

IN THE UNITED STATES COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

MONTANAN'S FOR MULTIPLE USE,)
et al.)

Plaintiffs,)

vs.)

CATHY BARBOULETOS, *et al.*)

Defendants.)

CASE NO. **1:03-cv-01244-RWR**

Declaration of James M. Slack

COMES NOW James M. Slack and declares as follows:

1. I have personal knowledge of the matters stated herein and if called upon to testify could testify competently thereto. In the course of the preparation of this declaration, I have read the declaration of Mr. Donald R. Black dated May 25, 2004.

2. I am the owner/operator of one of the first bulldozers hired to fight the July 18, 2003 Wedge Canyon Fire. As such I was an eyewitness to events in the early stages of the fire suppression efforts in that fire.

3. I am also currently Vice President of James A. Slack Inc., a long established family logging business in Flathead County, Montana. My family has roots commensurate with the establishment of the United States Forest Service and Flathead National Forest as a result of the establishment of my Great Grandfather's homestead here in about 1897. My family history reflects the traditional custom and culture of Flathead County, Montana. My father grew up and was educated here in the Flathead along with his two brothers all of which eventually established

their own logging and trucking businesses as a result of working with my grandfather's agricultural and logging enterprises.

4. I began to work for my father's logging company in 1975 before graduating from Flathead High School in 1978. The forests of the west, including the Flathead National Forest, has been an integral part of my life. My family not only derived subsistence and income from the forest, but our recreation and leisure time activities were primarily based on access to forest resources (fishing, hunting, boating, berry picking, sight seeing, etc.). These traditions continue today with my own family. My father is now retired and I run the family business.

5. I have three decades of experience in all aspects of forest management activities from timber harvest, reforestation, controlled burning, and firefighting, to road construction and maintenance. In addition, I have continued my education in forestry and timber harvesting methods. In 1991 I was among the first class of loggers to attend the Montana State University Extension Forestry and Montana Logging Association sponsored Forest Stewardship Workshop. In addition to learning more about the principles of forest inventory, ecology, silviculture, fish and wildlife relationships, stream and water protection laws and Best Management Practices, I achieved Accredited Logging Professional status. I maintain this professional status through annual continuing education short courses covering safety, fire fighting, business management, road maintenance, insect and disease identification and management, and attending logging conferences, among other things.

6. As I stated above, I have read the Declaration of Mr. Don R. Black, who was evidently in the Supervisors Office in Kalispell at the time the Wedge Canyon Fire broke out on July 18, 2003. I agree with Mr. Black that the fire hazard and burning conditions at that time

were extreme and perhaps unprecedented.

7. Due to my long experience with burning conditions for controlled burning of logging slash and in wildfire suppression, I know this was a severe situation and I had my logging equipment already under contract with the Forest Service for firefighting work, and I had first aid and fire training updates to qualify for "Red Card" certification for fire duty.

8. I first heard the Wedge Fire reports on the radio scanner. I knew the mountainous terrain and heavy fuels in that part of the Flathead Forest would require heavy equipment to effectively fight the fire. I was expecting to receive a call at any time as I serviced my equipment and made sure I was ready to go. Finally, about 8:00 p.m., after hearing nothing from the Forest Service, I called the Flathead National Forest contracting office who had the paperwork on my equipment and talked to Judy Cundy to ask what equipment was needed. She talked to someone in Dispatch and informed me that the Forest Service needed bulldozers but not today. Instead, I was told to be at the Ford Work Center at 5:00 a.m. on July 19.

9. I reported with my Cat D-6D loaded on a lowboy truck at Ford at 5:00 a.m. I observed that another logger with whom I am familiar, Jim Stupack, had a D-6 bulldozer there as well and there were two smaller bulldozers supplied by construction contractors. I recognized, based on my experience and expertise that the construction company dozers were of the type used for excavating and backfilling around construction sites, and their operators had no experience fighting fires or operating the equipment in mountainous terrain. They had no fire safety clothing or shelters. As required by my contract, I had the required fire safety shelter and clothing ready to go to work. In my professional opinion, this kind of construction equipment and such operators should not have been dispatched to a dangerous fire in mountainous terrain.

10. A Forest Service official did an inspection of my bulldozer right away, but then we just sat there getting standby pay all day with no instructions or information from fire overhead. As we sat there all day I did not observe the arrival of any organized fire crews or additional equipment.

11. Finally, at approximately 5:00 p.m. on July 19th, Tom Smith (“Smitty”), a Division Boss, showed up and had us move the equipment down to Whale Creek and park it for the night. He informed me and others present that the Forest Service was working on plans to get into the fire because there were no open roads. We were then told to report for a briefing at 6:00 a.m. on Sunday, July 20, 2003. All equipment operators went home without turning a wheel toward the fire on July 19 while the fire continued to expand all day with no effective ground attack.

12. After breakfast and a briefing at the newly established fire camp on July 20, the two construction cats and an excavator were employed to install culverts and remove berms to open up the main Tepee Creek road #907 for firefighting access, confirming what we had been told regarding the lack of road access. Smitty took me and Stupack’s D-6 Cats up Trail Creek north of the fire to begin opening the Antley Creek road, a logging road that was built in the 1970’s, but which had grown up with thick brush and was unuseable without work. The road bed and culverts were all in good condition with no evidence of erosion or culvert failures. We got started around 8:00 a.m. and worked until 8 p.m. I pioneered ahead, removing most of the brush and windfalls, while the other bulldozer finished the road surface suitable for truck or bus access. We got at least a mile and a half of the road open for use and only had about a mile and a half left to get to the end of road where it would be easy to push on up a spur ridge on the foot

trail location to the ridge top to the west, above and upwind of the fire. We parked our dozers where we quit because we were upwind and in no danger of fire reaching our position on this road.

13. Among the areas we were told not to take bulldozers was the area at the top of the ridge because it was a "roadless area". However, based on my knowledge of the area, including the Thompson-Seaton "Roadless" area, it was known to me to be the site of numerous old trails and roads and the denial of access made it difficult if not impossible to fight the fire and put firefighters and other people at risk as well as private property. A point on this ridge would be the logical place to establish an anchor point, to provide access for ground crews, and begin building flanking fire line down into Teepee Creek and on the north perimeter of the fire each morning and evening when fire activity subsided. In my professional opinion, this is the plan that should have been implemented as soon as possible after the fire was reported. Dozers can safely work at night opening an old road like that, and access to the top of the fire could have been established on Saturday July 19.

14. The next morning, June 21, the plans were changed to place high emphasis on building a 100-150 foot wide north-south fire line west of Teepee Lake to try to protect private property from the advancing flames. After the morning briefing, I went with Smitty up the Teepee Lake road to scout the fire line location to the north while Stupack's operator went with the lowboy drivers to get the cats from Antley Creek. It was after 8:00 a.m. before we got the dozers and began work along with 2 timber harvesters and 2 skidders clearing the line. We worked a full 14 hour shift on the 21st and again on the fire line and again on the July 22.

15. On July 23 we worked until around 2:30 p.m. when the fire blew up and they

pulled us out. We pulled back to Ford and watched the fire until 6:00 pm.

16. The morning of June 24 the fire had layed down and we went back to work on the fire line until about 1:30 p.m. when the fire blew up again. This time we were pulled back clear to Polebridge. At this point, the fire overran the new fire line, private property, and the North Fork Road, jumped the North Fork Flathead River, and burned into Glacier National Park.

17. On June 25 and 26 we were put to work building a fire line in the Trail Creek area from the North Fork road to the river. The purpose of this fire line was to stop the fire from spreading north into more private land and possibly into Canada.

18. From July 27 to August 1, I worked various fire line construction jobs around young timber stands that the fire did not burn, moving piles of timber cut from the big firebreak, constructing safety zones, and opening the reclaimed upper two (2) mile portion of the Tepee Lake road #9899 for firefighter access.

19. As a result of witnessing on-the-ground effects resulting from the lack of access due to closed and obliterated roads which delayed an effective early attack on the Wedge Canyon Fire, it is my professional opinion based on my knowledge and experience that Mr. Black's assertion in his declaration that open access roads would not have changed the consequences of this fire is grossly inaccurate. I very strongly disagree with Black's claim about a "strong initial attack" on the Wedge Canyon Fire. In reality there was no effective initial attack on this fire, no ground forces got near the fire, and the air attack proved how completely ineffective it is in heavy fuels and extreme burning conditions. There was not even a plan to get access restored until the fire was in its third burning day.

20. My experience with efforts to restore firefighting access to this fire outside the

roadless area it started in, as well as my experience fighting other fires from Montana to California, confirms my believe that rapid access for heavy equipment, pumps, and organized ground crews is critical to stopping catastrophic fires such as this one. Nearly all the old roads that have been closed within this fire were reopened for firefighter use and then "reclaimed" after the fire rather than left open for fire salvage and burn area restoration work. I understand the Antley Creek road was obliterated and all existing culverts remove after the fire with no NEPA review or public notification of obliterating yet another usable road. It was evident that the Forest Service reluctance to send heavy equipment into a roadless area also contributed to the scale and consequences of the Wedge Canyon Fire. The Forest Service's actions in closing and reclosing roads clearly reduces access to the Forest for management of forest health, fire fuels, and fire suppression, as well as access for public recreation and other multiple uses.

I declare that the foregoing is true and correct to the best of my knowledge and recollection under penalty of perjury of the laws of the United States.

Dated this __ day of June, 2004

James M. Slack

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MONTANAN'S FOR MULTIPLE USE,)
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Declaration of Gary D. Hall
Flathead County Commissioner

COMES NOW Gary D. Hall and declares as follows.

1. I have personal knowledge of the matters stated herein and, if called to testify, could testify competently thereto. I make this declaration in my capacity as Commissioner for Flathead County.

2. I am a resident of Flathead County and have lived in Flathead County since 1948.

3. I have some Business College education with several certificates of completion from various universities and colleges, and several courses as part of City and County Government related training.

4. I am currently a Commissioner of Flathead County and have served in that capacity since January, 2003. Prior to my election as Flathead County Commissioner, I worked as Mayor for Columbia Falls, Montana (a timber dependent community) for a period of five years. I have owned my own small business and managed others, including non-profit charitable organizations.

5. As a result of my education and years of experience as described above as well as my residency in Flathead County and the area surrounding the Flathead National Forest, I am familiar with the economic environment of Flathead County and the area around the Flathead National Forest. Both in my professional capacity as Flathead County Commissioner, and my personal capacity as a resident of Flathead County who lives, works and recreates in and around the Flathead National Forest, I am also familiar with the way in which conditions within the Flathead National Forest pertaining to forest health, fire risk, and the impact of past decisions, actions, and failures to act of Defendants in the above-entitled action has had on Flathead County and the areas adjacent to the Flathead National Forest. I am also familiar, as a result of my education and experience, with the role that timber harvesting and other resource extraction and use decisions, road closure and obliteration decisions, and other management decisions have had and will likely have on Flathead County, including on the communities around them and the people who live in and around Forests.

6. In my capacity as Flathead County Commissioner, I am responsible for supervising and approving the collection and expenditure of funds by Flathead County including, without limitation, county property tax revenues, funds to Flathead County provided by the United States “in lieu of taxes” based on a formula which considers – among other things – federal land ownership, moneys provided to Flathead County from the federal government and the State of Montana under other legislation or programs, and from county-imposed fees. I have knowledge and access to the financial records for Flathead County for budgeting and other purposes.

7. Flathead County provides the following services, either on its own, or in

conjunction or cooperation with other state, local, and federal entities: (1) fire protection; (2) police and other emergency services; (3) health services in the form of joint City and County Health Services; (4) recreation, parks, animal and weed control; (5) roads and bridges; (6) tax assessor, treasurer and bookkeeping; (7) surveying, recording and maps; (8) courts; (9) elections; (10) library, extension, and senior services; (11) solid waste disposal.

8. The amount of funds available to Flathead County in any given period is affected by a variety of factors including, among other things: (a) fluctuations in property values; (b) the amount of tourism in any given year, which may vary even season by season and especially with road closures and obliteration reducing recreational opportunities for tourists and local residents; (c) growth or reduction of recreational opportunities available to both visitors and residents of Flathead County and the surrounding areas; (d) sales of goods and services; and (e) environmental factors including the existence of smoke or other pollutants resulting from fires, unattractive landscapes resulting from fires, disease, or insect infestations, overgrowth of timber stands, fire destruction of riparian areas and watersheds resulting in polluted streams and lakes, damage to roads, landscape and watersheds from mud or landslides, and the like. A change in any one of these factors can also cause changes in other factors. It is sometimes difficult to determine the degree to which a change in one or more factors has affected revenues, but even in such cases, it is possible to make reasonable estimates as to the degree that different factors have affected revenues with a fair degree of certainty.

9. Anything which reduces revenues to Flathead County will adversely affect the ability of the County to meet its' fiscal obligations as well as its ability to provide the services discussed above to the County and its residents, and in a full public process accorded to Forest

Plan revisions Flathead County would have, and will in the future be likely to, participate by bringing such information to the attention of the defendants in the above-referenced litigation.

10. In 1993 approximately 44.9 MBF (million board feet) of saw-timber was harvested from the Flathead National Forest (already a significant drop from the 1983 harvest of 83.1 MBF), but by 2003 the harvest continued to drop to 25.18 MBF (USFS R1. Timber Cut and Sold on National Forests). The 1993 Flathead National Forest Timber harvest resulted in \$1,836,388 in total net timber revenue collections, \$1,876,712 in timber sale improvement collections (KV funds), \$269,188 in road construction and maintenance credits, \$3,343,372 in salvage sale collections for a total economic impact of \$7,325,660 from sale of Federal timber. This economic activity not only supported employment, income and property tax base in Flathead County, but contributed most of the direct payment to Flathead County of \$1,400,794 (includes less than \$75,000 from non-timber revenues) for roads and schools due to Federal payment in lieu of taxes laws (USFS, R1. FY 1993 Payments to States, 25 Percent Fund and Related Receipt Information).

11. The FY 2003 harvest only generated \$387,883 in total net timber revenue collections, \$225,895 in timber sale improvement collections, \$355,237 in road construction and maintenance credits, \$889,739 in salvage sale collections for a total economic impact of \$1,858,754 from sale of Flathead NF timber (USFS, R1. FY 2003 Payments to States, 25 percent fund and Related Receipt Information). The 2003 payment to Flathead County was \$1,094,835 as a result Federal subsidies. Without the subsidies provide by the Secure Rural Schools and Community Self-determination Act of 2000, the original 25% fund would have provided approximately \$464,688 as federal revenue sharing payment from FNF timber in lieu

of taxes in 2003. The lack of timber sales from National Forests is affecting all taxpayers in the United States, but especially harms local communities in and near the National Forests.

The wood products industrial sector and supporting contractors in Montana employed 11,549 people in 1993 and only 9,286 in 2003 a twenty percent decline. In 1997 Timberline Lumber Company in Kalispell closed causing the loss of 21 direct jobs in Flathead County. In 2000 American Timber Company closed resulting in the loss of 165 direct jobs. For every direct manufacturing job lost, about 3 additional supporting jobs are lost. (University of Montana Bureau of Business and Economic Research). The Flathead is typical of what has happened all over the State. As a result of losing our natural resource industries, the average annual pay for Montana workers has dropped from 13th in the nation in 1983 to \$24,264 per year, ranking Montana 50th in the nation in 2000. The destruction of hundreds of miles of roads in the suitable timber base, along with the cumulative effects of other amendments (alleged by the Forest Service to be insignificant) has been the direct cause of severe economic, social, and environmental harm to Flathead County residents and resources.

12. Last summers' uncontrolled fires originating on the Flathead National Forest caused evacuations of several communities including the Apgar-West Glacier areas of Glacier National Park (GNP) are yet another example of harm caused to Flathead County residents. According to the National Park Service (NPS) website (www2.nature.nps.gov/mpur/index.cfm) the total number of GNP visitors in August and September of 2003 was 358,467 less than in 2002, a poor year due to the national economic slump. The Economic Impact data section of the NPS website shows that each GNP visitor represents \$34.56 in total spending. The drop in visitors in the critical August-September peak months represents a loss of \$12,388,620 to GNP

and surrounding area. This is a conservative estimate because the trend in visits for 2003 was up significantly prior to the fires (July 2003 was 585,823 vs. 490,697 in July 2002, more than a 19% increase). Instead of increased business in August and September our tourism businesses needed, we got a 42% decrease from a previous poor year due to negligent forest fuel management and lack of firefighting access on Federal Land.

13. The uncontrolled Flathead National Forest fires caused the loss of 7 homes and 29 outbuildings and their contents while burning 1,538 acres of private property in Flathead County. I estimate the loss of private property will decrease the value of property on the tax rolls by approximately one million dollars (the reassessment process for those properties are not complete, but the Northwest Montana Association of Realtors reports the median price of a home in the Columbia Falls area is \$125,750). The emotional and physical pain and suffering of private property owners who lost property is far worse than the monetary losses. I personally know several of the property owners affected by the fires. Property owners nearby that did not get burned out suffered as much anguish or more than those who suffered losses, because every day for over 50 days they watch the fires and prayed their property would not burn.

14. Flathead County has the primary responsibility for protection of homes and private property from wildfires. Flathead County Office of Emergency Services mobilized structure protection teams and equipment within 2 days of the start of the Wedge Canyon Fire on July 18, 2003. Crews from the various fire departments around the county were on the job for approximately 50 days. Flathead County firefighting costs exceeded \$1.5 million dollars. We have applied for reimbursement from various federal agencies for \$1,054,000 leaving Flathead County a cost of \$446,000 which must be met by Flathead County and State of Montana

taxpayers. State School Trust Lands administered by the State Department of Natural Resources were burned by the same fires, and State firefighters were heavily involved in trying to control the fires. The federal fire disasters occurred all over the State in 2003, and the cost to every citizen in the State of Montana will be substantial, a cost Montana taxpayers cannot afford.

15. County law enforcement was severely impacted by the fire disasters. The Sheriff's department logged 5825 hours assisting firefighters with traffic control and with evacuation of thousands of people in several communities (North Fork, Blankenship, Lake Five, West Glacier, and Apgar). Lake Five, West Glacier and Apgar communities had to be evacuated two times. These demands thrust upon Flathead County seriously impaired the Departments' ability to provide protection and services to the other citizens of the County during the period of the fires.

16. As a direct result of the impact of fighting catastrophic fires exported from overgrown National Forest land, Flathead County Board of County Commissioners had to use emergency authority to impose an additional 2 mill tax levy on all the property owners in the county to help pay approximately \$296,000 of the budget deficit caused by the fires.

17. Failure to grant an injunction is sure to cause continuing harm to Flathead County and communities in and around the Flathead National Forest in the form of increased costs, decreased revenues and impaired ability to provide the county services described above. The 2004 fire season currently is developing the same severity as the 2003 season as the drought continues here. Failure to grant an injunction prohibiting the continuing implementation of harmful and illegal amendments such as the Regional Foresters OHV and INFISH Amendments and Flathead Forest Amendments 19, 21, and 24 not only affects the economy, environment,

health and safety, but has been especially harmful effects on the custom, culture, social and mental health of Flathead County citizens. I believe an injunction would be of benefit to the Forest Service, because it would permit substantial funds to be redirected to a full and fair revision of the Forest Plans rather than spent on practices prescribed by illegal Plan amendments that destroy the local resources and the citizens' trust and respect for the US Forest Service.

I declare that the Foregoing is true and correct to the best of my knowledge and recollection under penalty of perjury of the laws of the United States.

Dated this 13th Day of April, 2004

A handwritten signature in black ink that reads "Gary D. Hall". The signature is written in a cursive style with a large initial "G" and "H".

Gary D. Hall
County Commissioner