Testimony of
Darcy Helmick
On behalf of the Public Lands Council

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Chairman Farenthold, Chairman Palmer, Ranking Member Plaskett, Ranking Member Demings, and members of the subcommittees; thank you for inviting me to appear before you today. My name is Darcy Helmick, I'm a Fourth Generation rancher from Mayfield, Idaho. My family owns a cow/calf and farm operation which utilizes a mix of Bureau of Land Management and Forest Service grazing permits as well as state grazing leases and private lands. My grandparents and extended family also ranch in Idaho, and have for over 100 years. Continuing that tradition, I recently purchased 30 of my own cows, and am working with my brother towards transitioning into ownership of our parents operation.

Professionally, I am the Land Manager for Simplot Land & Livestock based in Grand View, Idaho. In that capacity, I oversee approximately 4 million acres of federal grazing permits in Idaho, Nevada, Oregon, and Utah. It is my responsibility to manage all public land activities for Simplot entities. I work with ranch managers and public land management agencies to manage grazing on public lands. I review, participate and comment on land planning documents impacting Simplot Land & Livestock. I attend meetings and collaborate with agencies to protect and enhance wildlife and special status species habitat while maintaining viable ranching operations on public lands. I am involved in 5 different Rangeland Fire Protection Associations,

am the public lands chair for the Idaho Cattle Association, Idaho Delegate for the Public Lands Council, and a graduate of Leadership Idaho Agriculture.

Prior to Simplot, I worked seasonally for Bureau of Land Management in Boise for 7 years as wildland fire fighter, and for the fuels program and operations outside of fire season. I then worked as a range specialist for the Idaho Department of Lands for 1.5 years, and then moved to the private sector as a rangeland monitoring specialist for Simplot for 4 years before moving into the Land Manager position here in April, 2014.

In my extensive experience dealing with the federal grazing system and western land use in general – offensive litigation tactics by outside activist groups have served to totally derail business operations. In the relatively short amount of time I have worked for Simplot, I have been exposed to multiple legal cases, sometimes being directly impacted and filing as interveners, and in other cases just in review. The legal process is a crucially important part of owning a federal lands grazing permit. While it is critical that we maintain the right of citizens to litigate when necessary, reform is needed to prevent that right from being abused or exploited. Federal agencies must be able to perform job activities that maintain protection of multiple use and ensure the intent of Congress during and in the wake of offensive litigation. It is also critical that permitted public lands users have a role in any settlement agreements, and that federal employees at a local level have input. Unreasonable timelines have become the norm and, once imposed during settlements, are rarely reached. The repercussions of those missed timelines heavily impact the permitted public lands users and result in a level of uncertainty that is

prohibitive in any business environment. Unfortunately this is often the goal of these litigants. Below are two specific examples where missed timelines have impacted our ranching operations.

Example 1 – Jarbidge Litigation Case 1:04-cv-00181-BLW: (specifics taken from Document 505, filed 7/22/11 – memorandum decision and order).

A special interest group litigated the permit renewal process in the Jarbidge Field Office in 2005. Although an injunction against livestock grazing on 28 allotments within the JFO was issued by the judge, a Stipulated Settlement Agreement was signed by all parties to allow for the continuation of grazing under Interim Grazing Management Plans (IGMPS). In the SSA, the BLM agreed to prepare a revised Jarbidge Resource Area Resource Management Plan and supporting Environmental Impact Statement. They further agreed to conduct site-specific NEPA reviews and issue ten-year grazing permits for all JRA allotments (not just the 28 allotments covered by the SSA). The BLM estimated completion of this process by September 30, 2009, but the parties agreed to extend the completion date to September 30, 2010. That meant the IGMPs would be in effect until the end of the grazing year in 2010, or Feb 28, 2011.

During the Land Use Planning process, the field office experienced a massive wildfire (the "Murphy Complex" fire) and subsequent litigation from the same special interest group. The motion filed by the litigants sought to strike down the SSA, enjoin grazing once again on those 28 allotments, and enjoin all grazing on an additional 36 allotments. Although the court denied striking the SSA, and a trial resulted in the Court denying the injunction of the other 36 allotments, valuable time was spent by BLM employees and staff preparing for that litigation. Needless to say, the agency failed to meet the deadline issued by the Stipulated Settlement

Agreement, and the parties were not able to come to agreement in 2010, therefor the injunction banning all grazing on the 28 allotments came back into place as the IGMPs expired.

The ranchers/interveners responded by filing a motion to modify the injunction under Rule 60(b)(5). While the litigation was being settled, livestock had to be completely removed from the allotments named in the litigation. Because this deadline occurred February 28, we were able to receive an extension to provide for the health and safety of the cattle as to not be moving them in muddy conditions and when baby calves were in the process of being born. We were however, forced to remove the cattle completely on May 1. Cattle remained off of the allotments until an order was issued by the Judge, July 22, 2011.

While cattle were only off the allotments some 80+ days, the impacts to our operations were astronomical. The relocation costs alone hindered business operations. (Livestock numbers are from Document 431). Over 2000 pairs of Simplot owned cattle were displaced – that does not take into consideration other operators numbers. These cattle were relocated onto private lands during the time the injunction was imposed. Increased cost in feed, and increased health and sickness issues occurred during this time. As a larger operator, we consider ourselves lucky that we had enough private land to relocate the cattle for the amount of time they were required to be off. When confronted with a similar situation, most family ranches simply do not have the resources to survive such a blow. Even in an organization like Simplot, a negative result in court would have meant livestock would have been sold, and employees would have been let go. Every one of our ranches employees multiple individuals – most of whom have families and raise their children on the operations.

Example 2 – ESA litigation in Oregon Case 1:15-cv-00895-CL:

In May of 2015 special interest groups filed a complaint seeking injunctive relief against the U.S. Forest Service and U.S Fish & Wildlife Service over certain grazing allotments within the Fremont-Winema National Forest claiming impacts of continued livestock grazing on bull trout critical habitat was arbitrary, capricious and otherwise not in accordance with the ESA, in violation of the Administrative Procedure Act. The claim included multiple Simplot Allotments.

The Forest and FWS had previously issued a Biological Assessment (BA) and Letter of Concurrence (LOC) for grazing within the allotments in 2007 and again in 2010 when critical habitat was defined. The Forest Service noted in their Motion for Summary Judgement, dated February 26, 2016 that they were in the process of reinitiating informal consultation.

While the permittees intervened, and with the Forest Service was successful in the legal case, time that should have been spent completing new consultation was used to prepare for litigation. The result was consultation not being completed in adequate time to turn cattle out as permitted and billed in the spring of 2017.

The Forest Service recognized in its Motion for Summary Judgement that one of the goals of the National Forest grazing permit program is to provide stability to local ranch operations. The controlling Fremont Forest Plan states that grazing "will remain an important use" of the Forest. The Plan goes on to state grazing "contributes to the economic viability and stability of local communities in the Summer Lake basin" and that "Many local ranch operations could not stay in business without the seasonal spring-summer-fall range provided on the Forest."

While the litigation was not directly tied to the FS and FWS not completing consultation prior to the 2017 turn out, the time obligated to the litigation certainly impacted the federal

agencies ability to perform their jobs at a direct impact to our operations, which is inconsistent with the above mentioned Forest Plan.

The chilling effects of these "sue and settle" tactics are felt throughout our communities. Not only is litigation expensive, the costs to the communities go beyond legal costs. When litigation directly or indirectly forces the removal or reduction of cattle, families are forced to make decisions that impact their bottom line, and the potential ability to continue operations. Scrambling to relocate cattle onto alternative leased pastures (often at a much higher rate) not only impacts the business's ability to prosper, it also has impacts to cattle health and well-being. A majority of the west is owned by "the public." Businesses and ranches have developed in the area depending on the use of public lands. As the ability to utilize those lands diminishes the value of business operations and the rural economies they support also suffers.

These tactics also serve to limit young producers from entering the industry, which will inevitably lead to further erosion of the footprint of ranching in the West. As a fourth generation cattle producer it is in my blood to continue with my family business. As my parents age and need more help, my brother and I are working with financial advisors on how to transition the business. My experience dealing with litigation and public lands grazing gives me pause when considering the options. Not only do they impact the financial side of the considerations –how does one budget for litigation, how does one calculate the expense of the stress and time used to work through litigation – how does one put a value on an AUM when it is not certain anymore if that AUM will even be available tomorrow? These questions make an already difficult process overwhelming to even begin working on.

It is critical that we as Americans maintain the ability to sue our government agencies when warranted. It is also critical that impacted stakeholders have a seat at the table when other parties litigate to insure our investments are protected, and we have some kind of certainty moving forward. But above all, we must ensure the integrity of the entire system by preventing abuse and manipulation by motivated activist groups.

I thank the Chairmen and Ranking Members for allowing me to speak today. The issue of sue and settle litigation abuse is one that simply must be addressed if family ranching operations and rural economies are going to survive another generation.