Testimony of Caroline Lobdell

before the

Subcommittee on Oversight & Investigations

of the House Committee on Natural Resources

June 28, 2017

Good morning Chairman Labrador, Ranking Member McEachin, and members of the Subcommittee. I am Caroline Lobdell the Executive Director of the Western Resources Legal Center (WRLC). WRLC is a nonprofit organization that provides clinical education at Lewis and Clark Law School in Portland, Oregon for those students interested in resource use such as livestock grazing, timber harvest, mining, and oil and gas exploration and production. My remarks are based on my experience as an educator and litigator and do not represent the position of the Law School. Today I will address three topics: Concerns over recovery of attorney's fees under the Equal Access to Justice Act (EAJA); The marginalization of resource users as limited intervenors that want to help defend the Department's resource use decisions in court; And steps that the Department of Interior can take to avoid litigation and streamline the challenges to its resource projects so that projects benefiting natural resources and rural communities are not delayed for years by its own appeals process.

Equal Access to Justice Act Reforms

EAJA is a taxpayer funded meal ticket for environmental groups to collect attorney's fees at enhanced rates even if the non-profit's net assets exceed the $2 million limit that precludes attorney's fees recovery for individuals. EAJA is an incentive to sue the Department of Interior and other agencies and is a funding source for expansion of the staff and offices of groups that want to halt environmentally and economically beneficial natural resource projects. The taxpayers lose all around. They pay plaintiffs and they lose revenue from the projects that are halted.

Congress should consider three reforms that will bring some sanity to stop the EAJA gravy train for plaintiff groups. First, a nonprofit should be subject to the same net worth limit that precludes recovery for other plaintiffs. If the nonprofit's net assets exceed $2 million, then there should be no recovery of attorney's fees. Second, there should be no enhanced rates for environmental litigation. Decades ago environmental law was considered a specialty area with few lawyers practicing in the field and the courts concluded that enhanced rates were justified for environmental plaintiffs. However, today almost every law school has an environmental law clinic. A multitude of newly minted lawyers challenge BLM, Fish and Wildlife Service, and other Department of Interior actions to get experience straight out of law school and hope for a big EAJA payday. Environmental law simply is no longer a specialty justifying enhanced rates. We have seen cases where law students used on the cases are awarded rates of $150 an hour and they are not even admitted to practice law. Third, a plaintiff should not be considered a "prevailing party" entitled to EAJA fees if it only obtains a favorable ruling on a few claims. A plaintiff should be required to prevail on all, or at least half, of its claims before it can recover under EAJA.

Level the Litigation Playing Field for Those Who Support Department of Interior Decisions

State and local governments, potential purchasers of timber sales and grazing allotments, and existing contract and permit holders are allies of the Department of Interior to defend lawsuits filed to halt resource projects. These third parties can help demonstrate to the court the adverse economic impacts and negative environmental consequences from halting a resource project. Unfortunately, there is no legislation that provides a right for a state or local government, contractor, or permit holder to intervene in a lawsuit that seeks to halt a Departmental project. For example, on the Point Reyes National Seashore north of San Francisco, families engaged in ranching and dairying moved to intervene in a lawsuit that challenges the Park Service over delayed revision of the Seashore's General Management Plan and the authorizations of long-term leases for the ranches. These multi-generational ranch and dairy families were land stewards before the National Seashore was created. The Park Service acquired these private lands under threat of condemnation. Congress recognizes the importance of the ranches and provided for continuation of ranching and dairying in the pastoral zone of the Seashore. These families have been caring for the land and provide locally grown, organic, and grass-fed cattle, sheep, and dairy products and are a major part of the agricultural base of Marin County. The ranchers and Marin County moved to intervene in a lawsuit. The court, at the urging of plaintiffs, limited the ranchers' and County's participation to the point where they are not considered full parties to the settlement negotiations. Secretary Ken Salazar directed that ten- year ranching leases be issued, but the Park Service has capitulated to plaintiffs and only provided one year leases. The short- term leases make it hard for the ranchers to justify investments in water distribution, pond improvements, and range rejuvenation that will benefit wildlife and water quality.

Finally, when the government loses a case, the Ninth Circuit has held that intervenors have no right to appeal if the government does not appeal. So, bad legal precedent is established by one sided settlements. Furthermore, when the Department is prevented by the Solicitor General from appealing an adverse decision, which an intervenor cannot appeal, because of bad Ninth Circuit law.

Actions Within the Control of the Department of Interior to Avoid Litigation and Streamline Administrative Review

Finally, there are at least two actions that the Department of Interior can implement to avoid litigation and streamline the challenges to resource projects. First, Department of Interior agencies need to build flexibility into their Resource Management Plans when the plans are amended and revised. Plaintiffs love to plumb the depths of voluminous Management Plans to find inflexible standards and required procedures to serve as a foundation for lawsuits to stop agency projects. Every use of the word "shall" in a management plan lifts a plaintiff lawyer's heart and provides another arrow to shoot down a resource project. Not surprisingly, courts have held that an agency must follow the nondiscretionary mandates in its management plan. A plan full of nondiscretionary standards defeats an agency's ability to engage in adaptive management during a given year and over the life of the plan. For example, a provision in a plan that BLM "shall retain 500 pounds of residual dry matter per acre" after the grazing season does not

account for the annual variation in weather or site conditions that could allow greater forge utilization while maintaining the health of the range.

Second, the Department of Interior's administrative review process is vastly more cumbersome and lengthy than the administrative review of the Forest Service and the Department of Agriculture. The Forest Service has an objection process that provides one level of administrative challenge to a resource project such as a timber sale. In stark contrast, the Department in Interior has a three-level review process. A protest before the Bureau of Land Management, then an appeal to the Department of Interior Office of Hearings and Appeals administrative law judge, and then another appeal to a three-judge panel of the Interior Board of Land Appeals (IBLA). IBLA itself is not a creature of statute but is one of two Boards in the Office of Hearings and Appeals that the Secretary of Interior created in 1970. The Secretary has the power to shape and modify the administrative appeals process and define which decisions are subject to administrative appeal and whether there is one level of challenge instead of three. For example, under the Department of Interior Manual there is no appeal of a biological opinion issued by the Fish and Wildlife Service. Certain decisions could have one level of protest just like Forest Service decisions. For example, I represent Carolyn and Manuel Manuz from Clifton, Arizona, who are seeking to build a solar powered well. There is no reason for three levels of review of the decision to drill a modest well on the Twin C Grazing Allotment in Arizona far from any surface water source, that will benefit wildlife and cattle with a new water source, and reduce water withdrawals from a well on the Gila River. Decisions to maintain the status quo, such as renewal of a grazing permit at the same level of livestock use, are another class of decisions that could be subject to only one level of administrative challenge.

Thank you for this opportunity to testify, and I am happy to answer any questions.

ARNOLD & PORTER LLP
PETER OBSTLER (SBN 171623)
peter.obstler@aporter.com
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: 415.471.3100
Facsimile: 415.471.3400

SEAN A. McCORMICK (SBN 295711)
sean.mccormick@aporter.com
777 S. Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Telephone: 213.243.4262
Facsimile: 213.243.4199

Attorneys for Intervenor-Defendants
JULIE EVANS ROSSOTTI, et al.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(OAKLAND DIVISION)

RESOURCE RENEWAL INSTITUTE, CENTER FOR BIOLOGICAL DIVERSITY, and WESTERN WATERSHEDS PROJECT

Plaintiffs,

v.

NATIONAL PARK SERVICE, a federal agency, and CICELY MULDOON, in her official capacity as Superintendent of Point Reyes National Seashore,

Defendants;

JULIE EVANS ROSSOTTI, DAN and DOLORES EVANS, DAVID EVANS, ROBERT McCLURE, TIM, TOM, and MIKE KEHOE, ERNIE, ERNEST, and NICHOLA SPALETTA, BETTY NUNES, and WILLIAM and NICOLETTE NIMAN,

Intervenor-Defendants.

Case No.: 4:16-cv-00688-SBA

DECLARATION OF AMY MEYER IN SUPPORT OF INTERVENOR DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

ORAL ARGUMENT REQUESTED

Action Filed: February 10, 2016

Date: November 9, 2016
Time: 1:00 p.m.
Dept.: 210, 2nd Floor, 1301 Clay Street, Oakland
Judge: Hon. Saundra B. Armstrong

I, AMY MEYER, declare as follows:

1. I make this declaration on behalf of myself and People for a Golden Gate National Recreation Area ("PFGGNRA") in support of the Intervenor-Defendants' Opposition to the Plaintiffs' Motion for Preliminary Injunctive Relief in the above-captioned lawsuit.

2. I am Chairperson of PFGGNRA, an organization of conservation and civic-minded groups and individuals founded in 1971 that coordinated the campaign to authorize the Golden Gate National Recreation Area ("GGNRA") as a national recreation area.

3. I have been involved in advocacy for federally protected and recognized lands in the Bay Area for more than 45 years, including GGNRA, Muir Woods National Monument, Fort Point National Historic Site, San Francisco Maritime National Historic Park, and Point Reyes National Seashore.

4. I am an author of a book about the founding of GGNRA, titled "New Guardians for the Golden Gate— How America Got a Great National Park" (1996). My work is featured in the film "Rebels With a Cause" about Point Reyes National Seashore and GGNRA.

5. I am a member of a coalition of environmentalists who support sustainable ranching at Point Reyes National Seashore ("National Seashore").

6. I am familiar with the National Seashore enabling legislation and the National Park Service's policies and regulations concerning the National Seashore. The National Seashore was authorized in order to save and preserve a portion of our diminishing United States Seashore. The continuation of ranching at the National Seashore, subject to terms and conditions determined by the Park Service, was part of the bargain that made authorization of the park possible. Regulation of ranching is necessary to protect ranching within the National Seashore.

7. I have reviewed the Plaintiffs' Motion for Preliminary Injunctive Relief (ECF. No. 86) filed in the above-captioned lawsuit. The Plaintiffs ask the Court to halt progress on the Ranch Comprehensive Management Plan. However, halting progress on this plan will have detrimental impacts on the National Seashore. The plan, when complete, will implement Best Management

Practices at the National Seashore to make ranching more environmentally sustainable. The plan will also allow the Park Service to properly manage Tule elk.

8. The Plaintiffs also ask the Court to prohibit the National Park Service from giving leases longer than one year to the ranchers. This too will have detrimental impacts on the National Seashore. For 29 years, I participated in the Federal Advisory Commission, which advised the Secretary of the Interior on management policies concerning grazing, erosion, fencing, and resource sustainability as well as development projects, ranch management practices, and good and poor uses of the National Seashore ranch lands. Through my participation on the Advisory Commission, I learned that there are financial requirements and environmental requirements for ranching to continue to be viable in the National Seashore. For instance, ranchers must have a sense of stability in order to invest in the changes necessary for Best Management Practices that will make possible environmental sustainability. Thus, prohibiting the Park Service from granting leases longer than one year will make it more difficult for the National Seashore ranchers to invest in Best Management Practices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this date of September 13, 2016.

Amy Meyer

AMY MEYER

ARNOLD & PORTER LLP
PETER OBSTLER (SBN 171623)
peter.obstler@aporter.com
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: 415.471.3100
Facsimile: 415.471.3400

SEAN A. McCORMICK (SBN 295711)
sean.mccormick@aporter.com
777 S. Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Telephone: 213.243.4262
Facsimile: 213.243.4199

Attorneys for Intervenor-Defendants
JULIE EVANS ROSSOTTI, et al.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(OAKLAND DIVISION)

RESOURCE RENEWAL INSTITUTE, CENTER FOR BIOLOGICAL DIVERSITY, and WESTERN WATERSHEDS PROJECT

Plaintiffs,

v.

NATIONAL PARK SERVICE, a federal agency, and CICELY MULDOON, in her official capacity as Superintendent of Point Reyes National Seashore,

Defendants;

JULIE EVANS ROSSOTTI, DAN and DOLORES EVANS, DAVID EVANS, ROBERT McCLURE, TIM, TOM, and MIKE KEHOE, ERNIE, ERNEST, and NICHOLA SPALETTA, BETTY NUNES, and WILLIAM and NICOLETTE NIMAN,

Intervenor-Defendants.

Case No.: 4:16-cv-00688-SBA

DECLARATION OF BRIGITTE MORAN ON BEHALF OF AGRICULTURAL INSTITUTE OF MARIN COUNTY IN SUPPORT OF INTERVENOR DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

ORAL ARGUMENT REQUESTED

Action Filed: February 10, 2016

Date: November 9, 2016
Time: 1:00 p.m.
Dept.: 210, 2nd Floor,
1301 Clay Street, Oakland
Judge: Hon. Saundra B. Armstrong

I, BRIGITTE MORAN, declare as follows:

1. I make this declaration on behalf of myself and the Board of Directors of the Agricultural Institute of Marin County ("AIM"), in support of the Intervenor-Defendants' Opposition to the Plaintiffs' Motion Preliminary Injunctive Relief in the above-captioned lawsuit.

2. I am the Chief Executive Officer of AIM. AIM currently manages seven certified farmers' markets in the Bay Area that supply products from more than 400 family farms, specialty food purveyors, and local artisans. AIM's mission is to educate the public about the nutritional and economic benefits of buying locally grown food directly from farmers, and to connect and support communities and agriculture.

3. Farmers' Markets are a valued part of Marin County and the greater Bay Area. There are 14 Farmers Markets in Marin County, 202 in the San Francisco Bay Area, 850 in California, and approx. 8,284 in the US according to the USDA. AIM estimates that more than 30,000 people attend AIM's seven Farmers Markets a week. The Local Food movement is strong and growing.

4. In 2014, 81.5 percent of Marin County voters affirmed their support for AIM and the maintenance and expansion of local farmers' markets by voting to create and designate an expanded and permanent farmers' market pavilion and market site at the Marin County Civic Center to support the local food movement.

5. The Ranchers at Point Reyes National Seashore are long-time, regular vendors and/or product suppliers whose supplies of local, sustainable, and organic dairy and beef products at AIM farmers' markets are crucial to the markets and the local farm-to-table food supply chain.

6. AIM monitors the production practices of all of its vendors through our Farm Audit program. The Ranchers, like all other vendors or suppliers, meet stringent requirements and certifications that ensure that sustainable and environmentally sound agricultural practices are used on local and ranch lands and at dairy and beef production facilities.

7. AIM staff and board members conduct and participate in regular visits, tours, and events at the Seashore Ranches. We strongly disagree with Plaintiffs' characterization of the

Seashore ranches as "sprawling" "industrial" complexes that "sull[y]" the Seashore. Plaintiffs' Motion (ECF No. 86), at 10-11. Before the Court passes judgment on the Ranchers or any of the Plaintiffs' allegations against them, we would urge the Court to visit the Ranches as well as any of our markets and see for itself whether Plaintiffs' characterizations are accurate.

8. AIM and customers at AIM farmers' markets value and depend on the Ranchers for many locally produced, sustainable, and organic products. Among the vendors and products that the Ranchers directly contribute to are Straus Dairy, Clover Dairy, Marin Sun Farms, and Pt Reyes Farmstead. The Rancher's products are found in all of our food artisans prepared products at the Farmers Market, as well as in many of the Bay Area restaurants, school cafeterias and institutions.

9. AIM's mission is to connect local, sustainable farmers directly to consumers. The Ranchers play a vital and important role in that goal, as well as the creation and maintenance of the local farm-to-table food culture that has become such an important part of Marin County and the larger Bay Area. AIM believes that the Ranchers are stewards and innovators of modern sustainable local agriculture and food production. Penalizing or harming them because of planning disputes between Plaintiffs and the National Park Service is unfair to the Ranchers and harms the interests of AIM and the thousands of families who come every week to purchase local, sustainable and organic dairy and beef products for their families. Impeding or harming the Ranchers' ability to continue to maintain and manage their historic family ranches during this lawsuit or planning process would negatively impact the valuable supply of farm-to-table beef and dairy products that consumers have come to depend on in the Bay Area.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this date of August 31, 2016.

BRIGITTE MORAN

ARNOLD & PORTER LLP
PETER OBSTLER (SBN 171623)
peter.obstler@aporter.com
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: 415.471.3100
Facsimile: 415.471.3400

SEAN A. McCORMICK (SBN 295711)
sean.mccormick@aporter.com
777 S. Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Telephone: 213.243.4262
Facsimile: 213.243.4199

Attorneys for Intervenor-Defendants
JULIE EVANS ROSSOTTI, et al.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(OAKLAND DIVISION)

RESOURCE RENEWAL INSTITUTE, CENTER FOR BIOLOGICAL DIVERSITY, and WESTERN WATERSHEDS PROJECT

Plaintiffs,

v.

NATIONAL PARK SERVICE, a federal agency, and CICELY MULDOON, in her official capacity as Superintendent of Point Reyes National Seashore,

Defendants;

JULIE EVANS ROSSOTTI, DAN and DOLORES EVANS, DAVID EVANS, ROBERT McCLURE, TIM, TOM, and MIKE KEHOE, ERNIE, ERNEST, and NICHOLA SPALETTA, BETTY NUNES, and WILLIAM and NICOLETTE NIMAN,

Intervenor-Defendants.

Case No.: 4:16-cv-00688-SBA

DECLARATION OF JAMISON WATTS ON BEHALF OF MARIN AGRICULTURAL LAND TRUST IN SUPPORT OF INTERVENOR DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

ORAL ARGUMENT REQUESTED

Action Filed: February 10, 2016

Date: November 9, 2016
Time: 1:00 p.m.
Dept.: 210, 2nd Floor,
1301 Clay Street, Oakland
Judge: Hon. Saundra B. Armstrong

I, JAMISON WATTS, declare as follows:

1. I am the Executive Director of Marin Agricultural Land Trust ("MALT"). I am authorized by the board of directors for MALT to make this declaration in support of the Intervenor-Defendants' Opposition to the Plaintiffs' Motion for Preliminary Injunctive Relief in the above-captioned lawsuit.

2. Founded in 1980 by a broad coalition of ranchers, environmentalists, and community leaders, MALT is a membership-based nonprofit organization dedicated to permanently protecting Marin County farmland for farming and ranching. In doing so, MALT protects natural resources, wildlife habitat, a family-based farming community, and a bounty of local food for generations to come. As of 2016, MALT has invested over $67 million to permanently preserve the agricultural utility and natural resources on 78 Marin farms and ranches totaling 48,000 acres. We also work with agricultural landowners and public and private partners to support and enhance agricultural viability and sustainability locally and regionally.

3. Approximately half of the land in Marin, 167,000 acres, is in agricultural use, including the approximately 32,000 acres in Point Reyes National Seashore (PRNS) and Golden Gate National Recreation Area (GGNRA). Agriculture in PRNS and GGNRA represent approximately 17% of Marin County's agricultural land base and 17% of the County's agricultural production. If these ranches disappear, we face losing the critical mass necessary to sustain suppliers, processors, and other services crucial to the future of agriculture countywide. Such a loss could devastate the remainder, including the farms and ranches served by MALT.

4. Land security is critical to both the economic and ecological health of an agricultural operation. Land security, whether through agricultural conservation easements or long-term leases, enables farmers and ranchers to invest in ranch improvements that make the land more productive over the long term and protect sensitive natural resources. For this reason, MALT strongly supports granting long-term leases to agricultural operators on Marin County's public lands. Such leases are a critically important next step toward obtaining financing for ongoing operations and

improvements on PRNS ranches—investments that would almost certainly benefit the environment on PRNS.

5. In and out of PRNS, Marin County is home to multi-generational, family-run farms and ranches that yield a steady supply of sustainably raised local food and a picturesque working landscape that draws visitors from all over the world. Point Reyes National Seashore, where all the dairies are certified organic and the ranchers work closely with the Park Service to cooperatively manage the land, is an example of how agriculture on public land can work well. There are few places in the world where so much sustenance is achieved with such a soft touch on the land.

6. MALT unequivocally supports the continuation of sustainable farming and ranching on PRNS and the GGNRA, where it has been an integral part of the landscape for more than 150 years.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this date of September 13, 2016.

JAMISON WATTS