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Attorneys for Defendants State of Oregon, Oregon State Police and Governor Kate Brown

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

D. JEANETTE FINICUM; THARA
TENNEY; TIERRA COLLIER; ROBERT
FINICUM; TAWNY CRANE; ARIANNA
BROWN; BRITTNEY BECK; MITCH
FINICUM; THOMAS KINNE; CHALLICE
FINCH; JAMES FINICUM; DANIELLE
FINICUM; TEAN FINICUM; and the
ESTATE OF ROBERT LAVOY FINICUM,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT;
DANIEL P. LOVE; SALVATORE LAURO;
W. JOSEPH ASTARITA; SPECIAL AGENT
BM; MICHAEL FERRARI; STATE OF
OREGON; OREGON STATE POLICE;
KATHERINE BROWN; HARNEY
COUNTY; and the CENTER FOR
BIOLOGICAL DIVERSITY,

Defendants.

Case No. 2:18-cv-00160-MO

DECLARATION OF JAMES S. SMITH IN
SUPPORT OF FRCP 12(B)(6) MOTIONS
AGAINST THIRD AMENDED COMPLAINT

Oral Argument Requested

I, James S. Smith, declare under penalty of perjury:

1. I am a Senior Assistant Attorney General with the Oregon Department of Justice and make this declaration in support of the State Defendants' FRCP 12(b)(6) Motions against the Third Amended Complaint.

2. Mindful of the LR 7-1 requirement that there be conferral before motion practice, I sent an email to plaintiffs' counsel October 18, 2021. A copy of that email is attached as Exhibit 1.

3. Having received no response from counsel, I called his office and left a voicemail October 22, 2021, at about 3:30pm PDT. I heard nothing from counsel, and left another voicemail message October 26, 2021, at about 11:30am PDT.

4. Having received no response to my email or my phone messages, I sent counsel another email October 26, 2021. A copy of that email is attached as Exhibit 2. I received a response to this email from California attorney John Pierce, who indicated that he was adding his "associate" Ryan Marshall to "coordinate as necessary", but heard nothing further from Mr. Philpot, Mr. Pierce or Mr. Marshall. Neither Mr. Pierce nor Mr. Marshall are attorneys of record for plaintiffs in this case.

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

EXECUTED on October 28, 2021.

s/ James S. Smith
JAMES S. SMITH
Senior Assistant Attorney General