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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, Plaintiff, vs.	Case No. 08-cv-435-BLW
SALLY JEWELL[1], Secretary, DEPARTMENT OF THE INTERIOR, an agency of the United States, and BUREAU OF LAND MANAGEMENT, Defendants.	**DECLARATION OF KENNETH COLE**
J.R. SIMPLOT CO., *et. al*, Defendants-Intervenors.	

I, Kenneth Cole, do hereby declare:

1. My name is Kenneth Cole, and the following facts are personally known to me, and if called as a witness I could and would testify truthfully thereto.

2. I am currently the NEPA Coordinator for Western Watersheds Project, and have been in my current position since 2008. My duties for WWP include reviewing BLM and Forest Service proposed decisions, submitting comments on behalf of Western

[1] S.M.R. Jewell has been substituted for Ken L. Salazar pursuant to Fed. R. Civ. P. 25(d).

Watersheds Project's almost 1500 members, and otherwise participating in the public comment process for grazing allotments across Nevada and Idaho. I have commented on scores of agency decisions, and filed administrative protests and appeals for grazing decisions issued in Nevada and Idaho. One essential element of my job is to conduct site visits to the public lands, during which I routinely observe the conditions of the uplands, riparian areas, and wildlife habitat. As part of my duties at WWP, I have become proficient at using version 10.0 of ESRI ArcGIS Desktop software to create maps for various projects including for this litigation.

3. From 2000 to 2008, I worked for Idaho Department of Fish and Game (IDFG) as a fisheries technician. My responsibilities with IDFG included: (1) establishing a locally-adapted brood population of B-Run steelhead on a tributary of Upper Salmon River; (2) processing Chinook salmon at salmon trap; collecting biological information and samples from salmon; setting tags and recovered tag information; conducting creel surveys at check station; conducting redd counts; and operating smolt screw trap; and (3) conducting fin-ray aging study for Snake River Chinook salmon; and extracting and reading coded wire tags from Chinook and steelhead.

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

5. In the paragraphs that follow, I provide detailed information on how I created Exhibits 1-8, which are attached to this declaration.

Burley Field Office, Section 325 Grazing Permit Allotments, Summary Judgment Rd II

6. I created the map titled Burley Field Office, Section 325 Grazing Permit Allotments, Summary Judgment Rd II (attached hereto as Exhibit 7) using publicly available data obtained from the Inside Idaho website, BLM's GeoCommunicator

website, the Idaho Department of Fish and Game, the BLM's Rangeland Administrative System website, and from the administrative record of this litigation.

7. The map depicts the boundary of the Burley Field Office, the boundary of the Raft River Cumulative Effects Analysis Unit, and the Section 325 grazing permit allotments in the Burley Field Office, which include the Meadow Creek, Strevell, Warm Creek, Point Springs, Highway Common, Land Creek, Squaw Joe, Squaw Joe Isolated, Western Stockgrowers, Hub Butte-Western Sg, and Point Ranch allotments.

8. The map also depicts Idaho Fish and Game sage grouse habitat designations K (key sage-grouse habitat), R1 (perennial native and non-native grasslands with high restoration potential), R2 (annual grass dominated areas (either shrubland or grassland) with low restoration potential), and R3 (conifer encroachment areas with high restoration potential) from 2008. Additionally, the map includes lek information that existed in 2008.

9. I acquired the allotment boundary data from the BLM's GeoCommunicator website. The data for the Burley Field Office boundary and the 2008 Idaho Fish and Game Sage Grouse data was acquired from the Inside Idaho website. The boundary of the Raft River Cumulative Effects Analysis Unit was traced from a map provided in the administrative record at page BTLCKII 001234.

10. I received the Idaho Fish and Game Sage Grouse Lek data as two spreadsheets directly from the Idaho Fish and Game over the course of 2012 and 2013. I combined the two spreadsheets to form one database that contains locations, annual counts from 1951 to 2013, and the management status for leks in 2011 and 2012. To determine circa-2008 lek management status as depicted on the map, I reviewed IDFG lek count data

for the previous 5 years (i.e., 2002-2007), according to IDFG definition of an "occupied" and "unoccupied" lek. Also, I mapped lek management status in 2008 – and not 2013 – to provide an analysis of the information that was before BLM at the time it made the grazing decisions on the Jim Sage, Cassia Creek, Choke Cherry, and Almo-Womack allotments. During this analysis, I made some minor adjustments to lek locations as shown in the 2012 lek data, due to the disparate lek location information between earlier IDFG lek data and 2012 IDFG lek data.

Burley Field Office Grazing Permits, 2005-2013 and 2008 Sage Grouse Data

11. I created the map titled Burley Field Office Grazing Permits, 2005-2013 and 2008 Sage Grouse Data (attached hereto as Exhibit 6) using publicly available data obtained from the Inside Idaho website, the BLM's GeoCommunicator website, the Idaho Department of Fish and Game, the BLM's Rangeland Administrative System website, and from the administrative record of this litigation.

12. This map depicts the grazing allotments in the Burley Field Office where BLM has issued grazing permits under the apparent authority of the grazing rider – including Section 325, P.L. 108-108 and its progeny; as well as grazing permits on the Jim Sage, Cassia Creek, Chokecherry and Almo-Womack allotments; and grazing permits BLM issued through its traditional decisionmaking authority or other processes. The map also depicts the boundary of the Burley Field Office, the boundary of the Raft River Cumulative Effects Analysis Unit, and sage grouse habitat and lek information from 2008.

13. I obtained and worked with the sage grouse data, the Burley Field Office boundary, and the Raft River Cumulative Effects Analysis Unit boundary as described

for the previous map. The allotment boundaries were obtained from the BLM's GeoCommunicator website with the exception of the Jim Sage and Chokecherry allotments which were modified to reflect the mapping found in the Environmental Assessment. *See* SAR 55. The allotments are depicted in three categories; Jim Sage Mountain Allotments, which include the Jim Sage, Chokecherry, Almo-Womack, and Cassia Creek allotments; Non Appropriations Act Allotments, where BLM issued grazing permits through its traditional decisionmaking authority or other processes; and Appropriations Act Allotments, where permits were reissued under the authority of Section 325 of P.L. 108-108 and its progeny. I obtained the information to determine the permit status directly from the BLM's Rangeland Administrative System website.

Burley Field Office Grazing Permits, 2005-2013

14. I created the map titled Burley Field Office Grazing Permits, 2005-2013, BLM's Rangeland Administrative System Search (September 9, 2013) (attached hereto as Exhibit 5) using publicly available data obtained from the Inside Idaho website, the BLM's GeoCommunicator website, the BLM's Rangeland Administrative System website, and the administrative record of this litigation.

15. This map is similar in many ways to the map title Burley Field Office Grazing Permits, 2005-2013 and 2008 Sage Grouse Data (*see* Exhibit 6), with this current map including additional information on the timing of the grazing rider permit. Of course, this map also does not include an overlay of sage grouse habitat. For an allotment where BLM issued more than one grazing rider permit, the color scheme identifies the year in which the first Appropriations Act permit(s) was issued. There are also 5 allotments where BLM issued some grazing rider permits and other permits using its

traditional decisionmaking authority or other process. In addition, BLM's Geocommunicator database identifies 31 grazing allotments for which there is no information in BLM's RAS database, as described below. These allotments are labeled a "Unknown," on Exhibit 5.

Individual Jim Sage Mountain Allotment Maps

16. I also created 4 maps that depict sage grouse habitat and sage grouse leks on the Jim Sage, Cassia Creek, Almo Womack, and Chokecherry allotments. *See* Exhs. 1-4 (attached hereto). The data is based on information available in the administrative record, data from the Inside Idaho website, the USGS National Hydrography Dataset website, and from the GeoCommunicator website.

17. Because there were numerous maps depicting different configurations of the Chokecherry and Jim Sage allotments, I decided to use the map from the administrative record at SAR 55 to illustrate the configuration of these allotment boundaries.

18. I determined the use area boundaries for the Jim Sage allotment using the map found at SAR 56. I determined the use area boundaries for the Chokecherry allotment using the map found at SAR 55. I determined the use area boundaries for the Almo Womack allotment using the map found at SAR 717. I determined the use area boundaries for the Cassia Creek allotment using the map found at SAR 742.

19. I based the locations of the sage grouse leks in these maps on a map in the administrative record at SAR 2153. While this map does not specify the activity status of the leks shown, it uses two different colors to depict them. Based on the comprehensive database I acquired from the Idaho Fish and Game, I determined that the leks shown as black dots were the occupied leks while the leks shown as green dots were leks with

undetermined activity.

20. The locations of springs and sink rises based on data from the USGS National Hydrography Dataset website. Spring/seeps and sink/rises are depicted as springs in these maps.

21. I used the data from the Idaho Fish and Game's 2008 sage grouse habitat layer obtained from the Inside Idaho website to depict sage grouse habitat.

BLM Rangeland Administrative System, Burley Field Office Permit Information

22. According to the Bureau of Land Management's Rangeland Administration System (RAS) website, the RAS "provides grazing administrative support and management reports for the BLM and the public." BLM's RAS database permits the public to run a series of database searches, and on September 9, 2013, I ran one such search seeking information on grazing permit schedule information for all allotments in the Burley Field Office.

23. My search returned a spreadsheet that contained information showing that since 2005 the Burley Field Office has issued a total of 225 grazing permits across 200 grazing allotments that permit grazing of 142,704 Animal Unit Months (AUMs).

24. I have attached as Exh. 8 a .pdf version of this RAS Database search result (actually an Excel version of the spreadsheet converted into .pdf, as it is far more user-friendly and shorter than a version converted directly into .pdf (which runs 42 pages)). I understand that Local Rules require all court submissions to be in .pdf format, but the original Excel format is much more user-friendly than Exh. 8, as it allows sorting and organizing by different parameters, and other workability features non-existent in the .pdf version. The identical Excel spreadsheet – prior to its conversion into .pdf – can be

independently obtained by following these steps: (1) go to http://www.blm.gov/ras/; (2) in left hand column, click on "Run Reports"; (3) under "RAS Public Records", click on "Permit Schedule Information"; (4) find and click on LLIDT02000 Burley FO, and then click "Run Report" below; (5) to convert the resulting table into an workable Excel document, click on the "Export to Excel" tab (which looks like an Excel icon, and is located in the middle portion of the screen trending towards the top 1/5 of the screen).

25. According to Exh. 8, of these 225 grazing permits issued by the Burley Field Office since 2005, 165 of them were issued under an Appropriations Act rider, for a total of 118,230 AUMs. Thus, according to the BLM's RAS database, 73% of all grazing permits issued by the Burley Field Office since 2005 have been issued under the auspices of Section 325, P.L. 108-108 and its progeny; and fully 83% of the total AUMs authorized on the Burley Field Office since 2005 have been permitted under Section 325, P.L. 108-108 and its progeny.

26. Moreover, Exh. 8 shows that these 225 new grazing permits authorize grazing on 200 separate grazing allotments. BLM's data shows that of the 200 grazing allotments with new permits, 168 allotments (excluding the Jim Sage allotment) have grazing authorized under a Section 325 grazing rider permit, and 31 allotments (excluding the Jim Sage allotment) have grazing authorized under other processes. Thus, looked at another way, BLM has authorized grazing on 84% of the allotments in the Burley Field Office via the Section 325 grazing rider.

27. As described, I used this information to create the maps titled Burley Field Office Grazing Permits, 2005-2013 and 2008 Sage Grouse Data, Burley Field Office Grazing Permits, 2005-2013, and Burley Field Office, Section 325 Grazing Permit Allotments,

Summary Judgment Rd II by relating the state allotment number of the permit to the allotment shown in the maps. *See* Exhs. 5-7.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 9th day of September, 2013 at Boise, Idaho.

/s Kenneth Cole
Kenneth Cole