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5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF MONTANA**
8 **MISSOULA DIVISION**
9

10 ALLIANCE FOR THE WILD ROCKIES, and
11 NATIVE ECOSYSTEMS COUNCIL

12 Plaintiffs,

13 vs.

14 TOM TIDWELL, Regional Forester of Region
15 One of the United States Forest Service, and
16 UNITED STATES FOREST SERVICE, an
agency of the U.S. Department of Agriculture,

17 Defendants.

CV 08-89-M-DWM

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

18
19 **I. INTRODUCTION**
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- 21 1. This is a civil action for judicial review under the Administrative Procedure Act of the
22 U.S. Forest Service's May 31, 2007 Decision Memo approving the Price Powder Salvage
23 Project (Project) in the Butte Ranger District of the Beaverhead-Deerlodge National
24 Forest. Plaintiffs Alliance for the Wild Rockies and Native Ecosystems Council attest
25 that the final decision approving the Project is arbitrary and capricious, an abuse of
26 discretion, and/or otherwise not in accordance with law.
- 27 2. The Decision Memo (DM) authorizes what is essentially clearcut logging of 133 acres of
28 existing and potential habitat for management indicator species and sensitive species.

1 The DM fails to show that such logging will not have individually or cumulatively
2 significant impacts on these species, and it fails to demonstrate that the Forest Service is
3 in compliance with the Deerlodge National Forest Plan¹ (Forest Plan) and federal
4 statutory law. Additionally, the DM demonstrates that the Forest Plan standard for snag
5 habitat is invalid.

- 6 3. Defendants' approval of the Project as written is a violation of the National
7 Environmental Policy Act (NEPA), 42 U.S.C. 4331 *et seq.*; the National Forest
8 Management Act (NFMA) 16 U.S.C. § 1600 *et seq.*; and the Administrative Procedure
9 Act (APA), 5 U.S.C. §§ 701 *et seq.* Plaintiffs seek declaratory and injunctive relief to
10 protect Plaintiffs' interests at law that the Forest Service comply with NEPA's mandate to
11 consider environmental impacts, comply with NFMA's mandate to protect biodiversity,
12 and mitigate harm and prevent irreparable injury to the human environment. Plaintiffs
13 request that approval of the Project under a categorical exclusion be set aside pursuant to
14 5 U.S.C. § 706(2)(A); and that the Court enjoin the Forest Service from implementing
15 this Project until Defendants comply fully with NEPA, NFMA and the APA.
- 16 4. Plaintiffs seek a declaratory judgment, injunctive relief, the award of costs of suit,
17 including attorney and expert witness fees pursuant to the Equal Access to Justice Act, 28
18 U.S.C. § 2412, and such other relief as this Court deems just and proper.

20 II. JURISDICTION

- 21
- 22 5. This action arises under the laws of the United States and involves the United States as a
23 defendant. Therefore, this Court has subject matter jurisdiction over the claims specified
24 in this Complaint pursuant to 28 U.S.C. §§ 1331, 1346.
- 25 6. An actual controversy exists between Plaintiffs and Defendants. Plaintiffs use and enjoy

26
27 ¹The Beaverhead National Forest was merged with the Deerlodge National Forest in
28 1996. Prior to that date, both Forests had developed their own forest plans with different
standards. The standards from the Deerlodge National Forest Plan apply to this Project.

1 the Beaverhead-Deerlodge National Forest, including the Butte Ranger District, for
2 hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in
3 other vocational, scientific, spiritual, and recreational activities. Plaintiffs' members
4 intend to continue to use and enjoy the area frequently and on an ongoing basis in the
5 future.

6 7. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiffs have
7 been and will be adversely affected and irreparably injured if Defendants implement the
8 Project. These are actual, concrete injuries caused by Defendants' failure to comply with
9 mandatory duties under NFMA and NEPA. The requested relief would redress these
10 injuries and this Court has the authority to grant Plaintiffs' requested relief under 28
11 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

12 8. Plaintiffs and their members submitted extensive written comments concerning the
13 Project, have fully participated in the administrative review process, and have exhausted
14 administrative remedies. Defendants have declared that the Decision Memo for the
15 Project is the final administrative action of the U.S. Department of Agriculture Forest
16 Service. Thus the challenged decision is final and subject to this Court's review under the
17 APA, 5 U.S.C. §§ 702, 704, and 706.

18 **III. VENUE**

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20
21 9. Venue in this case is proper under 28 U.S.C. § 1391(e) and LR 3.3(a)(1). Defendant
22 Tidwell, an officer of the U.S. Forest Service with its Region One office in Missoula,
23 resides within the Missoula Division of the United States District Court for the District of
24 Montana, and is the principal representative in this District of Defendant U.S. Forest
25 Service. The challenged decisions were upheld by the Regional Forester, and are
26 representative of official policies and procedures common to the Northern Region.

27 **IV. PARTIES**

1 10. Plaintiff NATIVE ECOSYSTEMS COUNCIL is a non-profit Montana corporation with its
2 principal place of business in Three Forks, Montana. Native Ecosystems Council is
3 dedicated to the conservation of natural resources on public lands in the Northern
4 Rockies. Its members use and will continue to use the Beaverhead-Deerlodge National
5 Forest for work and for outdoor recreation of all kinds, including fishing, hunting, hiking,
6 horseback riding, and cross-country skiing. The Forest Service's unlawful actions
7 adversely affect Native Ecosystems Council's organizational interests, as well as its
8 members' use and enjoyment of the Beaverhead-Deerlodge National Forest, including the
9 Project area. Native Ecosystems Council brings this action on its own behalf and on
10 behalf of its adversely affected members.

11 11. Plaintiff ALLIANCE FOR THE WILD ROCKIES (Alliance) is a tax-exempt, non-profit public
12 interest organization dedicated to the protection and preservation of the native
13 biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and
14 its naturally functioning ecosystems. Its registered office is located in Helena, Montana.
15 The Alliance has over 2,000 individual members, many of whom reside in Montana, and
16 more than 600 member businesses and organizations, many of which are located in
17 Montana. Members of the Alliance work as fishing guides, outfitters, and researchers who
18 observe, enjoy and appreciate Montana's native wildlife and the water quality of aquatic
19 ecosystems in Montana's lakes and streams, as well as the habitat quality of terrestrial
20 ecosystems upon which they depend, and expect to continue to do so in the future,
21 including in the Project area. Members' professional and recreational activities are
22 directly affected by Defendants' failure to perform their lawful duty to protect and
23 conserve these ecosystems.

24 12. Defendant TOM TIDWELL is the Regional Forester for the Northern Region of the US
25 Forest Service, and in that capacity is charged with ultimate responsibility for insuring
26 that decisions made at the National Forest (unit) level in the Northern Region are
27 consistent with applicable laws, regulations, and official policies and procedures.

28 13. Defendant UNITED STATES FOREST SERVICE is an agency within the U.S. Department of

1 Agriculture, entrusted with the management of our National Forests.

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3 **V. PROCEDURAL BACKGROUND**
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5 14. On August 29, 2007, Forest Supervisor Bruce Ramsey May 31, 2007 signed the Price
6 Powder Decision Memo (DM).

7 15. Plaintiffs filed administrative appeals of the DM on October 9, 2007. The appeals were
8 denied on November 28, 2007. Plaintiffs have exhausted all administrative remedies.
9

10 **VI FACTUAL ALLEGATIONS**
11

12 **A. Project Details**

13 16. The Price Powder Project authorizes logging on approximately 133 acres of the
14 Beaverhead-Deerlodge National Forest in the Fleecer Mountain Range near the
15 Continental Divide. The Project is located approximately 10 miles southwest of Butte,
16 Montana and is encompassed by the Upper Clark Fork Landscape Area.

17 17. The logging is divided into two units: unit one is 59 acres and unit two is 74 acres. The
18 FS originally stated that the units would be clearcuts, but later retracted that
19 categorization and now states that the harvest units are “salvage” not “clearcut,” though
20 the areas logged “may resemble a clearcut.” The wildlife analysis still refers to the
21 treatments as clearcuts.

22 18. The areas to be clearcut are currently providing habitat to several woodpecker species,
23 which are also management indicator species for the Beaverhead-Deerlodge National
24 Forest (Forest). The areas to be clearcut also provide potential habitat for two sensitive
25 species on the Forest: the fisher and the black-backed woodpecker.
26

27 **B. Exclusion from NEPA Analysis**

28 19. The Forest Service excluded the Project from a NEPA environmental assessment (EA)

1 under Forest Service Handbook 1909.15 Section 31.2 (13): “Salvage of dead and/or dying
2 trees not to exceed 250 acres, requiring no more than 1/2 mile of temporary road
3 construction.” The DM states that the Project may be excluded from NEPA under this
4 category because it will “have no significant effect on the human environment,
5 individually or cumulatively”

6 20. The Forest Service acknowledges that a categorical exclusion from NEPA analysis may
7 not be warranted if the Project falls within an exempted category but nonetheless may
8 have a significant impact on the environment due to “extraordinary circumstances.” Such
9 extraordinary circumstances include the presence of Forest Service sensitive species in an
10 area.

11 21. The Forest Service acknowledges that there are sensitive species in the area and
12 concludes that those species may be affected by the proposed clearcutting. The Forest
13 Service does not discuss why its “may impact” conclusion does not render the categorical
14 NEPA exclusion unwarranted, and call for an environmental assessment to determine
15 whether the Project poses the risk of a significant environmental impact.
16

17 **C. Habitat Model for the Project Analysis**

18 22. For the Project analysis, the Forest Service used pre-existing old growth and snag
19 estimates modeled from Forest Inventory and Analysis (FIA) data from an inventory that
20 occurred 11 to 12 years ago. The original analysis document implied that the FIA data is
21 appropriate only for a broad-scale analysis, and that more information should be used to
22 determine habitat on a more site-specific “fine scale management approach.”

23 23. The Forest Plan requires inventories at the timber compartment level, and the Forest
24 Service admits that the “FIA does not provide information at the compartment scale
25 identified in the 1986 [forest] plan.”

26 24. Because the analysis document relied upon for the Project analysis provides a broad scale
27 estimate, the estimates have a significant error margin. For example, although the
28 “Response to Comments” appendix to the DM represents that the Upper Clark Fork

1 Landscape Area (which encompasses the timber compartments at issue) has 11.1% old
2 growth, the actual analysis document admits that there could actually be 0.0% old growth
3 in the Landscape Area. Indeed, this Landscape Area has the lowest estimated percentage
4 of old growth of any Landscape Area in the entire Forest.

- 5 25. Similarly, the “Wildlife Report” appendix to the DM represents that the Upper Clark Fork
6 Landscape Area has 2.2 snags per acre, but the original analysis document stated that
7 there could actually be 0 snags per acre in the Area between 10 and 20 inches diameter
8 breast height (dbh), and that there is definitely 0 snags per acre over 20 inches dbh in the
9 Area. This Area has the lowest estimated number of snags of any Landscape Area in the
10 Forest.

11 **D. Snag and Old Growth Habitat in the Timber Compartment**

- 12 26. The Forest Plan standard requires that 3.5% of each timber compartment be retained in
13 suitable snag habitat. The Forest Service never discloses the percentage of suitable snag
14 habitat in the timber compartment that encompasses the Project boundaries. The Forest
15 Service did not indicate the boundaries of the timber compartment on the unit map it
16 provided, and did not otherwise disclose the size (in acres) of the affected timber
17 compartment. The Forest Service never explicitly disclosed which timber compartment
18 encompasses the Project.

- 19 27. The Forest Service did not disclose the number of snags per acre in the specific affected
20 timber compartment, and instead states that its habitat model “does not provide
21 information at the compartment scale identified in the 1986 [forest] plan and systematic
22 snag inventories on a compartment-wide basis have not been completed.”

- 23 28. The Forest Service did not disclose the location of the snag “wildlife stands” in the timber
24 compartment, as designated according to the Forest Plan and entered into the stand record
25 database. In fact, in a Freedom of Information Act (FOIA) response the Regional
26 Forester admitted that the Forest Service has never maintained a snag database for the
27 Forest, as required by the Forest Plan.
28

- 1 29. The Forest Plan requires that the Forest Service designate replacement snag wildlife
2 stands if a timber compartment has a deficit level of snags. Although the Forest Service
3 admits that there may be 0 snags per acre in the timber compartment, it did not designate
4 any replacement snag wildlife stands in the Project Area.
- 5 30. The Project does not set a diameter limit on snags that will be logged, and does not
6 require a certain number of large snags to be retained. The Forest Service will not retain
7 snags well-disbursed throughout the logging units. Instead, it will clearcut within the
8 units and leave snags on the edges.
- 9 31. The Forest Service implies that its Forest Plan snag standard is stale: it is now using the
10 Northern Region Snag Management Protocol to provide “management recommendations
11 for snags” for the Project. This protocol recommends leaving 6 - 12 snags per acre and
12 leaving the largest snags available. This is significantly higher than the Forest Plan
13 Standard, which requires 0.1 snags per acre.
- 14 32. The Forest Service does not monitor areas that have been clearcut to determine if the
15 requisite number of snags have been retained in the short term and/or long term.
- 16 33. The Forest Service did not provide a map showing old growth stands in the timber
17 compartment and did not disclose the percentage of old growth habitat within the timber
18 compartment. The Forest Service admitted that it does not have this data: “we didn’t
19 inventory old growth in the compartment”

20
21 **E. Sensitive Species and Management Indicator Species**

- 22 34. Although the Forest Service states that the Project will not log old growth, it concludes
23 that the logging may impact the following old growth management indicator species:
24 hairy woodpecker; pine marten; goshawk; pileated woodpecker; and three-toed
25 woodpecker. The Forest Service also concludes that the Project may impact the sensitive
26 black-backed woodpecker.
- 27 35. When the Forest Plan was adopted in 1986, the Forest Service followed the original
28 NFMA implementing regulations, which are often referred to as the 1982 planning

1 regulations, in order to ensure that the Forest Plan complied with NFMA. One mandate
2 from these regulations was that forest plans had to include terms to ensure that
3 "[p]opulation trends of the management indicator species will be monitored and
4 relationships to habitat changes determined." The Forest Plan incorporated this
5 requirement.

- 6 36. Another mandate from the 1982 planning regulations was that the Forest Plan had to
7 include terms to maintain minimum viable populations:

8 Fish and wildlife habitat shall be managed to *maintain viable*
9 *populations* of existing native and desired non-native vertebrate
10 species in the planning area. For planning purposes, a viable
11 population shall be regarded as one which has the estimated
12 numbers and distribution of reproductive individuals to *insure its*
13 *continued existence* is well distributed in the planning area. In
14 order to *insure that viable populations will be maintained*, habitat
15 must be provided to support, at least, a minimum number of
16 reproductive individuals and that habitat must be well distributed
17 so that those individuals can interact with others in the planning
18 area.

19 36 C.F.R. § 219.19 (2000) (emphasis added). Both the Forest Plan and the Price
20 Powder Project decision documents incorporated this requirement.

- 21 37. The Forest Plan lists the hairy woodpecker as an indicator species for lodgepole
22 pine and requires monitoring of that species. Despite this mandate, the Forest
23 Service admits that it "no longer explicitly monitors" the hairy woodpecker.

- 24 38. The Wildlife Report states that the hairy woodpecker is an old growth
25 management indicator species that prefers mature and old growth lodgepole pine,
26 and mature and old growth spruce/subalpine fir. It further admits that the hairy
27 woodpecker's habitat will be impacted by the Project logging. The Forest Service
28 observed one hairy woodpecker in the Project Area. The Forest Service did not
analyze the impacts of logging its habitat on the hairy woodpecker and the species
for which it indicates.

39. The Forest Plan requires monitoring of the three-toed woodpecker. The Forest's
monitoring report indicates that the Forest Service does not monitor the three-toed

1 woodpecker.

2 40. The Wildlife Report states that the three-toed woodpecker is an old growth
3 management indicator species that prefers mature and old growth lodgepole pine,
4 and mature and old growth spruce/subalpine fir, as well as landscapes disturbed
5 by fire, wind, and insect epidemics. It further admits that the three-toed
6 woodpecker’s habitat will be impacted by the Project logging. The Forest Service
7 observed 9 three-toed woodpeckers in the Project Area, four of which were “all
8 foraging on beetle trees.” The Forest Service did not analyze the impact of
9 logging its present habitat on the three-toed woodpecker, and the species for
10 which it indicates.

11 41. The black-backed woodpecker is a sensitive species in the Forest. This means
12 that it is a species “for which population viability is of concern, as evidenced by
13 significant current or predicted downward trends”

14 42. The Forest Service states that the black-backed woodpecker “require[s]” burned
15 or insect-killed forest. The Forest Service acknowledges that all 120 acres of
16 clearcuts will be a loss of required habitat to this already sensitive species.

17 43. The Forest Service acknowledges that it does not have population data for the
18 black-backed woodpecker on the Forest, and that it has a limited understanding of
19 the black-backed woodpecker’s habitat requirements. .

20 44. The Forest Service estimates that the Landscape Area has an average 2.2 snags per
21 acre, but admits that there could actually be 0 snags per acre, and it has never
22 actually inventoried snags per timber compartment. The Forest Service does not
23 disclose whether 2.2 snags per acre is sufficient for black-backed woodpecker
24 viability. The Forest Service’s own regional guidance for the black-backed
25 woodpecker states that 4.3 snags per acre should be maintained in unburned
26 forest, and 5.3 snags per acre in burned forest. Despite this lack of data and
27 understanding, the Forest Service concludes that “adequate snag habitat will be
28 maintained in untreated areas in the analysis area” and that the proposed clearcuts

1 “will not result in a loss of viability”

2
3 **F. Big Game Species**

4 45. The Forest Service acknowledges that elk and mule deer habitat will be affected
5 by the proposed clearcuts. Specifically, the Forest Service states the logging will
6 reduce hiding cover on 120 acres.

7 46. The Project is located in Hunter Recreation Opportunity Geographic Area
8 (HROGA) # 20 High Rye. The Forest Plan includes a requirement to “insure that
9 adequate hiding cover is maintained to meet the Hunting Recreation Objectives . .
10 . .” The Hunting Recreation Objectives that must be met for HROGA # 20 High
11 Rye are a maximum of 0.5 miles of road per square mile and a minimum of 36%
12 hiding cover.

13 47. The Forest Service stated that the High Rye HROGA has 0.4 miles of road per
14 square mile and 40 % hiding cover. The Forest Service does not disclose how it
15 created those estimates. There is no discussion or citation to any methodology or
16 data that would support those estimations. Only the Forest Service conclusions
17 were provided to the public.

18 **VII. CLAIMS FOR RELIEF**

19 **FIRST CLAIM FOR RELIEF**

20 The Forest Service violated NEPA when it categorically
21 excluded the Project from NEPA review.

22 48. All above paragraphs are incorporated by reference.

23 49. The Price Powder Project will clearcut 120 acres of habitat that is currently being
24 used by old growth management indicator species, and that provides potential
25 habitat for sensitive species whose population viability is a concern.

26 50. The presence and likely presence of these species in the proposed clearcut units is
27 an extraordinary circumstance that alerts the Forest Service to a possible
28 significant environmental effect.

1 51. In addition to the individual impacts of the Project, clearcutting projects of this
2 magnitude create significant cumulative impacts.

3 52. Because of the likely individual and cumulative impacts of the Project, the Forest
4 Service violated NEPA when it failed to conduct an Environmental Assessment
5 (EA) to determine whether the Price Powder Project would create a significant
6 environmental impact.

7
8 **SECOND CLAIM FOR RELIEF**

9 The Forest Service violated NFMA and NEPA when it failed
10 to comply with Forest Plan snag standards.

11 53. All above paragraphs are incorporated by reference.

12 54. The Forest Plan requires that the Forest Service inventory and maintain snag
13 habitat at the timber compartment level.

14 55. The Forest Service admits that it has not inventoried snag habitat at the
15 compartment level, thus it cannot inform the public whether it is meeting the
16 Forest Plan standard.

17 56. The Forest Plan requires that the Forest Service designate snag wildlife stands and
18 record those designations in a database.

19 57. The Forest Service admits that it does not have a database of designated snag
20 wildlife stands.

21 58. The Forest Plan requires that the Forest Service designate replacement snag
22 habitat if a timber compartment is deficit in snag levels.

23 59. The Forest Service acknowledges that there may be as few as 0 snags per acre in
24 the timber compartment affected by the Project, but did not designate replacement
25 snag habitat in the affected timber compartment.

26 60. The Forest Service's failure to comply with these Forest Plan standards violates
27 NFMA. The Forest Service's failure to conduct these inquiries also violates
28 NEPA, because it demonstrates that the Forest Service failed to take a hard look at
snag habitat in the timber compartment.

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THIRD CLAIM FOR RELIEF

The Forest Service violated NFMA and NEPA when it failed to comply with Forest Plan old growth standards.

- 61. All above paragraphs are incorporated by reference.
- 62. The Forest Plan requires that the Forest Service inventory and maintain old growth habitat at the timber compartment level.
- 63. The Forest Service admits that it has not inventoried old growth habitat at the compartment level, thus it cannot inform the public whether it is meeting the Forest Plan standard.
- 64. The Forest Service acknowledges that the affected Landscape Area has the lowest percentage of old growth habitat across the Forest and that there could be as low as 0.0% old growth habitat. Despite this potential deficit and the fact that old growth management indicator species are already using the areas to be clearcut, the Forest Service does not designate replacement old growth stands in the Project Area.

FOURTH CLAIM FOR RELIEF

The Forest Service violated NFMA and NEPA when it failed to disclose or reference the underlying data and analysis supporting its hiding cover and open road density estimates.

- 65. All above paragraphs are incorporated by reference.
- 66. The Forest Service acknowledges that the Project will clearcut areas that are now providing hiding cover for big game species, including elk.
- 67. The Forest Service concluded that the big game analysis area has sufficient hiding cover and sufficiently limited open road densities.
- 68. The Forest Service does not provide any reference or citation to the underlying data and methodology used to create its conclusions.
- 69. The Forest Service's failure to reference or disclose the underlying data and methodology supporting its conclusions violates NEPA because the public cannot

1 analyze whether its conclusions are correct. This failure also violates NFMA
2 because the Forest Plan requires that the Forest Service ensure that hiding cover
3 and open road density objectives are met, and conclusory statements without
4 supporting data do not provide such assurance.

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6 **FIFTH CLAIM FOR RELIEF**

7 The Forest Plan standard for snag habitat violates NFMA.

8 70. The Forest Plan standard for snag habitat was approved over 20 years ago. The
9 standard requires 0.1 snags per acre across the Forest.

10 71. The Forest Service Region One now relies upon the Northern Region Snag
11 Protocol as the best available science regarding snag retention. The Protocol
12 requires much higher numbers of snags per acre than the 20 year old Forest Plan
13 standard. For example in the Project Area, it requires 6 - 12 snags per acres.

14 72. The Forest Service is violating NFMA by retaining the Forest Plan snag standard,
15 because that standard is based upon stale science that has been impliedly
16 invalidated by the Forest Service's own scientists.

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20 **SIXTH CLAIM FOR RELIEF**

21 The Forest Service violated NFMA and NEPA because it is not ensuring
22 the viability of sensitive and management indicator species in the Project Area.

23 73. The Forest Plan incorporated the 1982 NFMA planning regulation requirement to
24 maintain viable wildlife populations. The Wildlife Report for the Project
25 references and applies this requirement.

26 74. The Forest Plan requires monitoring of management indicator species to ensure
27 that viable populations are maintained.
28

- 1 75. The Forest Service admits that it does not monitor two of the old growth
2 dependent management indicator species whose habitat will be clearcut by the
3 Project.
- 4 76. The Forest Service admits that the sensitive black-backed woodpecker will lose
5 120 acres of its required habitat when the Project units are clearcut. The Forest
6 Service admits that it does not does not have population data for the black-backed
7 woodpecker on the Forest. The Forest Service's scientists recommend 4.3 - 5.3
8 snags per acre for viable black-backed woodpecker populations, and the Forest
9 Service estimates that there is an average of only 2.2 snags per acre in the affected
10 Landscape Area. The affected Landscape Area has the lowest number of snags
11 per acre in the entire forest because of heavy logging, and may have as low as 0.0
12 snags per acre.
- 13 77. The Forest Service's decision to authorize clearcuts that eliminate 120 acres of
14 habitat that is currently being used by managment indicator species, and that is the
15 type of habitat required by a sensitive species, is arbitrary and capricious because
16 it runs counter to the evidence before the agency. The decision violates NFMA
17 because it does not ensure species viability, and violates NEPA because the Forest
18 Service did not take a hard look at the effect of the clearcut on local species that
19 depend upon that habitat.

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23 **.VII. REQUEST FOR RELIEF**

24 **For all of the above-stated reasons, Plaintiffs request that this Court:**

- 25 A. Declare that the use of a categorical exclusion for the Project violates NEPA
26 because the Project will clearcut over one hundred acres of habitat for MIS and
27 sensitive species;
- 28 B. Declare that the Forest Service must complete an Environmental Assessment to
determine whether the Project will have a significant environmental impact;

- 1 C. Declare that the Decision Memo violates NFMA and NEPA because the Forest
2 Service is not complying with Forest Plan snag standards;
- 3 D. Declare that the Decision Memo violates NFMA and NEPA because the Forest
4 Service is not complying with Forest Plan old growth standards;
- 5 E. Declare that the Decision Memo violates NFMA and NEPA because it failed to
6 disclose or reference the underlying data and analysis supporting its hiding cover
7 and open road density estimates;
- 8 F. Declare that the Deerlodge Forest Plan snag standard violates NFMA because it is
9 based upon stale science that does not ensure species viability of snag-dependent
10 species;
- 11 G. Declare that the Decision Memo violates NFMA and NEPA because the Forest
12 Service is not ensuring the viability of old growth management indicator species
13 and sensitive species;
- 14 H. Enjoin the sale of the Project units and the logging authorized by the Decision
15 Memo;
- 16 I. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable
17 attorney fees under EAJA; and
- 18 J. Grant Plaintiffs such further relief as may be just, proper, and equitable.

19 DATED this 23rd day of June, 2008

20 /s/ Timothy M. Bechtold

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