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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CENTER FOR BIOLOGICAL DIVERSITY ,	}	Civ. No.
Plaintiffs,		
vs.	}	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
U.S. BUREAU OF LAND MANAGEMENT;		
U.S. FOREST SERVICE;		
Defendants.	}	

INTRODUCTION

1. This civil action requests declaratory and injunctive relief for violations of the Wild and Scenic Rivers Act, 16 U.S.C. § 1271 et seq. Specifically, this action seeks to compel preparation of eight (8) long over-due management plans required to be prepared under the Act.

2. Congress designated segments of 8 rivers in California to be protected under the Wild and Scenic Rivers Act on March 31, 2009, PL 111-11 (MAR. 30, 2009) 123 STAT. 991 (codified at 16 U.S.C. § 1274 (a)(196, Amargosa River), (197, Owens Headwaters), (198, Cottonwood Creek), (199, Piru Creek) (200, North Fork

1 San Jacinto River), (201, Fuller Mill Creek), (202, Palm Canyon Creek), (203,
2 Bautista Creek)).

3 3. For these designated rivers, the Wild and Scenic Rivers Act requires the
4 preparation of Management Plans to “protect and enhance . . . outstanding remarkable
5 values” for “future generations,” and such Plans must be complete within a specified
6 time frame, 3 years for the rivers at issue here. 16 U.S.C. §§ 1271, 1274(d)(2),
7 1281(a). The statutory deadline for plan preparation has thus long since passed.
8 There are no River Management Plans in place to protect and enhance the natural
9 resources found in any of these eight rivers.

10 4. Because Defendant the U.S. Bureau of Land Management has failed to
11 prepare a River Management Plan for the designated wild and scenic river segments in
12 the Amargosa River or the Cottonwood Creek that cross BLM managed public lands,
13 the agency has violated the express terms of the Act.

14 5. Because Defendant the U.S. Forest Service has failed to prepare a River
15 Management Plan for the designated wild and scenic river segments in Owens
16 Headwaters, Cottonwood Creek, Piru Creek, North Fork San Jacinto River, Fuller
17 Mill Creek, Palm Canyon Creek, or Bautista Creek that are within National Forest
18 lands managed by the Forest Service the agency has violated the express terms of the
19 Act.

20 6. Plaintiffs seek an injunction ordering the BLM and the Forest Service to
21 complete the Management Plans promptly.

22 JURISDICTION AND VENUE

23 7. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1346, because
24 Defendants are agents of the United States and because Plaintiffs’ claims arise under
25 federal law. The Court may issue a declaratory judgment and further relief pursuant
26 to 28 U.S.C. §§ 2201-02. An actual justiciable controversy exists between the parties.
27

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(2), because a substantial part of the omissions giving rise to the claims occur in this district, and a substantial part of the federal land that is the subject of this action lies in this district. Assignment to the Western Division of this Court is proper under General Order No. 16-05 I.B.1.a.(1)(b).

PARTIES

9. Plaintiff Center for Biological Diversity (the “Center” or “CBD”) is a national non-profit conservation organization with over 61,000 members dedicated to the protection of biodiversity and ecosystems throughout the world. CBD works through science, law, and creative media to secure a future for all species, great and small, hovering on the brink of extinction, with a focus on protecting the lands, waters and climate that species need to survive. CBD has offices in California and over 7,000 members across the state. CBD is actively involved in species and habitat protection on the federal land at issue in this case.

10. The Center's staff and members have used, and intend to continue to use the Amargosa River, Owens Headwaters, Cottonwood Creek, Piru Creek, North Fork San Jacinto River, Fuller Mill Creek, Palm Canyon Creek, and Bautista Creek and adjacent lands for observation, research, aesthetic enjoyment, hiking, camping, swimming, birding, fishing, and photography, and other recreational, scientific, and educational activities. CBD and its members advocate on behalf of species found in and near each of these designated wild and scenic rivers segments and intend to continue to do so. Species that depend on the Amargosa River and its riparian corridors include the Amargosa vole, the Amargosa niterwort, and the least Bell's vireo; the riparian areas also include designated critical habitat for the southwestern willow flycatcher. Species that depend on the Owens Headwaters and its riparian corridors include Yosemite toad which are found in Glass Creek Meadows and the area provides habitat for the highest diversity of butterflies in the Eastern Sierra.

Species that depend on Cottonwood Creek and its riparian corridors include Piute cutthroat trout and spotted bat. Species that depend on Piru Creek and adjacent areas include arroyo southwestern toad, California red-legged frog, California condor, and native trout. Species that depend on North Fork San Jacinto River and its riparian corridors include mountain yellow-legged frogs, California spotted owls, the rubber boa and the San Bernardino flying squirrel. Species that depend on Fuller Mill Creek and its riparian corridors include mountain yellow-legged frogs, California spotted owls, the rubber boa and the San Bernardino flying squirrel. Species that depend on Palm Canyon Creek and its riparian corridors include southwestern willow flycatcher and Peninsular bighorn sheep. Species that depend on Bautista Creek and its riparian corridors include arroyo toads, southwestern willow flycatchers, Quino checkerspot butterfly and the slender-horned spineflower. The above described aesthetic, conservation, recreation, scientific and wildlife preservation interests of Plaintiffs and their members have been and will continue to be adversely affected and irreparably injured by Defendants' failure to prepare River Management Plans for these designated river segments.

11. Defendant U.S. Bureau of Land Management ("BLM") is the agency charged with the administration of the designated Amargosa River wild and scenic segments and the Cottonwood Creek designated segment on public lands at issue here and is responsible for compliance with the Wild and Scenic Rivers Act for these designated river segments.

12. Defendant U.S. Forest Service is the agency charged with administration of the wild and scenic rivers within the national forests at issue in this matter.

WILD AND SCENIC RIVERS ACT

13. Congress enacted the Wild and Scenic Rivers Act in 1968 to preserve the rivers of the United States in their natural condition. 16 U.S.C. § 1271. Congress intended to protect rivers of exceptional value for public use and enjoyment. The

1 lands and waters that comprise the Wild and Scenic River Act system should be
2 managed essentially as wilderness.

3 14. The purposes of the Act, 16 U.S.C. § 1272, are to carry out the policy
4 that “certain selected rivers of the Nation which, with their immediate environments,
5 possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife,
6 historic, cultural, or other similar values, shall be preserved in free-flowing condition,
7 and that they and their immediate environments shall be protected for the benefit and
8 enjoyment of present and future generations.” 16 U.S.C. § 1271. And further, that
9 these rivers or segments be maintained “in their free-flowing condition to protect the
10 water quality of such rivers and to fulfill other vital national conservation purposes.”
11 *Id.*

12 15. Congress designates a river for inclusion in the Act’s system if it
13 possesses “outstanding remarkable values.” 16 U.S.C. § 1273(a). These values may
14 include “scenic, recreational, geologic, fish and wildlife, historic, cultural, or other
15 similar value.” *Id.*

16 16. Congress classifies rivers, or segments thereof, as a “wild,” “scenic,” or
17 “recreational” river. 16 U.S.C. § 1273(b). “Wild” rivers are those in their most natural
18 state, representing “vestiges of primitive America.” *Id.* § 1273(b) (1). Wild rivers are
19 free of impoundments and generally inaccessible except by trail, with watersheds or
20 shorelines essentially primitive and waters unpolluted. *Id.* “Scenic” river are “rivers
21 that are free of impoundments, with shorelines or watersheds still largely primitive
22 and shorelines largely undeveloped, but accessible in places by roads.” *Id.* §
23 1273(b)(2). “Recreational” rivers are “readily accessible . . . may have some
24 development along their shorelines, and . . . may have undergone some impoundment
25 or diversion in the past.” *Id.* § 1273(b)(3).

26 17. For rivers designated after January 1, 1986, the Federal agency charged
27 with administration over the river “shall prepare a comprehensive management plan

1 for such river segment to provide for the protection of the river values.” 16 U.S.C. §
2 1274(d)(1). Plans must “address resource protection development of lands and
3 facilities, user capacities, and other management practices necessary or desirable to
4 achieve the purposes of th[e] Act.” *Id.* River management plans must be prepared
5 within 3 years of the river being designated. *Id.*

6 18. In 2009, Congress designated segments of eight rivers in California under
7 the Wild and Scenic Rivers Act. PL 111-11 (MAR. 30, 2009) 123 STAT. 991
8 (codified at 16 U.S.C. § 1274 (a) (196, Amargosa River), (197, Owens Headwaters),
9 (198, Cottonwood Creek), (199, Piru Creek) (200, North Fork San Jacinto River),
10 (201, Fuller Mill Creek), (202, Palm Canyon Creek), (203, Bautista Creek)).

11 19. Congress designated three (3) segments of the Amargosa River: 12.1
12 miles as scenic, 7.9 miles as wild, and 6.3 miles as recreational. 16 U.S.C. § 1274
13 (a)(196). The Amargosa River is an entirely spring-fed perennial desert river system,
14 harboring a level of biodiversity which is all the more remarkable when considered in
15 contrast to its austere setting, the hottest and driest part of the Mojave Desert. The
16 River harbors the entire wild population of the endangered Amargosa vole (*Microtus*
17 *californicus scirpensis*), including its critical habitat; and provides habitat for the
18 endangered Amargosa niterwort (*Nitrophila mohavensis*), the endangered least Bell’s
19 vireo (*Vireo bellii pusillus*); and designated critical habitat for the southwestern
20 willow flycatcher (*Empidonax trailii extimus*). The designated river segments are
21 located on public lands managed by the Bureau of Land Management within the
22 California Desert Conservation Area, 43 U.S.C. § 1781, and include areas within the
23 Amargosa River Area of Critical Environmental Concern.

24 20. Congress designated eight (8) segments of the Owens Headwaters (along
25 the Upper Owens River, Glass Creek and Deadman Creek): 6.3 miles as wild, 6.6
26 miles as scenic, and 6.2 miles as recreational. 16 U.S.C. § 1274 (a)(197). Owens
27 Headwaters and its adjacent riparian areas provide habitat for many species including

1 the threatened Yosemite toad and a wide diversity of butterflies. The designated
2 segments of the Owens Headwaters are located on public lands managed by the U.S.
3 Forest Service within the Inyo National Forest.

4 21. Congress designated two (2) segments of Cottonwood Creek: 17.4 miles
5 as wild and 4.1 miles as recreational. 16 U.S.C. § 1274 (a)(198). Cottonwood Creek
6 and its adjacent riparian corridors provide habitat for Piute cutthroat trout and spotted
7 bat. The designated wild segment of Cottonwood Creek is located on public lands
8 managed by the Defendants at the U.S. Forest Service within the Inyo National Forest.
9 16 U.S.C. § 1274 (a)(198)(A). The designated recreational segment of Cottonwood
10 Creek is located on public lands managed by the Bureau of Land Management. 16
11 U.S.C. § 1274 (a)(198)(B).

12 22. Congress designated two (2) segments of the Piru Creek: 4.25 miles of
13 Piru Creek as a wild river, and 3 miles as a recreational river. 16 U.S.C. § 1274
14 (a)(199). Piru Creek is a tributary of the Santa Clara River which flows to the ocean.
15 Piru Creek contains unique geological formations, unusual gorges, and riparian
16 vegetation. Piru Creek and its adjacent riparian corridors provide critical California
17 condor (*Gymnogyps californianus*) nesting and roosting sites and habitat for arroyo
18 toad and native trout. The designated segments of Piru Creek are located on public
19 lands managed by the U.S. Forest Service within the Los Padres National Forest.

20 23. Congress designated six (6) segments of the North Fork of the San
21 Jacinto River: 7.18 miles as wild, 2.26 miles as scenic, and 0.68 miles as recreational.
22 16 U.S.C. § 1274 (a)(200). The North Fork of the San Jacinto River and its adjacent
23 riparian areas provide habitat for mountain yellow-legged frogs, California spotted
24 owls, the rubber boa and the San Bernardino flying squirrel. The designated segments
25 are located on public lands managed by the U.S. Forest Service within the San
26 Bernardino National Forest.

1 24. Congress designated three (3) segments of Fuller Mill Creek: 2.6 miles as
2 scenic and 0.9 miles as recreational. 16 U.S.C. § 1274 (a)(201). Fuller Mill Creek and
3 its adjacent riparian corridors provide habitat for mountain yellow-legged frogs,
4 California spotted owls, the rubber boa and the San Bernardino flying squirrel among
5 others. The designated scenic segments are located on public lands managed by the
6 U.S. Forest Service within the San Bernardino National Forest.

7 25. Congress designated one (1) segment of Palm Canyon Creek: 8.1 miles
8 as wild. 16 U.S.C. § 1274 (a)(202). Congress also instructed that Defendants enter
9 into a cooperative management agreement with the Agua Caliente Band of Cahuilla
10 Indians “to protect and enhance river values.” *Id.* Palm Canyon Creek and its
11 associated riparian corridors provide habitat for southwestern willow flycatcher and
12 Peninsular bighorn sheep. The designated wild segment is located on public lands
13 managed by the U.S. Forest Service within the San Bernardino National Forest.

14 26. Congress designated one (1) segment of Bautista Creek: 9.8 miles as
15 recreational. 16 U.S.C. § 1274 (a)(203). Bautista Creek and its adjacent riparian areas
16 provide habitat for arroyo toads, southwestern willow flycatchers, Quino checkerspot
17 butterfly and the slender-horned spineflower. The designated segment is located on
18 public lands managed by the U.S. Forest Service within the San Bernardino National
19 Forest.

20 27. The U.S. BLM is the federal agency charged with administration of the
21 designated segments of the Amargosa River on public lands within the California
22 Desert Conservation Area. 16 U.S.C. § 1274 (a)(196). The BLM also has
23 management authority over the designated segment of Cottonwood Creek (B), 16
24 U.S.C. § 1274 (a)(198)(B), on public lands within the California Desert Conservation
25 Area.

26 28. The U.S. Forest Service is the federal agency charged with administration
27 of the river segments that pass through national forest lands as follows: Piru Creek

(Los Padres National Forest); Owens Headwaters and Cottonwood Creek (A) (Inyo National Forest); North Fork San Jacinto River, Fuller Mill Creek, Palm Canyon Creek, and Bautista Creek (San Bernardino National Forest). 16 U.S.C. §§ 1274 (a)(197), (198)(A), (199), (200), (201), (202), (203).

FIRST CLAIM FOR RELIEF

(BLM: Failure to Prepare a River Management Plan -- 16 U.S.C. § 1274(d)(1); APA 5 U.S.C. § 706(1))

29. Each and every allegation set forth in this Complaint is incorporated herein by reference.

30. The BLM has a mandatory duty to prepare a Comprehensive Management Plan for the segments of the Amargosa River and the segment of Cottonwood Creek managed by the BLM. Congress designated segments of the Amargosa River and Cottonwood Creek under the Wild and Scenic Rivers Act in 2009. The deadline for completion of the plan was 2012. The BLM has not prepared a River Management Plan for the designated wild and scenic segments of the Amargosa River or the segment of Cottonwood Creek managed by the BLM. The duty to prepare plans remains in effect.

31. By failing to prepare a River Management Plan for the wild and scenic Amargosa River and the designated segment of Cottonwood Creek managed by the BLM, Defendant BLM has unlawfully withheld or unreasonably delayed compliance with the Wild and Scenic Rivers Act within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(1).

SECOND CLAIM FOR RELIEF

(Forest Service: Failure to Prepare a River Management Plan, 16 U.S.C. § 1274(d)(1); APA 5 U.S.C. § 706(1))

32. Each and every allegation set forth in this Complaint is incorporated herein by reference.

33. The Forest Service has a mandatory duty to prepare a Comprehensive Management Plan for the following wild and scenic rivers: Piru Creek (Los Padres National Forest); Owens Headwaters and Cottonwood Creek (Inyo National Forest); North Fork San Jacinto River, Fuller Mill Creek, Palm Canyon Creek, and Bautista Creek (San Bernardino National Forest). Congress designated segments of these rivers under the Wild and Scenic Rivers Act in 2009. The deadline for completion of the plan was 2012. The Forest Service has not prepared a River Management Plan for the designated segments of Piru Creek, Owens Headwaters, Cottonwood Creek, North Fork San Jacinto River, Fuller Mill Creek, Palm Canyon Creek, or Bautista Creek. The duty to prepare these plans remains in effect.

34. By failing to prepare a River Management Plans for Piru Creek, Owens Headwaters, Cottonwood Creek, North Fork San Jacinto River, Fuller Mill Creek, Palm Canyon Creek, or Bautista Creek, Defendant Forest Service has unlawfully withheld or unreasonably delayed compliance with the Wild and Scenic Rivers Act within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment providing the following relief:

A. Declare that Defendant BLM has “unlawfully withheld or unreasonably delayed” compliance with their mandatory duty to prepare a Comprehensive River Management Plan under the Wild and Scenic Rivers Act for the Amargosa River segments and for the Cottonwood Creek segment on BLM lands Congress designated on March 30, 2009. 16 U.S.C. §§ 1274 (a)(196), (208)(B).

B. Declare that Defendant Forest Service has “unlawfully withheld or unreasonably delayed” compliance with their mandatory duty to prepare a Comprehensive River Management Plan under the Wild and Scenic Rivers Act for the Piru Creek, Owens Headwaters, Cottonwood Creek, North Fork San Jacinto River,

1 Fuller Mill Creek, Palm Canyon Creek, or Bautista Creek segments Congress
2 designated on March 30, 2009. 16 U.S.C. §§ 1274 (a)(197), (198)(A), (199), (200),
3 (201), (202), (203).

4 C. Order the BLM, through a permanent injunction, to prepare a
5 Management Plan for the Amargosa River and Cottonwood Creek, 16 U.S.C. §§
6 1274(a)(196), (208)(B), by a date certain;

7 D. Order the Forest Service, through a permanent injunction, to prepare a
8 Management Plan for Piru Creek, Owens Headwaters, Cottonwood Creek, North Fork
9 San Jacinto River, Fuller Mill Creek, Palm Canyon Creek, and Bautista Creek, 16
10 U.S.C. §§ 1274 (a)(197), (198)(A), (199), (200), (201), (202), (203), by a date certain;

11 E. Award Plaintiffs their costs of litigation, including reasonable attorneys'
12 fees and costs; and

13 F. Grant Plaintiffs such additional relief as the Court may deem proper.
14

15 Respectfully submitted,

16 Dated: March 27, 2018

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