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Attorney for Plaintiffs

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

FLATHEAD-LOLO-BITTERROOT
CITIZEN TASK FORCE and WILDEARTH
GUARDIANS,

Plaintiffs,

vs.

STATE OF MONTANA

Defendant.

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) **SECOND DECLARATION**
) **OF CARTER NIEMEYER**
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Pursuant to 28 USC §1746, I, Carter Niemeyer, hereby declare:

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

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

4. The trap placement regulations Mr. Kluge cites at ¶6 will do nothing to prevent grizzly bears from being attracted to the traps and caught. Fifty to one hundred fifty feet is meaningless to grizzly bears, which have powerful senses of smell. These setbacks were established to protect people and their pets around picnic areas, campgrounds, trailheads, fishing access sites, and within public rights-of-way adjacent to roads, not for grizzly bears. As I noted in my Declaration, Dkt#6-3 at ¶28, trail sets are indiscriminate and will catch anything that comes down the trail. Mr. Kluge claims that Lynx Protection Zones (LPZs) provide significant protection for grizzly bears. In my experience, this is not true. The ONLY thing prohibited within LPZs is the use of snares for wolf trapping. Snares targeting coyotes are allowed, as is wolf trapping with scents and meat baits and all other forms of traps.
5. The claims made by Mr. Kluge at ¶7 are inaccurate. A trap with a 9" jaw spread can easily trap even large grizzly bears and will not mitigate capture of animals larger than wolves. The 5 3/8" jaw spread for traps targeting bobcats within LPZs will not prevent capture of grizzly bears, particularly subadults, yearlings,

and cubs, which have smaller feet.

6. The pan tension requirements cited by Mr. Kluge at ¶8 will not prevent capture of grizzly bears, since grizzly bears weigh more than wolves and coyotes.
7. At ¶9, Mr. Kluge states that the traps used by recreational wolf trappers are the same or very similar to the traps used by wolf researchers. This is no longer true. The trapping market has moved away from what I regard as conventional traps like the single spring and double spring traps that most trappers previously used and has moved to coil-spring traps. The manufacture of these new coil-spring traps incorporates powerful coil springs that magnify the gripping power of this type of trap. The coil-spring trap design makes setting and concealing the traps very convenient, the costs are moderate, and the gripping power, once snapped on the foot of a target or non-target, indisputable. That is why I find them undesirable for the trapping I was doing as an agency trapper.
8. Coil-spring traps possess much stronger gripping power for their size than single and double-spring traps. It is my opinion based on decades of experience that the coil-spring traps, if snapped on the foot of an animal greater in size than targeted, will hold that species where, back in the day, the single spring and double spring traps would seldom hold. In other words, a number two coil-spring set for a fox could easily grip and hold a coyote, and a number three coil-spring set for a coyote could easily grip and hold a wolf. I find it unimaginable

to allow coil-spring traps with up to a 9" jaw opening to be allowed to trap any animal. Once a trap is set, wolf size traps will grip and hold the toes or feet of bears and mountain lions. In fact, wolf size coil-spring traps can grip most wild ungulate hooves and some livestock hooves up to the size of a horse's hoof.

Montana Fish, Wildlife & Parks records show that two moose were caught in wolf traps in 2022 and six deer were caught in foothold traps set for wolves in 2021 and 2022.

9. In my opinion, the wolf-size traps legal today are overkill and a risk to many non-target species, especially larger animals like the grizzly bear.
10. Throughout my career trapping and radio collaring wolves I would never consider using the coil-spring traps on the market today. Traps that were more than adequate were the McBride EZ grip traps that most agency people were using. The jaw spread was reduced by about 7 inches or less, with rubber jaws and anchored solid, which let all bears pull out but held wolves just fine. However, the McBride EZ grip trap assembly (trap, chain, and drag) sells for about \$165 per trap. The MB 750 coil-spring traps sell for about \$34, which easily explains why most recreational wolf trappers today usually use this more moderately-priced trap.
11. Mr. Kluge seems to be blissfully unaware of the reality on the ground. Traps being set for wolves are larger and stronger than ever before. Best Management

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

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

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

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

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

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

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

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

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

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

19. Mr. Kluge states at ¶15 that grizzly bears can easily jump over snares.

However, grizzly bears cannot simply jump over snares they cannot see.

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

and feet.

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

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

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

Dated November 2, 2023.



Carter Niemeyer