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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

OREGON WILD,

Plaintiff,

vs.

UNITED STATES FOREST SERVICE, an
administrative agency of the United States
Department of Agriculture,

Defendant.

Civ. Case No. 14-cv-00981

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Violation of Administrative Procedure Act,
National Environmental Policy Act, and
National Forest Management Act)

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief, arising under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*, and alleging violations of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, and the National Forest Management Act (NFMA), 16 U.S.C. §§ 1600 *et seq.*.

2. Plaintiff Oregon Wild (Plaintiff) seeks a declaration that Defendant United States Forest Service's (Defendant or Forest Service) authorization of the Bybee Timber Sale Project (Bybee Project) violated federal law and is otherwise arbitrary and capricious.

3. Plaintiff additionally seeks injunctive relief to redress the injuries caused by this violation of the law.

4. By initiating this action, Plaintiff seeks to: (1) obtain a declaration that the Forest Service's authorization of the Bybee Project violates NEPA, NFMA, and the APA; (2) compel the Forest Service to prepare an environmental impact statement for the Bybee Project; (3) vacate the Decision Notice for the Bybee Project; (4) order the Forest Service to remove all harvest units in Potential Wilderness Areas (PWA) from the Bybee Project; (5) order the Forest Service to prepare new or supplemental NEPA analysis to analyze and discuss the effects of the Bybee Project on gray wolves; and (6) enjoin the Forest Service and its contractors, assigns, and other agents from proceeding with the proposed Bybee Project, or any portion thereof, unless and until this Court determines that the violations of law set forth herein have been corrected.

5. Should Plaintiff prevail, Plaintiff will seek an award of costs, attorneys' fees, and other expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

JURISDICTION

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (United States as a defendant), 2201 (injunctive relief), and 2202 (declaratory relief). The current cause of action arises under the laws of the United States, including the APA, NFMA, and NEPA. An actual, justiciable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. § 706.

VENUE

7. Venue in this Court is proper under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district. The Forest Service official who authorized the decision is headquartered in Medford, Oregon, and that office is located within this district. Additionally, Plaintiff has offices within this district.

8. This case is properly filed in Medford, Oregon pursuant to Local Rule 3.2 because the Bybee Project is located in Jackson County, Oregon.

9. If Plaintiff prevails, Plaintiff will seek an award of costs, attorneys' fees, and other expenses, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

PARTIES

10. Plaintiff OREGON WILD is a nonprofit corporation with approximately 10,000 members and supporters throughout the state of Oregon and the Pacific Northwest. Oregon Wild and its members are dedicated to protecting and restoring Oregon's wildlands, wildlife, and waters as an enduring legacy. Oregon Wild members regularly use the Bybee Project area for hiking, recreation, observing wildlife, solitude, nature appreciation, and other pursuits. Oregon Wild members have plans to return to the Bybee Project area in the near future for hiking, recreation, observing wildlife, solitude, nature appreciation, and other pursuits. The interests of Oregon

Wild and its members will be irreparably impaired if the Bybee Project is allowed to proceed without compliance with our federal environmental laws.

11. The aesthetic, recreational, scientific, educational, and other interests of Oregon Wild and its members have been and will continue to be adversely affected and irreparably injured if the Forest Service continues to act and fails to act as alleged, and affirmatively implements the action that Oregon Wild challenges with this litigation. These are actual, concrete, particularized injuries caused by the Forest Service's failure to comply with mandatory duties under the APA, NEPA, and NFMA. The relief sought in this case would redress these injuries.

12. Defendant UNITED STATES FOREST SERVICE is an agency of the United States and is a division of the Department of Agriculture. The Forest Service is charged with managing the lands and resources within the Rogue River-Siskiyou National Forest in accordance and compliance with NEPA, NFMA, and other federal laws and regulations.

LEGAL BACKGROUND

National Environmental Policy Act

13. Congress enacted NEPA in 1969, directing all federal agencies to assess the environmental impacts of proposed actions that significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). NEPA's disclosure goals are two-fold: (1) to ensure that the agency has carefully and fully contemplated the environmental effects of its action, and (2) to ensure that the public has sufficient information to challenge the agency's action.

14. The Council on Environmental Quality (CEQ) promulgated uniform regulations to implement NEPA that are binding on all federal agencies. 42 U.S.C. § 4342; 40 C.F.R. §§ 1500 *et seq.*

15. The regulations implementing NEPA require the Forest Service to disclose and analyze the environmental effects of the proposed action. 40 C.F.R. § 1500.1(b). Specifically, the regulation explains that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.*

16. NEPA requires the agencies to prepare an Environmental Impact Statement (EIS) when a major federal action is proposed that may significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4(a)(1).

17. An EIS is a “detailed written statement” that “provide[s] full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. §§ 1508.11 and 1502.1.

18. When it is not clear whether or not an action will significantly affect the environment (and thus require the preparation of an EIS), the NEPA regulations direct agencies to prepare a document known as an Environmental Assessment (EA) in order to determine whether an EIS is required. 40 C.F.R. §§ 1501.4(b), 1508.9. An EA is “a concise public document” that “[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” 40 C.F.R. § 1508.9(a). An EA “shall include brief discussions of the need for the proposal, or alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.” 40 C.F.R. § 1508.9(b).

19. The NEPA regulations require the agency to consider ten “significance factors” in determining whether a federal action may have a significant impact, thus requiring an EIS. 40 C.F.R. § 1508.27. Among other factors, the agency must consider unique characteristics of the geographic area such as proximity to ecologically critical areas, the degree to which the effects on the quality of the human environment are likely to be highly controversial, the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risk, the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration, the degree to which the action may adversely affect an endangered or threatened species or its habitat, and whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. *Id.* If the agency’s action may be environmentally significant according to any of the criteria, either individually or when considered cumulatively, the agency must prepare an EIS.

20. The agency implementing the project, not the public, has the burden of demonstrating that significant adverse effects will *not* occur as a result of the proposed project. 40 C.F.R. § 1508.13.

21. NEPA requires that environmental information be made available to public officials and citizens before decisions are made and before actions are taken. 40 C.F.R. § 1500.1(b). The information must be of high quality, and the Forest Service must ensure the “scientific integrity of the discussions and analyses in environmental impact statements.” *Id.* § 1502.24. The purpose of these requirements is to ensure that the public has information that allows it to question and understand the decision made by the agency.

22. For an agency's decision to be considered reasonable, a decision notice and finding of no significant impact (DN/FONSI) must contain sufficient evidence and analysis to show the decision is reasonably supported by the facts. The agency must show a rational connection between the facts found and the decision rendered. If the agency fails to consider important aspects of the problem in its EA, its decision is arbitrary and capricious.

23. An agency must supplement its environmental analysis whenever "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. §1502.9(c)(1)(ii).

National Forest Management Act

24. The National Forest Management Act (NFMA), 16 U.S.C. §§ 1600-1614, was enacted by Congress in 1976, and governs the Forest Service's management of the national forests.

25. NFMA requires the Forest Service to develop a land and resource management plan (LRMP) for each unit of the National Forest System, including the Rogue River-Siskiyou National Forest. 16 U.S.C. § 1604(a).

26. LRMPs contain standards and guidelines for public lands management and are implemented through the provisions of NFMA. All site-specific projects and activities on national forests must be consistent with the applicable LRMP, including its standards and guidelines. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15(b) (1982).

27. The Rogue River National Forest LRMP applies to the Bybee Project. It directs that "[n]o more than 10 percent of an activity area should be compacted, puddled or displaced upon completion of [a] project" and that "[n]o more than 20 percent of the area should be displaced or compacted under circumstances resulting from previous management practices including roads and landings." Rogue River LRMP 4-41.

Administrative Procedure Act

28. The APA confers a right of judicial review on any person that is adversely affected by agency action. 5 U.S.C. § 702. Upon review, the court shall “hold unlawful and set aside agency actions . . . found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.” 5 U.S.C. § 706(2).

29. The APA authorizes the court to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

FACTUAL BACKGROUND

The Northern Spotted Owl (*Strix occidentalis caurina*)

30. According to the United States Fish and Wildlife Service (FWS), the northern spotted owl (*Strix occidentalis caurina*) is “a medium-sized, dark brown owl with a barred tail, white spots on the head and breast, and dark brown eyes surrounded by prominent facial disks.” The northern spotted owl occupies late-successional and old-growth forest habitat from southern British Columbia through Washington, Oregon, and California as far south as Marin County.

31. Spotted owls rely on older forest habitats because such habitats generally contain the structures and characteristics required for the owl’s essential biological functions of nesting, roosting, foraging, and dispersal. These structures include: a multi-layered and multi-species tree canopy dominated by large overstory trees; moderate to high canopy closure; a high incidence of trees with large cavities and other types of deformities; numerous large snags; an abundance of large dead wood on the ground; and open space within and below the upper canopy for owls to fly. Forested stands with high canopy closure also provide thermal cover as well as protection from predation.

32. Due to concerns over its widespread habitat loss and habitat modification, and the lack of regulatory mechanisms to protect the species, the FWS listed the northern spotted owl as a threatened species under the Endangered Species Act on June 26, 1990. 16 U.S.C. § 1533(a); *Determination of Threatened Status for the Northern Spotted Owl*, 55 Fed. Reg. 26,114 (June 26, 1990) (codified at 50 C.F.R. § 17.11(h)).

33. Since the owl was listed in 1990, its population continues to decline on a range-wide basis. The latest demographic data shows a three percent decline in the overall spotted owl population every year. The HJ Andrews Central Cascades Demography Study Area is located north of the Bybee Project area. In the HJ Andrews Central Cascades Demography Study Area, the spotted owl population declined 20 to 30 percent between 1988 and 2008.

34. The South Cascades Demographic Study Area encompasses portions of the Bybee Project area.

35. In the South Cascades Demographic Study Area, the spotted owl population was approximately stable through 2011.

36. The South Cascades Demographic Study Area is an important stronghold for Northern Spotted Owls in the Southern Cascades.

The Gray Wolf (*Canis lupus*) and OR-7

37. The Gray Wolf is the largest member of the canine family. Adult male gray wolves typically weigh between 90 and 110 pounds, while adult female gray wolves typically weigh between 80 and 90 pounds. Gray wolves frequently live in defined packs. Pack territory can range between 25 square miles to more than 1,000 square miles. To establish new territories, young wolves will disperse from their packs and sometimes travel significant distances to find a mate and establish a new pack.

38. The United States Fish & Wildlife Service listed the gray wolf as Endangered under the Endangered Species Act in 1978. In 2011, the Northern Rockies Distinct Population Segment (DPS) of the gray wolf was delisted through Congressional action. The Northern Rockies DPS consists of wolves geographically located in Idaho, Montana, and portions of Oregon, Washington, and Utah. This Congressional action removed all Endangered Species Act protections from gray wolves within the geographic boundaries of the DPS.

39. In Oregon, gray wolves physically located east of Highway 395 and Highway 78 north of Burns Junction, and east of Highway 95 south of Burns Junction, are considered to be a part of the Northern Rockies DPS. These wolves are not listed as Endangered under the federal Endangered Species Act.

40. However, if a gray wolf crosses to the western side of the Northern Rockies DPS boundary in Oregon, it again is listed as Endangered under the Endangered Species Act. 74 Fed. Reg. 15123, 15125 (April 2, 2009) (defining boundaries of Northern Rockies DPS for the gray wolf); 76 Fed. Reg. 25590, 25591 (May 5, 2011) (delisting gray wolves within geographical boundaries of Northern Rockies DPS).

41. OR-7 is a male gray wolf born in northeastern Oregon in the spring of 2009. OR-7 was born into the Imnaha Pack. The Oregon Department of Fish and Wildlife (ODFW) fitted OR-7 with a radio collar in February 2011. In September 2011, OR-7 dispersed from the Imnaha Pack. Over the next two years, OR-7 travelled several hundred miles from northeastern Oregon southwest to the southern Cascade Mountains, into northern California, and back to the southern Cascade Mountains in Oregon.

42. On May 12, 2014, ODFW announced that OR-7 had been found with a female wolf in Oregon's southern Cascade Mountains. ODFW speculated that the female wolf had mated with OR-7.

43. On June 4, 2014, ODFW publicly announced photographic evidence that OR-7 produced offspring in the southern Cascade Mountains. ODFW photographs show two of OR-7's pups beneath a log on the Rogue River-Siskiyou National Forest.

44. OR-7, his mate, and pups are not part of the Northern Rockies DPS. OR-7, his mate, and pups are gray wolves listed as Endangered under the Endangered Species Act.

45. The wolf den used by OR-7, his mate, and pups is located on the Rogue River-Siskiyou National Forest.

46. The wolf den used by OR-7, his mate, and pups is located within the High Cascades Ranger District of the Rogue River-Siskiyou National Forest.

47. The wolf den used by OR-7, his mate, and pups is located near or within the Bybee Project Area.

48. The Forest Service has not reinitiated consultation with the U.S. Fish and Wildlife Service regarding the effects of the Bybee Project on gray wolves.

49. The Forest Service did not analyze the effects of the Bybee Project on gray wolves in the EA for the project.

50. The word "wolf" is not found anywhere in the Bybee Project EA.

51. The Forest Service has not issued a supplemental EA discussing the effects of the project on gray wolves.

The Bybee Project

52. The Bybee Project is located in the High Cascades Ranger District of the Rogue River-Siskiyou National Forest.
53. The Forest Service issued a notice describing the Bybee Project and soliciting scoping comments on the proposed action on April 9, 2010.
54. On May 7, 2010, Oregon Wild submitted scoping comments on the Bybee Project.
55. On June 7, 2011, the Forest Service prepared a Biological Assessment related to the Bybee Project.
56. The Forest Service asked the FWS to concur with its Biological Assessment on June 13, 2011.
57. On July 11, 2011, the FWS concurred with the Forest Service's Biological Assessment, agreeing that the Bybee Project "may affect, and is not likely to adversely affect" the northern spotted owl.
58. There is no reference to the gray wolf in either the Forest Service's Biological Assessment or the FWS' concurrence.
59. The Forest Service announced the availability of an Environmental Assessment (EA) related to the Bybee Project and the commencement of a thirty-day public review and comment period on January 10, 2013.
60. On February 19, 2013 and February 27, 2013, Oregon Wild submitted comments on the Bybee Project EA.
61. The Forest Service issued a Decision Notice and Finding of No Significant Impact (DN/FONSI) approving the Bybee Project on September 17, 2013.
62. On November 4, 2013, Oregon Wild filed an administrative appeal of the Bybee Project DN/FONSI.

63. Throughout the NEPA process, Oregon Wild consistently opposed logging in native (unlogged) forests and unroaded areas, but did support some elements of the Bybee Project, including commercial, pre-commercial, and non-commercial thinning in hundreds of acres of stands that were previously clearcut within the project area where such thinning would restore ecological structure, function, and process.

64. On December 17, 2013, Regional Forester Kent Connaughton denied Plaintiff's administrative appeal.

65. The DN/FONSI authorizes logging on 2,021 acres of Forest Service land, producing about 27 million board feet of commercial timber. The DN/FONSI authorizes pre-commercial thinning on 487 acres, non-commercial thinning on 236 acres, and natural fuels reduction treatments on 467 acres.

66. The Bybee Project includes 7.9 miles of temporary road construction. Of this, 0.8 miles of temporary road will be constructed within potential wilderness areas (PWAs).

67. The Bybee Project will treat 403 acres of PWAs with "free thinning" and "commercial thinning." The thinning approved by the Bybee Project will affect approximately 15% of the 2,693 acres of PWAs found within the Bybee Project planning area.

68. According to the Forest Service, PWAs that are treated as part of the Bybee Project will likely be no longer eligible for wilderness designation.

69. The Bybee Project contains areas that are a part of the citizen wilderness proposal known as the Crater Lake Wilderness Proposal. The Crater Lake Wilderness Proposal seeks to protect 500,000 acres both within and adjacent (i.e., on the Rogue River-Siskiyou National Forest and in the Bybee project area) to the boundaries of Crater Lake National Park. This would create a 90-mile protected corridor of habitat with very few disturbances along the southern Cascades.

70. According to the EA, the Bybee Project will treat an additional 447 acres out of 3,287 acres classified by the Forest Service as “other undeveloped land” in the project area that does not qualify for PWA status, but has no signs of logging or roads. Many of these lands classified as “other undeveloped land” are suitable for wilderness designation and are a part of the Crater Lake Wilderness Proposal.

71. The DN/FONSI allows logging in more than 700 acres of northern spotted owl suitable habitat. Fourteen known, historic, or suspected owl sites are located within the Bybee Project area.

72. Twenty-seven (27) of the seventy-eight (78) harvest units of the Bybee Project have more than twenty percent (20%) of their activity areas considered to be detrimentally compacted, displaced, burned, or eroded.

73. Sixteen (16) units have disturbance rates of fifty percent (50%) or more. Three (3) units have disturbance rates of seventy-five (75%) percent.

74. According to the Bybee Project EA, the 27 units with a more than 20% disturbance rate will receive a subsoil treatment to make them less damaged. Subsoiling fractures compacted soil but will not bring the detrimental soil back to its pre-logging conditions.

75. The Bybee Project will not result in a net increase in soil quality for units with a more than 20% disturbance rate.

**FIRST CLAIM FOR RELIEF
(NEPA Violation)**

Failure to Prepare an Environmental Impact Statement

76. Plaintiff incorporates by reference all preceding paragraphs.

77. NEPA requires the Forest Service to prepare an EIS when a proposed major federal action may significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C).

78. In determining whether a proposed action may “significantly” impact the environment, both the context and intensity of the action must be considered. 40 C.F.R. § 1508.27.

79. In evaluating intensity, the agency must consider numerous “significance” factors, including the unique characteristics of the geographic area such as proximity to ecologically critical areas, the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration, the degree to which the action may adversely affect an endangered or threatened species or its habitat, and whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. 40 C.F.R. § 1508.27(b).

80. If the agency’s action may be environmentally significant according to any of the criteria, the agency must prepare an EIS. If the agency’s action could have several impacts that cumulatively are significant, the agency must prepare an EIS.

81. The Bybee Project EA and DN/FONSI authorize logging that would reduce the size of the ecologically critical 2,693-acre PWA within the Bybee Project planning area by 403 acres. This logging indirectly affects additional acres of forest through fragmentation of unroaded areas and isolation of certain areas due to logging. 40 C.F.R. § 1508.27(b)(3).

82. The Bybee Project EA and DN/FONSI authorize logging in a PWA and other roadless areas. These areas would no longer be eligible for wilderness designation. 40 C.F.R. § 1508.27(b)(3).

83. Roadless areas are ecologically critical areas. 40 C.F.R. § 1508.27(b)(3).

84. The Bybee Project is located next to Crater Lake National Park, an ecologically critical area, and is within the Crater Lake Wilderness Proposal area, which also possesses ecologically important resources. The Bybee Project DN/FONSI authorizes logging in roadless areas that are

immediately adjacent to Crater Lake National Park. The Bybee Project EA and DN/FONSI authorize logging that reduces the total size of contiguous roadless areas that begin within the borders of Crater Lake National Park and continue into the Bybee Project Area. 40 C.F.R. § 1508.27(b)(3).

85. State Highway 230 runs through the Bybee Project Area. State Highway 230 is part of the Rogue-Umpqua National Forest Scenic Byway. State Highways 230 is a historical and cultural resource. 40 C.F.R. § 1508.27(b)(3).

86. The authorized logging will permanently alter these ecologically critical areas. *See*, 40 C.F.R. § 1508.27(b)(3).

87. Authorizing logging in PWAs and other undeveloped areas is an agency decision that may establish precedent for future actions with significant effects or represents a decision in principle about a future consideration (i.e., logging in PWAs). 40 C.F.R. § 1508.27(b)(6).

88. The Bybee Project EA and DN/FONSI authorizes logging in an area with 14 known, historic, or suspected owl sites, and specifically authorizes treatment of more than 700 acres of suitable habitat for the northern spotted owl. 40 C.F.R. § 1508(b)(9).

89. The proposed logging would have a negative effect on the Threatened northern spotted owl. 40 C.F.R. § 1508(b)(9).

90. Further, because the Forest Service has not analyzed the effects of the Bybee Project on the gray wolf, the Bybee Project will have unknown effects on this endangered species. 40 C.F.R. § 1508.27(b)(9).

91. The Bybee Project threatens a violation of NFMA with respect to the project's compliance with forest plan standards regarding protection of the soil resource. *See*, Third Claim for Relief; 40 C.F.R. § 1508.27(b)(10).

92. The Bybee Project threatens a violation of NEPA, for failing to consider and analyze significant new circumstances or information related to the environmental consequences of the project on the Endangered gray wolf, which was recently confirmed to be residing and breeding in or about the geographic proximity of the Bybee Project. 40 C.F.R. § 1508.27(b)(10).

93. Defendant has failed to prepare an EIS for the Bybee Project, despite the presence of several significance factors. The present significance factors are significant both individually and cumulatively. Defendant's decision to implement and proceed with the proposed action without first preparing an EIS is arbitrary, capricious, and not in compliance with NEPA. 5 U.S.C. § 706(2)(A).

94. Plaintiff is entitled to its reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

SECOND CLAIM FOR RELIEF (NEPA VIOLATION)

Failure to Prepare New or Supplemental Environmental Analysis

95. Plaintiff incorporates by reference all preceding paragraphs.

96. NEPA requires that the Forest Service supplement its environmental analysis whenever “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

97. There are significant new circumstances or information relevant to the environmental impacts of the Bybee Project, including but not limited to: the confirmed presence of the Endangered male gray wolf known as OR-7 in or about the geographic proximity of the Bybee project area; and the confirmed offspring of OR-7 and his mate in or about the geographic proximity of the Bybee project area.

98. The EA and DN/FONSI for the Bybee Project does not discuss how the project may affect the Endangered gray wolf.

99. The Forest Service's failure to prepare a new or supplemental EA for the Bybee Project in light of the new circumstances and/or information regarding OR-7 is arbitrary, capricious, and not in accordance with NEPA. 5 U.S.C. § 706(2)(A).

100. Plaintiff is entitled to its reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

THIRD ALTERNATIVE CLAIM FOR RELIEF (NEPA VIOLATION)

Failure to Prepare New or Supplemental Environmental Analysis

101. Plaintiff incorporates by reference all preceding paragraphs.

102. NEPA requires that the Forest Service supplement its environmental analysis whenever “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. §1502.9(c)(1)(ii).40 C.F.R. § 1502.9(c)(1).

103. There are significant new circumstances or information relevant to the environmental impacts of the Bybee Project, including but not limited to: the confirmed presence of the Endangered male gray wolf known as OR-7 in or about the geographic proximity of the Bybee project area; and the confirmed offspring of OR-7 and his mate in or about the geographic proximity of the Bybee project area.

104. In the alternative to Plaintiffs' Second Claim for Relief, the Forest Service's failure to prepare a new or supplemental EA for the Bybee Project in light of this new information is agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

105. Plaintiff is entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the EAJA. 28 U.S.C. § 2412.

**FOURTH CLAIM FOR RELIEF
(NFMA Violation)**

Failure to Comply with Forest Plan Requirements for the Protection of the Soil Resource

106. Plaintiff incorporates by reference all preceding paragraphs.

107. NFMA requires the Forest Service to develop a LRMP for each unit of the National Forest System. 16 U.S.C. § 1604(a). All site-specific projects and activities on national forests must be consistent with the applicable LRMP. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15(b) (1982).

108. The Rogue River National Forest LRMP requires that “[n]o more than 10 percent of an activity area should be compacted, puddled or displaced upon completion of [a] project” and that “[n]o more than 20 percent of the area should be displaced or compacted under circumstances resulting from previous management practices including roads and landings.” Rogue River LRMP 4-41.

109. The Rogue River National Forest LRMP does not allow a project to be implemented in areas where the soil is more than 20% displaced or compacted.

110. The Forest Service authorized logging on 20 units in the Bybee Project Area that are currently, pre-project, at or above the 20% displacement or compaction threshold.

111. Compliance with LRMP requirements for the protection of the soil resource is mandatory. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15(b) (1982).

112. The Forest Service’s failure to implement and follow the LRMP’s soil requirements violates the Rogue River National Forest LRMP.

113. The Forest Service's failure to implement and follow the requirements of the soil standards is a violation of NFMA. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15(b) (1982).

114. The Forest Service's failure to implement and follow the requirements of the soil standards is arbitrary, capricious, and not in accordance with the APA. 5 U.S.C. § 706(2)(A).

115. Plaintiff is entitled to its reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

PLAINTIFF'S PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court:

1. Declare that the Forest Service violated the National Environmental Policy Act, the National Forest Management Act, the Administrative Procedure Act, and their implementing regulations in designing, analyzing, and implementing the Bybee Project EA and DN/FONSI;
2. Vacate the Bybee Project EA and DN/FONSI;
3. Order the Forest Service to withdraw the Bybee Project EA and DN/FONSI until such time as the agency demonstrates to this Court that it has adequately complied with the law;
4. Order the Forest Service to remove all harvest units in PWA's from the Bybee Project;
5. Order the Forest Service to prepare new or supplemental environmental analysis pursuant to NEPA to analyze and discuss the effects of the Bybee Project on gray wolves;
6. Enjoin the Forest Service and its agents from proceeding with the Bybee Project, or any portion thereof, unless and until the violations of federal law set forth herein have been corrected to this satisfaction of this Court;
7. Award Plaintiff its cost of suit and attorneys fees; and
8. Grant Plaintiff such other and further relief as the Court deems just and equitable.

Respectfully submitted and dated this 18th day of June, 2014.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to FRCP 7.1, Plaintiff states that they have not issued shares to the public and have no affiliates, parent companies, or subsidiaries issuing shares to the public.

Respectfully submitted and dated this 18th day of June, 2014.

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