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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

CROW INDIAN TRIBE; <i>et al.</i> ,)	
Plaintiffs,	)	Case No. 9:17-cv-00089-DLC
)	
v.	)	(Consolidated with Case Nos.
	)	9:17-cv-00117-DLC,
UNITED STATES OF AMERICA; <i>et al.</i>,	)	9:17-cv-00118-DLC,
Defendants,	)	9:17-cv-00119-DLC,
	)	and 9:17-cv-00123-DLC)
and)	
	)	BRIEF IN SUPPORT OF
WYOMING FARM BUREAU	)	WYOMING FARM BUREAU
FEDERATION, WYOMING STOCK	)	FEDERATION, WYOMING
GROWERS ASSOCIATION, CHARLES	)	STOCK GROWERS
C. PRICE, and W&M THOMAN	)	ASSOCIATION, CHARLES PRICE,
RANCHES, LLC,)	AND W&M THOMAN RANCHES'
Applicants for Intervention.)	MOTION TO INTERVENE

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Applicants for Intervention, Wyoming Farm Bureau Federation (“WyFB”), Wyoming Stock Growers Association (“WSGA”), Charles Price, and W&M Thoman Ranches, LLC (“Thoman Ranches”) (collectively “Applicants”), respectfully file this Brief in support of their Motion to Intervene on the side of Defendants¹ in all five of the above-captioned, consolidated cases.

BACKGROUND

In 1975, the U.S. Fish and Wildlife Service (“FWS”) designated the grizzly bear (*Ursus arctos horribilis*) as a threatened species under the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* (“ESA”). 40 Fed. Reg. 31,734 (July 28, 1975). In 1982, FWS issued the original Grizzly Bear Recovery Plan, which identified six recovery ecosystems within the coterminous United States.² The FWS designation and original recovery plan were promulgated prior to FWS’s adoption of a distinct population segment (“DPS”) policy, which occurred in February 1996.³ In 2007, FWS published a final rule identifying the Greater

¹ Defendants in the five consolidated actions are: the United States of America; Ryan Zinke, Secretary of the Interior, in his official capacity; the United States Department of the Interior; Jim Kurth, Acting Director of the U.S. Fish and Wildlife Service, or his successor, in his official capacity; the United States Fish and Wildlife Service; and Hilary Cooley, Grizzly Bear Recovery Coordinator, in her official capacity.

² A digitized version of the 1982 Recovery Plan is available at <https://www.biodiversitylibrary.org/item/137553#page/13/mode/1up>.

³ The ESA does not define “distinct population segment,” but FWS’s adopted policy defines a DPS as a “discrete” and “significant” segment of the overall

Yellowstone Ecosystem (“GYE”) grizzly bear population as a DPS and simultaneously removing the GYE grizzly bear DPS from the List of Endangered and Threatened Wildlife.⁴ 72 Fed. Reg. 14,866 (Mar. 29, 2007). That final rule was challenged, and the Ninth Circuit vacated the rule and remanded for more thorough research whether the loss of whitebark pine was a threat to the GYE grizzly bear population. *Greater Yellowstone Coalition, Inc. v. Servheen*, 665 F.3d 1015, 1032 (9th Cir. 2011).

In 2013, FWS published a draft Grizzly Bear Recovery Plan that proposed a minimum population goal of 500 bears and at least 48 females with cubs for the GYE. *See* 78 Fed. Reg. 17,708 (Mar. 22, 2013). In its 2015 report, released in 2016, the Interagency Grizzly Bear Study Team (“IGBST”) estimated the population of the GYE grizzly bear to be approximately 717 bears, including 51 females with cubs. F. T. van Manen & M. A. Haroldson, *Introduction*, in YELLOWSTONE GRIZZLY BEAR INVESTIGATIONS: ANNUAL REPORT OF THE INTERAGENCY GRIZZLY BEAR STUDY TEAM, 2015, 1, 1-4 (F. T. van Manen, M. A.

population. *Policy Regarding the Recognition of Distinct Vertebrae Population Segments Under the Endangered Species Act*, 61 Fed. Reg. 4,722, 4,725 (Feb. 7, 1996).

⁴ The GYE is located in northwestern Wyoming, eastern Idaho, and southwestern Montana, and consists of 9,200 square miles. 72 Fed. Reg. 14,866, 14,869 (Mar. 29, 2007).

Haroldson, & B.E. Karabensh, eds., 2016).⁵ Additionally, the IGBST stated “the population may be nearing carrying capacity in some portions of the ecosystem” *Id.* In 2016, based on those numbers and additional research, FWS proposed a rule identifying the GYE population of grizzly bears as a DPS and removing the GYE grizzly bear from the List of Endangered and Threatened Wildlife. 81 Fed. Reg. 13,173 (Mar. 11, 2016). FWS also approved the 2013 draft supplement to the Grizzly Bear Recovery Plan (“2016 Recovery Plan”) and a long-term conservation strategy for the delisted DPS (“2016 Conservation Plan”). *See id.* During the public comment period, both WyFB and WSGA timely filed comments supporting the designation and delisting, as well as advocating the return of management of the delisted GYE grizzly bear population to the various states. Declaration of Ken Hamilton ¶ 14;⁶ Declaration of James H. Magagna ¶ 13.⁷ FWS published its 131-page final rule and final recovery plan on June 30, 2017.⁸ 82 Fed. Reg. 30,502

⁵ IGBST’s Annual Reports are available at https://www.usgs.gov/centers/norock/science/igbst-annual-reports?qt-science_center_objects=0#qt-science_center_objects.

⁶ The Declaration of Ken Hamilton (“Hamilton Decl.”) is attached hereto as Exhibit 1.

⁷ The Declaration of James H. Magagna (“Magagna Decl.”) is attached hereto as Exhibit 2.

⁸ The final recovery plan is available at https://www.fws.gov/mountain-prairie/es/species/mammals/grizzly/GYE_RP_Supplement_2017_final.pdf.

(June 30, 2017) (“2017 Final Rule”). FWS based its delisting decision on a multitude of scientific data and existing protections. *See id.*

Starting in June 2017, a number of entities, Indian tribes, and individuals filed actions to challenge the 2017 Final Rule (collectively “Plaintiffs”). On June 30, 2017, the Crow Indian Tribe, amongst others,⁹ filed a *Complaint and Petition for Permanent Injunction and Declaratory Relief*, initiating the instant case, and on September 8, 2017, filed a *First Amended Complaint and Petition for Permanent Injunction and Declaratory Relief* (“Crow Indian Tribe Complaint”). Case No. 9:17-cv-00089-DLC, ECF Nos. 1, 22 (D. Mont. June 30, 2017).¹⁰ The Crow Indian Tribe alleges, *inter alia*, that the 2017 Final Rule, issued by Defendants, violates the ESA and that Defendants failed to comply with the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* (“APA”), in promulgating the rule. *Id.*

¶¶ 113–91. Specifically, the Crow Indian Tribe alleges, *inter alia*: (1) Defendants violated the ESA and APA by “initiating the process of delisting the GYE grizzly

⁹ The other Plaintiffs in Case No. 9:17-cv-00089-DLC are Crow Creek Sioux Tribe, Standing Rock Sioux Tribe, Lower Brule Sioux Tribe, Ponca Tribe of Nebraska, Piikani Nation, the Crazy Dog Society, Hopi Nation Bear Clan, Northern Arapaho Elders Society, David Bearshield, Kenny Bowekaty, Llevando Fisher, Elise Ground, Arvol Looking Horse, Travis Plaited Hair, Jimmy St. Goddard, Pete Standing Alone, Nolan Yellow Kidney, and Gary Dorr.

¹⁰ Hereinafter, unless otherwise specified, citations to court filings will be based upon the electronic docket contained within this Court’s CM/ECF database for the lead case, i.e. Case No. 9:17-cv-00089-DLC.

bear prior to the completion of the conservation strategy”; (2) Defendants violated the ESA by “improperly designating a DPS and delisting that DPS simultaneously”; (3) Defendants violated the ESA by “designating a DPS of an already existing DPS”; (4) Defendants violated the ESA by “failing to assess the impacts on the grizzly bear population of the conterminous United States”; and (5) “Defendants’ conclusion is not consistent with the best available scientific and commercial data.” *Id.*

After the Crow Indian Tribe filed its complaint, four other complaints were filed by various parties, all challenging the 2017 Final Rule that involve common questions of law and fact. *See* ECF No. 40. On August 29, 2017, the Humane Society of the United States (“Humane Society”) and the Fund for Animals filed a *Complaint for Declaratory and Injunctive Relief* (“Humane Society Complaint”), initiating Case No. 9:17-cv-00117-DLC. Case No. 9:17-00117-DLC, ECF No. 1 (D. Mont. Aug. 29, 2017). On August 30, 2017, WildEarth Guardians filed a *Complaint* (“WildEarth Complaint”), initiating Case No. 9:17-cv-00118-DLC. Case No. 9:17-cv-00118-DLC, ECF No. 1 (D. Mont. Aug. 30, 2017). On August 30, 2017, the Northern Cheyenne Tribe, amongst others,¹¹ filed a *Complaint for Declaratory and Injunctive Relief* (“N. Cheyenne Tribe Complaint”), initiating

¹¹ The other Plaintiffs in Case No. 9:17-cv-00119-DLC are Sierra Club, Center for Biological Diversity, and National Parks Conservation Association.

Case No. 9:17-cv-00119-DLC. Case No. 9:17-cv-00119-DLC, ECF No. 1 (D. Mont. Aug. 30, 2017). Finally, on September 6, 2017, Alliance for the Wild Rockies (“Wild Rockies”), amongst others,¹² filed a *Complaint for Declaratory and Injunctive Relief* (“Wild Rockies Complaint”) initiating Case No. 9:17-cv-00123-DLC. Case No. 9:17-cv-00123-DLC, ECF No. 1 (D. Mont. Sept. 6, 2017).

All Plaintiffs request, *inter alia*, this Court grant relief in the form of an Order: (1) declaring that the 2017 Final Rule violates the ESA and/or APA, and (2) vacating, and/or permanently enjoining enforcement of the 2017 Final Rule. *See* Crow Indian Tribe Complaint, at 42–43; Humane Society Complaint, at 43; WildEarth Complaint, at 46; N. Cheyenne Tribe Complaint, at 41–42; Wild Rockies Complaint, at 23.

On December 5, 2017, this Court entered an Order consolidating the five, above-captioned cases, while having each case retain its individual character. ECF No. 40, at 3–4. Additionally, this Court set forth a schedule for the production and finalization of the Administrative Record. *Id.* at 4–5. Pursuant to that schedule, Defendants were required to produce the Administrative Record by January 5, 2018, and Plaintiffs have until March 5, 2018, to “notify the Federal Defendants whether Plaintiffs believe the Administrative Record is complete, requires

¹² The other Plaintiffs in Case No. 9:17-cv-00123-DLC are Native Ecosystems Council and Western Watersheds Project.

supplementation with additional materials, or whether the Plaintiffs will seek discovery regarding the sufficiency of the record.” *Id.* The Order further provides that a briefing schedule will be set after the Administrative Record is finalized. *Id.* at 5–6.

On December 21, 2017, Defendants filed a motion to stay the proceedings in the consolidated cases in light of Defendants issuing a “Federal Register Notice soliciting public comment on the possible side effects of the D.C. Circuit’s opinion [in *Humane Society v. Zinke*, 865 F.3d 585 (D.C. Cir. 2017)] on the 2017 Final Rule.” ECF No. 62, at 3-4 (citing 82 Fed. Reg. 57,699 (Dec. 7, 2017)); *see* ECF No. 61. All Plaintiffs filed oppositions to the Defendants’ motion to stay. ECF Nos. 81, 82, 84, 85, 86. This Court has scheduled a hearing on Defendants’ motion to stay for March 13, 2018. ECF No. 94.

IDENTITIES AND INTERESTS OF APPLICANTS

The Wyoming Farm Bureau Federation, founded in 1920, is a non-profit, membership, trade association organized to represent agricultural producers throughout the State of Wyoming. Hamilton Decl. ¶ 4. WyFB represents 23 county farm bureau associations, totaling over 2,600 member families working in agricultural production and over 10,000 non-agricultural members throughout the state. *Id.* ¶¶ 4, 5. WyFB’s agricultural members consist of both ranchers and farmers in the State of Wyoming. *Id.* ¶ 5. WyFB’s purpose is to protect, promote,

and represent the economic, social, and educational interests of its members at the local, state, and national levels; as well as protect private property rights and help members achieve an equitable return on their investments. *Id.* ¶ 6.

WyFB has actively participated in the development of grizzly bear management plans and strategies dating back to 2004. *Id.* ¶ 12. In 2004, WyFB, on behalf of itself and its members, submitted a petition to FWS to declare the GYE grizzly bear a DPS, which was addressed in 2007 in FWS’s Final Rule Designating the Greater Yellowstone Area Population of Grizzly Bears as a Distinct Population Segment; [and] Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife. *Id.* ¶ 13; *see* 72 Fed. Reg. 14,866 (Mar. 29, 2007).

In May 2016, WyFB timely submitted comments to FWS pursuant to 81 Fed. Reg. 13,173 (Mar. 11, 2016), in which WyFB supported FWS’s proposed rule identifying the GYE grizzly bear population as a DPS and removing the GYE grizzly bear population from the List of Endangered and Threatened Wildlife. Hamilton Decl. ¶ 14. WyFB supported returning conservation and management of the delisted grizzly population in Wyoming to the Wyoming Game and Fish Department (“WGFD”). *Id.* When the 2017 Final Rule was published, WyFB reviewed the final rule to inform its membership of the contents therein. *Id.* ¶ 15. In January 2018, WyFB timely submitted comments to FWS pursuant to 82 Fed.

Reg. 57,698 (Dec. 7, 2017), which sought public comment on the potential impact, if any, of *Humane Society of the United States, et al. v. Zinke, et al.*, 865 F.3d 585 (D.C. Cir. 2017) on the 2017 Final Rule delisting the GYE grizzly bear DPS. *Id.* ¶ 16.

The Wyoming Stock Growers Association, founded in 1872, is a tax-exempt, membership organization established to represent livestock producers in the State of Wyoming. Magagna Decl. ¶ 4. WSGA currently represents over 1,200 livestock producers in Wyoming. *Id.* WSGA advocates on issues affecting the livestock industry, Wyoming agriculture, rural community living, and the livestock related interests of its members. *Id.* ¶ 5. WSGA promotes the role of the Wyoming livestock industry and its membership in resource stewardship, animal care, and production of high-quality, safe, and nutritious meat. *Id.* As part of its mission, WSGA informs and educates the public regarding the role of the livestock industry in the state, as well as engaging in advocacy by commenting on issues affecting WSGA and its members and participating in litigation. *Id.* ¶¶ 5, 6.

WSGA has provided comment on grizzly bear recovery plans, the Grizzly Bear Conservation Strategy, WGFD's Grizzly Bear Management Plan, and other grizzly bear conservation and management plans, in their various iterations, beginning with the earliest consideration for ESA listing for the grizzly bear. *Id.* ¶ 11. In March 2006, WSGA timely submitted comments to the Grizzly Bear

Recovery Coordinator of FWS pursuant to 71 Fed. Reg. 4,097 (Jan. 25, 2006) and 71 Fed. Reg. 8,251 (Feb. 16, 2006). *Id.* ¶ 12. WSGA's comments supported FWS's proposed rule to designate the GYE grizzly bear population as a DPS and remove the GYE grizzly bear from the List of Threatened and Endangered Wildlife, and further supported FWS's decision to accept the WGFD's final plan for management of the delisted grizzly population, thereby supporting state-level conservation. *Id.*

In May 2016, WSGA timely submitted comments to FWS pursuant to 81 Fed. Reg. 13,173 (Mar. 11, 2016), in which WSGA supported FWS's proposed rule identifying the GYE grizzly bear population as a DPS and removing the GYE grizzly bear population from the List of Endangered and Threatened Wildlife. *Id.* ¶ 13. WSGA further advocated for returning conservation and management of the delisted GYE grizzly bear population to the various states. *Id.* When the 2017 Final Rule was published, WSGA reviewed the final rule to inform its membership of the contents therein. *Id.* ¶ 14. In January 2018, WSGA timely submitted comments to FWS pursuant to 82 Fed. Reg. 57,698 (Dec. 7, 2017), which sought public comment on the potential impact, if any, of *Humane Society of the United States, et al. v. Zinke, et al.*, 865 F.3d 585 (D.C. Cir. 2017) on the 2017 Final Rule delisting the GYE grizzly bear DPS. *Id.* ¶ 15.

Mr. Charles C. Price is an active member and former executive officer of WSGA. Declaration of Charles C. Price ¶ 1.¹³ Mr. Price is also a former WGFD commissioner, who served for six years—from 2011 to 2017—for the district covering Lincoln, Sublette, Teton, and Uinta Counties, Wyoming. *Id.* ¶ 2. Additionally, Mr. Price is a member of the Upper Green River Cattle Association (“UGRCA”) and has been since 1978. *Id.* ¶ 3. Mr. Price manages and operates a ranch, located in the Green River Valley, and conducts ranching operations within the GYE area. *Id.* ¶ 4, 5. Mr. Price was born and raised on that ranch, which was homesteaded by his family. *Id.* ¶ 4. Mr. Price is the fourth generation on that ranch, and his son and son’s family are the fifth and sixth generations. *Id.*

Mr. Price has personally suffered from grizzly depredations in the GYE area. *Id.* ¶ 7. In 2017 alone, Mr. Price had two mature cows, one yearling, and several calves officially confirmed —meaning the depredation was investigated by a wildlife expert and declared a grizzly bear depredation—lost due to grizzly bear depredations. *Id.* ¶ 7. Mr. Price has also suffered additional livestock losses where grizzly bears were suspected, but the loss could not be officially confirmed as a grizzly bear depredation. *Id.* In addition to the direct loss of cattle due to grizzly bear depredation, grizzly bears regularly cause other indirect losses to Mr. Price’s

¹³ The Declaration of Charles C. Price (“Price Decl.”) is attached hereto as Exhibit 3.

operation. *Id.* ¶ 8. Mr. Price has personally encountered: (1) loss of weight gain in cattle, which decreases the price the livestock can be sold for; (2) cattle fertility problems due to the high stress of grizzly encounters, which reduces overall conception rate, and an increase in management costs; and (3) costs associated with fixing fencing and attempting to relocate and return the cattle that have been displaced by grizzly bears that will often chase cattle out of the grazing allotment. *Id.*

As a member of UGRCA, Mr. Price runs cattle in common with other UGRCA members, all of whom track livestock losses due to grizzly depredations, wolf depredations, and natural causes, as well as due to unidentifiable or unconfirmable causes. *Id.* ¶ 9. The UGRCA then combines the data and makes the amalgamated data available upon request. *Id.* Including Mr. Price's personal losses, in 2017, the UGRCA had 71 confirmed grizzly depredations of livestock on the Upper Green River Cattle Allotment. *Id.* ¶ 10. Confirmed grizzly depredations constituted approximately 19% of all livestock losses. *Id.* ¶ 12. The number of grizzly depredations in the Upper Green River Valley has been increasing since the 1990s. *Id.* ¶ 11.

Mr. Price has and continues to support FWS's identification of the GYE DPS and the delisting of the GYE grizzly bear, as well as allowing WGFD to manage the delisted GYE grizzly bear population in Wyoming. *Id.* ¶ 13. Mr. Price

does not believe removal of individual bears, either by capture or kill, from the population is always necessary to protect individuals and livestock, but believes WGFDD is capable of relocating bears for the safety of the bear and the individuals and livestock affected. *Id.* ¶ 14. Mr. Price believes it is well established that when a depredating grizzly bear is removed or relocated, the death loss due to depredations decreases. *Id.*

W&M Thoman Ranches, LLC is a family owned and managed entity and a member of WyFB. Declaration of W&M Thoman Ranches, LLC ¶ 3, 4.¹⁴ The Thoman's ancestors emigrated from Austria around 1900 and homesteaded on land along the Hams Fork River, north of Kemmerer, Wyoming—property that Thoman Ranches still uses to this day. *Id.* ¶ 4. In the early 1950s, Thoman Ranches purchased the property where the ranch is currently located and operates. *Id.* ¶ 5. Four generations of Thomans have been born, raised, and lived on that same land. *Id.* Thoman Ranches' day-to-day, on-the-ground operations and still conducted and coordinated by the Thomans directly and have been for over 50 years. *Id.* ¶ 6. Thoman Ranches grazes sheep within the GYE area and has for more than a century. *Id.* ¶ 7.

¹⁴ The Declaration of W&M Thoman Ranches, LLC ("Thoman Ranches Decl.") is attached hereto as Exhibit 4.

Thoman Ranches and its employees, regularly come into contact with grizzly bears, or their effects, within the GYE area. *Id.* ¶ 8. Dating back to 1977, Thoman Ranches grazed and bed sheep on four allotments in the Bridger-Teton National Forest, which is located within the GYE area. *Id.* ¶ 9. In September 2009, one of Thoman Ranches' shepherders, Marcelo Tejada Suarez, was mauled by a female grizzly bear in the GYE area—receiving punctures in his chest and wrist, claw wounds to his abdomen, and a seven-inch gash on the top of his head. *Id.* ¶ 10. Mr. Suarez had to be driven to a nearby hospital and then airlifted to Idaho Falls, but very luckily, Mr. Tejada recovered from his injuries. *Id.*

Starting in the 2010, Thoman Ranches was forced to start using electric fences to bed its flocks in the Upper Green River Valley due to increased predator activity and increasing livestock losses resulting from grizzly bear and wolf depredations. *Id.* ¶ 11. In 2010, twelve distinct grizzly bears were observed on one of Thoman Ranches' allotments (the Rock Creek allotment), a number of which were observed following the sheep herds. *Id.* ¶ 12. Thoman Ranches continued to experience increasing and unsustainable losses to its flocks, in part due to grizzly bear depredations. *Id.* ¶ 13. In 2015, Thoman Ranches lost a total of 47 ewes and 112 lambs—4 ewes and 2 lambs were lost due to confirmed grizzly bear depredations. *Id.* In 2016, Thoman Ranches lost a total of 73 ewes and 131 lambs—8 ewes and 15 lambs were lost due to confirmed grizzly bear depredations.

Id. The actual number of losses due to grizzly depredations is likely much higher than those confirmed, due to the difficulties associated with having a loss officially confirmed as a grizzly depredation. *Id.* Losses prior to implementation of electric pens were even greater—29 ewes and 27 lambs were confirmed grizzly bear depredations in 2009 and 53 ewes and 51 lambs were confirmed grizzly bear depredations in 2010. *Id.* ¶ 14.

In addition, Thoman Ranches also suffered indirect costs due to the increased cost of attempting to protect against predator depredation, increased property damage due to grizzly bear activity, and the increased cost of trying to best prepare and protect Thoman Ranches' employees. *Id.* ¶ 15. Due to grizzly bear activity in the GYE area, the U.S. Forest Service and FWS Biologic Opinion also imposed stringent operating requirements on Thoman Ranches. *Id.* As a result of these factors, Thoman Ranches was forced to voluntarily relinquish its permits to the four allotments in the Bridger Teton National Forest that it held and operated on since 1977. *Id.* ¶ 16.

Thoman Ranches has and continues to support the FWS's identification of the GYE population of the grizzly bear as a DPS and the removal of the GYE grizzly bear DPS from the List of Endangered and Threatened Wildlife. *Id.* ¶ 18. Thoman Ranches has also and continues to advocate for allowing WGFD to manage the delisted GYE grizzly bear population in Wyoming. *Id.*

ARGUMENT

I. APPLICANTS ARE ENTITLED TO INTERVENE AS OF RIGHT.

Federal Rule of Civil Procedure 24(a) provides, *inter alia*:

On timely motion, the court must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the [applicant's] ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). In short, intervention as of right under Rule 24(a)(2) involves application of a four-part test. First, the motion to intervene must be timely. Second, the applicant for intervention must assert an interest relating to the transaction or property that is the subject of the action. Third, the applicant must show that its interest may be impaired by the action. Fourth, the interests of the applicant must not be represented adequately by the parties already involved in the action. *Southwestern Center for Biological Diversity v. Berg*, 268 F.3d 810, 817–18 (9th Cir. 2001) (“*Berg*”) (citing *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 826 (9th Cir. 1996)).

Rule 24(a) is to be construed liberally in favor of potential intervenors.

Berg, 268 F.3d at 818 (citing *Forest Conserv. Council v. United States Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011)); *United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992).

Review of a motion to intervene is “‘guided primarily by practical considerations,’ not technical distinctions.” *Berg*, 268 F.3d at 818 (quoting *United States v. Stringfellow*, 783 F.2d 821, 826 (9th Cir. 1986), *vacated on other grounds sub nom. Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370 (1987)).

Here, Applicants satisfy all four elements of Federal Rule of Civil Procedure 24(a)(2). Therefore, this Court should grant Applicants intervention as of right.

A. Applicants’ Motion Is Timely.

In considering the timeliness of a motion to intervene, the Ninth Circuit considers three factors: (1) the stage of the proceedings; (2) the prejudice, if any, to the other parties; and (3) the reason for and length of any delay. *Alaska v. Suburban Propane Gas Corp.*, 123 F.3d 1317, 1319 (9th Cir. 1997) (citing *Empire Blue Cross & Blue Shield v. Janet Greeson’s A Place For Us, Inc.*, 62 F.3d 1217, 1219 (9th Cir. 1995)).

The Crow Indian Tribe initiated the first action on June 30, 2017. ECF No. 1. The subsequent actions were filed from August 29, 2017, through September 6, 2017. *See* Humane Society Complaint, Case No. 9:17-cv-00117-DLC, ECF 1; *see also* Wild Rockies Complaint, Case No. 9:17-cv-00123-DLC, ECF 1. The Crow Indian Tribe then filed its first amended complaint on September 8, 2017. ECF No. 22. This Court consolidated the five cases on December 5, 2017, and gave Plaintiffs until March 5, 2018, to notify Defendants of

any perceived defects with Administrative Record. ECF No. 40. Thus, Applicants moved to intervene less than 90 days after consolidation, and prior to finalization of the Administrative Record. Additionally, the Court has indicated it will not begin the process of setting a briefing schedule until the Administrative Record is finalized. *Id.* Therefore, because these consolidated cases are still in their early stages, Applicants' motion is timely, and the existing parties will not be prejudiced if this Court grants intervention. *See Berg*, 268 F.3d at 816–17, 818 (motion to intervene was timely filed five months after second amended complaint was filed).

Furthermore, the only pending activity currently before this Court is the Defendant's Motion to Stay, which is scheduled to be heard on March 13, 2018. ECF Nos. 61, 94. Applicants take no position on Defendant's motion and do not seek to participate at that hearing. Again, this Court has not yet set a schedule for how the remainder of the case will proceed, if not stayed. *See* ECF 40. Thus, the addition of Applicants will not prejudice the existing parties, nor cause any undue delay to the proceedings. As such, Applicants' Motion is timely filed. *See United States v. South Ben Community School Corp.*, 710 F.2d 394, 396 (7th Cir. 1983) (“The purpose of the [timeliness] requirement is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal”); *see also Akiachak Native*

Community v. Dept. of Interior, 584 F.Supp. 2d 1, 5–6 (D.D.C. 2008) (motion to intervene was timely when filed before any dispositive motions were filed).¹⁵

B. Applicants Have Significant, Protectable Interests In The Rule That Is The Subject Of This Action.

To intervene as a matter of right, an applicant must establish “a ‘protectable interest’ in the outcome of the litigation of sufficient magnitude to warrant inclusion in the action.” *Smith v. Pangilnam*, 651 F.2d 1320, 1324 (9th Cir. 1981) (citing *Donaldson v. United States*, 400 U.S. 517, 531 (1971) (the “interest” referred to in Rule 24(a) is a “significantly protectable interest”). Demonstrating a significant, protectable interest is a “practical” inquiry, which does not require any specific “legal or equitable interest.” *Berg*, 268 F.3d at 819 (citations omitted). The purpose of the interest test is to involve as many concerned persons as is efficiently compatible with due process, thereby avoiding repetitive lawsuits. *Fresno Cnty. v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980). “The ‘interest test’ is basically a threshold one, rather than the determinative criterion for intervention, because the criteria of practical harm to the applicant and the adequacy of representation by others are better suited to the task of limited extension of the right to intervene.” *Id.*

¹⁵ Plaintiffs’ in Case No. 17-00119 filed a Motion for Partial Summary Judgement on January 8, 2018, but the Court has stayed briefing on the motion until after the Defendants’ Motion for Stay is resolved. ECF Nos. 75, 98.

The outcome of the instant actions poses a direct and substantial threat to Applicants, including the property rights and economic interests of WyFB and WSGA, their members, Mr. Price, and Thoman Ranches. If Plaintiffs are successful, Applicants and their members will be unable to effectively address the dangers and losses resulting from the rebounded and ever increasing GYE grizzly bear population. Applicants will continue to suffer the direct losses to their agricultural operations as a result of the GYE grizzly bear and will continue to suffer indirect costs due to the increased cost of attempting to protect against predator depredation, increased property damage due to grizzly bear activity, and the increased cost of preparing and protecting themselves and their employees. Additionally, Applicants and their members who are currently operating within the GYE area may be forced to relinquish their federal use permits, should their costs continue to rise to an unbearable level. Regardless, Applicants will continue to be exposed to safety concerns and increasing operating costs within the GYE area. Therefore, Applicants' interests in this litigation directly arise from economic losses, increased economic burdens, and increased personal safety concerns caused by the rebounded GYE grizzly bear population.

The Ninth Circuit has determined that lesser interests than those asserted by Applicants were sufficient for intervention as of right. *E.g., United States v. Oregon*, 745 F.2d 550, 552–53 (9th Cir. 1984) (intervention as of right granted to

Idaho because fishing by a tribe could affect Idaho fishermen); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528–29 (9th Cir. 1983) (intervention as of right granted to an environmental organization to defend the creation of a conservation area). In sum, Applicants have substantial and legally protectable interests sufficient to support intervention as of right under Federal Rule of Civil Procedure 24(a).

C. Applicants’ Interests Would Be Impaired If Intervention Were Denied.

The third prong of the test for intervention as of right requires a demonstration that the applicant’s interests will be impaired as a result of litigation. This burden is minimal. The Advisory Committee’s Notes for Rule 24 provide that “[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.” Fed. R. Civ. P. 24 advisory committee’s note (1966); *see also Forest Conserv. Council*, 66 F.3d at 1497–98.

If Plaintiffs prevail, and this Court vacates the 2017 Final Rule, Applicants would continue to be subjected to ESA limitations regarding the GYE grizzly bear, despite the fact the GYE grizzly bear has rebounded, and there is no significant concern for extinction. As demonstrated above, Applicants will continue to suffer economic losses, amplified operational expenses, and increasing safety concerns as

a result of the rebounded GYE grizzly bear, without any real recourse to address Applicants' injuries. Thus, Applicants satisfy the third element for intervention as of right under Federal Rule of Civil Procedure 24(a).

D. Applicants' Interests Are Not Adequately Represented.

The final prong of the test for intervention as of right requires the applicants to demonstrate their interests will not be adequately protected by the existing parties. The burden under this prong is also "minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (Applicants need only show that representation of their interests "may be inadequate." (emphasis added) (internal citations omitted)). The Ninth Circuit considers numerous factors to determine whether the applicants for intervention's interests will be adequately represented by an existing party, including:

- (1) whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments;
- (2) whether the present party is capable and willing to make such arguments; and
- (3) whether the would-be intervenor would offer any necessary elements to the proceedings that the other parties would neglect.

Northwest Forest Res. Council, 82 F.3d at 838 (citing *California v. Tahoe Regional Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986)). It is sufficient for the applicants to show that, because of the difference in their interests, it is unlikely the existing parties will advance the same arguments as the applicants. *Berg*, 268 F.3d at 823.

It goes without saying the Plaintiffs will not adequately represent the Applicants' interests. Plaintiffs are seeking to vacate the 2017 Final Rule, which allows Applicants to live and operate with lessened concerns and state-level recourse for addressing the increasing threat of the rebounded GYE grizzly bear population. *See* 2017 Final Rule, 82 Fed. Reg. 30,502 (June 30, 2017).

In addition, although the Applicants seek to intervene on the side of Defendants, it cannot be assumed Defendants will adequately represent Applicants' interests, by making all of Applicants' arguments, or that Defendants would even be willing to do so. *Forest Conserv. Council*, 66 F.3d at 1498–99. Defendants are not engaged in the same practices as Applicants and are not affected by interactions with the GYE grizzly bear in the same manner as Applicants. When a party has private interests, as opposed to the government's public interests, this difference is sufficient to allow intervention. *Fresno Cnty.*, 622 F.2d at 438–39; *see also Mausolf v. Babbitt*, 85 F.3d 1295, 1298 (D.C. Cir. 2003) (The federal government's representation is inadequate where proposed intervenors identify "local and individual interests not shared by the general citizenry." (internal quotation and citations omitted)); *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (A party's interests are not adequately represented where a federal agency "has no financial stake in the outcome of the challenge"). Applicants' interests are local and individualized

to farmers and ranchers in affected areas in Wyoming and differ from those of the general citizenry because Applicants conduct specific activities that put them in regular contact with the GYE grizzly bear population. Thus, the Applicants' interests are not adequately protected by Defendants.

The fact that the States of Wyoming, Idaho, and Montana, including the Montana Department of Fish, Wildlife, and Parks, have intervened in the consolidated cases does not alter this analysis. The States are also government organizations, which are required to equally balance the interests their entire citizenry and must take into consideration more than just the interests of Applicants. Additionally, like Defendants, the States represent a general public interest, unlike the private interest of Applicants. Applicants interests are focused predominately on the possible effect of vacating the 2017 Final Rule on their farming and ranching activities. Applicants can offer specific guidance about the effect of the GYE grizzly bear on local farming and livestock grazing operations in GYE grizzly bear habitat within Wyoming, as well as ongoing efforts to mitigate impacts to the GYE grizzly bear employed by individual farmers and ranchers. Therefore, Applicants have demonstrated their interests will not be adequately protected by the States and that Applicants can provide necessary elements of the proceeding that the state-intervenors would neglect. *See WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 15 (D.D.C. 2010) (representation by a state-intervenor is

not adequate when an applicant for intervention demonstrates “discrete and particularized interests.”)

Finally, the intervention of Safari Club International and National Rifle Association of America (“Safari Club/NRA”) also does not affect this analysis. The Safari Club/NRA’s primary interests relate specifically to the ability to hunt the delisted GYE grizzly bear, and the alleged beneficial effect the hunting of the GYE grizzly bear will have on the hunting of other game species. *See* Brief in Support of Motion to Intervene by Safari Club International and the National Rifle Association of America, ECF No. 36, at 14–15. There is no indication Safari Club/NRA would or could adequately represent the interests of farmers and ranchers who operate within the GYE area, such as Applicants can and will do. Furthermore, Applicants’ perspective will provide a beneficial compliment to that of Safari Club/NRA, by allowing the Court to examine and weigh different perspectives of individuals who currently, and will in the future, regularly come into contact with the grizzly bear population located in the GYE. Thus, Applicants’ interests are not adequately represented by Safari Club/NRA and it is unlikely Safari Club/NRA would make any of Applicants’ arguments.

In sum, because no current party is capable of protecting Applicants’ interests, making Applicants’ arguments, and providing Applicants’ perspective, Applicants satisfy the fourth requirement for intervention as of right. As the other

three requirements are also satisfied, this Court should grant Applicants intervention as of right.

II. IN THE ALTERNATIVE, APPLICANTS ARE ENTITLED TO PERMISSIVE INTERVENTION.

Federal Rule of Civil Procedure 24(b), which governs permissive intervention, provides:

On timely motion, the court may permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Fed. R. Civ. P. 24(b)(1), (3).

Unlike Federal Rule of Civil Procedure 24(a)(2), Rule 24(b) does not require an applicant for intervention to demonstrate a significant or legally protectable interest. Instead, all that is necessary is the applicant for intervention's "claim or defense and the main action have a question of law or fact in common." *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1008–09 (9th Cir. 2002) (citing Fed. R. Civ. P. 24(b)). Federal Rule of Civil Procedure 24(b) "plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." *Security and Exchange Comm'n v. U.S. Realty and Improvement Co.*, 310 U.S. 434, 459 (1940). Therefore, if this Court denies Applicants intervention as of right, it should grant Applicants permissive intervention.

As demonstrated above, granting Applicants permissive intervention would not cause undue delay and would not otherwise prejudice adjudication of the rights of the current parties. The proceedings are essentially in a “holding pattern” pending the hearing on Defendants’ Motion for Stay, upon which Applicants take no position. Additionally, the Administrative Record has not been finalized, which is a necessary prerequisite for briefing to begin. *See* ECF 40. Thus, granting Applicants permissive intervention would not prejudice the current parties. *See Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977) (“If the trial court determines that the initial conditions for permissive intervention under rule 24(b)(1) or 24(b)(2) are met, it is then entitled to consider other factors in making its discretionary decision....”). In addition, Applicants intend to raise arguments and defenses that share a “common question of law or fact” with the claims in the consolidated cases.¹⁶ As demonstrated above, Applicants have significant interests in the 2017 Final Rule, which is directly at issue in the consolidated cases. Finally, granting Applicants permissive intervention would best serve the interests of judicial economy, by allowing for efficient administration of the cases and by allowing Applicants to provide the

¹⁶ Pursuant to Fed. R. Civ. P. 24(c), Applicants’ proposed answer to each Complaint is filed concurrently herewith. These proposed answers demonstrate that Applicants intend to raise arguments and defenses that share a “common question of law or fact” with the claims in the consolidated cases.

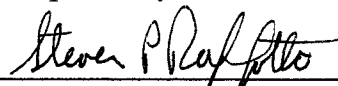
Court with a currently unrepresented perspective. Therefore, at a minimum, this Court should grant Applicants permissive intervention.

CONCLUSION

Based upon the foregoing, Applicants respectfully request this Court grant Applicants intervention as of right, or, in the alternative, permissive intervention, in all five of the above-captioned, consolidated cases.

DATED this 26th day of February 2018.

Respectfully submitted,



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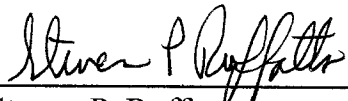
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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to D. Mont. L.R. 7.1(d)(2), the foregoing Brief in Support contains 6,440 words, excluding the parts of the brief exempted by rule. This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14-point font.

DATED this 26th day of February 2018.



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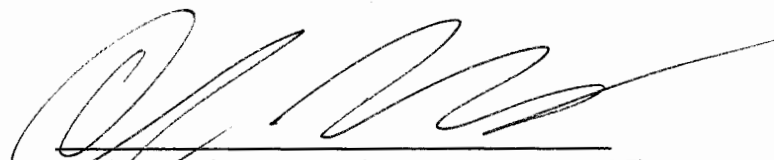
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

CROW INDIAN TRIBE; <i>et al.</i> ,)	
Plaintiffs,	)	Case No. 9:17-cv-00089-DLC
)	
v.	)	(Consolidated with Case Nos.
	)	9:17-cv-00117-DLC,
UNITED STATES OF AMERICA; <i>et al.</i>,	)	9:17-cv-00118-DLC,
Defendants,	)	9:17-cv-00119-DLC,
	)	and 9:17-cv-00123-DLC)
and)	
	)	DECLARATION OF KEN
WYOMING FARM BUREAU	)	HAMILTON
FEDERATION, WYOMING STOCK)	
GROWERS ASSOCIATION, CHARLES)	
PRICE, and W&M THOMAN)	
RANCHES, LLC,)	
Applicants for Intervention.)	

I, Ken Hamilton, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct to the best of my knowledge:

1. I am the Executive Vice President of the Wyoming Farm Bureau Federation (“WyFB”). I am over 18 years of age, competent to testify, and, based upon my involvement with WyFB, have personal knowledge of the matters stated herein.

2. I have held the position of Executive Vice President of WyFB for 14 years. As Executive Vice President, I control WyFB’s day-to-day activities. Also, as part of my duties and responsibilities, I review and comment on issues affecting members, inform members of issues affecting them, and make recommendations to the organization regarding involvement in litigation.

3. WyFB has authorized me to submit this declaration on its behalf.

4. WyFB was founded in 1920 to represent agricultural producers throughout the State of Wyoming. WyFB is a non-profit, membership, trade association organized under the laws of the State of Wyoming, with its principal place of business in Laramie, Wyoming. WyFB is also the umbrella organization for 23 county farm bureau associations throughout the State of Wyoming.

5. WyFB has more than 2,600 member families working in agricultural production in the State of Wyoming and over 10,000 non-agricultural members in

all 23 counties in the State of Wyoming. WyFB's agricultural members consist of both farmers and ranchers in the State of Wyoming.

6. WyFB's purpose is to protect, promote, and represent the economic, social, and educational interests of its members at the local, state, and national levels; as well as protect private property rights and help members achieve an equitable return on their investments.

7. WyFB furthers its members' interests by working with state and local entities to advocate for reduced regulatory burdens on farmers and ranchers, as well as to lobby for lower administrative costs of compliance. WyFB expends significant resources in furthering its advocacy and educational missions. Specifically, WyFB educates its member regarding compliance with state and federal regulations. WyFB also informs and advocates for its members regarding legislative, regulatory, legal, conservation, and environmental issues.

8. One such issue is the management of grizzly bears within the portion of the Greater Yellowstone Ecosystem ("GYE") located in Wyoming. WyFB membership includes agricultural producers who own private lands within the GYE, and operate on those and other private lands, as well as on state and federal lands within the GYE. Many of WyFB's members are actively engaged in food production or ranching activities within the GYE. These members are directly impacted by the grizzly bear population within the GYE area.

9. WyFB and its members have been actively involved in the monitoring and reporting of grizzly bear activity in the GYE. WyFB and its members, at the same time, have witnessed an increase in grizzly bear populations, to a level exceeding recovery goals, and an expansion in occupied habitat.

10. A number of WyFB members have suffered significant and unsustainable loss due to the expansion of and predation by the grizzly bear population located in the GYE area. A number of WyFB's farming members incur additional and unsustainable costs due to the need to protect their farms, employees, and crops from grizzly bear intrusion and destruction. Additionally, many of WyFB's ranching members incur additional and unsustainable costs due to loss and injury to livestock, reduction in weight gains to livestock, decreased conception rates of livestock, interruptions of grazing patterns, and significantly higher livestock management costs.

11. WyFB has a number of members who have been forced to voluntarily relinquish use permits within the GYE area due to the pressures of predation and expansion of grizzly bears. These and other members have experienced significant and increasing levels of grizzly bear threat and depredation that are not economically sustainable. In nearly every instance, the relinquishment was driven by the inability to withstand the pressure of predation by bears or other predators, or regulatory constraints imposed by the federal land management agencies.

12. WyFB has actively participated in the development of grizzly bear management plans and strategies dating back to 2004.

13. In 2004, WyFB, on behalf of itself and its members, submitted a petition to FWS to declare the GYE grizzly bear a distinct population segment (“DPS”), which was addressed in 2007 in FWS’s Final Rule Designating the Greater Yellowstone Area Population of Grizzly Bears as a Distinct Population Segment; [and] Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife. *See* 72 Fed. Reg. 14,866 (Mar. 29, 2007).

14. In May 2016, WyFB timely submitted comments to FWS pursuant to 81 Fed. Reg. 13,173 (Mar. 11, 2016). WyFB supported FWS’s proposed rule identifying the GYE grizzly bear population as a DPS and removing the GYE grizzly bear population from the List of Endangered and Threatened Wildlife. WyFB supported returning conservation and management of the delisted grizzly population in Wyoming to the Wyoming Game and Fish Department.

15. In June 2017, FWS published its final rule and final recovery plan (“2017 Final Rule”) identifying the GYE grizzly bear as a DPS and removing the GYE grizzly bear from the List of Endangered and Threatened Wildlife. 82 Fed. Reg. 30,502. WyFB reviewed the 2017 Final Rule upon publication to inform its membership of the contents therein.

16. In January 2018, WyFB timely submitted comments to FWS pursuant to 82 Fed. Reg. 57,698 (Dec. 7, 2017), which sought public comment on the potential impact, if any, of *Humane Society of the United States, et al. v. Zinke, et al.*, 865 F.3d 585 (D.C. Cir. 2017) on the 2017 Final Rule delisting the GYE grizzly bear DPS.

17. Plaintiffs in the above-captioned consolidated cases seek, inter alia, vacatur of the final rule. If the final rule were vacated, WyFB and its members would be unable to address the dangers and losses resulting from the rebounded grizzly bear population. WyFB and its members will continue to suffer increased and unsustainable losses due to the increased numbers and expansion of the grizzly bear within the GYE area.

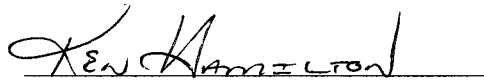
18. WyFB's members who were forced to voluntarily relinquish their permits will be unable to apply to resume operation in those areas due to the unsustainably high, prohibitive cost of operating. Further, WyFB's members who are currently operating within the GYE area may be forced to relinquish their permits should their costs continue to rise to an unbearable level.

19. If the rule were upheld, not only would WyFB and its members be able to better and more safely operate at a sustainable level, WyFB and its members would actively work with the State of Wyoming to assist with state-level conservation and management of the GYE grizzly bear, providing the combined

knowledge and information available to WyFB and its members. Returning management of the delisted GYE to the State of Wyoming would allow for a more localized and responsive approach to conservation. WyFB's members will be able to better and more safely manage their agricultural operations, increasing production for the benefit of all.

20. WyFB is aware that the State of Wyoming, the State of Idaho, and Safari Club International and National Rifle Association of America have intervened in the above-captioned actions. WyFB is also aware the State of Montana has moved for intervention as well. WyFB and its members' interests are not adequately represented by those parties, due to WyFB's specific interest in protecting and advancing the interests of its agricultural members, who are the individuals directly and regularly impacted by the GYE grizzly bear population.

DATED this 26 day of FEB 2018.


Ken Hamilton
Executive Vice President
Wyoming Farm Bureau Federation

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

CROW INDIAN TRIBE; <i>et al.</i> ,)	
Plaintiffs,	)	Case No. 9:17-cv-00089-DLC
)	
v.	)	(Consolidated with Case Nos.
	)	9:17-cv-00117-DLC,
UNITED STATES OF AMERICA; <i>et al.</i>,	)	9:17-cv-00118-DLC,
Defendants,	)	9:17-cv-00119-DLC,
	)	and 9:17-cv-00123-DLC)
and)	
	)	DECLARATION OF JAMES H.
WYOMING FARM BUREAU	)	MAGAGNA
FEDERATION, WYOMING STOCK)	
GROWERS ASSOCIATION, CHARLES)	
PRICE, and W&M THOMAN)	
RANCHES, LLC,)	
Applicants for Intervention.)	

I, James H. Magagna, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct to the best of my knowledge:

1. I am the Executive Vice President of the Wyoming Stock Growers Association (“WSGA”). I am over 18 years of age, competent to testify, and, based upon my involvement with WSGA, have personal knowledge of the matters stated herein.

2. I have held the position of Executive Vice President of WSGA for 19 years. As Executive Vice President, I control WSGA’s day-to-day activities. Also, as part of my duties and responsibilities, I review and comment on issues affecting members, inform members of issues affecting them, and make recommendations to the organization regarding involvement in litigation.

3. WSGA has authorized me to submit this declaration on its behalf.

4. WSGA is a tax-exempt organization incorporated under the laws of the State of Wyoming. WSGA was founded in 1872 and currently represents over 1,200 livestock producers in the State of Wyoming.

5. WSGA’s purpose is to advocate for and advance the livestock industry, Wyoming agriculture, rural community living, and the livestock-related interests of its members. As part of its mission, WSGA informs and educates the public regarding the role of the livestock industry in the State. WSGA also

promotes the role of the Wyoming livestock industry and its members in resource stewardship, animal care, and production of high-quality, safe, and nutritious meat.

6. WSGA accomplishes its purpose and mission by representing and informing its members on legislative, regulatory, legal, conservation, and environmental issues. WSGA also engages in advocacy by commenting on issues affecting itself and its members, as well as participating in litigation.

7. One such issue is the management of grizzly bears within the portion of the Greater Yellowstone Ecosystem (“GYE”) located in Wyoming. WSGA’s membership includes numerous permittees who graze livestock on National Forest lands in Wyoming, and others, who are directly impacted by the grizzly bear population located within the GYE area.

8. WSGA and its members have been actively involved in the monitoring and reporting of grizzly bear activity in the GYE area. WSGA and its members, at the same time, have witnessed an increase in grizzly bear populations, to a level exceeding recovery goals, and an expansion in occupied habitat.

9. Every year, WSGA members who graze livestock within the GYE area are severely impacted by grizzly bears. These impacts include, but are not limited to: loss and injury to livestock, reduction in weight gains to livestock, decreased conception rates of cattle and sheep, interruptions of grazing patterns, and significantly higher livestock management costs.

10. WSGA also has a number of members who have been forced to voluntarily relinquish grazing permits within the GYE area due to the pressures of predation by grizzly bears. These members have experienced significant and increasing levels of grizzly bear depredation of livestock that are not economically sustainable. In nearly every instance, the relinquishment was driven by the inability to withstand the pressure of predation by bears and/or wolves, or regulatory constraints imposed by the federal land management agencies.

11. WSGA has provided comment on grizzly bear recovery plans, the Grizzly Bear Conservation Strategy, the Wyoming Game and Fish Department's Grizzly Bear Management Plan, and other grizzly bear conservation and management plans, in their various iterations, beginning with the earliest considerations for Endangered Species Act listing for the grizzly bear.

12. In March 2006, WSGA timely submitted comments to the Grizzly Bear Recovery Coordinator of the U.S. Fish and Wildlife Service ("FWS") pursuant to 71 Fed. Reg. 4,097 (Jan. 25, 2006) and 71 Fed. Reg. 8251 (Feb. 16, 2006). WSGA's comments supported FWS's proposed rule to designate the GYE grizzly bear population as a distinct population segment ("DPS") and remove the GYE grizzly bear DPS from the List of Threatened and Endangered Wildlife. WSGA further supported FWS's decision to accept the Wyoming Game and Fish

Departments' final plan for management of the delisted grizzly population, thereby supporting state-level conservation.

13. In May 2016, WSGA timely submitted comments to FWS pursuant to 81 Fed. Reg. 13,173 (Mar. 11, 2016). WSGA supported FWS's proposed rule identifying the GYE grizzly bear population as a DPS and removing the GYE grizzly bear DPS from the List of Endangered and Threatened Wildlife. WSGA further supported returning conservation and management of the delisted grizzly population to the various states.

14. In June 2017, FWS published its final rule and final recovery plan ("2017 Final Rule") identifying the GYE grizzly bear as a DPS and removing the GYE grizzly bear from the List of Endangered and Threatened Wildlife. 82 Fed. Reg. 30,502 (June 30, 2017). WSGA reviewed the 2017 Final Rule upon publication to inform its membership of the contents therein.

15. In January 2018, WSGA timely submitted comments to FWS pursuant to 82 Fed. Reg. 57,698 (Dec. 7, 2017), which sought public comment on the potential impact, if any, of *Humane Society of the United States, et al. v. Zinke, et al.*, 865 F.3d 585 (D.C. Cir. 2017) on the 2017 Final Rule delisting the GYE grizzly bear DPS.

16. Plaintiffs in the above-captioned consolidated cases seek, *inter alia*, vacatur of the final rule. If the final rule were vacated, WSGA and its members

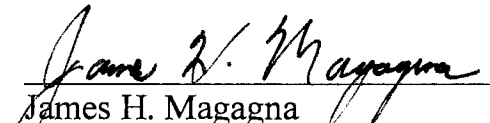
would be unable to address the dangers and losses resulting from the rebounded and ever increasing grizzly bear population. Further, WSGA and its members will continue to suffer continually increasing operating costs and unsustainable losses due to the increased numbers and expansion of the GYE grizzly bear population.

17. WSGA's members who were forced to voluntarily relinquish their grazing permits, due to the pressures of predation by grizzly bears, will be unable to apply to resume operation in those areas due to the unsustainably high, prohibitive cost of operating. Further, WSGA's members who are currently operating within the GYE area may be forced to relinquish their permits should their costs continue to rise to an unbearable level. If they do not, those members will continue to be exposed to safety concerns and increasing operating costs.

18. If the rule were upheld, not only would WSGA and its members be able to better and more safely operate at a sustainable level, WSGA and its members would actively work with the State of Wyoming to assist with state-level conservation and management of the GYE grizzly bear population, providing the combined knowledge and information available to WSGA and its members. Returning management of the delisted GYE to the State of Wyoming would allow for a more localized and responsive approach to conservation. WSGA's members will be able to better and more safely manage their herds, increasing production for the benefit of all.

19. WSGA is aware that the State of Wyoming, the State of Idaho, and Safari Club International and National Rifle Association of America have intervened in the above-captioned actions. WSGA is also aware the State of Montana has moved to intervene. WSGA and its members' interests are not adequately represented by those parties, due to WSGA's specific interest in protecting and advancing the interests of its livestock-producing members, who are the people directly and regularly impacted by the GYE grizzly bear population, and WSGA's focused understanding of the complex relationships between grizzly bears and livestock management.

DATED this 25 day of February 2018.


James H. Magagna
Executive Vice President
Wyoming Stock Growers Association

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

CROW INDIAN TRIBE; <i>et al.</i> ,)	
Plaintiffs,)	Case No. 9:17-cv-00089-DLC
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v.)	(Consolidated with Case Nos.
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Defendants,)	9:17-cv-00119-DLC,
)	and 9:17-cv-00123-DLC)
and)	
)	DECLARATION OF CHARLES C.
WYOMING FARM BUREAU	)	PRICE
FEDERATION, WYOMING STOCK)	
GROWERS ASSOCIATION, CHARLES)	
PRICE, and W&M THOMAN)	
RANCHES, LLC,)	
Applicants for Intervention.)	

I, Charles C. Price, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct to the best of my knowledge:

1. I am an active member and former executive officer of the Wyoming Stock Growers Association (“WSGA”). I am over 18 years of age, am competent to testify, and have personal knowledge of the matters stated herein.

2. I was a commissioner for the Wyoming Game and Fish Department (“WGFD”) for six years—from 2011 to 2017—for the district covering Lincoln, Sublette, Teton, and Uinta Counties, Wyoming.

3. I am a member of the Upper Green River Cattle Association (“UGRCA”), and have been since 1978.

4. I manage and operate a ranch located in the Upper Green River Valley. I was born on that ranch, which was homesteaded by my family and has remained in my family since. I am the fourth generation on the ranch and my son and his family who are taking over are the fifth and sixth generations.

5. I run cattle in common with other UGRCA members on the Upper Green River Cattle Allotment, which is located on National Forest lands and within the Greater Yellowstone Ecosystem (“GYE”) area at issue in this matter.

6. I regularly come into contact with grizzly bears, or their effects, in the GYE area. Sometimes I come into direct contact with grizzly bears while moving

cattle. Other times I see the effects of the GYE grizzly bear population on livestock and ranch property.

7. I have personally suffered from grizzly depredations in the GYE area. For example, in 2017, two of my mature cows, one yearling, and several calves were officially confirmed—meaning the depredation was investigated by a wildlife expert and declared a grizzly bear depredation—lost due to grizzly bear depredations. I have also suffered additional livestock losses where grizzly bears were suspected, but it could not be officially confirmed as a grizzly bear depredation. Often, it is difficult to confirm a grizzly bear depredation because the livestock carcasses may not be found for days or weeks after the attack and scavengers feast on the livestock carcasses and obliterate any evidence that the death was due to a grizzly bear. Other times, the missing livestock is never found, so the cause of the loss can never be confirmed.

8. In addition to the direct loss of cattle due to grizzly bear depredation, grizzly bears regularly cause other indirect losses to ranchers. I have personally encountered: loss of weight gain in cattle, which decreases the price the livestock can be sold for; cattle fertility problems due to the high stress of grizzly encounters, which reduces overall conception rate; and an increase in management costs. Grizzly bears will often chase cattle out of the grazing allotment, which

results in indirect costs related to fixing fencing and attempting to relocate and return the cattle that have been displaced.

9. As a member of UGRCA, I run cattle in common with other UGRCA members, all of whom track livestock losses due to grizzly depredations, wolf depredations, and natural causes, as well as due to unidentifiable or unconfirmable causes. We, as an association, then combine the data and make the amalgamated data available upon request.

10. Including my personal losses, in 2017, the UGRCA had 71 confirmed grizzly depredations of livestock on the Upper Green River Cattle Allotment.

11. The number of grizzly depredations in the Upper Green River Valley has been increasing since the 1990s. For example, in the 1990s, the calf mortality rate for the UGRCA, prior to the appearance of the grizzly bears, averaged approximately 2–2.5%. In 2017, the calf mortality rate for the UGRCA was 13.7% from all causes—grizzly bears, wolves, normal loss, and missing. It is estimated that grizzly bear depredation contributed approximately 6% to the overall calf loss.

12. In 2017, confirmed grizzly depredations constituted approximately 19% of all livestock losses. These numbers do not take into account the number of grizzly bear depredations that cannot not be confirmed. The actual number of losses in 2017 due to grizzly depredations certainly is much higher than just 71.

13. I have and continue to support the U.S. Fish and Wildlife Service's identification of the GYE population of the grizzly bear as a distinct population segment ("DPS") and the removal of the GYE grizzly bear DPS from the List of Endangered and Threatened Wildlife. Additionally, I have and continue to advocate for allowing WGFD to manage the delisted GYE grizzly bear population in Wyoming.

14. I do not believe removal of individual bears, either by capture or kill, from the population is always necessary to protect individuals and livestock. For example, WGFD is more than capable of relocating bears within the GYE for the safety of the bear and the individuals and livestock affected. It is well established that when a depredating grizzly bear is removed or relocated, the death loss due to depredations decreases.

15. Plaintiffs in the above-captioned consolidated cases seek, *inter alia*, vacatur of the final rule. If the final rule were vacated, I would continue to suffer from the increasing and unsustainable effects of the rebounded GYE grizzly bear population. Depredations and other economic losses will likely continue to rise, without any real recourse to address the safety and economic concerns raised by ranchers caused by GYE grizzly bear activity. An argument often made is that grizzly bear depredation loss is an insignificant part of the depredation losses in Wyoming. The truth is that these losses fall onto a relatively small number of

operators, like myself and other WSGA and UGRCA members, and are a very significant loss to them.

16. If the rule were upheld, myself and other ranchers in the Upper Green River Cattle Allotment will be able to better and more safely operate. Additionally, transferring management of the delisted GYE grizzly bear to the WGFD would provide localized, specific conservation and management of the grizzly bear and would allow myself and other ranchers more localized recourse for addressing the safety and economic concerns resulting from the rebounded GYE grizzly bear population.

17. I am aware that the State of Wyoming, the State of Idaho, and Safari Club International and National Rifle Association of America have intervened in the above-captioned actions. I am also aware the State of Montana has moved for intervention in the above-captioned actions.. My interests, like those of the other affected ranchers working in the GYE area, are not adequately represented by those parties. The states must represent the general will of all their citizens, and do not have a specific interest in protecting the interests of affected ranchers in the GYE area. Additionally, my interest in representing and protecting the interests of ranchers in the GYE area is not adequately represented by Safari Club International and National Rifle Association of America, who are primarily

concerned with the ability to hunt the delisted GYE grizzly bear and the effects of such hunting on other game species.

DATED this 24 day of February 2018.

Charles C. Price

Charles C. Price

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Defendants,)	9:17-cv-00119-DLC,
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and)	
)	DECLARATION OF W&M
WYOMING FARM BUREAU)	THOMAN RANCHES, LLC
FEDERATION, WYOMING STOCK)	
GROWERS ASSOCIATION, CHARLES)	
PRICE, and W&M THOMAN)	
RANCHES, LLC,)	
Applicants for Intervention.)	

I, Mary E. Thoman, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct to the best of my knowledge:

1. I am the authorized agent of W&M Thoman Ranches, LLC (“Thoman Ranches”). I am over 18 years of age, am competent to testify, and have personal and institutional knowledge of the matters stated herein.

2. Thoman Ranches has authorized me to file this declaration on its behalf.

3. Thoman Ranches is a member of the Wyoming Farm Bureau Federation (“WyFB”). My grandmother, who was instrumental in creating Thoman Ranches, was also a founding member of WyFB.

4. Thoman Ranches is currently managed by my mother, Mary A. ‘Mickey’ Thoman. My grandparents, who emigrated from Austria around 1900, homesteaded on land along the Hams Fork River, north of Kemmerer, Wyoming—property that Thoman Ranches still uses to this day.

5. In the early 1950’s, Thoman Ranches purchased the property where the ranch is currently located and operates. Four generations of my family have lived and been raised on Thoman Ranches’ land.

6. Thoman Ranches predominantly raises sheep—the Thoman family has been doing so since the early 1900s. Myself, my two sisters, Laurie Thoman

and Kristy Wardell, and our 88-year old mother, Mary A. ‘Mickey’ Thoman, conduct the day-to-day, on-the-ground operations, and have been doing so for over 50 years.

7. Thoman Ranches currently grazes sheep within the Greater Yellowstone Ecosystem (“GYE”) area and has done so for more than a century.

8. Thoman Ranches, and its employees, regularly come into contact with grizzly bears, or the effects of the grizzly bear population within the GYE area. Sometimes, Thoman Ranches’ employees come into direct contact with grizzly bears while managing and monitoring sheep flocks. Other times, Thoman Ranches’ employees observe the direct effects of the grizzly bear population on Thoman Ranches’ livestock and property.

9. Dating back to 1977, Thoman Ranches grazed and bed sheep on four allotments in the Upper Green River Valley in the Bridger-Teton National Forest, which is located within the GYE area. Thoman Ranches would regularly use three allotments and allow one to rest in rotation.

10. In September 2009, one of Thoman Ranches’ shepherders, Marcelo Tejada Suarez, was mauled by a female grizzly bear in the Upper Green River Valley. Mr. Suarez went to check on a barking livestock-protection dog and discovered grizzly bears amongst the sheep. The female grizzly bear charged Mr. Suarez, who tried to retreat, but was unable to. Mr. Suarez was mauled by the

grizzly bear, receiving punctures in his chest and wrist, claw wounds to his abdomen, and a seven-inch gash on the top of his head. Mr. Suarez had to be driven to a nearby hospital and then airlifted to the Eastern Idaho Regional Medical Center in Idaho Falls. Very luckily, Mr. Suarez survived and eventually recovered from his injuries.

11. Starting in 2010, Thoman Ranches was forced to start using electric fences to bed its flocks in the Upper Green River Valley due to increased predator activity and increasing livestock losses due to grizzly bear and wolf depredations. Often, when the sheepherders would go to release the sheep from their pens in the morning, they would observe grizzly bears waiting for the flocks to be let out.

12. In 2010, twelve distinct grizzly bears were observed on one of Thoman Ranches' allotments—the Rock Creek allotment. A number of the grizzly bears on that allotment were observed following the sheep flocks.

13. Thoman Ranches continued to experience increasing and unsustainable losses to its flocks because of grizzly bear depredations and other livestock loss. In 2015, Thoman Ranches lost 4 ewes and 2 lambs to confirmed grizzly bear depredations. Thoman Ranches lost a total of 47 ewes and 112 lambs by the end of the 2015 summer season, the majority of which were never located or could not be confirmed as specific predator depredations. In 2016, Thoman Ranches lost 8 ewes and 15 lambs to confirmed grizzly bear depredations.

Thoman Ranches lost a total of 73 ewes and 131 lambs by the end of the 2016 summer season, but the majority were either not located, or could not be confirmed as specific predator depredations. Confirming a grizzly depredation—meaning the depredation was investigated by a wildlife expert and concretely identified as a grizzly bear kill—can be difficult for a number of reasons, including but not limited to, being unable to locate the missing livestock or being unable to verify the loss was due specifically to a grizzly bear kill. The actual number of losses due to grizzly depredations is likely much higher than those confirmed.

14. Losses prior to implementation of the electric pens—which occurred towards the end of the 2010 grazing season—were even greater. In 2009, the year Mr. Suarez was mauled by the grizzly bear, Thoman Ranches' had 271 missing ewes and 263 missing lambs by the end of the summer season—of those, 29 ewes and 27 lambs were confirmed grizzly bear depredations. In 2010, Thoman Ranches' had 249 missing ewes and 174 missing lambs—of those, 53 ewes and 51 lambs were confirmed grizzly bear depredations.

15. In addition to the direct losses suffered to Thoman Ranches' flocks, Thoman Ranches has also suffered indirect costs due to the increased cost of attempting to protect against predator depredation, increased property damage due to grizzly bear activity in the GYE area, and the increased costs of trying to best prepare and protect Thoman Ranches' employees. Due to grizzly bear activity in

the GYE area, the Forest Service and the U.S. Fish and Wildlife Service Biologic Opinion imposed stringent operating requirements on Thoman Ranches, *i.e.* two herders had to be with each flock at all times; all dog food and food items had to be stored in heavy, 250-pound metal boxes or stored inside a small sheep camp; the herd had to be kept in electric pens, which required the purchase of 30 rolls of electric fencing (48” x 150 feet each) along with four solar fence chargers and subsequent replacement chargers and batteries; and the electric pens had to be moved on a daily basis, which required the purchase of four GPS cameras to verify the new location of the pens each day.

16. Due to the ever-increasing losses to Thoman Ranches’ flocks, the unsustainable costs of operating in the Bridger-Teton National Forest, and federal pressures through increasingly stringent rules and regulations, Thoman Ranches was forced to voluntarily relinquish its permits to the four allotments in the Bridger Teton National Forest that it held and operated on since 1977. Thoman Ranches operated on those allotments for 40 years prior to relinquishment.

17. Currently, Thoman Ranches has had no other option but to lease private and state lands to graze and bed its flocks—to fill the void left by relinquishment of the Upper Green River allotments. The leased lands are too small to run all of the flocks together, so Thoman Ranches is forced to use three

different pastures that are miles apart. A portion of these lands are still within the GYE area.

18. Thoman Ranches has and continues to support the U.S. Fish and Wildlife Services' identification of the GYE population of the grizzly bear as a distinct population segment ("DPS") and removal of the GYE grizzly bear DPS from the List of Endangered and Threatened Wildlife. Thoman Ranches has also and continues to advocate for allowing the Wyoming Game and Fish Department ("WGFD") to manage the delisted GYE grizzly bear population in Wyoming.

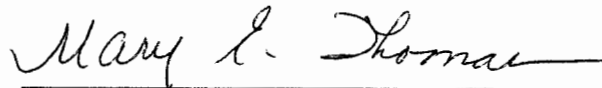
19. Plaintiffs in the above-captioned consolidated cases seek, *inter alia*, vacatur of the final rule. If the final rule were vacated, Thoman Ranches would continue to suffer from the increasing and unsustainable effects of the rebounded GYE grizzly bear population. Depredations and other economic losses will likely continue to rise, without any real recourse to address the safety and economic concerns raised by Thoman Ranches, and other ranchers, caused by GYE grizzly bear activity.

20. If the rule were upheld, Thoman Ranches will be able to better and more safely operate. Additionally, transferring management of the delisted GYE grizzly bear to the WGFD would provide localized, specific conservation and management of the grizzly bear and would allow Thoman Ranches more localized

recourse for addressing the safety and economic concerns caused by the rebounded GYE grizzly bear population.

21. Thoman Ranches is aware that the State of Wyoming, the State of Idaho, and Safari Club International and National Rifle Association of America have intervened in the above-captioned actions. Thoman Ranches is also aware the State of Montana has applied for intervention. Thoman Ranches' interests, like those of the other affected ranchers working in the GYE area, are not adequately represented by those parties. The states must represent the general will of all their citizens, and do not have a specific interest in protecting the interests of affected ranchers in the GYE area. Additionally, Thoman Ranches' interest in representing and protecting the interests of ranchers in the GYE area is not adequately represented by Safari Club International and National Rifle Association of America, who are primarily concerned with the ability to and effects of hunting the delisted GYE grizzly bear.

DATED this the 26 day of February 2018.



Mary E. Thoman
Authorized Agent
W&M Thoman Ranches, LLC