

Case No. 20-71554

**In the United States Court of Appeals
for the Ninth Circuit**

FOOD & WATER WATCH, INC.; SNAKE RIVER WATERKEEPER, INC.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

On Petition for Review of Final Action of the United States Environmental
Protection Agency

**PETITIONERS' MOTION FOR LEAVE TO FILE STANDING
DECLARATIONS**

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Counsel for Petitioners

Petitioners Food & Water Watch, Inc. and Snake River Waterkeeper, Inc. move this Court for an Order granting them leave to file four declarations, attached to this motion as Exhibits 1–4, to establish standing in this case. Petitioners conferred through counsel with Respondent U.S. Environmental Protection Agency (“EPA”) and can represent that EPA does not oppose Petitioners’ motion.

I. Background

On May 13, 2020, EPA signed the final reissuance of National Pollutant Discharge Elimination System (“NPDES”) General Permit for Concentrated Animal Feeding Operations in Idaho (“Idaho Permit”). That same day, notice of this action, which became effective on June 15, 2020, was published in the Federal Register. *See* 85 Fed. Reg. 28,624 (May 13, 2020). Petitioners have challenged the Idaho Permit pursuant to the Clean Water Act section 509(b)(1), 33 U.S.C. § 1369(b)(1), which provides for direct review in the Courts of Appeals of certain EPA decisions, including the final issuance of an NPDES permit such the Idaho Permit.

II. Petitioners’ Standing Declarations

The attached declarations contain testimony from Petitioners’ members and staff. The declarations are provided by Michele Merkel (Exhibit 1), Ferrell S. Ryan, III (Exhibit 2), Jordan Warren (Exhibit 3), and Adra Lobdell (Exhibit 4). The declarations establish Petitioners’ interests at stake in this litigation, detail how

Petitioners' members are being injured by EPA's issuance of the Idaho Permit, and explain how relief from this Court could redress those injuries. The facts contained in the declarations are directly relevant and necessary to establishing Petitioners' standing to maintain this suit, and do not otherwise appear in the record before the Court.

III. The Court May Review Petitioners' Standing Declarations

This Court may rely on Petitioner's declarations, even though the Court typically limits its review of an agency action, like the Idaho Permit, to the record before the agency. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973) (stating judicial review should be based on the record before the agency when it made its decision). It is well established that, when a petitioner seeks direct review of an agency's decision before the Court of Appeals, such petitioner may submit, and this Court may properly consider, declarations establishing petitioner's standing. *Nw. Env'tl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1527–28 (9th Cir. 1997) (“Because Article III’s standing requirement does not apply to agency proceedings, petitioners had no reason to include facts sufficient to establish standing as part of the administrative record. We therefore consider the affidavits . . . to determine whether petitioners can satisfy a prerequisite to this court’s jurisdiction.”). Here, Petitioners must demonstrate a “substantial probability” of standing. *Nat’l. Family Farm Coal. v. EPA*, 966 F.3d 893, 908 (9th Cir. 2020) (citation omitted). This

standing burden is the same “as that of a plaintiff moving for summary judgment in the district court.” *Id.* (quoting *Sierra Club v. EPA*, 292 F.3d 895, 899–90 (D.C. Cir. 2002) (“The petitioner’s burden of production in the court of appeals is . . . the same as that of a plaintiff moving for summary judgment in district court: it must support each element of its claim to standing by affidavit or other evidence. [A] petitioner whose standing is not self evident should establish its standing by the submission of its arguments and any affidavits or other evidence . . . at the first appropriate point in the review proceeding. In some cases that . . . will be with the petitioner’s opening brief.”)) (internal quotation marks and citation omitted). Thus, it is appropriate for Petitioners to submit, and for this Court to consider, the attached standing declarations.

IV. Conclusion

Petitioners respectfully request an Order granting them leave to file the standing declarations attached as Exhibits 1–4.

Dated this 22nd day of September, 2020.

Respectfully submitted,

s/ Tyler Lobdell

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Watch and Snake River Waterkeeper*

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), I hereby certify that I have electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 22, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated this 22nd day of September, 2020.

s/ Tyler Lobdell

Tyler Lobdell

Food & Water Watch

Counsel for Petitioners

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

This motion complies with the length limits permitted by Ninth Circuit Rule 27(d)(2)(A). This motion is 625 words, excluding the portions exempted by Ninth Circuit Rule 32(f), if applicable. Per Ninth Circuit Rule 27(d)(1)(E), the motion's type size and type face comply with Ninth Circuit Rules 32(a)(5) and (6).

Dated this 22nd day of September, 2020.

s/ Tyler Lobdell
Tyler Lobdell
Food & Water Watch

Counsel for Petitioners

Exhibit 1

1
2 UNITED STATES COURT OF APPEALS
3 FOR THE NINTH CIRCUIT

4)
5) Case Number: 20-71554
6)
7) **DECLARATION OF MICHELE MERKEL**
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9) Food & Water Watch, Inc., Snake
10) River Waterkeeper, Inc.
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12) v.
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15) U.S. Environmental Protection Agency)
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Declaration of Michele Merkel

I, Michele Merkel, do hereby declare:

1. My name is Michele Merkel, and I am the Managing Director of Advocacy Programs at Food & Water Watch (“FWW”). My business address is 1616 P Street NW, Suite 300, Washington, D.C., 20036. Unless otherwise stated, I have personal knowledge of all of the facts stated below, and if called as a witness can and will competently testify to all of the facts below.

2. I have worked for FWW for the past 9 years, and have held several positions within the legal and policy departments of FWW. Given my past and present duties, I am intimately familiar with the organization’s mission, membership, activities, and operations.

3. I make this declaration in support of FWW’s petition for review of the National Pollutant Discharge Elimination System (“NPDES”) general permit for concentrated animal feeding operations (“CAFOs”) in Idaho, IDG010000 (“the Idaho Permit”), as issued by the Environmental Protection Agency (“EPA”) on May 13, 2020.

1 4. FWW is a national, non-profit membership organization that mobilizes regular
2 people to build political power to move bold and uncompromised solutions to the most pressing
3 food, water, and climate problems of our time. FWW uses grassroots organizing, media outreach,
4 public education, research, policy analysis, and litigation to protect people's health,
5 communities, and democracy from the growing destructive power of the most powerful
6 economic interests. FWW has more than 2.8 million members and supporters, including
7 approximately 4,800 members and supporters across Idaho.

8 5. One of FWW's primary focus areas is factory farming and the U.S. food system.
9 FWW works to bring systemic change, transparency and accountability to the U.S. food system
10 through litigation; engaging with regulatory agencies at the federal and state level; outreach and
11 education to FWW members and the general public; and building coalitions to support
12 sustainable, local food systems.

13 6. A major component of this work is to ensure that environmental laws, including
14 the Clean Water Act, are applied to CAFOs to the fullest extent of the law. This includes
15 ensuring that all statutory and regulatory requirements and protections are appropriately and
16 vigorously executed by EPA and state agencies. Because CAFOs have such widespread and
17 devastating impacts to water quality, community wellbeing, and human health, ensuring that
18 CAFOs are accountable for their pollution is a top organizational priority. To that end, FWW
19 also strives to provide its members and the general public access to information about CAFO
20 industry pollution.

21 7. FWW believes that it is vitally important for EPA to fulfill its mission to protect
22 our environment and communities from pollution, including CAFO water pollution. Because of
23 this, challenging agency actions that we believe fall short of meeting legal requirements is one of
24 FWW's core activities and is central to our ability to further our mission. Such challenges have
25 been an important way that FWW seeks to advance our and our members' interests. To increase
26 our capacity to bring such legal challenges against agencies and polluters, FWW launched Food
27 & Water Justice, the litigation branch of the organization, in 2010.
28

1 8. FWW filed comments on the draft Idaho Permit issued by EPA, requesting that
2 EPA adopt several changes before finalizing the permit. This specifically included a request that
3 EPA add effluent monitoring requirements that would allow for EPA and state regulators, FWW,
4 and the general public to hold CAFOs accountable to the effluent limitations contained in the
5 permit. FWW's comments also raised several other specific deficiencies with the draft permit,
6 including EPA's failure to ensure that CAFOs are appropriately required to be permitted.

7 9. FWW is aware that EPA issued the final Idaho Permit without adopting nearly
8 any of FWW's requested changes, and that EPA did not add monitoring requirements as
9 requested.

10 10. FWW also brought the lack of effluent monitoring and other problems with
11 CAFO Clean Water Act permits to EPA's attention thorough a Petition for Rulemaking, filed
12 with EPA in 2017—to FWW's knowledge, EPA has not taken any action regarding that Petition.

13 11. As an organization dedicated to its members' interests in a healthy environment
14 and vibrant communities, one of FWW's responsibilities is to provide information to our
15 membership and the general public regarding CAFOs and their pollution. To that end, FWW
16 maintains a website and communications network whereby we keep our members informed
17 about CAFO operations, CAFO pollution, and violations of clean water protections. Access to
18 pollution data from CAFOs is an integral part of our work.

19 12. FWW has designed and maintains a website dedicated specifically to informing
20 its members and the general public about the CAFO industry. This site and an associated issue
21 brief, available at [https://www.foodandwaterwatch.org/news/brand-new-see-americas-factory-](https://www.foodandwaterwatch.org/news/brand-new-see-americas-factory-farms-mapped-out)
22 [farms-mapped-out](https://www.foodandwaterwatch.org/news/brand-new-see-americas-factory-farms-mapped-out), contain specific information about the CAFO industry across the country,
23 including in Idaho. Access to up-to-date and comprehensive data about CAFO pollution is
24 critical to this aspect of FWW's work. Because EPA does not adequately permit and oversee
25 CAFOs, and does not require pollution and water quality monitoring for permitted CAFOs,
26 FWW must rely on incomplete information gleaned from other sources to pursue its
27 organizational goals and to keep its members informed. This work to cobble together other
28 sources of information requires significant expenditure of staff time and other organizational

1 resources; resources that FWW would not have to expend or would expend elsewhere if EPA
2 required CAFOs to conduct pollution monitoring as FWW has called for and as the CWA
3 requires.

4 13. Data related to CAFO pollution are of primary importance to FWW's mission and
5 our members' interests because of the many environmental and community ills associated with
6 this unsustainable industry model. CAFOs frequently create severe and ongoing pollution
7 problems for nearby waterways, as explained in detail in FWW's comments to EPA regarding
8 the draft version of the Idaho Permit. These facilities often confine too many animals in too
9 small an area, producing more manure and other waste than can be safely utilized by crops or
10 otherwise disposed of, which results in discharges of pollutants into public waterways. Certain
11 standard operating procedures, or what EPA has deemed best management practices, are known
12 by FWW to cause or contribute to such discharges and associated water pollution issues.

13 14. FWW has researched and documented that CAFOs impact waterways across the
14 country, including in Idaho, because they are significant sources of nitrogen, phosphorus,
15 bacteria, and sediment into rivers, streams, and lakes. Many Idaho waterways are listed as
16 impaired for these pollutants in the state's Clean Water Act 303(d) (impaired waters) list,
17 including waters that are in areas populated by CAFOs.

18 15. EPA's final Idaho Permit will not remedy FWW's lack of information and
19 inability to educate our membership or engage in citizen enforcement actions (or work to spur
20 government agencies to take enforcement action) unless EPA includes effluent monitoring
21 requirements that enable FWW to fully assess whether facilities comply with permit terms and
22 conditions, the Clean Water Act, and EPA regulations.

23 16. Many of FWW's members understand that CAFO permits, including in Idaho, do
24 not require these operations to monitor and report their pollution discharges like other industries'
25 permits do, and are concerned about using waterways that are or may be impacted by
26 unmeasured and unreported CAFO pollution. The consequence is that FWW members' aesthetic,
27 recreational, and professional interests in Idaho's waterways are negatively impacted. Source-
28 specific effluent monitoring is an essential component of the NPDES permit program, and it is

1 critical to filling information gaps and determining which CAFOs are polluting and which
2 waterways they are adversely impacting. Without water pollution monitoring at every permitted
3 CAFO, FWW cannot effectively communicate to or empower our members with the information
4 and tools they need to protect their interests in clean, usable waters.

5 17. The accountability and transparency that site-specific pollution information would
6 provide would greatly benefit FWW's goals, campaigns, and mission. It would also empower our
7 members who are adversely impacted by Idaho CAFOs by enabling them to identify waterways
8 that are degraded by or vulnerable to CAFO pollution. These members could then protect their
9 health by choosing to recreate in and around cleaner, safer waterways. This information would
10 also enable such members to identify CAFOs that are violating the Idaho Permit and use the
11 monitoring data to advocate for better protections, to initiate citizen enforcement actions, or to
12 demand that EPA or state authorities take enforcement action.

13 18. FWW could, and would, use site-specific monitoring data to help advance our
14 mission and protect our members' interests by holding individual CAFOs, as well as government
15 agencies, accountable to the Clean Water Act's requirements.

16
17 I declare under penalty of perjury that the foregoing is true and correct.

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19 Executed on August 11, 2020.

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22
23 Michele Merkel

Exhibit 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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)	Case Number: 20-71554
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)	DECLARATION OF FERRELL S. RYAN,
Food & Water Watch Inc., Snake River))	III
Waterkeeper Inc.)	
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v.)	
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U.S. Environmental Protection Agency))	
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Declaration of Ferrell S. Ryan, III

I, Ferrell S. Ryan, III, do hereby declare:

1. My name is Ferrell S. Ryan, III, and I reside in Boise, Idaho. I have lived there since 2013. I have personal knowledge of all the facts stated below, and if called as a witness can and will competently testify to all of the matters contained herein.

2. I submit this declaration in support of Snake River Waterkeeper’s (“SRW”) and Food & Water Watch’s (“FWW”) above-captioned challenge to the Environmental Protection Agency’s (“EPA”) issuance of the National Pollutant Discharge Elimination System general permit for concentrated animal feeding operations (“CAFOs”) in Idaho (“Idaho Permit”).

3. I live and work within the Snake River watershed in southern Idaho. I founded SRW in March 2014 and have served as its Executive Director since that time. Since its founding, SRW has been and remains a licenced member of the Waterkeeper Alliance. Clean Water Act (“CWA”) compliance and enforcement is the primary focus of SRW’s mission of “applying science and law to protect, restore, and sustain waters of the Snake River Basin.” Each

1 year, SRW staff and interns monitor water quality at more than 25 sites across the Snake River
2 Basin, track water quality trends, engage in advocacy to address pollution issues, report illegal
3 pollution activity, and coordinate Basin-wide river trash cleanups. SRW also engages in advocacy
4 efforts in local, regional, and national forums, including state and federal regulatory bodies and
5 courts of law, through commenting on permits and rulemaking processes and litigating
6 challenges against polluters and state and federal agencies. SRW has worked for the past 6 years
7 across southern Idaho and the Snake River Basin to address water pollution issues under the
8 CWA and other federal laws.

9 4. SRW is a membership organization comprising individual supporting members
10 residing in communities across the Snake River region, as well as across the United States. At
11 present, approximately 100 individuals have supported SRW through monetary contributions,
12 more than 250 volunteers have participated in our annual spring river cleanups at sites across the
13 Snake River Basin, and our SWIM Guide sites, a smartphone app we offer for free to the public
14 which seeks to inform users about areas of polluted water that pose a threat to human health
15 during primary contact recreation, have received more than 100,000 views. I have been an active
16 member of SRW since its inception. In addition to relying on the Snake River and its connected
17 groundwater aquifers as a source of drinking water, SRW members have recreational interests in
18 the Snake River Basin, including outdoor activities such as swimming and boating, aesthetic
19 values, spiritual values, wildlife viewing, and natural resource utilization such as harvesting fish
20 for food.

21 5. I am a member of both SRW and FWW.

22 6. I have been a licensed attorney in good standing in Idaho since 2010. Prior to
23 founding SRW, I practiced law for a private firm at its offices in both Pocatello and Boise, Idaho,
24 focusing on public interest environmental and water law. In 2014, I taught Environmental Law as
25 an adjunct professor at Concordia University School of Law in Boise, Idaho.

26 7. I have a lifelong passion for clean water, fly fishing, and a healthy environment.
27 On weekends, I frequently visit and enjoy fishing and wildlife viewing on Silver Creek, the Big
28 and Little Lost rivers, the Middle Snake River near Glens Ferry, the Main Stem Snake River

1 near Pocatello, the South Fork Boise River, and many other tributaries to the Snake River and its
2 headwaters, as well as on National Forest lands across Idaho. I intend to continue engaging in
3 these and other activities at these places, which depend on healthy, usable waters in the Snake
4 River Basin.

5 8. I know that nutrients, pathogens, and other contaminants known to be associated
6 with CAFOs decrease trout health and abundance in coldwater rivers and streams. Knowing that
7 CAFOs are in the watersheds that I rely on for fishing and other recreational activities, and that
8 they are not required to monitor and report their water pollution, reduces my enjoyment as a
9 fisherman and visitor to these areas, as well as the likelihood that SRW's members or I would
10 return to visit these rivers and streams.

11 9. Water pollution has directly affected my and my staff's recreational activities. For
12 example, in 2019 poor water quality conditions due to algal blooms caused me to cancel a trip to
13 Hells Canyon, which is located along a stretch of the Snake River downstream of many Idaho
14 CAFOs. I have also lost opportunities to fish for steelhead due to poor returns, which were
15 caused in part by poor water quality conditions. High nitrate levels sampled by my interns and
16 staff have caused me to reduce the number of visits I take to the Snake River near Glens Ferry,
17 the Lower Boise River near Boise, and the Owyhee River near the Idaho border in eastern
18 Oregon.

19 10. As Executive Director of SRW, I am responsible for supervising all campaigns
20 and activities of SRW's operations, including but not limited to developing and managing
21 litigation, organizational administration, collecting water quality samples, administering SRW's
22 SWIM Guide resource, recruiting and coordinating volunteers, fundraising and event planning,
23 informing and educating SRW's Board and membership, guiding organizational objectives, and
24 ensuring campaign progress and program strategies that fulfill SRW's mission.

25 11. SRW also seeks to keep its members informed about water pollution issues
26 affecting the Snake River Basin and local communities via newsletters, eblast update emails
27 appraising our membership and supporters of developments and victories, and social media posts
28 about events and updates on Facebook and Instagram. SRW also administers its online SWIM

1 Guide resource, an online mapping resource and smartphone app that shows the public where
2 SRW's water quality sampling indicates public sites are safe or unsafe to swim. Despite
3 investing significant resources into the SWIM Guide, available information about whether
4 various Idaho waterways are safe for swimming and other recreation is incomplete. If CAFOs
5 were required to monitor their own pollution and publicly report whether they are in compliance
6 with the CWA, it would be easier to maintain the SWIM Guide and SRW would not have to
7 spend as much staff time and money trying to track down information from other sources. It
8 would also make the SWIM Guide a better and more comprehensive resource for SRW's
9 membership and the general public that rely on it.

10 12. SRW and its members are particularly concerned about pollution of waters in the
11 Snake River Basin caused by CAFOs. The main Snake River serves as the lifeblood of
12 recreation, agriculture, and tourism in Idaho. Based on our observations and water quality
13 monitoring data, SRW believes CAFOs have contributed and are likely to continue
14 contributing to increased pollution levels in the Snake River and its watershed as a major source
15 of waterway impairment in the Middle and Lower Snake River. As of January 1, 2019, dairy
16 CAFOs in Idaho housed approximately 614,000 dairy cows.¹ I am concerned that Idaho's dairy
17 industry is composed of large corporate operations concentrated heavily along the Snake River
18 that employ industrialized methods of dairy production, processing, manufacturing, and
19 international distribution that bear no resemblance to traditional agriculture or family-sized
20 operations. It is my understanding that Idaho dairy CAFOs located in the Snake River
21 Plain produce millions of tons of animal manure each year. From SRW's monitoring and
22 observations, as well as Idaho state records, I am aware that CAFOs typically store their massive
23 amounts of waste in open-air pits known to leak, and eventually dispose of it without treatment
24 onto agricultural lands. Other types of CAFOs are also sited in the Snake River Plain, such as
25 massive beef feedlots, one of which can reportedly house 150,000 head of cattle at any given
26 time.² I am very worried that inadequately-regulated and poorly-designed CAFOs and the fields

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28 ¹ See SRW's and FWW's comments on the Draft Idaho Permit (Dec. 9, 2019), at pg. 4 and Appendix B.

² http://www.simplot.com/pdf/Simplot_Feedlot_Web_PDF.pdf

1 that receive their waste pose serious problems for human health and water quality due to
2 standard industry practices that threaten to severely contaminate waterways with nitrogen,
3 phosphorus, pathogens like *E. coli* and salmonella, antibiotics, heavy metals, and other
4 pollutants.

5 13. Based on my research and experience in Idaho, I am also concerned that large
6 CAFOs in Idaho produce more manure than can be absorbed by the land according to settled
7 agronomic rates, causing excess manure and pollutants to run off into ditches and canals—many of
8 which were converted from existing ephemeral and intermittent streams that empty into the
9 Snake River via directly connected groundwater or other feeder streams. SRW’s monitoring
10 and state records show that entire sections of the Snake River are highly polluted by
11 bacteria and nutrients that cause excessive nuisance algae production and low dissolved oxygen
12 levels nearly year-round. Not surprisingly, and despite notoriously limited water quality sampling,
13 Idaho Department of Environmental Quality’s most recent report shows that more than a third of
14 Idaho streams require Total Maximum Daily Loads (TMDLs) for failure to meet water quality
15 standards.³ Many of Idaho’s impaired waterways fail to meet water quality standards due to
16 pollutants commonly associated with CAFOs – sediment, nutrients, and pathogens.

17 14. CAFO pollution also degrades trout and native fish habitat critical to the
18 survival of unique and endangered species of Idaho’s iconic fish. These fish and their habitat are
19 of extraordinary importance to SRW and its members. Given the existential threats from water
20 pollution to these and other invaluable water resources in the Snake River Basin, a primary
21 ongoing objective for SRW is to work for rigorous enforcement of the CWA against CAFOs.

22 15. SRW annually commits substantial organizational resources to conduct water
23 quality testing and other monitoring efforts in parts of the Snake River Basin that its members
24 use and where CAFOs predominate. Specifically, these areas are near the towns of Jerome, Twin
25 Falls, Burley, and Grand View. SRW finds these areas necessary to monitor in large part due to
26 the significant presence of CAFOs upstream.

27
28 ³ Idaho’s 2016 Integrated Report (Nov. 2018), <https://deq.idaho.gov/media/60182296/idaho-integrated-report-2016.pdf>.

1 16. Yet, even with SRW's diligent and substantial efforts, the full scope of CAFO
2 water pollution is presently unascertainable. SRW's efforts to monitor CAFOs are limited by a
3 lack of access to private lands and facilities, the non-transparent ways in which CAFOs operate,
4 and EPA's failure to require that CAFOs monitor their discharges to ensure compliance with
5 effluent limitations. This failure to require meaningful monitoring in the Idaho Permit hinders
6 SRW's mission and ability to protect its members' interests; SRW is unable to track permit
7 compliance to know whether a CAFO is actually complying with effluent limitations, which in
8 turn substantially hampers its ability to inform its members of important CAFO pollution issues
9 or effectively compel CWA compliance.

10 17. As stated herein, Idaho CAFOs pollute waters in the Snake River Basin. On
11 information and belief, they are likely to continue doing so with adverse and potentially
12 devastating effects on the resources and values cherished by SRW and its members, including
13 me personally.

14 18. The monitoring and reporting permit requirements sought by the above-captioned
15 challenge would allow SRW to collect, analyze, and use that information to advance its mission
16 and protect its members' interests by identifying CWA compliance or violations and taking
17 appropriate action. Absent EPA requiring such monitoring and reporting, SRW and its members
18 will be largely left to guess at what threats or actual harm CAFOs are causing to their interests in
19 safe, usable, and healthy waters in the Snake River Basin. Further, EPA's continued failure in
20 this respect severely undermines SRW's statutory right to assist in CWA enforcement by
21 denying it the very information necessary to show that CAFOs are violating the CWA and
22 established effluent limitations.

23 19. I believe the monitoring sought by the above-captioned challenge is also
24 necessary to demonstrate that Idaho must impose stronger requirements for CAFOs to protect
25 water quality. I believe that requiring CAFOs to monitor their operations would demonstrate that
26 the practices required by the Idaho Permit do not prevent pollution runoff into waterways in the
27 Snake River Basin. This evidence would enable SRW to more effectively advocate for stronger
28 permitting requirements in the future, to engage in citizen enforcement actions, as well as to

1 advocate for strong enforcement actions by EPA and Idaho DEQ when CAFOs are either
2 discharging pollution without permit approval or are polluting waters in violation of their permit.

3 20. Requiring CAFOs to monitor their effluent would also help establish baseline
4 monitoring data. CAFO industry growth, due to both new and expanding CAFOs, has been
5 taking place in Idaho for many years now, and SRW expects such growth to continue. Yet
6 without adequate monitoring that allows for baseline data comparisons, SRW, its members, and
7 the general public will be unable to sufficiently identify the increased pollutant loading
8 associated with additional or expanded operations.

9 21. Given SRW's expertise and experience in CWA and water pollution issues, SRW
10 is well positioned to, and would in fact, use such monitoring and reporting information to
11 advance its mission and protect its members' interests through accountability campaigns,
12 member engagement efforts, and advocacy programs aimed at increasing water quality and
13 decreasing dangerous water conditions for recreation. Monitoring requirements in the Idaho
14 Permit would save SRW's scarce resources and enable the organization to allocate those
15 resources to other campaign and advocacy work essential to furthering its mission. Finally, the
16 monitoring sought would enable SRW members, including me personally, to feel safe recreating
17 in more of Idaho's waterways because we would know if CAFOs were discharging illegal
18 pollution into specific waterways. This would increase my and our members' willingness to
19 engage in and increase our enjoyment of these activities. It would also allow me and our
20 members to avoid recreating in waterways impacted directly by CAFO pollution.

21 22. Absent EPA's revision of the Idaho Permit to include the effluent monitoring
22 requirements required by the CWA, the harms to SRW's mission and its members' interests as
23 described herein will persist.

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

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27 Executed on August 11, 2020.

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X /s Ferrell S. Ryan, III

Ferrell S. Ryan, III
Executive Director, Snake River Waterkeeper

Exhibit 3

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

)
) Case Number: 20-71554

) **DECLARATION OF JORDAN WARREN**
)
) Food & Water Watch, Inc., Snake
) River Waterkeeper, Inc.)

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) v.)

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) U.S. Environmental Protection Agency)
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Declaration of Jordan Warren

I, Jordan Warren, do hereby declare:

1. My name is Jordan Warren, and I reside in Boise, Idaho, where I have lived for the past six years. I grew up in Twin Falls, Idaho. I have personal knowledge of all the facts stated below, and if called as a witness can and will competently testify to all of the facts below.

2. I am a member of and volunteer intern for Snake River Waterkeeper (“SRW”). I support and volunteer for SRW because I deeply believe in its mission to protect and improve water quality in the Snake River and its watershed. In particular, I support SRW’s efforts to expose the role concentrated animal feeding operations (“CAFOs”) play in degrading the Snake River and its watershed, and to hold CAFOs accountable.

3. I understand that CAFOs are a serious and growing source of pollution in Idaho’s waterways. I support SRW’s and Food & Water Watch’s efforts in this lawsuit because I want these facilities to have more transparency and accountability, and am deeply concerned about the future of Idaho’s waters if CAFOs are allowed to continue polluting without adequate oversight.

1 4. I am currently in my final year as an undergraduate student at Boise State
2 University, where I major in environmental studies. Water quality is an area of particular interest
3 to me, and I aspire to a career working to protect and restore water resources upon graduation.

4 5. My current work with SRW involves conducting water quality testing, processing
5 water quality data, and coordinating the work of other SRW interns.

6 6. I regularly test for pollutants in frequently used waters of the Snake River and its
7 tributaries. SRW primarily uses the data I collect and process to manage and update its SWIM
8 Guide, an application that informs the public of water quality problems and protects public
9 health by notifying potential users of dangerous conditions.

10 7. In particular, I have conducted or intend to conduct water quality sampling at the
11 following locations: Middle of The Snake River above Shoshone Falls, Lower Snake River at
12 Fishhook Park, Chief Timothy Park, and Beachview Park. My water quality work also includes
13 the Boise River, Payette River, Palouse River, Malheur River, Owhyee River, Grand Ronde
14 River, Lucky Peak State Park, Eagle Island State Park, Ontario State Recreation Site, and Lyons
15 Ferry State Park.

16 8. I have a profound appreciation for the environment, waters, and other natural
17 resources of Idaho. As an outdoor enthusiast and environmentalist who loves the water, I have
18 been using the rivers, streams, and lakes of the Snake River Basin in various ways my entire life.
19 I waterski, paddle board, kayak, swim, and fish in these waters.

20 9. A few specific examples of places where I have engaged in these activities
21 include waterskiing at Centennial Park in Twin Falls, paddle boarding at Lucky Peak State Park
22 and the Boise River; kayaking at various sites of the Snake, Salmon, and Payette Rivers; and
23 fishing at Valley Creek, Yankee Fork of the Salmon River, Boise River, Arrowrock Reservoir,
24 Anderson Ranch Reservoir, and the Snake River. I have also spent significant time recreating in
25 and around my home town of Twin Falls, Idaho, which the Snake River runs through.

26 10. I also enjoy and engage in wildlife viewing throughout Idaho, including along the
27 Snake River, in and around Twin Falls, and in the Morley Nelson Snake River Birds of Prey
28 National Conservation Area. Wildlife depends on the health of the Snake River in many ways,

1 and a degraded Snake River watershed is very likely to negatively impact wildlife and my ability
2 to engage in this activity.

3 11. All of these areas are near or downstream of Idaho CAFOs. I understand that
4 CAFOs have impacted and will continue to threaten water quality in the Snake River and its
5 tributaries. Over the years, I have experienced obvious water pollution near Twin Falls, Idaho
6 and other places, and it has changed my recreational activities. For example, I used to swim and
7 cliff dive in the Snake River near Twin Falls, but stopped doing so after my sister cut her foot in
8 the River and was diagnosed with blood poisoning afterwards. I believe her illness was caused
9 by pollution in the water. I have also experienced visibly polluted water at Anderson Ranch
10 Reservoir, Ontario State Recreation Site, Centennial Park and Rock Creek Park in Twin Falls,
11 and the Malheur River along with water that let off odors due to pollution. Certain beaches and
12 other parts of the Snake River watershed are regularly too polluted to safely swim in or otherwise
13 use for recreation, due to pollution.

14 12. It is my understanding that the presence of CAFOs in and around the Twin Falls
15 area can result in frequent manure management issues that have a direct impact on the health of
16 the Snake River and its inhabitants. Given CAFOs' known potential to pollute waters with
17 nutrients, pathogens, and other pollutants, and the high concentration of CAFOs in these areas, I
18 believe that upstream CAFOs are a likely source of the pollution leading or contributing to these
19 disturbing experiences with polluted waters.

20 13. I have refrained from recreating in local waters on several occasions due to poor
21 water quality conditions. For example, about two years ago, my family and I wanted to spend
22 Father's Day kayaking in our area, but were unable to because nearby waters were so polluted
23 that it was unsafe to use them.

24 14. Instead of using the Snake River and its tributaries to engage in the activities that
25 I enjoy, I often travel to Stanley, Idaho because I can be confident that the water there is clean
26 and safe to use. It is my understanding that there are no or very few CAFOs near or upstream of
27 the Stanley area, so I do not have to worry about CAFO pollution in those waters. This requires
28 me to travel almost 150 miles one way by car, causing me to spend money and time that I would

1 not otherwise have to. If local water quality was not so degraded, I would not make this trip as
2 often and would instead recreate locally more often. This additional time and money are ongoing
3 added expenses I must deal with to avoid the polluted waters found near me where CAFOs
4 predominate. Most recently, I traveled to Stanley Lake on the 4th of July, 2020 to paddle board.
5 My other option would be to simply not partake in the outdoor activities that I love.

6 15. The role that CAFOs appear to play in polluting my local water resources makes
7 me anxious, worried, and upset. I attempt to stay as educated as possible on water quality issues,
8 but do not have enough data to know the extent to which CAFOs are degrading local waterways.
9 Having grown up in the Magic and Treasure Valleys, I have seen the massive growth in CAFOs
10 as they replace smaller, independent, and family operated farms. Decreased water quality has
11 come along with those changes.

12 16. If the water quality issues as described above continue or worsen, I am
13 increasingly less likely to engage in the activities that I love in the places most accessible to me.
14 I will be forced to spend more time and money traveling to places that are not degraded by
15 CAFO pollution.

16 17. Were it not for the unknown quantities of CAFO pollution entering these waters, I
17 would likely engage in the activities described above that I current avoid, and I would enjoy
18 those activities I continue to engage in more. I will continue working to identify water quality
19 issues and intend to continue recreating in and around waters of the Snake River Basin. I will
20 also continue visiting places that are surrounded by CAFOs, such as Twin Falls and the lower
21 and middle stretches of the Snake River. CAFO pollution's impact on these areas has and will
22 reduce my enjoyment of them, and the lack of understanding and data about the full scope of
23 CAFO pollution in these areas further reduces my ability to enjoy these places.

24 18. Due to the COVID-19 pandemic, I have temporarily refrained from recreating and
25 conducting water quality samples in certain waterways, including the Boise River and around
26 Eagle Island State Park. Once the acute risk of contracting COVID-19 in these areas goes away, I
27 will return to my normal activities as described in this declaration.
28

1 19. I understand that EPA has recently issued a final Clean Water Act permit for
2 CAFOs in Idaho that does not require CAFOs to monitor and publicly report their compliance
3 with, or violations of, the permit's pollution controls or the requirements of the Clean Water Act.
4 Through my work with SRW, I know the effort and resources it takes for citizens to try and fill
5 the gap when polluters are not adequately regulated, and also understand that it is necessary for
6 polluters themselves to monitor their impacts to water quality if we are to ultimately stop and
7 reverse the water quality problems plaguing the Snake River and its tributaries.

8 20. I am profoundly concerned with the integrity of the environment and waterways
9 in Idaho, and knowing that CAFOs are likely polluting these areas but do not have to monitor
10 and report their pollution to the public lessens my enjoyment of them and reduces the likelihood
11 that I will continue to visit certain places. I am less willing to swim or wade in waterways that
12 contain unknown amounts of CAFO wastes, and I am concerned that the lack of water quality
13 monitoring requirements may make CAFOs more likely to illegally discharge into waterways
14 that I rely on for recreation and personal fulfillment.

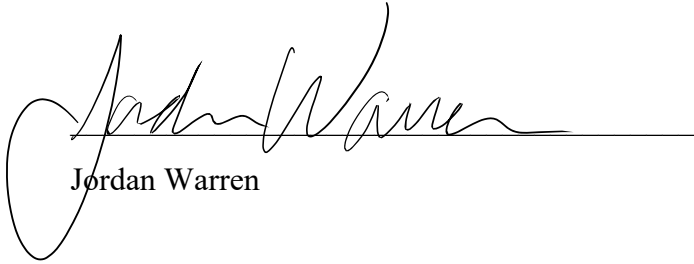
15 21. If I had access to monitoring information showing whether any of the places I
16 visit are polluted by CAFOs in ways that threaten my health or the region's environmental
17 integrity, I would be better able to take appropriate measures to avoid that pollution. If data
18 indicating whether water quality is being degraded by certain CAFOs were available, I would be
19 more knowledgeable and effective in my work for SRW and in my career going forward to
20 protect water quality. The lack of CAFO-specific monitoring data severely reduces my ability to
21 pursue my personal and professional goals to protect clean, usable waters in Idaho.

22 22. Unless EPA includes robust monitoring requirements as demanded by this
23 lawsuit, I will experience ongoing and potentially increasing harms as described above. EPA's
24 failure to include monitoring requirements in the CAFO permit that disclose CAFOs' impacts to
25 water quality leaves me without information essential to my aesthetic and recreational interests,
26 as well as my professional interests. Until EPA requires CAFOs to collect and report data on
27 their impacts to water quality, I will continue to have diminished enjoyment of Idaho's rivers and
28 streams and surrounding areas, not knowing if these areas are polluted or safe to use. Further, the

1 anxiety and reduced enjoyment associated with simply not knowing the extent to which CAFOs
2 in my state are degrading water quality will continue to harm me.

3
4 I declare under penalty of perjury that the foregoing is true and correct.

5
6 Executed on August 19, 2020.

7 A handwritten signature in cursive script, appearing to read "Jordan Warren", is written over a horizontal line. The signature is fluid and somewhat stylized, with a large loop at the beginning.

8 Jordan Warren
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Exhibit 4

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

)
) Case Number: 20-71554

Food & Water Watch, Snake River
Waterkeeper

) **DECLARATION OF ADRA LOBDELL**

v.

U.S. Environmental Protection Agency

Declaration of Adra Lobdell

I, Adra Lobdell, do hereby declare:

1. My name is Adra Lobdell, and I reside in Boise, Idaho. I first lived in Idaho from 2010-2013, have visited repeatedly over the years, and most recently settled here with my family in 2019. I have personal knowledge of all of the facts stated below, and if called as a witness can and will competently testify to all of the facts below.

2. I am a member of Food & Water Watch. I support Food & Water Watch because I know that it is a leading organization working to hold concentrated animal feeding operations (“CAFOs”) accountable for their water pollution and other impacts on the environment. In particular, I support the organization’s efforts to ensure that the U.S. Environmental Protection Agency (“EPA”) issues CAFOs strong National Pollutant Discharge Elimination System permits that comply with the Clean Water Act, to enable robust protection of my local and regional waters and environment. I understand that CAFOs are a major source of water pollution in Idaho

1 and across the country, and that large CAFOs in Idaho pollute our rivers, lakes, streams, and
2 groundwater.

3 3. I am also a member of Snake River Waterkeeper because I support their mission
4 to protect the Snake River and its watershed. In particular, I support their work to investigate
5 CAFOs' role in polluting water and educate Idahoans about the harms associated with these
6 facilities.

7 4. I have a Bachelor of Arts degree in English and Environmental Studies from
8 Guilford College in North Carolina. I also have a Master of Science degree in Natural Resources
9 from the University of Idaho. My educational experience has given me a profound appreciation
10 and understanding of natural ecosystems, particularly Idaho's aquatic and terrestrial ecosystems,
11 and how they can be positively and negatively impacted.

12 5. I currently work as the Golden Eagle Audubon Society's Education and
13 Community Engagement Specialist. The Golden Eagle Audubon Society is the national Audubon
14 Society's southwest Idaho chapter. As part of my position, I lead bird watching tours, host
15 educational classes and workshops, and assist with restoration projects designed to increase high-
16 quality habitat for bird species throughout southwest Idaho.

17 6. I have previously worked as a project coordinator for a watershed council in
18 Oregon and have extensive experience conducting water quality sampling and analysis. I also
19 coordinated riparian restoration projects that improved habitat for native anadromous fish
20 species. Because of this work, I have an understanding of the impacts of water pollution, and I
21 feel personally invested in supporting efforts that monitor and protect the health of my local
22 watershed.

23 7. I deeply value the environment, waters, and other natural resources of Idaho. As
24 an outdoor enthusiast and environmentalist, I spend much of my free time hiking, camping, rock
25 climbing, and viewing wildlife throughout the wildlands of Idaho, including along the Snake
26 River and several of its tributaries. One of my favorite places to hike, view wildlife, and rock
27 climb is along the Snake River in the Morley Nelson Snake River Birds of Prey National
28 Conservation Area. I regularly visit the Conservation Area and I intend to continue visiting it. In

1 addition to the area's amazing recreation opportunities, I cherish it because of its immense
2 ecological value as one of the densest populations of nesting raptors in the world. I have
3 recreated and engaged in wildlife viewing in many other parts of southern Idaho as well,
4 including along the Boise River and Reynolds Creek. I hope to and intend to return to these
5 areas. Whereas closures and other considerations related to the COVID-19 pandemic may
6 postpone my plans to visit these and other areas again, once that risk has passed I will resume my
7 normal intentions.

8 8. All of these areas are near CAFOs, which I understand have impacted and will
9 continue to threaten water quality with CAFO waste. For example, the Morley Nelson Snake
10 River Birds of Prey National Conservation Area is immediately adjacent to and downstream of
11 several CAFOs, including Simplot Land & Livestock's Grand View beef feedlot, one of the
12 largest feedlots in the world. I frequently see CAFOs as I travel to and from places that I cherish
13 for their environment and wildlife, which causes me anxiety and fear over what impact they are
14 having to these resources.

15 9. For example, after learning of the many large CAFOs upstream of Swan Falls,
16 near where I have hiked and camped several times, I am now less likely to go swimming, rafting,
17 or kayaking along this stretch of the Snake River—activities I was hoping and planning on
18 engaging in to enjoy the water and view the canyon and wildlife from another perspective. I am
19 especially hesitant to allow my son to wade in these waters now that I know they may be
20 contaminated by CAFO pollution. But for the risk of CAFO pollution, my family and I would
21 more often engage in our desired activities in this watershed and would enjoy them more when
22 we do.

23 10. If wildlife viewing opportunities and other environmental values were to be
24 further diminished due to CAFO pollution in any of the areas I have visited and to which I hope
25 to return, I would be less likely to continue going to those areas. Further, my work to protect,
26 enhance, and raise public awareness about birds and their habitat throughout southern Idaho is
27 and would be undermined by CAFO pollution that degrades the water resources critical to
28 healthy and viable bird habitats. For example, I organize and lead riparian restoration projects in

1 the Boise area and hope to participate in river cleanups along the Snake River in partnership with
2 Snake River Waterkeeper, the benefits of which could be undermined if CAFO pollution
3 continues to degrade or increasingly degrades the waters in those areas.

4 11. I understand that EPA has recently issued a final Clean Water Act discharge
5 permit for CAFOs in Idaho that does not require CAFOs to monitor and publicly report their
6 compliance with, or violations of, the permit's pollution limits. I do not believe regulators or
7 citizens will be able to ensure CAFOs comply with this permit without meaningful monitoring
8 requirements designed to monitor actual CAFO discharges at the time they take place.

9 12. I will continue visiting these places in Idaho to recreate, view wildlife, and find
10 spiritual and psychic rejuvenation if pollution does not compromise their environmental qualities
11 and/or threaten my or my family's health. However, I am profoundly concerned with the
12 integrity of the environment and waterways of these places, and knowing that CAFOs are likely
13 polluting these areas but do not have to meaningfully monitor and report their pollution to the
14 public lessens my enjoyment of them, will limit what activities I feel comfortable continuing to
15 engage in, and reduces the likelihood that I will continue to visit certain places. For instance, not
16 knowing the extent to which CAFOs are, or are not, causing environmental degradation to places
17 like Swan Falls and the Morley Nelson Snake River Birds of Prey National Conservation Area
18 leaves me in the dark and further lessens my enjoyment of these areas. I will continue to visit
19 these places, but am not willing to swim or wade in waterways that contain unknown amounts of
20 CAFO wastes, and I am concerned that the fact that CAFOs are not required to monitor their
21 pollution may make them more likely to illegally discharge into waterways that I rely on for
22 recreation.

23 13. Because I live and work in the Treasure Valley of southern Idaho, the closest and
24 most accessible outdoor recreation opportunities are in this area, which is also where CAFOs are
25 most heavily concentrated. CAFO pollution degrading these areas would force me to travel
26 farther, take more time away from work, and incur more costs to continue enjoying the outdoor
27 activities that are so important to me.
28

1 14. It is my understanding that CAFOs have contributed and are contributing to water
2 quality problems throughout southern Idaho, especially in the places I have visited and intend to
3 continuing visiting in the Treasure and Magic Valleys.

4 15. I understand that CAFOs can contribute to dangerous algal blooms and pathogen
5 contamination in Idaho's waterways because CAFO waste contains nutrient pollutants like
6 nitrogen and phosphorus that feed algae blooms, as well as *E. coli* and other harmful bacteria
7 known to threaten human health. These and other pollutants in CAFO waste degrade waters and
8 the broader environment in a plethora of ways—for example, by harming aquatic species and the
9 birds that rely on them for food.

10 16. If I had access to monitoring information showing whether any of the places I
11 frequently visit are polluted by CAFOs in ways that threaten my or my family's health, for
12 example by adding dangerous pathogens into local waters, I would be able to take measures to
13 avoid that pollution. If I were able to know whether pollutants were being discharged by CAFOs
14 in violation of the Clean Water Act, I would be better able to protect myself and my family. I
15 would also be more knowledgeable and effective at my job protecting local bird species because
16 I understand that water quality is of paramount importance to environmental integrity and high-
17 quality habitat. If I had access to this monitoring information, I would also know which
18 waterways are not impacted by illegal CAFO pollution, and would be able to more fully enjoy
19 my recreational activities in areas that I love to visit. I am unable to personally conduct water
20 quality testing due to time and resource constraints, and therefore adequate monitoring of
21 CAFOs under the Clean Water Act is critical to my continued enjoyment of the places I love, as
22 well as my ability to achieve my professional goals. EPA's permitting must include requirements
23 that would result in monitoring data becoming available to citizens and regulators, otherwise my
24 inability to protect myself and fulfill my professional goals will assuredly persist.

25 17. Unless EPA requires the monitoring that this lawsuit seeks, I will continue to be
26 harmed by failure of the CAFO permit to ensure I have access to information essential to my
27 aesthetic and recreational interests throughout Idaho, as well as my professional interests in
28 learning as much as possible about what is impacting Idaho ecosystems and the birds that rely on

1 them. Unless EPA requires permitted CAFOs to monitor their pollution, I will continue to have
2 diminished enjoyment of Idaho's rivers and streams and surrounding areas, not knowing if these
3 areas are polluted or safe for me and my family. Further, the anxiety and reduced enjoyment
4 associated with simply not knowing whether CAFOs in my state are being required to comply
5 with the Clean Water Act will continue to harm me.

6
7 I declare under penalty of perjury that the foregoing is true and correct.

8
9 Executed on August 08, 2020.

10 *s/ Adra Lobdell*

11 Adra Lobdell