

**Affidavit #1 of Blair Hammond  
Affirmed the 30<sup>th</sup> day of January, 2018**

Court File No.: T-1882-17

**FEDERAL COURT**

BETWEEN:

**WELLS GRAY GATEWAY PROTECTION SOCIETY**

Applicant

and

**THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE and  
ATTORNEY GENERAL OF CANADA**

Respondents

**AFFIDAVIT #1 OF BLAIR HAMMOND**

I, Blair Hammond, public servant with Environment and Climate Change Canada ("ECCC"), located at 5421 Robertson Road, RR #1, Delta, in the Province of British Columbia, AFFIRM THAT:

1. I am the Acting Regional Director, Pacific Region, of ECCC's Canadian Wildlife Service, which position I have held since October 2017. As such, I have personal knowledge of the facts and matters deposed to in this affidavit except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.

## My Role and Background

2. My career history is in the field of conservation biology and program management. I have worked in this field for more than 20 years, the last 16 years with Canadian Wildlife Service in various roles, including as a biologist and manager with responsibility for the development and delivery of the Pacific Region's Species at Risk program, and since October, 2017, as the Acting Regional Director.

3. In my capacity as the lead manager responsible for the Pacific Region's Species at Risk program from 2008 to October 2017, I was responsible for all aspects of the program, which included prioritizing work related to the assessment of species' status, listing, and recovery planning for approximately 150 terrestrial (including birds) species at risk in British Columbia, whose identified critical habitat currently covers an estimated 20% of British Columbia's landmass. The work included scientific work, building awareness among stakeholders and Indigenous groups, as well as formal consultations and co-ordination of activities with other federal and provincial agencies. Throughout this period, aside from a period of leave for language training in 2016-2017, I was responsible for managing the work on Southern Mountain caribou and have continued to lead the file as the Acting Regional Director.

4. Attached hereto and marked as **Exhibit "A"** to this my affidavit is a true copy of my *curriculum vitae*.

5. In this affidavit, I will address the following:

- a) co-ordination of species recovery and protection between Canada and British Columbia;
- b) recovery planning for the Southern Mountain caribou;
- c) protection of Southern Mountain caribou's critical habitat;
- d) imminent threat assessment for the Southern Mountain caribou; and

- e) other measures taken to protect and recover the Southern Mountain caribou.

**Co-ordination of Species Recovery and Protection between Canada and British Columbia**

6. In the spring of 2005, Canada and British Columbia entered into the *Canada – British Columbia Agreement on Species at Risk* (the “*Bilateral Agreement*”) under which Canada and British Columbia agreed to administrative and operational procedures for implementing the *Species at Risk Act*, S.C. 2002, c. 29 (the “*SARA*”) and other species at risk conservation measures in British Columbia. The *Bilateral Agreement* expired on its terms in 2015 and is awaiting renewal. The processes and sub-committees established under the *Bilateral Agreement* continue to operate on the presumption that it will be renewed in the future. Attached hereto and marked as **Exhibit “B”** to this my affidavit is a true copy of the *Bilateral Agreement*.

7. Under the *Bilateral Agreement*, overarching co-ordination of *SARA* business in British Columbia is guided by the multi-agency Species at Risk Steering Committee (the “*Steering Committee*”). The Steering Committee is composed of the most senior federal and provincial government officials with responsibility for species at risk protection and recovery. With regards to processes related to orders under various sections of the *SARA*, including effective protection assessment under section 61 and imminent threat assessment under section 80, the Steering Committee has to date not played a role or been involved.

8. Below the Steering Committee, the administrative structure under the *Bilateral Agreement* is known as the Species at Risk Coordinating Committee (“*SARCC*”). *SARCC* has senior management membership from British Columbia, ECCC, the Department of Fisheries and Oceans, and the Parks Canada Agency. I am currently the ECCC member of the *SARCC* in British Columbia. One function of the *SARCC* is to coordinate the production of jurisdictionally led recovery documents (i.e., recovery strategies, management plans, and action plans) required under the *SARA*. The *SARCC* typically meets at least twice per year. In the last

year, regular formal meetings have been replaced by frequent interaction amongst members to manage key files.

9. On issues related to the Southern Mountain caribou, since April 2017, ECCC and the British Columbia Ministry of Environment and Ministry of Forests, Lands and Natural Resource Operations, and Rural Development have maintained an Assistant Deputy Minister level committee that meets every two weeks by phone to serve as a forum on issues related to the caribou. The role of this *ad hoc* committee is to ensure effective information exchange between the two governments on issues related to the Southern Mountain caribou.

10. With regards to the process engaged under section 61 of the *SARA* on assessment of effective protection for the Southern Mountain caribou's critical habitat on non-federal lands, the *ad hoc* committee's principle role has been for ECCC to answer British Columbia's questions about the process, for ECCC to communicate its information needs related to the caribou, and to provide notice of upcoming formal consultations.

11. With regards to the process engaged under section 80 of the *SARA* on assessment of imminent threat to the survival or recovery of the Southern Mountain caribou, Canadian Wildlife Service has sought from British Columbia specific information such as on local predator and alternate prey populations and dynamics, activities likely to pose an imminent threat to caribou (e.g., forest harvesting), and any mitigation measures the province may have in place. Information gathering has taken place by email and telephone.

### **Recovery Planning for the Southern Mountain Caribou**

#### **A. General Information on Southern Mountain Caribou**

12. The present application involves the Southern Mountain population of the Woodland caribou (*Rangifer tarandus caribou*), referred to as the "Southern Mountain caribou" in this affidavit and in the affidavit of Robert McLean. In the following, I have used information from the *Recovery Strategy for the Woodland*

*Caribou, Southern Mountain population (Rangifer tarandus caribou) in Canada – 2014* (the “Recovery Strategy”), supplemented with updated information drawn from the 2017 Canada-British Columbia Southern Mountain Caribou (Central Group) protection study. The Recovery Strategy and protection study are addressed and attached further below.

13. The Recovery Strategy organizes Southern Mountain caribou into 40 subpopulations divided into 24 local population units (“LPUs”). At the time that the Recovery Strategy was published, four of those subpopulations were recently extirpated. The local population units reflect likely larger historical subpopulations that have fragmented into the currently recognized subpopulations. Three of these local population units are in Alberta; one is located in Alberta and British Columbia; one is located in British Columbia and the United States; while the remaining 19 are entirely within British Columbia.

14. The current overall number of Southern Mountain caribou is estimated to be approximately 4,500.

15. The geographic area occupied by a subpopulation of caribou is referred to as a range. Southern Mountain caribou occupy ranges of highly diverse topography and environmental conditions, requiring large ranges of relatively undisturbed, interconnected habitat. Its range extends from south of the Canada-United States international boundary to the southern Peace River district of British Columbia, and includes the Rocky, Selkirk, Purcell, Columbia and Itcha-Ilgachuz mountain ranges, as well as the hills and lowlands of the southern Peace River and west Chilcotin regions.

16. To facilitate recovery planning and implementation, Southern Mountain caribou are divided generally into three groups: the Northern Group, the Central Group, and the Southern Group. Each group uses different ranges and uses its habitat differently. For example, the Southern Group uses low elevation mature forest during the spring and early winter, moving to high elevation mature or subalpine forest in mid-and-late winter and in the summer.

17. In addition to primary habitat, Southern Mountain caribou require matrix habitat. Type 1 matrix range consists of areas that are not delineated as summer or winter range, but may include seasonal migration areas or other areas of lower use. Type 2 matrix range consists of areas surrounding annual ranges where predator/prey dynamics influence caribou predation rates within the annual range. Type 2 matrix range may also include areas with trace occurrences of caribou and dispersal zones between subpopulations. In the Southern Group, all matrix of both types is to be managed to support an ecological condition of low predation risk. In the Northern and Central Groups, Type 1 matrix is to be managed such that it is 65% undisturbed; Type 2 matrix in these Groups is to be managed as for the Southern Group.

18. The provinces of British Columbia and Alberta have the primary responsibility for management of lands, natural resources, and wildlife within Southern Mountain caribou ranges because approximately 96% of the area within the 24 local population unit boundaries is located on provincial and private land. Most of the remaining 4% is managed by the Parks Canada Agency.

19. In addition to the provincial governments, Indigenous groups have a central role in ECCC's strategy for recovery planning and protection. Both Canada and British Columbia have ongoing engagement with Indigenous groups, the logistics of which are complex. For example, there are approximately 100 First Nations' traditional territories that overlap with Southern Mountain caribou in BC and Alberta, and up to 80 First Nations were consulted in preparation of the Recovery Strategy.

20. Recovery of all Southern Mountain caribou local population units has been determined to be technically and biologically feasible over a multi-decade timeframe.

**B. Wells Gray - Thompson Local Population Unit (LPU)**

21. This application is focused on the Wells Gray-Thompson local population unit of the Southern Mountain caribou. The Wells Gray – Thompson LPU is part of the Southern Group, and comprises two subpopulations or herds, known as the Wells Gray (South) herd and the Groundhog herd. The present estimated number of caribou in the Wells Gray – Thompson LPU is 164.

**C. The Recovery Strategy**

22. The development and publication of the Recovery Strategy was the product of extensive consultations with stakeholders, including environmental non-governmental organizations, provincial governments, as well as Indigenous organizations and individuals.

23. The proposed Recovery Strategy was posted on the *SARA* public registry (the “*SARA* Registry”) for comment in January 2014. A significant number of comments were received, reviewed and incorporated into the final Recovery Strategy that was posted on the *SARA* Registry in June 2014. A true copy of the Recovery Strategy is attached and marked as **Exhibit “C”** to this my affidavit.

24. The Recovery Strategy identifies six key threats to the Southern Mountain caribou: unsustainable predation; habitat alteration resulting from industrial activities; roads and linear features; recreational activities; natural disturbances; and hunting. The most significant, immediate and direct threat to all three Groups is unsustainable predation. Increased predator abundance has resulted from habitat alteration due to industrial activities, such as forest harvesting, mining and mineral exploration and development, and oil and gas exploration and development, which remove or destroy caribou habitat (mature and old forests) and create early seral habitats favoured by other prey species such as moose and deer, which in turn support larger predator populations.

25. The Recovery Strategy sets population and distribution objectives to guide recovery efforts. These objectives are, to the extent possible, to: stop the decline in

size and distribution of all local population units; maintain the current distribution within each local population unit; and increase the size of all local population units to self-sustaining levels and, where attainable and appropriate, to levels which can sustain a harvest with dedicated or priority access to Aboriginal peoples.

26. Critical habitat is partially identified in the Recovery Strategy for all local population units. For the Southern Group, the high and low elevation seasonal ranges are identified for minimal disturbance, and additional habitat is intended to be identified for restoration to natural condition suitable for caribou use. In addition, for the Southern Group, Types 1 and 2 matrix range are to be managed so as to allow for low predation risk, defined as wolf population densities less than three wolves per 1000 km<sup>2</sup>.

27. The Recovery Strategy identifies additional studies required to complete the identification of critical habitat. For the Southern Group, these studies include: completing mapping of all high elevation summer and/or winter range; completing habitat mapping in national and provincial parks where gaps still exist; completing mapping of all Type 2 matrix range which has not yet been mapped; developing seasonal range specific disturbance thresholds; and monitoring the effects of mountain pine beetle on caribou and caribou habitat through various stages of forest infestation.

28. In addition to the schedule of studies identified in the Recovery Strategy, ECCC is planning to improve the clarity of critical habitat mapping for Southern Mountain caribou by correcting errors in the local population unit boundaries in British Columbia. This proposed amendment is still under review.

29. The success of the Recovery Strategy depends on co-operation between provincial governments, Indigenous peoples, industry, and other stakeholders. The Recovery Strategy seeks to provide the flexibility that provincial jurisdictions require to develop their approach within a reasonable period of time, and to co-ordinate that approach with any necessary federal measures of protection.

## Protection of Critical Habitat

### *Protection of Critical Habitat on Federal Lands*

30. Pursuant to subsection 58(2) of the *SARA*, within 90 days from publishing the Recovery Strategy on the *SARA* Registry, the Minister was required to publish a description of that portion of the critical habitat that is in a national park in the *Canada Gazette*. Attached hereto and marked as **Exhibit "D"** to this my affidavit is a true copy of the August 30, 2014 publication of the *Canada Gazette*, Part 1, Volume 148, No. 35, giving notice that subsection 58(1) of the *SARA* prohibits the destruction of those portions of the Southern Mountain caribou's critical habitat that are located within the Banff National Park of Canada, Jasper National Park of Canada, Glacier National Park of Canada and Mount Revelstoke National Park of Canada.

### *Protection of Critical Habitat on Provincial Lands*

31. In October 2016, as part of our ongoing collaboration and, in part, in recognition that a number of proposed resource development projects had the potential to have impact on the Southern Mountain caribou, ECCC and British Columbia (Ministry of Environment and Ministry of Forests, Lands and Natural Resources) undertook a joint study to review the legislative tools in place to protect the Central Group and its habitat on non-federal lands, with the ultimate goal of determining what additional steps may need to be taken to protect and recover the species.

32. The purpose of the study was to inform a federal critical habitat protection assessment under the *SARA* to determine what additional steps may need to be taken by federal or provincial governments to protect and recover Southern Mountain caribou. The study was also to provide information to ECCC to inform future decision making under *SARA*, such as the Minister's opinion on whether the laws of British Columbia effectively protect the individuals and critical habitat of the Southern Mountain caribou.

33. As British Columbia has no legislation directly comparable to the *SARA* and relies upon more than a dozen different statutes and regulations to manage lands and wildlife, the study focused on the Central Group to keep the scope manageable. It was a significant undertaking for British Columbia and ECCC staff to understand the legislative regimes and how the various laws controlling activities on the landscape were being used.

34. Attached hereto and marked as **Exhibit “E”** to this my affidavit is a true copy of the final *Canada – British Columbia Southern Mountain Caribou (Central Group) Protection Study, May 2017* (the “Protection Study”). An earlier version of the Protection Study was posted in the *SARA* Registry in February 2017 for public comment. The final Protection Study was revised before it was posted in May 2017.

35. Initially, ECCC and British Columbia intended to conduct similar studies on the Southern and Northern Groups, but after the Protection Study was completed ECCC informed British Columbia that on the basis of the information in the Protection Study, ECCC would proceed with the protection assessment for the entire Southern Mountain population.

36. The Protection Study was used, in part, to prepare information to support a protection assessment for the Southern Mountain caribou. This information was provided to British Columbia and Alberta on December 22, 2017 for the purpose of consultation pursuant to subsection 61(4) of the *SARA*. The provincial ministries are expected to provide their comments by January 31, 2018.

### **Imminent Threat Assessment**

#### *Wells Gray – Thompson and Central Kootenay Requests*

37. On April 7, 2017, the Minister received a request from the applicant, Wells Gray Gateway Protection Society, other environmental and citizen groups, scientists and private individuals (collectively, “Wells Gray petitioners”) that the Minister recommend and the Governor in Council make an emergency order under

section 80 of the *SARA* to prohibit timber harvesting and related road building on provincial Crown land within matrix range critical habitat including, for identification, in the Upper Clearwater Valley of British Columbia adjacent to southern Wells Gray Provincial Park (“Wells Gray Request”). The Wells Gray petitioners also asked that the Minister expedite completion of the process for a ‘safety net’ order under section 61 of the *SARA* for the Southern Mountain caribou.

38. On April 14, 2017, the Minister received a second request for an emergency protection order under section 80 of the *SARA*. This request from Dr. Lee Harding identified logging and related activities as a threat to the critical habitat of the Nakusp herd of the Central Kootenay local population unit (“Central Kootenay Request”).

39. The work that was undertaken by Canadian Wildlife Service to respond to the two requests included developing an approach to assess whether or not the Southern Mountain caribou is facing an imminent threat to its survival or recovery, and gathering the best available information from British Columbia and Parks Canada Agency, as the two relevant jurisdictions with authority over land use and wildlife management. The work on developing the approach has been carried out by the Species at Risk Division in the Assessment and Regulatory Affairs Directorate, led by Robert McLean, while the work of gathering relevant information has been carried out by the Pacific region office under the Stewardship and Regional Operations Directorate, led by Laura Farquharson. My role was to supervise the information gathering process and the subsequent drafting of the analysis on imminent threat. I describe that work below.

40. Canadian Wildlife Service gathered information to support the Minister in determining whether the Southern Mountain caribou are, or are not, facing an imminent threat to their survival or recovery as a result of activities that may impact the Wells Gray-Thompson and Central Kootenay local population units. This analysis was conducted for the entire species as listed under the *SARA*.

41. The focus on the Wells Gray-Thompson and Central Kootenay local population units was considered prudent in light of the emergency nature of the requests, and was considered to be the appropriate unit of analysis because the Recovery Strategy requires that all local population units remain extant to achieve the population and distribution objectives.

42. This information gathering has been multi-faceted. It has required the review of scientific information, including published scientific literature and that summarized in documents such as the Protection Study. It has also required further engagement with British Columbia, the Parks Canada Agency, and others to gather additional information on the caribou.

43. A central component of this information gathering has been vetting for accuracy of the materials contained in the Wells Gray and Central Kootenay Requests, and the accuracy of data and other information received from British Columbia, as part of Canadian Wildlife Service's due diligence in ensuring that the Minister receives advice based on best available information.

44. In addition to a thorough review of the best available data on the status of the species, the information gathering also required a review of the threats facing the Southern Mountain caribou. These threats include information on human-made threats, such as forestry harvesting, and naturally-occurring threats, such as forest fires.

45. Southern Mountain caribou pose a particular challenge to evaluate because of the complexity of their habitat use and because of their extensive range. This is in contrast to previous imminent threat assessments conducted by Canadian Wildlife Service for the Western Chorus Frog in Quebec and Sage Grouse in Saskatchewan and Alberta. Both Western Chorus Frog and Sage Grouse addressed comparatively small geographic areas.

46. An additional unique challenge in respect to Southern Mountain caribou is that threats to their survival, recovery, and habitat needed to be reviewed for both

their individual and cumulative effect on the species. Many threats are related and may interact, in which case they can have cumulative impacts that may not be evident when threats are examined individually. Thus, although the Wells Gray and Central Kootenay Requests focused largely on forestry and associated road building, Canadian Wildlife Service gathered information on other additional activities likely to impact individuals or to destroy critical habitat (as defined in the Recovery Strategy) for each of those local population units.

*Additional Request Received*

47. On December 13, 2017, the Minister received a further request for an emergency protection order for the Southern Mountain caribou's critical habitat from Valhalla Wilderness Society. This request identifies a number of threats, including logging and winter recreational activities, to ten herds within six local population units within the Southern Group ("Valhalla Request"). The Valhalla Request also seeks a section 34 order to protect individuals from harassment and displacement resulting from motorized winter recreation activities and a section 61 order to protect critical habitat on non-federal lands. ECCC provided the Valhalla Request to British Columbia and Parks Canada Agency.

48. To streamline the process and in order to bring all three requests before the Minister at the same time, Canadian Wildlife Service is not planning to prepare a detailed analysis of the Valhalla Request similar to that prepared for the Wells Gray and Central Kootenay Requests. Instead, Canadian Wildlife Service will be providing to the Minister summary information on the Valhalla Request's impact on the assessment of whether the Southern Mountain caribou face an imminent threat to their survival or recovery.

*Present Status*

49. At present time, ECCC is in the process of finalizing advice covering all three requests for the Minister.

## **Other Measures Taken to Protect Southern Mountain Caribou**

### *Action Plans and Conservation Strategy in National Parks*

50. The Minister, in her capacity as the Minister responsible for Parks Canada Agency, has prepared three multi-species action plans to implement recovery strategies for the species (including the Recovery Strategy) as they relate to their habitat in the Banff, Jasper, Mount Revelstoke, and Glacier National Parks. The action plans were prepared pursuant to the *SARA* requirements and were posted on the *SARA* Registry in 2017.

### *Section 11 Agreements*

51. Section 11 of the *SARA* authorizes the Minister to enter into conservation agreements with a province in order to benefit a species at risk or enhance its survival in the wild. Under this authority, on November 17, 2017, the Minister and the British Columbia Ministers of Environment and Climate Change Strategy and of Forest, Lands, and Natural Resources Operations, and Rural Development announced a draft conservation agreement addressing recovery measures for the Central Group of the Southern Mountain caribou. Attached hereto and marked as **Exhibit "F"** to this my affidavit is a true copy of the draft *Species at Risk Act (SARA) Section 11 Conservation Agreement for the Conservation of the Southern Mountain Caribou* (the "Draft Agreement"), which was posted on the *SARA* Registry for public comment in November 2017. The comments received will be considered in finalizing the agreement.

52. The goal of the Draft Agreement is to articulate the actions Canada and British Columbia intend to take over the next five years to support the recovery and protection of the Central Group of the Southern Mountain caribou in British Columbia.

53. Further, it is anticipated that engagement with affected Treaty 8 First Nations may lead to partnership agreements to assist in the recovery of the Central Group of Southern Mountain caribou.

*Funding for Protection and Recovery of the Southern Mountain Caribou*

54. Since 2006, Canadian Wildlife Service has allocated over \$1 million toward the recovery of the Southern Mountain caribou's habitat under its *Habitat Stewardship Program* through the funding of 19 projects.

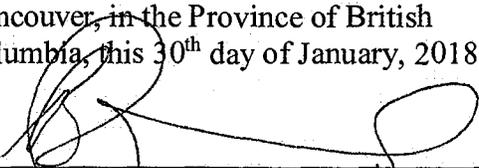
55. Since 2009, Canadian Wildlife Service has allocated over \$480,000 under the *Aboriginal Fund for Species at Risk* to recover Southern Mountain caribou through the funding of 18 projects.

56. Canadian Wildlife Service, Pacific Region has also started discussions with First Nations on three two-year contribution agreements totaling \$630,000 to support the First Nations' leadership in caribou recovery implementation.

57. Funding allocated by the *Habitat Stewardship Program* and the *Aboriginal Fund for Species at Risk* has included contributions to First Nations, non-governmental organizations, and the British Columbia government for various purposes such as maternal penning, planning and data collection, recreational threat mitigation, outreach, habitat protection, and habitat restoration.

58. Under the *Natural Areas Conservation Program*, Canada made a \$41 million contribution toward the purchase a 55,200 hectare piece of private land known as the Darkwoods, in south-central British Columbia. Additional federal contributions came *via* income tax credits under ECCC's *Ecological Gifts Program*. Securing the Darkwoods property was a major contribution to the protection of the South Selkirks herd of the Southern Mountain caribou.

AFFIRMED before me at the City of  
Vancouver, in the Province of British  
Columbia, this 30<sup>th</sup> day of January, 2018.

  
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Commissioner for Taking Affidavits  
within British Columbia

BLAIR HAMMOND

This is Exhibit "A" referred to in the  
affidavit of **Blair Hammond** affirmed  
before me at **Vancouver, British Columbia**  
this 30<sup>th</sup> day of January, 2018



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**Dennis Hill**  
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