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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]

**SECOND DECLARATION OF
BRENT FENTY**

SECOND DECLARATION OF BRENT FENTY

I, BRENT FENTY, state and declare as follows:

1. My name is Brent Fenty and I reside in Bend, Oregon. I am the same Brent Fenty who filed a first declaration in this matter, Dkt # 612, and I continue to serve as executive director of plaintiff Oregon Natural Desert Association (“ONDA”). The following matters are personally known to me, and if called as a witness I would and could truthfully testify thereto.

2. I make this declaration in further support of the now-global petition for attorney fees and costs in this case filed by the plaintiffs, ONDA, Center for Biological Diversity, and Western Watersheds Project. In particular, I will make a few additional comments about the results the plaintiffs have achieved now that we have successfully obtained this Court’s judgment in this set of consolidated cases.

3. As I explained in my prior declaration, our main objective in filing these cases against the U.S. Forest Service and National Marine Fisheries Service was to protect threatened steelhead trout and their critical stream and riparian habitat in the upper John Day River basin. This Court’s 2008 and 2009 preliminary injunction decisions protected some of the worst-hit areas on the Malheur National Forest, and made clear that the agencies must make steelhead protection their highest priority. We obtained still further protections for steelhead by then winning stipulated and court-ordered restrictions on cattle grazing in 2010, an important merits decision largely in our favor in 2010, a permanent injunction in 2011 that prohibited grazing on several allotments and pastures and imposed strict oversight on grazing on the remaining allotments, and then, finally, issuance of a 2012–2016 biological opinion that today imposes far more quantitative triggers and restrictions on grazing than the previous BiOp, which we had challenged. The new biological opinion’s requirements for specific periods of rest and renewed

scientific analysis when cattle cause damage to steelhead habitat are unprecedented and will benefit native steelhead for generations to come.

4. We achieved everything we set out to do when we filed this legal action. Through the injunctions and stipulations, literally hundreds of miles of streams and hundreds of thousands of acres of public land saw some of the first significant respite from grazing damage that they had seen in decades or longer. This Court’s 2010 summary judgment decision set important legal precedent that will help guide these agencies going forward and will help us further enforce the law when the agencies will not follow it. We established an important principle in the Ninth Circuit about what public lands livestock management actions constitute final agency action, which will help ensure that agencies are accountable for their decisions to authorize livestock grazing.

5. Eight years ago, in the early stages of this litigation, this Court identified “what amounts to a dire need for better management of grazing on these public lands” and “that recent management has fallen short of the legal mandates related to the protection of the land and water and the endangered species dependent thereon.” *Or. Natural Desert Ass’n v. U.S. Forest Serv.*, No. 03-318-HA, 2004 WL 1592606, at *10 (D. Or. July 15, 2004). Because of our nearly ten years of relentless effort, the Malheur National Forest’s management of livestock grazing has changed for the better. In short, this Court’s merits and relief rulings were critical to ONDA’s and our co-plaintiffs’ ability to achieve our missions and to furthering the purposes of the Endangered Species Act by protecting steelhead trout, a native fish in danger of going extinct, from the effects of mismanagement of livestock grazing on over 300 miles of its critical habitat.

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

DATED this 19th day of December, 2012.

s/ Brent Fenty

Brent Fenty, Executive Director
Oregon Natural Desert Association