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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

OREGON NATURAL DESERT ASS’N
et al.,

Plaintiffs,

v.

TOM TIDWELL, et al.,

Defendants,

v.

HARLEY & SHERRIE ALLEN, et al.,

Defendants-Intervenors.

Case No. 2:07-cv-1871-HA
[Related Case No. 3:03-cv-381-HA]
[Related Case No. 2:08-cv-151-HA]

**THIRD DECLARATION OF
PETER M. LACY**

THIRD DECLARATION OF PETER M. LACY

I, PETER M. LACY, state and declare as follows:

1. My name is Peter M. Lacy and I serve as counsel for plaintiffs Oregon Natural Desert Association (“ONDA”), Center for Biological Diversity (“CBD”), and Western Watersheds Project (“WWP”) in the above-captioned case. I submit this declaration in further support of plaintiffs’ application for an award of attorney fees and costs pursuant to the Endangered Species Act (“ESA”) and the Equal Access to Justice Act (“EAJA”).

2. I contemporaneously compiled the hours I spent litigating the United States Forest Service’s (“USFS”) and National Marine Fisheries Service’s (“NMFS”) decisions related to management of livestock grazing on the Malheur National Forest.

3. I attach as **Exhibit F** to this declaration my time and expense records for time spent working on this case from July 1, 2009 to present. I mark it as Exhibit F to follow the consecutively time sheets marked as Exhibits A through D, which I attached to my first declaration (Dkt # 619), and the interim-fees-on-reply time sheets marked as Exhibit E, which I attached to my second declaration (Dkt # 637). I include as the first two pages of Exhibit F tables summarizing all of the plaintiffs’ incurred and requested fees, costs and expenses, including a summary of those items documented with the interim request, and today’s now-global fee petition.

4. As I noted in my prior declarations, throughout this action, I exercised professional billing judgment in recording my time and by eliminating time that I considered to be unnecessarily duplicative or inefficiently spent. In carefully reviewing my time records in preparing this fee petition, and just as I described in my first declaration, I eliminated or reduced time spent on, among other things, certain clerical tasks or entries, related time spent on matters

not used directly in this litigation, media work, and, in my billing discretion, certain substantive entries. I note that some such work may be compensable.

5. I seek reimbursement of \$295/hour for my time in 2009, \$310/hour for 2010, \$320/hour for 2011, and \$335/hour for 2012. I explained in my prior declarations why these rates are supportable as market rates in Portland, Oregon for an attorney of my experience, expertise, and reputation.

6. In my first declaration as well as in ONDA's interim fee petition brief (Dkt # 611) I addressed the 2007 Oregon State Bar Economic Survey, as required by this Court. Since that time, the Oregon State Bar commissioned and completed a new Survey, released in August 2012.¹ The 2012 OSB Survey supports the reasonableness of the rates I and my co-counsel seek. It shows that Portland attorneys practicing in the Survey's "Real Estate/Land Use/Environmental Law" category charge an average of \$332/hour. 2012 OSB Survey at 32. Thus, my 2012 hourly rate of \$335 falls almost exactly at the average for Portland attorneys working within the "Real Estate/Land Use/Environmental Law" practice area in mid-2012. This is reasonable for someone of my experience and reputation. My rates, as is the case with Mr. Becker's and Ms. Ruether's rates, therefore are consistent with rates charged by other highly respected plaintiff's civil litigators in Portland.

7. However, just as ONDA noted in its interim petition brief with respect to the 2007 OSB Survey, the 2012 OSB Survey continues to underestimate market rates for environmental law specialists of ONDA's attorneys' caliber—in particular by lumping these types of specialists into the Survey's "Real Estate/Land Use/Environmental Law" category. Among other reasons,

¹ The 2012 OSB Survey is available at <http://www.osbar.org/docs/resources/Econsurveys/12EconomicSurvey.pdf> (last visited Dec. 19, 2012).

the Survey does not reflect an environmental *litigation* practice specialty, does not account for the additional specialization of this practice at the federal court level, does not account for the scarcity of attorneys in this specialized practice area, fails to address any aspect of the skill and standing of the attorney or his/her reputation, and fails to address other special factors such as the novelty and complexity of the issues or the quality of the representation.

8. Finally, I attach as **Exhibit G** to this declaration the time and expense records for the experts, consultants, and law clerks that ONDA engaged during this litigation for the period July 1, 2009 to present, as well as a summary of litigation costs. As illustrated in Exhibit G as well as on the summary sheets at pages 1–2 of Exhibit F, ONDA seeks – for the period July 1, 2009 to present – \$1,570.20 for copying, court fees, postage and similar expenses, \$16,804.00 for the services of experts Dr. Robert Beschta and Jonathan Rhodes, \$3,250.00 for the services of consultants Christopher Christie and Bill Marlett, and \$1,776.00 for the services of two student law clerks. These experts and consultants were critical to our success on the merits and in obtaining permanent injunctive relief.

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

Executed this 20th day of December, 2012, at Portland, Oregon,

s/ Peter M. Lacy

Peter M. Lacy