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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
PETER M.K. FROST**

I, PETER M.K. FROST, hereby declare:

1. I am an attorney licensed to practice law in Oregon since 1991. I am a member of the bars of the State of Oregon, the United States District Court for the District of Oregon, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court. I described my qualifications in detail in my first declaration, dated February 1, 2012 (07-1871 Dkt # 617). I file this second declaration to further attest to the reasonableness of the rates, hours, and litigation expenses sought by the plaintiffs' attorneys—and, in particular, for the time period July 2009 to present, now that the plaintiffs are converting their earlier, interim fee petition into a request for a “global” award of litigation costs including attorney fees.

2. As I stated in my earlier declaration, I know Mr. Lacy and Mr. Becker, as well as the quality of their work. In my view, each of these two attorneys possesses the distinctive knowledge and skills necessary to establish a practice specialty in environmental law that warrants the rates they seek. Each of these attorneys is a careful and skilled litigator. Each of these attorneys has considerable experience litigating cases related to livestock grazing and protected species. Each of these attorneys possesses highly specialized knowledge and skills in the area of environmental litigation.

3. Based on my experience, and on my review of the major pleadings and orders in this case, as well as the plaintiffs' attorneys' time sheets supporting their fee petition, I believe the hourly rates sought by Mr. Becker (\$220 to \$350 for 2005 to 2012) and Mr. Lacy (\$160 to \$335 for 2001 to 2012) are reasonable and reflect prevailing market rates of attorneys of their experience and expertise in this type of case. In fact, given the complexity of this particular litigation, I believe the rates sought are relatively low, compared to what an attorney in private

practice with comparable expertise and experience would likely charge a client for the same or comparable work.

4. In reviewing the district court and appellate briefs filed in this case, and this Court's decisions, as well as the time records plaintiffs' attorneys have filed in support of their now-global fee petition, the number of hours expended and sought for recovery is reasonable. This was a complex case and the results the plaintiffs obtained were outstanding outcomes. Further, the attorneys' billing records show that they exercised proper billing judgment by eliminating or reducing many otherwise recoverable entries.

5. I do not view the work of the four attorneys who worked on this matter as duplicative. I view it as a sound legal strategy.

6. I have reviewed the costs sought and find them to be reasonable, and of the types that are routinely charged to clients in similar cases. In particular, given the complex nature of the litigation, including the fact that the plaintiffs had to litigate fact- and resource-intensive preliminary injunction motions in 2004, 2008, and 2009, and similarly complex merits and remedial issues between 2009 and 2012, I think that the plaintiffs' use of two experts was an important part of their successes in winning the 2010 summary judgment decision, protecting threatened steelhead, and furthering the purposes of the Endangered Species Act. I also think that plaintiffs' continued use of one senior conservation consultant following the 2008 and 2009 preliminary injunction rulings was reasonable. These case management decisions saved attorney hours and directly contributed to these attorneys' ability to successfully obtain the excellent relief achieved in this case.

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

Date: December 17, 2012. /s/ Peter M.K. Frost
Peter M.K. Frost