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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

BARK, an Oregon non-profit corporation,
FRIENDS OF MOUNT HOOD, an Oregon
non-profit corporation, **NORTHWEST**
ENVIRONMENTAL DEFENSE CENTER,
an Oregon non-profit corporation, **SIERRA**
CLUB, a California non-profit corporation,

Plaintiffs,

v.

LISA NORTHROP, Acting Forest
Supervisor of the Mt. Hood National Forest,
BILL WESTBROOK, Zigzag District
Ranger, **KENT CONNAUGHTON**, Regional
Forester for Region 6, and the **UNITED**
STATES FOREST SERVICE, a federal
agency.

Defendants.

Case No. 3:13-cv-00828-AA

DECLARATION OF
STEPHEN G. WISE



P.O. Box 868, Sandy, Oregon 97055

Declaration of Stephen H. Wise

I, Stephen H. Wise, pursuant to the provisions of 28 U.S.C. § 1746, do hereby state and declare as follows:

Introduction

1. My name is Stephen H. Wise and I am the Executive Director of the Sandy River Basin Watershed Council. The Sandy Basin Watershed Council is located at 16400 Champion Way, Sandy, Oregon 97055 (mailing address PO Box 868, Sandy, Oregon).

2. I write to provide this technical declaration to explain technical matters and to underscore what the Forest Service did not disclose and consider in its analysis of the proposed Timberline Downhill Mountain Bike Trails and Skills Park (the “Project”). Through this declaration, I seek to underscore the extensive work and investment that many organizations have made to protect critical designated habitat in the Still Creek basin and to explain the technical reasons why the Sandy Basin Watershed Council recommended against the construction and operation of 17 miles of new bike trails within the Timberline Special Use Permit area.

3. I have worked for the Sandy Basin Watershed Council for three years. I have led the Council’s administration, planning and project implementation in a range of restoration activities including native vegetation restoration, riparian and in-stream habitat enhancements and other on-the-ground projects, monitoring, and educational activities. Prior to that I worked as Natural Resources Director at the Center for Neighborhood Technology in Chicago, and over

the course of 18 years have conducted a range of conservation activities and analyses in portions of the Columbia River basin, the North Santiam River, and elsewhere with a focus on wild salmon habitat and native forest ecology. I have a Master of Science degree in Space Studies, with a focus in Earth System Science, from the University of North Dakota in Grand Forks North Dakota, and was an adjunct professor in the University of Oregon's Environmental Studies program.

4. The Sandy River Basin Watershed Council is a non-profit, citizen led organization whose mission is to restore and protect the natural, cultural, and historical resources of the Sandy River Basin Watershed. The Council has worked in partnership with the US Forest Service, other agencies, private landowners and volunteers for over 12 years to restore portions of the Sandy River Basin. The Council has secured financial and organizational support for collaborative efforts in the Sandy and its tributaries, including completed and planned projects in the Still Creek sub-basin not far downstream from the proposed project. The Council and the other agencies and private entities that are members of the Sandy River Basin Partners have invested significant financial resources in habitat restoration projects.

Summary

5. I have reviewed the Preliminary Assessment prepared for the Project, the Environmental Assessment (the "EA") prepared for the Project, the Hydrology Specialist Report and the Draft Biological Assessment prepared as appendices to the PA, and the Biological Evaluation dated July 12, 2012 prepared by Kathryn Arendt (the "BE").

6. The Sandy Basin Watershed Council opposes the Project because it involves the construction of 17 miles of new downhill mountain bike trails, many of which are proposed to be

up to 99 inches wide, and a 100% increase in the number of stream crossings in the headwaters of the West Fork of the Salmon River and Still Creek.

7. The Council recommends against the action because of the significance of the aquatic and watershed resources within the project area for listed salmonids and other wildlife and the fact that the system is not currently in a ‘not properly functioning’ condition of those resources. All sources of pollution in this basin need to be addressed to restore this watershed, particularly our headwater streams before more damage has done.

8. In the Council’s opinion and based on our substantial knowledge in the Sandy River Basin, this project will have an individually and cumulatively significant impact habitat, water quality, and other important ecological factors.

9. Based on my review, I offer the following observations:

A. The aquatic resources within the area are of high importance – Sandy salmonids and their tributary habitats are key elements of the Oregon Department of Fish and Wildlife’s Recovery Plan for the Lower Columbia region.

B. The EA admits that the project area habitats currently are not in properly functioning condition and discloses that the construction of the facilities will have negative impacts in the short- and long-term.

C. The Forest Service is relying on restoration to reduce the impacts of this project yet there are problems, due to past activities, that we feel must be corrected and proven to actually be effective before more facilities are constructed that will deliver pollution into the system. The Forest Service has not disclosed the scientific foundation to support its claim that the restoration will be immediately effective in the highly erodible volcanic soils found at these high elevations in the headwaters of these streams.

D. The EA does not adequately address the direct, indirect and cumulative impacts of this project on watershed and wildlife resources in light of other current and planned future projects related to Timberline Ski Area. If constructed the mountain bike trails will increase the cumulative impact to Still Creek and the West Fork of the Salmon River and jeopardize the recovery of ESA listed salmonids.

10. The Council has supported and will continue to support the recreational community to discuss and develop sustainable recreation in the basin. Engaging with the recreational community that enjoys the lands and waters in the Mt. Hood National Forest is a very important element of watershed protection and this is a key way that the Council works to bring a broad audience into the effort to restore and protect the Sandy River.

11. The Council seeks to rigorously and scientifically assess whether any proposed project is a net positive for watershed health, habitat and water quality. Based on our expertise in watershed restoration projects, we do not believe that the proposed restoration will be immediately effective. We do not feel comfortable that the Forest Service has adequately disclosed the scientific support for its claims that the restoration work will cancel out the impacts from the new construction and the Forest Service's admission that the chronic non-functioning condition will continue establishes that work needs to be done first to restore the area and be effective before we should analyze and consider disrupting the headwater streams further.

12. The Council supports the Forest Service moving forward with the proposed watershed restoration projects described in the EA. These projects are needed independently to address lingering problems within the Timberline Special Use Permit area and should not be used as a substitute for further habitat degradation.

13. The EA discloses that even if the restoration actions are completely and immediately successful, the benefits from the restoration would not “offset” the negative sediment impacts produced by the existence of this large system of trails, which operate like roads on the landscape. The key concern that the Council has with the EA and the supporting documents is that the Forest Service appears to admit that under expected and regular year round weather conditions (rain on snow, rain, snow melt, etc.) the amount of sediment produced from the bike trails will far outstrip any hoped benefits from restoration. The Forest Service discloses that if the bike park was operating during wet periods when water is moving off the mountain and bringing with it sediment from the existing network of disturbed areas (e.g. from roads, landings, trails, clearcuts), that implementation of the project would produce “sediment yield would increase by a factor of 7.5 times.” BE at 42. The Forest Service fails to disclose the amount of sediment that will be produce by the facilities during the annual snow melt and during likely rain on snow or heavy rain events that are common on Mt. Hood and during the periods that produce the bulk of the sediment that is delivered annually from disturbed areas that are connected to the drainage network.

14. The Council submits that no further ground disturbing activities should be approved that result in more sediment sources before the restoration projects are implemented and are working to correct existing erosion and water quality problems.

Management Direction

15. Land designations within the project area include a portion of the Salmon River Tier 1 Key Watershed (Northwest Forest Plan) and a significant amount of land identified as Riparian Reserves (Northwest Forest Plan) in the headwaters of tributary streams. "The objective of Key Watersheds is to contribute directly to conservation of at-risk anadromous salmonids and

resident fish species" (Appendix C - Watershed Resources Report at 3). The Forest Service states that the bike trails will cause ground disturbance up to 99 inches wide and that the trails function as roads do from a hydrologic perspective. Therefore, the construction of 17 miles of new bike trails and the on-going ground disturbance and sediment produced by the long-term operation of these trails is not consistent with the Key Watershed objective. This project as proposed is not compatible with the Forest Service's responsibility to protect watershed health.

16. Still Creek has been designated as "Critical Habitat" for Lower Columbia River Steelhead trout up to the West Leg Road at the Jeff Flood ski lift base terminal. However, the disturbed soils in the base station area and on some sections of the ski slopes are still devoid of vegetation years after the lift was constructed. In particular given that this designation occurred after the previous lift development was approved, the continuing erosion of sediment into Still Creek and potential for additional sediment is unacceptable and may be large enough to have a significant, negative, and avoidable effect on listed steelhead trout and their critical habitat.

17. The Sandy River Basin Partners' analysis and prioritization of sub-watersheds within the Sandy basin ranked Still Creek number 3, and the Salmon River number 2, among a total of 14 areas that were identified as highest priority geographic area for habitat restoration (Sandy River Basin Working Group. 2007. *Sandy River Basin Aquatic Habitat Restoration Strategy: an anchor habitat-based prioritization of restoration opportunities*). The lower elevation sections of Still Creek produce very significant numbers of salmon including spring Chinook and Coho. Given the importance of Still Creek and the West Fork of the Salmon River in the production of wild salmon it is imperative that water quality be maintained at the highest possible level, and sediment load from headwaters areas limited.

18. The habitat provided by the rivers and tributaries within the Sandy River basin is of great importance to efforts to recover listed fish populations in the Lower Columbia region. The Sandy basin is a key part of the Oregon Department of Fish and Wildlife's Recovery Plan for the Lower Columbia region. "Thus, the Salmon River and Still Creek provide the majority of critical spawning and juvenile rearing habitat for LCR spring Chinook, and consequently play a critical role in the recovery of that ESU [Evolutionarily Significant Unit]. (Appendix G - Draft Aquatics Biological Assessment at 23 *citing* report by the Sandy River Basin Partners).

Watershed Restoration

19. The Council supports proposed actions to restore some existing service roads and disturbed areas within the permit area. Some of these measures were required to be completed as part of past projects implemented by the permit holder or just simply should be done by the permit holder as part of meeting stewardship responsibilities under the terms of the Special Use Permit that enables the permit holder to operate on public land.

20. Given the past failures and the well-known limitations and difficulties of achieving success in the highly erosive and fragile soils found at this elevation, the Council recommend that the restoration activities described in the EA be implemented independent of the construction any new facilities.

21. In our experience, the typical establishment period for restoring vegetation at lower elevations in more favorable conditions is two-three years, allowing new development activities in or near the restoration areas at the same time would result in short- and long-term negative effects in terms of sediment delivery and turbidity in the system during the life cycle of aquatic life found in the West Fork of the Salmon and Still Creek.

Project Design Criteria

22. The Council generally supports efforts by the Forest Service to develop and use performance based standards and outcomes (PDC's) to reduce the impacts of new construction activities in the basin.

23. In light of the existing problems with soil erosion, the lack of re-vegetation of disturbed areas, the presence of chemical contamination/Total Dissolved Solids (TDS) from salting operations, and the presence of a scientific controversy over the key assumptions found in the Hydrology Report and the BE, we do not have confidence that the PDC's will be effective at addressing the significant impacts that will result from the new constructions.

Hydrology, Geology, and Water Resources

24. Existing sediment problems in Still Creek and the West Fork Salmon River suggest that additional impacts anticipated by the PA are contrary to management goals and restoration objectives. The current conditions in the upper reaches of these drainages are not acceptable as baseline conditions let alone in light of the results of the Forest Service's sediment model analysis of sediment expected to be generated by the proposed project (Appendix G - Draft Aquatics Biological Assessment at 38, Table 7). "Bike Park construction/operation will significantly increase short and long term fine sediment into Still Creek and the West Fork Salmon River" and "... may be large enough to have a negative, significant affect on listed steelhead trout and critical habitat" (Appendix G at 38 and 39). Table 7 indicates that under "dry" operating conditions moderate use levels of the bike park will produce 2 times as much sediment (i.e. 40 tons) as would be generated at baseline conditions. Heavy use under "dry" conditions will produce 20 times the baseline amount or a total of 400 tons of sediment.

25. While the PDC's require that the trails only be used under "dry" conditions, the facilities are still present and operational (although not being used) under "wet" conditions, which are when the soils are saturated, the snow is melting off, rain is falling on the snowpack or rain is falling on the facilities after the snow has melted.

26. The Hydrology Report states: "The reason for the distinction between 'dry' and 'non-dry' conditions is that the amount of annual sediment generated by the Bike Park increases by orders of magnitude if the operation/construction occurs during saturated soil conditions, at which point, the watershed restoration actions will no longer offset the sediment generated from this project" (p. 38, Appendix G). The hydrologic impact from the construction of the mountain bike trail facility will be the greatest during wet conditions, whether or not the facility is operational. While use would exacerbate the situation, there is nothing that the Forest Service or the permit holder can do to prevent the annual snowmelt or storm events.

Botany

27. Maintaining healthy communities of native trees and associated plants is a very important component of healthy watersheds. As outlined below we are concerned that the project has the potential to harm the plant communities within the project area and in the case of invasive plants become an area from which new invasive plants could spread to other areas nearby.

28. In our experience, we have found that upper elevation plant communities are sensitive to disturbance and very slow to recover because of a very short growing season. The trail construction in the open high-alpine meadows and forested zones between the existing ski runs or interspersed in the natural meadows will further disrupt the native plant communities.

Based on our collective experience, we do not believe there is any basis to believe that future efforts to re-vegetate disturbed areas will be immediately successful.

29. The efforts made to re-vegetate the disturbed areas at the Jeff Flood base station and on associated ski runs have not been successful. Effectively re-vegetating disturbed areas is an important component of preventing soil erosion and continued sediment problems in headwaters of Still Creek and other tributaries within the project area.

30. The EA also does not adequately address how re-vegetation efforts will be negated by trampling that will occur along trail corridors as large numbers of spectators try to view race events that are planned for the bike park. As mentioned above, the typical establishment period for vegetative restoration at more amenable sites is two-three years.

31. The project plan does not indicate how restored areas will be protected during establishment if use of the facility is allowed within the re-establishment period follows construction. The loss of vegetation along the trail corridors, due to trampling by race spectators will contribute to additional soil erosion and sediment delivery to the streams in the project area.

32. The project risks introduction or expansion of invasive plant species within the project area. The potential for introduction of non-native, invasive plants is very high given the number of riders that the permit holder hopes to attract and the large geographic area that they are likely to come from. Steps must be taken to reduce the likelihood of invasive plant introduction, to monitor the permit area for invasives and rapidly control any invasive plants that are found. The proposed bike cleaning station (PDC Veg-16) is a good idea but it does not address the problems that now exists with invasive plants, how future restoration may lead to the introduction of more and what will be done to prevent further spread by spectators.

33. The threat posed by plants like False brome, Garlic mustard and others must be addressed thoroughly in any analysis. The Forest Service cannot afford to have any of these species become established in the project area. It is inconsistent with existing management goals, commitments and multi-agency, basin-wide efforts to risk altering the function of the native plant communities and thus the function of the headwaters of the streams that originate in the area. As mentioned below Garlic mustard chemically disrupts interactions between plants and fungi. This chemical disruption can inhibit the natural establishment of tree seedlings within the affected area.

34. The Forest Service outlines the significant risk posed by invasive plants in Appendix E of the Botany report: “False brome is a highly invasive ecosystem-altering grass, capable of invading and overrunning roadsides, trailsides, openings, and forest interiors. This non-native grass is a species of particular concern in the Willamette Valley where it has invaded thousands of acres on the Willamette National Forest and Eugene BLM District. Populations of false brome have now spread along roads and trails in the Columbia River Gorge. The Nature Conservancy and East Multnomah County Soil and Water Conservation District are treating populations in the Columbia River Gorge with herbicide on an annual basis. Threats: This plant is a serious threat to forests and meadows on the west side of the Cascade Range and can spread rapidly (like wildfire). It could easily be transported by mountain bikers from infested areas (upper Willamette Valley, Columbia River Gorge) to the proposed Timberline mountain bike park.” (Appendix E at 91).

35. The Forest Service states that; “Garlic mustard is another highly invasive ecosystem-altering plant species, capable of invading and overrunning roadsides, trailsides, openings, and forest interiors. This nonnative herb has invaded thousands of acres of forest in the

northeastern and Midwestern United States (e.g., New England, Wisconsin, Minnesota). It is now present along trails in the Columbia River Gorge and in Forest Park in downtown Portland. Populations in the Columbia River Gorge were probably spread from what is thought to be the source population in the nearby town of Corbett. Garlic mustard exudes a chemical into the soil that disrupts beneficial mycorrhizal associations between native plants, especially trees, and fungi. Threats: This plant is a serious threat to forests and meadows on the west side of the Cascade Range and can spread rapidly (like wildfire). It could easily be transported by mountain bikers from infested areas (Columbia River Gorge) to the proposed Timberline mountain bike park. This plant is very difficult to eradicate or control.” (Appendix E at 91-92)

Aquatics

36. Still Creek and the West Fork of the Salmon River are critical to the recovery of salmonids in the Lower Columbia region. Impacts from the project could adversely affect efforts to recover ESA listed fish.

- Within the Sandy basin Still Creek is very significant for production of salmonids. Still Creek ranked as number 3 among a total of 14 areas that were identified for restoration efforts (Sandy River Basin Working Group. 2007. Sandy River Basin Aquatic Habitat Restoration Strategy: an anchor habitat-based prioritization of restoration opportunities).
- The Sandy River basin is a key part of the Oregon Department of Fish and Wildlife’s Recovery Plan, for the recovery of wild fish populations that are listed under the federal Endangered Species Act, within the Lower Columbia region.

37. The current baseline conditions of Still Creek are Not Properly Functioning (NPF) for Suspended Sediment/Turbidity, Substrate Embeddedness, Road Density & Location and six other important habitat parameters (Appendix G - Draft Aquatics Biological Assessment at 35, Table 6).

38. Current conditions in the West Fork Salmon River are also listed as Not Properly Functioning (NPF) for Suspended Sediment/Turbidity and Road Density & Location. *"In Still Creek, surface fines were at 52% (Not Properly Functioning) and in the West Fork Salmon River, surface fines were at 44% (Not Properly Functioning) within the Action Area"* (p. 38, Appendix G).

39. These high levels of surface fine sediments on the streambed are very significant in light of the fact that they greatly exceed the threshold for being classified as Not Properly Functioning (values over 20% surface fine sediment are considered NPF). Constructing a trail system with a total of 44 new stream crossings will greatly increase the 'stream network' because the trail segment on both sides of a crossing has the potential to route sediment to the stream to the same degree that road networks do. The project will result in additional fine sediment delivery to Still Creek and the West Fork Salmon River in the short- and long-term which will further degrade their condition and irreparably injure threatened, endangered and Sensitive Species which the Council is working to maintain and restore.

Chemical Contamination/Total Dissolved Solids (TDS) resulting from salting

40. In 1996, RLK & Company negotiated with Oregon DEQ to establish in-stream water quality conditions to limit the amount of Total Dissolved Solids (TDS) and NaCl in runoff from the Palmer snowfield (see p. 42 of Appendix G - Draft Aquatics Biological Assessment for more detail). However, Table 9 (p. 42 -43) indicates that the standard for TDS, in Still Creek, has been exceeded every year since 1997 (the permit holder applies large quantities of salt as a tool for managing snow conditions). As a result, the baseline determination for Still Creek is that it is Functioning At Risk.

41. If the water quality standard has been exceeded every year then actions must be implemented to correct the problem. In the absence of improved performance the permit holder should not be allowed to engage in the construction of new facilities that will result in additional impacts to Still Creek.

42. Given the very limited information on the distribution and abundance of Scott's Apatanian caddisfly it is not prudent to proceed with the construction and operation of a trail system that poses a risk to the viability of a Survey and Manage species. "Scott's Apatanian Caddisfly: (*Allomyia scotti*) may be a truly rare species (Wissman,2010). ... The species is present in both the Project Area and Action Area which includes the majority of its known habitat range in Oregon. Habitat for this species occurs in both Still Creek and West Fork Salmon although in the most recent surveys, this caddisfly was only observed in the West Fork Salmon." (p. 29, Appendix G - Draft Aquatics Biological Assessment). Further, "The results of this survey, i.e. presence of the species only in the West Fork Salmon River tributaries, and not in the Still Creek headwater tributaries, suggest that the habitat requirements for this species is very narrow. Perhaps it formerly occurred in the Still Creek tributaries. It seems evident that these Still Creek tributaries have already experienced a much greater level of human impact than seen in the West Fork Salmon River tributaries (Wissman, 2010)." (p. 30, Appendix G). "Turbidity and sediment increases may also adversely effect Region 6 Sensitive Scotts appatanian caddisfly populations in both the West Fork Salmon and Still Creek." (p. 40, Appendix G)

43. We are concerned that adverse effects due to sediment from the bike park may result in a "take" of LCR winter Steelhead a species listed under the federal Endangered Species Act. "Turbidity increases from the operation and maintenance of the Bike Park on and near LCR

winter steelhead habitat in Still Creek may be large enough to have a negative, significant affect on listed steelhead trout and critical habitat. ... Although operation plans and maintenance work will use PDC's designed to minimize sediment increases in streams and steelhead habitat, turbidity may increase enough to temporarily affect steelhead distribution within the action area and annual sediment increases may reduce the quality and quantity of designated critical habitat for steelhead." (p. 40, Appendix G)

Conclusion

44. At a time when the Forest Service and more than a dozen other agencies, along with hundreds of individuals and volunteers, are working toward restoration of the Sandy River Basin and tributaries including Still Creek and the West Fork Salmon River, we need to choose actions that further the protection and ultimate continued viability of species and habitats whose critical habitat encompasses the project area. Because of the project's predicted negative impacts that are contrary to existing goals, Forest Plan standards, programs and activities, we recommend that the Forest Service proceed with the restoration work but otherwise adopt the No Action alternative in this case.

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. Executed this 2nd day of June 2013 at Portland, Oregon.



Stephen H. Wise, Executive Director
Sandy River Basin Watershed Council