

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

FLATHEAD-LOLO-BITTERROOT	)	
CITIZEN TASK FORCE and	)	
WILDEARTH GUARDIANS,	)	Civil Action No.
	)	CV-23-101-M-DWM
Plaintiffs,	)	
	)	
-vs-	)	
	)	
STATE OF MONTANA, LESLEY	)	
ROBINSON, and GREG GIANFORTE	)	
	)	
Defendants.	)	

Witness located in Kelowna, British Columbia  
Tuesday, February 27, 2024 - 9:15 A.M. (MST)

VIDEOCONFERENCE DEPOSITION

OF

BRIAN HOREJSI

Reported by Terra Rohlfs, RPR, Jeffries Court Reporting, Inc., 1015 Mount Avenue, Suite B, Missoula, Montana 59801, (406)721-1143, Freelance Court Reporter and Notary Public for the State of Montana, residing in Hamilton, Montana, jrcrcourt@montana.com

Page 2

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10  
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22  
23 Also appearing via Zoom: Mike Bader, Lizzy  
24 Pennock, Quentin Kujala.  
25

Page 3

1 INDEX  
2  
3 WITNESS: PAGE:  
4 BRIAN HOREJSI  
5 Examination by Ms. Clerget 5  
6  
7 Stipulations 4  
8  
9 EXHIBITS:  
10 Deposition Exhibit Number 12  
11 Subpoena to Testify at Deposition in Civil  
12 Action 8  
13 Deposition Exhibit Number 13  
14 Documents Mr. Horejsi brought to depo  
15 with his annotations on them, scanned in  
16 by BC court reporter 165  
17 Deposition Exhibit Number 14  
18 Lamb et al., unpublished article 76  
19 Deposition Exhibit Number 15  
20 Declaration of Brian L. Horejsi 87  
21  
22 Certificate of Witness 166  
23 Certificate of Court Reporter 167  
24 Read and Sign Letter 168  
25 Release Letter 169

Page 4

1 STIPULATIONS  
2  
3 It was stipulated by and between counsel for  
4 the respective parties that the deposition be taken  
5 by Terra Rohlf, RPR, Freelance Court Reporter and  
6 Notary Public for the State of Montana, residing in  
7 Hamilton, Montana.  
8  
9 It was further stipulated and agreed by and  
10 between counsel for the respective parties that the  
11 deposition be taken in accordance with the Federal  
12 Rules of Civil Procedure.  
13  
14 It was further stipulated and agreed by and  
15 between counsel for the respective parties that all  
16 objections except as to form would be reserved  
17 until time of trial, and that said objections would  
18 have the same force and effect as if interposed at  
19 the time of taking the deposition.  
20  
21 It was further stipulated and agreed by and  
22 between counsel for the respective parties and the  
23 witness that the reading and signing of the  
24 deposition would be expressly reserved.  
25

Page 5

1 TUESDAY, FEBRUARY 27, 2024  
2 Thereupon,  
3 BRIAN HOREJSI,  
4 a witness of lawful age, having been first duly  
5 sworn to tell the truth, the whole truth and  
6 nothing but the truth, testified upon his oath as  
7 follows:  
8 EXAMINATION  
9 BY MS. CLERGET:  
10 **Q. All right. Mr. Horejsi, am I saying that**  
11 **right?**  
12 A. You're close, it's Horejsi.  
13 **Q. Thank you very much.**  
14 **I am Sarah Clerget and I represent**  
15 **Montana Fish, Wildlife & Parks, the State of**  
16 **Montana, Lesley Robinson and Governor Greg**  
17 **Gianforte, so all the defendants in this action.**  
18 **And --**  
19 A. I see your name on there.  
20 **Q. Pardon?**  
21 A. I see your name on the paperwork.  
22 **Q. Yep. And so with me, I have Alex**  
23 **Scolavino, who's another attorney with me at FWP,**  
24 **and my paralegal Christina Bell.**  
25 MS. CLERGET: And then can we make

Page 6

1 appearances for those that are on Zoom, Tim?  
 2 MR. BECHTOLD: On behalf of the  
 3 plaintiff, Tim Bechtold.  
 4 MS. CLERGET: And Quentin, we have --  
 5 Quentin Kujula is our client representative.  
 6 MR. BADER: Mike Bader here in Missoula.  
 7 MS. PENNOCK: Lizzy Pennock,  
 8 representative of WildEarth Guardians.  
 9 MS. CLERGET: Is that everybody?  
 10 **Q. (BY MS. CLERGET) All right. We are --**  
 11 **we, FWP, are present at 1015 Mount Avenue, Suite B,**  
 12 **in Missoula, Montana, conducting this deposition.**  
 13 **And Mr. Horejsi, can you please tell me**  
 14 **where you are physically.**  
 15 A. I'm sitting right now in an office here  
 16 in Kelowna. I'm not sure of the name of the place,  
 17 but that's where I am.  
 18 **Q. And Kelowna's in British Columbia; right?**  
 19 A. That's correct.  
 20 **Q. Okay. And we're going to -- Well, have**  
 21 **you seen your notice of deposition, your subpoena?**  
 22 A. Have I seen mine?  
 23 **Q. Yes.**  
 24 A. My declarations?  
 25 **Q. No, our subpoena to be here today, have**

Page 7

1 **you seen that?**  
 2 A. No, I haven't.  
 3 MS. CLERGET: Okay. Let's share his  
 4 subpoena, please, for today.  
 5 **Q. (BY MS. CLERGET) Can you see that screen**  
 6 **all right?**  
 7 A. I do see it now. Yes, I haven't seen  
 8 that before. I should probably have a copy of that  
 9 some day.  
 10 **Q. All right. So I'm going to state for the**  
 11 **record that we are sharing what we will mark as**  
 12 **exhibit 1, which is --**  
 13 COURT REPORTER: 12.  
 14 **Q. (BY MS. CLERGET) Oh, sorry, I'm sorry,**  
 15 **Exhibit 12, which is a copy of the subpoena for you**  
 16 **to be here today. And we delivered it to your**  
 17 **attorney on --**  
 18 MR. SCOLAVINO: Wednesday of last week.  
 19 MS. CLERGET: -- Wednesday of last week,  
 20 I think.  
 21 Tim, correct me if I'm wrong.  
 22 **Q. (BY MS. CLERGET) The 22nd. And so**  
 23 **that's just the document that tells you you have to**  
 24 **be here.**  
 25 A. Okay, yeah, now that I've -- now that you

Page 8

1 mention it, Tim did bring it to my attention.  
 2 **Q. Okay.**  
 3 A. I just hadn't seen it previously.  
 4 MS. CLERGET: Okay. Crissy, we can take  
 5 that down.  
 6 EXHIBITS:  
 7 (Deposition Exhibit Number 12 marked for  
 8 identification.)  
 9 **Q. (BY MS. CLERGET) And have you ever had a**  
 10 **deposition before?**  
 11 **Actually, before I ask you that question,**  
 12 **because we're on Zoom and we're not live together**  
 13 **in the room, I need you to confirm a few extra**  
 14 **things for me, okay?**  
 15 A. Sure.  
 16 **Q. So do you have anything open -- any other**  
 17 **window open on the computer that you're looking at**  
 18 **other than the Zoom?**  
 19 A. I don't. And I'm not in control of this  
 20 but it's not -- no, it's clean.  
 21 **Q. Okay. So you can't go look anything up**  
 22 **on the computer while we're having this deposition;**  
 23 **right?**  
 24 A. I'm unable to.  
 25 **Q. Okay. And then the same thing for your**

Page 9

1 **phone, do you have a phone that you could look**  
 2 **something up on?**  
 3 A. A which?  
 4 **Q. A cell phone, do you have some cell phone**  
 5 **or --**  
 6 A. No, I don't have a phone.  
 7 **Q. Okay. And then can you be sure, please,**  
 8 **that -- Did you say, sorry, that you don't have any**  
 9 **phone at all or you just don't have a smartphone?**  
 10 A. I don't have a phone except the house  
 11 phone.  
 12 **Q. Okay. And then and I saw at the**  
 13 **beginning of this deposition that it looked like**  
 14 **you had some papers in front of you.**  
 15 A. I do have.  
 16 **Q. Can you show me what those papers are and**  
 17 **describe them one by one?**  
 18 A. I could, you want to go through all that?  
 19 Okay. I have my first declaration. I have my  
 20 second declaration. I have a declaration from Ken  
 21 McDonald. Nathan Kluge. I have part of the one  
 22 from Costello. I have another one -- I have the  
 23 judge's order, Molloy, part of it. And I have  
 24 several other little pieces of information, do you  
 25 want to see them?

Page 10

1 **Q. Yes, please.**  
 2 A. Okay. Here or there?  
 3 **Q. And what is that figure of?**  
 4 A. That is a document from the Center For  
 5 Science and Democracy, showing a number of agencies  
 6 in the U.S. and whether or not they consider that  
 7 the -- the level of political interest, that the  
 8 agency is either high or very low.  
 9 **Q. Okay. And can you tell me more about**  
 10 **where you got that from.**  
 11 A. I can. It's from a document from the  
 12 Center For Science and Democracy, 2015.  
 13 **Q. And how did you get ahold of it? Did you**  
 14 **search for it, download it, did somebody give it to**  
 15 **you?**  
 16 A. No, it's something that's in my share of  
 17 interest and it struck me as being useful in this  
 18 particular discussion.  
 19 **Q. So did you have it before you knew about**  
 20 **this deposition or is it something --**  
 21 A. Yes.  
 22 **Q. -- that you went and got for this**  
 23 **deposition?**  
 24 A. Well, I've had it before, I've had it  
 25 probably since it was issued in 2015, but I pulled

Page 11

1 it out for this.  
 2 **Q. Okay. And then anything else that you**  
 3 **have in front of you?**  
 4 A. Yeah, I do have some other things. I  
 5 have another one from a -- a poll from your  
 6 organization, Fish, Wildlife & Parks, showing  
 7 whether or not citizens have an influence on  
 8 grizzly bear management decisions, that's there.  
 9 **Q. And can you tell me where you got that**  
 10 **from.**  
 11 A. Yeah, that's from your own poll that you  
 12 have published on -- it's a year old, I believe, or  
 13 two years, asking Montanans what they feel about  
 14 grizzly bear management.  
 15 **Q. So how did you get ahold of that one?**  
 16 **Did you download it from the website or --**  
 17 A. Yes, I would've had it at the time it was  
 18 issued, and so I pulled it out for this.  
 19 **Q. When you say you had it at the time it**  
 20 **was issued, how did you get it at the time it was**  
 21 **issued? Was it sent to you or did you download it**  
 22 **somewhere or did somebody --**  
 23 A. Well, as a rule, I keep track of these  
 24 things, so if I don't spot them when they first  
 25 appear, generally there's a network of people that

Page 12

1 will bring it to my attention, and so I put it in  
 2 my files.  
 3 **Q. And is that something that you do on a**  
 4 **computer?**  
 5 A. I do it on a computer, but I do it  
 6 physically, manually as well.  
 7 **Q. Okay. And then anything else that you**  
 8 **have in front of you?**  
 9 A. Yeah, I have some other things. I have  
 10 here a document that I was co-author in, Status of  
 11 Grizzly Bear and Conservation Biological Diversity  
 12 in the Northern Rocky Mountains, that is from 2019.  
 13 I have a letter here from the Daily Interlake and  
 14 the Billings Gazette written by a group of retired  
 15 civil servants regarding grizzly bear management.  
 16 And I have a copy of the British Columbia trapping  
 17 regulations.  
 18 **Q. Okay. And I'm seeing, as you hold all of**  
 19 **those up for the record, that you have some notes**  
 20 **and highlights on most of those documents; is that**  
 21 **right?**  
 22 A. Some of them, not most, but some.  
 23 **Q. And then do you have any other notes with**  
 24 **you?**  
 25 A. I have this little thing that's a

Page 13

1 flowchart for stress systems in mammals that is  
 2 from a recent publication. This is just a front  
 3 page of Clayton Lamb's paper.  
 4 **Q. Sorry, wait, let's go back to the one**  
 5 **that you were just talking about, the diagram,**  
 6 **where did you say that was from?**  
 7 A. Oh, you know, I can't give you exactly  
 8 where that one was from because I didn't copy the  
 9 front page. But it's a recent document talking  
 10 about boldness versus wariness in mammals and how  
 11 the hormones and systems respond to stress in  
 12 mammals.  
 13 **Q. So you said you couldn't remember where**  
 14 **it was from, do you know who made it or in what**  
 15 **context?**  
 16 A. I printed this off from a document, but I  
 17 neglected to put the front page on it, so I can't  
 18 give you the exact citation. It's possible, if I  
 19 needed to do that, I could do that.  
 20 **Q. And when did you get that document?**  
 21 A. Oh, that document's probably from about  
 22 2015 or so. And I follow that information, I  
 23 follow the author, so I would've gotten it when it  
 24 was published.  
 25 **Q. And you say you follow the author, but**

Page 14

1 **you're not sure who the author is?**  
 2 A. I think his name is Boonstre.  
 3 **Q. Can you spell that? Sorry.**  
 4 A. B-o-o-n-s-t-r-e.  
 5 **Q. Okay. So fair to say that you didn't get**  
 6 **that specifically for today's deposition?**  
 7 A. No, I didn't get it for today, but I  
 8 pulled it up for today in case I make a reference  
 9 to it.  
 10 **Q. Okay. And then you started to talk about**  
 11 **the Lamb, and so could you tell me what of that you**  
 12 **have in front of you?**  
 13 A. Which, the Lamb paper?  
 14 **Q. Uh-huh.**  
 15 A. Yes, I just happened to copy the front  
 16 page so I have the title exactly, and a couple of  
 17 underlines in the -- one of the pages within the  
 18 document, page 9.  
 19 **Q. And could you hold it up for me again?**  
 20 A. (Witness complies.)  
 21 **Q. It looks to me like that is the**  
 22 **unpublished first draft of Lamb; is that correct?**  
 23 A. That is correct.  
 24 **Q. Okay. And anything else that you have in**  
 25 **front of you?**

Page 15

1 A. I don't think so, I think that's pretty  
 2 much it. I mean --  
 3 **Q. So what I'd like to do now is take a**  
 4 **break, and I'd like you to take the pile of stuff**  
 5 **you have in front of you and take it to the court**  
 6 **reporter and have him scan it in and send it to us.**  
 7 A. Oh, wow, okay.  
 8 **Q. And so we'll take a few minutes so that**  
 9 **that can happen. And you can just take it to him**  
 10 **and ask him to do that and he'll send it to Crissy,**  
 11 **he has Crissy's email. And then you can come back**  
 12 **in, if you're comfortable, and we can go through**  
 13 **things that I don't think you'll need any materials**  
 14 **for. But if you do need the materials, we can stop**  
 15 **and wait until he brings them back to you, is that**  
 16 **okay?**  
 17 A. Yeah, some of these things, like the  
 18 trapping regulations are fairly extensive  
 19 documents, do you actually want a copy of that?  
 20 **Q. I would like a copy of any of the pages**  
 21 **that you have notes on. So I don't need the whole**  
 22 **thing, but if you have some notes on some pages,**  
 23 **then I would like that.**  
 24 A. Okay, I'll ask him to do that , but we  
 25 can start -- we can start with questions very

Page 16

1 shortly, I'm just not sure what they're going to be  
 2 and whether I'll make reference to these documents  
 3 at all.  
 4 **Q. Yeah, so let's pause and take those**  
 5 **documents to him and let him scan them in and then**  
 6 **we can -- while he's doing that, we can come back,**  
 7 **and if you come back and you get to a point where**  
 8 **you need them back in front of you, we can wait**  
 9 **until you get them back in front of you.**  
 10 A. Sure.  
 11 MS. CLERGET: So we'll take five minutes  
 12 or however long it takes you to do that. Just when  
 13 you're back and ready, let us know.  
 14 THE WITNESS: Okay.  
 15 MS. CLERGET: Thank you.  
 16 THE WITNESS: Now, do you want the  
 17 declarations as well or you have those?  
 18 MS. CLERGET: If you have notes on them,  
 19 I'd like the pages that you have the notes on. But  
 20 I don't need the full copies if you don't have any  
 21 notes on them.  
 22 THE WITNESS: Okay. I'll go and get him.  
 23 MS. CLERGET: Perfect, thank you so much.  
 24 (Whereupon, the proceedings were in  
 25 recess at 9:29 a.m. and subsequently reconvened at

Page 17

1 9:36 a.m., and the following proceedings were  
 2 entered of record:)  
 3 MS. CLERGET: So we're back on the record  
 4 now. And just for the record, while we were off,  
 5 we were working through the logistics of getting  
 6 those notes and papers you have scanned in to mark  
 7 as an exhibit. So when we get those we'll mark  
 8 those as Exhibit 13.  
 9 And we agreed that there was one exhibit  
 10 in there that was a larger exhibit -- or it's not  
 11 an exhibit, it's -- part of that Exhibit 13 was a  
 12 larger document, and we agreed to have only the  
 13 cover page and your portion of it scanned. And  
 14 Mr. Bechtold agreed that he was going to help us  
 15 get the whole document if we can't find it publicly  
 16 available.  
 17 Tim, is that right, you agree?  
 18 MR. BECHTOLD: Correct.  
 19 **Q. (BY MS. CLERGET) All right. And so now**  
 20 **we're going to go through, and like I said, if we**  
 21 **get to any question you feel like you need to refer**  
 22 **back to that material before you can answer that,**  
 23 **just let me know and we'll either stop or we can**  
 24 **move on to some other questions that you may not**  
 25 **need for that, okay?**

Page 18

1 A. Okay.

2 **Q. All right. So let's go back to some of**

3 **the housekeeping things, have you ever been deposed**

4 **before?**

5 A. Yes.

6 **Q. And what was -- what matter was that in?**

7 A. It was mainly to do with long gas in

8 mining activity and its impacts on landscapes and

9 biodiversity.

10 **Q. Anything else?**

11 A. Well, I mean, the same sort of things,

12 ski hills, all largely environmental issues.

13 **Q. Have you been deposed before in any**

14 **action related to grizzly bears?**

15 A. Well, I mean, they've been related to

16 grizzly bears, but only as part of the package.

17 For example, opposition to, let's say, development

18 and the consequences for that development for

19 wildlife, including bears.

20 COURT REPORTER: What development?

21 MS. CLERGET: Wildlife.

22 **Q. (BY MS. CLERGET) So with that example**

23 **that you just gave, would you have talked**

24 **specifically about grizzly bears at all or just**

25 **about wildlife in general, of which grizzly bears**

Page 19

1 **were a part?**

2 A. Most likely I would've specifically

3 referred to grizzly bears. We're talking about --

4 we're talking about a series of events probably two

5 to three dozen of which occurred earlier in my

6 career and span from 10 to 25 or 30 years ago.

7 MS. CLERGET: All right. Tim, we may

8 come back to that and see if we can get a more

9 specific list, but I don't want to spend the time

10 to do that right now.

11 **Q. (BY MS. CLERGET) So it's fair to say**

12 **that you know how a deposition goes, then?**

13 A. Well, I have a hunch.

14 **Q. So just to be clear, the best way to have**

15 **this work is if you make sure I finish my question**

16 **before you answer, and I'll try not to talk over**

17 **you, too, I'll try to make sure that you finish**

18 **your answer before I ask another question so we**

19 **don't talk over each other and poor Terra doesn't**

20 **kill us.**

21 **And then I also just want to make sure**

22 **that there's nothing that would prevent you from**

23 **giving me your full attention today; is that right?**

24 A. That is right.

25 **Q. And you're not on any medication or have**

Page 20

1 **any health issues that would make you unable to**

2 **answer my questions today?**

3 A. Well, nothing that I can predict.

4 **Q. What does that mean?**

5 A. Well, I might have a heart failure.

6 **Q. I do have that affect on people.**

7 A. Pardon?

8 **Q. I said I do have that affect on people.**

9 A. Oh, well, I won't go that far.

10 **Q. All right.**

11 A. But no, I can't predict, you know, but

12 generally I'm in decent health, so I should be good

13 for the next while.

14 **Q. All right. And if you don't understand**

15 **one of my questions, will you let me know?**

16 A. I most certainly will.

17 **Q. Okay. Then my assumption is that if you**

18 **answered the question, that you understood it; is**

19 **that fair?**

20 A. Not necessarily.

21 **Q. All right. So are you going to speak up**

22 **and tell me if you don't understand a question?**

23 A. That I will.

24 **Q. All right. So unless you do that --**

25 A. I may also not understand why you're

Page 21

1 asking it of me.

2 **Q. Well, the "why" is not important, the**

3 **important thing is that you understand the**

4 **question.**

5 A. Okay, let's proceed, we can manage that

6 if it comes up.

7 **Q. All right. I just want to make sure that**

8 **if you don't say anything, if you don't say I don't**

9 **understand or you don't ask me to repeat it or**

10 **something like that, that means that you do**

11 **understand the question and you're answering it to**

12 **the best of your ability.**

13 A. I will respond to them.

14 **Q. All right. And then as we talk about**

15 **exhibits or the things in front of you, it's**

16 **important that I know, because I can't see what's**

17 **in front of you at any given point in time. So**

18 **I'll ask that if you're looking at an exhibit, you**

19 **bring the exhibit out, tell me what it is or we'll**

20 **post it on the Zoom, and then you put it away until**

21 **you need to bring it out again, and then you tell**

22 **me when you brought it out again; does that make**

23 **sense?**

24 A. Sure.

25 **Q. So we're all on the same page about**

Page 22

1 **what's in front of you at any given moment.**  
 2 A. I think so.  
 3 **Q. All right. I plan on taking a break**  
 4 **probably every hour or so, does that work for you**  
 5 **or do you think you might need more than that?**  
 6 A. No, I thought we'd be done in an hour.  
 7 **Q. I think it's probably going to take**  
 8 **longer than that.**  
 9 **So if you need a break, just speak up and**  
 10 **let me know, okay?**  
 11 A. I will.  
 12 **Q. And the only rule about that is if I have**  
 13 **a question pending, then you have to answer the**  
 14 **question before we take the break, does that make**  
 15 **sense?**  
 16 A. Sure.  
 17 **Q. Okay. Can you tell me what you did to**  
 18 **prepare for today's deposition?**  
 19 A. What I did to prepare?  
 20 **Q. Yes, sir.**  
 21 A. Well, that's a tricky little question. I  
 22 spent a whole lifetime preparing for these kinds of  
 23 things so that I can understand the issues,  
 24 understand the motivation of people behind them and  
 25 generally address these kinds of questions or

Page 23

1 issues.  
 2 So immediately, of course, I pulled some  
 3 of these documents I made reference to that I  
 4 showed you, that we're having copied, and I did a  
 5 little bit of reading, refreshing myself on my  
 6 declarations and the ones that I have in my  
 7 possession.  
 8 **Q. Was there anything else that you looked**  
 9 **at that you didn't bring with you today?**  
 10 A. Oh, my, yes.  
 11 **Q. What was that?**  
 12 A. Well, it would be a fairly extensive  
 13 library.  
 14 **Q. Anything in particular for today's**  
 15 **deposition?**  
 16 A. Yes, I've read a whole bunch of things  
 17 that I don't have copies of with me or that I  
 18 couldn't possibly enumerate for you, but it would  
 19 be considerable.  
 20 **Q. And did you do that after you got the**  
 21 **notice that you were going to have to be at this**  
 22 **deposition today or before that?**  
 23 A. No, for this.  
 24 **Q. Okay. So when did you get the notice**  
 25 **that you were going to have to be here today?**

Page 24

1 A. That might be better question for Tim,  
 2 but I'm going to say about a week ago.  
 3 **Q. Okay.**  
 4 A. Maybe ten days.  
 5 **Q. So in the last week, as you prepared for**  
 6 **this deposition, other than the stuff that you**  
 7 **brought with you, can you enumerate the things that**  
 8 **you looked at or used to prepare for today's**  
 9 **deposition?**  
 10 A. Can I enumerate them?  
 11 **Q. Yes.**  
 12 A. No, I can't.  
 13 **Q. Can you tell me --**  
 14 A. It would've been -- it would've been bits  
 15 and parts of probably 20 or 30 or 40 papers and  
 16 reports.  
 17 **Q. And do those papers and reports appear**  
 18 **anywhere attached to your declarations in this**  
 19 **case?**  
 20 A. Attached to my declarations?  
 21 **Q. Yes.**  
 22 A. No. Let's see, I did review my  
 23 declaration and saw the reference to Lamb --  
 24 **Q. Yes.**  
 25 A. -- so no.

Page 25

1 **Q. And then --**  
 2 A. These are background documents that help  
 3 a person understand, or reinforces understanding.  
 4 **Q. And can you give me the general subject**  
 5 **of those papers and articles that you reviewed?**  
 6 A. Yeah, of course. The evolution, the  
 7 genetics, physiology, physical abilities,  
 8 ecological interactions, conservation issues,  
 9 impacts of human industrial activity on wildlife  
 10 and bears; that would sum it up, I think.  
 11 **Q. All right. Are there any particulars**  
 12 **that stand out for you in your memory today of**  
 13 **things that were particularly important in your**  
 14 **preparation?**  
 15 A. No.  
 16 **Q. And were any of the materials that you**  
 17 **reviewed that you didn't bring with you today, were**  
 18 **they cited by the other people, the other experts**  
 19 **in this case?**  
 20 A. Well, in this case, you mean --  
 21 **Q. Uh-huh.**  
 22 A. -- or in related issues?  
 23 **Q. This case.**  
 24 A. Well, it's possible, I just don't recall  
 25 if they do. I mean, there might've been something

1 in some of these other declarations that I quickly  
2 reviewed, but it wasn't something I made a note of.

3 **Q. Would you say that the documents that you**  
4 **reviewed in preparation for this deposition were**  
5 **the same documents or different than what you**  
6 **looked at to prepare for your declaration -- or**  
7 **declarations, I should say, plural.**

8 A. Right. No, I would say that this was  
9 probably a greater range of documents.

10 **Q. Okay. And why is there a greater range**  
11 **now than when you wrote your declaration?**

12 A. Well, because of somebody sitting there,  
13 like you, that's going to ask me questions about  
14 them.

15 **Q. Is there anything, as you reviewed those**  
16 **documents, that you went back and thought, oh, I**  
17 **should've added that to my declaration or I**  
18 **should've said that or I should've cited that in my**  
19 **declaration?**

20 A. You're asking me if I should have written  
21 a book about this, Sarah, which I could've done,  
22 but I didn't. All we're doing is a simple  
23 declaration addressing a simple issue, I think.  
24 So, no, I didn't list extensively available  
25 scientific management conservation or historical

1 literature.

2 I just got these back.

3 **Q. Great, thank you so much. And just for**  
4 **the record, that's returning the documents that you**  
5 **had from before, yeah?**

6 A. These are the documents that I showed you  
7 and that he hauled away.

8 **Q. Okay, perfect.**

9 A. They're back.

10 **Q. And I want to go back, would you change**  
11 **anything in your declaration as a result of your**  
12 **preparation for this deposition? I heard you say**  
13 **you could make it bigger, but would you change any**  
14 **of the conclusions that are in it?**

15 A. No, I don't think so.

16 **Q. And would you change -- anything else**  
17 **aside from the conclusions, anything else you would**  
18 **have added or subtracted or changed in any way from**  
19 **what you wrote in your declarations?**

20 A. Well, perhaps if I had anticipated the  
21 questions you might ask, I might've tried to  
22 address them, but really, no, what's in the  
23 declaration is, in my view, adequate to address the  
24 issue.

25 **Q. Okay. So fair to say that the stuff that**

1 **you reviewed in preparation for the deposition**  
2 **today, the essence of it is captured in your**  
3 **declaration; is that right?**

4 A. Yes, generally, I would say yes.

5 **Q. Okay. What I'm trying to do is just make**  
6 **sure I'm not surprised by a piece of information**  
7 **that may come up later, and so that's why I'm**  
8 **trying to understand if there's something new or**  
9 **different, aside from what's in your declaration,**  
10 **that could come up to surprise me later, do you**  
11 **feel like that could be the case?**

12 A. I don't think it is, but it might be.

13 **Q. All right.**

14 A. I don't know where we're going to go, so  
15 we'll have to see as we progress, I guess.

16 **Q. All right. Well, let's do this --**

17 A. I don't anticipate it. I didn't plan a  
18 surprise for you.

19 **Q. All right. Let's do this, if we get to**  
20 **the end of the deposition and you feel like there's**  
21 **anything that you looked at in preparation for your**  
22 **deposition that you would have added or that you**  
23 **think would support any of the positions or**  
24 **questions -- sorry, answers to my questions, then**  
25 **we'll bring it up at the end of the deposition,**

1 **does that work?**

2 A. We could do that.

3 **Q. Okay. So I'll be sure and ask you a**  
4 **final question to make sure we wrap that up at the**  
5 **end. These guys are going to help me remember to**  
6 **do that.**

7 **Okay. Did you talk to anyone else aside**  
8 **from Mr. Bechtold in preparation for this**  
9 **deposition?**

10 A. No.

11 **Q. And without telling me -- Well, did**  
12 **you -- Let me ask you this. Did you talk to**  
13 **Mr. Bechtold in preparation for this deposition?**

14 A. Did I help him?

15 **Q. Did you talk to him in preparation for**  
16 **the deposition?**

17 A. Very briefly, yes.

18 **Q. Okay. And did you talk to anyone from**  
19 **WildEarth Guardians or the Flathead-Lolo Task Force**  
20 **before preparing this -- in preparation for this**  
21 **deposition?**

22 A. No.

23 **Q. Any of the other experts that have given**  
24 **declarations in this case, did you talk to any of**  
25 **them?**

Page 30

1 A. Well, not specific to these -- to this  
 2 issue.  
 3 **Q. So have you talked to anyone at WildEarth**  
 4 **Guardians or Flathead-Lolo Task Force about this**  
 5 **case in general?**  
 6 A. No.  
 7 **Q. And have -- Sorry, go ahead.**  
 8 A. No.  
 9 **Q. Have you talked to Mr. Bader at all?**  
 10 A. I talked to Mike. I talked to all of the  
 11 people you have on your list, as many of them are  
 12 friends, but we haven't discussed my declaration or  
 13 this case.  
 14 **Q. So when you say the folks I have on my**  
 15 **list, do you mean the folks that have given**  
 16 **declarations in this case?**  
 17 A. Who I do what? Sorry.  
 18 **Q. I just want to be sure I'm clear that**  
 19 **when you say the folks that are on my list, you**  
 20 **mean the people who gave declarations in this case,**  
 21 **the other people?**  
 22 A. Yes, some of the others, yes, they're  
 23 people I've known all my life.  
 24 **Q. Which of the people did you talk to?**  
 25 A. Well, I mean, for 40 years I've been

Page 31

1 talking to some of these people, so I continue to  
 2 do that.  
 3 **Q. Sure, I totally understand.**  
 4 **Which of the -- Is it all of them that**  
 5 **you'd say you talk to regularly or is it just a**  
 6 **few?**  
 7 A. Well, I talk to, let's see, probably  
 8 let's say a few.  
 9 **Q. And can you list those few for me?**  
 10 A. I could. Do I need to?  
 11 **Q. Yes, please.**  
 12 A. Dave Mattson, Barrie Gilbert, let's put  
 13 those two down.  
 14 **Q. Anyone else?**  
 15 A. No.  
 16 **Q. And you said you didn't talk to them**  
 17 **about this case in particular; is that right?**  
 18 A. That's correct.  
 19 **Q. So --**  
 20 A. And by talking, I mean electronic  
 21 communications.  
 22 **Q. Well, have you had any phone calls with**  
 23 **any of them?**  
 24 A. No.  
 25 **Q. So any communication at all with any of**

Page 32

1 **the other experts in this case? And by experts, I**  
 2 **mean folks who gave declarations about this case**  
 3 **specifically.**  
 4 A. No.  
 5 **Q. And when you prepared your declaration,**  
 6 **your first or second declaration, did you compare**  
 7 **notes or talk with anybody else at all to prepare**  
 8 **for that declaration?**  
 9 A. No, I didn't.  
 10 **Q. So how did you come to give a declaration**  
 11 **in this case?**  
 12 A. Well, I was asked by Tim on behalf of the  
 13 FLB group to submit my comments.  
 14 **Q. And do you know -- or do you know Tim**  
 15 **personally?**  
 16 A. I do.  
 17 **Q. Okay. So fair to say he knew you before**  
 18 **this and that's how he would know to reach out to**  
 19 **you?**  
 20 A. That's correct.  
 21 **Q. Okay. Can you tell me in your words what**  
 22 **you think this case is about?**  
 23 A. I can. And unfortunately, it seems to be  
 24 a superfluous case in the sense that the issue of  
 25 trapping in recovering grizzly bear population

Page 33

1 range or the presence of recovering grizzly bears  
 2 or bears from the recovering population makes  
 3 absolutely no sense to me.  
 4 So I see this as an attempt by the State  
 5 to isolate itself from a lot of information, a lot  
 6 of good science, a lot of good management options,  
 7 and, instead, proceed with something that I think  
 8 should be dismissed as strictly from a very  
 9 cautionary point of view. That's how I view the  
 10 case.  
 11 **Q. So when you say the State, do you**  
 12 **understand the difference between Fish, Wildlife &**  
 13 **Parks and the Fish and Wildlife Commission and then**  
 14 **the legislature?**  
 15 A. I do.  
 16 **Q. And could you explain the different roles**  
 17 **there for me?**  
 18 A. Well, the Commission has come up, I  
 19 gather, with this recommendation for trapping  
 20 changes. The legislature, of course, enacts  
 21 legislation from which there follows regulations.  
 22 And Fish, Wildlife & Parks is handed the hot  
 23 potato.  
 24 **Q. So you said just now that you think --**  
 25 **and correct me if I'm misstating what you said --**

1 **that you believe trapping of any kind in an area**  
2 **where there are grizzly bears should not be**  
3 **happening; is that right?**

4 A. Well, given the context of the Endangered  
5 Species Act and the fact that these populations are  
6 protected and are -- have been expanding and are  
7 still not -- in my view and in the view of a  
8 considerable number of people, still not recovered,  
9 still not viable on their own, it seems just  
10 elementary that a person would take precautions to  
11 minimize the risk to those bears and to the  
12 possible recovery, and to abide by the direction  
13 the Endangered Species Act gives.

14 **Q. So do you know about the legislative**  
15 **history that required -- Well, do you know about**  
16 **the legislative history in Montana regarding**  
17 **wolves? And I'll specifically point you to the**  
18 **legislation that came in 2021.**

19 A. You might have to elaborate on that, I'm  
20 not sure which legislation you're talking about.  
21 But no, generally I'm not that -- I do see the  
22 legislation, but it's not something that I follow  
23 as closely as I do the science or the management of  
24 the landscapes and wildlife.

25 **Q. Okay. So I'll represent to you that in**

1 **2021, the Montana legislature required a wolf**  
2 **trapping season and also required the use of baits**  
3 **and snares and also required a reduction in the**  
4 **wolf population. And so it sounds, from what you**  
5 **said just now, that you would take issue with all**  
6 **of those things; is that right?**

7 A. That is right, I would question the use  
8 of the word "required." There is no demand for  
9 this, from an ecological or biological perspective,  
10 but there obviously is from political perspective.

11 So I'm here because I think the grizzly  
12 bear population is important and should be managed  
13 and protected under the Endangered Species Act, and  
14 Montana has a role to play in that and I'm not sure  
15 they're doing it right now.

16 **Q. But it sounds to me like what you're**  
17 **taking issue with is really the legislative**  
18 **direction that those things have to happen.**

19 A. Well, I take issue with that, of course,  
20 but it fell down in the lap of Fish, Wildlife &  
21 Parks, who I think have basically stood on their  
22 heads in an effort to try to legitimize this  
23 direction from the Commission. And I think in the  
24 process of doing that, they've probably stretched  
25 the truth and ignored other parts of it. And they

1 are about -- or attempting to make a decision that  
2 I think is it not in the interest of both  
3 themselves or the bear population, or for that  
4 matter, to think bigger, the state.

5 **Q. So I want to go back a little bit because**  
6 **there are a lot of pieces to that answer.**  
7 **So first, I want to be clear that Fish,**  
8 **Wildlife & Parks and the Commission, we can't not**  
9 **have a wolf trapping season, would you agree with**  
10 **that, because of the legislation, we have to have a**  
11 **wolf trapping season?**

12 MR. BECHTOLD: Calls for a legal  
13 conclusion. Go ahead and answer, Brian.

14 A. Yeah, I was -- that's why I was pausing,  
15 both Sarah and Tim, it sounds to me like once the  
16 legislation is passed and it's handed to Fish,  
17 Wildlife & Parks to address it, then obviously  
18 you're stuck with it.

19 **Q. (BY MS. CLERGET) So it sounds to me like**  
20 **your issue would be with the fact that the**  
21 **legislature has required that trapping season?**

22 A. Well, I think you've heard my issues,  
23 Sarah. I mean, yes, it's unfortunate the Fish and  
24 Wildlife Commission instructed both the legislature  
25 or indirectly through the Fish, Wildlife & Parks to

1 implement or to try to implement this season, and  
2 of course, that's -- that's a major issue. But  
3 there are other ones as well, which then fall on  
4 the shoulders of people in Fish, Wildlife & Parks  
5 to somehow justify this action in the context of a  
6 situation with endangered species and the  
7 legislation that puts them in direct conflict, and  
8 yes, I object to that.

9 **Q. And I just want to be clear, I think**  
10 **there was a little miss -- a little confusion in**  
11 **your answer there. So the legislature sets the**  
12 **statutes, the Commission doesn't have any influence**  
13 **on the legislature. Then the Commission has to act**  
14 **in accordance with what the legislature does. And**  
15 **then FWP has to act in accordance with what the**  
16 **Fish and Wildlife Commission requires; does that**  
17 **make sense?**

18 A. It does.

19 **Q. Okay. So --**

20 A. It doesn't make sense in this instance,  
21 but I understand that those are the mechanics.

22 **Q. Right. So the mechanics being what they**  
23 **are, you'd agree with me that it's really the**  
24 **legislature and the statutes requiring that we have**  
25 **a trapping/snaring season that, in your opinion,**

Page 38

1 are causing the problem, the conflict with the  
 2 **Endangered Species Act; am I right?**  
 3 A. No, I don't agree with you, Sarah.  
 4 Certainly that's part of it, but Fish, Wildlife &  
 5 Parks, with their what I would call antics in an  
 6 effort to justify this under the guise of something  
 7 that's based on evidence or scientifically sound,  
 8 implicates them as much as anyone else.  
 9 **Q. So how do you think FWP and the**  
 10 **Commission could not have a wolf trapping or**  
 11 **snaring season?**  
 12 A. Well, that sounds simple to me, or at  
 13 least the answer sounds simple to me. Decide that  
 14 you're not gonna hunt or trap wolves in the area in  
 15 which you have an expanding or trying to  
 16 re-establish itself as a viable grizzly bear  
 17 population, so within that range. And that would  
 18 be simple, it seems to me, give them a buffer zone,  
 19 you stay out of it, don't complicate life for both  
 20 parks and for managers and for the animals.  
 21 **Q. But you'll agree with me that if the**  
 22 **legislature had told us we have to have those**  
 23 **seasons, then Fish & Wildlife and the Commission**  
 24 **have to follow those statutes; right?**  
 25 MR. BECHTOLD: Calls for a legal

Page 39

1 conclusion. Go ahead and answer.  
 2 A. Oh, okay. Well, at this point what we're  
 3 faced with is Fish, Wildlife & Parks is in it,  
 4 they've obviously been drawn into this issue. I  
 5 would expect, obviously, that that's the case  
 6 always with wildlife. So now the issue is how do  
 7 they deal with it? And I think they've dealt with  
 8 it poorly.  
 9 **Q. (BY MS. CLERGET) All right. I need to**  
 10 **go back, we've kind of headed down a rabbit hole**  
 11 **there. I want to come back to why you think we've**  
 12 **dealt with it poorly, but I want to go back and**  
 13 **make sure that I get all of the housekeeping stuff**  
 14 **done.**  
 15 **Your education and work background you**  
 16 **described in your declaration, do you have anything**  
 17 **to add to that that you think is relevant to**  
 18 **grizzly bears specifically?**  
 19 A. I don't think so, I think that summarizes  
 20 it well enough.  
 21 **Q. All right. And can you tell me a little**  
 22 **bit more about Montana specifically, not British**  
 23 **Columbia, Wyoming, Idaho, Washington, Oregon, but**  
 24 **Montana specifically, what experience have you had**  
 25 **in Montana?**

Page 40

1 A. Well, you probably saw that I went to  
 2 school initially in Montana, in Missoula. And  
 3 pretty much since that time I have spent anywhere  
 4 between probably 30 and 50 days a year in Montana  
 5 enjoying its public land, enjoying its wildlife and  
 6 interacting with people that I know there.  
 7 **Q. So do you have another residence here or**  
 8 **do you just come down and visit?**  
 9 A. I come down and visit, I don't have a  
 10 residence.  
 11 **Q. All right. And have you done any**  
 12 **studying of Montana specifically?**  
 13 A. Studies?  
 14 **Q. Yes.**  
 15 A. Yeah, I have. I actually have written  
 16 several reports on Cabinet-Yaak-Selkirks Ecosystem  
 17 and its cross-border interests and implications, as  
 18 well as the Flathead and the North Fork of the  
 19 Flathead in Montana, and in southwestern Alberta,  
 20 where I've written reports about bear conservation  
 21 and the implications of needing an international  
 22 boundary and whether there are benefits or  
 23 disadvantages of that.  
 24 **Q. And anything on the GYE, the Greater**  
 25 **Yellowstone Ecosystem?**

Page 41

1 A. The which?  
 2 **Q. Greater Yellowstone Ecosystem.**  
 3 A. Yeah, no, I've not written -- I shouldn't  
 4 say that, that's not true. I've written several  
 5 reports that were submitted to Yellowstone National  
 6 Park about grizzly bears and conservation in that  
 7 area.  
 8 **Q. And what about the NCDE, have you written**  
 9 **anything specifically about that ecosystem?**  
 10 A. Well, as related to southwest Alberta and  
 11 southeastern British Columbia, yes, excluding those  
 12 two, no.  
 13 **Q. And the studies that you talk about, can**  
 14 **you tell me what those are, the ones that you just**  
 15 **enumerated having to do with Montana?**  
 16 A. Yeah, I mean, the one -- and I can't --  
 17 it might be referenced.  
 18 **Q. Just for the record, you're looking at**  
 19 **one of the documents in Exhibit 13; is that right?**  
 20 A. (Holds up document to camera.)  
 21 **Q. And it's the Status of Grizzly Bear**  
 22 **Conservation and Biological Diversity in the**  
 23 **Northern Rocky Mountains; is that right?**  
 24 A. Correct, that's correct.  
 25 **Q. Okay.**

Page 42

1 A. I'm looking at three things in here --  
 2 well, you don't have it there, do you? Do you want  
 3 me to read these out to you?  
 4 **Q. No, we can read them, if you'll just tell**  
 5 **us which page their on.**  
 6 A. Which?  
 7 **Q. Which page they're on.**  
 8 A. I'm on page 12.  
 9 **Q. Okay. And so --**  
 10 A. The, let's see, one, two, three, four,  
 11 five, six, seven citations to my career or work.  
 12 **Q. Okay. And is there anything other than**  
 13 **those listed reports that have to do with Montana**  
 14 **specifically?**  
 15 A. Yeah, I don't see -- I don't see the  
 16 reference to the report that I did about interior  
 17 grizzly bears in British Columbia that included  
 18 some information on the Yaak and the Selkirks and  
 19 Cabinets, and I think the northeast -- northwest  
 20 corner of Montana, so I don't see that in there,  
 21 but there is a report.  
 22 **Q. Can you tell me the name of that and**  
 23 **about when it came out?**  
 24 A. Yeah, it's something -- like something to  
 25 the effect of Interior Grizzly Bear, Granby Grizzly

Page 43

1 Bear Population Status, Land Use Impacts and  
 2 Management Conservation History, so it would be  
 3 something to do with the Kettle-Granby.  
 4 **Q. And what year about was that?**  
 5 A. That's probably 15 years ago.  
 6 **Q. And do you know where -- is there**  
 7 **someplace public we could get ahold of it?**  
 8 A. Well, it is in some libraries in British  
 9 Columbia and I have copies, of course. Other than  
 10 that, I'm not aware of where you might find one.  
 11 **Q. Okay. Did you do the study for any**  
 12 **particular agency or group?**  
 13 A. Yes.  
 14 **Q. And who was that?**  
 15 A. We're talking about the Granby-Kettle one  
 16 now?  
 17 **Q. Yes, please.**  
 18 A. Yeah, okay. That was done for the  
 19 Valhalla Wilderness Society.  
 20 **Q. All right. Any other reports aside from**  
 21 **the ones listed that we talked about and then this**  
 22 **report that you've worked on that have to do with**  
 23 **Montana specifically?**  
 24 A. I don't recall them if they're there.  
 25 **Q. All right.**

Page 44

1 A. No.  
 2 **Q. So we've been at this about an hour now,**  
 3 **do you need a break or can we keep going?**  
 4 A. We can keep going.  
 5 MS. CLERGET: Do you need a break?  
 6 COURT REPORTER: I'm fine, thank you.  
 7 **Q. (BY MS. CLERGET) All right. And have**  
 8 **you done -- aside from the reports, have you done**  
 9 **any field research in Montana at all?**  
 10 A. Any which?  
 11 **Q. Field research in Montana at all.**  
 12 A. Yes, in the Northern Rockies, Northern  
 13 Continental Divide Ecosystem, I have. And in the  
 14 Cabinet-Yaak and the Selkirks, yes, I've been on  
 15 the ground in all of them.  
 16 **Q. Can you describe for me what you did in**  
 17 **the field.**  
 18 A. Yeah, just getting -- familiarizing  
 19 myself with the landscape, some of the people that  
 20 use these areas, and the grizzly bear populations a  
 21 little bit on the ground, and then through the  
 22 literature and reports that are available.  
 23 **Q. So when you were on the ground in those**  
 24 **areas --**  
 25 A. Uh-huh.

Page 45

1 **Q. -- were you doing research for a**  
 2 **particular study or a particular report or was it**  
 3 **just research generally?**  
 4 A. Well, there is -- some of it's general,  
 5 but like everyone, Sarah, that's sort of in my  
 6 position, you build an entire career, a  
 7 professional portfolio in being in the field and  
 8 reading about them, stay in touch with people that  
 9 are working on them, and then, of course,  
 10 incorporating what's available in documents. So I  
 11 would say, you know, it's an inclusive package that  
 12 takes sort of years to assemble and that explains  
 13 it for me.  
 14 **Q. So when you were on the ground in Montana**  
 15 **did you trap any bears at all for research**  
 16 **purposes?**  
 17 A. No, I didn't personally, but I did  
 18 accompany U.S. Fish and Wildlife Service on several  
 19 captures in the Northern Continental Divide  
 20 Ecosystem. Other than that, I don't -- I haven't  
 21 had my hands on a bear.  
 22 **Q. And do you remember when that was, about?**  
 23 A. Oh yes, well, I could remember vaguely,  
 24 let me say by that I can give you maybe a ten-year  
 25 period, that would've been in probably the '70s.

Page 46

1 **Q. And when you accompanied that agency were**  
 2 **you assisting them or were you just observing them?**  
 3 A. I was observing mostly.  
 4 **Q. So have you ever collected any data, for**  
 5 **example, DNA or age statistics or anything like**  
 6 **that on bears in Montana?**  
 7 A. No, I haven't.  
 8 **Q. Are there any differences, in your mind,**  
 9 **between bears in Montana and bears in British**  
 10 **Columbia?**  
 11 A. No.  
 12 **Q. So bears are bears?**  
 13 A. Well, in this case, these bears are  
 14 bears, yes.  
 15 **Q. When you say "these bears," what do you**  
 16 **mean?**  
 17 A. I mean the bears in Montana, Idaho,  
 18 Alberta and British Columbia interior.  
 19 **Q. So are there any differences between, for**  
 20 **example, the GYE bears and the NCDE bears?**  
 21 A. Very little.  
 22 **Q. And when you say "very little," what is**  
 23 **different?**  
 24 A. Well, there may be a few genes and a few  
 25 genomes that might be different, but basically

Page 47

1 these are bear descendents of the original bears  
 2 that occupied this entire part -- or that entire  
 3 part of the continent.  
 4 **Q. And how about --**  
 5 A. And I do want to look at this, maybe you  
 6 could look at this, or you might want to look at  
 7 it, anyway. It is a document that I showed you  
 8 earlier, I just marked it to show you that these  
 9 bears have basically the same genome. And the  
 10 mark, the red mark on there, you don't have it in  
 11 front of you, but it shows Edmonton at the top,  
 12 which is bears captured or who've provided DNA in  
 13 central Alberta and then southwest California, and  
 14 those are fossil bears, and then northwestern U.S.,  
 15 those bears are all almost -- almost identical in  
 16 the sense that they have the vast majority of the  
 17 same genome.  
 18 **Q. And I just want to be clear for the**  
 19 **record, you're holding up one of the documents that**  
 20 **is included in Exhibit 13, and you said the name --**  
 21 **is there a name or something on the top of that so**  
 22 **we can kind of find it in Exhibit 13 later?**  
 23 A. Yeah, put a name on it?  
 24 **Q. Or no, let's just say it's a diagram and**  
 25 **it has some red markings on it, does that --**

Page 48

1 A. Yes.  
 2 **Q. -- would that be able to distinguish it**  
 3 **for us?**  
 4 A. Yeah, I mean, it shows the path of bears  
 5 from the Beringia into North America, and then  
 6 dispersal through Montana and south, and Central  
 7 Alberta and south.  
 8 **Q. Okay. So how about behaviorally, are**  
 9 **there any differences in the behaviors between**  
 10 **bears in Montana and bears in British Columbia?**  
 11 A. There are no substantial inherent  
 12 differences in the behavior of these bears. The  
 13 differences that come in are exposure to the  
 14 sounding environment and particularly with respect  
 15 to humans and their industrial and agricultural and  
 16 recreational activities. Otherwise, these bears  
 17 are the same, and I would expect and have seen  
 18 bears in southern British Columbia or southwestern  
 19 Alberta or the Northern Continental Divide  
 20 Ecosystem react essentially to the same  
 21 circumstances, just like the bears from any of  
 22 those other two jurisdictions.  
 23 I mean, we need to look at something  
 24 here, Sarah. And I wish the State had done this,  
 25 but I'm disturbed by the fact that the State seems

Page 49

1 to be trying to insulate itself from the rest of  
 2 the world. And that might be politically  
 3 acceptable to you or to Fish, Wildlife & Parks, but  
 4 the reality is that we're talking about science  
 5 here, the science of grizzly bears and science of  
 6 conservation. And science, as you well know, I'm  
 7 sure you do, is a worldwide effort and it does not  
 8 abide by boundaries. It does research all around  
 9 the world on issues. People communicate all around  
 10 the world on the same kinds of issues they're  
 11 interested in.  
 12 And it disturbs me, as I said, that  
 13 Montana seems to be trying to build a wall around  
 14 itself and subsequently is protecting the image of  
 15 being a bit antiscience. And that's unfortunate,  
 16 because these bears are not confined by boundaries,  
 17 either from a conservation point of view, from an  
 18 interaction with human point of view, from a  
 19 genetic point of view, they're very much alike.  
 20 And I think it would behoove Montana to, instead of  
 21 building the walls --  
 22 I'm just looking at one thing here, let  
 23 me make another reference to -- let's see, if  
 24 you'll give me a second. Yeah, it's Nathan Kluge,  
 25 I was amazed at some of the statements in there,

Page 50

1 like evidence from various parts of grizzly bear  
 2 range does not apply to trapping activities in  
 3 Montana. He describes the challenge as a fallacy.  
 4 He dismisses references to bears and their  
 5 circumstances outside of Montana. And he seems to  
 6 dismiss those sources of evidence and understanding  
 7 good science, in many cases, as being not  
 8 significant because Montana doesn't have  
 9 jurisdiction in those areas. Well, I'm astounded  
 10 by that, to be honest, that's not what this is  
 11 about.  
 12       What this is about is trying to  
 13 understand bears and how they're gonna interact  
 14 with this occupancy zone that Montana's trying to  
 15 project and the Endangered Species Act and the  
 16 viability of these bears and the actions or the  
 17 behavior of movements of bears on the fringes of  
 18 this; there's dozens of bears involved here. And  
 19 if you count the core populations, we're talking  
 20 about hundreds that are moving back and forth  
 21 across these temporary or invisible signs that have  
 22 been established by the state.  
 23       So I don't understand what the resistance  
 24 is about here, other than trying to defend  
 25 something that's damn near indefensible.

Page 51

1       **Q. So I think I heard you say, as part of**  
 2 **that, the science -- in your opinion, the science**  
 3 **tells us that bears are bears no matter where they**  
 4 **are, and they behave the same no matter where they**  
 5 **are; is that right?**  
 6       A. Well, the same bear given the same  
 7 circumstances is likely to respond the same as  
 8 another bear would.  
 9       **Q. So I --**  
 10       A. And so take your six-year-old adult  
 11 female or subadult female and put her in the same  
 12 situation, and it doesn't matter if it's a southern  
 13 BC bear or southern Alberta bear or northern  
 14 Montana bear, those bears will be essentially the  
 15 same.  
 16       **Q. You said if they're given similar**  
 17 **circumstances, do you think the circumstances in**  
 18 **Montana are similar to those in British Columbia or**  
 19 **Alberta?**  
 20       A. Well, some of them are, but there are  
 21 also some substantial differences. And obviously  
 22 we've got the Endangered Species Act, which is the  
 23 reason, the foundation of why we're even here,  
 24 okay, if we didn't have that I'm sure I would not  
 25 be here talking to you, there's -- there's other

Page 52

1 things that are really significant, I mean, and  
 2 relate -- you know, the fact --  
 3       Let's go back to, you know, if a bear  
 4 catches its foreleg in a snare, wolf snare, and  
 5 rips it off, then, you know, that doesn't matter  
 6 whether it's in BC, Alberta or Montana. But the  
 7 circumstances that influence the frequency of these  
 8 kinds of things and the fact that you are dealing  
 9 with a situation that is -- that you have an  
 10 obligation to deal with by law, that changes  
 11 things. Those may not necessarily exist in  
 12 Montana -- I mean, Alberta or BC, but they do for  
 13 you.  
 14       I mean, look at, you know, the earth,  
 15 you're very fortunate in some cases, okay, Montana  
 16 is a very lightly-populated population, so you're  
 17 dealing with jurisdictions next to you that have  
 18 immense pressures on bear populations. On the  
 19 other hand, you've got a far larger trapping  
 20 population than either of those two provinces have.  
 21 So you've got problems that you should be trying to  
 22 deal with, recognizing that the kinds of instances  
 23 that we've brought up here regarding bears  
 24 interacting with trapping are going to be more  
 25 frequent in Montana.

Page 53

1       I've read some and seen them in some of  
 2 your declarations, you've had instances of that in  
 3 Montana. But Lamb has brought up a bunch of them.  
 4 And I personally have had bears that were injured  
 5 when I captured them and even, unfortunately, a  
 6 couple became injured during capture.  
 7       But the frequency of these things in  
 8 Montana is going to be high because you have -- you  
 9 have a lot of trappers in Montana and,  
 10 proportionately, a really high proportion. And you  
 11 have a lot of hunters that are in the woods  
 12 relative to both Alberta and BC.  
 13       So you have the same ecological and  
 14 biological backgrounds for bears, but you have  
 15 these demographic -- human demographic issues that  
 16 are not showing themselves, in my view, in the  
 17 declarations or in this regulation.  
 18       **Q. I want to go back to the bear behavior,**  
 19 **though. I think what I heard you say was that the**  
 20 **bear behavior between -- so not the -- not the**  
 21 **potential for being trapped because of the human**  
 22 **demographic differences, but the actual behavior of**  
 23 **the bears, you know, when they den, for example,**  
 24 **that that would be the same in Montana as it is in**  
 25 **British Columbia because bears are bears; is that**

Page 54

1 **fair?**  
 2 A. It's fair to say that these bears in this  
 3 area we're talking about right now, from  
 4 Yellowstone up to the southern parts of British  
 5 Columbia and Alberta, those are essentially the  
 6 same genetic bears.  
 7 **Q. And the behaviors -- so for example, the**  
 8 **denning behaviors, are they also the same as the**  
 9 **genetics are the same?**  
 10 A. Well, they're pretty close. But  
 11 remember, you know, there's a lot of flexibility  
 12 between an animal's genome and how it behaves,  
 13 that's what animal behavior is, if I can point that  
 14 out, it's how an animal copes with the surrounding  
 15 environment and the social environment, and that's  
 16 based on its genetic capacity to do so.  
 17 These bears are all the same in their  
 18 capacity to do so. They might be facing, for  
 19 example, a landscape where there's road densities  
 20 that are really high and that might be clogged with  
 21 trappers or hunters at a certain time of year,  
 22 versus other areas where the same bear might not  
 23 encounter anywhere near as much disturbance or  
 24 human impact as it is presently.  
 25 So those are real things, differences

Page 55

1 between -- differences between maybe Montana and --  
 2 actually, in the case of Montana, additional strain  
 3 on the system in Montana that don't exist in  
 4 perhaps Alberta or British Columbia.  
 5 **Q. So I heard you say the difference between**  
 6 **the human pressures, would a difference in human**  
 7 **pressure, density of roads, things like that**  
 8 **influence the difference between the times bears**  
 9 **den?**  
 10 A. Maybe you might have to repeat that for  
 11 me, Sarah, I didn't hear it very well.  
 12 MS. CLERGET: Could you read it back?  
 13 (Whereupon, the court reporter read back  
 14 the following:)  
 15 "QUESTION: So I heard you say the  
 16 difference between the human pressures,  
 17 would a difference in human pressure,  
 18 density of roads, things like that influence  
 19 the difference between the times bears den?"  
 20 A. The potential exists, yes, to do that.  
 21 And that link has got to do with whether that bear  
 22 has sufficiently had time or time and space and  
 23 security to feed as intensively as it would like to  
 24 typically in the late summer or fall. There are  
 25 bears that are unable to do that because of human

Page 56

1 impacts or -- and stress and strain on the  
 2 individual bear, and they enter their dens in poor  
 3 condition. We know that from den studies there  
 4 have been bears found that are really malnourished.  
 5 Those are of some of the things that happen on the  
 6 surface before a bear decides it's going to den.  
 7 Now, there are some other changes as  
 8 well. I mean, for example, parts of Montana might  
 9 be very dry and warm and the mountains are less so,  
 10 and some bears den based on the availability of  
 11 food, which may decline as the fall and the winter  
 12 progress, and green vegetation in abundance and  
 13 nutritious vegetation no longer become available,  
 14 so those are factors that may determine a 10- or  
 15 even a 14-day difference of when a bear might go  
 16 into a den.  
 17 But keep in mind that the same bear might  
 18 do that differently in the same year or in two  
 19 different years. So it's not institutionalized in  
 20 the bear population, it's coping with the  
 21 environment, trying to prepare itself the best it  
 22 can for den -- denning, which in the case of males  
 23 is, you know, relatively important, but in the case  
 24 of females extremely important. So you have a lot  
 25 less latitude in females' denning times than you do

Page 57

1 in males'.  
 2 **Q. (BY MS. CLERGET) So I heard you just**  
 3 **talk about some individual examples -- or examples**  
 4 **of individual bear activity and how human dynamics**  
 5 **might influence those individual bears. When we're**  
 6 **looking at the average or, you know, a**  
 7 **generalization or a summary of data talking about**  
 8 **bears as a population and the population level,**  
 9 **would you expect bears in Montana to den on average**  
 10 **at the same time as bears in British Columbia?**  
 11 A. I would. There's relatively little  
 12 difference between the weather, let's say in  
 13 Livingston and Gardener and French Creek or  
 14 Fernie -- French Creek in Alberta or Fernie in  
 15 British Columbia, those are generally the same  
 16 environments climate-wise. So if there are  
 17 differences there, it's a matter of the bear being  
 18 different, a bear being a different age, a bear  
 19 being in a different reproductive status, and the  
 20 ability of that bear to go about improving its  
 21 position as it prepares to den.  
 22 **Q. And so that would be based on the**  
 23 **individual bear level -- or individual bear**  
 24 **experience, not on the sort of population trends as**  
 25 **a whole; right?**

Page 58

1 A. Well, as I said, the bears that are going  
 2 to respond to this are the ones that are dealing  
 3 with the local environment, so they -- and I've  
 4 already tried to impress upon you, Sarah, that a  
 5 bear of a certain category, certain description of  
 6 bear, whether it was in southern Alberta or whether  
 7 it was somewhere south of Missoula in the  
 8 Sapphires, for example, would respond to the same  
 9 set of conditions pretty much the same way.  
 10 One interesting thing is there's always  
 11 exceptions and there's always tails of the curve.  
 12 As you know, if you're familiar with the bell  
 13 curve, you've got a tail on it, and those bears in  
 14 those behavioral categories, ultimately I think  
 15 Montana should be addressing these bears,  
 16 particularly these discovery or outreach bears, I  
 17 guess you'd call them, that are on the edge of core  
 18 ranges but are moving in and out of these zones  
 19 that the State has tried to establish.  
 20 So those bears are more mobile, younger,  
 21 but not always, and so you have these bears that  
 22 you've got to deal with that are just a little bit  
 23 perhaps more bold and prepared to deal with the  
 24 circumstances that you find on the fringe of your  
 25 recovery zones or whatever you call this --

Page 59

1 **Q. Sorry, just give me one second here.**  
 2 A. All right.  
 3 (Discussion held off the record.)  
 4 A. The term I was trying to refer to is the  
 5 estimated "occupied" range of bears in that last  
 6 little comment I was making.  
 7 MS. CLERGET: All right. I think I need  
 8 about five minutes just to collect my thoughts here  
 9 and use the potty, so we're going to take a  
 10 five-minute break, if that's okay, and we'll come  
 11 back at 10:45, which is 9:45 your time.  
 12 (Whereupon, the proceedings were in  
 13 recess at 10:39 a.m. {MST} and subsequently  
 14 reconvened at 10:50 a.m. {MST} and the following  
 15 proceedings were entered of record:)  
 16 **Q. (BY MS. CLERGET) All right. We are back**  
 17 **on the record, are you ready to go?**  
 18 A. I am.  
 19 **Q. Okay. And I see you looking at some**  
 20 **stuff, I'd just ask that you -- let's be careful**  
 21 **that we only have what's in front of us when we're**  
 22 **looking at an exhibit, is that okay?**  
 23 A. Yeah, I don't have anything here you  
 24 don't have.  
 25 **Q. Okay. But let's kind of put it away**

Page 60

1 **until we're ready to talk about it, and then you**  
 2 **can indicate what you brought out at each moment,**  
 3 **does that work?**  
 4 A. We'll see.  
 5 **Q. All right. So I want to go back, you**  
 6 **talked about that you had personal experience**  
 7 **trapping bears and them being hurt in traps, can**  
 8 **you describe that for me?**  
 9 A. Well, there's not a lot to describe. I  
 10 captured almost 200 and released almost -- released  
 11 alive almost 200 bears, and spent a decade working  
 12 with those bears both from the air and on the  
 13 ground with telemetry part of it as well as the  
 14 landscape area they were in.  
 15 **Q. And those bears that you captured, were**  
 16 **they in British Columbia?**  
 17 A. No, they were -- sorry, some of them were  
 18 in British Columbia on occasion, but they were  
 19 captured in Alberta.  
 20 **Q. All right. And what kind of traps did**  
 21 **you use?**  
 22 A. Snares.  
 23 **Q. And what kind of snares?**  
 24 A. Leghold snares.  
 25 **Q. And you said that some of the bears had**

Page 61

1 **been hurt in your traps, can you describe when that**  
 2 **happened?**  
 3 A. Yes, I mean, there is occasion where a  
 4 bear, for some reason unknown to us because we  
 5 weren't there to watch it, injured itself in the  
 6 snare. So it probably got extremely excited,  
 7 agitated, might've been disturbed by another bear,  
 8 could've been disturbed by a human, something that  
 9 caused it to respond really violently and injured  
 10 itself.  
 11 **Q. And just to be clear, you were doing that**  
 12 **trapping in a research or a monitoring capacity,**  
 13 **not a personal capacity; right?**  
 14 A. {Inaudible.}  
 15 **Q. Sorry, I couldn't hear that response.**  
 16 A. Yes, yes.  
 17 **Q. Okay. And when was the last time that**  
 18 **you did bear trapping on the ground?**  
 19 A. That I had a bear in my hands?  
 20 **Q. Yeah.**  
 21 A. Probably about early '80s.  
 22 **Q. All right. And I heard you say, too,**  
 23 **that there were more bears in British Columbia than**  
 24 **in Montana; is that right?**  
 25 A. Well, if you take it province-wide, yes.

Page 62

1 **Q. And I also heard you say we had more**  
 2 **trappers in Montana?**  
 3 A. You do have.  
 4 **Q. And what are you basing that conclusion**  
 5 **on?**  
 6 A. Well, I'm basing that on, Montana I think  
 7 has a summary report on I think -- actually, I  
 8 don't think, you do have a whole series of reports  
 9 on trapping. And there's also the U.S. Fish and  
 10 Wildlife Service that does a five-year survey on  
 11 all the states and how people engage with wildlife,  
 12 and that includes trapping.  
 13 **Q. Is there similar data for British**  
 14 **Columbia?**  
 15 A. Yes, but not as comprehensive.  
 16 **Q. So how do you know how much trapping is**  
 17 **going on in British Columbia?**  
 18 A. Well, I'm just looking at the number of  
 19 licenses and the number of registered trappers, and  
 20 that's what I'm comparing.  
 21 **Q. So does British Columbia track, for**  
 22 **example, trapper days or trapper effort?**  
 23 A. Does it what?  
 24 **Q. Does it track trapper days or trapper**  
 25 **effort, you know, how many of those people who have**

Page 63

1 **licenses are going out?**  
 2 A. Yes, I understand what you're saying. If  
 3 it does, I haven't found it.  
 4 **Q. All right. So we can't compare the**  
 5 **number of trapper days or effort that's going on in**  
 6 **Montana to those in British Columbia; is that**  
 7 **right?**  
 8 A. No, you can. I mean, it's a  
 9 generalization, but the fact that you have a far  
 10 larger pool of people that are engaged in that kind  
 11 of activity would lead, I think, reasonably to the  
 12 conclusion that more people are going to be  
 13 participating.  
 14 **Q. So what you're saying is more people buy**  
 15 **licenses in Montana than in British Columbia?**  
 16 A. I'm saying that there are more registered  
 17 trappers in Montana than there are in British  
 18 Columbia or Alberta.  
 19 **Q. All right.**  
 20 A. Substantially more. I think there's  
 21 something like 12 or 13 hundred in British Columbia  
 22 and there's 6,500 in Montana.  
 23 **Q. And we were talking about bears and**  
 24 **behavior before, and I just want to make sure I**  
 25 **understood. I think you said that individual bears**

Page 64

1 **can be adaptable or can change their behavior based**  
 2 **on the circumstances there they're presented with**  
 3 **at any given point in time; is that right?**  
 4 A. Well to, a certain degree, Sarah. I  
 5 mean, remember, we're dealing with an animal that  
 6 has three priorities in life, first one is to stay  
 7 alive, the second one is to keep itself alive by  
 8 feeding, and the those two issues, security and  
 9 nutrition and reproduction are immense motivators  
 10 of behavior. The third one is breeding, and that  
 11 also is a powerful drive for bears, but that's more  
 12 limited, it's a very restricted time period, but it  
 13 does produce conflicts with these animals, between  
 14 these animals and humans. So that's the big  
 15 picture. Bears have to eat, they want to be  
 16 secure, and at certain times of year they want to  
 17 reproduce.  
 18 **Q. And as the conditions change, the bears**  
 19 **change; right?**  
 20 A. Well, as they age and learn, those are  
 21 important elements. I mean, we've all heard about,  
 22 and I'm sure you have as well, about habituated  
 23 bears, there's a spectrum of bold to wary bears,  
 24 for example. There are food-conditioned bears,  
 25 which are different than habituated. So we have a

Page 65

1 whole class of bears that have been produced  
 2 largely by interactions with humans.  
 3 **Q. And I think I heard you say, when we were**  
 4 **talking about the examples, one of the examples you**  
 5 **gave was a bear that could have a denning behavior**  
 6 **one year and then, based on conditions, could have**  
 7 **a different denning behavior the next year; have I**  
 8 **got that right? You gave me some examples of that**  
 9 **kind of change in behavior.**  
 10 A. I think that's -- yes, there's going to  
 11 be some individuals that have variation in how they  
 12 do things at a given time in a year, as a  
 13 consequence of their age and experience and of  
 14 external conditions.  
 15 I had -- the vast majority of bears that  
 16 I captured and worked with denned in October and  
 17 mid November, but the males and occasional females  
 18 without young were out of the dens and active until  
 19 December. And I had two occasions where bears were  
 20 active in January.  
 21 **Q. Two occasions total that you know of?**  
 22 A. Well, two out of my bears, yes.  
 23 **Q. Okay. Over how long of a period of time**  
 24 **that were your bears?**  
 25 A. Well, I worked with these bears for seven

Page 66

1 or eight years.

2 **Q. All right. And then I'd like to -- we're**

3 **going to put up the Lamb report at page 3, so we're**

4 **going to put up an exhibit here and we're going to**

5 **mark this as Exhibit 14.**

6 MR. SCOLAVINO: The published one?

7 MS. CLERGET: Sorry, we've got the wrong

8 one.

9 THE WITNESS: This is Lamb, isn't it?

10 MS. CLERGET: Yeah, it was, but that was

11 the unpublished one, I want to do the published

12 one. It's okay, we can come back to it later.

13 **Q. (BY MS. CLERGET) Going back, I want to**

14 **clarify one thing, you said a registered trapper in**

15 **British Columbia. What is a registered trapper in**

16 **British Columbia? Is that somebody who's bought a**

17 **license or do you have to do something else to**

18 **register?**

19 A. You have to have -- it's in the

20 regulations exactly, but basically you have to --

21 nowadays I think you have to pass some sort of a

22 course and then you have to buy a permit, and of

23 course you have to have -- you have to declare

24 yourself for a certain area or trap line.

25 **Q. Okay. And then is it your understanding**

Page 67

1 **when you use the word register in Montana, it's the**

2 **same thing, it's somebody who's gone through**

3 **trapper education and has bought a license?**

4 A. Well, I don't know that. I don't think

5 Montana requires trapper education, but I'm not

6 positive.

7 **Q. Okay. And that brings me to another**

8 **group of questions I have for you. Could you**

9 **describe for me your understanding of Montana's**

10 **regulatory structure as it's set up right now?**

11 A. Probably not. I mean, what are we

12 talking about, you want to know the organization of

13 government?

14 **Q. No, I'm sorry, the wolf trapping**

15 **regulations in Montana, are you familiar with**

16 **those?**

17 A. Well, only what I've learned in the past,

18 in the recent times here and what the judge said in

19 his orders and what your declarations have exposed

20 by Kluge McDonald.

21 **Q. So can you explain to me your**

22 **understanding of what Montana hunt -- or excuse me,**

23 **wolf trapping regulations have done to try and**

24 **mitigate or prevent incidental takes of grizzly**

25 **bears.**

Page 68

1 A. Well, I can mention what I think they've

2 done or attempted to do, which is -- of course,

3 we've got one of the trapper's declarations here,

4 somebody who talked about some of the activities,

5 you know, things like where you put the trap, which

6 incidentally is completely irrelevant because

7 there's nowhere you can put a trap in bear country

8 that the bear won't find it. But there's another

9 thing here, of course, you've tried to introduce

10 this slowly, but I'm pretty --

11 **Q. And can you just tell me what you're**

12 **looking at, for the record?**

13 A. Right now I'm looking at -- I'm looking

14 at this -- actually, it's a media comment, it's

15 this thing here. {Holds up a document to the

16 camera.}

17 **Q. So that looks like a newspaper article;**

18 **is that right?**

19 A. Yeah, it's a newspaper article. I'm

20 trying to find the place where you have this

21 reference to the floating trapping zone or periods

22 for wolves, but that's -- so that's what I

23 understand largely Montana has attempted to

24 implement to alleviate this issue.

25 **Q. And do you think that that floating start**

Page 69

1 **date helps mitigate the certainty of grizzly bears**

2 **being caught in recreational wolf traps?**

3 A. Personally I can't see how it would do

4 that, but -- so the answer is no, I don't think it

5 will help much. It might be very incremental, but

6 it's not significant.

7 **Q. And why do you not believe that?**

8 A. Well, because you still have these people

9 trying to trap bears and martens and other animals

10 in grizzly bear range, and that leads to conflict.

11 **Q. So this case is just focused on**

12 **recreational wolf traps, so let's focus on the wolf**

13 **trapping.**

14 MR. BECHTOLD: Well --

15 MS. CLERGET: Pardon?

16 THE WITNESS: Pardon me?

17 MR. BECHTOLD: Misstates the -- well,

18 misstates the nature of the case.

19 **Q. (BY MS. CLERGET) All right. So let's**

20 **focus on recreational wolf trapping, and can you**

21 **tell me what about Montana's regulations on**

22 **recreational wolf trapping you believe endanger**

23 **grizzly bears?**

24 A. Well, I think I've already said that,

25 Sarah, and certainly it's in my declaration. I

Page 70

1 mean, the presence of people with baits and snares  
 2 or traps in grizzly bear habitat are going to  
 3 produce conflicts with bears --  
 4 **Q. So -- Sorry.**  
 5 A. -- and you've got some examples from  
 6 Montana, and there's some in Lamb. And the  
 7 consequences for a bear population like this one,  
 8 that is attempting to establish itself as a viable  
 9 population in as much habitat as it possibly can  
 10 occupy, the consequences for a population like that  
 11 are not insignificant, they're rigged, and they  
 12 will have a bearing on this bear population.  
 13 So it doesn't matter how you try to blur  
 14 the edges of this, the reality is that there are  
 15 gonna be bears impacted. And it doesn't  
 16 necessarily mean strictly that a bear is going to  
 17 lose a forepaw or some of its claws or a foreleg,  
 18 it means these animals are gonna be stressed by the  
 19 presence of these people.  
 20 As well as the fact that if they get  
 21 injured or get frightened badly, there will be  
 22 consequences for their well-being in terms of their  
 23 nutrition, the stress levels they're dealing with,  
 24 the ability to deal with security, their  
 25 willingness or unwillingness to deal with other

Page 71

1 people and other bears, all of this feeds down into  
 2 the social order of bears, and that has  
 3 consequences for reproduction and survival. Those  
 4 are all realities that Montana knows, in my view,  
 5 but this legislation is not paying attention to.  
 6 **Q. So for you, any recreational wolf traps**  
 7 **on the landscape where there are any bears at all**  
 8 **is problematic?**  
 9 A. It is.  
 10 **Q. And there's no amount of mitigation that**  
 11 **Montana could do that you believe would reduce the**  
 12 **risk of grizzly bears being caught incidentally in**  
 13 **recreational wolf traps?**  
 14 A. Well, I fail to see why they wouldn't try  
 15 to mitigate this in the sense that they implemented  
 16 it and then want to continue to pursue it in the  
 17 face of all the evidence and the Endangered Species  
 18 Act of the status of the bear population. So the  
 19 only solution is to not have this additional risk  
 20 to these bears and this population.  
 21 And this seems like such an obvious case,  
 22 it would be so simple to withdraw it and not pursue  
 23 it, that would be positive for the Endangered  
 24 Species Act and bears and, as you know, the vast  
 25 majority of Montanans who want grizzly bears on the

Page 72

1 landscape, they want them to be recovered.  
 2 So I'm baffled by their persistence, as I  
 3 said earlier, about trying to isolate themselves  
 4 from the rest of the world is just -- you know,  
 5 they're not -- they're not the beneficiaries of  
 6 this fabulous piece of legislation that's given  
 7 them a bear population that they should be  
 8 shepherding.  
 9 **Q. So other than stopping trapping -- wolf**  
 10 **trapping completely, what do you think Montana**  
 11 **could do to have a trapping and snaring season that**  
 12 **would be acceptable?**  
 13 A. In grizzly bear habitat, I can't.  
 14 **Q. Okay. So nothing Montana could do to**  
 15 **allow a wolf recreational wolf trapping and**  
 16 **snaring, there's no mitigation, there's nothing we**  
 17 **could do?**  
 18 A. Well, I mean, you can mitigate killing  
 19 ten wolves by killing six. But the fact is that  
 20 you're still out there and you're trying to carry  
 21 out an activity that has an inherit degree of  
 22 conflict with bears, and that you can't mitigate.  
 23 There's no way you can get the majority of these  
 24 trappers to conform to either direction or goodwill  
 25 suggestions or avoidance of these situations other

Page 73

1 than not pursuing it.  
 2 **Q. And to be clear, you mean not pursuing**  
 3 **wolf trapping or not pursuing any trapping at all?**  
 4 A. Well, wolf trapping and any other  
 5 trapping that might end the conflicts. I mean, if  
 6 you've got lynx -- if you're setting traps for lynx  
 7 or cougars or black bears, then you're dealing with  
 8 essentially the same situation, it might be  
 9 different timing, might be a different kind of tool  
 10 being used, but you're producing conflict between  
 11 humans and bears, which you have expressly  
 12 indicated you want to recover and protect. And to  
 13 me, those two don't mesh.  
 14 **Q. So I don't want to push you, if you're**  
 15 **not sure, just let me know, but I want to ask some**  
 16 **specific questions about Montana's regulations, and**  
 17 **if you can't answer them, don't worry about it, we**  
 18 **can move on.**  
 19 **Do you know how Montana's wolf**  
 20 **regulations changed in 2023?**  
 21 A. Well, I gather that, you know, the season  
 22 has changed a bit or it's been -- a season has been  
 23 imposed for '23/'24 by the judge, which would move  
 24 it back to a starting date in January as opposed to  
 25 I think it was somewhere around Thanksgiving. So

Page 74

1 that, to me, is the major change that I'm aware of.  
 2 **Q. So the impetus for this case or the thing**  
 3 **that's talked about in the Complaint are the wolf**  
 4 **regulations that came into effect in 2023, so**  
 5 **before the judge's order, the problems with the**  
 6 **2023 regulations. And do you know what the**  
 7 **problems are with the 2023 regulations as opposed**  
 8 **to the regulations that were in place before?**  
 9 MR. BECHTOLD: Objection to the extent  
 10 that it misstates the nature of the case.  
 11 **Q. (BY MS. CLERGET) Go ahead, you can**  
 12 **answer.**  
 13 A. Well, I know that, you know, the State  
 14 has changed some of the season start dates. And I  
 15 mean, you've only been trapping wolves, I gather,  
 16 for ten years or something, but you've changed,  
 17 recently, some of the start dates and stop dates,  
 18 but you still overlapped the period in which bears  
 19 are active.  
 20 **Q. So the changes in the start dates that**  
 21 **you're talking about, can you be a little more**  
 22 **specific?**  
 23 A. No.  
 24 **Q. All right.**  
 25 A. I am not that familiar with what exactly

Page 75

1 the machinations were that led to the changes in  
 2 the Commission's seasons.  
 3 **Q. So fair to say -- I'm just going to**  
 4 **summarize so I don't have to go down a bunch of**  
 5 **these questions. Fair to say you don't know the**  
 6 **difference between, for example, the 2020**  
 7 **regulations and the 2021 regulations, the 2021 to**  
 8 **the 2022, and the 2022 to the 2023? You can't tell**  
 9 **me the differences between each one of those**  
 10 **regulations?**  
 11 A. I probably could read them all off from  
 12 these various documents, but I have to say that I'm  
 13 not sure that that's the issue we're dealing with,  
 14 here, Sarah. We are talking about any activity,  
 15 regardless of whether it's permitted or not  
 16 permitted, that may lead to conflict with bears.  
 17 And either one of these, whether you change the  
 18 regulations from '20 to '22 or '23 are still  
 19 producing those situations.  
 20 **Q. Okay.**  
 21 A. I'm not going to read the regulations to  
 22 you because I don't know them, but that doesn't  
 23 skirt the issue, which is conflict between baits  
 24 bears and people.  
 25 **Q. All right. So I want to look at --**

Page 76

1 MS. CLERGET: Do you have the Lamb study  
 2 now? (Speaking to Ms. Bell.)  
 3 MS. BELL: Yes.  
 4 MS. CLERGET: I want to put up the Lamb  
 5 study in front of you, and we're going to mark this  
 6 as Exhibit 14, and this is the published version of  
 7 the Lamb study.  
 8 THE WITNESS: Excuse me, this gentleman  
 9 just came in and told me you wanted something else  
 10 scanned to you.  
 11 MR. SCOLAVINO: It was the media article.  
 12 MS. CLERGET: So that media article that  
 13 you just held up for us when we were talking  
 14 about --  
 15 THE WITNESS: Oh, okay. This one  
 16 probably?  
 17 MS. CLERGET: Yes, we don't have a copy  
 18 of that.  
 19 THE WITNESS: It was in there, but it's  
 20 now in there again.  
 21 EXHIBITS:  
 22 (Deposition Exhibit Number 14 marked for  
 23 identification.)  
 24 **Q. (BY MS. CLERGET) So we're -- this is the**  
 25 **Lamb study that we're going to look at, and this is**

Page 77

1 **the published version. Have you seen this**  
 2 **published version of the Lamb study before?**  
 3 A. I have seen that.  
 4 **Q. Okay. And can you look at the diagram**  
 5 **marked B. Again, this is in Exhibit 14, and it's**  
 6 **on page 3 of the published Lamb study. Can you**  
 7 **tell me, according to this, when the bears den in**  
 8 **British Columbia?**  
 9 A. Well, according to this, as you can see  
 10 in the blue curve, denning starts sometime in  
 11 October and peaks sometime in -- I'm going to  
 12 interpret that -- probably early to middle  
 13 December.  
 14 **Q. And what about when they emerge?**  
 15 A. Well, that one you can see also is the  
 16 pink curve, it looks like May {sic} emergence  
 17 beginning, peaking in mid April.  
 18 **Q. Okay. So the bears are coming -- they're**  
 19 **going into their dens in mid December and they're**  
 20 **coming out in April, do you agree that that's what**  
 21 **that says?**  
 22 A. I think that's the generalization, yeah.  
 23 There's probably some little bit flatter curves,  
 24 but that's generally what it says.  
 25 **Q. Okay. You cited this Lamb study; right?**

Page 78

1 A. Which?  
 2 **Q. This Lamb study, you cited it in your**  
 3 **declarations?**  
 4 A. I did, I have the first version of it,  
 5 but I've seen this one, too.  
 6 **Q. Okay. And so fair to say you support his**  
 7 **conclusions here about denning?**  
 8 A. What is the conclusion?  
 9 **Q. Sorry, this chart here about the denning**  
 10 **dates, you support that? You agree with that?**  
 11 A. Well, I think what it does is reflect  
 12 their data, so I'm not here to challenge it, I  
 13 can't, I don't have their data.  
 14 **Q. Okay.**  
 15 A. But I assume that given that it's been  
 16 reviewed, it's legitimate.  
 17 **Q. And in your personal experience does**  
 18 **this -- does this representation of denning comport**  
 19 **with your personal experience?**  
 20 A. No, not entirely. As I said, it's a  
 21 little bit flatter and there's a little bit more  
 22 latitude in it, and I think that's true everywhere.  
 23 I've had bears active at the beginning of March  
 24 and, as I said, I've had two occasions where they  
 25 were present in January, and it's not uncommon in

Page 79

1 the fall for bears not to den until mid December.  
 2 **Q. Okay. This shows mid December, right, on**  
 3 **it?**  
 4 A. Yeah, mid December running into January.  
 5 **Q. Well, it has -- on the far right of the**  
 6 **graph it has January 1; right?**  
 7 A. January, is that the 1st?  
 8 **Q. January 1st, yes.**  
 9 A. Okay, yeah.  
 10 **Q. And so according to this graph, there**  
 11 **aren't any bears out of their dens past January**  
 12 **1st, as an average, again, this is --**  
 13 A. Yeah, I think that's probably a safe  
 14 conclusion.  
 15 **Q. Okay. And in fact, the graph shows mid**  
 16 **December, really, right, because it's not up to**  
 17 **January 1st?**  
 18 A. Yeah, I can't -- I'm not sure precisely,  
 19 but generally that looks like it.  
 20 **Q. And I heard you talk a little bit about**  
 21 **individual bears that can do things differently.**  
 22 **You know, we talked about winter bears, those two**  
 23 **that you've talked about that, in your experience,**  
 24 **didn't den, and so I understand there's some**  
 25 **variations among individual bears. But as a**

Page 80

1 **general trend, would you agree with this**  
 2 **representation based on your experience?**  
 3 A. Well, I can agree -- what I'm saying is,  
 4 Sarah, I see the chart, the information they've  
 5 presented, and I'm not going to question it because  
 6 it's a reflection of their data. So it's fine with  
 7 me, I would look at that and that's what I would  
 8 interpret.  
 9 **Q. Okay.**  
 10 MS. CLERGET: All right, you can take  
 11 that down. And, actually, let's go to -- can you  
 12 put up the first page of the published Lamb.  
 13 **Q. (BY MS. CLERGET) Again this is**  
 14 **Exhibit 14, we're going to look at page 1, which is**  
 15 **the first page of the Lamb study that you cited in**  
 16 **your declaration.**  
 17 **Well, while we get it up, can you agree**  
 18 **with me that one of the things that Lamb -- that**  
 19 **Lamb doesn't conclude is that there should be no**  
 20 **trapping; is that right? That's not a conclusion**  
 21 **that Lamb reaches?**  
 22 A. Yes, I've not seen it in there, it  
 23 wouldn't surprise me.  
 24 **Q. Okay. So down here at the bottom of**  
 25 **this, the last sentence that appears on this page**

Page 81

1 **it talks about delaying the conibear trapping as**  
 2 **being a solution for the problems that it**  
 3 **describes, stating, One option is to delay the**  
 4 **start of the marten trapping season until**  
 5 **December 1st; right?**  
 6 A. Tell me what you're saying again, read  
 7 it -- you said it's in this document?  
 8 **Q. Yeah, the last -- the last sentence --**  
 9 **the start of the last sentence, I think Crissy is**  
 10 **highlighting it there for you, it starts with the**  
 11 **word One, One option is to delay the start of the**  
 12 **marten trapping season until December 1.**  
 13 A. Yeah, okay, I see that.  
 14 **Q. Okay. So Lamb doesn't advocate for no**  
 15 **trapping at all, does it?**  
 16 A. Well, Lamb's not in a position to do  
 17 that, so I'm not surprised by that. You have to  
 18 look at the authors on this paper to realize that  
 19 two of them are government of British Columbia  
 20 employees, and they're pretty much in a compromised  
 21 or conflict-of-interest position when it comes to  
 22 making a decision that might be in the best  
 23 interest of bears versus what might be in the best  
 24 interest of the political situation they find  
 25 themselves in; that's relevant and it's

Page 82

1 significant.

2 **Q. So you cited in your declaration the Lamb**

3 **study, and correct me if I'm wrong, but the reason**

4 **you cited it was to use it to show that bears can**

5 **be harmed by traps, is that a fair representation?**

6 A. That is.

7 **Q. Okay. And so the problems that Lamb lays**

8 **out, i.e., the injuries that come from bear -- that**

9 **bears receive that Lamb talks about and that you**

10 **cite Lamb for, Lamb says can be solved by delaying**

11 **the start of marten trapping until December 1st; is**

12 **that right?**

13 A. Well, I don't know what he's -- what he's

14 proposing, one option is one way of catering to the

15 program so that it continues without doing what

16 might be the ultimate right or most progressive

17 solution, and that would be, as I've mentioned, to

18 not proceed.

19 **Q. Okay.**

20 A. Keep in mind, remember, Sarah, that he's

21 in the same position as the people you're acting

22 for, they've gotten the direction from somewhere,

23 so they're trying to meld the politics with the

24 management and not necessarily to the best -- or

25 for the best interests of the bears or the public,

Page 83

1 for that matter, might be for some of the trapping

2 public, but not for the rest of the public.

3 **Q. Okay. And again, the reason you cited**

4 **Lamb was because of the injuries it describes;**

5 **right?**

6 A. That's right.

7 **Q. And can you agree with me that the**

8 **injuries that Lamb describes are all injuries from**

9 **conibear traps, not from recreational wolf traps;**

10 **is that right?**

11 A. I think it implies that. I don't think

12 there's any references to snares, although there

13 might be, I'd have to reread it.

14 **Q. So let's go to page 7, we'll put it up**

15 **here on the screen for you, again, of Exhibit 14.**

16 (Discussion held off the record.)

17 **Q. (BY MS. CLERGET) Okay. So she's going**

18 **to highlight for you where I'm reading from, can**

19 **you see that highlight?**

20 A. I do.

21 **Q. Okay. That says, However, in the records**

22 **we were able to collect, body gripping traps were**

23 **the only trap on bears' feet where it was clear the**

24 **trap was causing toe loss.**

25 A. Uh-huh.

Page 84

1 **Q. Would you agree?**

2 A. Well, I agree that it's written there.

3 **Q. Okay. And body gripping traps are not**

4 **used for wolf trapping in Montana; right?**

5 A. I don't think they are, I'm sure you can

6 pretty much snare them.

7 **Q. And those are conibear traps that are**

8 **used, body gripping are for conibears; right?**

9 A. Other traps -- I don't know whether

10 Montana uses traps, but there are traps that are

11 used for wolves, and I'm not sure what Montana

12 does --

13 **Q. Okay.**

14 A. -- but --

15 **Q. And then a little later in that**

16 **paragraph -- Sorry, go ahead.**

17 A. -- whether they're using conibear or

18 cable, they all use baits.

19 **Q. And then a little later in that paragraph**

20 **it talks about marten trapping in box traps.**

21 A. Uh-huh.

22 **Q. You agree with me?**

23 A. About what?

24 **Q. That the next sentence that begins with,**

25 **However, he's talking about marten trapping and box**

Page 85

1 **traps; right?**

2 A. Yep.

3 **Q. And you wouldn't use marten -- sorry, you**

4 **wouldn't use box traps to capture wolves, would**

5 **you?**

6 A. Probably not, but I'm not sure what

7 trappers do. I honestly can't tell you what

8 trappers do out there in many cases, but you'd

9 think they would be as judicious as possible.

10 **Q. Okay. And then down a little bit further**

11 **in that -- actually, never mind, we can skip over**

12 **that.**

13 (Discussion held off the record.)

14 **Q. (BY MS. CLERGET) So the only instance in**

15 **the Lamb study that talks about Flathead in**

16 **Montana, so it talks about -- Crissy's got her --**

17 MS. CLERGET: Whoops, you just had your

18 thing over it. Go back. Yep, right there.

19 **Q. (BY MS. CLERGET) And so reading from**

20 **there, this is again still on page 7 of Exhibit 14,**

21 **it's talking about the Flathead Valley. And the**

22 **only injury that they're talking about in Montana**

23 **is from a body gripping trap; is that right? Would**

24 **you agree with me?**

25 A. Well, that's what it looks like he's

Page 86

1 talking about, yes.  
 2 **Q. So the only evidence in Lamb of the**  
 3 **injuries that you're talking about are from body**  
 4 **gripping traps; right?**  
 5 A. Yes, yes. But let's keep in mind also,  
 6 Sarah, that if you are using traps, either kill  
 7 traps or grip traps, then you're not gonna be  
 8 reporting with cables, so let's not blur the lines  
 9 between that. If you've got cable -- you're  
 10 trapping out there with snares and cables, you're  
 11 gonna have the same effects, no matter where you  
 12 use those snares and cables.  
 13 So what you're trying to do is relieve  
 14 the examination of the consequences of dealing with  
 15 snares and cables by looking at different kinds of  
 16 trapping situations for different animals. That  
 17 still doesn't -- still doesn't dismiss the  
 18 attraction part for bears. But if you want  
 19 information on cables, ideally you'd have  
 20 information on cables, but if you don't have it,  
 21 then you draw on what we have from Lamb.  
 22 **Q. So when you say cables, are you meaning**  
 23 **snares?**  
 24 A. The point with Lamb's work is that  
 25 there's conflict, that's the point. And that's the

Page 87

1 point that's transmissible to anywhere that  
 2 trapping is taking place.  
 3 **Q. I want to be clear, when you're saying**  
 4 **cables, you're talking about snares?**  
 5 A. Yes.  
 6 **Q. Okay. So you'll agree with me, though,**  
 7 **that Lamb isn't talking about snares; right?**  
 8 A. No, I think he makes some inference to  
 9 them occasionally, but I don't recall every  
 10 sentence in that document.  
 11 **Q. Okay. So when you're citing Lamb in your**  
 12 **declaration, and the injuries that Lamb is talking**  
 13 **about, is it your understanding that those injuries**  
 14 **were caused by snares?**  
 15 A. The injuries that Lamb is reporting?  
 16 **Q. That you --**  
 17 MS. CLERGET: Hang on, I'll put your  
 18 declaration here in front of you here, if you'll  
 19 give me second. So this is -- I'm looking at your  
 20 first declaration here, and that will be Exhibit  
 21 15, we'll mark that as Exhibit 15, and that is  
 22 right?  
 23 COURT REPORTER: Uh-huh.  
 24 EXHIBITS:  
 25 (Deposition Exhibit Number 15 marked for

Page 88

1 identification.)  
 2 **Q. (BY MS. CLERGET) Paragraph 7, you'll**  
 3 **agree with me that is where you cite Lamb in your**  
 4 **declaration; right?**  
 5 A. I'm looking at number 7, what do you  
 6 think I'm going to agree with you about?  
 7 **Q. That you're citing Lamb in this part of**  
 8 **your declaration; right?**  
 9 A. I see that.  
 10 **Q. And you're talking about in paragraph 7**  
 11 **the lost claws, toes, feet, lower limbs, bears**  
 12 **being maimed by traps, things like that, those**  
 13 **trap-type injuries, and for those injuries you're**  
 14 **citing Lamb; right?**  
 15 A. That's correct.  
 16 **Q. So if we just agree that Lamb is talking**  
 17 **about conibear traps, not wolf traps and not**  
 18 **snares, then those injuries that you're describing**  
 19 **in paragraph 7 for which you're citing Lamb are not**  
 20 **attributable to wolf traps or snares; right?**  
 21 A. Well, no, that's not correct at all,  
 22 Sarah, they certainly are. I mean, what Lamb is  
 23 presenting is information from traps that are set  
 24 for much smaller animals in most cases, but which  
 25 still cause stress for some bears. And I think

Page 89

1 Montana needs to keep in mind that cables and  
 2 snares for any animal are far more potentially  
 3 destructive than our traps.  
 4 So I'm not sure why you're trying to  
 5 skirt the reality on this, Sarah, but it is that if  
 6 you have baits and you're putting bears in  
 7 situations where they can injure themselves or  
 8 interact with themselves or other humans, that  
 9 might lead to injury as well, then you are  
 10 aggravating this situation for bears. And trapping  
 11 with cables and snares is a step up from these  
 12 little traps.  
 13 **Q. So what evidence do you have, other than**  
 14 **Lamb, of these injuries that you're talking about**  
 15 **here with lost claws, toes, feet, lower limbs and**  
 16 **the maiming?**  
 17 A. Well, I have -- I have -- I have showed  
 18 you Lamb's evidence from this. You've got some in  
 19 your declarations from McDonald, I think. The  
 20 judge makes a reference to some of them in his  
 21 order. And I've had two occasions where bears have  
 22 been injured by snares.  
 23 **Q. And those snares, if I understand right ,**  
 24 **correct me if I'm wrong, were from monitoring or**  
 25 **research snares that you set; right?**

Page 90

1 A. The two observations that I'm making,  
2 yes.  
3 **Q. Okay. So do you have any evidence other**  
4 **than this citation to Lamb here in your**  
5 **declaration, and this is you, not anybody else,**  
6 **just you, any evidence of these kind of injuries**  
7 **coming from recreational wolf traps?**  
8 A. Well, I think -- I'd have to review it,  
9 but I think your declarations -- or some of the  
10 declarations submitted on behalf of the State do  
11 mention some examples --  
12 **Q. Okay. Separate from -- Sorry.**  
13 A. -- but some of them are not, so I'd have  
14 to go back and reread it, we could read it to each  
15 other, but generally, there are examples of it.  
16 **Q. So do you have any examples other than**  
17 **the ones that are in the pleadings? And by**  
18 **pleadings I mean filings in this case.**  
19 A. Well, there are a few examples. I mean,  
20 you may be aware of the research from the  
21 veterinary school at the University of Saskatchewan  
22 where they have captured bears, and they do have a  
23 documented case where the bear died from capture  
24 myopathy.  
25 And so this is the other side of the

Page 91

1 equation and it's not an insignificant one, it's a  
2 big part. We're now talking about the potential  
3 for soft tissue or interior body injuries that come  
4 from trapping. And it doesn't matter whether a  
5 bear exerts itself against a trap that might hold  
6 it's claw or its foot for half an hour or a day, or  
7 versus a cable that might hold it permanently. But  
8 what happened in that case was the bear got injured  
9 during the capture and died 10 or 20 days later.  
10 **Q. And --**  
11 A. And those kinds of things do happen.  
12 **Q. And I heard you say that was in**  
13 **Saskatchewan, do you know what kind of trap that**  
14 **was that that incident happened?**  
15 A. I don't. I don't recall it. The bear  
16 was not in Saskatchewan, that's where the  
17 veterinary school was. The fieldwork was somewhere  
18 in western Alberta, continuing up along the Rocky  
19 Mountains from the Northern Continental Divide  
20 Ecosystem.  
21 **Q. Do you know if it was a research trap or**  
22 **a recreational trap that caught that bear?**  
23 A. I think it was a research trap, but I  
24 can't confirm that , I'd have to reread the  
25 document.

Page 92

1 **Q. And do you -- you didn't cite that**  
2 **document in your declaration; right?**  
3 A. I didn't.  
4 **Q. And have you seen it in the filings in**  
5 **any other place? Did anybody else cite it?**  
6 A. I haven't seen it in -- I don't think  
7 I've seen it in any declaration.  
8 **Q. Okay. And do you remember what time of**  
9 **year that bear was trapped? If it was a research**  
10 **trap was it in the summer or the spring?**  
11 A. I don't. They were capturing bears from  
12 spring to fall, like most research projects.  
13 MS. CLERGET: Okay. I think we just have  
14 20 more minutes until Tim has to go, and then we're  
15 going to have to come back at 1 our time, 12 your  
16 time, is that right, Tim?  
17 MR. BECHTOLD: Correct, that's correct.  
18 THE WITNESS: I'm trying to get -- maybe  
19 I'm being a bit impatient here, but I'm trying to  
20 find out what it is that you would like to expose,  
21 Sarah, so that you and everyone else, including the  
22 judge, can make a reasonable and considerate  
23 decision that this is a risk, and the best way to  
24 to deal with it might not be to have it to deal  
25 with. I'm trying to figure out what it is you want

Page 93

1 to justify.  
2 **Q. (BY MS. CLERGET) I understand your**  
3 **concerns. I have to run through my questions that**  
4 **I've got based on the declarations and the stuff**  
5 **that you gave and what's at issue in this case, so**  
6 **that's all I'm trying to do.**  
7 A. Well, it's been --  
8 **Q. And on that note, I want to go back to**  
9 **your declaration, and this time we're going to talk**  
10 **about paragraph 8. And this is where you talk**  
11 **about the hyperphagia?**  
12 A. Oh, okay, well, we have talked about that  
13 already.  
14 **Q. Okay. Do you have anything else to add?**  
15 A. Okay, I mean, these things are all  
16 context for the bigger picture, Sarah, that there's  
17 activity in bear range where bears are endangered  
18 and the law protects them. All of this stuff feeds  
19 in, it's kind of like the room you're in and being  
20 fed into by all the building around you and all the  
21 people around you and all the system, that's the  
22 same for bears.  
23 And you're trying to -- in my view,  
24 you're trying to nitpick it, you're repeating all  
25 this stuff again and again and we're not going

Page 94

1 anywhere with it. You know what the situation is,  
 2 I know what it is, the State knows what it is, I'm  
 3 convinced the State knows what it is, but they're  
 4 unable to deal with it. And you, I think, need to  
 5 try to expose that.  
 6 Look, let's take a look at, you know,  
 7 these statements from various people that are now  
 8 retired but have been in the midst of this  
 9 situation during their active careers. They're now  
 10 speaking up and saying, listen, the process is not  
 11 adequate, the regulations are not adequate, the  
 12 management is not adequate, and to me, we're at the  
 13 point where we know that. So I'm not quite sure  
 14 what you're trying to extract, whether it's blood  
 15 out of a stone or a concession from me that's gonna  
 16 say this is acceptable.  
 17 **Q. No, I understand that you don't think**  
 18 **this is acceptable, I heard you say that the best**  
 19 **thing that can be done was take the traps off of**  
 20 **the landscape entirely. So I've heard you say**  
 21 **that, we've got that in the transcript. I've just**  
 22 **got additional questions on top of that.**  
 23 **And one of them I want to ask you is, we**  
 24 **had some depositions yesterday, and during those**  
 25 **depositions we asked some questions about why now,**

Page 95

1 **essentially, for this lawsuit? And one of the**  
 2 **things that came out during those depositions was**  
 3 **that there was a discussion among the experts,**  
 4 **among the folks who do this kind of work, the same**  
 5 **group you're just referring to, and that discussion**  
 6 **prompted action and the action was this lawsuit.**  
 7 **So I want to know if you were part of those**  
 8 **conversations at all?**  
 9 A. Yeah, we can deal with that right now,  
 10 because I was not. I was invited ultimately into  
 11 this, I suspect, and I don't -- but I don't know  
 12 how long it may have been in the works.  
 13 **Q. Is there something special that**  
 14 **happened --**  
 15 A. It was a request to submit my expert  
 16 review of it, and that's what I've done. I was not  
 17 involved in the formulation of this action.  
 18 **Q. So is there something -- anything that**  
 19 **happened in 2021 that you think is new or different**  
 20 **or more problematic than before in Montana?**  
 21 A. Well, perhaps just an awareness among  
 22 people that this trapping agenda is in conflict  
 23 with the recovery of those bears and the Endangered  
 24 Species Act. Maybe it took some time to bring that  
 25 awareness to where people want to take action. I

Page 96

1 don't know, I wasn't involved in that. I'm simply  
 2 sitting in here as an add-on to provide my  
 3 observations on bears and conflicts.  
 4 **Q. So in your -- just focusing on you, then,**  
 5 **in your understanding or your research or your**  
 6 **thinking about this --**  
 7 A. No, I --  
 8 **Q. -- is there something that -- is there**  
 9 **something that changed in 2022 to 2023 that would**  
 10 **be different or worse for grizzly bears in Montana?**  
 11 A. I suspect that there was for the people  
 12 that are involved that may have been more  
 13 fundamental to, let's say, the genesis of this.  
 14 And you brought it up earlier that there were  
 15 changes in the wolf trapping regulations from '20  
 16 to '21, '22 and '23, so I would imagine that  
 17 elicited attention from other people.  
 18 I wasn't in the process of that, but I am  
 19 here now and it's based on my interpretation of  
 20 what the evidence and the conflicts are. So I  
 21 don't know if that answers your question, but it  
 22 certainly is not the case that I was part of a  
 23 conference or a series of conferences or  
 24 discussions that generated this action.  
 25 **Q. Okay. You talked a little bit about --**

Page 97

1 **in your declaration you talked about -- Well,**  
 2 **sorry, let me go back to hyperphagia a little bit.**  
 3 **In your declaration you didn't cite**  
 4 **anything about your conclusions about hyperphagia.**  
 5 **We talked already about some resources that you**  
 6 **reviewed preparing for this deposition. Is there**  
 7 **anything different other than what we've already**  
 8 **talked about that you would use as a citation for**  
 9 **your statements on hyperphagia?**  
 10 A. Well, I think we could list a pile of  
 11 scientific literature that would reach to the  
 12 ceiling in this room or your room that talks about  
 13 the significance of bears gaining weight and body  
 14 condition in the fall in preparation for denning,  
 15 and the consequences of that for reproduction and  
 16 that bear's body condition and its ability to  
 17 reproduce, so that is extremely well documented.  
 18 All I'm doing is saying there is a pile  
 19 of evidence out there. If you want somebody to  
 20 write a report about it, it can be done, but it  
 21 would be extensive, there's a huge body of  
 22 information. It's been known starting with the  
 23 Craigheads way back in the '60s and '70s, and it's  
 24 only been confirmed over time. And there's -- I'm  
 25 not sure why you would even question it. Certainly

Page 98

1 Montana Fish, Wildlife & Parks ought not question  
 2 it when it comes to the behavior and activity of  
 3 bears, that's what they're doing in the fall, or  
 4 trying to do.  
 5 **Q. So my question goes more to the**  
 6 **interaction between hyperphagia and the regulations**  
 7 **in Montana, that's what I -- I want to know if**  
 8 **there's any other information you have about the**  
 9 **interaction of those two things, not hyperphagia in**  
 10 **general, but as it relates to the specific**  
 11 **regulations in 2023 in Montana?**  
 12 A. Well, I mean, it's not uncommon for there  
 13 to be a spike in interactions between humans and  
 14 bears as fall approaches and bears become more  
 15 aggressive about feeding. And they have, if you  
 16 want to use the old term, a biological imperative,  
 17 even though it's not a conscious decision to do so,  
 18 it is the end result of 30 or 40 thousand years of  
 19 evolution. So these bears have -- they're faced  
 20 with a situation, get in good condition and  
 21 reproduce or disappear and take your genes out of  
 22 the population; that's what we're talking about.  
 23 And when these bears become active like  
 24 this they are extremely inquisitive, they're  
 25 active, they're mobile, they access everything.

Page 99

1 And if there's food out there and there's tools  
 2 that could cause them damage, then you're gonna  
 3 have interaction between those, in other words,  
 4 conflict, so there's no way to avoid it. You can  
 5 argue up and down that you can carry on this  
 6 activity in bear country without affecting them,  
 7 but that is simply unrealistic.  
 8 **Q. All right.**  
 9 MR. BECHTOLD: Sarah, would this be a  
 10 good time to take a break, give me a chance to get  
 11 to my appointment?  
 12 MS. CLERGET: Sure. And if you, by any  
 13 chance, get done before 1, will you just let us  
 14 know?  
 15 MR. BECHTOLD: Absolutely.  
 16 (Discussion held off the record.)  
 17 THE WITNESS: Here's my recommendation,  
 18 during the lunch hour I think you should decide you  
 19 need to go back to Parks as tell them, listen,  
 20 you've got yourself a problem here, try to correct  
 21 it, it's not gonna change.  
 22 MS. CLERGET: Understood.  
 23 Okay. So then we'll go off the record.  
 24 THE WITNESS: Maybe they'll decide that's  
 25 a reasonable approach and we can dispense with the

Page 100

1 rest of this.  
 2 MS. CLERGET: I promise you I'm still  
 3 going to have questions, I'm a lawyer, we never  
 4 stop having questions.  
 5 THE WITNESS: Okay. Well, listen, I can  
 6 talk about bears forever, but I think we need to do  
 7 something other than just talk about them.  
 8 MS. CLERGET: Okay. So we'll come back  
 9 at 12:00 your time, 1:00 our time.  
 10 MR. BECHTOLD: Thank you.  
 11 (Whereupon, the proceedings were in  
 12 recess at 11:52 a.m. {MST} and subsequently  
 13 reconvened at 1:00 p.m. {MST} and the following  
 14 proceedings were entered of record:)  
 15 **Q. (BY MS. CLERGET) All right. Back on**  
 16 **the record at about 1:01. So I want to show you --**  
 17 **Well, let me back up.**  
 18 **Did you read the reply brief to the**  
 19 **preliminary injunction briefing in this case, do**  
 20 **you remember?**  
 21 A. No, I'm not sure I understand what you're  
 22 referring to.  
 23 **Q. Okay. It's all right, we'll put it in**  
 24 **front of you.**  
 25 MS. CLERGET: Just put it up, Crissy,

Page 101

1 okay?  
 2 **Q. (BY MS. CLERGET) Okay. So this has**  
 3 **already been marked in a prior deposition as 5, so**  
 4 **that's why it's a little out of order for you. We**  
 5 **are going to look at a specific part at the end of**  
 6 **it, that is where the plaintiffs in this case, so**  
 7 **Lolo and WildEarth Guardians, asked for relief from**  
 8 **the judge, this is at page 13 of Exhibit 5. And**  
 9 **down there at the bottom of the page you can see**  
 10 **the plaintiffs are asking the court for a season --**  
 11 **a trapping season from January 1st to February**  
 12 **15th.**  
 13 A. Okay.  
 14 **Q. Do you understand that? Do you see that?**  
 15 A. I do understand that, yes.  
 16 **Q. Okay. So I heard you say before --**  
 17 MS. CLERGET: You can take it down,  
 18 Crissy.  
 19 **Q. (BY MS. CLERGET) -- that, you know, you**  
 20 **any trapping on the landscape is dangerous, as far**  
 21 **as you're concerned; right?**  
 22 A. Well, I mean, but keep that in context,  
 23 Sarah, of bears being present and active.  
 24 **Q. Okay. So you'd agree that a season is**  
 25 **appropriate if bears are inactive?**

Page 102

1 A. Well, I don't know if it's appropriate,  
2 but it eliminates or reduces the risk.  
3 **Q. Okay. So before when you were talking**  
4 **about no trapping ever, you'd amend that to say**  
5 **trapping is okay as long as the bears are inactive,**  
6 **and then the question is just when are they**  
7 **inactive?**  
8 A. Yeah, I don't know if I'd amend it, I  
9 think I probably meant it initially. But trapping  
10 where it provides a risk to bears when they're  
11 active is inappropriate. So if you manage around  
12 that somehow to eliminate it, then that's pretty  
13 much what I've said.  
14 **Q. Okay. So in that vein, then, you talked**  
15 **a little bit about what I'll call winter bears,**  
16 **which are those bears that stay out, and you had**  
17 **the example of the two in your experience; right?**  
18 A. Yeah.  
19 **Q. Would you agree with me that two bears**  
20 **over that long period of time in your career mean**  
21 **that there's not a high likelihood that bears are**  
22 **going to be out and active during that trapping**  
23 **season?**  
24 A. During which season?  
25 **Q. During the trapping season in the late**

Page 103

1 **winter.**  
2 A. Define "late winter."  
3 **Q. So let's use the definition that's in**  
4 **Lamb that we talked about earlier.**  
5 A. Uh-huh.  
6 **Q. So if you use those dates that are in**  
7 **Lamb, would you say that there's a low likelihood**  
8 **that bears are going to be trapped in those dates?**  
9 A. Well, I can't say that, Sarah. I mean,  
10 as long as there are -- as long as there's that  
11 activity and baits and the tools are on the  
12 landscape, there is more than likely going to be  
13 conflict.  
14 **Q. So if there's more than likely going to**  
15 **be conflict, why would the plaintiffs in this case**  
16 **agree to a trapping season where there are traps**  
17 **out on the landscape and there the potential for**  
18 **bears to be out on the landscape?**  
19 MR. BECHTOLD: Object to the extent that  
20 invades attorney-client privilege.  
21 **Q. (BY MS. CLERGET) Go ahead, you can**  
22 **answer.**  
23 A. So where are we?  
24 MS. CLERGET: Can you read it back?  
25 (Whereupon, the court reporter read back

Page 104

1 the following:)  
2 "QUESTION: So if there's more than  
3 likely going to be conflict, why would the  
4 plaintiffs in this case agree to a trapping  
5 season where there are traps out on the  
6 landscape and there the potential for bears  
7 to be out on the landscape?"  
8 A. Well, you're asking me a question I can't  
9 answer and won't, Sarah, that's not my doing. I'm  
10 here simply to provide you some evidence about the  
11 possibilities and reasoning and conclusions of the  
12 probabilities of risk when you proceed. So if  
13 they're prepared to compromise to that extent,  
14 that's their decision, I'm just here to talk about  
15 the bears and the issues.  
16 **Q. (BY MS. CLERGET) So the reason I ask you**  
17 **those questions is because yesterday when we took**  
18 **the depositions of the plaintiffs, of Lolo and**  
19 **WildEarth Guardians, they deferred to their**  
20 **experts, they said, we defer to the experts as to**  
21 **why there's a low likelihood of a bear being**  
22 **trapped from January 1st to February 15th. So**  
23 **that's why I'm now asking you, one of their**  
24 **experts, the same question about why trapping is**  
25 **okay during that time?**

Page 105

1 MR. BECHTOLD: Object to the extent it  
2 misstates the testimony. And object to the extent  
3 it invades attorney-client privilege --  
4 **Q. (BY MS. CLERGET) Okay, go ahead.**  
5 MR. BECHTOLD: -- and attorney work  
6 product privilege.  
7 **Q. (BY MS. CLERGET) Go ahead.**  
8 THE WITNESS: So what's the situation  
9 here? You want me to reply?  
10 MS. CLERGET: Yes.  
11 THE WITNESS: Is that reasonable, Tim?  
12 MR. BECHTOLD: Yeah, you have to answer.  
13 A. Okay. Well, I think that to make it  
14 clearer, I don't see the distinction here. I've  
15 said if we can minimize or virtually eliminate the  
16 possibility that there's a risk or a conflict, then  
17 that's -- proceed as you wish. But within the time  
18 that bears are active on the landscape in that  
19 particular area, the best way we can do that is to  
20 avoid trapping in that area.  
21 **Q. (BY MS. CLERGET) So how would --**  
22 A. So this -- I mean, if there's no  
23 conflict, if there's no bears and there's trapping  
24 going on or the two don't cross tracks, fine.  
25 **Q. So would you say that between the --**

Page 106

1 **Well, let's go back and break that down.**  
 2 **So first of all, you'd agree that there**  
 3 **can be trapping as long as you limit it to when the**  
 4 **bears are most likely denned; is that right?**  
 5 A. Well, let's keep it in the context of  
 6 what we came to talk about, Sarah, which is this  
 7 endangered grizzly bear population and the  
 8 Endangered Species Act, which obligates you and the  
 9 State to do as much as you can, it seems to me, to  
 10 make sure that this population thrives; so that's  
 11 the issue for me.  
 12 Whether you want to pursue trapping some  
 13 other time or in some other fashion or other  
 14 species, that's your management issue. Mine is  
 15 simply trying to point out that it makes no sense  
 16 to increase the risk and create conflict for bears  
 17 by introducing this trapping season when bears are  
 18 active.  
 19 **Q. So what do you mean when you say when**  
 20 **bears are active?**  
 21 A. Well, I mean when bears are above ground  
 22 and before they den.  
 23 **Q. And would you --**  
 24 A. So what I --  
 25 **Q. Go ahead, sorry.**

Page 107

1 A. No, that's fine, that's it.  
 2 **Q. So would you agree that the -- to use**  
 3 **your words, when bears are inactive, that Lamb**  
 4 **gives a good example or good science of determining**  
 5 **when bears are active?**  
 6 A. Not necessarily, no. I think that  
 7 activity period of bears is probably more  
 8 substantial than he has defined in that particular  
 9 instance. But, you know, that's -- and I tried to  
 10 point that out to you that we're looking at a bell  
 11 curve here, so there's gonna be bears on the low  
 12 end and bears on the high end of the curve, and  
 13 those bears are gonna do a little bit different  
 14 things. So there potentially could be activity,  
 15 there could be conflict.  
 16 Do I think that's significant? Yeah, it  
 17 could be, particularly on a bear or if one or two  
 18 bears were affected. Now, you may dismiss that and  
 19 say, what's one or two bears? But one or two  
 20 bears, if they happen to be the right kind of bears  
 21 in the right situations, that can be relevant in  
 22 terms of the population's growth or stability. So  
 23 that's what I'm saying. If the season closes on  
 24 the 1st and there's a conflict afterwards, then I  
 25 would suggest that everybody reevaluate that

Page 108

1 opening date.  
 2 **Q. So I heard a couple of things in there.**  
 3 **First of all you said you disagreed with Lamb's**  
 4 **dates?**  
 5 A. Well, I didn't say I disagreed with them,  
 6 I said there's probably more evidence to broaden  
 7 the curve.  
 8 **Q. Okay. What evidence is that?**  
 9 A. Well, there's a lot of bears that are  
 10 active, we're talking about, you know, a thousand  
 11 bears or more in this population, plus the ones  
 12 that are in Montana and Alberta that cross back and  
 13 forth, and British Columbia. So, you know, you've  
 14 got a sample, I don't know what Lamb's sample was,  
 15 I can't recall it, but you've got a lot of other  
 16 bears and they're crossing and being active in  
 17 this -- in and around this occupied grizzly bear  
 18 area on a regular basis, so it would seem to me  
 19 that a bit more attention should be paid to that.  
 20 **Q. And what evidence, what science would you**  
 21 **use to determine when bears are denning?**  
 22 A. Probably the evidence you have, plus the  
 23 evidence from a whole range of grizzly bear studies  
 24 throughout the Rocky Mountains and down into  
 25 Yellowstone. There's a lot of evidence available,

Page 109

1 I haven't seen it assembled, but it's out there.  
 2 **Q. So right now you don't --**  
 3 A. -- flatten out the curve, there's going  
 4 to be bears out there, even here I suspect there  
 5 will be bears that might be active in early January  
 6 or come back out of their dens early, that happens.  
 7 **Q. So what evidence do you have of that**  
 8 **happening aside from the two bears in your**  
 9 **personal -- your personal experience?**  
 10 A. Of the two bears -- Oh, you mean that  
 11 were active in January?  
 12 **Q. Yeah, what evidence do you have other**  
 13 **than those two bears?**  
 14 A. Personal evidence with bears, none. In  
 15 the literature and the scientific management  
 16 literature there are documents, there are  
 17 indications that this happens. I didn't summarize  
 18 those because I'm paying attention to what the  
 19 State proposed, but they are there and they should  
 20 be considered --  
 21 **Q. So you cited --**  
 22 A. -- ideally I would --  
 23 **Q. Sorry. So you cited Lamb; right?**  
 24 A. Huh?  
 25 **Q. You cited Lamb in your declaration.**

Page 110

1 A. I what?  
 2 **Q. You cited Lamb in your declaration;**  
 3 **right?**  
 4 A. Yes, I did, yeah.  
 5 **Q. And you didn't cite any of those other**  
 6 **studies that you're talking about; right?**  
 7 A. No, I did not.  
 8 **Q. And now you're trying to say that you**  
 9 **disagree with the science that's in Lamb, Lamb's**  
 10 **conclusions with denning?**  
 11 A. No, that's not what I'm saying, Sarah.  
 12 His data is there and I'm taking it at face value.  
 13 I'm saying that it's not adequate to explain the  
 14 entry dates and emergence dates of bears throughout  
 15 this entire region. There's more activity than  
 16 outside of that that Lamb has -- than Lamb has  
 17 indicated.  
 18 **Q. But you've already told me that bears are**  
 19 **bears, essentially; right? There's no behavioral**  
 20 **difference between the bears in the south British**  
 21 **Columbia and the bears in British Columbia --**  
 22 A. I'm not trying to distinguish between  
 23 bears in various regions, Sarah, I'm just trying to  
 24 tell you that there's a lot of ecological and  
 25 behavioral variation of bear population. Some of

Page 111

1 it's captured by Lamb, but it's not extensive  
 2 enough to cover the entire region, so expect there  
 3 to be bears that are going to fit outside the  
 4 definition of Lamb.  
 5 **Q. Okay. And you'd agree that in order to**  
 6 **set a season -- I think I heard you say, in order**  
 7 **to set a season that won't conflict with bears, we**  
 8 **need some science in order to base that -- make**  
 9 **that determination; right?**  
 10 A. Well, that's referring to the evidence,  
 11 yes, that would be appropriate, that would be the  
 12 best.  
 13 **Q. Okay. And we've got Lamb, we talked**  
 14 **about that. What other science would you use other**  
 15 **than Lamb for us to set those season dates?**  
 16 A. Well, I would have to go back through the  
 17 literature, you know probably as well as I do that  
 18 Montana, the Parks Service and the Fish and  
 19 Wildlife Service have been capturing bears for --  
 20 going back to the '60s. You could assemble all  
 21 that information, as I could as well, but it hasn't  
 22 been done right now because it's not, I don't  
 23 think, that critical.  
 24 **Q. Okay. Have you looked at the work of**  
 25 **Dr. Costello at all?**

Page 112

1 A. I've looked at her declaration.  
 2 **Q. And you'd agree with me that the Bjornlie**  
 3 **method that she talks about is one way that the**  
 4 **science you were just talking about with the U.S.**  
 5 **Forest Service, USGS, National Park Service, all of**  
 6 **that data that they have been collecting is used in**  
 7 **that Bjornlie method, would you agree with that?**  
 8 A. In which method?  
 9 **Q. Bjornlie.**  
 10 A. I'm not hearing that very well, sorry.  
 11 **Q. It's Bjornlie, B-j --**  
 12 A. Oh, Bjornlie, okay, yeah. You know, I  
 13 don't know, I'd have to refresh my memory on  
 14 Bjornlie.  
 15 **Q. Okay.**  
 16 A. What are we talking about? Are we  
 17 talking about the definition of the "occupied"  
 18 versus "occurred" area?  
 19 **Q. So the Bjornlie method is what all of**  
 20 **those agencies -- all those federal agencies and**  
 21 **Fish, Wildlife & Parks and Idaho and Wyoming use to**  
 22 **determine both the "occupied" range and then also**  
 23 **some of the -- some of that data is used to**  
 24 **determine the denning patterns.**  
 25 A. Yeah, okay, now I know where you're

Page 113

1 going, okay. No, I wouldn't agree with that.  
 2 **Q. You would not? Sorry, I just want to be**  
 3 **clear, you would not agree with that?**  
 4 A. No, I don't think Bjornlie's method is  
 5 satisfactory. I think it narrows down the range of  
 6 the bears that should be of management interest,  
 7 both in terms of the numbers, the movements, and  
 8 the distribution. And that's reducing -- for  
 9 example, reducing the "occupied" area map that I  
 10 think is in Costello is a diminution of that and it  
 11 does not adequately cover it.  
 12 Now, I'm not the only one saying that.  
 13 And I could read you this little comment from this  
 14 newspaper article that you do have in front of you  
 15 now, from a group of people who worked in the  
 16 system, including state fish and wildlife and U.S.  
 17 Fish and Wildlife Service, and they agree with me  
 18 that --  
 19 **Q. So you don't need to read it if it's**  
 20 **already in the record, I don't want to waste our**  
 21 **time re-reading.**  
 22 A. Well, I'm trying --  
 23 **Q. But you can just refer to it.**  
 24 A. -- I'm trying to answer this and tell you  
 25 that -- here's this -- this is from a letter by

Page 114

1 Servheen, published in the papers. Servheen and  
 2 two -- two retired members of Montana Fish and  
 3 Wildlife Commission and a former regional  
 4 supervisor, and they're simply saying, look it,  
 5 grizzlies move back and forth across our home  
 6 boundaries all the time, so this "occupied" area is  
 7 not adequate. And the map of "occupied" range of  
 8 grizzly bears currently used by the State,  
 9 according to these ex-agency researchers and  
 10 managers, does not display the actual distribution  
 11 of grizzly bears. I think they're right, and that  
 12 would be my interpretation based on a broader  
 13 inclusion of all the research data that's  
 14 available. I don't know why you're trying to  
 15 pick -- put one leg on the stool with Lamb, there's  
 16 more to it than that. But Lamb is one example that  
 17 we use.

18 **Q. So I want to set aside everybody else's**  
 19 **opinions because what I care most about is your**  
 20 **opinions and your science. You're a scientist and**  
 21 **I want to know what you -- why you think that the**  
 22 **methodology used by Bjornlie and the USGS, Park**  
 23 **Service, U.S. Fish and Wildlife Service, why you**  
 24 **think that methodology is incorrect?**  
 25 A. Well, I think it's -- I can't say it's

Page 115

1 incorrect, it's not inconclusive enough, so that  
 2 makes it inadequate, in my view.

3 The home range of an individual grizzly  
 4 bear during the course of a week or a day can be  
 5 easily 10 or 15 kilometers across. And so using a  
 6 3-kilometer grid, for example, in establishing this  
 7 "occupied" area is simply underestimating, by  
 8 design, what bears are doing. I just read you that  
 9 there's, you know, these guys said --

10 **Q. I don't care about what anybody else**  
 11 **thinks, I want to know what you think.**  
 12 A. Yeah, well, that's what I agree with. I  
 13 agree.

14 **Q. Okay. And --**  
 15 A. But I'm not the only one agreeing, and  
 16 it's based on that. Bears are moving all the time.  
 17 There's a lot of bears out there that are not  
 18 marked, but are moving, those bears are just as  
 19 important as the research bears, and I don't see  
 20 that being addressed here.

21 All I see is the State trying to minimize  
 22 the area over which they want to apply more  
 23 intensive management at the cost of bears that are  
 24 outside this area that are important bears to the  
 25 population and to the region; that's it, it's

Page 116

1 straightforward.

2 **Q. So you'd agree with that me that this**  
 3 **method has been used in the GYE and by all of those**  
 4 **federal agencies for a long time; right?**  
 5 A. Well, it was there until they changed it  
 6 around here more recently. You know that they  
 7 changed the size of the "occupied" area, and  
 8 they're always manipulating the recovery area  
 9 versus the "occupied" area versus the "occurrence"  
 10 area. It seems like they're trying to redefine  
 11 something here, and I'm suspicious that they're  
 12 trying to redefine it to their advantage and not  
 13 the advantage of the bears, I'm simply telling you  
 14 that.

15 **Q. So I want to clarify, the 3-by-3 cell**  
 16 **kilometer -- or 3-by-3-kilomter cell, that cell**  
 17 **size has been used in the GYE since 2013.**  
 18 A. Yeah.

19 **Q. So --**  
 20 A. Yeah.

21 **Q. -- so that hasn't changed?**  
 22 A. Yeah, that's unfortunate, but those cells  
 23 are too small to represent bear activity.

24 **Q. Okay. So I think what I'm hearing you**  
 25 **say is that you believe that the method that all of**

Page 117

1 **those federal and state agencies have been using**  
 2 **since 2013 is not scientifically valid, is that**  
 3 **what I'm hearing you say?**  
 4 A. I think it's not scientifically sound  
 5 enough to draw the conclusions that they have  
 6 drawn.

7 **Q. Okay. And the --**  
 8 A. There's some validity to it, they're  
 9 trying to work with this, but they're working in  
 10 contravention, I think, of the interest of the  
 11 bears, and for that matter, the public. I just  
 12 told you as well that I'm not the only one that  
 13 thinks this, so I'm going to refer -- defer to  
 14 these other people who are just as much inside -- I  
 15 wish they had spoken up when they were in positions  
 16 of authority, but they're not -- they didn't do  
 17 that, so they are now, which to me implies that  
 18 they knew that the decisions being made and the  
 19 management basis, the science that was being used  
 20 was unsound and inadequate. Now they're speaking  
 21 up.

22 I mean, this is true even, you know, for  
 23 people that work for the State, there's several  
 24 State employees here. So the ability to speak  
 25 openly about the validity of the science and how

Page 118

1 it's been analyzed and integrated into the  
 2 decision-making is suppressed by people that are in  
 3 the agency at the time. It's --  
 4 **Q. So I'm going to stop you because -- I'm**  
 5 **sorry, I wouldn't normally stop you, but Tim's**  
 6 **giving us only a limited amount of time, so I've**  
 7 **got to get through what I need to get through. And**  
 8 **I've heard you reference the article, it's in**  
 9 **evidence, I understand that you agree with those**  
 10 **folks, I don't want to hear any more about what**  
 11 **they think because I want to focus on what you**  
 12 **think.**  
 13 **So I've heard you say that the**  
 14 **3-by-3-kilometer cell grid is too small, and that's**  
 15 **one of the reasons you disagree with the**  
 16 **methodology. Is there any other reason that you --**  
 17 **scientific reason why you believe that the**  
 18 **methodology used is unscientifically sound?**  
 19 A. Well, there is that one. Plus the  
 20 decision to eliminate a lot of peripheral  
 21 observations that were cells and not include those  
 22 or include some sort of transition area between  
 23 them and the core range or the "occupied" range,  
 24 that's another omission that I think is a  
 25 disadvantage to the bears and I think politically

Page 119

1 motivated. I mean, but science-wise, it's not  
 2 adequate because bears are moving through there on  
 3 a regular basis, including the bears that were seen  
 4 at some distance away from the "occupied" area. So  
 5 those are inadequacies that I think limit the  
 6 capacity of the State to protect bears.  
 7 **Q. Okay. So what you disagree with is the**  
 8 **fact that they're using the methodology to**  
 9 **establish the estimated "occupied" range. What you**  
 10 **believe they should be using instead is the --**  
 11 **we'll call it the "may be present" map, anywhere**  
 12 **where bears may be; is that a correct statement?**  
 13 A. Well, I think it's important to consider  
 14 the bears that are exploratory bears, those are  
 15 critical bears for a lot of populations. If we  
 16 hadn't had that, imagine -- take this in  
 17 consideration, we have seen the expansion of  
 18 grizzly bear range in and around the core areas.  
 19 If those bears had not been permitted to do that,  
 20 then we would not have seen the expansion of the  
 21 core area and we would be in a far more difficult  
 22 predicament than we are.  
 23 Now, you're telling me -- or they are  
 24 telling me that we should curtail the movement on  
 25 the fringe of the existing "occupied" area, and I'm

Page 120

1 telling you that that's to the disadvantage of  
 2 bears and it is not applying the science properly.  
 3 **Q. I want to go back for a minute, you said**  
 4 **there that bears are continually expanding; right?**  
 5 A. Well, if you have a core -- if you have a  
 6 sufficient threshold number of bears in a  
 7 population, you're gonna find these bears that are  
 8 gonna try to find that habitat where there's less  
 9 social strife, where they're gonna try to avoid  
 10 interactions with humans or livestock, all these  
 11 problems that Fish and Wildlife I think is aware  
 12 of, although, not necessarily managing to minimize,  
 13 but those are there.  
 14 So if you have any kind of a core  
 15 population, you're always gonna have those bears.  
 16 And you won't have them until -- you won't have  
 17 them in only the cases where you basically reduce  
 18 that population to a nonfunctional level --  
 19 **Q. So you'll agree --**  
 20 A. -- that's not what we're dealing with  
 21 right now. We're trying to keep this population  
 22 with these bears that are important on the edges,  
 23 moving back and forth and sometimes moving well  
 24 into the corridor area and then moving out again.  
 25 Those are the bears that are important to keep in a

Page 121

1 population just as much as the ones that are  
 2 home -- home-sitters.  
 3 **Q. So you'll agree with me that the**  
 4 **population has grown -- population of bears has**  
 5 **grown as long as you've been working with the**  
 6 **bears; right?**  
 7 A. Well, I think the Endangered Species Act  
 8 has been relatively effective, incrementally  
 9 effective. So obviously, I think there are more  
 10 bears now, and the State concedes that, so does  
 11 Fish and Wildlife Service. I think initially at  
 12 one point there were probably only 5 or 6 hundred  
 13 bears thought to be in the Northern Continental  
 14 Divide Ecosystem population, now there's  
 15 substantially more, or more.  
 16 So in that sense, after 40 years or  
 17 whatever it is from list listing of the bears, it's  
 18 been useful, it's been healthy. It's been a long,  
 19 tedious haul because of very issues we're talking  
 20 about right now, resistance to taking positive  
 21 actions that would do the best thing for bears that  
 22 could be done; we're not doing that. But through  
 23 all those decades, incrementalism has allowed the  
 24 bear population to improve its stature.  
 25 **Q. And you know that there's been a wolf**

Page 122

1 **trapping season in Montana since 2013; right?**  
 2 A. I do, I read that. I saw that.  
 3 **Q. So the bear population has continued to**  
 4 **grow since 2013 while we were trapping wolves;**  
 5 **right?**  
 6 A. Well, I don't know exactly what the  
 7 growth has been in the last decade, but I think  
 8 it's at least held its own. But I don't think  
 9 holding its own is what the Endangered Species Act  
 10 expects. We're looking at, if I'm not mistaken,  
 11 recovery here, not maintenance.  
 12 **Q. Well, you'll agree that -- you say**  
 13 **holding its own, but the population's grown since**  
 14 **2013; right? It hasn't maintained the same, it's**  
 15 **grown?**  
 16 A. Yeah, I'd have to check Ms. Costello's  
 17 report about the status of the bear population, but  
 18 I think there's been some incremental improvement.  
 19 **Q. Okay. So it's fair to say that the bears**  
 20 **still can -- the population can still grow even**  
 21 **though there's trapping?**  
 22 A. Well, I mean, if trapping has been there  
 23 the whole time, obviously, these bears have been  
 24 able to counter some of the costs of that and  
 25 produce a few more bears.

Page 123

1 **Q. Okay. I just want to double-check, when**  
 2 **we are talking about your history, your employment**  
 3 **history, have you ever worked in a management**  
 4 **capacity at all?**  
 5 A. In a which?  
 6 **Q. A management capacity.**  
 7 A. American?  
 8 **Q. Management, like managing the bears.**  
 9 A. Oh, management capacity, yes.  
 10 **Q. And when was that?**  
 11 A. That was when I was a biologist in the  
 12 Yukon, and then when I was a forester in Alberta.  
 13 **Q. So were you working for the government in**  
 14 **both of those instances?**  
 15 A. Correct.  
 16 **Q. And so you'd agree that you were not**  
 17 **politically motivated when you worked for the**  
 18 **government, I'm assuming?**  
 19 A. I would agree there were political --  
 20 there was a political shroud in place that limited  
 21 the ability of some of the people working under  
 22 that shroud to integrate the best information for  
 23 the best results, there were limitations on it and  
 24 I was subjected to some of those as well.  
 25 **Q. All right. So as far as you're**

Page 124

1 **concerned, any government science is suspect?**  
 2 A. Is which?  
 3 **Q. Suspect.**  
 4 A. Sorry, the word?  
 5 **Q. Is any government science suspect? Yes.**  
 6 A. Well, it's -- I don't know if it starts  
 7 out suspect, but I think everything that happens  
 8 under those politically-constrained circumstances  
 9 warrants intensive scrutiny from the public and  
 10 independent science; that's important. I found the  
 11 same thing.  
 12 Now, some people do what I did, and that  
 13 is leave. But obviously others are choosing not to  
 14 do that, but that doesn't mean it's in the  
 15 advantage or benefit of the wildlife resource or  
 16 the landscape that those bears depend upon. This  
 17 is a good example of that.  
 18 What you're trying to do, Sarah, what the  
 19 State is trying to do is simply make 2 and 2 equal  
 20 5. And, you know, the evidence doesn't suggest  
 21 that's the case, nor will it be the case. So you  
 22 have to -- I think you have to regroup and realize  
 23 we are going to have a cost on this and it's a  
 24 legitimate complaint.  
 25 **Q. So we talked about the Bjornlie method**

Page 125

1 **that is used to calculate the estimated "occupied"**  
 2 **range of grizzly bears, and to some extent the data**  
 3 **goes into estimating the denning. And you**  
 4 **understand that that methodology is used by the**  
 5 **U.S. Forest Service, USGS, National Park Service**  
 6 **and multiple states and the interagency grizzly**  
 7 **bear team, do you understand that?**  
 8 MR. BECHTOLD: Asked and answered.  
 9 **Q. (BY MS. CLERGET) Yes or no?**  
 10 A. I understand that they are trying to use  
 11 that, yes.  
 12 **Q. Okay. And would you say that all of**  
 13 **those entities are politically motivated, in your**  
 14 **estimation?**  
 15 A. I would say that there's a degree of  
 16 compromise in their actions. And that's precisely  
 17 why a case like this that forces it to be exposed  
 18 in the public's eye by independent scientists and  
 19 conservationists is a positive thing. So yes,  
 20 there's always going to be people working at the  
 21 government, but this is a good thing, and it's  
 22 exposing their inadequacies, and it helps explain  
 23 why we're struggling with grizzly bear conservation  
 24 after still almost 50 years.  
 25 **Q. How do you believe that scientists should**

Page 126

1 **track changes in bear denning behavior?**  
 2 A. Well, the way they've been doing it, but  
 3 with more strategic use of resources and time,  
 4 probably.  
 5 **Q. Who do you mean by that?**  
 6 A. Well, I mean, more distribution of a  
 7 greater area of interest, greater focus. I don't  
 8 think we need to go too much further, but there  
 9 still needs to be continuous long-term monitoring.  
 10 **Q. When you say monitoring, what do you**  
 11 **mean?**  
 12 A. Well, I mean watching bear population and  
 13 keeping track of the bears that they do have  
 14 presently marked.  
 15 **Q. And how -- so I heard you say telemetry**  
 16 **data, when you say marked, is that what you mean?**  
 17 A. Which?  
 18 **Q. Telemetry data, when you say marked, is**  
 19 **that what you mean?**  
 20 A. Well, telemetry could be part of it, but  
 21 I think it's probably also time to start toning  
 22 down telemetry, but that's a whole 'nother issue.  
 23 I think what we have is a database right now that  
 24 says it would be wise to start paying more  
 25 attention to the application of information we

Page 127

1 have.  
 2 **Q. So what other information do you think**  
 3 **that we need besides collar data and on-the-ground**  
 4 **observations?**  
 5 A. Not a lot. We know -- there's not a lot  
 6 that we don't know about bears. And what we do  
 7 know and what we can suppose on the basis of  
 8 reasonable consideration of the evidence, we know  
 9 enough about bears to take strong action to protect  
 10 the population and to mind the Endangered Species  
 11 Act, we know what to do. What's happening is  
 12 attempts to defuse that.  
 13 **Q. And you'd agree that those same methods,**  
 14 **the collar data and the on-the-ground observations,**  
 15 **those can change -- meaning those observations can**  
 16 **track changes in bear denning activity; right?**  
 17 A. Well, they can, they can for some of the  
 18 bears that are obviously marked. But keep in mind,  
 19 as you do, no doubt, and as Montana does, too,  
 20 we're dealing with a small fraction of bears that  
 21 are marked. And the supposition here or the  
 22 implication is that those bears are characteristic  
 23 of all the bears that are out there, and they're  
 24 not, but they are representative of some of the  
 25 bears. But there's also a lot of bears that are

Page 128

1 doing things at times and places that are not being  
 2 captured by the telemetry data.  
 3 **Q. So what else would you use to track the**  
 4 **bear denning activity aside from the telemetry data**  
 5 **and the on-the-ground observations?**  
 6 A. I don't think I would do anything else,  
 7 Sarah. What I would quit doing is trying to force  
 8 the program by interpreting the data that is  
 9 available in a very narrow, narrow manner. And  
 10 that I don't support and I object to it, and I'm  
 11 telling you that now. So I wouldn't do much. I  
 12 think we know a lot about bears, but we're not  
 13 applying that in a constructive manner.  
 14 **Q. Have you looked at the collar data for**  
 15 **the last ten years in Montana?**  
 16 A. I did see a figure recently, and it  
 17 might've even come from the grizzly bear recovery  
 18 coordinator or your person, your bear biologist  
 19 Costello, showing a humongous number of bear  
 20 relocations.  
 21 **Q. Have you looked at the raw data,**  
 22 **yourself, not the interpretations of the data as**  
 23 **you call them, but the data itself?**  
 24 A. No, I haven't looked at the field sheet  
 25 that says we captured bear 312 on the 15th at this

Page 129

1 location.  
 2 **Q. Okay. So everything that you look at,**  
 3 **the sort of, I'm going to call it the data, right,**  
 4 **the data that comes from the collar data and the**  
 5 **in-the-field observations, you haven't done your**  
 6 **own independent assessment of that data, have you?**  
 7 A. I have not.  
 8 **Q. And so when you talk about bear denning**  
 9 **behavior, you haven't determined for yourself,**  
 10 **based on that data, a different conclusion from the**  
 11 **ones reached by Costello and the other scientists;**  
 12 **is that correct?**  
 13 A. I'm not sure just exactly what you said,  
 14 Sarah, but let me try to answer what I think you  
 15 said and what I think about it. I trust these  
 16 researchers not to fudge the data. When they say  
 17 they caught 42 bears in this time span, I'm going  
 18 to believe them unless I find out that there's  
 19 malpractice in place.  
 20 Once they do that, that's when I start to  
 21 apply a greater interest, and that is, how are they  
 22 gonna take that data and what do they do with it?  
 23 Do they make 3-kilometer grids out of it? Does  
 24 that represent a bear's movement? Does that  
 25 represent the bears that come and go from the

1 fringe population? Does that represent the  
2 explorer bears? That's where the deficiency is  
3 here, it's not in the original data, I'm assuming,  
4 anyway. Although, obviously, everybody likes to  
5 have a lot of data, but we have enough now to make  
6 the right kinds of decisions.

7 We know what the status of this  
8 population is. We know the law defines them as  
9 endangered. So I'm saying that I don't think the  
10 State is doing the right thing. It's taking the  
11 data which it has, the researchers' data, but it's  
12 in this middle area of interpretation, the  
13 extensions of management that I think they've  
14 failed.

15 **Q. So if you haven't interpreted the data**  
16 **yourself, then you don't have anything to compare**  
17 **to the interpretations that we have, correct,**  
18 **because --**

19 A. No, that's not so, that's not so. I  
20 mean, if the State reports that they, you know, got  
21 106 bears captured and they're monitoring them, I'm  
22 going to believe them, I don't expect them to  
23 misrepresent that. But what they're going to do  
24 with that information is where I can apply my  
25 expertise and my view, and it is using their data

1 as a basis. But it's the management applications  
2 and the conservation applications or the  
3 introduction of wolf trapping initiatives that  
4 distort that information, that's what I'm saying.

5 **Q. Do you have any --**

6 A. I don't have to be there to monitor the  
7 capture, Sarah. I mean, what you're trying to do  
8 here, you know -- as an analogy -- you're certainly  
9 using an agricultural approach to this. You know,  
10 you've got a bunch of animals in a corral and  
11 you're trying to tell me that you know when they go  
12 through the gate in and out, that's adequate to  
13 understand what's going on. And I'm saying that's  
14 not adequate to go on.

15 We know how many bears that might be  
16 coming and going, but we have to apply the biology,  
17 the behavior and the ecology to the interpretation  
18 of how you're going to protect those bears and how  
19 you're going to represent them; I don't think  
20 Montana's done that.

21 **Q. Do you have any evidence that outlier**  
22 **bears, as you've called them, have been trapped in**  
23 **incidental wolf traps in Montana?**

24 A. I don't have any evidence of that.

25 **Q. Okay. And so would you agree with me**

1 **that if we don't have any evidence of that, then we**  
2 **can't assume that that's going to happen in the**  
3 **future?**

4 A. No, I don't agree with you at all. I  
5 mean, there's a couple things involved. Firstly,  
6 this is a big database of bears, there's a thousand  
7 bears or so out there. There's a big landscape,  
8 there's a lot of things happening on that  
9 landscape. To imply that, unless you are sitting  
10 there when something happens that it could not have  
11 happened otherwise, I think is a bit naive. And  
12 it's certainly not what we use science for, which  
13 is partly to build an understanding and then take  
14 that and extrapolate it or apply it to regulation  
15 or the act of management to try to protect, as  
16 inconclusively as you can, the population.

17 **Q. So in your estimation a data point of**  
18 **zero is enough to conclude that something will**  
19 **occur in the future?**

20 A. Well, there is zero data point. If  
21 you're trying on use a zero data point to the fact  
22 that somebody with a snare captured a grizzly bear  
23 east of Great Falls, then that isn't there yet.  
24 But the fact is that it's happened in the range of  
25 bears, including, as I said, with me and bears

1 being captured by cables and being injured, so that  
2 happens.

3 So, you know, you're -- I'm trying to  
4 think of a more substantial example. It's like  
5 looking at a rocket that NASA might be trying to  
6 launch, you know, they don't dismiss probabilities,  
7 even if they're small. Well, you are dismissing  
8 probabilities, even though they may be small, but  
9 they may not be, either.

10 **Q. Is there a difference between a small**  
11 **probability and reasonable certainty?**

12 A. No. Well, there might be a degree of  
13 difference, but one overlaps the other, even if  
14 it's a small probability in some cases that it will  
15 be a certainty. You know, I'm confident that there  
16 will be bears that will be captured by snares, that  
17 will be damaged by the trapping or physically  
18 injured, both seriously -- or internally that will  
19 be seriously stressed by it. So I'm confident that  
20 might be a small percentage, it might be 2, 3, 4,  
21 it could be 10 percent one year, but that's  
22 reasonable certainty, that's almost -- not a  
23 reasonable certainty, it's almost a certainty.

24 **Q. So that's never happened, though; right?**

25 A. Well, it has, it has. And it happens --

Page 134

1 there's two cases -- and I don't know if I  
 2 mentioned this. I did speak, before I came down  
 3 here, to a -- deliberately went down to the local  
 4 office where I live and spoke to the conservation  
 5 officer service in British Columbia, and no, there  
 6 are cases where bears have been caught in snares;  
 7 two of them, in fact. So it's happening. It's  
 8 something that you haven't focused on.  
 9 And I don't think -- I don't think you  
 10 can count on trappers or casual hunters or  
 11 recreationists to report that kind of thing. It's  
 12 a sensitive issue. And people are inclined, even  
 13 if they do get involved in it, to not talk about  
 14 it. So that's another factor that says -- that  
 15 suggests that this is probably going on but not  
 16 being reported.  
 17 It's the same as reporting mortality in  
 18 bears. I mean, you know, it depends on who you  
 19 are. In some cases, in known bears only 10 percent  
 20 of the mortality or injuries have been reported, in  
 21 other cases it might be 60 or 70 percent. But  
 22 there's a lot going on out there that isn't  
 23 reported, even if we know it should be reported, as  
 24 we do in the case of a dead grizzly bear.  
 25 **Q. So going back to what you just said about**

Page 135

1 **the two examples, can you give me the details of**  
 2 **those two examples you mentioned?**  
 3 A. Well, I think there's one in one of your  
 4 declarations, that's the one I'm referring to. And  
 5 then there's a well-known documentation of it in  
 6 the southeast part of British Columbia where there  
 7 was a long-term bear study, and I think they had 10  
 8 or 12 percent of bears that were marked that were  
 9 either killed legally or illegally that were  
 10 actually reported.  
 11 **Q. No, I'm talking about the two -- you said**  
 12 **that before this deposition, one of the things you**  
 13 **did to prepare was to go talk to your local office**  
 14 **in British Columbia, and they gave you two examples**  
 15 **of bears caught in snares. Can you give me the**  
 16 **examples -- the details of the examples you just**  
 17 **talked about?**  
 18 A. Can I give you details of them?  
 19 **Q. Yes.**  
 20 A. No, I'm taking the conservation officer's  
 21 word for it.  
 22 **Q. So do you know whether they were**  
 23 **recreational traps or research traps?**  
 24 A. As far as I know, they were trapping --  
 25 trapping incidents. That's the part of British

Page 136

1 Columbia that is not -- does not have any research  
 2 in place right now. But they've been trapping  
 3 wolves in Montana -- or in British Columbia for far  
 4 too long.  
 5 **Q. And do you know a time of year those**  
 6 **traps were --**  
 7 A. I don't. I don't. If you would like me  
 8 to investigate them, I can certainly do that, but I  
 9 don't know.  
 10 **Q. And do you know whether they were set for**  
 11 **wolves specifically or whether they were set for**  
 12 **other species?**  
 13 A. I don't know that.  
 14 **Q. And --**  
 15 A. I put it in a context of a conversation  
 16 about wolves, but it could also have been, remember  
 17 that there just be everything is present and is  
 18 being trapped. So it could be -- it might've --  
 19 the trapper might've been trying to get a cougar,  
 20 could've been a lynx, could've been wolverine,  
 21 even, but they ended up having two instances of  
 22 bears being caught in wolf snares.  
 23 **Q. Well, you just told me that you weren't**  
 24 **sure they were wolf snares.**  
 25 A. They weren't what?

Page 137

1 **Q. Wolf snares.**  
 2 A. Yeah, no, and I didn't know. I don't  
 3 know if they were trapping wolves or not, but  
 4 that's what the conservation officer implied. So  
 5 it does happen and it's happening here, you're  
 6 going to find it here, it's just a matter of time  
 7 until it's reported.  
 8 The fact that you are trying to deny that  
 9 it's happening and it has a probability of  
 10 happening is the disturbing part to me, Sarah; not  
 11 you necessarily, but the State. We need to move  
 12 beyond that and accept the reality that these  
 13 things can happen on the ground and do happen on  
 14 the ground.  
 15 **Q. So what evidence do you have that they**  
 16 **are happening on the ground that we haven't talked**  
 17 **about yet?**  
 18 A. Other than me writing a report for you,  
 19 we've covered everything that we have.  
 20 **Q. Okay. So no other evidence that we've**  
 21 **talked about or that appears in the record that**  
 22 **grizzly bears are being trapped in recreational**  
 23 **wolf traps in Montana?**  
 24 A. Only what we've discussed.  
 25 **Q. Okay. Do you consider yourself an**

Page 138

1 **advocate for the bears?**  
 2 A. No, not really, you know, even though  
 3 you're probably shaking your head about that. I  
 4 consider them a public interest to have viable  
 5 grizzly bear populations on the landscape, to me,  
 6 that's where my interests are invested.  
 7 **Q. And what science have you personally**  
 8 **done, not that you've reviewed, but that you've**  
 9 **personally done to indicate the likelihood that**  
 10 **grizzly bears will be caught in recreational wolf**  
 11 **traps in Montana?**  
 12 A. Well, I haven't done that work here -- I  
 13 mean, I haven't worked on the field -- in the field  
 14 with marked bears in this state.  
 15 **Q. And then I heard you say something**  
 16 **earlier about having telemetry data, we should move**  
 17 **away from that, can you explain what you meant by**  
 18 **that?**  
 19 A. Repeat that for me, please.  
 20 **Q. I think you said earlier about --**  
 21 **something about we should move away from**  
 22 **telemetry data -- toning it down, sorry, were you**  
 23 **words, and I wanted to know what you meant by that.**  
 24 A. Well, I don't think you abandon the data  
 25 you have, what I think we need to do is start

Page 139

1 slowing the capture of bears, and the trauma and  
 2 the stress that that imposes on bears. But that's  
 3 a bigger issue where we're starting to move into  
 4 both the science of it, but also the welfare of  
 5 bears.  
 6 **Q. So how would you collect data, for**  
 7 **example, to predict when bears are denning or not**  
 8 **denning other than with collar data?**  
 9 A. We don't need to continue to collect much  
 10 of that, Sarah, it's in the literature, it's  
 11 available, there's a monstrous -- I mean, there's  
 12 been over a thousand bears -- or easily a thousand  
 13 bears marked and tracked in British Columbia,  
 14 there's been several hundred, 6 or 7 hundred in  
 15 Alberta, and there's several thousand in Montana.  
 16 That information exists, it's a matter of sitting  
 17 down and gleaning it out of these reports. And  
 18 then you will broaden your view of these entry and  
 19 emergence dates that would be well beyond what you  
 20 see in Lamb.  
 21 **Q. So you don't need any more collar data,**  
 22 **essentially?**  
 23 A. We don't -- we need very little. I'm --  
 24 that's a bit of an ethical issue. But I think we  
 25 need to get to the point where we maybe have one

Page 140

1 intensely-managed population, which continue to do  
 2 these sorts of things, but to pursue the bears to  
 3 try to learn more about them without taking  
 4 appropriate action to protect them, as in this  
 5 case, we know a lot about bears, this is not an  
 6 action that is an advantage to bears. It shouldn't  
 7 be happening, in my view, in a critical area like  
 8 this. So we know that building a bigger database  
 9 is not going to change that. The onus is on you  
 10 and the department you represent to take the action  
 11 that now incorporates all the information we have  
 12 and starts to do something really positive for the  
 13 bears.  
 14 **Q. So you think the data that we have right**  
 15 **now on bears is sufficient to predict what's going**  
 16 **to happen with them in the future over time?**  
 17 A. Pretty much.  
 18 **Q. And is that true even as the climate**  
 19 **starts to change?**  
 20 A. Pardon me?  
 21 **Q. That's true even as the climate starts to**  
 22 **change and we move into the future?**  
 23 A. Yes, we can predict that with a fair  
 24 degree of accuracy, give or take some confidence  
 25 limits. But like everything, if you erode an

Page 141

1 ecosystem and if you have a mining community with a  
 2 whole bunch of miners and you have sheep grazing  
 3 with a whole bunch of dogs and shepherds, if you  
 4 have global warming that's gonna start producing  
 5 availability of white bark pine, as it has in the  
 6 ecosystem here, you are going to see negative  
 7 consequences for bears; we can predict that.  
 8 Whether we can predict it within a handful of  
 9 bears, probably not, but we can predict within  
 10 generalities, that the bear population will  
 11 decline, it will be increasingly difficult to  
 12 manage or to protect, that we can do already.  
 13 **Q. And so in your opinion, we don't need --**  
 14 **we don't need collar data in order to -- we don't**  
 15 **need collar data going forward?**  
 16 A. Not a lot -- not a lot going forward.  
 17 **Q. Okay. I want to go back to the**  
 18 **January 1st to February 15th date that everybody**  
 19 **has agreed in this case is a reasonable time to**  
 20 **allow trapping. Can you agree with me that that is**  
 21 **a reasonable time in which to allow trapping?**  
 22 MR. BECHTOLD: Misstates prior testimony.  
 23 THE WITNESS: Should I continue with  
 24 this? Do I answer?  
 25 **Q. (BY MS. CLERGET) Yep, go ahead and**

Page 142

1 answer.  
 2 MR. BECHTOLD: Yes, go ahead and please  
 3 answer.  
 4 A. No.  
 5 **Q. (BY MS. CLERGET) So you don't agree that**  
 6 **January 1st to February 15th is an appropriate time**  
 7 **to allow trapping, why is that?**  
 8 A. Well, I mean, we've been talking about  
 9 that all morning, Sarah. You're trying to --  
 10 you're trying to make me say that 2 and 2 is 5, I'm  
 11 not gonna do that.  
 12 What we have here is, if you are  
 13 cornered, you've got your back to the wall and  
 14 that's what you're gonna do, it's the best you can  
 15 do, but that doesn't mean that is the actual right  
 16 thing to do given the evidence, given the  
 17 Endangered Species Act, given the status of this  
 18 population, and given what I think is the  
 19 responsibility of the State to cooperate with Fish  
 20 and Wildlife Service and the people of the U.S., I  
 21 don't see it happening, all I see is continued  
 22 resistance.  
 23 So if your back's in the wall and you're  
 24 gonna come out shooting, okay, that's fine, I guess  
 25 you're gonna go for the January thing. I would say

Page 143

1 it would be better off not to do any of it. This  
 2 is not a big deal for the vast majority of the  
 3 people of this state, not economically, not any  
 4 other way, not recreationally, and it certainly is  
 5 negative for the bears.  
 6 So my suggestion, my recommendation would  
 7 be go back and say, okay, the data says we are  
 8 increasing the risk to these bears, and that's not  
 9 our responsibility, we have the opposite  
 10 responsibility, let's do what we think will be the  
 11 most appropriate thing to do.  
 12 **Q. And I'm honestly just trying to**  
 13 **understand here, because I hear you saying no**  
 14 **trapping would be best. And I hear you saying**  
 15 **that, at least in your experience, there have been**  
 16 **two bears that stay out of dens. But then on the**  
 17 **other hand, I have to ask in this case for the**  
 18 **preliminary injunction to the judge, the ask that**  
 19 **the plaintiffs made was for a trapping season from**  
 20 **January 1st to February 15th, so I'm honestly just**  
 21 **trying to reconcile how those two opinions can**  
 22 **exist at the same time.**  
 23 A. Well, I mean, I can't understand how they  
 24 exist. If you want to see why the plaintiff has  
 25 chosen to accommodate those dates, you probably

Page 144

1 have to ask them. They're looking at doing the  
 2 best they can under what I think are extremely  
 3 onerous political and management conditions in  
 4 Montana. So perhaps they're hoping to get away  
 5 with the best they can, ask them, though.  
 6 **Q. Well, they've told me to ask you, is the**  
 7 **problem.**  
 8 A. Yeah, well, I've told you what I think.  
 9 The ideal would be none. If you're going to -- if  
 10 you have to do it, if you're caught in a corner,  
 11 you've got your hands in the pot, then stay with  
 12 the time that we have a reasonably high probability  
 13 that bears will be less active.  
 14 **Q. And what is it that makes you think**  
 15 **January 1st to February 15th is that time?**  
 16 A. What about it?  
 17 **Q. What is it that makes you think**  
 18 **January 1st to February 15th is that time?**  
 19 A. Well, it's -- as I said, it's the time  
 20 where the probability is highest that bears will be  
 21 inactive. It does not rule out activity, it does  
 22 not rule out the fact that you -- you cannot in any  
 23 way discipline or manage your trappers, there's  
 24 gonna be overlap, there's gonna be slop. So you've  
 25 got a number of issues here. If you're cornered,

Page 145

1 you're trying to do the best you can. I'm not  
 2 saying that I approve of that or not, but it's the  
 3 option pass, if you're gonna talk football  
 4 language.  
 5 **Q. So what's the scientific --**  
 6 A. If you're backed in a corner and you want  
 7 to try to get out, try that.  
 8 **Q. What's the scientific difference between**  
 9 **January 1st and February 15th and the dates that**  
 10 **are in Lamb? What's the difference in the science**  
 11 **there? Why is one scientifically better than the**  
 12 **other?**  
 13 A. Well, I think I tried to explain that to  
 14 you here, you're repeating yourself or me, Sarah.  
 15 I said that there's -- if you incorporate all the  
 16 data out there from these 3,000 or more grizzly  
 17 bears that have been tracked for decades, starting  
 18 in the '60s or '70s, you will have expanded your  
 19 entry dates and your emergence dates, and you will  
 20 have as good of databases you need or will ever  
 21 get. You haven't done that, they haven't done it.  
 22 **Q. Well, you think -- so you think Lamb**  
 23 **didn't do it?**  
 24 A. I don't know what Lamb did. All I'm  
 25 doing -- all I can tell you is what's in Lamb's

Page 146

1 paper.

2 **Q. Okay. Have you seen anybody else do it**

3 **that you think has good science?**

4 A. Well, there's probably a -- there's

5 probably a whole bunch of information in the

6 original Craighead book. I didn't refresh my

7 memory real by looking at it, but I would be

8 interested to see what John and Frank Craighead

9 said in their first book; maybe Montana ought to

10 try to do that.

11 I noticed a distinct absence in some of

12 the Montana work, when I do look at it, about

13 scholarship in terms of addressing earlier work and

14 more bodily-based work, which is what the science

15 is, okay, that's what the science -- the

16 scholarship of science is, incorporate everything

17 you can find and then use it to your best

18 advantage, not, in this case, to permit trapping of

19 wolves in bear country, but to do what might be the

20 best for the bears and the landscape. I'm not

21 seeing that. I've tried to tell you that clearly.

22 You're trying to convince me to change my mind, I'm

23 not going to.

24 **Q. I'm not trying to convince you of**

25 **anything, I'm really trying to understand the**

Page 147

1 **science. I want to understand the science that**

2 **you're relying on and that the plaintiffs are**

3 **relying on.**

4 A. Well, you're not trying to convince me,

5 you're trying to dismiss it. There's a probability

6 that bears are being injured by trapping, we know

7 that. And it doesn't necessarily mean trapping

8 with snares and cables, but all trapping, and

9 snares and cables only add to that, like a

10 cumulative affect. I've never seen a cumulative

11 affect analysis on this issue, maybe that's what

12 would be a good start. And if they did that, then

13 they could more broadly incorporate the scientific

14 evidence that exists, which is a massive pile of

15 information. And I believe it would substantially

16 expand your understanding of that particular issue

17 plus a whole series of other issues, but I'm not

18 seeing it.

19 So I'm just suggesting that, you know,

20 you're trying to force an issue here based on one

21 or two observations or your peculiar concerns about

22 certain researchers or reports. There's more to

23 it. There's a big world out there with

24 information, that's what Montana needs to do.

25 **Q. But you haven't done that; right?**

Page 148

1 A. No, I have, if you read -- if you read

2 either of my reports for southwest Alberta or the

3 Granby-Kettle, there's a lot more information in

4 there that I find in some other documents.

5 **Q. And you haven't done it for Montana,**

6 **though; right?**

7 A. No.

8 **Q. And nobody has?**

9 A. Remember this -- I mean, I don't know why

10 I want to keep repeating this, I won't after this.

11 The point about science, Sarah, is that, you know,

12 it incorporates the world. There's guys and women

13 doing research all around the world on these

14 issues, and it's relevant, it's important.

15 And the State, instead, is trying to

16 build a wall around itself and ignore it, and I

17 think that's an improper strategy. After all, your

18 responsibility is to do what's right for the

19 Endangered Species Act and the people in Montana,

20 you ought to be doing more than that.

21 **Q. And nobody else has done that cumulative**

22 **report for Montana, have they?**

23 A. Oh boy, I don't know. I'd have to go

24 back through and -- maybe there was -- yeah, I

25 didn't see any reference to the report by Arnold

Page 149

1 Dood, for example, about bear management in

2 Montana, so I don't know, I'd have to refresh my

3 memory on that, but that would've been one that

4 would've been good to see once in awhile.

5 **Q. But you didn't base -- your opinions in**

6 **your declarations, they aren't based on any of that**

7 **information; right?**

8 A. No, that's not there. I've selectively

9 used certain things because, as I've tried to tell

10 you, what I'm saying here and what I make reference

11 to verbally, or if I can pull the documents when

12 I'm at home in my library, are the cumulation of

13 working with these kinds of issues for half a

14 century. So can I put them all on the table in

15 front of you now and document it for a numbered

16 form? No, I can't.

17 **Q. Well, you couldn't have done that,**

18 **though, when you were writing your declaration,**

19 **though, right, because you had plenty of time to**

20 **write that?**

21 A. Are you saying you don't like my

22 declaration?

23 **Q. No, just I believe you had time at that**

24 **point to do it; right?**

25 A. Well, this is a declaration that points

Page 150

1 out the fact that Montana, I think, is making a  
 2 mistake with this. It doesn't need the documents  
 3 from the world of bear research.  
 4 **Q. Okay. But if you had evidence to support**  
 5 **the claims that you're making right now at the time**  
 6 **that you made your declaration, you would've used**  
 7 **them; right?**  
 8 A. No, everything else was there. Listen,  
 9 we can't -- if you want to go into a six-month  
 10 trial assembling all the information based on  
 11 reports and having us sit here and go through each  
 12 one of them, I suppose you could do that, but I see  
 13 no advantage to it.  
 14 We know what the issues are, we know what  
 15 the problems are, and we know what the solution is.  
 16 It is not me assembling my library or the library  
 17 at the University of British Columbia or at Montana  
 18 State University to present to you and say, are you  
 19 convinced now, Sarah? You're resisting whatever  
 20 there is already, and I think you know that's not  
 21 the right way to handle this. The State is not  
 22 doing what's proper here.  
 23 **Q. And when you say what there is already,**  
 24 **what you mean is what you put in your declaration;**  
 25 **right?**

Page 151

1 A. Oh, probably I mean that, but I have no  
 2 idea what you're referring to.  
 3 **Q. Okay. Well, what I'm trying to do is**  
 4 **understand your opinion. You gave your opinion in**  
 5 **your declaration; right?**  
 6 A. Yeah, but I've expanded on my opinion,  
 7 Sarah, surely you understand my opinion by now.  
 8 **Q. Well, the thing that's important for me**  
 9 **to understand is on what you base that opinion.**  
 10 **And what I've heard you say is there's a lot of**  
 11 **things that you might base your opinion off of, and**  
 12 **I need to know what those are so that our**  
 13 **scientists can look at them and see whether or not**  
 14 **they agree with you.**  
 15 A. Well, I've given you some examples of it.  
 16 There is a vast body of information, research and  
 17 management and historical information available on  
 18 the behavior, ecology, conservation of bears and  
 19 their interactions with human. Has it been  
 20 assembled in a five-page declaration? No. Could  
 21 it be? Well, you'd have to read some of the larger  
 22 compendiums, including some of the better, more  
 23 recent books, maybe, on bears. I didn't do that.  
 24 I can bring them in here and read them to you,  
 25 Sarah, but that's not what the intent was, and

Page 152

1 that's not what my understanding of what this was.  
 2 **Q. So I want to focus on, again, wolf**  
 3 **trapping and snaring in Montana, that's what I want**  
 4 **to focus on, and I want to understand how your**  
 5 **opinions about wolf trapping and snaring in Montana**  
 6 **are formed, what the basis of those opinions are**  
 7 **other than what you've cited in your declaration.**  
 8 A. Other than what I've cited?  
 9 **Q. Yes.**  
 10 A. Well, I think I've tried to tell you that  
 11 again, I'll repeat it once more. There's a large  
 12 amount of information out there, much of which I  
 13 would say I've assembled into my professional  
 14 opinion, but I don't have the documents here that  
 15 I'm going to read to you, either the intent --  
 16 either the title or the citation of the document or  
 17 the evidence in it.  
 18 But there's no question, in my view, that  
 19 if you have humans with food on the landscape and  
 20 tools that could injure a bear, you are going to  
 21 have those kinds of incidents happen. Bears are  
 22 insatiable, they're curious, they're smart, they're  
 23 active, they get into everything. And because it  
 24 has not been reported specifically for some part of  
 25 Montana, I think to overlook -- to overlook the

Page 153

1 fact or to deliberately dwell on the fact that it's  
 2 for the Flathead -- North Fork of the Flathead is  
 3 simply naive. You're just trying to defend a  
 4 position that I don't think is defensible.  
 5 **Q. So in your declaration you talked about**  
 6 **how bears missing toes could affect their mobility**  
 7 **and their ability to dig dens and their ability to**  
 8 **find food, right, do you remember that -- and**  
 9 **reproduce?**  
 10 A. I do, that's what I said there.  
 11 **Q. Okay. And, again, your citation for that**  
 12 **was to Lamb; right?**  
 13 A. No, not entirely. I mean, there's lots  
 14 of people that have spoken about bears with  
 15 injuries; it's common. I mean, the East Front  
 16 Grizzly Bear Study in Montana that was conducted in  
 17 the '60s and '70s by researchers from Montana has  
 18 references to that sort of thing.  
 19 I've seen bears without toes that were  
 20 not injured by my snare. It's common to see  
 21 pictures of bears without toes, pictures of bears  
 22 without -- or tracks of without toes, and tracks  
 23 with partial feet, so this -- this is happening on  
 24 the landscape. What you're simply saying is,  
 25 because we haven't documented them at the moment,

Page 154

1 it's not happening. I'm not going to agree with  
 2 that, I dispute that.  
 3 **Q. Well, I just want to understand the basis**  
 4 **for your opinion. So what I think I heard you say**  
 5 **was there was Lamb, there was this other study that**  
 6 **you just cited, and you've had some -- what's the**  
 7 **word I'm looking for -- personal experiences, maybe**  
 8 **not of you but of other people. Is there any other**  
 9 **evidence that you have that grizzly bears missing**  
 10 **toes or limbs have trouble denning, finding food or**  
 11 **reproducing?**  
 12 A. Well, that seems like an odd question,  
 13 Sarah, because what you're saying is that somebody  
 14 would have to -- have to impose themselves into a  
 15 bear and say this -- my foot is so sore that I  
 16 can't pay attention to trying to grub for roots,  
 17 which I can't do with one foot. Or I have a hard  
 18 time even standing on three feet, which causes me  
 19 all kinds of other issues. What you're saying is  
 20 that that is not happening to bears. I'm telling  
 21 you it is happening to bears, and it's significant.  
 22 I mean, you know, one of the very first  
 23 bear documents was written here somewhere in the  
 24 U.S., Old Ephraim or something, I think it was in  
 25 Utah, and that bear -- the story -- that bear story

Page 155

1 talks about a bear that was missing part of its  
 2 foot. Okay, this goes back into -- I'm not even  
 3 sure when that was, '30s or '40s. So it's been  
 4 around forever.  
 5 And the more -- the more potential  
 6 conflict situations you put on the landscape, as  
 7 you have done with this wolf trapping, the more the  
 8 probability of these increases, the more likely  
 9 they are to happen, the more they are going to  
 10 happen. So I don't see what advantage that is in  
 11 terms of the Endangered Species Act or addressing  
 12 the issue of a population that's endangered.  
 13 So I'm not sure what you're trying --  
 14 what horse you're trying to beat here, but I think  
 15 the horse is already dead.  
 16 **Q. I just want to make sure that I**  
 17 **understand the basis of your opinion and the actual**  
 18 **data that you're using to form your opinion.**  
 19 A. Well, I explained that to you. I'm  
 20 talking about a lifetime of working with these  
 21 animals, a lifetime of reading about it. I didn't  
 22 bring the entire document. If Montana Fish,  
 23 Wildlife & Parks want's to do that, they should  
 24 commission somebody to do it --  
 25 **Q. So in your --**

Page 156

1 A. -- I'm not going to do it on my  
 2 declaration.  
 3 **Q. So in your life experience and your work**  
 4 **that you've talked about, can you explain to me the**  
 5 **instances where you've seen bears, yourself,**  
 6 **experience trouble reproducing or digging dens or**  
 7 **finding food because of lack of toes?**  
 8 A. I've spent time looking at bears, and I  
 9 have seen bears that are sore, and I've seen bears  
 10 that may not be sore but I see how they act, how  
 11 they rely on their feet when they're digging roots  
 12 or digging up plants or moving carcasses. And any  
 13 bear that is sore will have difficulty doing what  
 14 he would normally do.  
 15 It's no different, Sarah, than if I put a  
 16 little pebble in your shoe, you're gonna have a  
 17 sore foot and you're gonna be different, you're  
 18 gonna be moving differently and acting differently  
 19 than if you didn't have that there. And the same  
 20 applies to bears, they have the same essential  
 21 muscles, nervous system as ours, they're affected  
 22 by stress.  
 23 There is, as I pointed out in one of the  
 24 figures that I showed you earlier, a routine stress  
 25 response by mammals, and it doesn't matter whether

Page 157

1 it's soreness, they've broken an arm, or whether  
 2 you've been displaced from the place you really  
 3 want to be, it's stressful. So those things are  
 4 real, you're trying to deny that they're real or  
 5 that there even is the possibility of them. I'm  
 6 saying there is and it could be significant.  
 7 **Q. Have you seen a bear digging a den**  
 8 **without toes?**  
 9 A. No, but I have watched a bear dig a den  
 10 and I know how important it would be for that bear  
 11 to be strong and able.  
 12 **Q. Have you seen a bear fail to find food**  
 13 **because he didn't have toes?**  
 14 A. Well, I did refer to that earlier, Sarah,  
 15 that there are reports from the literature, both  
 16 black and grizzly bears, of bears being  
 17 malnourished in the den, and so something happened  
 18 to those bears that they were unable to fatten  
 19 themselves. So it doesn't take me riding the back  
 20 of the bear constantly to determine that.  
 21 It's no different than medicine, when you  
 22 go into your doctor and say, look it, I can't gain  
 23 weight or I'm skin and bone, he'll ask you, have  
 24 you been eating.  
 25 **Q. So those malnourished bears in the den,**

Page 158

1 **were they missing toes and limbs?**  
 2 A. You know, I don't recall references to  
 3 that, no. But they are behavioral issues and  
 4 they're ecological and social issues, and these are  
 5 affected, as you well know, by anybody that might  
 6 have -- or any animal that might have an injury.  
 7 You've probably seen dogs, I don't know  
 8 if you're a dog person or a cat person, but if you  
 9 have a dog with a broken foot or a sore foot or a  
 10 cat that gets injured, or even a dog that wants to  
 11 chew on its foot with a cone around its head, it's  
 12 going to be a different kind of animal, and it can  
 13 be costly in terms of those animals. Without human  
 14 intervention for those domesticated animals  
 15 probably many of them would die, but we don't have  
 16 that for wild animals, all we're doing is imposing  
 17 those conditions on them.  
 18 **Q. Have you seen a bear with missing toes or**  
 19 **limbs have trouble reproducing?**  
 20 A. You're asking me again, Sarah, whether  
 21 I've followed the actual event from the beginning  
 22 until the end; no.  
 23 **Q. Have you ever tracked or followed a bear**  
 24 **that was missing toes or limbs?**  
 25 A. I've had several bears that were missing

Page 159

1 parts of their feet and I have, as I said, a bear  
 2 that was more seriously injured. I do not have  
 3 information on whether those bears successfully  
 4 reproduced.  
 5 **Q. Okay. So when you say you had a bear,**  
 6 **you mean that you had a bear in one of your traps**  
 7 **that had those injuries; yeah?**  
 8 A. In the snare, yes.  
 9 **Q. Okay. And did you track the bear, did**  
 10 **you put a radio collar on it after it had been**  
 11 **caught in those -- in that snare?**  
 12 A. I did do that.  
 13 **Q. You did?**  
 14 A. Put a radio collar on them?  
 15 **Q. Yes.**  
 16 A. Yes.  
 17 **Q. So you tracked that bear after you caught**  
 18 **it in the snare and noticed that it had missing**  
 19 **toes; yes?**  
 20 A. Yes, I did. Now, I did -- Keep in mind  
 21 two other things here, Sarah. Firstly --  
 22 **Q. Well --**  
 23 A. Firstly, there are -- it's not uncommon  
 24 to have failures in the telemetry system, and in  
 25 this particular case, one of the bears was shot.

Page 160

1 In my case, I happened to be -- my work was done  
 2 mostly in an area pretty much like what you're  
 3 talking about in Montana, where there were a lot of  
 4 hunters on the ground, a lot of roads, and people  
 5 were trapping. So bears in those circumstances  
 6 don't necessarily live out their life to longevity,  
 7 and this one didn't.  
 8 **Q. So how long was it between when you put**  
 9 **the radio collar on that bear and when it was shot?**  
 10 A. That was one year and that bear was shot  
 11 illegally.  
 12 **Q. So the bear lived for a year between the**  
 13 **time that it had -- that you put the radio collar**  
 14 **on it and the time that it was shot, do you have**  
 15 **any indication over that year period that the bear**  
 16 **had trouble eating?**  
 17 A. Well, I'm concluding that it did. In  
 18 fact, I haven't thought about this a great deal,  
 19 but you're forcing me to think about it now. It  
 20 may well be that that's why that bear was dead,  
 21 because it was killed on a road system where a lot  
 22 of vegetation was planted along the roadside to  
 23 keep erosion down, and those are attractive to  
 24 bears, it's easier feeding, and she would've had no  
 25 doubt difficulty feeding on three good legs and one

Page 161

1 that had been seriously injured. So as a  
 2 scientist, and as a -- I think reasonably I would  
 3 extrapolate that maybe that bear actually paid the  
 4 price of its life because it was injured.  
 5 **Q. So did you -- why did you capture that**  
 6 **bear in the snare in the first place?**  
 7 A. Why?  
 8 **Q. Yeah.**  
 9 A. Well, because I was trying to determine  
 10 impact of the kinds of industrial activity that we  
 11 have been talking about on bear population.  
 12 **Q. So the bear was already in a populated**  
 13 **area when you snared it; right?**  
 14 A. Correct. I didn't take it anywhere and I  
 15 didn't bring in from somewhere.  
 16 **Q. So it was already in a place where it was**  
 17 **finding food sources other than, you know, out in**  
 18 **the wild, it was finding food sources in an**  
 19 **industrialized area; right?**  
 20 A. It was living in that area.  
 21 **Q. Okay. So fair to say it would've been**  
 22 **living -- could've been living off of those**  
 23 **introduced food sources even before you snared it;**  
 24 **right?**  
 25 A. It could've been.

Page 162

1 **Q. And then I want to go back and review --**  
 2 **you said there was -- there were some other**  
 3 **instances where you had bears that were missing**  
 4 **toes that -- I think there was one other instance**  
 5 **you talked of that you caught a bear in a snare; is**  
 6 **that right?**  
 7 A. Yeah, they had been caught somewhere by  
 8 somebody.  
 9 **Q. So how did you find out about that bear?**  
 10 A. Well, because I captured that bear, but  
 11 the injury didn't occur during my capture event.  
 12 **Q. Okay. And did you put a radio collar on**  
 13 **that bear?**  
 14 A. You know, I'd have to go back through my  
 15 notes to determine that, because radio collars go  
 16 on only certain kinds of bears, certain ages,  
 17 certain activities, certain sexes of bears  
 18 depending on what the objective is. So I don't  
 19 know if it was a yearling or a subadult bear, in  
 20 which case it would not have been marked.  
 21 **Q. Okay. Do you -- so you don't remember**  
 22 **how old the bear was when you captured it?**  
 23 A. Well, this bear that we injured was an  
 24 adult female, so yes, I remember her quite well.  
 25 The other two that I can recall I don't have the

Page 163

1 details about the bear.  
 2 **Q. Okay. So in those two instances or few**  
 3 **instances you had bears in your possession,**  
 4 **essentially, that had injuries to toes or limbs and**  
 5 **you chose not to track the others -- that one I**  
 6 **understand you tracked, but you chose not to track**  
 7 **the others to see if they were having trouble**  
 8 **eating or denning or reproducing; right?**  
 9 A. Well, I mean, you can't -- you can't  
 10 choose to track a bear that's dead, obviously. So  
 11 I try -- I did try to explain that -- the more I  
 12 think about it, the more reasonable it seems that  
 13 the bear was --  
 14 **Q. Well, I just want to be clear, you were**  
 15 **talking about the bear that died, I'm talking about**  
 16 **the other bears, the other two bears.**  
 17 A. I know you are.  
 18 **Q. And I'm -- in those instances, did you**  
 19 **track -- after you got those bears, did you track**  
 20 **whether they had trouble eating or reproducing or**  
 21 **denning?**  
 22 A. You know, I can't tell you that, I don't  
 23 know. I don't know if I did.  
 24 **Q. Okay. So it's possible that they**  
 25 **could've been fine?**

Page 164

1 A. They could've been which?  
 2 **Q. Fine, they could've been able to do all**  
 3 **those things? You don't know?**  
 4 A. Well, it's -- yes, it's always possible,  
 5 almost everything is possible. But the probability  
 6 is that those bears paid a price for their  
 7 injuries.  
 8 **Q. But you don't have any evidence of that?**  
 9 A. Well, I just had evidence of the entire  
 10 animal kingdom, a million animals that have been  
 11 injured, including, if you want to go to that  
 12 extent, humans, and the impacts injuries have on  
 13 the ability of an animal to make a living, to  
 14 survive and to reproduce. Almost all of them -- in  
 15 fact, all of them do pay a price somewhere along  
 16 the road. Whether you're there to document it or  
 17 not, it's real.  
 18 **Q. You've said females were important for**  
 19 **denning, and you'd agree with me that the females**  
 20 **go into the dens earlier and come out of the dens**  
 21 **later than the males; is that right?**  
 22 A. Well, they may, they don't always. But  
 23 typically if there's female with young, she will  
 24 den a little bit earlier. And if she has young,  
 25 depending on how old they are, if they're a

Page 165

1 newborn, she may be slower coming out of the den.  
 2 But the yearlings or two-year-olds, they may not  
 3 affect her den emergence time.  
 4 MS. CLERGET: All right. No further  
 5 questions.  
 6 MR. BECHTOLD: I have no examination.  
 7 EXHIBITS:  
 8 (Deposition Exhibit Number 13 marked for  
 9 identification.)  
 10 (Deposition concluded at 2:31 p.m.)  
 11 Witness excused, signature reserved.)  
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1 CERTIFICATE OF WITNESS

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10 I hereby certify that this is a true and  
11 correct copy of my testimony, together with any  
12 changes I have made on this and any subsequent  
13 pages attached hereto.

14  
15 Dated on this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

16

17 \_\_\_\_\_  
18 BRIAN HOREJSI, Deponent.

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