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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

OREGON NATURAL DESERT ASS’N et al., Case No. 03-CV-213-KI

Plaintiffs,

v.

UNITED STATES FOREST SERV. et al.,

Defendants,

and

ROBERTSON RANCH et al.,

Intervenor-Defendants,

and

OREGON CATTLEMEN’S ASS’N,

Intervenor-Defendants.

**THIRD DECLARATION OF
CHRISTOPHER CHRISTIE**

I, CHRISTOPHER CHRISTIE, state and declare as follows:

1. My name is Christopher Christie. I am a resident of Baker City, Baker County, Oregon, having recently moved from Prairie City, Grant County, Oregon. I am the same Christopher Christie who filed a First Declaration in this case, dated March 26, 2004, and a Second Declaration, dated May 13, 2004. I am a member of the Oregon Natural Desert Association and a past member and supporter of the Center for Biological Diversity. I have a B.S. in microbiology (Honors, with Distinction) from San Diego State University and subsequently completed one year's training for, and worked as, a medical technologist and microbiologist. I am also an amateur botanist/photographer. Thirteen hundred and fifty five of my wildflower photographs are now posted at CalPhotos, a part of the University of California-Berkeley Digital Library (<http://elib.cs.berkeley.edu/photos/photographers.html>), and many others are posted on the internet at www.RangeNet.org.

2. I incorporate by reference my previous declarations in this case and I stand by my previous observations, statements, and conclusions, etc.

3. This year I spent a good deal of time on the Malheur National Forest while engaged in several different activities. These included botanizing (identifying plants) and wildflower photography, butterfly photography, bird watching, wood cutting, examining live old growth ponderosa pines slated for "fire salvage," and monitoring grazing activity. This year I spent 21 days monitoring the grazing situation from early June to mid-October.

4. In my monitoring, I used the Forest Service's own implementation protocols for stubble height measurements, as described in my prior declarations. I ran a transect, either along the green line or across a terrace on a specific bearing for approximately 180 feet, or 30 measurements. Measurements were taken on both sides of the stream except for the main stem of

the Malheur River, where I extended the length and number of transects to allow for variations in vegetation and channel morphology. At each toe or “step-point” I would sample a 3-inch circle using my ruler to determine the average stubble height within the 3-inch circle. I then determined for each transect the median of these average stubble heights, as is called for by the protocol.

5. I also used the Forest Service’s implementation protocol for measuring bank damage. I laid out a steel measuring tape over a hundred foot transect and measured the damage on both sides of the stream. In some cases where there was continuous trampling or where it was otherwise obvious that the damage was greater than 10% I estimated the damage to be over 10%.

6. I estimated the degree of shrub use by comparing leader lengths left after grazing to any un-browsed leaders that still remained on nearby shrubs, if available.

7. At each transect I took one or more pictures with a Nikon digital camera pointed along the general bearing of the green line, or along a bearing for the transect across a terrace. In many cases I also photographed bank damage and suppressed or over-utilized shrubs.

8. Both the Malheur River and North Fork Malheur River wild and or scenic river corridors have been severely and chronically impacted by livestock grazing over the years, although some areas are worse than others. Over-utilization of riparian shrubs, excessive removal of soil and bank protecting graminoid vegetation, and severe bank damage have been serious problems in the river corridors and tributaries. This year, most grazing units in the corridors were rested, and one, the River Unit of the Flag Prairie Allotment, was grazed very, very lightly. This fact resulted in the cessation of most direct grazing impacts for this year, but the impacts will begin again if livestock are allowed back into the corridors. Any improvement in conditions will likely be eradicated if grazing resumes.

9. In some units where grazing is authorized to occur along the rivers, the woody or shrub component of the stabilizing and shade-providing riparian vegetation has been eliminated or suppressed due to long-term over-utilization. Similar conditions exist in many of the tributaries to the rivers. When the units are not rested, the shrubs that remain are generally over-utilized, with many shrubs being partially to fully defoliated and others being severely cropped or hedged on the portions of the plants most accessible to livestock. I observed that livestock-caused shrub damage beyond that allowed by the applicable standards had occurred to some of the smaller shrubs on some of the tributaries to the rivers, but in many cases the shrub component has already been completely lost.

10. Forest Service grazing management has failed to stop the loss or suppression of woody species. Apparently realizing this fact, the Forest Service has taken to caging the willows in many areas, including the main stem of the Malheur River within the scenic corridor. Almost every willow on the South Star Glade Unit of the Dollar Basin/Star Glade Allotment has now been caged, giving a very unnatural look to the scenic corridor. The caging degrades the scenic value of the corridors and makes the shrubs inaccessible to some wildlife. It also contributes to over-utilization on any un-caged shrubs. Caged willows eventually grow through the holes in the fencing and are then hedged by livestock and wild ungulates. Eventually they become grotesquely misshapen into bottle brush bonsai shrubs with longer branches at the top portion of the plant.

11. On the Dollar Unit of the Dollar Basin/Star Glade Allotment I took pictures of four un-caged willows, both at the beginning of the grazing season and at the end. The unit had been rested this season so the willows were browsed only by wild ungulates if they were browsed at all. The willows were photographed on 6/19/04 and then again on 10/1/04. They

actually showed considerable growth from the normally hedged condition found when the unit is grazed. The average growth in height for the four willows was 18 inches. In seasons when grazing occurs, they are lucky to grow more than a few inches. Many small repressed willows on the gravel bar were able to gain height and showed little if any use.

12. I observed that soil- and bank-protecting graminoid vegetation along the green line and on the riparian terraces had been removed to levels below that allowed by the applicable standards on grazed units of the allotments in question. This occurred on tributaries to the river corridors on the Spring Creek Allotment (Little Crane Creek, Barrel Spring, Elk Flat Creek, seeps along the 16 road near Halfway Creek), Flag Prairie Allotment (Little Crane Creek and Station Creek), Ott Allotment (Anderson Spring), North Fork Allotment (Fopian Creek), and on the Bluebucket Allotment (Rock Springs area, Skookum Creek, Marksburg Spring, Black Canyon Creek, Lake Camp Spring area, Cougar Spring and drainage). I was not able to monitor all areas and units on the allotments so it is likely that there were problems not included in the above list. Removal of vegetation by livestock contributed to sheet erosion occurring during a storm event in Black Canyon on the Bluebucket Allotment. The latter is an arid allotment with few water sources outside of riparian areas and is chronically over-grazed. Given the situation, it has far more cattle than can be sustained if it is to meet standards and reduce sediment flows into the Wild and Scenic River corridor.

13. On the units that were grazed this year, I observed bank damage on the tributaries to the river corridors when there was enough developed bank still remaining to damage and also where new bank was beginning to be created. Damage was in the form of hoof shearing and trampling/hummocking. Bank damage exceeded standards on tributaries to the river corridors on the Flag Prairie Allotment (Little Crane Creek and Station Creek), Ott Allotment (Anderson

Spring), North Fork Allotment (Fopian Creek), and on the Bluebucket Allotment (Rock Springs area, Marksburg Spring, Lake Camp Spring area, Cougar Spring and drainage). I was not able to monitor all areas and units on the allotments so there are no doubt bank damage problems not included in the above list.

14. These observations are supported by my photographs and/or monitoring data and are similar to what I have observed in previous years on these and many other allotments on the Malheur National Forest. I have attached to this declaration, as Attachment 1, photographs I took this year which document riparian conditions and the impacts of livestock grazing on the tributaries to the wild and scenic river corridors that I was able to visit. It is by no means a complete accounting. Included in the photos are several that show grazed areas next to exclosures. They reveal the continuing stark contrast in conditions between grazed and ungrazed streams and terraces. These include photos from the Lake Camp Spring area, Black Canyon, Rock Springs and Skookum Creek and another aspen exclosure on the Bluebucket Allotment, and Station Creek on the Flag Prairie Allotment. The photos, dates, locations, and my captions accompanying them, are accurate, true and correct to the best of my knowledge. I have attached to this declaration, also as part of Attachment 1, summary forms of my monitoring on these allotments within the Malheur and North Fork Malheur wild and scenic river corridors. Again, these data and summaries are accurate, true and correct to the best of my knowledge.

15. Trespass is a regular feature of grazing on the Malheur National Forest, but it is not always easy to observe the livestock in the act of trespass. In 2004 I filmed, observed, or became aware of trespass cows on several allotments, including the Ott (including in exclosures), South Star Glade, and Flag Prairie (River unit) allotments.

16. For example:
 - a. On the Star Glade Unit of the Dollar Basin/Star Glade Allotment I noted a “cow pie” from this season and grazed sedges on the green line during a visit there on October 1, 2004.
 - b. On August 28, 2004, I observed two cows on the River Unit of the Flag Prairie Allotment along Crane Creek.
 - c. Also on August 28, 2004 I observed at least 15 cows in the exclosures along Cottonwood Creek and also two head of cattle at the south end of the Rattlesnake Unit on the Ott Allotment.
 - d. On October 12, 2004, I observed 3 bulls lounging around near the 381 trailhead on the River Unit of the Flag Prairie Allotment.
 - e. On October 13, 2004, I observed that cows had been in the exclosure above the 16 road along Little Crane Creek. “Cow pies” from this season were seen and the green line sedges had been grazed.
17. By not grazing the wild and/or scenic river corridors this year, the Forest Service seems to be admitting that the only sure way to improve the degraded conditions, restore bull trout habitat, and protect the outstandingly remarkable values of the river corridors, is to remove the livestock. If history is any guide, any improvement in conditions realized on those units is likely to be erased if the livestock are allowed back on. An example of the phenomenon is Fopian Creek on the Mountain Unit of the North Fork Allotment. It is sometimes rested, but never long enough to bring about the necessary improvement. Then the livestock are allowed back on and the riparian habitat is severely degraded once again, just as it was in this exceptional precipitation year. In many cases, even with the abnormally high amount of precipitation we had this summer, the units with tributaries to the river corridor could not meet the standards this grazing season. The only way to guarantee the necessary improvement is to remove the cows from the river corridors and to greatly reduce the number of livestock on adjacent units. If the

livestock go back on, then in a year or two, absent court supervision or an active lawsuit, it will be back to business as usual.

18. All of the captions below the photos I have attached to this declaration are descriptions that apply to the photos to which they are attached and are accurate, true and correct to the best of my knowledge.

19. Finally, I collected, summarized and presented all of the monitoring data on the attached monitoring forms. These data and summaries are accurate, true and correct to the best of my knowledge.

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

DATED this _____ day of November 2004.

Christopher Christie