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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF MONTANA**  
10 **MISSOULA DIVISION**

11 **SHARON J. HAPNER, NATIVE**  
12 **ECOSYSTEMS COUNCIL, and**  
13 **ALLIANCE FOR THE WILD ROCKIES,**  
14 **Plaintiffs,**

15 **v.**

16 **TOM TIDWELL, Regional Forester of**  
17 **Region One of the U.S. Forest Service, and**  
18 **UNITED STATES FOREST SERVICE, an**  
19 **agency of the U.S. Department of**  
20 **Agriculture.**  
21 **Defendants.**

CV 08-92-M-DWM

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

22 **I. INTRODUCTION**

23 1. Plaintiffs Sharon Hapner, Native Ecosystems Council, and Alliance for the Wild Rockies  
24 (collectively “Hapner”) herein challenge the U.S. Forest Service’s (Forest Service)  
25 decision to implement timber harvest, and apply the Gallatin National Forest Land and  
26 Resource Management Plan (Forest Plan), through the Smith Creek Vegetation Treatment  
27 Project (Project) on the Livingston Ranger District of the Gallatin National Forest.

- 1 2. The Forest Service has advertised that the Project will be sold July 7, 2008.  
2 3. If Plaintiffs prevail they will seek an award of costs and attorneys' fees pursuant to the  
3 Equal Access to Justice Act, 28 U.S.C. § 2412.  
4

5 **II. JURISDICTION, VENUE, AND ADMINISTRATIVE REMEDIES**

- 6 4. Hapner brings this civil action under the Administrative Procedure Act (APA), 5 U.S.C.  
7 §§ 701 et seq., the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et  
8 seq., and the National Forest Management Act (NFMA), 16 U.S.C. §§ 1600 et seq . This  
9 Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), and may issue a  
10 declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02.  
11  
12 5. Venue is proper in this District and Division under 28 U.S.C. § 1391(e) because  
13 Defendant Tom Tidwell, Regional Forester of Forest Service Region One, resides in this  
14 District and Division in his official capacity.  
15  
16 6. Plaintiffs exhausted their administrative remedies by submitting comments on the draft  
17 environmental assessment for the Project and administratively appealing the final agency  
18 decision to implement the Project (the decision notice/finding of no significant impact).

19 **III. PARTIES**

- 20 7. Plaintiff ALLIANCE FOR THE WILD ROCKIES (AWR) is a nonprofit public interest  
21 organization based in Helena, Montana dedicated to the protection and preservation of  
22 the native biodiversity of the Northern Rockies Bioregion, including its native plant, fish,  
23 and animal life, and its naturally functioning ecosystems. AWR has over 2,000  
24 individual members and more than 600 member businesses and organizations, and has  
25 been involved in public land management in the area for 18 years. Members use and  
26  
27

1 enjoy the Gallatin National Forest for hiking, fishing, hunting, camping, photographing  
2 scenery and wildlife, and engaging in other vocational, scientific, spiritual, and  
3 recreational activities. Members intend to continue to use and enjoy the affected area  
4 frequently and on an ongoing basis in the future. AWR's members have been and will be  
5 adversely affected and irreparably injured if Defendants are allowed to continue  
6 implementing the current Gallatin Forest Plan, and if they are allowed to implement the  
7 challenged timber sale. These are actual, concrete injuries caused by Defendants' failure  
8 to comply with mandatory duties under NFMA and NEPA. The requested relief would  
9 redress these injuries.  
10  
11

- 12 8. Plaintiff NATIVE ECOSYSTEMS COUNCIL (NEC) is a nonprofit public interest organization  
13 based in Three Forks, Montana, with an interest in protecting native ecosystems on public  
14 lands in the Northern Rockies. NEC has been active in public lands management for 15  
15 years. Members use and enjoy the Gallatin National Forest for hiking, fishing, hunting,  
16 camping, photographing scenery and wildlife, and engaging in other vocational,  
17 scientific, spiritual, and recreational activities. NEC's executive director Dr. Sara  
18 Johnson is the former wildlife biologist for the Forest. Members intend to continue to use  
19 and enjoy the affected area frequently and on an ongoing basis in the future. NEC's  
20 members have been and will be adversely affected and irreparably injured if Defendants  
21 are allowed to continue implementing the current Gallatin Forest Plan, and if they are  
22 allowed to implement the challenged timber sale. These are actual, concrete injuries  
23 caused by Defendants' failure to comply with mandatory duties under NFMA and NEPA.  
24 The requested relief would redress these injuries.  
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1 9. Plaintiff SHARON J. HAPNER is an individual homeowner in the Smith Creek drainage of  
2 the Crazy Mountains. She and her husband have owned their property and used their  
3 property and the surrounding area for 30 years, and intend to continue to do so in the  
4 future. Over the past three decades she has used the area and observed the ecology and  
5 evolution of the forest environment. Hapner has witnessed the degradation of the area  
6 around her property from logging activities and her interests will be adversely affected  
7 and irreparably injured if Defendants are allowed to continue implementing the current  
8 Gallatin Forest Plan, and if they are allowed to implement the challenged timber sale.  
9 These are actual, concrete injuries caused by Defendants' failure to comply with  
10 mandatory duties under NFMA and NEPA. The requested relief would redress these  
11 injuries.  
12

13  
14 10. Defendant TOM TIDWELL is the Regional Forester of Region One of the U.S. Forest  
15 Service. In that capacity, he is the official responsible for issuing the final decisions that  
16 authorized the actions challenged in this Complaint, and is responsible for ensuring the  
17 project comply with the laws relating to management of public resources on the U.S.  
18 National Forests. He is sued in his official capacity.  
19

20 11. Defendant UNITED STATES FOREST SERVICE (Forest Service) is an agency of the United  
21 States Department of Agriculture, and is the federal agency primarily responsible for the  
22 lawful management of our national forests, including the Gallatin National Forest.  
23  
24

#### 25 IV. FACTUAL ALLEGATIONS

##### 26 A. Background

27  
28

1 12. The Gallatin National Forest (Forest) is located in the Rocky Mountains of southern  
2 Montana. The Forest is directly adjacent to the north and west boundary lines of  
3 Yellowstone National Park.  
4

5 13. Wildfire in the Forest “has played an integral role in shaping and perpetuating forest and  
6 range ecosystems . . . .” Specific roles of wildfire in the Forest include creating habitat  
7 for wildlife such as cavity-nesting birds, and accelerating soil decomposition in an arid  
8 environment.  
9

10 14. The Forest provides habitat for native elk herds, mule deer, moose, bighorn sheep,  
11 mountain goats, black bears, bald eagles, and grizzly bears. The Forest includes the  
12 headwaters of blue ribbon trout streams such as the Madison, Gallatin, and Yellowstone  
13 Rivers. Tributaries throughout the Forest provide spawning and rearing habitat for these  
14 downstream fisheries.  
15

16 15. In recognition of the ecological importance of the Forest, the Forest Service committed  
17 itself to protecting fish and wildlife. In 1990, the Forest Service entered into a settlement  
18 agreement with the Madison-Gallatin Chapter of Trout Unlimited. The agreement allows  
19 management activities near waterways “only for the purpose of meeting riparian  
20 dependent resource objectives such as watershed, wildlife, or fisheries. The agreement  
21 further dictated that “[t]imber harvest activities designed to meet timber management  
22 objectives will not be scheduled in riparian areas.” Additionally, in 1998, the Forest  
23 Service entered into an interagency agreement to conserve the Yellowstone cutthroat  
24 trout. It committed to “modify land use to provide the greatest degree of habitat and  
25 population protections.”  
26  
27  
28

1 **B. Ecology and Management History of the Project Area**

2 16. The analysis area for the Project is located on the west side of the Crazy Mountains,  
3 approximately 35 miles north of Livingston, Montana. This area is an isolated mountain  
4 range that is “visually spectacular,” “topographically dramatic,” and “has been the  
5 backdrop for Hollywood movies, such as ‘The Horse Whisperer.’”

7 17. Elevations in the area range from 5,800 feet to 8,500 feet. The topography varies from  
8 rolling hills to steep terrain with saddles and ridges. The area is predominately forested  
9 with Douglas-fir and lodgepole pine. Sites vary in moisture levels: the dominant cover  
10 type lodgepole pine and Douglas fir are found on the drier sites; Engelmann spruce and  
11 quaking aspen are found on the wetter sites. Grass and sagebrush meadows, as well as  
12 seeps, springs, fens, and willow carrs, are spread throughout the area.

14 18. This area naturally experiences stand-replacing wildfires that regenerate the forest. The  
15 area provides habitat for a number of wildlife species including songbirds, raptors, small  
16 mammals, forest carnivores, and big game animals. There is a concentrated elk migration  
17 in the area in the fall. Elk have summer habitat in and above the Project Area. Elk also  
18 use the area in the spring.

20 19. The area chosen for logging by the Project has been severely degraded by previous  
21 logging. One-third (4,800 acres) of the affected timber compartment has been clearcut.  
22 An additional 600 acres have also been previously logged. Evidence of past logging  
23 remains throughout the area: skid trails, piles of soil, temporary roads, landings, and  
24 depressions missing topsoil are common.

26 **A. Road Density and Elk Habitat**

- 1 20. The Smith Creek area has been “extensively roaded.” In the 25.1 square mile Smith  
2 Creek watershed, there are 53 miles of open roads (i.e. 2.11 miles of road per square  
3 mile).  
4
- 5 21. The current road density in the Smith Creek watershed renders the elk habitat in the area  
6 less than 50% effective. Even if elk habitat effectiveness is assessed at the larger Shields  
7 River Travel Planning Area, the habitat is still only 58% effective.
- 8 22. Until 2006, the Forest Plan required that the Forest Service maintain 70% elk habitat  
9 effectiveness in the Forest. This translates into less than or equal to 0.75 miles of road  
10 per square mile of land in each land area between 5,000 and 15, 000 acres. If a specific  
11 land area did not meet that standard, the Forest Service was required to close roads at the  
12 project analysis level in order to meet that standard.
- 13  
14 23. In 2006, the Forest Service permanently removed the elk habitat effectiveness standard  
15 from the Forest Plan so that the Forest Service no longer must comply with a mandatory  
16 minimum percent for elk habitat effectiveness. Despite its removal from the Forest Plan,  
17 the Forest Service acknowledges that the standard is still scientifically valid: “[i]t will  
18 remain an appropriate tool for analyzing the effects of proposed timber sales and road  
19 construction activities.”  
20  
21

### 22 **B. Sedimentation, Water Quality, and Fish Habitat**

- 23 24. Roads in the area are soft during the spring and fall and subject to “extreme rutting.” The  
24 roads have poor drainage, poor maintenance, and heavy use when wet.
- 25 25. Some of the previous logging has occurred along riparian corridors, which has created  
26 unstable bank and channel conditions. Riparian logging has also reduced the large woody  
27

1 debris available in streams; the reduction of this habitat component is the cause of all of  
2 the “primary physical habitat factors limiting fish populations” in Smith Creek and the  
3 East Fork.  
4

5 26. Sedimentation from roads has led to channel instability in some riparian areas. In  
6 particular, the main East Fork road #6635 and a private road “contribute significant  
7 sediment loads . . . .”

8 27. Even roads that are officially “closed” by the Forest Service are still used by motor  
9 vehicles.  
10

11 28. The legacy of degradation from past logging and road construction has created “sediment  
12 concerns” for the Forest Service. The upper segment of Shields River, into which Smith  
13 Creek drains, is listed by the Montana Department of Environmental Quality as an  
14 impaired stream under the Clean Water Act. The segment of the Shields River in the area  
15 is impaired primarily because of “upstream timber harvest.”  
16

17 29. Sediment levels in upper stem of Smith Creek are 27.3% above natural, and sediment  
18 levels in the East Fork of Smith Creek are 16.1% above natural.

19 30. There are “extremely high levels of silt” in the East Fork of Smith Creek.

20 31. Stream samples in the area in 2006 indicated “possible sediment impairment of all sites  
21 sampled” as evidenced by a lack of sediment-intolerant macroinvertebrates.  
22

23 32. Smith Creek is classified as a Category A stream, which means that the native  
24 Yellowstone cutthroat trout are present. The cutthroat trout in the area are “extremely  
25 important to conservation and recovery of the species” and the area is a “core  
26 conservation population.”  
27

1 33. A recent survey showed that only a few cutthroat trout remain in the area. The cutthroat  
2 trout is declining in part due to “habitat degradation due to roads and timber harvest.” .

3 34. Two HUC 7, streams in the area have “existing in-stream fine sediment levels [that]  
4 already exceed channel competence [] and levels approach [East Fork] or exceed [Smith  
5 Creek] in-stream sediment guidelines.” In these streams, fine sediment is approaching  
6 levels that “some studies found to severely limit reproduction” of Yellowstone cutthroat  
7 trout.  
8

### 9 **C. Soil Degradation**

10 35. Due to past logging, the Forest Service estimates that pre-existing detrimental soil  
11 disturbance exceeds regional standards on four proposed logging units : A1, 36 %; B, 17  
12 %; D, 26 %; and I, 22 %. These four units amount to 64 % (almost two-thirds) of the  
13 acreage proposed for commercial logging activities.  
14

15 36. The Forest Service does not know the actual extent of the soil degradation in the area, and  
16 plans to monitor soils on units with previous logging at some unspecified future time  
17 after the decision has already been approved but before Project implementation.  
18

### 19 **D. Old Growth Habitat**

20 37. The Forest Service does not know how much actual old growth habitat remains in the  
21 affected timber compartment. The Forest Service did not conduct old growth field  
22 inventories in the timber compartment. The old growth analysis is based upon satellite  
23 imagery and the TSMRS (Timber Stand Management Resource System) database. With  
24 this model, the Forest Service estimated that the compartment contains 21% potential old  
25 growth habitat.  
26  
27

- 1 38. The Forest Service does not disclose the limitations of relying on satellite imagery and  
2 the TSMRS database to estimate old growth habitat. In particular it did not note the  
3 accuracy of the potential habitat estimations, nor which necessary components of old  
4 growth habitat cannot be determined by reliance on broad stand data and satellite photos.  
5  
6 39. The Forest Service's own old growth protocol indicates that it is necessary to field-truth  
7 potential old growth in order to produce a valid estimate:

8 **Because of the great variation in old growth stand structures, no set of**  
9 **numbers can be relied upon to correctly classify every stand.** In  
10 addition, the uncertainties of sampling and statistics introduce another  
11 need for caution in using stand data. The minimum criteria in the "tables  
12 of old growth type characteristics" are meant to be used as a screening  
13 device to select stands that may be suitable for management as old growth,  
14 and the associated characteristics are meant to be used as a guideline to  
15 evaluate initially selected stands. They are also meant to serve as a  
16 common set of terms for old growth inventories. Most stands that meet  
17 minimum criteria will be suitable old growth, but there will also be some  
18 stands that meet minimum criteria that will not be suitable old growth, and  
19 some old growth may be overlooked. **Do not accept or reject a stand as**  
20 **old growth based on the numbers alone; use the numbers as a guide.**

- 21 40. A different old growth model analysis conducted by the Forest Service indicated that the  
22 Crazy Mountains may contain as low as 5% potential old growth habitat.

- 23 41. The Forest Plan old growth standard was promulgated over 20 years ago and does not  
24 comply with and has been invalidated by more recent Forest Service science. Reynolds et  
25 al (1992) states that the goshawk, an old-growth management indicator species on the  
26 Forest, requires 20% old growth habitat. The Forest Service explicitly recognized that its  
27 standard was inadequate 17 years ago.

#### 28 **E. Snag Habitat**

1 42. According to the EA, at least four of the proposed commercial logging units (constituting  
2 65.6 %, approximately two-thirds, of the proposed commercial logging acreage) currently  
3 violate Forest Plan snag habitat and coarse woody debris requirements. The Forest  
4 Service District Ranger acknowledged: “[f]rom observation noted while driving and  
5 walking throughout the analysis area, I would estimate that very few old logging units  
6 have what is the Gallatin National Forest’s Plan standard of 30 snags per 10 acres that are  
7 greater than 18' and are greater than 10" dbh.”

8  
9 43. The disclosure that the Forest Service is violating Forest Plan snag standards corresponds  
10 with earlier similar acknowledgments made by the Forest Service that snag management  
11 is a key issue and the Forest Service was not complying with Forest Plan snag standards.  
12

13 44. After publishing the EA, the Forest Service conducted snag surveys in four proposed  
14 logging units. The total area surveyed was 3 acres, which is less than one percent of the  
15 proposed logging units. The Forest Service extrapolated estimates for those four  
16 proposed units, ranging from four to six snags per acre. It concluded, contrary to the  
17 representation in the EA, that the proposed logging units met Forest Plan snag standards.  
18 The Forest Service did not provide estimates for the other five proposed logging units, or  
19 disclose the margin of error for the extrapolations. It did not discuss the express  
20 contradiction in the EA or supplement the EA with the new information. It did not  
21 explain why it could not conduct a complete inventory of all of the proposed logging  
22 units.  
23  
24

25 45. The Forest Service never disclosed the location of the previously designated snag habitat  
26 and replacement snag habitat in the old logging units in the area.  
27  
28

1 46. The Forest Plan snag standards were promulgated 15 years ago. They do not comply with  
2 and have been invalidated by a new Forest Service protocol: the Northern Region Snag  
3 Protocol (USDA Forest Service 2000).

4  
5 47. Despite repeated promises and recommendations, the Forest Service never appointed an  
6 indicator species for snag-dependent species.

#### 7 **F. Wildlife**

8 48. The Forest Service does not have population trend information for wildlife species forest-  
9 wide or in the area of the Project. The Forest Service previously admitted that its  
10 assessments of indicator species lacked data so that viability analyses were “mostly  
11 guesswork.” Similarly, the Forest Service admitted that its analyses of sensitive species  
12 were “hit-or-miss.”

13  
14 49. The only wildlife surveys conducted for the Project were 3 days of goshawk surveys over  
15 2 years. The Forest Service plans to assess the current wildlife situation after the decision  
16 has already been made, by “conduct[ing] further surveys within individual treatment units  
17 prior to beginning harvest activities.”

#### 18 **C. Purpose and Need for the Project**

19  
20 50. The Forest Service admits that much of the area naturally experiences stand-replacing  
21 wildfire, which may occur only once in hundreds of years. The Forest Service  
22 acknowledges: “Historically, large-scale, stand replacement fires wildfires was [sic] an  
23 important natural event that created and maintained habitats and their associated species  
24 assemblages.” .  
25  
26  
27  
28

- 1 51. The Forest Service states that the subalpine fir with lodgepole forest type may be within  
2 its range of variability in terms of wildfire occurrence. The Forest Service admits that  
3 aspen is a fire-dependent species with return intervals of 20 to 130 years.  
4
- 5 52. The Forest Service proposed the Smith Creek Project to lower “the intensity of potential  
6 wildfire behavior.” This is the “main concern” in the area.
- 7 53. More specifically, the Forest Service states that an objective of the Project is to “creat[e]  
8 a more defensible area in a Wildland Urban Interface . . . .” The Forest Service states that  
9 it can lower wildfire intensity by “breaking up the vertical and horizontal continuity of  
10 vegetation and fuel conditions in the portions of the WUI in closest proximity to  
11 residences, other structures, and primary transportation routes.”  
12
- 13 54. The Forest Service does not analyze the likelihood that lightening will actually strike one  
14 of the logged units during the time that the logging is purportedly effective at reducing the  
15 rate of fire spread (6 to 8 years).  
16
- 17 55. The Forest Service admits that the logging prescription will only reduce the likelihood of  
18 crown fire within the logged unit itself, and if a crown fire started in an adjacent area, it  
19 would continue as a crown fire in the logged unit.
- 20 56. The FS admits that a crown fire could still start in a logged unit if conditions were  
21 extremely windy or dry. Despite this recognition, and the recognition that global climate  
22 change could pose significant issues, the Forest Service did not address whether climate  
23 change-induced drought will render the logging treatments completely ineffective for  
24 their intended purpose.  
25  
26  
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28

1 57. The FS implies that the fuel treatments will “remain valid” for six to eight years. The FS  
2 did not address “future fuel reduction treatments needed to maintain post-treatment  
3 conditions.”  
4

5 58. The Forest Service admits that creating a 300 foot buffer around existing structures would  
6 protect them from wildfire: “[c]oncerns for the intensity and scale of changes to the  
7 current condition resulting from treatments in the Smith Creek WUI would be fully  
8 satisfied [by creating a 300 foot buffer around structure].” It states that the Project will  
9 “encompass[] the benefit” of such action “and much more.”  
10

11 59. The Forest Service does not cite to scientific support for its contention that logging in  
12 several patches throughout the Forest will protect the public more than if homeowners  
13 created defensible space around their homes.  
14

#### 15 **D. Project Implementation**

16 60. On December 18, 2007 Gallatin National Forest District Ranger Ron Archuleta signed a  
17 Decision Notice/Finding of No Significant Impact that authorized implementation of the  
18 Smith Creek Project. Plaintiffs filed administrative appeals on this Project and their  
19 appeals were denied.  
20

21 61. The Project is located completely within Timber Compartment 221, which is 14,487  
22 acres. The Project authorizes commercial logging or hand-thinning on 810 acres, and  
23 prescribed burning on an additional 300 acres. More specifically, the Project allows  
24 commercial logging on up to 692 acres in nine units: A1 (52 acres); B (165 acres); C  
25 (112 acres); D (125 acres); E1 (34 acres); E2 (50 acres); F (60 acres); G (28 acres); and I  
26 (66 acres).  
27  
28

1 62. The Forest Service estimates that logging will begin in Fall 2008/Winter 2009, and be  
2 completed within four to five years. The Forest Service does not predict when, if ever,  
3 restoration activities that are part of the project will be completed.  
4

5 63. The Project authorizes logging of large diameter green trees (live trees) as well as large  
6 diameter snags (dead trees). Logging of large trees will be permitted on at least 435  
7 acres. The Project does not place any diameter limit on logging.

8 64. The Forest Service estimates that Project implementation will eliminate 112 acres of old  
9 growth forest. The Forest Service concluded that logging old growth forest is not a  
10 significant issue, and declined to address the issue in the main body of the EA.  
11

12 65. The Project authorizes logging that the Forest Service “assume[s] [will] reduce available  
13 snags.”

14 66. The Project allows the reopening of formerly closed roads.

15 67. Using a computer model, the Forest Service estimated that the Project will eliminate 16%  
16 of the suitable nesting habitat in the area for the goshawk, an old growth indicator  
17 species.  
18

19 68. The Forest Service says that wolverines need to den in mature or old growth forest, and  
20 estimates that there are 504 acres of marginal wolverine denning habitat in the area. The  
21 Forest Service then directly contradicts itself by stating that there is no habitat for the  
22 wolverine in the area so none would be affected by logging. No further analysis is  
23 provided.  
24

25 69. The Forest Service states that the Project will reduce roosting habitat (in mature canopy  
26 cover) for the sensitive Townsend’s big-eared bat. It concludes without any citation or  
27

1 quantification that the roosting needs would be provided by other areas of the Forest, so  
2 the removal in the area is “not a limiting factor.”

3  
4 70. The Forest Service concluded that Project implementation would degrade 204 acres of  
5 potential habitat for the pine marten, an old growth indicator species.

6 71. The Forest Service concluded that the Project may temporarily displace elk, the big game  
7 indicator species. The Forest Service states that the Project will reduce hiding cover from  
8 an estimated 70-90% to 55 %. In direct contradiction of these disclosures, the Forest  
9 Service concluded that “[k]ey components such as cover [and] security areas . . . would  
10 remain unchanged with the proposed action . . . . None of the alternatives would result in  
11 adverse modification of big game or its associated habitat.”

12  
13 72. The Forest Service does not have population trend data for old growth indicator species in  
14 the timber compartment and admits its analysis does not “reflect a comprehensive  
15 assessment” of wildlife in the area. Nonetheless, it concluded that “[n]o species  
16 addressed would have significant impacts to their habitat.”

17  
18 73. The Forest Service did not designate snag habitat and snag replacement habitat for the  
19 new proposed logging units.

20 74. The Project authorizes logging in riparian areas in units A1, A2, and G. The logging may  
21 remove up to 50 % of the large trees in these areas right up to the stream, and there is no  
22 diameter limit on the logging. The FS admits that logging in riparian areas “could  
23 jeopardize large woody debris recruitment into streams or rivers. Additional sediment  
24 would reduce the quality of fisheries habitat and interfere with fish spawning.”  
25  
26  
27  
28

1 75. The proposed logging will cause an increase in stream sedimentation: 2.7 tons in Smith  
2 Creek at the East Fork confluence; 2.2 tons in the East Fork at the Smith Creek  
3 confluence; and 4.3 tons in Smith Creek at the Shields River confluence. The Forest  
4 Service did not disclose the stream sedimentation expected from log-hauling on the roads  
5 in the area.

7 76. Despite the adverse impacts of riparian logging, and the unknown amount of  
8 sedimentation that will result from log-hauling on the roads, the Forest Service concludes  
9 that there will be no impact from the Project on the sensitive Yellowstone cutthroat trout.  
10

11 77. The Forest Service estimates that proposed logging will increase detrimental soil  
12 disturbance 0 to 7.0 % in previously logged areas that already violate regional soil quality  
13 standards.

14 78. The Forest Service states that the proposed logging will only be in compliance with soil  
15 standards if “the soil protection BMPs are used and the specified restoration practices are  
16 carried out.” The Forest Service states that it will mitigate the soil degradation by placing  
17 coarse woody debris along old roads. The Forest Service admits that it does not know  
18 how effective this action will be: “there are no data to estimate quantitative measures of  
19 reduction.” It does not discuss how mitigation can ensure compliance with numeric  
20 standards when there is no numeric estimate on effectiveness. It also does not address the  
21 fact that mitigation is speculative because it is based upon unsecured funding.  
22

24 79. The Forest Service states that additional timber sales and livestock grazing in the area are  
25 reasonably foreseeable.

26 **E. Restoration and Mitigation**  
27

1 80. Because of poor road quality in the area, the Forest Service will conduct road restoration  
2 on Smith Creek Road #991 and East Fork of Smith Creek Road # 6635 (Treatment A).  
3 This restoration work is not part of the Smith Creek Project. The Forest Service intends  
4 for this work to be completed prior to implementation of the Project.  
5

6 81. The road restoration work referred to as Treatment B and Treatment C is included in the  
7 Smith Creek Project. The environmental effects of the Project are analyzed as if  
8 completion of these treatments is guaranteed. To the contrary, funding for these projects  
9 is speculative: the treatments will “be completed as funding allows.” The receipts are  
10 not expected even to cover the cost of the timber sale. Thus the road treatments will only  
11 “provide benefits to fishery habitat if sufficient funding is available whether from receipts  
12 generated from the harvested timber and other forest products or through other means.”  
13

14 82. The Forest Service proposes other “ecosystem restoration activities” as part of the Smith  
15 Creek Project, and the environmental effects of the Project are analyzed as if completion  
16 of these activities is guaranteed as well. These activities include woody debris placement  
17 on old skid trails (to rehabilitate soil quality); aspen fencing (to protect trees from grazing  
18 livestock and wildlife); and the placement of a toilet facility in a parking area. These  
19 activities are also dependent upon speculative funding. Specifically, the Forest Service  
20 states that fencing around aspen to prevent degradation from livestock grazing is  
21 “economically prohibitive” although it may be critical to regenerate the aspen.  
22

23  
24 83. The Forest Service proposes “thinning non-commercial small diameter products and slash  
25 removal” as part of the Project prescription. These activities are also dependent upon  
26 speculative funding.  
27

1 84. In summary, although the EA and DN/FONSI analyze the restoration and mitigation  
2 activities as if their implementation is guaranteed, in reality most of them are not likely to  
3 be completed because they are dependent on speculative funding.

4  
5 85. The Forest Service estimates that this project will lose money.

6 86. The Forest Service will have to raise over one-half of a million dollars (\$545,734.00) to  
7 complete the restoration work represented in the EA. The Forest Service does not  
8 disclose the likelihood of success in this endeavor.

9  
10 **V. CLAIMS FOR RELIEF**

11 **FIRST CLAIM FOR RELIEF**

12 **The Forest Service violated NEPA and NFMA because the Forest Service**  
13 **failed to conduct soil surveys in the proposed logging units, and even if its estimates are**  
14 **accurate the proposed logging units still violate regional soil quality standards.**

15 87. All previous paragraphs are incorporated by reference.

16 88. NFMA requires that agency actions “ensure that timber will be harvested from National  
17 Forest System lands only where [soil] will not be irreversibly damaged.” To implement  
18 this requirement, regional standards mandate that the Forest Service must abstain from  
19 logging in units that would result in more than 15% detrimental soil disturbance.

20 89. The Forest Service projects that at least four proposed logging units, or 64% of the  
21 acreage proposed for logging, exceed the 15% standard. The FS estimates that the  
22 proposed logging will add an additional 0 to 7.0 % disturbance to all of these areas.

23  
24 90. Although the Forest Service proposes to mitigate this damage, it admits that it does not  
25 know how effective the mitigation would be, and that the mitigation may not ever happen  
26 because it may not be funded.

1 91. The Forest Service's violation of the regional soil quality standards in these units, without  
2 ensurance that the degradation will be mitigated, renders the Project approval a violation  
3 of NFMA.

4  
5 92. Additionally, the Forest Service's plan to wait until after project approval to inventory the  
6 actual condition of soil in the proposed logging units is a violation of NEPA, because  
7 NEPA requires consideration of environmental impacts before a decision is made.

### 8 **SECOND CLAIM FOR RELIEF**

#### 9 **The Forest Service violated NFMA and NEPA by violating Forest Plan wildlife standards** 10 **in the Project Area and failing to take a hard look at the Project's effects on wildlife.**

11 93. All previous paragraphs are incorporated by reference.

12 94. The Forest Plan requires monitoring of population trends of old growth dependent  
13 species. The Forest Service has never monitored population trends of old growth  
14 indicator species. The Forest Service did not mitigate this failure with habitat monitoring  
15 because the Forest Service never conducted an old growth habitat inventory in the Project  
16 Area to demonstrate compliance with the Forest Plan old growth standard, and its model  
17 is unreliable to demonstrate such compliance.

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19  
20 95. The Forest Plan requires the designation and preservation of actual and replacement snag  
21 habitat in proposed logging units. The Forest Service did not conduct a snag inventory  
22 and designate retention and replacement snags in the proposed logging units. The Forest  
23 Service estimated that two-thirds of the area to be logged violated Forest Plan snag  
24 standards, and that the Project will continue to log snags. The Forest Service's later  
25 retraction of this admission is not credible.  
26

1 96. The Forest Plan set out standards to ensure the viability of big game species, including a  
2 requirement that specific elk habitat elements be mapped during each project level  
3 analysis. The Forest Service failed to map these elements and/or provide them to the  
4 public in the EA. The Project will reduce elk hiding cover to 55%, which violates that  
5 Forest Plan mandatory minimum of 66.6%. The original Forest Plan also required that  
6 the Forest Service maintain 70% elk effective cover. The Project Area violates that  
7 standard with less than 50% elk effective cover, and instead of closing roads to meet the  
8 standard, the Forest Service will reopen roads for log-hauling.

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10  
11 97. The Forest Plan requires that sensitive species habitat be managed to maintain sensitive  
12 species. The Forest Plan specifically lists the Yellowstone cutthroat trout as an example.  
13 Yellowstone cutthroat trout habitat in the Project Area is already significantly degraded  
14 from logging and road densities: only a few Yellowstone cutthroat trout remain in the  
15 area, and streams are approaching or exceeding sediment levels that “severely limit  
16 reproduction.” The Project will violate the requirement to maintain habitat for the  
17 Yellowstone cutthroat trout by adding sedimentation to streams from logging in riparian  
18 areas, increased road use, and the reopening of formerly closed roads.

19  
20 98. For all of the above stated reasons, the Forest Service’s approval of the Project violated  
21 NFMA because the Forest Service is violating its own Forest Plan standards for fish and  
22 wildlife protection. Because the Forest Service has also failed to do the requisite analyses  
23 to ensure Forest Plan compliance in many of these instances, the Forest Service’s  
24 approval of the Project also violates NEPA because the Forest Service failed to take a  
25 hard look at the Project’s effect on wildlife species.  
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1 **THIRD CLAIM FOR RELIEF**

2 **The Forest Service violated NFMA by implementing the Gallatin Forest Plan in this**  
3 **Project, because the Gallatin Forest Plan does not ensure species viability.**

4 99. All previous paragraphs are incorporated by reference.

5 100. The Forest Plan was created in 1987 and incorporated the 1982 NFMA implementing  
6 regulations. The Forest Plan states that the GNF should “[p]rovide habitat for viable  
7 populations of all indigenous wildlife species and for increasing populations of big game  
8 animals.”

9  
10 101. The Forest Plan previously included a standard limiting road density on the Forest in  
11 order to provide secure elk habitat. In 2006 the Forest Service eliminated that  
12 requirement from the Forest Plan. Although roads are recognized as the primary factor  
13 that degrades elk habitat, the Forest Plan now contains no limit on road density to protect  
14 and restore secure elk habitat.

15  
16 102. The Forest Plan snag habitat requirement is intended to satisfy the needs of snag-  
17 dependent wildlife species. The standard was adopted in 1993 as an amendment to the  
18 original Forest Plan. The standard has since been invalidated by the Northern Region  
19 Snag Protocol published by the Forest Service in 2000, yet it still remains the Forest Plan  
20 standard. Additionally, although recommended multiple times by its own scientists, the  
21 Forest Service has failed to designate an indicator species for snag-dependent wildlife  
22 species.  
23

24  
25 103. The Forest Plan designates the goshawk as an indicator species for old growth dependent  
26 species. The Forest Plan old growth habitat standards require retention of 10% old  
27

1 growth habitat. The Forest Service recognizes that more recent science indicates that the  
2 goshawk requires 20% old growth habitat.

3  
4 104. For the above-stated reasons, the Forest Plan -- as implemented by this Project – violates  
5 NFMA because it does not require the habitat necessary to sustain viable populations of  
6 elk, snag dependent, and old growth dependent wildlife species.

7 **FOURTH CLAIM FOR RELIEF**

8 **The Forest Service is violating NEPA because it failed to take a "hard look"**  
9 **at its policy of commercial logging for wildfire suppression, including a**  
10 **failure to consider how climate change affects the assumptions of that policy.**

11 105. All previous paragraphs are incorporated by reference.

12 106. The Forest Service presents the Project primarily as a means to reduce wildfire risk to  
13 residents in the Project Area.

14  
15 107. The Forest Service admits that stand-replacing fire is a necessary and natural process in  
16 the Project Area.

17 108. The Forest Service did not cite to a single scientific study that indicates that commercial  
18 logging in patches will reduce the chance of wildfire in the Project Area.

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20 109. The Forest Service admits that if weather conditions are dry and hot enough, a wildfire  
21 will still burn through the units even if they are logged. Nonetheless, the Forest Service  
22 declined to address whether drought conditions likely to result from global climate  
23 change renders its intended treatments obsolete.

24  
25 110. The Forest Service declined to address whether the logging was actually creating worse  
26 fire conditions.

1 111. For the above stated reasons, the Forest Service’s decision to implement its policy of  
2 logging for wildfire suppression in the Project Area violates NEPA because the Forest  
3 Service failed to take a hard look at the effectiveness and justification for this policy in  
4 light of the scientific evidence. The decision also violates the APA because it runs  
5 contrary to the evidence before the agency and the agency failed to consider the important  
6 factor of climate change.  
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9 **VI. REQUEST FOR RELIEF**

10 THEREFORE, Hapner respectfully requests that this Court:

- 11 A. Declare that the DN/FONSI violates NFMA because the Project violates regional soil  
12 quality standards;
- 13 B. Declare that the DN/FONSI violates NEPA because the Forest Service did not plan to  
14 survey soil conditions in the proposed logging units until after the decision was already  
15 made;
- 16 C. Declare that the DN/FONSI violates NFMA and NEPA because the Forest Service did  
17 not demonstrate compliance with Forest Plan requirement to monitor population trends of  
18 management indicator species;
- 19 D. Declare that the DN/FONSI violates NFMA and NEPA because the Forest Service did  
20 not demonstrate compliance with Forest Plan snag habitat standards;
- 21 E. Declare that the DN/FONSI violates NFMA and NEPA because the Forest Service did  
22 not demonstrate compliance with Forest Plan old growth habitat standards;
- 23 F. Declare that the DN/FONSI violates NFMA and NEPA because the Forest Service did  
24 not demonstrate compliance with Forest Plan elk habitat standards;
- 25 G. Declare that the DN/FONSI violates NFMA and NEPA because the Forest Service did  
26 not demonstrate compliance with the Forest Plan requirement to maintain habitat for the  
27 sensitive Yellowstone cutthroat trout;
- 28 H. Declare that the Gallatin Forest Plan violates NFMA because it is failing to ensure the  
viability of snag dependent species by failing to designate a management indicator  
species for those species;

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- I. Declare that the Gallatin Forest Plan snag habitat standard violates NFMA because it is based upon stale science invalidated by the Forest Service’s own scientists;
- J. Declare that the Gallatin Forest Plan old growth habitat standard violates NFMA because it is based upon stale science invalidated by the Forest Service’s own scientists;
- K. Declare that the Gallatin Forest Plan violates NFMA because it no longer contains any standard to ensure elk habitat effectiveness;
- L. Declare that the Forest Service’s implementation of commercial logging for wildfire suppression purposes violates NEPA because the Forest Service failed to take a hard look at the validity of this policy;
- M. Declare that the Forest Service must withdraw the Smith Creek Project, or alternatively complete a full environmental impact statement for the Project;
- N. Enjoin implementation of the Smith Creek Project, including the sale of the Smith Creek Project timber sales;
- O. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees under EAJA; and
- P. Grant Plaintiffs such further relief as may be just, proper, and equitable.

Respectfully submitted this 1st day of July, 2008.

/s/ Timothy Bechtold  
Timothy M. Bechtold