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Attorney for Plaintiffs

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

FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS, Plaintiffs, vs. STATE OF MONTANA, LESLEY ROBINSON, and GREG GIANFORTE, Defendants.	CV 23-101-M-DWM **DECLARATION OF DAVID J. MATTSON**

Pursuant to 28 U.S.C. § 1746, I, David J. Mattson, declare as follows:

1. I am more than 18 years of age and competent to make this Declaration.

2. I am a scientist and retired wildlife management professional with extensive experience in grizzly bear research and conservation spanning four plus decades.

3. My educational attainments include a B.S. in Forest Resource Management, an M.S. in Plant Ecology, and a Ph.D. in Wildlife Resource Management.

4. My professional positions prior to retirement from the U.S. Geological Survey (USGS) in 2013 included Research Wildlife Biologist, Leader of the Colorado Plateau Research Station, and Acting Center Director for the Southwest Biological Science Center, all with the USGS; Western Field Director of the Massachusetts Institute of Technology-USGS Science Impact Collaborative; Visiting Scholar at the Massachusetts Institute of Technology; and Lecturer and Visiting Senior Scientist at the Yale School of Forestry & Environmental Studies.

5. I have been consulted by brown/grizzly bear managers and researchers worldwide, including from Russia, Japan, France, Spain, Greece, Italy, and, most notably, Canada. I have also given numerous public presentations on grizzly bear ecology and conservation, including talks at the Smithsonian (Washington, D.C.) and American Museum of Natural History (New York, New York).

6. I led field investigations for the Interagency Grizzly Bear Study in the Yellowstone Ecosystem during 1983-1993, prior to which I was research technician with this project for three years. During this work, I closely observed and interacted with grizzly bears on numerous occasions. I also developed and led six projects that investigated mountain lion ecology in the Southwest during 1999-2013.

7. I currently lead the Grizzly Bear Recovery Project, which is an organization devoted to producing materials that educate the public and synthesize research relevant to conservation of grizzly bears in North America.

8. I have authored more than 130 scientific articles and reports based on my professional research, many of which address the ecology and behavior of grizzly bears.

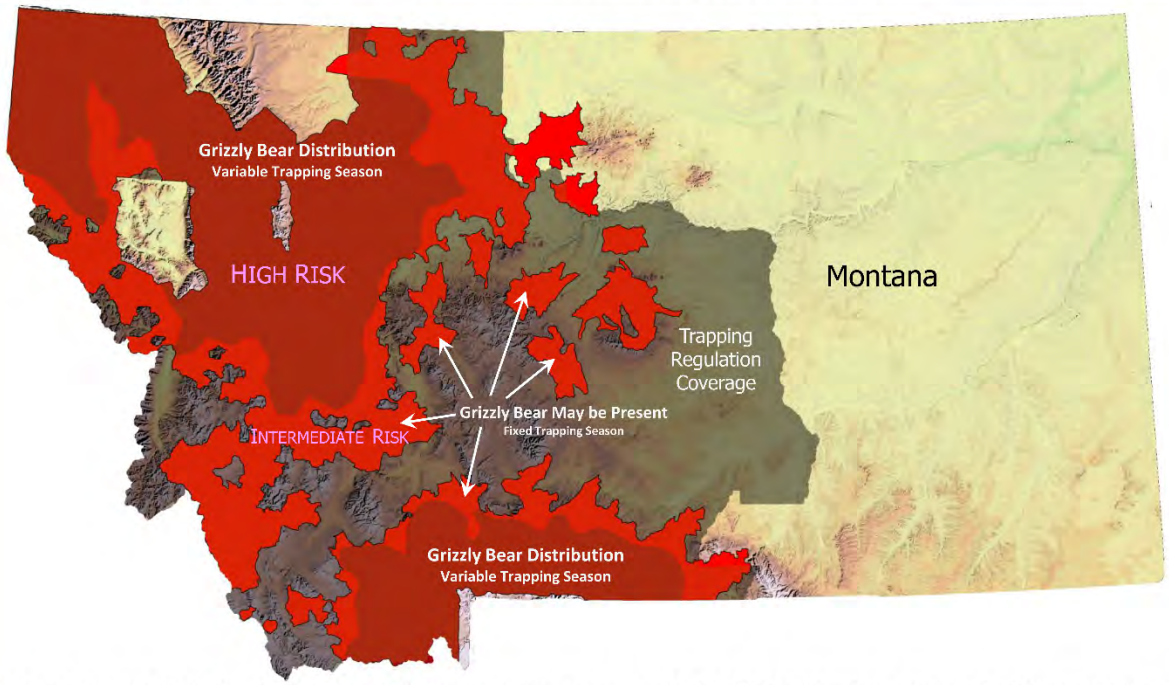
9. The current distribution of grizzly bears in Montana overlaps almost entirely with areas covered by regulations that Montana's Fish and Wildlife Commission promulgated to govern trapping of furbearers and wolves during August 2023 (See Figure 1).

10. Much of this overlap corresponds with core distributions of grizzly bears where the beginning of wolf and furbearer trapping can vary from the first Monday after Thanksgiving to December 31st. However, nearly as much area is encompassed by places where the U.S. Fish & Wildlife Service has

determined that "grizzly bears may be present." In these areas the trapping season may start the first Monday after Thanksgiving – approximately November 27th.

11. Barring early achievement of harvest quotas for wolves, trapping for wolves is set to end throughout western Montana on March 15th.

Figure 1. Trapping Regulations, Grizzly Bear Distribution, & Spatial Exposure to Risk



This map shows the distribution of grizzly bears in Montana overlain on areas covered by the 2023 Wolf-Furbearer-Trapping Regulations promulgated by Montana's Fish & Wildlife Commission. Areas colored burgundy are within core grizzly bear distribution where there is greatest risk of grizzly bears being harmed by non-target trapping. Areas colored red are where grizzly bears may be present and where non-target trapping injuries could also occur (adapted from U.S. Fish & Wildlife Service map "Species List Area for Grizzly Bears," updated July 19, 2023).

12. Depending on the ecosystem, nearly 40% of grizzly bears in Montana have historically been active outside their dens either after November 27th or before March 15th, with seasonal duration of activity typically greater for male bears (Figure 2; e.g., Haroldson et al. [2002], Kasworm et al. [2021]).

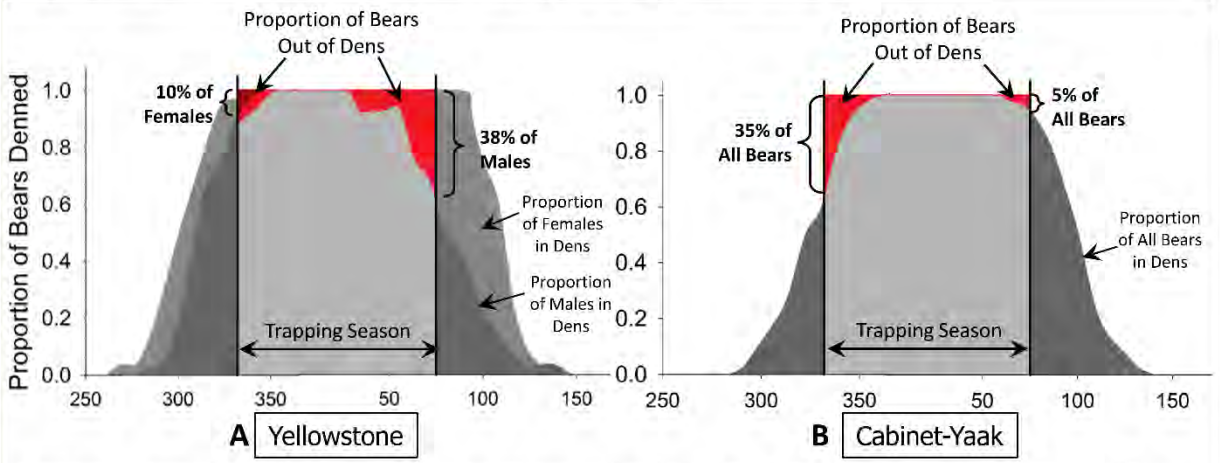
13. The temporal overlap between when grizzly bears are active in the Northern Rockies and current seasons for trapping wolves and furbearers has already increased and will likely continue to increase because of the direct and indirect effects of climate change.

14. There have been numerous anecdotal accounts of winter-active bears in the Northern Rockies, plausibly attributable to both a warming climate and

winter availability of meat from wolf kills, late-season kills of ungulates by hunters, and mild winter temperatures (e.g., Zuckerman 2015, Kearse 2019, Heinz 2022, Sherer 2021, Murdock 2023).

15. Grizzly bears in the Northern Rockies will almost certainly enter dens later and exit dens earlier as annual temperatures continue to warm and vegetal foods become available earlier and later in the year. There is ample evidence worldwide that brown and grizzly bears at lower latitudes spend less time in dens compared to bears in colder climates, with winter activity further promoted by year-round availability of anthropogenic foods and clement winter temperatures (Pigeon et al. 2016, Krofel et al. 2017, Delgado et al. 2018, Johnson et al. 2018, Fowler et al. 2019, Bojarska et al. 2019, González-Bernardo et al. 2020).

Figure 2. Historical Denning Seasons & Temporal Exposure to Risk



These graphs show the cumulative proportions of grizzly bears in dens (from 0 to 1.0; i.e., 0% to 100%) for grizzly bears in the Greater Yellowstone Ecosystem (GYE; A) at left (from Haroldson et al. 2002) and Cabinet-Yaak Ecosystem (CYE; B) at right (from Kasworm et al. 2021). The period during which wolves and fur-bearers can be trapped is delimited by solid horizontal lines in both graphs – in most areas from the first Monday after Thanksgiving until March 15th [Montana Fish, Wildlife & Parks (2023)]. Shades of gray correspond with proportions of bears in dens relative to Julian Date (e.g., 250 = September 7th and 150 = May 30th, with 0 = January 1st). Areas shaded darker gray correspond with proportions of bears *in dens before or after trapping is authorized*; areas shaded red or burgundy correspond with proportions of bears *not in dens during the period when trapping is authorized*. Denning chronology is differentiated for males and females in the GYE but pooled for bears in the CYE. Roughly 38% of male grizzly bears would be exposed to risk of non-target trapping during spring and late winter in the GYE (shaded red); approximately 10% of females would be exposed during fall and early winter (shaded burgundy). Roughly 35% of all bears would be exposed to risk of non-target trapping during fall and early winter in the CYE (shaded red). Differences in chronology between ecosystems and sexes lead to different levels of exposure to potential harm from trapping.

16. The considerable current as well as prospective future spatial and temporal overlap of trapping for furbearers and wolves in Montana with places and times that grizzly bears are also active results in widespread exposure of

bears to risks posed by non-target injuries from snares and body-hold traps set to capture other species.

17. This exposure and resulting risks to grizzly bears is magnified by well-documented interactions between wolves and bears that increase the likelihood that grizzly bears will be active in areas frequented by wolves and thus inadvertently targeted by wolf trappers.

18. Wherever ungulates such as elk, deer, and moose are available, wolves and brown/grizzly bears gravitate towards this source of high-quality meat, with grizzly bears often appropriating fresh kills from wolf packs (Hornbeck & Horejsi 1986, Servheen & Knight 1993, Smith et al. 2003, Gunther & Smith 2004, Tallian et al. 2017, Milleret et al. 2018, Ordiz et al. 2020).

19. Although grizzly bears are omnivores, meat comprises a substantial portion of bear diets in the Northern Rockies, with greatest amounts eaten by bears in the GYE and along the East Front of the Northern Continental Divide Ecosystem (NCDE) as well as by male bears in all ecosystems (Kendall 1986, Aune & Kasworm 1989, Mattson et al. 1991, McLellan & Hovey 1995, Mattson 1997, McLellan 2011, Kasworm et al. 2021).

20. Peak consumption of meat by grizzly bears occurs during spring and fall when other foods are scarce. Most consumption is by scavenging carcasses of animals that died from natural and anthropogenic causes (Mattson 1997), including unclaimed remains of animals killed by hunters during September-November and remains of kills made by wolves potentially year-around (e.g., Smith et al. 2023, Kearse 2019, Sherer 2021, Heinz 2022).

21. These dietary patterns predictably lead grizzly bears to associate meat with wolves and humans, especially during periods that potentially overlap with deployment of bait at traps set to capture wolves and furbearers (see Points 18 and 19 above).

22. Grizzly bears have an acute sense of smell, comparable to that of canids such as wolves and smaller carnivores targeted by bait-assisted trapping (Gittleman 1991; Green et al. 2012; Van Valkenburgh et al. 2011, 2014; Bird et al. 2014). Grizzly bears can consequently detect carrion from great distances, including meat used as bait, and can be readily attracted by lures such as fish oil, beaver castor, and rotted blood (Lamb et al. 2016).

23. Because meat and other animal-related scents are so alluring to bears, researchers commonly use these attractants to bait bears into culvert traps and snares – much like those used by trappers to target wolves and furbearers. Black bear hunters also legally use non-game meat and animal scents to lure bears into situations where they can be more readily killed (e.g., Idaho Fish & Game 2022, Wyoming Game & Fish Commission 2023). Grizzly bears are occasionally unintended victims.

24. Wherever baits are available, grizzly bears will predictably be attracted by and motivated to obtain them. This includes using their paws, snouts, and considerable height when erect to exploit lures and edible baits sequestered in small enclosures (or "cubbies") or elevated in a tree (e.g., Lamb et al. 2022).

25. In my professional opinion, because grizzly bears can seasonally range over areas as large as 40-80 square miles, odds that bears will detect even low densities of bait are high, especially where they are shadowing targeted species such as wolves (see Points 17-21 above) and oriented to consuming meat (see Points 19-20 above).

26. These high odds are manifest in documented instances where grizzly bears have been accidentally captured and sometimes severely injured by baited traps that were set to target wolves and furbearers (Figure 3; McKim 2017, Lamb et al. 2022). These injuries predictably included severe damage to paws and amputation of toes.

27. Grizzly bears are amongst the most dexterous of all large carnivores (Iwaniuk et al. 1999, 2000). Grizzly bears consequently use their flexuous front limbs and paws as an integral part of most foraging behaviors, including for catching larger mammals, excavating roots and rodents, exploiting insects, and manipulating limbs of shrubs to eat berries (e.g., French & French 1990; Welch et al. 1997; Mattson 1997b, Mattson 2004).

28. In my professional opinion, any loss of function in paws or limbs caused by trapping injuries has potentially severe consequences for affected bears, including abbreviated lives and increased suffering. I have also personally documented instances where severe injuries such as spiral fractures to front

limb bones resulting from attempts to escape snares have been fatal to the involved animals.

Figure 3. Non-Target Injuries from Traps (from Lamb et al. 2022)

These photos adapted from Lamb et al. (2022) are examples of grizzly bears that lost digits because of injuries from non-target capture by leg-hold and body-gripping traps set to capture other species.

29. In addition to physical injury, trapped bears also predictably experience additional harm in the form of stress and exertion associated with attempts to escape. This kind of harm has been well-documented (Cattett et al. 2003, 2008a; Powell 2005), with occasionally fatal consequences (Cattett et al. 2008b). Stress and exertion predictably mount the longer a bear is restrained, which has resulted in common use of radio-transmitters by bear researchers to signal when a snare has been sprung (e.g., Benevides et al. 2008), as well as recommendations that trapped bears be chemically immobilized and released within 1-2 hours of capture (Kaczensky et al. 2002).

30. In my professional opinion, trap-related stress and injury is guaranteed to be even greater for grizzly bears subject to non-target captures compared to those captured during research efforts. Under state regulations, trappers are only required to check wolf traps once every 48 hours (Montana Fish, Wildlife & Parks 2023). Even when a trapper detects a captured grizzly bear, he or she is unlikely to be carrying much less trained in the use of immobilization drugs and equipment. Recreational trappers will consequently need to communicate with a government agent proficient in immobilizing grizzly bears, at which point additional time will predictably transpire before the agent arrives, immobilizes the bear, and releases it.

31. The fact that Montana Fish, Wildlife & Parks had no reports of grizzly bears caught in traps in the NCDE area during 2022-2023 does not lessen the likelihood of future captures or related harm to affected bears.

32. In addition to the harm caused to inadvertently trapped grizzly bears, effects of non-target captures, demographically and to recovery of this species in the contiguous United States, will be proportionately greater in areas outside of the NCDE and GYE Recovery Zones, with repercussions for natural recovery of grizzly bears in the Bitterroot Ecosystem (BE).

33. Currently, grizzly bears outside of established Recovery Zones can only be sustained with immigration of bears from areas where females survive long enough to produce a figurative surplus of emigrants (Merrill & Mattson 2003, Johnson et al. 2004, Haroldson et al. 2006, Schwartz et al. 2006, Schwartz et al. 2010). In my professional opinion, this source-sink population dynamic has likely produced many of the gains in population distribution that promise connectivity among the NCDE, GYE, and CYE, as well as natural colonization of the BE.

34. All the areas recently colonized by grizzly bears outside of Recovery Zones are covered by 2023 regulations governing trapping of wolves and furbearers in Montana (see Points 22-30 above and Figure 1).

35. In my professional opinion, it is highly likely that grizzly bears naturally migrating into the BE and between the NCDE, GYE, and CYE will be attracted to and caught in traps and snares set by recreational trappers.

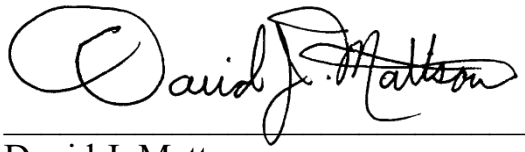
36. In my professional opinion, this will negatively affect local grizzly bear populations in areas between established grizzly bear Recovery Zones in

Montana, with resulting adverse effects on prospects for connectivity among existing populations and recovery of grizzly bears in the Contiguous United States.

37. Based on my training and experience, the current wolf and furbearer trapping regulations approved by the Montana Fish and Wildlife Commission on August 17, 2023, will result in increased incidences of accidental capture and harm to grizzly bears because these regulations increase the likelihood of traps being set in areas occupied by non-denning grizzly bears.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 22nd day of September, 2023.



David J. Mattson

Attachment 1.

References for DECLARATION OF DAVID J. MATTSON

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

FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS, Plaintiffs, vs. STATE OF MONTANA, LESLEY ROBINSON, and GREG GIANFORTE, Defendants.	CV 23-101-M-DWM **DECLARATION OF KATHERINE C. KENDALL**

Pursuant to 28 U.S.C. § 1746, I, Katherine C. Kendall, declare as follows:

1. I am more than 18 years of age and competent to make this Declaration.

2. I am a retired wildlife biologist.

3. I received a B.A. in Environmental Sciences from the University of Virginia and an M.S. in Fish and Wildlife Management from Montana State University. I have been employed by the National Park Service and Biological Discipline of the U.S. Geological Survey. I am currently a

member of the North American Bear Expert Team, Bear Specialist Group of IUCN.

4. I have authored and co-authored dozens of professional, peer-reviewed journal articles and book chapters and scientific reports on grizzly bears.

5. I have been involved in grizzly and black bear research since the 1970s including field research in Yellowstone and Glacier National Parks, the Northern Continental Divide Ecosystem Grizzly Bear Recovery Area and the Cabinet-Yaak Grizzly Bear Recovery Area. I led several large research teams investigating bear population status in Montana using baited and unbaited methods to detect and identify individual bears. As part of that research, I have studied bear behavior in response to olfactory attractants.

6. I pioneered the technique of using baited and unbaited hair snagging methods for non-invasive identification of individual bears through DNA analysis and for population estimation. The baited hair traps use scents to attract bears which deposit hair samples on strands of barbed wire which are collected for laboratory analysis.

7. In a peer-reviewed book chapter which I co-authored, we wrote: "The efficacy of various hair collection methods is governed by the biology of the target species, the physical characteristics of the hair, and the ability of the devices to collect hair. Method effectiveness in turn determines the types of analyses that can be conducted. Capture-recapture methods, for example, require that a significant proportion of the total population be captured more than once. For sparsely distributed carnivores, achieving this level of capture typically requires a very desirable attractant capable of "pulling" animals from long distances. Species that have an acute sense of smell, like bears and wolverines, can presumably be drawn from great distances to visit bait or scent stations. Thus, high capture rates can be achieved with bears (Boulanger et al. 2002, 2005 a, b) and winter-surveyed wolverines (B. Mulders, Northwest Territories Department of Resources, Wildlife, and Economic Development, pers. comm.) using widely spaced detection stations." This is an excerpt from Kendall, K.C**.** and K.S. McKelvey. 2008. Hair Collection. *Chapter in* Noninvasive survey methods for North American Carnivores. Island Press, Washington, DC., USA.

8. From extensive professional experience, I know that grizzly bears have an extraordinary sense of smell and can be attracted to scents from very long distances, including from animal carcasses or parts. Grizzly bears have large home ranges and make wide-ranging movements within that range. Capture-recapture methods, for example, require that a significant proportion of the total population be captured more than once. Scented and baited traps set for wolf, coyote, and furbearers are likely to attract grizzly bears from long distances. In those situations, grizzly bears can be highly vulnerable to being caught in traps and suffer injuries to extremities or even be killed.

9. During the fall pre-denning period, grizzly bears they enter hyperphagia, a period of intense feeding to accumulate fat reserves to survive hibernation. Grizzly bears in hyperphagia are very vulnerable to being attracted to and caught in baited and scented traps.

10. With our changing climate, grizzly bears may enter dens later and emerge earlier. It is not uncommon for grizzly bears to delay denning to feed on gut piles and unrecovered animals following hunting seasons and a few remain out into January. These bears are vulnerable to being attracted to and caught in baited and scented traps. Some grizzly bears emerge from the den as early as late February when they are very hungry and will be attracted to traps set for wolves, coyotes, and other furbearers.

11. Based upon my research, I am aware that grizzly bear distribution within Montana has increased significantly in recent decades. Grizzly bears may be encountered in all of Montana west of Billings according to the Montana Fish, Wildlife & Parks. These areas have been identified by the U.S. Fish & Wildlife Service (2023) as occupied grizzly bear habitat or where grizzlies may be present.

12. In my professional opinion, it is highly likely that grizzly bears living in and near Grizzly Bear Recovery Areas will be attracted to, and caught in, traps set by recreational trappers.

13. Based on my training and experience, the current wolf and furbearer trapping regulations approved by the Montana Fish and Wildlife Commission on August 17, 2023, will result in increased incidences of accidental capture and harm to grizzly bears because these regulations

increase the likelihood of traps being set in areas occupied by non-denning grizzly bears.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 22nd day of September, 2023.

K C Kendall

Katherine C. Kendall

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IN THE UNITED STATES DISTRICT COURT
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FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS, Plaintiffs, vs. STATE OF MONTANA, LESLEY ROBINSON, and GREG GIANFORTE, Defendants.	CV 23-101-M-DWM **DECLARATION OF CARTER NIEMEYER**

Pursuant to 28 USC §1746, I, Carter Niemeyer, hereby declare:

1. I hold a bachelor's degree and a master's degree in Wildlife Biology from Iowa State University. Since 1973, I have been trapping wild animals both privately and professionally. For more than 35 years, I was employed by the federal government as a Wildlife Biologist. For 25 of those 35 years, I worked as a trapper and supervised trapping activities for the Animal Damage Control ("ADC") program of Wildlife

Services, an agency within the U.S. Department of Agriculture.

2. Currently, I am a consultant and private contractor with state fish and game agencies, Indian Tribes, and non-governmental organizations. I provide mentoring, instructional training, and advice in the capture, handling, radio collaring, and tagging of gray wolves. My work with wolves includes the use of foothold (or leghold) traps, methods of setting traps, immobilization techniques, and monitoring techniques.

3. I have dedicated my entire adult life and professional career to the trapping and capture of wild animals. I am intimately familiar with the designs and functions of a variety of foothold (or leghold) traps and neck and foot snares. I have assembled, disassembled, and modified thousands of foothold traps and neck and foot snares. I have assembled both neck and foot snares from cable and other components (keepers, locks, swivels, ferrules). I have used snare traps (Belisle) in France. I am skilled in the use of foothold traps and foot snares. I have worked with professional trappers in the United States and Canada who were experts in the use of neck snares.

4. I have trapped or snared thousands of animals for fur, control, and research purposes, including most species of smaller mammals, furbearers, and large predators. I have trapped or snared wolves, grizzly bears, black bears, bobcats, coyotes, foxes, muskrats, beavers, mink, raccoons, badgers, and opossums. I have used different sizes and types of traps. I have used wolf traps to catch gray wolves. I have used foot snares to trap grizzly bears and black bears. I have trapped, snared, or shot from the air

animals in Idaho, Iowa, Montana, and Washington. I have helicopter-darted three wolves and further trapped one wolf in New Mexico for radio collaring and release.

5. I have observed, skinned, processed, and/or necropsied roughly 6,000 wolves, coyotes, bobcats, and foxes for pelt and skull salvage; for the fur market; and for state, federal, and tribal agencies. These animals were caught in foothold traps, neck or foot snares, conibear traps, or shot via aerial gunning. These experiences have made me acutely aware of the lethal and non- lethal effects that traps and snares can deliver. I have observed the often-significant physical effects of different types of traps and snares on animals when I have skinned them for pelt salvage. I have performed necropsies to examine animals after they were killed in traps and snares.

6. My opinions come from my use of traps and snares and my understanding of their functions in capturing birds and animals. To formulate my opinions, I rely mostly on my own experience using traps and snares. My field experience is based on thousands of hours in the field observing birds and animals in traps and snares, the behavioral responses of trapped or snared birds and animals, and the wounds inflicted on live and dead animals. I have spent thousands of hours on trap lines, and I have accompanied other trappers, which has exposed me to a variety of trapping scenarios. In addition to my direct experiences, I have spent a considerable amount of time reading and studying trapping and snaring techniques used by others in books, magazines, and videos. I have improved and modified my skills as a trapper by

studying the techniques of others. I have also reported my own trapping experiences in various publications and presentations. I am one of the individuals that the U.S. Fish and Wildlife Service asked to review and provide input on proposed measures under consideration to help reduce the risk of incidental take of lynx from trapping.

7. I am familiar with wolf-trapping laws and regulations in Montana. I am reasonably certain that these wolf-trapping laws and rules will cause the accidental capture of grizzly bears in wolf traps in Montana.

8. The Montana trapping requirements are not specific, restrictive, or protective enough to prevent the capture of grizzly bears in traps and snares set for wolves. Moreover, Montana recently expanded its regulations to cover a more extensive area of grizzly bear habitat during the non-denning seasons.

Wolf Foothold Traps

9. The State of Montana allows licensed trappers to use foothold traps where wolf trapping is allowed in Montana beginning as early as November 27 and extending through March 15. Regulations approved on August 17, 2023, by the Montana Fish & Wildlife Commission significantly expand the area where wolf trapping is allowed during the non-denning seasons for grizzly bears.

10. Foothold traps are restraining devices used to capture birds and animals for research, to control problem species, and to harvest furs. Although foothold traps come in a variety of designs from different manufacturers, they function in similar

ways. A foothold trap functions when someone compresses either one or two spring-steel springs downward until the trap jaws rest over the springs. The dog of the trap is placed over one of the jaws and placed in a notch on the pan. The upward pressure of the springs on the jaws is transferred to the dog, which holds the trap jaws open. At this point, the trap is in a "set" position. Foothold traps that function with one or two long spring-steel springs are referred to as "longspring" traps. Some foothold traps have additional coil springs built into the framework that create torsion on the spring-steel springs and are known as "coilspring" traps. When a foothold trap is set with the two jaws open, the pan must be pushed downward (by the weight of a bird or animal's foot) to trigger the trap. That is why some people call it a foothold trap. These traps seldom hold an animal by the leg but, rather, hold the animal by the paw or toes. A leg catch is usually the result of a large trap catching a small animal.

11. The State of Montana permits recreational wolf trappers to use foothold traps with an inside jaw spread of up to 9 inches when targeting wolves. Foothold traps with a 9-inch jaw spread are large enough to capture grizzly bears and all furbearers. Due to the massive size and weight of these traps, they can cause toe fractures and toe amputations in grizzly bears. Additionally, traps with a jaw spread of 9 inches or less may clamp bears just by their toes, a situation that may result in toe amputations when grizzly bears fight to free themselves.

12. In Montana, a minimum trap pan tension of 10 pounds is required for traps

set for wolves. Two swivels, including a center swivel on the base of the trap are required for all ground set foothold traps. The swivel can be attached directly to the base plate at the center, attached to a D-ring centered on the base plate, or can be included in the chain at a point no more than five normal chain links from a centered D-ring or base plate attachment at the center.

13. I am aware of numerous instances of grizzly bears being caught in traps set for wolves or coyotes in Montana. These are: a two-year-old female grizzly bear caught in wolf trap in 1988, South Fork Milk River, Browning; an adult female grizzly bear caught in a Newhouse 14 wolf trap, Dutch Creek, Glacier National Park in 1995; in 1994-95 an adult female grizzly bear caught in a Newhouse 14 wolf trap. This grizzly was killed by another grizzly bear while caught; an adult male grizzly bear missing an entire front foot and wrist caught in presumed wolf trap at Glen Lake in 1998; a male grizzly bear caught in a wolf trap at Reeder Creek/Tom Miner Basin in 2007; a female grizzly cub of the year caught in coyote Trap #3 at Edna Creek/Fortine Creek in 2010; an adult male grizzly caught in a wolf trap at Pistol Creek, Flathead Indian Reservation; grizzly bear caught in wolf trap at Bear Creek, Cameron, Montana in 2012; a grizzly bear caught in a wolf trap at Kleinschmidt Flat in 2012; a yearling male grizzly bear caught in coyote trap at Thirsty Lake in 2013; a cub of the year female grizzly caught in coyote trap at Birch Creek in 2013; subadult male grizzly bear caught in wolf trap in South Fork Dupuyer Creek in 2013; cub of the year female

bear in Swan in 2015; a yearling female grizzly bear caught in coyote trap at Lion Creek in 2018. I am also aware of other verified instances including two grizzly bears caught in wolf traps in Fish, Wildlife & Parks Region 3; according to the Montana Fish, Wildlife & Parks another 2 grizzly bears were caught in wolf traps in 2013; according to Montana Fish, Wildlife & Parks two grizzly bears were caught in coyote traps in October, 2021.

14. In addition to the 21 incidents of accidental grizzly bear capture described above, black bears have also been caught in traps in Montana. I have personally caught several black bears in my career and released them all. Because of the substantial similarities between black bears and grizzly bears, these incidents further show that wolf foothold traps set in grizzly bear territory in Montana will also capture grizzly bears.

15. Grizzly bears have also been captured in coyote traps. I know of at least 11 grizzly bears in Montana that have been caught in coyote traps. The fact that grizzly bears are caught in coyote traps supports a conclusion that grizzly bears can and will be caught in wolf traps. Coyote and wolf traps are very similar, though wolf traps are generally larger and stronger and therefore more likely to capture and injure a grizzly bear. Coyotes in Montana can be hunted and trapped year-round without a license.

Wolf foothold traps and grizzly bears

16. I am reasonably certain that recreational wolf trappers will accidentally

capture grizzly bears in foothold traps set for wolves in Montana. I base this conclusion on my intimate knowledge of wolf foothold traps, which I've gained during thousands of hours of wolf trapping. I also base this conclusion on numerous prior trapping incidents of which I am aware. As discussed below, I am aware of: (1) At least 10 confirmed accidental grizzly bear captures in foothold traps intended for wolves in Idaho, British Columbia, and Montana since 2007; (2) five additional confirmed accidental grizzly bear captures in foothold traps intended for wolves in Wyoming as of 2014; (3) one unconfirmed report of a grizzly bear capture in a wolf foothold trap in Montana in 2014; (4) five confirmed reports of grizzly bears captured in coyote traps in Montana since 2010; (5) twelve confirmed reports of black bear captures in wolf foothold traps in Idaho since 2012; and (6) three additional black bear captures in traps that Idaho presumes were wolf traps since 2012. I also count 23 black bear captures in foothold traps set in Idaho since 2012 for which Idaho is unable to identify the target species. As discussed in a later section of this declaration, I am also confident these reported incidents do not fully illustrate the danger that wolf foothold traps pose to grizzly bears. Many of these bears suffered the loss of claws and toes. Lamb et al. (2021) noted that the loss of digits may influence conflict behavior, which was common in these animals; three of four grizzly bears that were missing toes were involved in human-bear conflicts.

17. In 2012, an Idaho Fish and Game trapper, Bryan Aber, accidentally captured

a grizzly bear in a Minnesota Brand MB-750 trap intended for wolves. A Minnesota Brand MB-750 trap has an inside jaw spread of approximately 7 1/16 inches, which is significantly smaller than the maximum jaw spread of 9 inches permitted for recreational wolf trappers in Montana. Montana permits recreational wolf trappers to use traps that are much larger and more powerful than Minnesota Brand MB-750 traps. Due to their size, these wolf foothold traps are even more likely than a Minnesota Brand MB-750 trap to capture, hold, and injure a grizzly bear.

18. Bryan Aber's capture of a grizzly bear in a wolf trap is not an isolated incident. I am aware of at least 5 incidents of grizzly bear capture in foothold traps intended for wolves in British Columbia between 2010 and 2020. I am also aware of at least 6 incidents of grizzly bears being captured by recreational trappers in traps intended for wolves (1) or coyotes (5) since 2010 in Montana. Montana permits the use of wolf foothold traps with an inside jaw spread of up to 9 inches. The only major difference between a wolf foothold trap and a coyote foothold trap is that wolf traps are generally larger and more powerful than coyote traps. A wolf foothold trap is more likely than a coyote foothold trap to capture, hold, and injure a grizzly bear. Examples of grizzlies caught in coyote traps provide additional evidence that wolf traps will also capture grizzly bears. In addition to the confirmed incidents described above, I am also aware that Montana Fish, Wildlife, and Parks noted reports of a "grizzly running around with a [presumed wolf trap] on its foot" in 2014.

19. Even the most experienced trappers risk capturing a grizzly bear when deploying wolf foothold traps in grizzly bear territory. This is confirmed by the fact that Bryan Aber accidentally captured a grizzly bear in a wolf foothold trap in Idaho in 2012 and at least 8 grizzly bears have been captured by wolf traps set by wolf researchers in Montana. It is also illustrated by additional incidents involving Wildlife Services trappers—some of the most experienced trappers in the country—who have accidentally trapped five grizzly bears in Wyoming as of 2014, and two grizzly bears in wolf foothold traps in Montana since 2007. Similarly, a Montana Fish and Wildlife Services trapper, Brady Dunne, accidentally captured a grizzly bear in a wolf foothold trap in 2015.

20. On May 15, 1987, when employed as a trapper for Wildlife Services, a trapper I was supervising accidentally trapped a yearling grizzly bear in a #114 Newhouse wolf trap with a jaw spread of approximately 6 inches. The trap was anchored by a chain connected to a 17 pound bolt with spikes welded to the bolt designed to dig into the soil and brush if a wolf was caught. The bear dragged the trap for some distance before being stopped by the drag bolt. Had the grizzly bear been of larger size it may have escaped with the trap since the area was mostly wide-open range land.

21. Wolf foothold traps set in grizzly bear habitat risk capturing grizzly bears, and trapped bears pose dangers to trappers. In 2014, the Fish and Wildlife Service

examined the potential for grizzly bear capture from Wildlife Services trapping activities in Idaho and found that incidental take of grizzly bears in foothold traps was likely, including in wolf foothold traps. I agree with this assessment, and in my opinion, the same dangers identified by the Fish and Wildlife Service are magnified when it comes to recreational wolf trapping in Montana. Recreational wolf trappers are also likely to be less experienced than professional wolf trappers and are therefore likely to take fewer precautions, which leads to higher rates of non-target capture.

22. In my view, the State of Montana's rules for recreational wolf trappers do not in any way appreciably reduce the significant risk that grizzly bears will be incidentally trapped in foothold traps intended for wolves. Montana permits recreational wolf trappers to set foothold traps in grizzly bear territory during the grizzly bear non-denning season. Montana permits the use of wolf foothold traps with a 9-inch jaw spread, which are more than big enough to capture grizzly bears. Additionally, as discussed further below, the lawful use of baits and lures by recreational wolf trappers further heightens the trapping risk to grizzly bears by drawing grizzlies directly to wolf traps, where they risk capture and injury.

23. Montana allows wolf trappers to be paid bounties of $500. This incentivizes trappers to set more traps to enhance the chances of a payoff.

24. While Montana requires a mandatory wolf-trapper education course, this course is no substitute for the thousands of hours of field time required of expert

trappers. Expert wolf trappers are better equipped than most recreational wolf trappers to avoid accidental captures, and even these experienced experts are known to capture grizzly bears in wolf foothold traps. In short, I am reasonably certain that recreational wolf trappers will accidentally capture grizzly bears in foothold traps set for wolves in Montana even when complying with all applicable trapping rules.

Wolf Snares

25. The State of Montana regulations allow licensed trappers to use wolf snares on public lands beginning as early as November 27 and extending through March 15. Regulations approved on August 17, 2023, by the Montana Fish & Wildlife Commission significantly expand the area where wolf trapping is allowed during the non-denning seasons for grizzly bears.

26. Neck snares are cable devices designed to noose around an animal's neck or foot. When animals pass through a snare and gently tug on the snare loop, a cable equipped with a sliding lock mechanism gradually tightens and is designed to be unable to loosen. As the animal pulls or resists the snare, the locking mechanism will eventually tighten the snare until the animal is strangled; restrained by the foot, leg, or body; or dies. Trappers frequently use neck snares when wolf trapping because they are cheap and easy to carry in large numbers. A novice trapper can set dozens of snares in relatively little time.

27. Neck snares are usually placed on trails or in narrow, constricted corridors or

pathways where animals are forced to pass through the elevated loop created by the snare. Neck snares can quickly kill a snared animal because, as a snared animal struggles to get free, the snare becomes tighter and can either asphyxiate the animal or break its neck. However, sometimes a neck snare will effectively and quickly kill an animal for other reasons. Sometimes the locking mechanism will fail or will jam in an animal's fur. Neck snare locks can be modified to "relax" or loosen to prevent strangulation or instant death, and snare locks can be modified to break away under extreme forces (example: 350 pounds of pull tension or more). The breakaway design (shear pin, tear-away locks, and S hooks) allows large non-target species, like domestic livestock, deer, elk, and moose to escape snares in most instances.

28. Neck snares are non-selective and indiscriminate by design and will capture, hold, or kill non-target or unintended species. Grizzly bear size varies depending on age and sex. Smaller bears may not be able to break a neck snare set for wolves. There are examples of grizzly bears observed with snares around their necks. The way snares are normally set—on narrow trails and corridors—makes them capable of ensnaring almost any animal that steps into or through them.

29. Certain devices may be used to reduce the danger of harm to non-target animals once caught in a snare, but such devices do not prevent or minimize the danger that non-target animals will be caught in the first place. In particular, snares may be fitted with a loop stop, which is designed to stop a struggling animal from

pulling a snare loop tighter than a prescribed circumference. Loop stops protect against strangulation of animals smaller than the target species but not animals larger than the target species. Snares may also be fitted with breakaway devices, which may enable animals larger than the target species to activate a mechanism to break the snare and ultimately escape. In Montana, snares are a lawful method of trapping during the wolf trapping season. Snaring is permitted on public and private lands consistent with trapping season dates, except that snaring is not allowed on public lands within the Lynx Protection Zones. Snares must be equipped with a loop stop that will close to a loop no smaller than 2.5 inches in diameter (stop placed at no less than 8 inches from end of loop). Snares must have a breakaway device rated at 1,000 lbs. or less installed on the loop end. Snares must be placed such that the bottom of the snare loop is at least 18 inches above the surface. Power-assisted (e.g., spring-loaded) snare locks are prohibited on wolf snares on public lands.

Wolf snares and grizzly bears

30. I am reasonably certain that recreational wolf trappers will accidentally capture grizzly bears in snares set for wolves in Montana. I base this conclusion on my knowledge of wolf snares, which are often set with loop sizes and at heights that place grizzly bears in danger. I also base this conclusion on numerous prior snaring incidents of which I am aware.

31. In 2020, two grizzly bears were killed in northern Idaho in incidents involving wolf snares. One of these grizzly bears was killed directly by two snares, one around its neck and the other around its leg. The second grizzly bear was shot by hunters, who thought it was a black bear, and it was found to have a wolf snare around its neck.

32. The Fish and Wildlife Service has also noted an additional instance in which a Wildlife Services trapper accidentally captured a grizzly bear in a wolf snare in Wyoming. I am further aware of reports of a grizzly bear killed in a wolf snare in Alberta in 2011, and seven incidents in Idaho since 2012 in which black bears were accidentally caught in snares.

33. Montana has taken virtually no precautions to protect grizzly bears from the dangers of recreational wolf snaring. Also, loop stops and breakaway devices do not minimize the likelihood of a grizzly bear being captured in a wolf snare in the first place. Instead, a loop stop is intended to limit the potential for strangulation of animals smaller than the target species by placing a limit on how small the snare may tighten around a captured animal's neck (thus, loop stops on wolf snares offer no protections to grizzly bears, which have a much larger neck circumference than wolves). A breakaway device could allow an already ensnared adult grizzly bear to break free depending on the size of the bear and the specifications of the breakaway device.

34. Grizzly bears have also been caught in snares set for coyotes including one

grizzly bear in Idaho near the Montana border that had a snare cable embedded in its neck and would have died without intervention.

35. In Montana between 2012-2017 bycatch caught in snares set for coyotes died 73% of the time.

36. Based on my knowledge of snares and a review of prior snaring incidents, I am reasonably certain that recreational wolf trappers will capture grizzly bears in wolf snares, even when complying with all applicable laws and rules.

37. Because snares are indiscriminate, I recommend that Montana prohibit the use of snares in grizzly bear habitat during the non-denning season, which, with climate change, is now the months of January and February.

Use of Baits and Scented Lures

38. The use of baits and attractants during wolf trapping activities further heightens the risks that grizzly bears will be drawn directly to wolf traps and snares. The State of Montana permits wolf trappers to place traps 30 feet from visible bait. No such limitation is placed on the use of scented lures, which may be placed directly next to wolf traps and snares. The prohibition on trapping within 30 feet of visible bait is intended to prevent capture of raptors. It will not prevent capture of grizzly bears. Trappers' use of bait involves placing the bait—often a carcass—in an area and then surrounding the area with multiple snares located along trails or openings leading to the bait. When terrestrial animals are drawn to the bait, they are captured in the snares.

39. This illustrates the fundamental danger of trapping wolves in grizzly bear habitat. Trappers almost always use bait or scented lures (such as urine, anal glands, or ground up meat) to attract prey to their traps or snares. Any bait or lure that will attract a wolf will also attract grizzly bears, which are omnivores and have an acute sense of smell. The only time a trap or snare is set without bait or a lure is a trail set, which is a trap set on a game trail. This form of trapping is perhaps the most indiscriminate of all. It is designed to capture anything that uses the game trail.

Unreported Captures

40. I am confident that the reported incidents of accidental grizzly bear capture in traps and snares set for wolves do not show the full scope of the danger to grizzly bears from wolf foothold traps. Grizzly bears are fully capable of tearing wolf foothold traps and snares from their anchors and walking away with the trap or snare still attached, like in the 2020 incident where a grizzly bear shot and killed by a hunter was found with a snare around its neck. A missing trap or snare would likely go unreported.

41. Based on my conversations with various members of the trapping community, many trappers will not report incidental captures out of fear that these reports will result in increased regulation of trapping activities. To illustrate this point, neither of the 2020 grizzly bear snaring incidents in north Idaho were reported by the

trapper who set the snares but were instead reported by a mushroom picker and a hunter, respectively.

42. Based on the above, including decades of engagement with the trapping community, I believe that many incidental captures go unreported and that many more grizzly bears are captured in Montana than are reported to Montana Fish, Wildlife & Parks.

Traps and snares harm captured animals

43. Traps and snares of any kind are designed to capture, hold, and sometimes kill animals. By their design, placement, and function, traps and snares can be immensely effective at capturing animals. But the design, placement, or function of traps or snares controls whether they are discriminate, or indiscriminate, in terms of the animals that are trapped or snared. Generally, foothold traps are designed to catch specific-sized animals, but depending on the size of the trap, non-target captures remain a major risk. Various species of animals are at risk for incidental capture from traps and snares.

44. Grizzly bears caught in foothold traps frequently sustain foot injuries and toe amputations.

45. Injuries caused by foothold traps and neck snares can vary from rapid mortality to injuries that kill or impair the animal after release, as well as lacerations and blunt force trauma. Traps and snares by their very nature and function cause

compression or constriction injuries that can damage tissue, restrict vascular flow, and can have harmful effects beyond the extremity that is actually constricted. The physiological effects of stress, trauma, desperation, and shock can also cause death after release. Toxins can be released into the blood system after traps and snares are removed, resulting in organ damage and death.

46. Other injuries from traps and snares include bone fractures, sprains, dislocations, tooth and gum damage from biting the traps and snares, hypothermia or hyperthermia, and dehydration. Bone fractures to the phalanges and legs can be debilitating and result in death.

47. Oftentimes these injuries are discovered only if the grizzly bear is subsequently trapped for research or management. There are several reasons grizzly bear mortalities from traps would not be detected, including scavengers or predators consuming carcasses, animals dying in concealed places, carcasses decomposing quickly, radio transmitters malfunctioning, or animals fitted with radio transmitters emigrating from the study area.

48. Montana trapping regulations encourage trappers to use secure methods of attaching traps to hold the largest species occurring in the area in the case of an incidental capture. This means grizzly bears may be captured and held, causing injury and possible death. Since Montana only requires that wolf traps be checked every 48 hours, this elevates the potential of death to any held grizzly bear.

49. Animals that are trapped or snared and then released cannot be presumed to be unharmed. As a trapper, I have experienced undesirable and harmful outcomes when using traps and snares due to conditions and situations beyond my control. There can be a high degree of risk to wild animals when using traps and snares. I have skinned hundreds of animals, and performed necropsies on others, to examine how being caught in a trap or snare can affect an animal. I know that well-placed traps or snares can kill some animals and cause extensive injury, pain, and suffering when they fail to function. I have found significant impacts on animals from trapping or snaring, including the loss of digits in paws; neck snare injuries such as "waterhead" injuries, meaning significant edema; and neck snare injuries such as snares cutting through flesh, which causes bleeding and leads to eventual death of the animal.

50. Trapped or snared and subsequently released animals must be monitored to determine whether and how they were affected by being trapped or snared. The most useful way to determine whether an animal that has been trapped or snared was affected by the trapping or snaring is to collar it with a radio collar and monitor it to determine the extent of its injuries.

Frequently checking traps helps reduce the severity of trapping/snaring injuries

51. Montana currently requires wolf trappers to check their traps every 48 hours. Best practices dictate that traps should be checked at least every 24 hours to minimize injuries and mortality to grizzly bears. A trapped grizzly bear must be released within

24 hours or there is a high risk of irreparable harm and injury from prolonged restraint, constriction, stress and dehydration leading to death.

52. One of the most important factors in determining the extent to which a trapped or snared animal is injured is the amount of time it spends in a trap or snare. Skin, blood, and nerve tissue can be damaged the longer an animal is in a trap or snare. Another important factor is ambient temperature. When temperatures are below freezing, traps and snares are more likely to cause severe and irreparable harm to skin, bone, and vascular and nerve tissue at and below the constriction caused by a trap or snare. Upon release, the loss of function in an animal's extremities will limit its ability to hunt, travel, and escape predation (such as the ability to escape by climbing a tree). An animal could also simply freeze to death. For these reasons, in my experience, researchers work hard to limit the time a bird or animal is restrained in a trap; researchers use frequent trap/snare checks or electronic monitors to minimize injury. When I trap, I check my traps at least once a day, usually first thing in the morning.

Summary

53. Under Montana's regulations approved on August 17, 2023, I am reasonably certain that recreational wolf trappers will accidentally capture grizzly bears in traps and snares set for wolves in Montana, even when fully complying with all applicable laws and rules. The only way to appreciably eliminate the risk of trapping grizzly bears is to institute protective safeguards in areas where grizzly bears may be present.

54. Traps and snares should only be allowed during the non-denning season for grizzly bears. Continued trapping when grizzly bears are active in Montana is reasonably certain to continue to result in the non-target capture of and harm to grizzly bears.

55. Trappers should not be allowed to use snares where grizzly bears may be present. According to Montana Fish, Wildlife & Parks, grizzly bears may be present in all of Montana west of Billings.

56. Trappers should be required to check their traps at least once per day, every day.

Under penalty of perjury, I declare the foregoing is true and accurate.

Dated September 11, 2023.

Carter Niemeyer

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

FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS, Plaintiffs, vs. STATE OF MONTANA, LESLEY ROBINSON, and GREG GIANFORTE, Defendants.	CV 23-101-M-DWM **DECLARATION OF DIANE K. BOYD**

Pursuant to 28 U.S.C. § 1746, I, Diane K. Boyd, declare as follows:

1. I am more than 18 years of age and competent to make this Declaration.

2. I am a retired wildlife biologist.

3. I received a B.S. in Wildlife Management from the University of Minnesota in 1977, an M.S. in Wildlife Biology from the University of Montana in 1982 and a PhD in Fish and Wildlife Biology from the University of Montana in 1997.

4. I have been a professional wolf biologist for forty-five years and have conducted field research, published numerous peer-reviewed scientific papers and have been employed by the University of Montana, U.S. Fish and Wildlife Service, and Montana Department of Fish, Wildlife and Parks. My professional responsibilities included trapping and radio-collaring wolves to learn about wolf ecology, recolonization dispersal, habitat use, prey selection, behavior, morphology, genetic relationships, and the social dimensions of wolf-human conflict resolution.

5. During the course of my work as a wolf researcher, I have personal knowledge of harm to grizzly bears caused by traps.

6. In the early 1990s I caught a grizzly bear in a leghold trap set for wolves in Glacier National Park. It was tranquilized and released unharmed.

7. I also have personal knowledge of other grizzly bears caught in traps, including one female grizzly bear that was killed by a large male grizzly while the female was restrained in a leghold trap in Glacier National Park.

8. In 2019 I assembled a spread sheet based on information provided to me by bear managers at a bear management meeting which documents 15 incidents of grizzly bears being caught in wolf and coyote traps in Montana between 1988-2018. These are:

9. 1988. South Fork Milk River, Browning. Two-year-old female grizzly bear caught in wolf trap.

10. 1995. Dutch Creek, Glacier National Park. Adult female grizzly bear, Newhouse 14 Wolf Trap. Drag.

11. 1994-5, Spring. Glacier National Park. Adult female grizzly bear. Newhouse 14 Wolf Trap. Drag. This grizzly bear was killed by a male grizzly bear while caught.

12. 1998. Glen Lake, Adult male grizzly bear. Presumed wolf trap.

13. 2010. Edna Creek/Fortine Creek. Cub of year female grizzly bear. Coyote Trap #3. Staked.

14. 2007. Reeder Creek/Tom Miner Basin. Male grizzly bear. Wolf trap. Drag.

15. 2012. Pistol Creek, Flathead Indian Reservation. Adult male grizzly bear. Wolf Trap. Two anchors.

16. 2012. Bear Creek, Cameron, MT. Grizzly bear. Wolf trap. Drag.

17. 2012. Kleinschmidt Flat. Grizzly bear. Wolf trap. Drag.

18. 2013. Thirsty Lake. Yearling male grizzly bear. Coyote trap. Staked.

19. 2013. Birch Creek. Cub of the year female grizzly bear. Coyote trap, Bridger coil spring. Staked.

20. 2013. South Fork Dupuyer Creek. Subadult male grizzly bear. Wolf trap, MB coil spring.

21. 2015. Swan. Cub of the year female grizzly bear. Drag.

22. 2014. Sunday Creek. Grizzly bear. Presumed wolf trap.

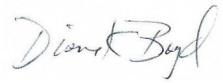
23. 2018. Lion Creek. Yearling female grizzly bear. Coyote trap anchored to a tree.

24. It is my professional opinion based on my experience that grizzly bears are vulnerable to being attracted to and being caught in traps set for wolves and coyotes.

25. Based on my training and experience, the current wolf and furbearer trapping regulations approved by the Montana Fish and Wildlife Commission on August 17, 2023, will likely result in increased incidences of accidental capture and harm to grizzly bears because these regulations increase the likelihood of traps being set in areas occupied by non-denning grizzly bears.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 5th day of September, 2023.



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

FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS, Plaintiffs, vs. STATE OF MONTANA, Defendant.	**DECLARATION OF BRIAN L. HOREJSI**

DECLARATION OF BRIAN L. HOREJSI

Pursuant to 28 U.S.C. § 1746, I, Brian L. Horejsi, declare as follows:

1. I am more than 18 years of age and competent to make this Declaration.

2. I am a retired wildlife biologist.

3. I received a B.S. in Forestry from the University of Montana and a Ph.D in the Behavioral Ecology of Large Mammals from the University of Calgary. I have worked extensively from 1976-present with grizzly bears and

conservation efforts in western Canada (Alberta, British Columbia, Yukon) and Idaho and Washington as an independent scientist.

4. I have field research experience with grizzly bears including trapping, radio-tracking and monitoring.

5. I have authored a number of professional articles and scientific reports on grizzly bear habitat use and mortality risk.

6. From my professional experience, and the findings of a long line of reputable bear researchers, I know that grizzly bears possess a powerful sense of smell and can be attracted to scents from very long distances including those of dead animals and animal parts. It has been said that bears "smell their way through life." Due to their large home ranges and their wide-ranging movements, scented and baited traps set for wolf, coyote and other furbearers will attract grizzly bears from long distances; they will investigate these attractants. In those situations, grizzly bears become vulnerable to being caught in traps and injured or even killed.

7. Grizzly bears caught in traps have lost claws, toes, feet and lower limbs. These bears suffer pain and strain myopathy from being restrained even if they manage to break free. Grizzly bears with these types of injuries suffer impaired foraging ability particularly when digging for food; they surely have great difficulty excavating a secure winter den. These bears are likely to experience decreased mobility which reduces biological and genetic fitness, including survival and breeding potential. Lamb et al. (2022) report that grizzly bears maimed by traps appear to have a higher incidence of management actions from seeking human-related foods.

8. During the Fall and early Winter pre-denning period grizzly bears enter a physiological state know as hyperphagia, an often extended late summer – fall period when grizzly bears travel widely and feed intensively in order to accumulate fat reserves which are critical to survival during winter hibernation. Grizzly bears exceptional sense of smell contributes to hyperphagia but makes them highly vulnerable to attractants like baits and to being attracted to and caught in baited and scented traps.

9. Climate change is altering grizzly bear denning behavior; they are entering dens later and emerging earlier. We now have common reports of bears not

entering the den until well into winter. Some male grizzly bears delay den entry to take advantage of gut piles or unrecovered shot animals; occasionally they do not den at all. These bears are at elevated risk of being attracted to and caught in baited and scented traps.

10. Grizzly bears are also emerging from their dens earlier than historically. After months without food they are hungry and hunger drives risk taking; these bears are subject to increased risk of attraction to baits / traps set for wolves, coyotes and other furbearers.

11. I am aware that grizzly bear distribution within Montana has increased significantly in recent decades including areas between the designated Grizzly Bear Recovery Areas. According to the Montana Fish, Wildlife & Parks Grizzly bears may be encountered in all of Montana west of Billings and these areas are either occupied habitat or mapped as May Be Present by the U.S. Fish & Wildlife Service.

12. My professional opinion is that grizzly bears naturally occupying in the Bitterroot Ecosystem and grizzly bears in areas between the Grizzly Bear Recovery Areas will be subjected to elevated risk of being attracted to, and caught in, traps set by recreational trappers.

13. My academic training and field and conservation experience lead me to conclude that the current wolf and furbearer trapping regulations approved by the Montana Fish and Wildlife Commission on August 17, 2023, will result in increased incidences of accidental capture and harm to grizzly bears with unfavorable population and human-bear conflict consequences; these regulations increase the likelihood of traps being set in areas occupied by non-denning grizzly bears.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 16th day of September, 2023.

Brian L. Horejsi

Brian L. Horejsi

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FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS, Plaintiffs, vs. STATE OF MONTANA, Defendants.	**CV 23-101-M-DWM** **DECLARATION OF TIMOTHY MANLEY**

DECLARATION OF TIMOTHY MANLEY

Pursuant to 28 U.S.C. § 1746, I, Timothy Manley, declare as follows:

1. I am more than 18 years of age and competent to make this Declaration.

2. I am a retired wildlife biologist.

3. I received a B.S. in wildlife biology from Colorado State University in 1981.

4. After receiving my degree in Wildlife Biology, I worked for the State of Montana Department of Fish Wildlife and Parks on two grizzly bear research projects and as a Bear Management Specialist for a total of 37 years. My professional responsibilities included capturing grizzly bears for both research and management purposes.

5. During the course of my work as a bear management specialist I have personal knowledge of harm to individual grizzly bears caused by leghold traps.

6. After wolf trapping became legal in Montana, I captured several adult male grizzly bears that were missing several of their front claws and toes. While I don't know with certainty the cause of the missing claws and toes, it appeared that traps could have cut off the claws and toes of these bears.

7. I also captured an older female grizzly that was missing the lower part of her front leg below her elbow. The wound was healed, and I don't know with certainty what caused the injury to her leg, but it appeared her leg could have been caught in a trap.

8. I also had to drug two grizzly bear cubs of the year that had been captured in leghold traps to release them from the traps. One cub was caught by a private individual trapping for coyotes. The second was caught by a Montana Fish Wildlife & Parks wolf technician who caught the cub in a wolf trap.

9. I also had to drug and release two yearling grizzly bears that had been captured in leghold traps set for a coyote and a bobcat. The second yearling was caught in the trap in mid-December. The adult female and two other yearlings were at the site. We enlisted the assistance of Two Bear Air Rescue to push the uncaptured bears away from the site so we could safely hike to the site, drug, and release the yearling that was trapped.

10. I also tried to help track down a grizzly bear that had been caught in a leghold trap set by a USFWS wolf biologist in Glacier National Park. The bear broke the trap swivel and escaped with the leghold trap still attached to it. We tracked it with Karelian Bear Dogs to the North Fork of the Flathead River before losing the trail.

11. Myself and another bear manager captured an adult male grizzly at a residence near Glen Lake that was missing an entire front foot and wrist. It is our belief that it had probably been caught in a neck snare set by a trapper in search of bobcats or coyotes.

12. I also was sent photos by Kevin Burns of an adult male grizzly bear on the Rocky Mountain Front that is missing claws on its front foot. It appeared that the claws could have been caught in a trap.

13. Based on my training and experience, grizzly bears are attracted to leghold traps set for other species, including wolves, especially when set around baits.

14. Based on my training and experience, the current wolf and furbearer trapping regulations approved by the Montana Fish and Wildlife Commission on August 17, 2023, will result in increased incidences of accidental capture and harm to grizzly bears because these regulations increase the likelihood of traps being set in areas occupied by non-denning grizzly bears.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 5th day of September, 2023.

Timothy Manley

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

FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS, Plaintiffs, vs. STATE OF MONTANA Defendant.	CV 23-101-M-DWM **SECOND DECLARATION OF BARRIE K. GILBERT**

Pursuant to 28 USC §1746, I, Barrie K. Gilbert, hereby declare:

1. I offer this declaration to respond to assertions in the Declaration of Nathan Kluge (Dkt#19-3).

2. At ¶5 of his declaration, Mr. Kluge states regulated trapping does not cause wildlife to become threatened or endangered and is managed through scientifically-based regulations that are strictly enforced. While this may be Mr. Kluge's opinion, he offers no factual basis for the opinion.

3. The trap placement regulations Mr. Kluge cites at ¶6 will do nothing to prevent grizzly bears from being attracted to the traps and caught. Fifty feet is a meaningless distance to a grizzly bear.
4. Mr. Kluge claims that Lynx Protection Zones (LPZs) provide significant protection for grizzly bears. The ONLY thing prohibited within LPZs is the use of snares for wolf trapping. Snares targeting coyotes are allowed, as is wolf trapping with scents and meat baits and all other forms of baited traps.
5. At ¶10, the methods described in McDonald are not adequate for determining when "grizzly bears have entered their dens." For example, only 7.3% of the NCDE population is radio-collared, meaning approximately 1,051 grizzly bears are not monitored. Moreover, trappers are unlikely to report grizzly activity if they believe it would shorten the trapping season. McLellan et al. (2018) determined that just 12% of unpermitted grizzly bear kills are reported. Rather than report bycatch, trappers are most likely to shoot grizzly bears caught in their traps, which would account for the State of Montana's ignorance of any reported harms to grizzly bears caused by traps.
6. Mr. Kluge states at ¶12 that most cases of bears missing toes, feet, or limbs do not have definitive causation. However, the types of injuries observed and documented are likely to be trap-caused and unlikely to occur in the wild. Trap-caused injuries include clean breaks of bones and tissue, and slicing type

wounds from cable snares and trap anchors. Irregular shaped amputations are likely from trap-caused necrosis of tissue.

7. As part of my field research I have observed thousands of grizzly and black bears in Yellowstone, Yosemite, and Katmai National Parks and also in Canada, including numerous fights between bears for dominance and over food sources such as spawning salmon. The types of injuries observed by Manley, Dkt#6-6 ¶¶6-12 – clean breaks of bone and tissue, slicing type wounds from cables or trap jaws, amputations of toes, feet and arms – are inconsistent with the types of injuries that bears suffer in the wild. The most common source of non-fatal injuries to bears in the wild occur during fights with other bears, injuries suffered when attacking prey, and from accidental falls. Fight injuries are most often scars on the nose and face, puncture wounds, torn ears, and missing patches of fur.

8. Mr. Kluge states: "Regardless, both breakaways stand to be broken free by the average-weight grizzly bear in Montana." This is highly arbitrary as any grizzly below "average weight," including females, subadults, yearlings and cubs, would not break free. Moreover, grizzly bears vary by weight depending on their location in Montana. Grizzly bears with more of a meat influence in their diet are larger than grizzly bears with a berry influenced diet (Hilderbrand et al. 1999).

9. Mr. Kluge states at ¶16 the results of Lamb et al. (2022) are not directly relevant to Montana. However, the study area is in an international population shared by Montana and British Columbia. For example, Montana shares the same population of grizzly bears with Canada in both the NCDE and CYE. According to Wayne Kasworm, U.S. Fish & Wildlife Service, the grizzly bear killed by mistaken identity in the Moyie River drainage in Idaho that had a neck snare embedded in its neck had an ear tag that came from British Columbia. A grizzly bear in the North Fork of the Flathead in October 2023 was DNA-indentified as from British Columbia. Some of the observed injuries of grizzly bears could have occurred in Montana, as many grizzly bears have home ranges that significantly span the borders of adjacent states and provinces. Moreover, the other grizzly bear populations in Montana are distributed into Idaho and Wyoming as well.

10. Mr. Kluge states at ¶17 that trapping regulations in British Columbia are less restrictive than in Montana. In British Columbia the allowable take of wolves is 3 per person. In Montana it is 20. Montana trapping regulations allow openings on the front of cubby boxes to be up to 52 square inches while British Columbia limits openings to 3.5 inches, or 12.25 square inches.

11. Grizzly bears are highly vulnerable to losing feet and toes in body-gripping traps as demonstrated by Lamb, et al. (2023).

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of November, 2023

Barrie K. Gilbert

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FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS, Plaintiffs, vs. STATE OF MONTANA, LESLEY ROBINSON, and GREG GIANFORTE, Defendants.	CV 23-101-M-DWM **SECOND DECLARATION OF DAVID J. MATTSON**

Pursuant to 28 U.S.C. § 1746, I, David J. Mattson, declare as follows:

1. I offer this declaration to respond to assertions in the Declarations of Nathan Kluge, Ken McDonald and Cecily Costello (Dkt#19-3).

1. At ¶5 of his declaration, Mr. Kluge states regulated trapping does not cause wildlife to become threatened or endangered and is managed through scientifically-based regulations that are strictly enforced. While this may be Mr. Kluge's opinion, he offers no factual basis for the opinion. Grizzly bears, wolves and other species were systematically shot, trapped and poisoned nearly out of existence in the Lower 48 states. One of the reasons for the listing of the lynx as a threatened species was due to the risk to the species from recreational trapping, and the most recent Species Status Assessment (U.S. Fish & Wildlife Service 2023) for wolverine cites state trapping regulations as an elevated threat to the species.

2. The trap placement regulations Mr. Kluge cites at ¶6 will do nothing to prevent grizzly bears from being attracted to the traps and caught. Grizzly bears have large home ranges and can move several miles in one day. As I stated in my previous declaration, grizzly bears have an acute sense of smell effective at long distances. Fifty to one hundred fifty feet is a trifle to a grizzly bear. The setbacks were established to protect people and their pets around picnic areas, campgrounds, trailheads and fishing access sites and within public rights-of-way adjacent to roads, not for the protection of grizzly bears.

3. The methods described in McDonald at ¶¶ 6, 8, 9, 10 are arbitrary and inappropriate as a basis for instituting a "floating" season opening date. The methods are not adequate for determining when "grizzly bears have entered their

dens." The method described is dependent on radio telemetry. This is not a reliable method. The current population estimate for the NCDE is 1,136 (Costello and Roberts 2023). Of these, 85 were collared for research and management in 2022. This is just 7.3% of the NCDE population leaving approximately 1,051, or 92.7% of grizzly bears that are not monitored. Research trapping effort in the NCDE is concentrated in a couple of areas. Other areas including the South End NCDE and parts of the Rocky Mountain Front have no research trapping effort, thus there are gaps in the observation data. Without access to telemetry data, managers rely on reports from the public and their own observations. Trappers are unlikely to report grizzly activity if they believe it would shorten the trapping season. Moreover, each Fish, Wildlife & Parks Bear Manager covers thousands of km^2 and cannot site-specifically monitor all that area. Without telemetry data it comes down to an educated guess, which lacks the precision required to prevent illegal takings of pre and post-denning grizzly bears.

4. Grizzly bears in lower elevations den later and emerge earlier. For example, grizzly bears in the Yaak portion of the CYE spend an average of three weeks less per winter than grizzly bears in the Cabinet portion of the CYE (Kasworm et al. 2023). Many areas outside of the Recovery Areas are in lower elevations including the Garnet and Sapphire Mountains and the Ninemile Demographic Connectivity Area where grizzly bears are likely to have shorter denning periods. Depending on

the ecosystem, nearly 40% of grizzly bears in Montana have historically been active outside their dens either after November 27th or before March 15th, with seasonal duration of activity typically greater for male bears (*See, e.g.,* Haroldson et al. [2002], Kasworm et al. [2021]). The temporal overlap between when grizzly bears are active in the Northern Rockies and current seasons for trapping wolves and furbearers has already increased and will likely continue to increase because of the direct and indirect effects of climate change. There have been numerous accounts of winter-active bears in the Northern Rockies, plausibly attributable to both a warming climate and winter availability of meat from wolf kills, late-season kills of ungulates by hunters, and mild winter temperatures (e.g., Zuckerman 2015, Kearse 2019, Heinz 2022, Sherer 2021, Murdock 2023). While it is important to delay the start of the trapping and snaring season until at least January 1 to avoid catching grizzly bears, it is equally important to end the season by early February in low elevations and mid-February in higher elevations.

5. The area described as Occupied in 2022 is already out of date. For example, in 2023 James Jonkel, Region 2 Bear Manager for Montana Fish, Wildlife & Parks, has provided multiple reports of several different grizzly bears in and around Potomac, Bonner, Missoula and the Sapphire Mountains and Bitterroot. He has also confirmed grizzly presence in the Ninemile Demographic Connectivity Area in 2023. The fact that Montana Fish, Wildlife & Parks had no reports of grizzly

bears caught in traps in the NCDE area during 2022-2023 does not lessen the likelihood of future captures or related harm to affected bears.

6. Mr. Kluge states at ¶12 that most cases of bears missing toes, feet, or limbs do not have definitive causation. I have observed countless grizzly and black bears in Yellowstone. Based on my professional experience, the types of injuries observed by Timothy Manley (Declaration) and Mike Madel (McDonald Dkt#19-3) and as shown in Lamb et al. (2023) (clean breaks of bone and tissue, slicing type wounds from cables or trap jaws, amputations of toes, feet and arms) are inconsistent with the types of injuries that bears suffer in the wild. The most common source of non-fatal injuries to bears in the wild occur during fights with other bears, injuries suffered when attacking prey and from accidental falls. Fight injuries are most often scars on the nose and face, puncture wounds, torn ears and missing patches of fur.

7. At ¶14 Mr. Kluge states regarding breakaway devices that "Regardless, both breakaways stand to be broken free by the average-weight grizzly bear in Montana." This is highly arbitrary as any grizzly below "average weight," including females, subadults, yearlings and cubs, would not break free. Moreover, grizzly bears vary by weight depending on their location in Montana. Grizzly bears with more of a meat influence in their diet are larger than grizzly bears with a berry influenced diet (Hilderbrand et al. 1999).

8. Mr. Kluge states at ¶17 the results of Lamb et al. (2022) are not directly relevant to Montana. In my professional opinion the types of injuries to grizzly bears shown in Lamb, et al. (2022) are highly relevant to Montana. Some of the injuries incurred were the result of baited conibear body-gripping traps. In response to this risk, the Province of British Columbia tightened trapping regulations by limiting size of the opening on cubby boxes to 3.5". Montana has failed to limit this risk and allows openings on cubbies up to 52 square inches. Moreover, their study area is in an international population shared by Montana and British Columbia.

For example, Montana shares the same population of grizzly bears with Canada in both the NCDE and CYE and grizzly bears frequently move across the border as shown in the maps below.

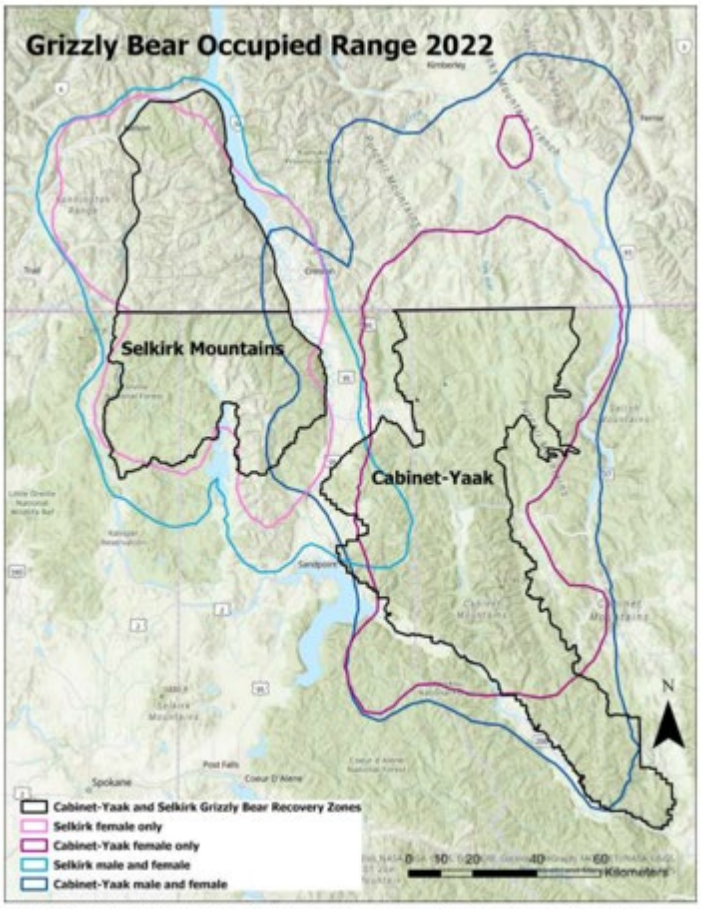

Figure 1. Occupied range of male and female grizzly bears and female grizzly bears only in the Cabinet-Yaak and Selkirk recovery areas, 2000-2022.

Figure 81. Radio locations and minimum convex (shaded) life range of male grizzly bear 722 in the Yaak River, 2011-12.

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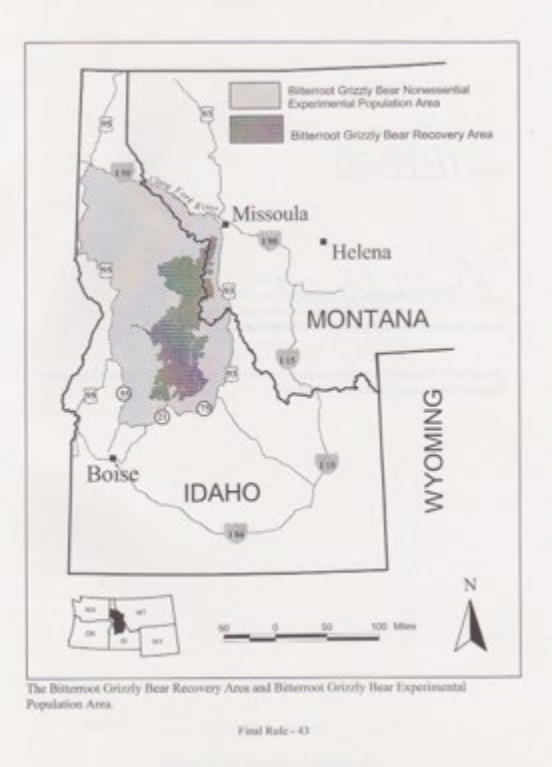
According to Wayne Kasworm, U.S. Fish & Wildlife Service, the grizzly bear killed by mistaken identity in the Moyie River drainage in Idaho that had a neck snare embedded in its neck had an ear tag that came from British Columbia. A grizzly involved in recent incidents in the North Fork of the Flathead was DNA identified to British Columbia. Moreover, all the other grizzly bear populations in Montana share the same populations with Idaho and Wyoming. Based on my own lengthy experience I know that many grizzly bears have home ranges that span the borders of Wyoming, Idaho and Montana. Some of the observed injuries of grizzly bears observed in adjacent states and provinces could have occurred in Montana, as many grizzly bears have home ranges that cross the borders.

9. Mr. Kluge at ¶18 asserts that Plaintiff's statement that traps kill and maim animals indiscriminately is not true. In my professional opinion, any loss of function in paws or limbs caused by trapping injuries has potentially severe consequences for affected bears, including abbreviated lives and increased suffering. I have also personally documented instances where severe injuries such as spiral fractures to front limb bones resulting from attempts to escape snares have been fatal to the involved animals. In my professional opinion, trap-related stress and injury is guaranteed to be even greater for grizzly bears subject to non-target captures compared to those captured during research efforts. Under state regulations, trappers are only required to check wolf traps once every 48 hours (Montana Fish,

Wildlife & Parks 2023). Even when a trapper detects a captured grizzly bear, he or she is unlikely to be carrying much less trained in the use of immobilization drugs and equipment. Recreational trappers will consequently need to communicate with a government agent proficient in immobilizing grizzly bears, at which point additional time will predictably transpire before the agent arrives, immobilizes the bear, and releases it. As a practical matter, only 12% of unpermitted grizzly bear killings are actually reported (McLellan, et al. 2018). This data shows that trappers who find grizzly bears in their traps are highly unlikely to call a government agent. Rather than immobilization drugs, trappers are most likely carrying firearms to dispatch grizzly bears in their traps so they can safely remove the traps.

10. The declaration of Ms. Costello, Dkt#19-4 at ¶13 defines the Bitterroot Ecosystem as just the Selway-Bitterroot and Frank Church Wildernesses and states there have been just two verified grizzly bear observations in that area. I and many other scientists, including with the U.S. Fish and Wildlife Service and the Craighead Wildlife-Wildlands Institute, have defined a far broader area as the Bitterroot Ecosystem. Just as the Greater Yellowstone Ecosystem is far larger than the Recovery Area, the Bitterroot Ecosystem is far larger than the Bitterroot Recovery Area. Within this larger area several additional verified grizzly bear observations have occurred, *see Alliance for the Wild Rockies v. Cooley*, ___F.Supp.3d___, 2023 WL 2522945 (D. Mont. Mar. 14, 2023). Additional

verified observations include a grizzly bear photographed in the Whitebird area, grizzly tracks verified near the Gospel Hump Wilderness, a grizzly bear killed in the Kelly Creek drainage, a grizzly verified in the North Fork of the Salmon and grizzly bear DNA recovered from a den in the Mallard- Larkins Roadless Area. This map from the 2000 Bitterroot Final Rule shows the ecosystem defined by the U.S. Fish & Wildlife Service that extends beyond the Bitterroot Recovery Area:



11. Ms. Costello at ¶14 inaccurately states that there is no evidence for a lack of grizzly bear denning in Montana. For example, James Jonkel, Region 2 Bear Manager for Montana Fish, Wildlife & Parks, has documented several instances of non-denning bears in Montana.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 3rd day of November, 2023.

David J. Mattson

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

FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS, Plaintiffs, vs. STATE OF MONTANA, Defendant.	CV 23-101-M-DWM **DECLARATION OF FRANK L. CRAIGHEAD**

Pursuant to 28 U.S.C. §1746, I, Frank L. Craighead, declare as follows:

1. I am more than 18 years of age and competent to make this Declaration.

2. I am a retired wildlife biologist.

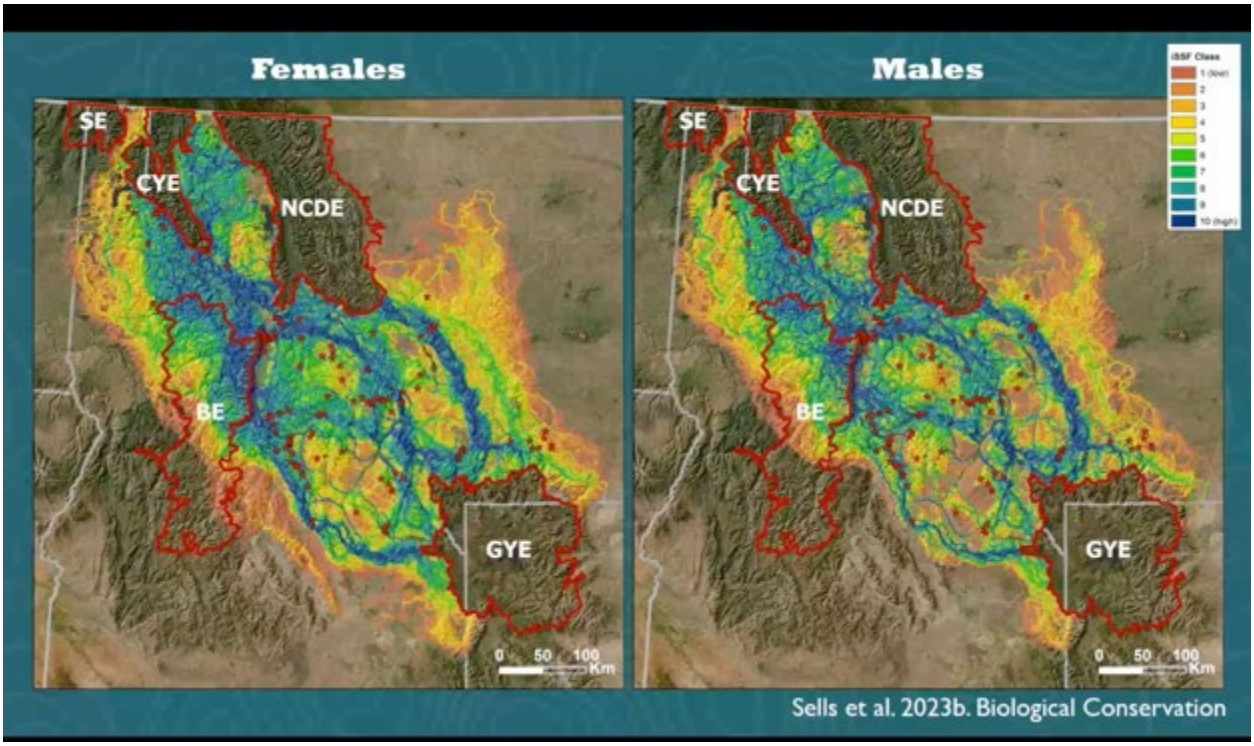
3. I received a B.A. in Biology from Carleton College in 1969, an M.S. in Wildlife Ecology from the University of Wisconsin-Madison in 1976 and a PhD. in Biological Sciences from Montana State University in 1994.

4. I have authored several professional articles and scientific reports and am the lead author of two book chapters on brown and grizzly bear metapopulations and conservation genetics. I have mapped known and probable connectivity

areas between the designated Grizzly Bear Recovery Areas for both male and female grizzly bears.

5. I have been involved in grizzly bear research since my teens including field research in Arctic Alaska, Montana, and British Columbia. My professional responsibilities have included capturing and monitoring grizzly bears for research purposes, genetic analyses, and field observation.

6. I have published reports concerning connectivity routes for female and male grizzly bears between the Grizzly Bear Recovery Areas. My results have been confirmed by Peck, et al. (2017) and Sells, et al. (2023b.). These routes are all entirely or partially within Montana and within the area in which Montana allows wolf and coyote trapping.



7. From my professional experience I know that grizzly bears possess a powerful sense of smell and can be attracted to scents from very long distances including from dead animals or animal parts. Due to their large home ranges relative to other mammals and their wide-ranging movements, scented and baited traps set for wolf, coyote and other furbearers will attract grizzly bears from long distances who will investigate such traps. In those

situations, grizzly bears can be highly vulnerable to being caught in traps and injured or even killed.

8. During the Fall pre-denning period for grizzly bears they enter hyperphagia, the period when grizzly bears often travel widely for feeding to accumulate fat reserves to survive the winter hibernation. Combined with the powerful sense of smell, grizzly bears in hyperphagia are very vulnerable to being attracted to and caught in baited and scented traps.

9. Due to climate change effects, grizzly bears are entering the den later and emerging earlier. I am aware that many grizzly bears in Montana do not enter the den until around Christmas or even later. Some male grizzly bears stay out later to take advantage of gut piles left by hunters as well as unrecovered animals and a few have not denned at all. These bears will be vulnerable to being attracted to and caught in baited and scented traps. Many grizzly bears are emerging from the den earlier than past years when they are very hungry and will be attracted to traps set for wolves, coyotes and other furbearers. The Montana trapping regulations have no process for ending the season earlier than March 15 if grizzly bears are active. The regulations need a mechanism to end the season in early February in lower elevations as bears leave their dens. About 40% of grizzly bears in Montana have historically been active outside their dens either after November 27th or before March 15th and this trend is likely to increase.

10. The methods described by Montana Fish, Wildlife & Parks are inappropriate as a basis for instituting a "floating" season opening date. The method described is primarily dependent on radio telemetry. This is not a reliable method for determining dates when bears are still safe in their dens. The current population estimate for the NCDE is 1,136 (Costello and Roberts 2023). Of this total, 85 were collared for research and management in 2022. This is just 7.3% of the NCDE population, leaving approximately 1,051, or 92.7%, of grizzly bears that are not monitored. Research trapping efforts in the NCDE is concentrated in only a couple of areas. Other areas, including the South End of the NCDE and parts of the Rocky Mountain Front have no research trapping effort, so there are gaps in the observation data. Without access to telemetry data, managers rely on reports from the public. Trappers are unlikely to report grizzly activity if they believe it would shorten the trapping season. Moreover, each Fish, Wildlife & Parks Bear Manager covers thousands of km^2 and cannot site-specifically monitor all that area.

Without telemetry data it comes down to making an educated guess, which lacks the precision required to prevent illegal takings of pre- and post-denning grizzly bears.

11. Grizzly bears in lower elevations den later and emerge earlier. For example, grizzly bears in the Yaak portion of the CYE spend an average of three weeks less per winter than grizzly bears in the Cabinet portion of the CYE (Kasworm et al. 2023). Many areas outside of the Recovery Areas are in lower elevations including the Garnet and Sapphire Mountains and the Ninemile Demographic Connectivity Area, where grizzly bears are likely to have shorter denning periods.

12. I am aware that grizzly bear distribution within Montana has increased significantly in recent decades, including areas between the designated Grizzly Bear Recovery Areas. Grizzly bears may be encountered in all of Montana west of Billings according to the Montana Fish, Wildlife & Parks and these areas are either occupied habitat or mapped as May Be Present by the U.S. Fish & Wildlife Service (see map exhibit).

13. In my professional opinion, it is highly likely that grizzly bears naturally migrating into the Bitterroot Ecosystem and grizzly bears in areas between the Grizzly Bear Recovery Areas will be attracted to, and caught in, traps set by recreational trappers. These bears are highly valuable for gene flow and genetic diversity that is vital to the viability and survival of the grizzly bear populations.

14. In my professional opinion the types of injuries to grizzly bears shown in Lamb, et al. (2022) are highly relevant to Montana. Some of the injuries incurred were the result of baited conibear body-gripping traps. In response to this risk, the Province of British Columbia tightened trapping regulations by limiting size of the opening on cubby boxes to 3.5”. Montana has failed to limit this risk and allows openings on cubbies up to 52 square inches.

15. The Lamb, et al. (2022) study area is adjacent to Montana and includes grizzly bears that are part of breeding populations that span the border of Montana and British Columbia. Grizzly bears cross invisible political boundaries. For example, many grizzly bears in the Greater Yellowstone Ecosystem have ranges that span Wyoming and Montana and Montana and Idaho. Thus, examples of trap injuries to grizzly bears in Wyoming and

Idaho is very relevant to Montana. It is possible that the injuries observed in Wyoming, Idaho and British Columbia may have occurred within Montana.

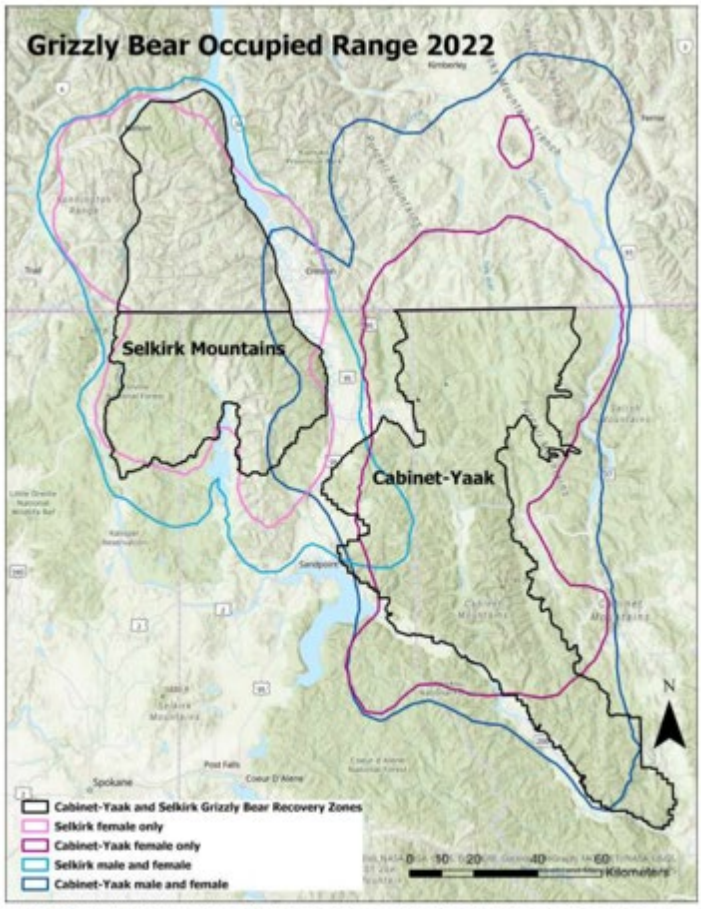


Figure 1. Occupied range of male and female grizzly bears and female grizzly bears only in the Cabinet-Yaak and Selkirk recovery areas, 2000-2022.

16. I have studied and observed grizzly bears for decades. Based on my experience, the types of injuries observed by Manley and Madel are not consistent with the types of injuries bears typically suffer in the wild, such as injuries and wear and tear on bears' bodies from fighting other bears, hunting prey, and foraging. Clean breaks, sliced off toes and feet, and missing limbs are more consistent with trap-caused injuries.

17. Based on my training and experience, the current wolf and furbearer trapping regulations approved by the Montana Fish and Wildlife Commission on August 17, 2023, will result in increased incidences of accidental capture and harm to grizzly bears because these regulations increase the likelihood of traps being set in areas occupied by non-denning grizzly bears.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 30th day of October, 2023.

_____

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

FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS, Plaintiffs, vs. STATE OF MONTANA Defendant.	**SECOND DECLARATION OF CARTER NIEMEYER**

Pursuant to 28 USC §1746, I, Carter Niemeyer, hereby declare:

1. I offer this declaration to respond to assertions in the Declaration of Nathan Kluge (Dkt#19-3).
2. At ¶5 of his declaration, Mr. Kluge claims that trapper education courses are adequate. As described in my Declaration, Dkt#6-3 at ¶24, such courses are no substitute for the required knowledge and experience.
3. At ¶5 of his declaration, Mr. Kluge states regulated trapping does not cause

wildlife to become threatened or endangered and is managed through scientifically-based regulations that are strictly enforced. While this may be Mr. Kluge's opinion, he offers no factual basis for the opinion. In my experience, trapping regulations are very rarely enforced.

4. The trap placement regulations Mr. Kluge cites at ¶6 will do nothing to prevent grizzly bears from being attracted to the traps and caught. Fifty to one hundred fifty feet is meaningless to grizzly bears, which have powerful senses of smell. These setbacks were established to protect people and their pets around picnic areas, campgrounds, trailheads, fishing access sites, and within public rights-of-way adjacent to roads, not for grizzly bears. As I noted in my Declaration, Dkt#6-3 at ¶28, trail sets are indiscriminate and will catch anything that comes down the trail. Mr. Kluge claims that Lynx Protection Zones (LPZs) provide significant protection for grizzly bears. In my experience, this is not true. The ONLY thing prohibited within LPZs is the use of snares for wolf trapping. Snares targeting coyotes are allowed, as is wolf trapping with scents and meat baits and all other forms of traps.

5. The claims made by Mr. Kluge at ¶7 are inaccurate. A trap with a 9" jaw spread can easily trap even large grizzly bears and will not mitigate capture of animals larger than wolves. The 5 3/8" jaw spread for traps targeting bobcats within LPZs will not prevent capture of grizzly bears, particularly subadults, yearlings,

and cubs, which have smaller feet.

6. The pan tension requirements cited by Mr. Kluge at ¶8 will not prevent capture of grizzly bears, since grizzly bears weigh more than wolves and coyotes.

7. At ¶9, Mr. Kluge states that the traps used by recreational wolf trappers are the same or very similar to the traps used by wolf researchers. This is no longer true. The trapping market has moved away from what I regard as conventional traps like the single spring and double spring traps that most trappers previously used and has moved to coil-spring traps. The manufacture of these new coil-spring traps incorporates powerful coil springs that magnify the gripping power of this type of trap. The coil-spring trap design makes setting and concealing the traps very convenient, the costs are moderate, and the gripping power, once snapped on the foot of a target or non-target, indisputable. That is why I find them undesirable for the trapping I was doing as an agency trapper.

8. Coil-spring traps possess much stronger gripping power for their size than single and double-spring traps. It is my opinion based on decades of experience that the coil-spring traps, if snapped on the foot of an animal greater in size than targeted, will hold that species where, back in the day, the single spring and double spring traps would seldom hold. In other words, a number two coil-spring set for a fox could easily grip and hold a coyote, and a number three coil-spring set for a coyote could easily grip and hold a wolf. I find it unimaginable

to allow coil-spring traps with up to a 9" jaw opening to be allowed to trap any animal. Once a trap is set, wolf size traps will grip and hold the toes or feet of bears and mountain lions. In fact, wolf size coil-spring traps can grip most wild ungulate hooves and some livestock hooves up to the size of a horse's hoof. Montana Fish, Wildlife & Parks records show that two moose were caught in wolf traps in 2022 and six deer were caught in foothold traps set for wolves in 2021 and 2022.

9. In my opinion, the wolf-size traps legal today are overkill and a risk to many non-target species, especially larger animals like the grizzly bear.

10. Throughout my career trapping and radio collaring wolves I would never consider using the coil-spring traps on the market today. Traps that were more than adequate were the McBride EZ grip traps that most agency people were using. The jaw spread was reduced by about 7 inches or less, with rubber jaws and anchored solid, which let all bears pull out but held wolves just fine. However, the McBride EZ grip trap assembly (trap, chain, and drag) sells for about $165 per trap. The MB 750 coil-spring traps sell for about $34, which easily explains why most recreational wolf trappers today usually use this more moderately-priced trap.

11. Mr. Kluge seems to be blissfully unaware of the reality on the ground. Traps being set for wolves are larger and stronger than ever before. Best Management

Practices are ineffective at preventing trap bycatch of grizzly bears. BMPs are not being followed when trap check periods exceed 24 hours; Montana allows trappers to use 9" jaw-spreads and check traps on 48-hour intervals. These are not BMPs.

12. At ¶10, the methods described in McDonald are not adequate for determining when "grizzly bears have entered their dens." Moreover, trappers are unlikely to report grizzly activity.

13. At ¶11, Mr. Kluge's tally of grizzly bears caught in traps disagrees with the spreadsheet attached to Mr. McDonald's declaration, which shows 27 incidents. *See* Dkt#20. Further, based on my experience, grizzly bears cannot easily break free from traps. Mr. Kluge's own declaration states that seven grizzly bears had to be tranquilized so they could be released from traps. Several of these were grizzly bears caught in coyote traps which, while similar to wolf traps, are smaller and have less holding power.

14. At ¶12, Mr. Kluge is simply wrong to assert that injury to trapped animals is rare. Based on my 50 years of trapping experience, I can declare with accuracy that injuries to trapped animals are not rare. Not every trapped animal is injured, but injuries are not rare.

15. Mr. Kluge states at ¶12 that most cases of bears missing toes, feet, or limbs do not have definitive causation. However, the types of injuries observed and

documented by Manley, Madel, Jonkel, et al., *see* Dkt#20 at 14-16, are likely to be trap-caused and unlikely to occur in the wild. These include clean breaks of bones and tissue, and slicing type wounds from cable snares and trap anchors. Irregular shaped amputations may be from trap-caused necrosis of tissue.

16. Mr. Kluge, at ¶13, does not mention that five grizzly bears caught in coyote traps were caught and held and had to be tranquilized and released, *see* Dkt#20 at 14-16, some with observed injuries. A sixth grizzly bear yearling "probably" had a trap stuck on its foot. Grizzly bears have been caught in traps set for coyotes in adjacent states and provinces that share the same populations with Montana.

17. At ¶14 Mr. Kluge presents information that is inconsistent with the facts as established in Lamb, et al. (2022) and in my Declaration, Dkt#6-3 at ¶¶30-37. Mr. Kluge states: "As soon as a bear or large animal get captured by one of these snares, the first hard pull would break the snare and allow the animal to run away unharmed." This is false. There are many documented instances of grizzly bears being held by snares. In fact, Montana trapping regulations encourage trappers to secure traps with anchors that can hold the largest species occurring in the area, which is often the grizzly bear. If they do break free, it is often with the loss of toes or a foot, which hardly constitutes no harm.

18. Grizzlies have also been observed who have broken free with the cable and

anchor still attached to their body. Mr. Kluge states: "Regardless, both breakaways stand to be broken free by the average-weight grizzly bear in Montana." This is highly arbitrary as any grizzly below "average weight," including females, subadults, yearlings and cubs, would not break free. Moreover, grizzly bears vary by weight depending on their location in Montana and their diets. Snares set for wolves will still capture grizzly bears because snares do not discriminate. Loop stops that allow capture of a wolf will also capture a grizzly bear, and breakaway devices can work in theory, but may fail in fact.

19. Mr. Kluge states at ¶15 that grizzly bears can easily jump over snares. However, grizzly bears cannot simply jump over snares they cannot see.

20. Mr. Kluge states at ¶17 that Montana trapping regulations are more restrictive than in British Columbia, the location of the Lamb, et al. (2022) study area. Current trapping regulations in British Columbia restrict wolf take to 3 per person while the Montana trapping regulations allow each person to take 20 wolves, 10 by trap. Montana trapping regulations allow openings on the front of cubby boxes up to 52 square inches while regulations in British Columbia restrict cubby opening size to 3.5 inches to prevent grizzly bears from having their feet caught in body-gripping traps which often are broken free from the anchor and remain attached to the feet, causing necrosis and loss of claws, toes,

and feet.

21. Mr. Kluge claims at ¶18 that recreational trapping is highly selective for target species. This is not true. As I showed in my Declaration, Dkt#6-3 at ¶28, trapping is highly non-selective. The published science in the field (Proulx et al. 2015) and experience show that snares are not selective, but instead are indiscriminate. For example, Montana Fish, Wildlife & Parks records show that hundreds of mountain lions have been the victims of bycatch in traps set for other species. Many species of animals have been killed and maimed by traps set indiscriminately. Based on my longstanding and ongoing involvement in the field of trapping I can say that even the newest traps and snares still capture non-target species on a regular basis.

22. Trapping is not selective. My fifty years of experience in the field informs this knowledge. Traps catch whichever animal happens to step in the trap with enough weight to depress the pan and spring the trap.

I declare under penalty of perjury that foregoing is true and correct.

Dated November 2, 2023.

Carter Niemeyer