

Exhibit 7

In Support of Plaintiffs' Partial Motion for Summary Judgment
on Their Endangered Species Act Listing Claims

in

Center for Biological Diversity et al., v. Jim Kurth et al., No. 1:15-cv-00477-EGS

and

Defenders of Wildlife v. Jim Kurth et al., No. 1:16-cv-00910-EGS

Consolidated Cases

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL)
DIVERSITY, *et al.*,)
)
Plaintiffs,)
)
v.)
)
DANIEL M. ASHE, *et al.*,)
)
Federal Defendants,)
)
AMERICAN FOREST & PAPER)
ASSOCIATION, *et al.*,)
)
Defendant-Intervenors.)
_____)

Case No. 1:15-cv-00477-EGS

)
DEFENDERS OF WILDLIFE,)
)
Plaintiff,)
)
v.)
)
DANIEL M. ASHE, *et al.*,)
)
Federal Defendants.)
)
AMERICAN FOREST & PAPER)
ASSOCIATION, *et al.*,)
)
Defendant-Intervenors.)
_____)

Case No. 1:16-cv-00910-EGS
(Consolidated Case)
Honorable E.G. Sullivan

DECLARATION OF DAVID NOAH GREENWALD

I, David Noah Greenwald, hereby declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge. If called as a witness, I could and would testify competently to these facts. As to those matters which reflect an opinion, they reflect my personal opinion and judgment on the matter.

2. I am a member of and the Endangered Species Director at the Center for Biological Diversity (“the Center”), a Plaintiff in this case. I am submitting this declaration in support of Plaintiffs’ Motion for Summary Judgment.

3. The Center is a nonprofit organization committed to the preservation, protection, and restoration of native species and the ecosystems upon which they depend through science, policy, education, and environmental law. The Center has offices throughout the United States, including in Arizona, the District of Columbia, New Mexico, California, Alaska, Minnesota, Vermont, Florida, Oregon, and Washington. The Center has more than 48,500 members and over 1.1 million online supporters.

4. The Center believes that the welfare of human beings is deeply linked to nature and to the existence in our world of a vast diversity of wild animals and plants. Because diversity has intrinsic value, and because its loss impoverishes society, the Center works to secure a future for all species, great and small, hovering on the brink of extinction through science, law and creative media, with a focus on protecting the lands, waters, and climate that species need to survive. The Center strives to protect its members’ and supporters’ recreational, aesthetic, scientific and educational interests in protecting and preserving imperiled species and biological diversity for future generations through its numerous organizational programs.

5. One such program, the Center’s Endangered Species Program, which I oversee, is specifically focused on: compiling and analyzing data about species status and recovery; submitting legal petitions and preparing reports, filing lawsuits when necessary, using the leverage of our supporters’ voices and ensuring that imperiled species are federally protected; obtaining adequate amounts of critical habitat for species; advocating for sound conservation policy; watch-dogging Congress and government agencies; and using creative media to keep the

Center's members informed and engaged. The Center's Endangered Species Program has been more successful than all other U.S. conservation groups combined in achieving first-time protection (i.e., listing) under the ESA for imperiled plant and animal species.

6. To that end, the Center systematically and ambitiously uses biological data, legal expertise, and the Endangered Species Act's ("ESA") citizen petition process to obtain sweeping, legally binding new protections for imperiled animals, plants, and their habitat. The Center has achieved ESA protection for hundreds of species as a result of its groundbreaking petitions, lawsuits, policy advocacy, and outreach to media. The Center employs a full-time staff of dozens of prominent environmental lawyers and scientists who work exclusively on its campaigns to save species and the places they need to survive. Additionally, the Center disseminates scientific and educational information in its various publications, including Endangered Earth Online, a weekly e-newsletter, as well as periodic reports detailing the current threats to imperiled species and biodiversity as well as the success stories of recovered and recovering species.

7. The Center has long endeavored to obtain the listing and protection of numerous imperiled species under the ESA. Over the past 26 years, the Center has submitted more than 90 different listing petitions addressing hundreds of at-risk species to the U.S. Fish and Wildlife Service ("FWS") identifying appropriate candidates for listing and protection under the ESA. Additionally, the Center is actively involved in species and habitat protection issues throughout the United States and across the world, including protecting plant and animal species that are or will be significantly negatively affected by habitat loss and destruction.

8. The Center and its numerous members', board members', and staff's institutional, educational, recreational, and scientific interests are harmed by the FWS' new interpretation of the phrase "significant portion of its range." The Center's (and its members', board members',

and staff's) interests in observing, studying, and otherwise enjoying the northern long-eared bat as well as many other threatened and endangered species and their critical habitats, and in obtaining and disseminating educational and scientific information regarding the survival of imperiled and at-risk species have been harmed by the FWS' adoption of the new and unlawful Policy construing "significant portion of its range," and improper refusal to protect northern long-eared bats as endangered.

9. On March 8, 2011, I submitted comments on behalf of the Center objecting to the Draft Policy defining "significant portion of its range" on multiple grounds. As explained in our comments, the draft policy eviscerates the ESA's requirement to protect species that are endangered in significant portions of range by defining significant such that it is "functionally equivalent to a species being endangered throughout all of its range," and by precluding consideration of historic range in determining whether species are endangered in significant portions of range.

10. The final policy failed to cure these deficiencies and in at least one respect further undercut the conservation purposes of the Act. The Center's comments were not able to address the FWS's ultimate determination that when species were found to be threatened in all of their range, FWS would not determine whether they were endangered in significant portions of their range because that was not included in the draft. This aspect of the policy harms the Center's interest in ensuring the survival and recovery of species by precluding species endangered in significant portions of range from receiving the elevated protections provided by an endangered versus threatened listing and we would have stated this had we been given the opportunity to comment.


11. The new Policy interferes with and undercuts the Center's organizational mission of utilizing the ESA to effectuate Congress' intent to protect, for the benefit of all U.S. citizens, the Nation's heritage in fish wildlife, and plants. Additionally, the new Policy concretely injures the Center, and directly interferes with its core organizational mission, by severely weakening the ability of the Center's Endangered Species Program and other Programs to successfully petition the FWS for the listing and protection of imperiled and at-risk species by unlawfully and unreasonably narrowing the scope of potential and candidate species eligible for listing under the ESA. Thus, the FWS' new Policy interpreting the phrase "or a significant portion of its range" concretely injures the ability of the Center to pursue its core and most essential activity – petitioning the FWS for listing of imperiled species – by unlawfully limiting the scope of the criteria under which imperiled species are protected. Examples of species in which the Center and its members have a longstanding interest and that have been, or are being, directly affected by the approach embodied in the Final Policy include the pygmy owl, the Rio Grande cutthroat trout, Arctic grayling, manatee, and bi-state sage grouse.

12. As detailed above, for over two decades the Center has worked to obtain needed ESA protections for numerous imperiled species on behalf of its members, board members, and staff. Additionally, the Center's organizational interests in ensuring the ESA is properly interpreted and implemented to meet Congressional goals and curb the impending extinction crisis is severely undercut by the final SPR Policy.

13. For these reasons, the Center along with its members, board members, and staff are harmed by FWS's unlawful new interpretation of the "or in a significant portion of its range" language in the definition of "endangered" and "threatened" species.

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

Executed this 13th day of April,

A handwritten signature in cursive script that reads "David Noah Greenwald". The signature is written in black ink and includes a checkmark-like flourish at the end.

David Noah Greenwald
Portland, Oregon