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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, and WILDEARTH GUARDIANS,

Plaintiffs,

v.

U.S. FOREST SERVICE,

Defendant.

CASE NO. 1:17-CV-00434-CWD

SECOND DECLARATION OF GERALD WALTERS

I, Gerald Walters, declare as follows:

1. 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 was asked by the Plaintiffs to respond to the Forest Service's declarations and briefing submitted in this matter.

Contact Between Bighorn Sheep Populations

3. In its brief and supporting declarations, the Forest Service ignores the serious risk that the South Beaverhead bighorn sheep population will contact or intermingle with bighorn sheep herds that inhabit areas outside the Targhee National Forest boundaries. This risk is particularly acute for the North and South Beaverhead bighorn populations, as their Population Management Units come together near Eighteen-Mile Peak along the Idaho and Montana border. IDFG's 2014 Statewide Surveys and Inventories Bighorn Sheep report states on page 53 when referring to the Beaverhead Ranges bighorn sheep populations, "[f]or a number of wildlife species, including bighorn sheep, the Beaverhead Range forms a potential travel corridor between the Yellowstone ecosystem and ecosystems farther north and west. If populations increase, bighorns may move along the length of the Beaverhead Range and form a more stable metapopulation. Conversely, the movement corridor could also provide an avenue for spread of diseases or parasites among sub-populations." The North Beaverhead bighorn sheep population has grown to approximately 84 animals in recent years. Accordingly, as the North Beaverhead population increases in size, it is even more likely that these populations will have contact or intermingle.

4. Similarly, the Tendoy herd in Montana is in close proximity to the known habitat for the South Beaverhead population. These and other bighorn herds do not stop at the Forest

Service boundaries or state lines. Bighorn sheep in the South Beaverhead population that are exposed to disease from domestic sheep grazing on the Snakey Canyon and Kelly Canyon allotments could spread disease to these nearby herds through forays or if any of these herds expand. For these reasons, I disagree with the Forest Service's position that the South Beaverhead population is isolated and does not pose a risk to other bighorn herds.

5. I also disagree with Mr. Yorgason's statement that, "[d]isease testing conducted by IDFG of the South Beaverhead herd between 2011 and 2015, indicates that the South Beaverhead herd is currently disease free." On March 28, 2013, I located a dead radio-collared ewe from the South Beaverhead population at the bottom of a cliff. I performed a necropsy and forwarded the samples to the IDFG Wildlife Health Lab for analysis. The attached Laboratory Report n13-238p (Exhibit 1) indicates that this ewe had Pasteurella multacida and Mycoplasma spp, which are common in domestic sheep and are known to be associated with all-age die-offs of bighorn sheep.

The Forest Service Relies on BMPs That Are Not Effective

6. Based on my significant experience tracking bighorn populations, I strongly disagree with the Forest Service's assertions that BMPs can reduce the risk of contact or separate bighorn and domestic sheep to an acceptable level. *See*, *e.g.*, Mickelsen Decl. ¶ 30. The BMPs that ARS and the Forest Service describe provide insufficient protection for bighorns from the risks of contact and disease transmission. None of the Sheep Station's BMPs are adequate or change my opinion about their effectiveness at reducing the risk of contact to an acceptable level.

7. The Forest Service and ARS are wrong that the problems with domestic strays on the Bernice Allotment can be avoided on the Snakey Canyon and Kelly Canyon allotments by

blaming the specific herder involved in that incident and instituting oversight or training. *See* Taylor Decl. ¶ 34.

8. The agencies cannot use the herder for the Bernice Allotment as a scapegoat. Working as a lone herder for twenty four hours a day, during the fall and winter, in remote conditions for hundreds of dollars a month is a brutal job. *See* Taylor Decl. ¶ 27. The agencies often cannot find locals to fill these jobs, so they rely on people from places like South America who are not familiar with the landscapes and wildlife populations in the area. Herders cannot be vigilant at all hours of the day because they must sleep, eat, and engage in other activities that do not allow them to constantly watch for domestic strays or bighorn sheep.

9. During the night when herders are asleep, predators come out to look for prey like bighorn or domestic sheep, which can scatter either species and cause strays or contacts without the herder's knowledge. Indeed, the agency underestimates the likelihood of domestic sheep scattering in response to predators, especially at night while herders sleep, or in response to gunshots, which makes it very difficult for a herder to keep track of sheep. For example, I remember how the five domestic sheep that I found on the Bernice allotment fled when I stepped out of my truck. The sheep ran at least a half-mile before they reached the base of the foothills and slowed down. The sheep again attempted to leave the area, at a high rate of speed, when a gunshot was fired at them.

10. The agency admits that ARS typically uses only one herder for these allotments. Mickelsen Decl. FN 2. In my professional experience, I have experienced far too many stray domestic sheep from allotments managed by the Sheep Station and private operators to believe that one herder can accurately track 1,000 domestic sheep and observe any near-by bighorn sheep in the fall and winter on these allotments. Furthermore, herders also have a strong

disincentive to identify and report bighorn sheep because it increases their workload and can threaten future grazing on the allotments and therefore their jobs.

11. The Forest Service overstates the ability of herders to observe bighorn sheep and stray domestic sheep on these allotments, especially during the fall and winter grazing season, and the significance of the non-sightings since 1996. *See* Taylor ¶¶ 29-30; Mickelsen ¶ 12. I have spent a significant amount of time near or in areas like the Snakey Canyon and Kelly Canyon allotments, including during the fall and winter seasons. In these areas, it is common during the fall and winter for storms to descend rapidly and cause visibility to drop to mere yards. I recall that some days the weather conditions were so bad during that time of year that it was impossible to complete my work searching for bighorns or taking data in the field. Limited visibility makes it even harder to keep track of all domestic sheep in a band or see any bighorns that are approaching.

12. Even without such storms, the Forest Service overstates the ability to observe domestic or bighorn sheep on the allotments from a herders' perspective in one location. These allotments have numerous draws and gullies throughout that make it impossible to watch the entire area for stray domestic sheep or bighorn sheep from a single location. Moreover, based on the years that I spent working for the Forest Service to track bighorn sheep, I can attest to how difficult it is to spot these animals in the wild, especially in areas like the Snakey Canyon and Kelly Canyon allotments. During my time with the Forest Service, I could sit for hours in the mountains and receive transmissions from radio collars on bighorn sheep that were right near me, but never see them. Bighorn sheep blend into the scenery and often can only be seen when they stand up, or turn around and display their white backsides. It can take biologists, who

generally have significantly more educational and professional training than herders, a long time to become skilled at spotting and identifying bighorn sheep.

13. For these reasons, additional oversight from an ARS technician and an annual training for herders is woefully insufficient to address these numerous factors that impede herders from spotting domestic sheep strays, bighorn sheep, or contact between the two species. Indeed, this additional training and oversight proved insufficient for a different herder to spot the bighorn that visited the Snakey Canyon allotment in 2015 when domestic sheep and a herder were present.

14. Beyond blaming the herder and mentioning additional oversight and training, the agency fails to present actual evidence or scientific support that rebuts my opinion that the incident on the Bernice allotment shows BMPs are not effective. Instead, the incident shows that many of the specific BMPs the agencies list in the declarations are ineffective. Based on my experience, I recall that BMPs employed on the Bernice Allotment included numerous dogs and two herders, monitoring two separate bands of sheep. Remarkably, ARS admits that the agency found some of the missing sheep mixed in with the wrong band. Taylor Decl. ¶ 33. This inability of two herders to notice when some domestic sheep left one herd and mingled with another herd highlights the shortcomings of relying on herders to manage domestic sheep herds. Furthermore, the Bernice allotment is much flatter than the Snakey Canyon and Kelly Canyon allotments, so it should have been much easier for the herders to keep track of domestic sheep on that allotment than it would be on the Snakey Canyon and Kelly Canyon allotments.

15. The Forest Service lists a host of other BMPs that are not effective. *See* Taylor Decl. ¶ 27; Mickelsen Decl. ¶¶ 8-9. For example, counting sheep every three days is insufficient because domestic sheep can easily and quickly slip away, including while a herder is sleeping,

eating, or not looking for a short moment, and quickly retreat to the steeper slopes along the foothills as they did on the Bernice allotment. Strays can disappear out of sight from the foothills in mere moments, so counting and finding a sheep is missing one to three days later does not prevent strays or ensure they are found in a timely manner. Similarly, I am unaware of any science that demonstrates a black marker sheep can accurately serve as a proxy for counting or estimating sheep grouping integrity. Moreover, when bighorns are spotted, hazing them or moving the domestic sheep may be insufficient to maintain separation because bighorns and scattered domestic sheep can travel great distances in a short period of time.

16. The agency also arbitrarily relies on BMPs for identifying and removing domestic sheep that exhibit signs of illness. *See* Taylor Decl. ¶ 27. Domestic sheep carry diseases without showing symptoms, so it is insufficient to check for symptoms to prevent disease carriers from grazing the allotments. ARS may think domestic sheep look healthy after applying the BMPs but the sheep could still carry the same diseases that can make bighorn sheep sick.

17. In conclusion, based on my significant experience working with bighorn sheep, I feel there is a significant risk of contact and potential disease transmission between the bighorn and domestic sheep on the Snakey Canyon and Kelly Canyon allotments that is not mitigated by the BMPs or other actions taken by the Forest Service or ARS for these allotments. The consequences of such contact and transmission are likely to be dire because just one contact between bighorn and domestic sheep can be disastrous for the bighorn herds.

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

Dated this 10th day of November 2017 in Orlando, Florida.

Gerald Walters