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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
SOUTHERN DIVISION

ALLIANCE FOR THE WILD ROCKIES; IDAHO SPORTING CONGRESS; and NATIVE ECOSYSTEMS COUNCIL, Plaintiffs, v. UNITED STATES FOREST SERVICE; VICKI CHRISTIANSEN, Chief of the Forest Service; TAWNYA BRUMMETT, Forest Supervisor for Payette National Forest; NORA RASURE, Regional Forester for Region 4 for the U.S. Forest Service, Defendants.	NO. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. NATURE OF ACTION

1. Defendants United States Forest Service, Tawnya Brummett, and Nora Rasure have recently approved a logging project in the Payette National Forest in direct violation of a Ninth Circuit Court of Appeals mandate on that same logging project.

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2. This project, called the Lost Creek Boulder Creek Landscape Restoration Project, will allow extensive commercial logging, prescribed burning, and construction of new roads in an area that encompasses approximately 80,000 acres in the New Meadows Ranger District of the Payette National Forest in Idaho.

3. Last year, in *Alliance for the Wild Rockies v. United States Forest Serv.*, 907 F.3d 1105, 1109 (9th Cir. 2018), the Ninth Circuit held, in the clearest possible terms, that the Lost Creek Boulder Creek Landscape Restoration Project was inconsistent with the Payette National Forest Plan and ordered that the Forest Service decision approving that Project be vacated. Defendants are now moving forward with this same Project in disregard of the Ninth Circuit's opinion and mandate.

4. With this action, plaintiffs request that the Court reverse the Project decision, enjoin implementation of the Project, and order that defendants cease and desist from proceeding with their action. Plaintiffs seek a declaratory judgment, injunctive relief, an award of costs and expenses of suit, including attorney and expert witness fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 and such other relief as this Court deems just and proper.

II. JURISDICTION

5. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States and involves the United States as a defendant.

6. Plaintiffs submitted timely objections concerning the 2019 Lost Creek Boulder Creek Project raising the issues that are presented in this Complaint and fully participated in the available administrative review process, thus they have exhausted their administrative remedies. Defendants' denials of plaintiffs' objections were the final administrative actions of the Forest Service. Thus, the Court has jurisdiction to review plaintiffs' APA claims.

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III. VENUE

7. Venue is proper in this Court under 28 U.S.C. 1391. All or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, defendants reside in this district, and the public lands and resources and agency records in question are located in this district.

IV. PARTIES

8. Plaintiff Alliance for the Wild Rockies (the "Alliance") is a tax-exempt, non-profit public interest organization dedicated to the protection and preservation of the native biodiversity of the northern Rockies bio-region; its native plant, fish, and animal life; and its naturally functioning ecosystems. Its registered office is located in Missoula, Montana. The Alliance has over 2,000 individual members, many of whom are located in Idaho. The Alliance brings this action on its own behalf and on behalf of its adversely affected members.

9. Plaintiff Native Ecosystems Council (the "Council") is a non-profit Montana corporation with its principal place of business in Three Forks, Montana. Native Ecosystems Council is dedicated to the conservation of natural resources on public lands in the northern Rockies. Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely affected members.

10. Plaintiff Idaho Sporting Congress, Inc. is a non-profit conservation organization that works to protect Idaho and the nation's public lands and water through public education and litigation. Idaho Sporting Congress brings this action on its own behalf and on behalf of its adversely affected members.

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11. Defendant United States Forest Service is an administrative agency within the U.S. Department of Agriculture and is responsible for the lawful management of our national forests, including the Payette National Forest.

12. Defendant Vicki Christiansen is named in her official capacity as Chief of the Forest Service.

13. Defendant Tawnya Brummett is named in her official capacity as Forest Supervisor of the Payette National Forest. Defendant Brummett issued the Final Record of Decision for the LCBC Project on November 1, 2019.

14. Defendant Nora Rasure is named in her capacity as the Regional Forester for the Intermountain Regional Office, which is Region 4 of the U.S. Forest Service. In that capacity, she is charged with ultimate responsibility for ensuring that decisions made at each national forest in the Intermountain Region, including the Payette National Forest, are consistent with applicable laws, regulations, and official policies and procedures.

V. STATEMENT OF STANDING

15. The interests at stake in this matter are germane to plaintiffs' organizational purposes. The agency's violations of law as set forth in the claims for relief herein threaten the preservation of wildlife and fish and their habitat and the native biodiversity of the Payette National Forest and the Project area and its naturally functioning ecosystems.

16. Plaintiffs and their members observe, enjoy, and appreciate Idaho's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future, including in the Project area in the Payette National Forest. Members use and enjoy the waters, public lands, and natural resources throughout areas covered by the Project for work, recreational, scientific, spiritual, educational, aesthetic, and other purposes. Plaintiffs' members enjoy fishing, hiking, camping,

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hunting, skiing, bird watching, study, contemplation, photography, and other activities in and around the waters and public lands throughout the Project area. Plaintiffs and their members also participate in information gathering and dissemination, education and public outreach, commenting upon proposed agency actions, and other activities relating to the Forest Service's management and administration of these public lands.

17. Plaintiffs were the prevailing parties in *Alliance for the Wild Rockies v. United States Forest Serv.*, 907 F.3d 1105, 1109 (9th Cir. 2018), which resulted in the mandate from the Ninth Circuit Court that has been disregarded by defendants.

18. Defendants' unlawful actions adversely affect plaintiffs' organizational interests, as well as their members' use and enjoyment of the Payette National Forest, including the Project area.

19. The interests of plaintiffs and their members have been and will continue to be injured and harmed by the Forest Service's actions and/or inactions as complained of herein. These decisions are particularly and directly harmful to these interests in that defendants have failed to perform their duties under federal law as set forth herein. Unless the relief prayed for herein is granted, plaintiffs and their members will suffer ongoing and irreparable harm and injury to their interests.

20. The injuries to plaintiffs are likely to be redressed by a favorable decision of this Court because an order granting the relief requested in this Complaint would ensure that the Project will not result in the destruction or adverse modification terrestrial and aquatic ecosystems and wildlife and fish habitat within the Project area.

VI. FACTUAL ALLEGATIONS

A. The Payette National Forest Land and Resource Management Plan

21. The Regional Forester for Region 4 of the Forest Service (the Intermountain Region) approved a Revised Land and Resource Management Plan for the Payette National Forest on July 25,

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2003. That plan, which is the Payette National Forest Land and Resource Management Plan (hereinafter the "Forest Plan" or "Payette National Forest Plan"), is the current plan that is in effect today for management of the Payette National Forest.

22. The Forest Plan guides natural resource management activities on lands administered by the Payette National Forest. It provides forest-wide long-term management direction in the form of goals, objectives, standards, and guidelines designed to guide land and species management activities in the Payette National Forest.

23. The Forest Plan establishes desired conditions for the Payette Forest that constitute the long-term goals for the forest. The Forest Plan provide specific direction on how the Forest Service must go about achieving those desired conditions.

24. The Forest Plan divides the Payette National Forest into 14 sections that are called management areas (MA). The land within each MA is assigned to various Management Prescription Categories (MPC) that determine how the land must be managed.

25. Relevant to this matter, the category MPC 5.1 in the Forest Plan places an emphasis on landscape restoration. MPC 5.2 is forested land that has an emphasis on achieving sustainable resources for commodity outputs, such as timber production. The standards, guidelines, and desired conditions that determine the forest conditions for MPC 5.2 are different from the standards, guidelines, and desired conditions that determine the forest conditions for MPC 5.1.

B. The 2014 Lost Creek-Boulder Creek Landscape Restoration Project

26. In 2014, the Forest Service entered a final Record of Decision approving the Lost Creek-Boulder Creek Landscape Restoration Project (the "2014 LCBC Project"), which encompassed approximately 80,000 acres on the New Meadows Ranger District of the Payette National Forest. The Project area was located approximately ten miles north and west of New Meadows, Idaho in Boulder

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Creek, a tributary to the Little Salmon, and in headwaters of the Weiser River and the West Fork of the Weiser River.

27. The 2014 LCBC Project area consisted of National Forest System lands located in the western portion of the New Meadows Ranger District T18N R1W; T19N R2W; T20N R1W; T20N R2W; T21N R1W, Boise Meridian Survey.

28. The 2014 LCBC Project authorized commercial logging of approximately 22,100 acres of forest and non-commercial logging of approximately 17,700 acres of forest in the New Meadows Ranger District of the Payette National Forest. Approximately 45,000 acres of the LCBC Project area were targeted for prescribed burning. Approximately 25 miles of current unauthorized routes and/or new construction of roads were proposed to be used as temporary roads to accomplish the proposed logging.

29. The Forest Service issued a Final Environmental Impact Statement (FEIS) for the 2014 LCBC Project which analyzed the environmental effects of the proposal.

30. On September 5, 2014, the prior Forest Supervisor, Keith Lannom, issued a Final Record of Decision approving 2014 LCBC Project.

C. The Ninth Circuit Mandate on the 2014 LCBC Project Approval.

31. On June 4, 2015, Plaintiffs filed suit in the United States District Court for the District of Idaho. Plaintiffs' case was assigned Case No. 1:15-cv-00193-EJL. Plaintiffs claims asserted, among other things, that the 2014 LCBC Project violated the National Forest Management Act (NFMA) because it was inconsistent with the Payette National Forest Plan.

32. On August 31, 2016, the District Court entered a Memorandum Decision, Order, and Judgment in Case No. 1:15-cv-00193-EJL, ruling for Defendants and against Plaintiffs on cross-motions for summary judgment, without a hearing.

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33. On October 12, 2016, Plaintiffs appealed the District Court decision to the United States Court of Appeals for the Ninth Circuit.

34. The Ninth Circuit ruled in favor of Plaintiffs on their claims that were brought under the National Forest Management Act (NFMA). *See Alliance for the Wild Rockies v. United States Forest Serv*., 907 F.3d 1105, 1109 (9th Cir. 2018).

35. The Ninth Circuit ruled, among other things, that Defendants' approval of the 2014 LCBC Project violated NFMA because it was inconsistent with the Payette National Forest Plan.

36. The court noted that the 2014 LCBC Project eliminated MPC 5.2 in its entirety and replaced it with MPC 5.1, which affected a significant portion of forest in the project area.

37. This change meant that the 2014 LCBC Project was violating binding standards and guidelines in the area that is currently MPC 5.2 and was, therefore, in violation of the Forest Plan.

38. The court concluded that the switch from MPC 5.2 to MPC 5.1 similarly rendered the 2014 LCBC Project inconsistent with the desired vegetative conditions set forth in the Payette Forest Plan.

39. The Ninth Circuit concluded that the Forest Plan does not permit the Forest Service to abandon desired conditions in favor of different conditions entirely, without consideration of effects in the long term.

40. The court also concluded that the 2014 LCBC Project deviated from the Forest Plan standard that requires maintaining at least 20 percent of the acres within each forested PVG in the large tree class. The court held that the Forest Service's decision to adopt a new definition of "old forest habitat" with the 2014 LCBC Project approval was inconsistent with the Forest Plan and was arbitrary and capricious.

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41. The Ninth Circuit remanded the case back to the District Court with instructions to vacate the Forest Service's September, 2014, Record of Decision and to remand to the Forest Service for further proceedings consistent with the Ninth Circuit's Opinion.

D. The 2019 Lost Creek-Boulder Creek Landscape Restoration Project

42. On November 1, 2019, Forest Service entered a final Record of Decision approving the Lost Creek-Boulder Creek Landscape Restoration Project (the "2019 LCBC Project").

43. On November 1, 2019, the Forest Service issued an FEIS Errata, which is now Appendix K to the 2014 LCBC FEIS ("2019 Errata").

44. The 2019 LCBC Project is essentially the same project as the 2014 LCBC Project.

45. The 2019 LCBC Project allows the same management activities that were at issue in the previous litigation to be implemented in the project area as those that were allowed by the 2014 LCBC Project approval.

46. The 2019 LCBC Project is inconsistent with the Payette National Forest Plan.

47. While the 2019 Record of Decision for the 2019 LCBC Project asserts that it does not change MPC 5.2 allocated areas to any other MPC (MPC 5.1), the Project is implementing management activities in a manner that contradicts this assertion.

48. The short-term desired conditions used for the forested vegetation analysis in the FEIS are different than the long-term desired conditions contained in the Forest Plan for the portion of the project area allocated to MPC 5.2 in the Forest Plan.

49. The 2019 LCBC Project is violating binding standards and guidelines in the area that is currently MPC 5.2 and was, therefore, in violation of the Forest Plan.

50. The 2019 LCBC Project is violating Fire Standard 312, which states that wildland fire use is prohibited in the MPC 5.2 area.

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51. The 2019 LCBC Project is inconsistent with the desired vegetative conditions set forth in the Payette Forest Plan for the areas within the project area that are MPC 5.2.

52. With its approval of the 2019 LCBC Project, the Forest Service is abandoning desired conditions in favor of the implementation of actions that aim for entirely different conditions in the MPC 5.2 area, without consideration of effects in the long term.

53. The 2019 LCBC Project deviates from the Forest Plan standard that requires maintaining at least 20 percent of the acres within each forested PVG in the large tree class.

54. The Forest Service's decision to implement a different definition of "old forest habitat" with the 2019 LCBC Project is inconsistent with the Forest Plan.

55. Neither 2019 Errata nor the 2019 Final Record of Decision cure the Forest Plan inconsistency issues addressed by the Ninth Circuit.

56. The changes and clarifications offered in the Record of Decision and the 2019 Errata do not make the 2019 LCBC Project consistent with the Payette National Forest Plan.

57. The arguments, false characterizations, and explanations that are provided in the Record of Decision to justify approval of the 2019 LCBC Project were presented by defendants to the Ninth Circuit, which considered and rejected those arguments, false characterizations, and explanations.

58. If the management activities that are proposed for the 2019 LCBC Project are different from those that were proposed in the 2014 LCBC and if the actual management activities were changed in order to make the 2019 LCBC Project consistent with the Forest Plan and/or abide by the Ninth Circuit mandate as asserted in the 2019 Errata Sheet and/or 2019 LCBC Project ROD, the FEIS does not adequately disclose or analyze the impacts of the new and different management activities that will be implemented under the 2019 LCBC Project.

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VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

VIOLATION OF NFMA AND APA

Failure to Comply with Payette National Forest LRMP

59. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

60. The National Forest Management Act (NFMA) charges the Forest Service with the management of national forest land, including planning for the protection and use of the land and its natural resources. *See* 16 U.S.C. § 1600 *et. seq*.

61. Site specific projects and activities must be consistent with the applicable Land and Resource Management Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15(e). The Forest Service's failure to comply with provisions of a Forest Plan is a violation of NFMA.

62. The 2019 LCBC Project violates NFMA and its implementing regulations because it is inconsistent with the Payette Forest Plan.

63. Implementation of the activities that were approved in the 2019 LCBC Project will effectively eliminate MPC 5.2 and replace it with MPC 5.1, which affects a significant portion of forest in the Project area.

64. The management activities that were approved by defendants violate binding standards and guidelines in the areas that are currently MPC 5.2 in a manner that causes the 2019 LCBC Project to violate the Forest Plan.

65. The 2019 LCBC Project is inconsistent with the desired vegetative conditions set forth in the Payette Forest Plan for areas that are designated as MPC 5.2.

66. The Forest Plan does not permit the Forest Service to abandon desired conditions in favor of different conditions entirely, without consideration of effects in the long term.

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67. The 2019 LCBC Project deviates from the Forest Plan standard that requires maintaining at least 20 percent of the acres within each forested PVG in the large tree class.

68. The Forest Service's decision to adopt a new definition of "old forest habitat" with the 2019 LCBC Project approval was inconsistent with the Forest Plan.

69. Under the law of the case and other legal doctrines, *Alliance for the Wild Rockies v. United States Forest Serv.*, 907 F.3d 1105, 1109 (9th Cir. 2018) is binding on the Forest Service and is also binding on the United States District Court.

70. Defendants' approval of the 2019 LCBC Project is in direct defiance of, is inconsistent with, and is in disregard of the Ninth Circuit opinion and mandate in *Alliance for the Wild Rockies v. United States Forest Serv.*, 907 F.3d 1105, 1109 (9th Cir. 2018).

71. Defendants are barred from relitigating any and all issues that have already been decided by the Ninth Circuit by collateral estoppel.

72. Defendants' actions as described above are arbitrary, capricious, not in accordance with law, and without observance of procedures required by law, within the meaning of the APA, 5 U.S.C. § 706.

SECOND CLAIM FOR RELIEF

VIOLATION OF NEPA AND APA

Failure to Adequately Disclose and Analyze Environmental Impacts

73. Plaintiff realleges and incorporates by reference all preceding paragraphs.

74. The National Environmental Policy Act (NEPA) requires all federal agencies to prepare a detailed environmental impact statement for every major action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C). NEPA mandates that the disclosure of

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high-quality information detailing the environmental impacts of the action be made to public officials and citizens before actions are taken. 40 C.F.R. § 1500.1(b).

75. NEPA requires federal agencies to take a hard look at the environmental consequences of the proposed action using the best available scientific information. An agency complies with NEPA's hard look requirement if the procedure followed by the agency resulted in a reasoned analysis of the evidence before it.

76. If the management activities being proposed in the 2019 LCBC Project were changed from those that were proposed in the 2014 LCBC Project in order to comply with the Ninth Circuit mandate, the LCBC FEIS failed to take a hard look at the environmental effects of the new management activities being proposed by the 2019 LCBS Project.

77. If the management activities being proposed in the 2019 LCBC Project were changed from those that were proposed in the 2014 LCBC Project in order to comply with the Ninth Circuit mandate, defendants did not conduct a reasoned analysis of the best available scientific information regarding the impacts of the 2019 LCBC Project on vegetation and/or fish and wildlife species and their habitat.

78. The FEIS fails to adequately disclose and analyze the adverse impacts of any changes that were made to comply with the Ninth Circuit mandate (if they were made) of the 2019 LCBC Project on vegetation and/or fish and wildlife species and their habitat.

79. Defendants' actions as described above are arbitrary, capricious, not in accordance with law, and without observance of procedures required by law, within the meaning of the APA, 5 U.S.C. § 706.

80. Plaintiffs are entitle to their reasonable fees, costs, and expenses associated with this litigation pursuant to the EAJA, 28 U.S.C. § 2412

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VIII. PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

1. Order, declare, and adjudge that the defendants have violated the Ninth Circuit mandate in *Alliance for the Wild Rockies v. United States Forest Serv*., 907 F.3d 1105, 1109 (9th Cir. 2018) and are, therefore, acting in violation of law;

A. Order, declare, and adjudge that the defendants have violated the National Forest Management Act, the National Environmental Policy Act, the Administrative Procedure Act, and their implementing regulations as set forth above;

B. An order enjoining the defendants from implementation of the Project;

C. An order vacating the Record of Decision approving the 2019 LCBC Project;

D. Award the plaintiffs their costs, litigation expenses, expert witness fees, and reasonable attorneys' fees associated with this litigation pursuant to the Equal Access to Justice Act, and all other applicable authorities; and

E. Grant the plaintiffs any such further relief as may be just, proper, and equitable.

Dated this 18th day of November, 2019.

Respectfully submitted,

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/s/ Claudia M. Newman
Attorneys for Alliance for the Wild Rockies, Idaho Sporting Congress, and Native Ecosystems Alliance

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