, because they are often the best examples of the least disturbed natural landscapes.

11. In 2003, The Larch Company commissioned and was a petitioner of what were to be the first petitions to list greater sage-grouse (then described as western and eastern sage-grouse) under the Endangered Species Act.

12. I have tasted the meat of sage grouse, served to me by sage grouse researchers from Oregon State University who were camped on the Hart Mountain National Wildlife Refuge in Lake County, Oregon. When asked what it tasted like, I note that it did not taste a lot like chicken. I did not acquire the taste for meat, especially since the species is imperiled.

13. It is my observation that it is a lot more difficult today to witness sage grouse in nature than is during my youth. I attribute this to both a loss of habitat (total removal of sagebrush) and also to degradation of habitat (livestock grazing affecting nesting and hiding cover among the sagebrush and degrading natural wet meadows full of

wildflowers upon which the sage grouse dine in the spring and early summer, roads, fences, powerlines, wind turbines, and other disturbances).

14. What Rachel Carson said in 1962 in *Silent Spring* is still true today:

The sage and the grouse seem made for each other. The original range of the bird coincided with the range of the sage, and as the sagelands have been reduced, so the populations of grouse have dwindled.

The dwindling continues and I deeply feel that loss.

15. I am very concerned about the Bureau of Land Management (BLM) has recently finalized its 2019 Amendments to the 2015 Greater Sage-Grouse Plans. The presence of domestic livestock especially detracts from the naturalness associated with the research natural areas (RNAs) in Oregon where livestock grazing is presently prohibited so as to benefit greater sage-grouse. RNAs, especially those that are free of domestic livestock, represent the wildest and most natural functioning ecosystems. The presence of domestic livestock and their grazing of native grasses and wildflowers diminishes my aesthetic enjoyment and intellectual appreciation of natural functioning ecosystems. Hiking in areas inhabited by domestic livestock means significant risk of stepping in large piles of unsightly bovine feces. Such feces, as well as copious deposits of bovine urine, emits smells that detract from the recreational experience. In addition, along with the large deposits of feces comes large populations of flies that must be constantly brushed away. I am also quite familiar with the feces of several wildlife species native to the Sagebrush Sea, including but not limited to, mule deer, Rocky Mountain elk, coyote, bighorn sheep, rabbit, and, of course, greater sage-grouse. None are close to the very large size of, nor emit a noxious smell as that from domestic

livestock feces. After aging beyond the highly odiferous stage, the domestic livestock feces deposits can remain intact for what sometimes can be several years. I have never observed a similar longevity for the feces of the native wildlife species.

16. An injunction preventing this Administration from moving forward to implement the weakened plans would help prevent irreparable harm to sage-grouse and my own interests in visiting Oregon's Sagebrush Sea, including the 13 RNAs where the 2019 Plan Amendments eliminated the ban on livestock grazing.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of April, 2019, in Washington, DC.



Andy Kerr