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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

18 FRIENDS OF GUALALA RIVER, et al.,

19 Plaintiffs,

20 vs.

21 GUALALA REDWOOD TIMBER, LLC,

22 Defendant.

Case No. 20-cv-06453-JD

**PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Date: June 24, 2021  
Time: 10:00 a.m.  
Courtroom: 11  
Judge: Hon. James Donato  
Action Filed: September 15, 2020  
Trial Date: None

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5 *American Rivers v. U.S. Army Corps of Engineers*, 271 F.Supp.2d 230

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10 *California v. Tahoe Regional Planning Agency*, 766 F.2d 1319 (9th Cir. 1985) ..... 20

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17 *Sierra Club v. Marsh*, 816 F.2d 1376 (9th Cir. 1987)..... 20

18 *Souza v. California Dep't of Transportation*, No. 13-CV-04407-JD, 2014 WL

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**NOTICE OF MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on June 24, 2021 at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable James Donato of the United States District Court for the Northern District of California, San Francisco Division, located at San Francisco Courthouse, Courtroom 11, 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs Friends of Gualala River (“FOGR”) and Center for Biological Diversity (“CBD,” collectively with FOGR, “Plaintiffs”) will and hereby do move for an order preliminarily enjoining Defendant Gualala Redwood Timber, LLC (“GRT”) from engaging in logging in the portion of the Gualala River floodplain known as the “Dogwood” area, while this action is pending, on the grounds that such logging is reasonably certain to result in the take of certain threatened and endangered species, result in irreparable harm, the balance of the hardships is in favor of Plaintiffs to the required degree, and the public interest would be served by the injunction.

**RELIEF REQUESTED**

Plaintiffs seek a preliminary injunction to stop the logging of a 100-year-old flood plain forest, along the Gualala River, that is home four threatened and endangered species: Northern California (“NC”) steelhead, Central California Coast (“CCC”) coho salmon, northern spotted owl, and California (“CA”) red legged frog (collectively the “Listed Species”).<sup>1</sup>

**INTRODUCTION**

The forest of the Gualala River floodplain, located on the border between Sonoma and Mendocino County, is among the southern-most redoubts of four of Northern California’s most iconic threatened and endangered species. Last logged over 100 years ago, broad, flat, and well-watered by the Gualala River, the forest is primeval in quality, with towering redwoods and Douglas firs that evoke the old growth forests that formerly blanketed the coastal range to Santa Cruz and beyond. As those old growth forests disappeared, so did fish, birds, and amphibians that

<sup>1</sup> FOGR and CBD have standing to pursue these claims and make this request. *See* Declaration of Jeff Miller (“Miller Dec.”); Declaration of Charles Ivor (“Ivor Dec.”).

1 lived in them. Absent the preliminary injunction sought herein, this summer<sup>2</sup>, GRT will log that  
 2 forest, likely killing, harassing, and/or harming individual members of each of the Listed Species  
 3 and causing irreparable harm to efforts to keep these animals from sliding into extinction.

4 Plaintiffs are likely to prevail in their claims that the proposed logging is reasonably  
 5 certain to result in the “take” of each of the Listed Species in violation of Section 9 of the  
 6 Endangered Species Act (“ESA”). There can be no dispute that each of the Listed Species  
 7 occupies the forest to be logged. The occupancy of each is well documented, including, in the  
 8 case of CCC coho, NC steelhead, and CA red-legged frogs, through environmental DNA  
 9 (“eDNA”) sampling conducted by Plaintiffs last year. And the declarations by Plaintiffs’  
 10 experts—Drs. Chris Frissell, Sarah Kupferberg, and Dominick DellaSalla—outline multiple  
 11 mechanisms by which the proposed logging is reasonably certain to kill, harm, harass, and/or  
 12 harm the Listed Species. These include both direct take and indirect take through significant  
 13 habitat modification and/or degradation that significantly impairs essential behavioral patterns of  
 14 the Listed Species, including breeding, feeding, and/or sheltering. They further detail how these  
 15 harms would result in species-wide impacts and delayed implementation of the Listed Species’  
 16 respective Recovery Plans, causing the type of irreparable harm that requires maintenance of the  
 17 status quo while Plaintiffs’ claims are pending.

18 It is expected that GRT will, nonetheless, argue that it simply not possible for take to  
 19 result because it intends to comply with California’s state law regulatory regime for logging and  
 20 various associated take-avoidance guidelines regarding northern spotted owl, NC steelhead, and  
 21 CCC coho.<sup>3</sup> Indeed, GRT has intimated that it intends to argue this as a matter of law. The fallacy  
 22 of this argument is multi-faceted. The only mechanism by which a party can, *as a matter of law*,  
 23 avoid an ESA § 9 take finding, is by utilizing ESA § 10, to wit: creating a Habitat Conservation  
 24 Plan (“HCP”) and obtaining an Incidental Take Permit (“ITP”) from the United States Fish and  
 25 Wildlife Service (“USFW”) or the National Marine Fisheries Service (“NMFS”), as applicable.

26 \_\_\_\_\_  
 27 <sup>2</sup> As described in the joint case management statement filed concurrently with this motion on May  
 28 20, 2021 (Dkt. 59), GRT expects to receive authorization to commence logging on approximately  
 July 14, 2021.

<sup>3</sup> The California Forest Practice Rules (“FPRs”), Cal. Code Regs. tit. 14, §§ 896 *et seq.*

1 GRT has never done so with regards to any of the Listed Species. Moreover, USFW and NMFS  
 2 have, in fact, repeatedly confirmed the inefficacy of the state law regulatory regimes on which  
 3 GRT intends to rely, and have likewise confirmed that California’s take avoidance requirements  
 4 are nowhere near as stringent as those required by an HCP. It is, therefore, not surprising that, as  
 5 explained in the accompanying expert declarations, notwithstanding GRT’s promises that it will  
 6 comply with the California Department of Forestry and Fire Protection (“CalFire”), USFW, and  
 7 NMFS’ guidelines for take avoidance, it is reasonably certain that take will not be avoided; and,  
 8 in certain circumstances, it is not even possible for GRT to comply with the take avoidance  
 9 measures, given baseline conditions.

10 These facts, which together show a likelihood of success on the merits and irreparable  
 11 harm, together with those going to a balancing of the equities and public interest, entitle Plaintiffs  
 12 to a preliminary injunction, and they respectfully request that the Court enter one, here.

### FACTS

#### **I. The Gualala River Watershed**

13  
 14  
 15 The Gualala River flows through southern Mendocino and northern Sonoma counties  
 16 about 100 miles north of San Francisco. Declaration of Stuart Gross (“Gross Dec.”) Ex. A at p.  
 17 1.<sup>4</sup> The 298 square mile watershed consists of rugged mountainous terrain with erodible soils  
 18 forested by redwood, Douglas fir, madrone, and tan oak. *Id.* It is one of the few and ever-  
 19 shrinking examples of mature redwood forests that once carpeted the Northern California coast.  
 20 *Id.* This lush riparian forest is the home of many different species of plants and animals, including  
 21 the Listed Species; and each of the Listed Species depend on the riparian habitat in the watershed  
 22 and the floodplain of the river. CCC coho and NC steelhead shelter, feed, and breed in the river  
 23 and its tributaries, which, while essential to the survival of these species, are already damaged by  
 24 sedimentation and nutrient loading from past logging, as well as temperature increases as a result  
 25 of the reduced canopy coverage. Declaration of Dr. Chris Frissel (“Frissell Dec.”) Ex. A, pp. 1-2.  
 26 The northern spotted owl uses that same dense canopy for nesting, roosting, hunting, and as a

27 \_\_\_\_\_  
 28 <sup>4</sup> In the concurrently filed Request for Judicial Notice, Plaintiffs request judicial notice of exhibits  
 A through M of the Gross Dec.



1 refuge from extensive predation by the invasive barred owl. Declaration of Dr. Dominick  
 2 DellaSalla (“DellaSalla Dec.”) Ex. A, pp. 1-2. And CA red legged frogs live and breed in the  
 3 moist woody debris in the forest understory of the floodplain to be logged, as well as in the river  
 4 itself and the surrounding off-channel pools and wetlands of the to-be-logged area. Declaration of  
 5 Dr. Sarah Kupferberg (“Kupferberg Dec.”) Ex. A, pp 6-7.

6 The Listed Species’ occupancy of this forest is despite the abuse that the Gualala River  
 7 watershed has suffered over the last 150 years, which has, in turn, made the mature floodplain  
 8 forests that GRT intends to log all the more essential for these animals. Intensive commercial  
 9 logging of the watershed began in the 1860s and continued through the 1950s. Gross Dec. Ex. B.,  
 10 p. 818. The deleterious effects of that historical logging on the watershed and the flora and fauna  
 11 that depend on it are well-documented and still keenly felt today.<sup>5</sup> As stated by the California  
 12 Department of Fish and Game in 1989:

13 Our files indicate the Garcia and Gualala River systems were subjected to some of  
 14 the most damaging logging shows [sic] in the early 1950’s and periods previous to  
 15 the 1950’s. In some cases, the streams were buried in ten feet of silt and cull logs.  
 16 For example, in the notes taken of an August 18, 1964 stream survey of the South  
 17 Fork of Fuller Creek it states, ‘The stream is almost a total log jam consisting of  
 large logs, slash, and debris from logging operations. There are over 40 partial  
 barriers present. The entire South Fork is heavily polluted by logging damage.’

18 *Id.*, Ex. C. Because it has been approximately 100 years since the lower floodplain of the Gualala  
 19 River was logged and it enjoys plentiful water and nutrients from the river, the forest that GRT  
 20 intends to cut provides a critical refuge for the Listed Species, in an environment that is otherwise  
 21 severely stressed. *See, e.g., Id.* Ex. B, pp. 821-823; Frissell Dec. Ex A, p. 10; DellaSalla Dec. Ex.  
 22 A, p. 18; Kupferberg Dec. Ex. A, pp. 14-15.

23 \_\_\_\_\_  
 24 <sup>5</sup> As stated in the NMFS Multispecies Recovery Plan, “[t]he first documented accounts of logging  
 25 of old growth redwoods [in the Gualala River watershed] date back to 1862 in lower portions of  
 26 the watershed. By 1965, aerial photos of the watershed show large areas denuded of trees and  
 27 scarred by roads and skid trails. Logging and clearing of dense conifer and woodland areas was  
 28 frequently followed by prolonged cattle grazing. Following slowed periods of logging in the  
 1970s and 1980s, timber harvest activity again increased in the 1990s. During the 1990s, smaller  
 but numerous clear-cut blocks appeared in the redwood lowland areas under Gualala Redwoods,  
 Inc. ownership.” Gross Dec. Ex. B, p. 818 (internal citations omitted).

1 **II. GRT’s Proposed Logging In The Dogwood Area**

2 Pursuant to the Dogwood Timber Harvest Plan (“THP”), GRT plans to log redwood trees  
 3 in the lower Gualala River floodplain, which was last logged approximately a century. Gross Dec.  
 4 Ex. D at § 2. The area to be logged is separated into 21 distinct units.<sup>6</sup> *Id.* at § 2 p. 8. The THP  
 5 will primarily involve cutting mature second-growth redwoods ranging from 90 to 100 years old.  
 6 *Id.* at § 2 pp. 7.1-8; Ex. B., p. 819. Accomplishing this logging will require the use of heavy  
 7 equipment within the floodplain, including tractors, skidders, feller-bunchers, and trucks. *Id.*, Ex.  
 8 D at § 2 p. 14. GRT will fell the trees, then drag them through the forest undergrowth to the dirt  
 9 roads using skid trails. *Id.* at § 2 p. 21. Landings—clearings carved out for the sorting and loading  
 10 of logs for shipping—will be created for stacking the felled trees prior to being transported along  
 11 the logging roads. *Id.* The logging roads will be maintained by spraying them with water drafted  
 12 from holes dug in the gravel bars of the Gualala River. *Id.* at § 2 p. 33. In sum, GRT’s timber  
 13 harvest will be accomplished by the use of invasive heavy equipment that will damage the forest  
 14 canopy, undergrowth, the river itself, and the species that inhabit each. *Id.* at § 4 p. 153.

15 **III. The Endangered and Threatened Species in the Gualala River Floodplain**

16 The Gualala River and its surrounding environs are home to the NC steelhead, CCC coho,  
 17 northern spotted owl, and CA red legged frog. Each of these species is listed as “threatened” or  
 18 “endangered” under the ESA, and all of them have been pushed to the brink of extinction, in large  
 19 part as a result of commercial timber harvesting. GRT’s logging in the Dogwood area is  
 20 reasonably certain to result in the take of each of these species and cause irreparable harm to each  
 21 and the habitat that it depends on for survival.

22 **A. The Northern California Steelhead**

23 The NC steelhead is the anadromous form of the coastal rainbow trout, meaning that it  
 24 migrates between fresh and salt water as part of its life cycle. Like all anadromous salmonids,  
 25 including CCC coho, NC steelhead, with minor exceptions, always return to the rivers or streams  
 26 they were born in. Frissell Dec. Ex. A, p. 10. NC steelhead were listed as a threatened species  
 27

28 <sup>6</sup> The units are numbered 1-24, but there are no units 2, 3 and 4.

1 under the ESA in 2000. Gross Dec. Ex. E. In 2016, NMFS promulgated a recovery plan for the  
2 NC steelhead, citing the “inadequacy of regulatory mechanisms, destruction and modification of  
3 habitat, and natural and man-made factors” as the “primary causes for the decline” of the NC  
4 steelhead. *Id.*, Ex. B at p. 6.

5 NC steelhead inhabit the Gualala River throughout the course of their life cycle — NC  
6 steelhead begin their lives as eggs in stream gravels, feed on tiny invertebrates in the water  
7 column as fry, spend 1-3 years in the stream until they are large enough to migrate through the  
8 estuary and into the ocean, then return to the stream to begin the process anew. *Id.*, Ex. B at p.  
9 817; Frissell Dec. Ex. A, pp. 11-12. Environmental DNA testing confirms the presence of NC  
10 steelhead throughout the lower watershed in which GRT intends to log, and although past and  
11 recent accounts of NC steelhead suggest the population is currently self-sustaining, the numbers  
12 of returning adult steelhead are highly variable and possibly declining. *Id.*; Frissell Dec. Ex. A,  
13 pp. 6-7. NMFS rates the following indicators for salmonid viability and watershed conditions in  
14 the Gualala River as “poor”: pool shelter, primary pools, pool/riffle/run ratio, impaired hydrology  
15 (passage flow for smolts), stream side road density, water temperature, and summer juvenile  
16 steelhead reduced density and abundance. Gross Dec. Ex. B at p. 819. The recovery plan  
17 identifies its focus for the river as: “improving these poor conditions as well as those needed to  
18 ensure population viability and functioning watershed processes.” *Id.*

19 NMFS specifically identifies logging, wood harvesting, and roads associated with logging  
20 as “high threats” to the Gualala River NC steelhead population. *Id.* at p. 821. Timber harvests  
21 result in the take of NC steelhead via impacts including reduced in-stream large woody debris,  
22 increased water temperature, and increased erosion and sedimentation. Frissell Dec., Ex. A p. 13.  
23 The recovery plan observes that “although logging has improved compared to historical practices,  
24 habitat degradation from past logging and potential impacts associated with future logging will  
25 continue to threaten the recovery of steelhead and their habitat” in the Gualala River. Gross Dec.  
26 Ex. B, p. 821. NMFS’ Gualala River Conservation Action Planning Viability Table ranks logging  
27 as posing the highest risk to NC Steelhead:  
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Threats Across Targets		Adults	Eggs	Summer Rearing Juveniles	Winter Rearing Juveniles	Smolts	Watershed Processes	Overall Threat Rank
Project-specific-threats		1	2	3	4	5	6	
1	Agriculture	Medium	Medium	Medium	Medium	Medium	Medium	Medium
2	Channel Modification	Low	Low	Medium	Low	Low	Medium	Medium
3	Disease, Predation and Competition	Low	Low	Low	Low	Low	Low	Low
4	Fire, Fuel Management and Fire Suppression	Low	Low	Low	Low	Low	Low	Low
5	Fishing and Collecting	Medium		Low		Low		Low
6	Hatcheries and Aquaculture							
7	Livestock Farming and Ranching	Medium	Medium	Medium	Medium	Low	Medium	Medium
8	Logging and Wood Harvesting	High	Medium	High	High	High	High	High
9	Mining	Low	Low	Low	Low	Low	Low	Low
10	Recreational Areas and Activities	Low	Low	Medium	Low	Low	Low	Low
11	Residential and Commercial Development	Low	Low	Low	Low	Low	Low	Low
12	Roads and Railroads	Medium	Medium	Medium	Medium	Medium	High	High
13	Severe Weather Patterns	Medium	Medium	Medium	Low	Medium	Low	Medium
14	Water Diversion and Impoundments	Medium	Low	Medium	Medium	Medium	High	Medium

10 *Id.*, Ex. B at p. 835. And, at various points in the Recovery Plan, with regard to California’s  
 11 regulatory mechanisms for avoiding take of Northern California steelhead, NMFS states that the  
 12 applicable Forest Practices Rules “do not fully address the limiting factors for steelhead.” *Id.*, Ex.  
 13 B at pp. 492-493.

14 **B. The CCC Coho Salmon**

15 The CCC coho is a species of anadromous fish, which, like the NC steelhead, migrates  
 16 between salt and fresh water as part of its life cycle. Recent environmental DNA sampling  
 17 (“eDNA”) confirms that CCC coho still maintain a presence in the Gualala River. Frissell Dec.  
 18 Ex. A, pp. 6-7. CCC coho use the Gualala River during their life cycle in a similar manner to all  
 19 anadromous salmonids — starting as eggs amongst clean stream gravels, sheltering and feeding  
 20 amongst cover in the stream as juveniles, then migrating into the estuary and ocean as adults,  
 21 before returning to breed. *Id.* at pp. 7-8. GRT’s impending logging project is likely to further  
 22 harm this distressed population, which is on the brink of complete collapse. *Id.* at pp. 8-10.

23 NMFS released its Final CCC Coho Recovery Plan, in 2014, with the goal of restoring  
 24 CCC coho to healthy, self-sustaining numbers. Gross Dec. Ex. F. The recovery plan states that  
 25 “[l]ogging and wood harvesting, severe weather, roads, and water diversion and impoundment”  
 26 are the greatest threats to coho in the Gualala River. *Id.*, Ex. F at p. 217. Like NC steelhead,  
 27 timber harvests result in the take CCC coho via impacts including reduced in-stream large woody  
 28 debris, increased water temperature, and increased erosion and sedimentation. Frissell Dec., Ex.

1 A p. 10. These impacts have been shown to impair the reproductive success of CCC coho due to  
 2 increased turbidity, loss of interstitial spaces for use by juveniles, the smothering of eggs by fine  
 3 sediments, loss of deep pools, and blockage of spawning habitat by landslides. *Id.*

4 With regard to the California’s Z’berg-Nejedly Forest Practice Act of 1973 and its  
 5 regulatory regime for protecting salmonids, referred to as the “Anadromous Salmonid Protection”  
 6 or “ASP” rules, NMFS’ CCC coho recovery plan specifically states that they do not adequately  
 7 protect CCC coho. Gross Dec. Ex. F. at pp. 121-122; *see also* Ex. H; Ex. I, & Ex. J at p. 97.

8 Similarly, NMFS states in its Recovery Plan for the Southern Oregon/Northern California Coast  
 9 (“SONCC”) ESU, which neighbors the CCC coho ESU:

10 [B]oth Oregon and California Forest Practices Acts are inadequate for the  
 11 complete protection of salmon in the SONCC coho salmon ESU . . . Although the  
 12 California forest practice rules have a requirement for disapproval of timber  
 13 harvest plans that would result in a ‘taking’ or finding of jeopardy for listed  
 species (14 CCR § 898.2(d)), the rules do not explicitly describe the method for  
 effectively implementing this requirement.

14 *Id.* at Ex. G p. 3.54. It is GRT’s claimed obedience to these ASP rules that it asserts will prevent  
 15 take of CCC coho and NC steelhead, as a matter of law. They won’t.

16 **C. The Northern Spotted Owl**

17 The northern spotted owl is a medium-sized dark brown owl native to the Pacific  
 18 Northwest. DellaSalla Dec. Ex. A, pp. 4-5. It requires older, multi-layered, structurally complex  
 19 forests for habitat, and its population has been decimated by commercial logging over the course  
 20 of the last century. *Id.* at pp. 6-8. USFW listed the northern spotted owl as “threatened” under the  
 21 ESA, in 1990, citing in large part the loss and adverse modification of suitable habitat as the  
 22 result of timber harvesting, and promulgated a revised recovery plan in 2011. *Id.* at p. 6; Gross  
 23 Dec. Ex. L. The decline of the northern spotted owl has been specifically and repeatedly linked to  
 24 habitat degradation caused by logging. DellaSalla Dec. Ex. A at pp. 7-8. Large trees, high canopy  
 25 closure, and multiple layers of trees allow the owl to nest and perch in the shade during the heat  
 26 of a summer day. *Id.* at p. 5. The structural complexity of older forests also provides suitable  
 27 habitat for canopy-dwelling prey species while offering large trees for hunting and nesting by  
 28 northern spotted owls. *Id.* Northern spotted owls are known to decline or abandon nesting

1 territories when logging destroys or degrades structurally complex and older forest habitat. *Id.* at  
 2 p. 7. In addition to the actual destruction of northern spotted owl habitat, the removal of large-  
 3 diameter trees and related canopy reduction invites invasion and competition by the barred owl; a  
 4 larger, more aggressive invasive competitor of the northern spotted owl. *Id.* at pp. 8-11.

5 Northern spotted owls live in the Gualala River watershed. The large and mature  
 6 secondary growth redwood trees in the riverine corridor in which GRT intends to log represents  
 7 some of the last, best northern spotted owl habitat in the Gualala River watershed. *Id.* at p. 20.  
 8 GRT’s northern spotted owl surveys – mandated by state law – identify numerous northern  
 9 spotted owl activity centers within or adjacent to the Dogwood THP, and its surveyors have made  
 10 contacts with northern spotted owls in the area over the last several years, including as recently as  
 11 March of 2020, *see* Gross Dec. Ex. D, Amendment No. 2, p. 1, though, for reasons discussed  
 12 herein, these surveys are likely undercounting northern spotted owls, *see* DellaSalla Dec. Ex. A at  
 13 p. 19. GRT’s logging are reasonably certain to cause take of the NSO by reducing the contiguous  
 14 canopy they require for nesting, roosting, and feeding; as well as by increasing the likelihood of  
 15 predation by the invasive barred owl. *Id.*, pp. 1-2.

16 **D. The California Red-Legged Frog**

17 The CA red legged frog is the largest frog native to the western United States. Kupferberg  
 18 Dec. Ex. A, p. 5. It has been extirpated from over 70% of its historic range and has suffered a  
 19 population decline of 90%. *Id.* at p. 8. USFWS listed the frog as a “threatened” species under the  
 20 ESA in 1996, and promulgated a recovery plan for the CA red legged frog in 2002, which states  
 21 “[t]imber operations and related practices occurring on commercial, private, and public  
 22 timberlands within watersheds inhabited by the California red legged frog may contribute to the  
 23 degradation of instream and riparian habitat and the decline of California red-legged frog and  
 24 other aquatic species.” Gross Dec. Ex. M, p. 22.

25 The CA red legged frog requires both terrestrial and aquatic habitats for living and  
 26 breeding. Kupferberg Dec. Ex. A, pp. 6-7. On land, it occupies moist woods, forest clearings,  
 27 stream border vegetation, shrub, and grassland communities, and shelters in moist debris piles,  
 28 mammal burrows, leaf litter, and under shrubs. *Id.* It moves into aquatic habitats to breed, mating

1 and reproducing in springs, marshes, ponds, and lakes, and in streams and rivers where there are  
2 microhabitats with slow moving water. *Id.* at p. 7. The Gualala River and its surrounding  
3 floodplain are replete with suitable CA red legged frog breeding habitat, and CA red legged frogs  
4 are known to live the Gualala River floodplain and their occupancy has been confirmed by eDNA  
5 sampling. *Id.* at pp. 14-15. GRT’s logging will cause take of CA red legged frogs by crushing  
6 frogs that occupy moist microhabitats on the forest flood, destroying those same microhabitats,  
7 and reducing and interfering with their available aquatic habitat. *Id.* at pp. 1-2.

### 8 LEGAL STANDARD

9 The Federal Rule of Civil Procedure 65 provides courts the authority to preliminarily  
10 enjoin conduct by defendants prior to a full adjudication of the merits of a case. The purpose of a  
11 preliminary injunction is “to preserve the status quo with provisional relief until the merits can be  
12 sorted out.” *Alliance for the Wild Rockies v. Cottrell* (“*AWR I*”), 632 F.3d 1127, 1134 (9th Cir.  
13 2011) (internal quotation omitted). A plaintiff may gain a preliminary injunction by meeting one  
14 of two standards.

15 The first is to establish: (1) that it is likely to succeed on the merits; (2) that it is likely to  
16 suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in  
17 its favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,  
18 555 U.S. 7, 20 (2008). The second is to establish that there are “serious questions” going to the  
19 merits, that the balance of hardships tips sharply in the plaintiff’s favor, and that the other two  
20 elements in the first standard are met. *AWR II*, 632 F.3d at 1135 (the “serious questions” approach  
21 “survives *Winter* when applied as part of the four-element *Winter* test.”); *see also Souza v.*  
22 *California Dep’t of Transportation*, No. 13-CV-04407-JD, 2014 WL 1760346, at \*3 (N.D. Cal.  
23 May 2, 2014).

24 In the context of ESA cases, courts have consistently found that the balance of the equities  
25 and the public interest *always* tip sharply in favor of protecting endangered or threatened species,  
26 including post-*Winter*. *See, e.g., Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 422 F.3d  
27 782, 793 (“*NWF I*”) (9th Cir. 2005); *Marbled Murrelet v. Babbitt*, 83 F.3d 1068, 1073 (9th Cir.  
28 1996); *Souza*, 2014 WL 1760346, at \*8; *All. for the Wild Rockies v. Kruger*, 35 F. Supp. 3d 1259,

1 1265 (D. Mont. 2014); *W. Watersheds Project v. U.S. Fish & Wildlife Serv.*, No. 13-0176 (BLW),  
 2 2013 U.S. Dist. LEXIS 91555, \*11 (D. Idaho June 26, 2013). As Judge Illston put it: “The  
 3 traditional preliminary injunction analysis, however, does not apply to injunctions issued pursuant  
 4 to the ESA.” *Wild Equity Inst. v. City & Cty. of San Francisco*, No. C 11-00958 SI, 2011 WL  
 5 5975029, at \*6 (N.D. Cal. Nov. 29, 2011). This is because in enacting the ESA “Congress has  
 6 spoken in the plainest of words, making it abundantly clear that the balance has been struck in  
 7 favor of affording endangered species the highest of priorities.” *TVA v. Hill*, 437 U.S. 153, 98  
 8 S.Ct. 2279, 57 L.Ed.2d 117 (1978); *see also Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551  
 9 U.S. 644, 671 (2007).

### ARGUMENT

#### A. There Are, At Least, Serious Questions Going To the Merits of Plaintiffs' Claims, And In Fact, Plaintiffs Are Likely to Succeed

10  
 11  
 12 Plaintiffs are likely to succeed on the merits of their claims, because, as detailed in the  
 13 accompanying expert declarations, there is a reasonable certainty that GRT’s planned logging will  
 14 “take” members of the Listed Species, both directly and indirectly, through significant habitat  
 15 modification, in violation of Section 9 of the ESA. At the very least, Plaintiffs have demonstrated  
 16 that substantial questions exist as to whether such illegal take will occur.

17 Section 9 of the ESA makes it a crime to “take” any species listed as endangered or  
 18 threatened. 16 U.S.C. § 1538(a)(1)(B). The term “take” is defined broadly to mean “harass, harm,  
 19 pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such  
 20 conduct.” 16 U.S.C. § 1532(19). The term “harm” as used in the ESA includes any “significant  
 21 habitat modification or degradation where it actually kills or injures wildlife by significantly  
 22 impairing essential behavioral patterns, including breeding, feeding or sheltering.” 50 C.F.R. §  
 23 17.3. This definition includes “significant ... modification or degradation” of a listed species'  
 24 habitat. *Babbitt v. Sweet Home Chapter of Cmities. for a Great Or.*, 515 U.S. 687, 691 (1995)  
 25 (upholding definition of “harm” in 50 C.F.R. § 17.3). The term “harass,” in the context of “take,”  
 26 means “an intentional or negligent act or omission which creates the likelihood of injury to  
 27 wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns  
 28 which include, but are not limited to, breeding, feeding, or sheltering.” 50 C.F.R. § 17.3.



1 As detailed below, Plaintiffs have demonstrated that GRT's planned logging is reasonably  
2 certain to cause extensive take of NC steelhead, CCC coho, northern spotted owl, and CA red  
3 legged frog. The declarations of Drs. Kupferberg, DellaSalla, and Frissell demonstrate that GRT's  
4 planned logging is likely to take individual members of the four species, as well as modify their  
5 respective habitats, such that all four of the Listed Species will, moreover, suffer irreparable  
6 harm. And NMFS and USFW have repeatedly stated that the prescriptive avoidance regime GRT  
7 intends to follow, here, is not sufficient to prevent take within the meaning of the ESA. *See, e.g.*,  
8 Gross Dec. Ex. I. In the face of such evidence, a preliminary injunction is appropriate to preserve  
9 the status quo until the case can be resolved on its merits.

10 **1. NC Steelhead and CCC Coho**

11 The Dogwood THP is reasonably certain to cause take of NC steelhead and CCC coho in  
12 a number of ways, including by: (1) reducing the amount of large, woody debris in the Gualala  
13 River (which CCC coho and NC steelhead depend on for shelter); (2) changing sensitive  
14 floodplain characteristics that provide key habitat for NC steelhead and CCC coho; (3) increasing  
15 the levels of fine sediment in the river, which will destroy sensitive breeding habitat; (4)  
16 increasing the nutrient load in the river, which will effectively suffocate juvenile NC steelhead  
17 and CCC coho; and (5) increasing the temperature of the river to levels that the salmonids cannot  
18 tolerate. Frissell Dec. Ex. A, pp. 1-2. Further, the mitigation measures that GRT intends to  
19 implement are insufficient to avoid take of the fish. *Id.* at pp. 29-30.

20 **a. Reduction of Large, Woody Debris**

21 NC steelhead and CCC coho require in-stream refugia for sheltering, specifically dead  
22 trees that naturally fall into the stream channel and contribute to the formation of channels and  
23 pools. *Id.* at p. 15. Wood-formed habitats on floodplains are essential to the survival of steelhead  
24 and coho salmon. *Id.* Numerous redwood trees that are marked to be logged within the Dogwood  
25 THP stand in close proximity to floodplain habitats that are important for overwintering of  
26 juvenile steelhead and for rearing coho salmon. *Id.* at p. 16. GRT's removal of large redwood  
27 trees that would otherwise die naturally and fall into the stream will have the effect of depriving  
28 NC steelhead and CCC coho of necessary wintering habitat comprised of large wood. *Id.* at p. 17.

1 Cutting of these trees directly curtails natural habitat recovery processes in these forests,  
2 preventing the return of high-quality wintering habitat that NC steelhead and CCC coho require to  
3 thrive. *Id.* GRT may argue that it compensates for this habitat loss by artificially introducing man-  
4 made large woody debris, but, in fact, that artificially placed wood is grossly inadequate to shape  
5 channel form, divert flood flows, or to create or maintain the natural complexity of floodplain  
6 channels and wetlands that NC steelhead and CCC coho require for sheltering. *Id.* at p. 18.

7 **b. Changes In Floodplain Characteristics**

8 Many locations flagged for skid trails within the Dogwood THP are directly imposed on  
9 top of sensitive floodplain features, including distributary channels, swales, and river-parallel  
10 floodplain channel features that provide key wintering habitat for NC steelhead and CCC coho.  
11 *Id.* at p. 19. The result of GRT driving heavy machinery and dragging logged trees over these  
12 locations is certain to be direct alteration of the floodplain habitats. *Id.* Because these essential  
13 habitats are both widespread within Gualala River floodplain and sensitive to direct disturbance,  
14 GRT's planned ground-based logging operations across these floodplains are highly likely to  
15 adversely modify them, which will in turn deprive NC steelhead and CCC coho of high-water  
16 wintering habitat they depend on for shelter. *Id.*

17 **c. Increased Sediment Loading In River, Tributaries, and**  
18 **Floodplain**

19 Coho and steelhead require clean, loose gravels free of fine sediment for spawning and  
20 egg development. The Dogwood THP makes clear that sedimentation is reasonably certain to  
21 occur, Gross Dec. Ex. D at § 4, p. 146, and the Gualala River is already listed as water quality  
22 impaired because of excess sediment. Frissell Dec. Ex. A, p. 21. Use of logging roads will  
23 increase the levels of sediment entering the river, tributaries, and floodplain habitats; and,  
24 thereby, the sediment issues that deprive steelhead and coho of necessary habitat to engage in  
25 spawning and egg development in the Gualala River floodplain will be exacerbated. *Id.* at pp. 22-  
26 23. Dr. Frissell observed roads with long distances of uninterrupted slope, which will collect fine  
27 sediments during the logging and deliver them off of the road at low points, including stream  
28 crossings, road-adjacent floodplain swales and wetlands. *Id.*

1 **d. Increased Nutrient Loading**

2 GRT’s plan to cut trees in close proximity to the Gualala River will create localized  
 3 hotspots of nutrient increase that are delivered to the surface waters. *Id.* at p. 23. The related soil  
 4 disturbance and road runoff create larger nutrient loads in the water via mineral sediment  
 5 delivery, which results in increased algal blooms that are already prevalent in the Gualala River.  
 6 *Id.* at p. 24. In turn, biological oxygen demand will increase to such levels that oxygen depletion  
 7 occurs, effectively suffocating the fish, further stressing and displacing juvenile NC steelhead and  
 8 CCC coho from river habitats they need to shelter and feed, even during somewhat cooler early  
 9 morning temperatures. *Id.* at p. 25.

10 **e. Increased Water Temperatures**

11 NC steelhead and CCC coho require cold and stable stream temperatures for survival, and  
 12 the Gualala River is already listed as water quality impaired for temperature. *Id.* at p. 27. Stream  
 13 temperatures increase where canopy reduction allows more sunlight to hit the water; and the  
 14 levels of logging anticipated in the Dogwood THP can be expected to reduce canopy cover by  
 15 about 6 to 14 percent. *Id.* This magnitude of shade loss is well within the range to cause increases  
 16 in summer water temperatures. *Id.* at pp. 27-28. By reducing canopy cover, GRT’s planned  
 17 logging is highly likely to shrink or eliminate cold water thermal refugia, thereby rendering  
 18 summer habitat in the Gualala River increasingly hostile to CCC salmon and NC steelhead — if  
 19 the water is too warm for the fish, they cannot shelter, feed, and grow in the stream. *Id.* at pp. 28-  
 20 29. Such increases in solar insolation to wetted streams may also further spur algal blooms  
 21 already facilitated by nutrient loads, as discussed above. *Id.* at p. 24.

22 **f. Insufficiency of California’s ASP Rules**

23 Finally, the protective measures that GRT intends to implement to avoid take of salmonids  
 24 are insufficient. NMFS has repeatedly criticized the California FPRs, and has stated in multiple  
 25 contexts that they are insufficient to prevent take of endangered and threatened salmonids. This  
 26 includes the following statement: “Even the most protective measures in the proposed  
 27 Anadromous Salmonid Protection Rules are still less protective than timberland operations that  
 28 have secured NMFS’ authorization for incidental take under HCPs.” Gross Dec. Ex. I. Dr. Frissell

1 concurs in this determination—none of the issues raised above and in his declaration are  
 2 adequately accounted for in the ASP rules, and the rules are not sufficient to mitigate the risks of  
 3 take posed by the logging. Frissell Dec. Ex. A, p. 29-30.

4 **2. CA Red Legged Frog**

5 GRT's logging is reasonably certain to cause take of the CA red legged frog through both  
 6 direct take and indirect take through significant habitat modification. Tree falling, skidding,  
 7 logging, trucking, water drafting, road building, and general heavy equipment use are reasonably  
 8 certain to directly kill, harm, and harass the frog and destroy its essential habitat. Kupferberg Dec.  
 9 Ex. A, pp. 1-2. Indeed, the Dogwood THP acknowledges that the proposed logging will cause  
 10 "disturbance of animal species in the summertime through logging and trucking activity [and] . . .  
 11 directly killing certain slow-moving or non-mobile plant and animal species through falling,  
 12 skidding, logging, trucking and road-building activities." Gross Dec. Ex. D, § 4, p. 146. CA red  
 13 legged frogs are such a slow-moving animal species. Kupferberg Dec. Ex. A, p. 9.

14 **a. Direct Take**

15 CA red legged frogs require a variety of terrestrial and aquatic microhabitats to complete  
 16 their life cycle, including moist debris piles, mammal burrows, leaf litter, marshes, and ponds. *Id.*  
 17 at p. 6. All of these microhabitats are ubiquitous throughout the Dogwood THP, and many areas  
 18 within the Dogwood THP mirror the locations at which CA red legged frog DNA was detected in  
 19 other areas of the Gualala River watershed. *Id.* at p. 15. GRT intends to use heavy machinery to  
 20 fell and drag trees in and around these microhabitats. *Id.* at p. 9. Trees will fall into areas of  
 21 seasonal wetland that CA red legged frogs are likely to occupy and will crush resident frogs. *Id.* at  
 22 p. 11. GRT will haul logs through existing, previously abandoned skid trails, containing  
 23 depressions in which water collects, forming seasonal wetlands that CA red legged frogs utilize,  
 24 again, crushing any resident frogs. *Id.* at p. 10. Tractors and trucks will drive through moist debris  
 25 and leaf litter, crushing underground burrows and above-ground refugia of frogs at the base of  
 26 shrubs of herbaceous vegetation and in woody debris, as well as the frogs within both the burrows  
 27 and the refugia. *Id.* at p. 10. And GRT will draft water from the stream in an area where Dr.  
 28 Kupferberg observed egg masses of a related species of frog that utilizes similar habitat to the CA

1 red legged frog. *Id.* at pp. 11-12. Water drafting will reduce the stream level, stranding and  
2 concentrating CA red legged frog tadpoles and expose them to predation. *Id.* Thus, the proposed  
3 logging is reasonably certain to directly take CA red legged frog in violation of the ESA. All of  
4 the activities described above are not only likely to kill, harm, or harass individual CA red legged  
5 frogs, they will also destroy the microhabitats the frogs require. *Id.* at pp. 9-13.

6 **b. Habitat Modification and Insufficient Avoidance Measures**

7 GRT has only designated two small areas within the Dogwood THP as potential habitat  
8 for CA red legged frogs. *Id.* at pp. 14-15. In these two areas GRT states that it will comply with  
9 USFWS guidelines for avoiding take. *Id.* at 15. But the THP fails to account for a myriad of other  
10 areas of suitable habitat within the proposed logging area, and for these other areas GRT has no  
11 plans to implement any take mitigation measures whatsoever. *Id.* Even in the areas GRT has  
12 identified as potential CA red legged frog habitat, the “buffer zones” GRT has designated are  
13 insufficient to account for the dispersal patterns of CA red legged frogs, i.e. the distances which  
14 they are known to move within their range. *Id.* at 13-14. Thus, GRT’s claimed take avoidance  
15 measures are insufficient to avoid take of the CA red legged frogs. *See id.* at pp. 15-17.

16 CA red legged frogs migrate over long distances to feed and breed, with a maximum  
17 known dispersal distance of 2 miles. *Id.* Thus, they require large, connected areas of suitable  
18 habitat through which to move. *Id.* But the Dogwood THP makes no effort to account for the fact  
19 that CA red legged frogs will require protected corridors to move *between* the two small sites it  
20 has designated as suitable habitat. *Id.* at 14. Because GRT’s buffer zone does not account for  
21 connecting the aquatic environments with un-logged corridors, GRT will fell trees, use skid trails,  
22 and disrupt the ground with heavy equipment in those disregarded corridors, thus likely killing,  
23 harming, and/or harassing individual frogs irreparably modifying the habitat they depend upon.  
24 *Id.* at 16. Disrupting the corridors between the areas GRT has identified will deprive the frogs of  
25 connected habitat through which to move, and will take them by interfering with their breeding  
26 and migratory patterns. *Id.*

1                                   **3.     Northern Spotted Owl**

2                   GRT's planned logging will remove trees that make up the dense canopy that northern  
3 spotted owls depend upon for nesting, roosting, feeding, and breeding, and will increase  
4 competition and resulting northern spotted owl extirpation by the owl's more aggressive relative,  
5 the barred owl, making take reasonably certain to occur. DellaSalla Dec. Ex. A, p. 2.

6                                   **a.     Reduction of Redwood Canopy That Provides Essential Habitat**

7                   Northern spotted owls need contiguous, unfragmented canopy to sustain nesting and  
8 roosting behaviors. *Id.* at p. 5. Adult survival is strongly related to dense canopy cover, while  
9 foraging habitat can include a mix of natural open areas where owls hunt—that is to say, higher  
10 levels of canopy density are necessary for roosting and nesting habitat, while lower levels of  
11 canopy density may provide suitable foraging habitat. *Id.* at pp. 12-13. GRT's planned logging  
12 will reduce and degrade necessary canopy cover within the Gualala River floodplain and deprive  
13 local northern spotted owls of suitable nesting habitat. *Id.* at pp. 13-14. LiDAR and photo analysis  
14 indicates that the planned logging will reduce the canopy level by approximately 6 to 14%,  
15 putting canopy coverage below the threshold level for high-quality nesting habitat. *Id.* at p. 17.  
16 The resulting thinned canopy may still provide suitable *foraging* habitat for the northern spotted  
17 owl, but at the expense of increasingly rare suitable *nesting and roosting* habitat. *Id.* Northern  
18 spotted owl adult survival rates and site occupancy in the area can reasonably be expected to  
19 decline as a result. *Id.*

20                                   **b.     Increased Barred Owl Invasion and Competition**

21                   The barred owl is a larger, more aggressive relative of the northern spotted owl that is able  
22 to survive in areas that have been damaged by logging, and opportunistically moves into such  
23 areas, pushing out already stressed northern spotted owl occupants. *Id.* at p. 8. Continued logging  
24 of large-diameter trees, alteration of forest canopies, and associated fragmentation of northern  
25 spotted owl habitat further tips the competitive advantage toward barred owls, while increasing  
26 the probability of local northern spotted owl extirpation that can accumulate over time, leading to  
27 eventual population collapse. *Id.* at p. 9. By fragmenting some of the last contiguous canopy in  
28 the watershed, GRT will render the floodplain more permeable to barred owl invasion, and

1 northern spotted owl extirpation is reasonably certain to occur as a result. *Id.* at p. 20. Further,  
 2 there are already a large number of barred owls within the Dogwood area, and the method by  
 3 which GRT has quantified northern spotted owl presence in the area fails to account for the fact  
 4 that barred owls suppress northern spotted owl responses to survey calls. *Id.* at p. 19. Thus, it is  
 5 likely that its surveys do not accurately reflect the true extent of northern spotted owl presence in  
 6 the Gualala River watershed, and that GRT will, in fact, log within areas that northern spotted  
 7 owls are likely to currently occupy, which is reasonably certain to result in direct harm to  
 8 individual owls by destroying habitat that they are currently using, thus harassing and disturbing  
 9 them through the use of loud, invasive logging equipment. *Id.*

10 **c. Insufficient Take Avoidance Measures**

11 The FPRs that are meant to protect the northern spotted owl are insufficient and  
 12 ineffective, because the “cumulative effects of repeated entries within many [northern spotted  
 13 owl] home ranges has reduced habitat quality to a degree causing reduced occupancy rates and  
 14 frequent site abandonment.” *See* Gross Dec., Ex. K at p. 11. And, even if sufficient, although  
 15 GRT claims that it will follow USFW’s guidelines for take avoidance, it has, as described in the  
 16 report of Dr. DellaSalla, failed to implement sufficient measures to avoid take. For example, the  
 17 canopy thresholds are not sufficient to prevent barred owl invasion, there are no protections for  
 18 juvenile owls in search of new territories, and the “buffer zones” it will establish around known  
 19 northern spotted owl activity sites only account for a tiny fraction of the owls’ known range.  
 20 DellaSalla Dec. Ex. A, pp. 20-21.

21 **B. The Logging is Likely to Cause Irreparable Harm To All Four Species**

22 Irreparable harm, in the context of an ESA §9 take case, is “that which would result in  
 23 significant take of the species and/or delays in implementing a recovery plan that would have  
 24 significant impacts on the species.” *Pac. Coast Fed’n of Fishermen’s Associations v. Gutierrez*,  
 25 606 F. Supp. 2d 1195, 1210 (E.D. Cal. 2008); *citing American Rivers v. U.S. Army Corps of*  
 26 *Engineers*, 271 F.Supp.2d 230 (D.D.C.2003). This requires “a definitive threat of future harm to  
 27 protected species.” *Nat’l Wildlife Fed’n v. Burlington N.R.R., Inc.*, 23 F.3d 1508, 1512 n.8 (9th  
 28 Cir.1994).

1 As discussed *infra* in section A, and in the declarations of Drs. Frissell, Kupferberg, and  
 2 DellaSalla, GRT’s intended logging will have far-reaching impacts — i.e. will cause “significant  
 3 take” — on each of the Listed Species and their habitat, and will cut directly against the  
 4 implementation of the recovery plans that are intended to save them from extinction. Once that  
 5 harm occurs, it cannot be undone, and a preliminary injunction is necessary to prevent that result.

6 **C. The Equities Must Balance in Favor Of Protecting Endangered And**  
 7 **Threatened Species**

8 As discussed above, “the balance of hardships always tips sharply in favor of endangered  
 9 species.” *Marbled Murrelet*, 83 F.3d at 1073; *see also NWF I*, 422 F.3d at 794. The Court, in  
 10 *TVA*, held that because the ESA was a manifestation of Congress’ view that the value of  
 11 endangered species was “incalculable,” courts’ equitable powers may not be used to balance the  
 12 loss of a sum certain against such an incalculable value. 437 U.S. at 194; *see also Nat’l Ass’n of*  
 13 *Home Builders*, 551 U.S at 671 (reaffirming holding from *TVA* that economic burden of enforcing  
 14 the ESA cannot be considered by the courts, concluding that “the ESA’s no-jeopardy mandate  
 15 applies to every discretionary agency action-regardless of the expense or burden its application  
 16 might impose”); *accord Souza*, 2014 WL 1760346, at \*8 (“The Court finds that the balance of  
 17 equities tips sharply in favor of Plaintiffs and protecting the endangered salmon and their critical  
 18 habitat pending a merits determination.”).

19 GRT may, nonetheless, argue that it has suffered economic hardship as a result of the  
 20 protracted delay of its plan to log the Dogwood area and would suffer further hardship, if it could  
 21 not log while this case is pending. However, under the foregoing law, any such hardship *cannot*  
 22 outweigh the hardships flowing from the take of these four Listed Species. Moreover, the prior  
 23 delay is attributable to GRT’s failures—over a period of five years—to create a THP that  
 24 complied with its obligations under the California Environmental Quality Act and the Forest  
 25 Practice Act. Regardless, even if GRT does experience some loss of profits, as a result of a pause  
 26 on its logging while Plaintiffs’ claims that such logging would imperil the future viability of the  
 27 Listed Species, that loss cannot outweigh the incalculable risk posed by the loss of these  
 28 endangered and threatened species.





1 Dated: May 20, 2021

GROSS & KLEIN LLP

2  
3 By /s/ Stuart G. Gross  
STUART G. GROSS

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