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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, et al., *Plaintiffs*, v. DAVID BERNHARDT, et al., *Defendants*.	Case No. 1:16-cv-00083-BLW **DECLARATION OF JONATHAN RATNER**

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

I, Jonathan Ratner, 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. I am a member of Western Watersheds Project (WWP), and have been a member since 2002.

3. I presently live in Pinedale, Wyoming, where I have lived since 2003. My family has worked and lived in Wyoming for generations.

4. I am WWP's Wyoming, Utah, and Colorado Director.

5. Prior to my employment with WWP, I was a professional biologist with four years of experience providing contract services for the BLM, USDA Forest Service, Wyoming Department of Game and Fish, the University of Wyoming, and the Interagency Grizzly Bear Study Team. My research focused on large forest carnivores, including grizzly bear, wolverine, lynx, and marten.

6. As both staff and a member of WWP, I rely on the organization to represent my personal and professional interests in maintaining, protecting, and restoring the public lands and resources of the sage-steppe ecosystems across the West, including in Wyoming, Utah, and Colorado. I joined WWP and continue to support it because, of the dozens of organizations that I have worked with, WWP is by far the most effective at protecting the sagebrush-steppe ecosystem and the species that depend upon it, like the sage-grouse and the pygmy rabbit. In my opinion, the harms caused by public lands livestock grazing to soils, native habitats, streams, and fish and wildlife populations would never be addressed in any meaningful fashion were it not for WWP.

7. In my capacity as WWP's Wyoming, Colorado, and Utah Director, I oversee and implement all of WWP's conservation programs in these three states. My responsibilities include monitoring livestock grazing impacts on Forest Service, National Park Service, and BLM lands and conducting research on the impacts of land management decisions on wildlife and ecosystem function throughout the states I cover. This encompasses a variety of tasks, including monitoring the implementation of and BLM's compliance with Resource Management Plans, Allotment Management Plans, monitoring annual use limits imposed by a grazing permits terms and conditions (stubble height, utilization rates for uplands and riparian areas, willow utilization

rates, stream-bank alteration, etc.), and conducting aerial surveys and photography to document watershed degradation in the form of erosion, gullying, headcutting, hummocking, excessive bare ground, and vegetation alteration patterns.

8. I collect a large quantity of data each field season by conducting surveys, including sage grouse habitat surveys, range condition surveys, forage production surveys, riparian condition monitoring and assessments, and fisheries habitat surveys. Sage grouse habitat surveys include measuring habitat parameters including sagebrush cover, residual grass height, bare ground, and species composition.

9. In addition to monitoring grazing impacts and permit compliance, I conduct Wyoming's only state-approved, non-governmental water quality monitoring program. Specifically, I monitor water quality parameters such as e. coli contamination, dissolved oxygen, pH, turbidity, temperature, and salinity for compliance with state water quality standards. This program is particularly field-intensive because, for every site I monitor, I must collect five water samples within a 30-day period, each separated by a minimum of 24 hours. I conduct a similar monitoring program in Utah.

10. In order to perform my duties, I keep up to date with current science in the areas of range management, species conservation, water quality, fisheries biology, soils and erosion processes, hydrology, botany and other fields. This also includes research on the impacts of land management decisions, such as oil and gas development, habitat fragmentation, road construction, logging and livestock grazing.

11. I also attend training courses regularly in order to keep up to date with changes in the protocols as well as to insure I am refreshed in the procedures. I regularly attend training

courses conducted by the BLM and Forest Service in the standard monitoring protocols used by the agencies. These include:

a. Multiple Indicators Monitoring – This quantitative methodology is used for the collection of a wide array of both short-term and long-term parameters that define riparian conditions.
b. Proper Functioning Condition – This qualitative method is used for rapid assessments of general stream conditions.
c. Interpreting Indicators of Rangeland Health – This method collects a wide array of quantitative and qualitative data in order to assess upland range condition.

12. In addition, I have found the use of Geographical Information System ("GIS") analysis invaluable in carrying out my duties. GIS analyses provide important information and patterns which would not be readily available through other means. Since 2003, I have taken numerous courses sponsored by ESRI to expand my knowledge of GIS, including an 8-hour training course entitled "Creating and Analyzing Surfaces using ArcGIS Spatial Analyst" in June 2009. I use GIS as part of my work on an almost daily basis. I estimate that I have used GIS analysis to create several hundred maps.

13. Due to the vast area I cover each field season, I spend a substantial portion of my time in the field. I spend approximately 100 nights each year camped out on the public lands. I conduct a large amount of fieldwork and spend an enormous amount of time on public lands in Utah, Colorado, and Wyoming each year.

Specific Areas Of Utah Sage-Grouse Habitat Visited

14. I have conducted my most intensive Utah monitoring work on the Salt Lake Field Office in Rich County, which is the very northeast corner of Utah, south of Bear Lake. I have been monitoring the allotments in that area for about a decade and have taken part in all BLM decision-making processes for all Rich County grazing allotments.

15. I have probably visited the Rich County grazing allotments four times a year over the past ten years, some years more and some years less. I plan to continue regularly visiting these allotments at probably the same frequency for the foreseeable future.

16. Over the ten years I have been monitoring the Rich County grazing allotments, I have collected a wide range of data. I've gone out and visited the allotments to determine compliance with grazing permit terms and conditions and documented riparian conditions, trespass, and failure to maintain range improvements. I have done GIS (capacity) analysis of some of the grazing allotments in Rich County.

17. I have collected sage-grouse habitat data throughout Rich County. For instance, I conducted Habitat Assessment Framework monitoring in the Three Creeks project area three to four years ago, with Wild Utah Project. This consisted of several one- to two-day visits where I gathered data regarding sage-grouse habitat conditions. Rich County contains the densest remnant sage-grouse habitat in Utah, and so the area has been a major focus of sage-grouse conservation efforts.

18. I have spent a significant amount of time travelling and collecting data on the Vernal Field Office in the northeastern part of Utah, primarily north of Bonanza to the Wyoming border. I have been active in that part of the state for approximately ten years, and have taken part in almost all decision-making on the grazing allotments in that area during that time period. I have frequently monitored the condition of those allotments through observation and photo documentation, and typically visit this area an average of three times a year. There is a significant cluster of sage-grouse leks in that general area and so I strive to keep tabs on range conditions that might be harming sage-grouse. I plan to continue regularly visiting these areas at probably the same frequency for the foreseeable future.

19. I typically visit the Richfield Field Office, including the area of sage grouse concentration in the Lyman-Teasdale area, approximately once a year and I have been doing so for the past ten years. When I visit the Field Office I frequently observe and photo document vegetation and soils conditions to discern the effects of livestock grazing. I plan to continue regularly visiting these areas at probably the same frequency for the foreseeable future.

20. For the past three years, I have been closely tracking the "Skutumpah Terrace Sagebrush Steppe Enhancement Project," a massive juniper-logging project on the Grand Staircase Escalante and Kanab Field Office, in south-central Utah. Branded a sage-grouse habitat "restoration" project, and using the Obama-era sage-grouse plans as a justification, this project aims to chain vast swaths of pinon-juniper habitat to try to create a sagebrush ecosystem that has not existed there in 150-200 years.

21. I have visited the project area approximately ten to fifteen times over the years, and plan to continue doing so more or less immediately. My work there over the past three years has focused substantially on coring the pinon-juniper trees in the area to document their age. Many of the pinon-juniper trees in the area are 150-250 years old, so in essence these are old-growth trees in a natural climax community that are being destroyed. I have also done some GIS analyses in this area to analyze soils and vegetation characteristics. At the time of this Declaration I am in the process of traveling to the area to conduct additional monitoring. I also presently plan to continue this work and other monitoring in the project area in future years.

22. Approximately five to six years ago, I visited the Hamlin Valley on the Utah-Nevada border to observe the site of a huge planned vegetation treatment I was tracking. The project area is home to an island population of sage-grouse. My visit helped me get a sense of

the place and a visual of the area BLM was treating. Since this area is separated from the areas I frequently work in, I don't get there often. My observations of completed vegetation 'treatments' indicate that they frequently cause extensive soil damage, introduce or increase invasive species and degrade habitats. I plan to return to this area within the next year to observe the effects of the treatments implemented so far.

23. I have also spent time in the northwestern part of Utah, where the second largest conglomeration of leks in Utah exists. I've visited about five times over the years to observe rangeland conditions and get to know the area. In particular my visits have focused on the Salt Lake Field Office, northwest of Salt Lake City. I'm also aware that the Salt Lake Field Office is home to sage-grouse populations and habitat and that populations there are declining significantly—I understand that they have tripped a hard trigger under the Obama era Utah sage-grouse ARMPA approximately a year ago. I plan to return to this area within the next year to observe habitat conditions.

24. In my experience, this area has one of the worst problems with invasive weeds that I've seen in Utah, caused by long term soil disturbance by domestic livestock.
The sage-grouse population in this area is suffering due to these poor habitat conditions.

25. I intend to continue my existing pattern of visiting these places into the immediate future and beyond. When this Declaration is filed I will be traveling through many of these areas. I will likely do at least one or two more trips like this before fall this year. Also, I plan to visit sage-grouse habitat in Rich County in early June and continue that work through the fall, I typically visit all of these places, except Hamlin Valley and the northwest corner, very frequently and plan to visit them again this year, next year and for future years. I also intend to return to Hamlin Valley and the northwest corner in the next year or so.

Personal and Professional Interests in Sage-Grouse and Sagebrush

26. My interest in the sagebrush steppe ecosystem and the species that depend upon it is personal and spiritual as well as professional. I enjoy hiking, camping, watching wildlife, and taking photographs on the public lands of Wyoming, Utah, Colorado, and throughout the American West. I am enriched and spiritually rejuvenated by the aesthetics of a healthy sagebrush ecosystem and the spiritual value of knowing that many species, including sage-grouse, elk, pronghorn antelope, grizzly and black bears, lynx, eagles, prairie dogs, raptors, fish, and other wildlife inhabit the areas I work in. I am personally and professionally interested in the survival of these species and their habitats because of the recreational, aesthetic, and spiritual benefits I have received, currently receive, and hope to receive in the future from them.

27. Healthy sagebrush ecosystems and sage-grouse populations are important to me because they signal the status of numerous other plants and animals. Sage-grouse are considered an "umbrella species" and the well-being of the sage-grouse signals the status of hundreds of other species. If the sagebrush steppe is healthy, then sage-grouse populations are typically healthy. Because sage-grouse are a focal species, if their populations are healthy, it typically means that hundreds of other birds, mammals, amphibians, and other species that inhabit the same ecosystem are also doing well.

28. I am also interested in preserving unaltered expanses of sagebrush steppe for their own sake, because of how rare intact ecosystems are, given the level of human impact on the environment. As ecosystems become increasingly fragmented and degraded, the value of remaining intact ecosystems increases. The preciousness of these ecosystems is underscored for me because of the ecological and habitat destruction I see in my work.

Ecological Destruction Of Sagebrush Habitat By Grazing And Vegetation Treatments

29. Everywhere I work, and Utah is the grossest example, I see destruction or elimination of mid-stature cool season bunchgrasses, which are essential to provide adequate sage-grouse cover and basic ecological processes. These grass species have been eliminated or dramatically reduced because of abusive livestock grazing on BLM lands throughout sage-grouse range. This seems to me to be the primary issue facing sage-grouse because sage-grouse evolved with this bunchgrass cover and they rely on it to hide from predators and to support the insect populations they rely on as a protein source.

30. Because these cool season mid-stature bunch grasses did not evolve with significant herbivory, they decrease under grazing pressure. The increaser species, such as Sandberg bluegrass are short stature and do not provide the cover required by sage grouse.

31. I have also seen an increasing number of destructive vegetation treatment projects done in the name of sage-grouse habitat improvement under the Obama-era sage-grouse plans. While heralded as sage-grouse habitat restoration projects, these projects have caused, and will continue to cause and perpetuate, weed invasions that harm sage-grouse, and destroy naturally-occurring native ecosystems. In essence, these projects amount to farming public lands for the benefit of grazing permittees, at the expense of the ecological condition of the public lands. They fall into two basic categories.

32. The first are in sagebrush steppe. Here, livestock destroy the native forage due to severe overstocking of livestock. Instead of correcting this imbalance, the agencies plow the native sagebrush and grasses, and seed, mostly with grazing tolerant exotics. The livestock deplete these seedings and then the agency repeats the process again.

33. The second category occur within pinyon and juniper forests. Since these are of little use to grazing permittees, the agencies chain and seed these in order to provide more forage for domestic livestock. Then a vicious cycle begins where chaining and seeding occur, livestock destroy the seeding, pinyon-juniper starts to recover, and then the land is devastated again by more chaining and seeding. This cycle is on its third repetition in the past 60 years in some places. BLM appears to be making a bold effort to avoid the physical limitations of the land by prioritizing livestock over ecosystem function. The end result is usually a dramatic increase in invasive species.

34. Biological soil crusts are destroyed by these chaining and seeding projects, and also by the livestock themselves, which in turn also exacerbates invasive species infestations. In general, sage-grouse habitat did not evolve with a significant density of large herbivores. Introducing herds of livestock dramatically alters the sagebrush steppe's trajectory because the native vegetation there has not evolved with herbivory, so the plants are not adapted to defend themselves against grazing. The same is true of biological soil crusts. The ecosystems where biological soil crusts plays an important function did not evolve with large herds of ungulates and those herds destroy the biological soil crusts, which are critical to keeping soils together in xeric systems. The elimination of biological soil crusts, along with the elimination and destruction of native vegetation, promotes the spread of invasive weeds, which alter the fire cycle, and decrease the quality of the habitat for sage-grouse.

35. For this reason, it causes me great personal anguish and distress when I see healthy swaths of sagebrush steppe destroyed through juniper chaining and other so-called "vegetation treatments" to promote livestock grazing on public lands, especially when done under the auspices of sage-grouse conservation. Seeing functioning ecosystems decimated for

the purported "benefit" of sage-grouse, when the projects are clearly actually aimed at promoting and perpetuating unsustainable levels of domestic livestock grazing, is enormously frustrating, especially because the projects do little or nothing to benefit sage-grouse.

36. Public lands grazing itself also causes me great distress because it decimates native plant communities, and decreases habitat quality for hundreds of wildlife species. I don't understand why commercial interests of a few permittees should outweigh the needs of hundreds of species that depend upon these ecosystems to exist, as well as the interests of the much larger public that values these lands in intact ecological condition.

Ecological Destruction of Sagebrush Habitat by Oil and Gas Development

37. I am also personally interested in BLM's approval of destructive oil and gas development projects in Wyoming, including the recently-approved Normally Pressured Lance (NPL) Project and the Jonah Infill and Pinedale Anticline Project Area major oil/gas field developments as well.

38. I am very familiar with this area, which is located near Pinedale, Wyoming where I have lived for many years. I have frequently toured – with BLM, on my own, and with other scientists and WWP members – this region.

39. The NPL project area still provides functional sage-grouse habitat comparable to that available in other parts of the field office that have not had the habitat severely compromised by oil and gas development. Prior to the development of the Pinedale Anticline and Jonah fields, these areas were some of the best sage-grouse habitat in the Pinedale field office. The cumulative impacts of roads, pipelines, traffic, noise, and surface disturbance associated with oil and gas development has caused significant declines in nesting success and rendered that habitat unsuitable.

40. The NPL project would allow new oil and gas well field development of 3,500 new oil/gas wells in the Pinedale and Kemmerer Field Offices of western Wyoming, as well as construction of surface roads, well pads, and other infrastructure. The project area includes a significant sage-grouse winter concentration area, which I understand is among the most vital sage-grouse areas for protection.

41. BLM approved a Record of Decision (ROD) for the project in August 2018. However, it must approve site-specific surface disturbing activities associated with the NPL Project, including Applications for Permits to Drill (APDs), Rights-of-Way, and other authorizations. According to the August 2018 ROD, BLM will apply the more relaxed and weakened sage-grouse conservation measures from the 2019 Plan Amendments in considering such approvals.

42. Under the current administration, BLM has sought to prevent the public, including WWP and myself, from obtaining timely and meaningful information about upcoming APDs and other oil/gas development approvals, including for the NPL Project. However, I understand from my review of BLM E-planning and other notices, media reports, and the recent history of the NPL Project – which was recently acquired by a new developer – that APDs and ROW applications will be imminently submitted and approved by BLM within coming weeks or months.

43. It causes me great personal anguish and distress to see how rampant oil and gas development in Wyoming has already degraded our air quality and groundwater and caused declines in our native wildlife populations, including sage-grouse. My enjoyment of the place I live is also diminished by the air, noise, and light pollution from the oil and gas fields. My personal health, recreational, aesthetic, and professional interests will be further harmed by

upcoming oil and gas development in the area, and more acutely so if BLM is allowed to implement its 2019 Wyoming Sage Grouse Plan Amendments, which will only further loosen restrictions on oil and gas development in this area.

The 2019 Sage-Grouse Plan Amendments

44. It is my understanding that the Bureau of Land Management (BLM) has recently finalized its 2019 Amendments to the 2015 Greater Sage-Grouse Plans. The previous plans were so riddled with loopholes and exceptions that, in my opinion, they were already completely inadequate to protect sage-grouse. However, they did have a few standards with potential to provide some benefit to sage-grouse.

45. For instance, the Utah Plan required BLM to maintain grasses at a height and density where they would "maintain overhead and lateral concealment from predators." It also required BLM to make changes to livestock grazing where recovery or maintenance of riparian conditions is not occurring and grazing is the causal factor. It prioritized monitoring and management activities on allotments not meeting Utah's Rangeland Health Standards due to grazing, where the best opportunities existed for conserving, enhancing, or restoring habitat for sage-grouse. It required lek buffers set forth in Manier et al. (2014) for new rangeland infrastructure projects. These restrictions, and other habitat objectives, if enforced, could have helped return the land to more natural conditions that sage-grouse need to survive, including by promoting native bunchgrass recovery.

46. Likewise, the Utah Plan imposed a "net conservation gain" standard for proposed projects in sage-grouse habitat would have benefitted sage-grouse, both by elevating sage-grouse habitat needs in decision-making and deterring project proponents from developing in sage-

grouse habitat. It also included General Habitat Management Areas (GHMA) as connectivity habitat between higher quality Priority Habitat Management Areas (PHMA).

47. But the 2019 BLM Plans eliminated these requirements or took careful pains to make sure they would never be enforced. The elimination of the habitat objectives, rangeland infrastructure buffers, permit processing requirements, the net conservation gain standard, and other limitations on grazing in sage-grouse habitat will harm the sagebrush steppe ecosystem and the sage-grouse populations that rely upon it to survive.

48. In addition, I am aware that the 2019 BLM Plans eliminated all sage-grouse GHMA in Utah. This, too, is a terrible development that will harm sage-grouse. Sage-grouse habitat in Utah is highly fragmented so non-ideal connectivity habitat is critical to provide connection between populations. By eliminating GHMA, BLM has further shrunk islands of sage-grouse management attention and eliminated a significant habitat component that is critical to sage-grouse populations in Utah.

49. I believe these developments are unlawful. The sage-grouse is a BLM sensitive species. BLM's Sensitive Species Manual requires the agency to take actions to recover the species. By eliminating habitat objectives, grazing permit processing requirements, the net conservation gain standard, and all sage-grouse GHMA in Utah, BLM fails to comply with its own Manual direction. BLM is essentially doing nothing to protect and recover this iconic and gravely imperiled species. The net conservation gain standard is especially critical; sage-grouse populations are a tiny fraction of what they once were and maintaining the status quo habitat is not enough.

Harms From 2019 Changes To Sage-Grouse Plans

50. These changes have harmed my personal interests in sage-grouse and sagebrush habitat as well as those of WWP as an organization.

51. I, and WWP, am injured because the Bernhardt Plans eliminate and/or further weaken any obligation that BLM address rampant, destructive grazing that destroys sagebrush habitat and the hundreds of species that depend upon it, including sage-grouse. The omnipresence of domestic livestock on public lands harms both my interests in management that promotes ecological integrity and recovery of public lands and my recreational interests. Beginning in the spring, when I begin my field season, I am overwhelmed by the ammonia smell of cattle urine and the stench of cow feces when I venture onto public lands that are grazed. Public lands grazing limits my use and enjoyment of millions of acres of grazed public lands each year, as well as that of many other WWP members and supporters.

52. It is worth noting that sage-grouse and other sagebrush species have nowhere to live except for the sagebrush-steppe. They rely on healthy sagebrush ecosystems and when those ecosystems cease to exist, so do they. The vast majority of remaining sagebrush steppe exists on federally-managed BLM lands. I and WWP value the existence of these species as the ecosystems they depend upon. We are injured by management that threatens their continued existence. The Bernhardt Plans impose no meaningful constraints on public lands grazing that harms sage-grouse and therefore the Plans virtually ensure that the birds will remain on a trajectory towards extinction.

53. The 2019 Plans also loosen restraints on oil and gas development in and around Pinedale, Wyoming, further harming my personal health and enjoyment of the place I live. A ruling by the Court that BLM violated the law in adopting the 2019 Sage-Grouse Plan Amendments and enjoining those Amendments from taking effect is vital to protect sage-grouse

habitats in Wyoming and my own interests from irreversible and irreparable harms from ongoing and imminent oil and gas developments, such as NPL.

54. More broadly, a rule by this Court prohibiting BLM from implementing the 2019 Plan Amendments in Wyoming, Utah, Colorado and other states will help ensure that BLM fully and fairly discloses the impacts of its sage-grouse management activities to the public and follows the best available science, and will prevent irreparable harm to sage-grouse and my own interests, as well as other WWP staff and member interests, that will otherwise occur if this Administration moves forward to implement the weakened sage-grouse plans through new approvals of oil and gas leasing and development in Wyoming, Utah, Colorado and other states in the sage-grouse range where I frequently visit in hopes of viewing and enjoying sage-grouse in their natural habitats.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of April, 2019, in Torrey, Utah

Jonathan B. Ratner