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6 Attorney for Plaintiffs

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

11
12 NATIVE ECOSYSTEMS COUNCIL,
13 and ALLIANCE FOR THE WILD
14 ROCKIES,

15 Plaintiffs,

16 vs.

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

22 Defendants.

CV-09-17-M-DWM

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

INTRODUCTION

1. This is a civil action for judicial review under the Administrative Procedure Act of the U.S. Forest Service’s April 18, 2008 Decision Notice/Finding of No Significant Impact approving the Lonesome Wood Vegetation Management Project in the Hebgen Lake Ranger District of the Gallatin National Forest. Plaintiffs Alliance for the Wild Rockies and Native Ecosystems Council attest that the final decision approving the Project is arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law.
2. The Decision Notice (DN) authorized 1572 acres of commercial logging and the construction of 5.1 miles of roads. Logging and road-building, including hundreds of acres of logging of old growth habitat, will occur in critical moose winter range, as well as in the Primary Conservation Area for the sensitive Yellowstone grizzly bear.
3. Defendants’ approval of the Project as written is a violation of the National Environmental Policy Act (NEPA), 42 U.S.C. 4331 *et seq.*, the National Forest Management Act (NFMA) 16 U.S.C. § 1600 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*
4. Plaintiffs seek declaratory and injunctive relief to protect Plaintiffs’ interests

1 at law, including their interests that the Forest Service comply with NEPA's
2 mandate to consider and disclose environmental impacts, comply with
3 NFMA's mandate to protect biodiversity, and mitigate harm and prevent
4 irreparable injury to the environment.
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7 5. Plaintiffs request that approval of the Project be set aside pursuant to 5
8 U.S.C. § 706(2)(A); and that the Court enjoin the Forest Service from
9 implementing this Project until Defendants comply fully with NEPA,
10 NFMA, and the APA.
11

12 6. Plaintiffs seek a declaratory judgment, injunctive relief, the award of costs
13 of suit, including attorney and expert witness fees pursuant to the Equal
14 Access to Justice Act, 28 U.S.C. § 2412, and such other relief as this Court
15 deems just and proper.
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17

18 **II. JURISDICTION**

19 7. This action arises under the laws of the United States and involves the
20 United States as a defendant. Therefore, this Court has subject matter
21 jurisdiction over the claims specified in this Complaint pursuant to 28
22 U.S.C. §§ 1331, 1346.
23
24

25 8. An actual controversy exists between Plaintiffs and Defendants. Plaintiffs
26 use and enjoy the Gallatin National Forest, including the Hebgen Lake
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1 Ranger District, for hiking, fishing, hunting, camping, photographing
2 scenery and wildlife, and engaging in other vocational, scientific, spiritual,
3 and recreational activities. Plaintiffs' members intend to continue to use and
4 enjoy the area frequently and on an ongoing basis in the future.
5

6
7 9. The aesthetic, recreational, scientific, spiritual, and educational interests of
8 Plaintiffs have been and will be adversely affected and irreparably injured if
9 Defendants implement the Project. These are actual, concrete injuries
10 caused by Defendants' failure to comply with mandatory duties under
11 NFMA, NEPA, and the APA. The requested relief would redress these
12 injuries and this Court has the authority to grant Plaintiffs' requested relief
13 under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.
14

15
16 10. Plaintiffs submitted extensive written comments concerning the Project,
17 have fully participated in the administrative review process, and have
18 exhausted administrative remedies. Defendants have declared that the
19 rejection of Plaintiffs' administrative appeals was the final administrative
20 action of the U.S. Department of Agriculture Forest Service. Thus the
21 challenged decision is final and subject to this Court's review under the
22 APA, 5 U.S.C. §§ 702, 704, and 706.
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III. VENUE

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3 11. Venue in this case is proper under 28 U.S.C. § 1391(e) and LR 3.3(a)(1).
4 Defendant Tidwell, an officer of the U.S. Forest Service with its Region
5 One office in Missoula, resides within the Missoula Division of the United
6 States District Court for the District of Montana, and is the principal
7 representative in this District of Defendant U.S. Forest Service (Forest
8 Service). The challenged decisions were upheld by the Regional Forester,
9 and are representative of official policies and procedures common to the
10 Northern Region.
11
12

IV. PARTIES

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15 12. Plaintiff NATIVE ECOSYSTEMS COUNCIL (Council) is a non-profit Montana
16 corporation with its principal place of business in Three Forks, Montana.
17 Native Ecosystems Council is dedicated to the conservation of natural
18 resources on public lands in the Northern Rockies. Its members use and
19 will continue to use the Gallatin National Forest for work and for outdoor
20 recreation of all kinds, including fishing, hunting, hiking, horseback riding,
21 and cross-country skiing. The Forest Service's unlawful actions adversely
22 affect Native Ecosystems Council's organizational interests, as well as its
23 members' use and enjoyment of the Gallatin National Forest, including the
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1 Project area. Native Ecosystems Council brings this action on its own
2 behalf and on behalf of its adversely affected members.
3

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

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23 14. Defendant TOM TIDWELL is the Regional Forester for the Northern Region
24 of the U.S. Forest Service, and in that capacity is charged with ultimate
25 responsibility for insuring that decisions made at the National Forest (unit)
26
27

1 level in the Northern Region are consistent with applicable laws,
2 regulations, and official policies and procedures.
3

- 4 15. Defendant UNITED STATES FOREST SERVICE is an administrative agency
5 within the U.S. Department of Agriculture, entrusted with the management
6 of our National Forests.
7

8 **V. PROCEDURAL BACKGROUND**

- 9
10 16. On April 18, 2008 William R. Queen, District Ranger of the Hebgen Lake
11 Ranger District of the Gallatin National Forest, signed the Decision
12 Notice/Finding of No Significant Impact (DN) approving the Lonesome
13 Wood Vegetation Management Project.
14

- 15 17. Plaintiffs Native Ecosystems Council and Alliance for the Wild Rockies
16 both filed timely administrative appeals of the DN in June 2008.
17

- 18 18. In July 2008, Appeal Deciding Officer Mary Erickson denied both of
19 Plaintiffs' administrative appeals, and stated that the decision constituted
20 the final administrative decision of the U.S. Department of Agriculture.
21

22 **VI. FACTUAL ALLEGATIONS**

23 **A. Description of Project Area**

- 24
25 19. The Lonesome Wood Project (Project) area is a 23,600 acre area located 12
26 miles west and north of West Yellowstone, Montana, along Hebgen Lake
27 Road and the west shore of Hebgen Lake, on the Hebgen Lake Ranger
28

1 District of the Gallatin National Forest.

2
3 20. The Project is located within the Greater Yellowstone Area (GYA), an
4 ecologically unique area of approximately 18 million acres with the
5 Yellowstone Plateau as its central core. The GYA includes the headwaters
6 of the Missouri-Mississippi, Snake-Columbia, and Green-Colorado river
7 systems. It also includes the Yellowstone Plateau, and 14 surrounding
8 mountain ranges. Elevations in the GYA range from 4,288 feet to 12,496
9 feet and average 8,038 feet.
10

11
12 21. The Project area is home to a variety of wildlife, including several species
13 listed under the Endangered Species Act (ESA), including the Canada lynx,
14 gray wolf, and – until recently – the Yellowstone grizzly bear.
15

16
17 22. The Project will occur in the Primary Conservation Area (formerly
18 identified as the Grizzly Bear Recovery Zone) for the Yellowstone grizzly
19 bear, within the Henry’s Lake #2 Bear Management Sub-unit. This area of
20 occupied grizzly bear habitat already has high road density, and was
21 identified in the Yellowstone Grizzly Bear Conservation Strategy as an area
22 needing a decrease in road density.
23

24
25 23. The Project is within Timber Compartments 709 and 710, an area
26 encompassing 32, 500 acres of forested and non-forested lands. Douglas-fir
27 makes up about 5% of the forested area of Project area, and the rest is a mix
28

1 of lodgepole pine, Engelman spruce, subalpine fir forest.

2
3 24. The Project is located in the Hebgen Lake Travel Planning Area and within
4 Management Areas (MA) 1, 5, 7, 13, and 15.

5 25. The Project area has already been logged and heavily roaded.

6
7 26. One of the five streams in the Project area, Watkins Creek, is already listed
8 as a 303(d) impaired stream under the Clean Water Act, in part due to
9 siltation from previous logging activities.
10

11 27. Previous logging activities have eliminated 2300 acres of moose winter
12 range in the Project area. The Forest Service admitted that this logging “has
13 likely been a factor in the moose population declines observed in the
14 analysis area.”
15

16 28. Compartment 709 has 21% of its forested acreage in designated old growth
17 habitat.
18

19 **B. Description of Project**
20

21 29. The Project authorized 1572 acres of commercial logging and the
22 construction of 5.1 miles of roads. (3.7 miles of new “temporary” road, and
23 the “reconstruction” of 1.4 miles of former roads where vegetation has
24 regrown).
25

26 30. The commercial logging authorized by the Project includes the logging of
27 422 acres of old growth habitat.
28

1 31. Outside of the commercial logging units, the Project authorized 440 acres of
2 broadcast (prescribed) burning and 835 acres of small tree thinning.
3

4 32. The Forest Service estimated that the Project will take 8 - 12 years to
5 implement.
6

7 33. The commercial thinning treatment will remove 50 - 60% of the trees per
8 acre, as well as creating some small clearcuts (3 acres in size or less). Large
9 old trees over 20 inches dbh will be logged, but small trees under 6 inches
10 dhh will not be removed in the commercial logging units.
11

12 34. The Project also authorized logging 80-90% of the trees if “heavily
13 diseased.”
14

15 35. The logging method authorized for the commercial thinning acres is
16 primarily ground-based.
17

18 36. The Forest Service stated that the Project’s “objectives are to lower the risk
19 of crown fire initiation, spread and fire severity by reducing the amount of
20 dead and down fuel loadings and by reducing tight canopy closure in tree
21 crowns and ladder fuels.” Additionally one of the stated “purposes” is
22 “reduced wildland fire risk.”
23
24

25 37. The Forest Service claimed that the “desired change in fire behavior is not
26 possible without removal of large trees in most of the treatment units,” and
27 therefore the logging prescription for the Project emphasizes the logging of
28

1 “overstory (older and larger) trees).”

2
3 38. The Forest Service stated that “[i]mplementation will reduce the wildland
4 fire risk to life and property in the WUI,” and that the Project “treatments
5 will reduce fire behavior.”

6
7 39. The Forest Service admitted that it does not have the funds necessary to
8 implement the mitigation/restoration activities proposed in the Project,
9 including the following activities: (1) thinning and hand-piling sub-
10 merchantable trees in commercial logging units; (2) thinning and piling
11 non-commercial units; (3) burning hand piles; (4) prescribed burning; (5)
12 obliterating the road at the end of Clark Springs; (6) creation of an
13 emergency vehicle turnabout near Rumbaugh and Romset summer homes;
14 (7) placement of rock barriers in Spring and Cherry Creek Campgrounds
15 along the lakeshore; (8) repair/placement of culverts in Trapper and Watkins
16 Creeks; and (9) noxious weed spraying along roads 2013 - 2017.
17
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19
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21 **C. Description of Project NEPA Analysis**

22 40. The NEPA analysis for the Project does not include a cumulative impact
23 analysis of the effect of implementation of the Forest Service’s
24 interpretation of Gallatin Forest Plan Amendment 27 (A27). A27 is also
25 referred to as the “Forest Plan Amendment for Grizzly Bear Habitat
26 Conservation for the Greater Yellowstone Area National Forests” and was
27
28

1 one of the primary elements of the Final Conservation Strategy for the
2 Grizzly Bear in the Greater Yellowstone Area (Conservation Strategy), as
3 well as one of the only legally enforceable elements.
4

5 41. A27 sets forth a standard to restrict road construction within secure habitat
6 within the grizzly bear PCA. Only 73% of the acreage of the Gallatin
7 National Forest within the PCA qualifies as secure habitat under A27.
8 Thus, A27 does not provide any habitat protection to the 222,000 acres of
9 the Gallatin National Forest within the PCA that do not qualify as secure
10 habitat.
11

12
13
14 42. The Project is located within the 97,900 acre grizzly bear management sub-
15 unit called "Henry's Lake 2." Only 45.7% of Henry's Lake #2 qualifies as
16 A27 secure habitat. Thus, 54.3% – 53,160 acres – of the affected sub-unit
17 receives no habitat protection from A27.
18

19 43. The U.S. Fish & Wildlife Service relied upon the measures described in the
20 Conservation Strategy in order to justify removing the Yellowstone grizzly
21 bear from the ESA.
22

23
24 44. The Conservation Strategy stated that Henry's Lake #2 was one of three
25 grizzly bear management sub-units that had too many roads and needed
26 improvement. The Conservation Strategy expected that the Forest Service
27 would take action to reduce road density in that sub-unit.
28

1 45. The Forest Service is now interpreting A27 to have removed an access
2 standard found in Amendment 19 (A19) of the Gallatin Forest Plan, which
3 prohibited any increase in total motorized access route density (TMARD)
4 within the PCA. Thus, the Forest Service asserts that it may authorize the
5 construction of over five miles of roads in the Project area, even though the
6 Forest Service admits that this road-building will increase TMARD within
7 the PCA.
8

9
10
11 46. There is no discussion anywhere in the record of the cumulative effects of
12 this interpretation of A27. There is no analysis of the impact of allowing
13 *more* roads in one of three grizzly bear management sub-units that are most
14 in need of *less* roads. Nor is there any analysis of the cumulative impact of
15 allowing unlimited road-building within the PCA on the 222,000 acres of
16 Gallatin National Forest that do not qualify as A27 secure habitat.
17

18
19 47. There is no discussion in the EA of the impact of the long duration of the
20 Project (8 to 12 consecutive years) on grizzly bears, in terms of providing
21 long-lasting “temporary” road access for hunters into occupied grizzly bear
22 habitat, nor in terms of causing repetitive seasonal displacement over more
23 than a decade.
24

25
26 48. Neither the EA nor the DN indicates that the recontouring of all of the
27 temporary roads (including new roads in secure grizzly bear habitat) will be
28

1 funded.

2
3 49. There is no record that the Forest Service consulted with the Montana
4 Department of Fish, Wildlife, and Parks (FWP) regarding the likely impacts
5 of the Project on the grizzly bear. FWP is the state agency charged with
6 managing Yellowstone grizzly bears post-ESA delisting, and the Project
7 authorized more than five miles of road construction in the Primary
8 Conservation Area for the grizzly bear.
9

10
11 50. The Forest Service stated that seven proposed logging units have been
12 previously logged, but the Forest Service did not disclose the percentage of
13 pre-existing detrimental soil disturbance in these units. These detrimental
14 disturbance percentages were not disclosed to the public in the EA, nor is
15 there a reference in the EA that indicates where that information can be
16 found. A review of the Project File indicated that these detrimental
17 disturbance percentages by unit were never calculated.
18

19
20
21 51. The Forest Service did not disclose the expected percentage of detrimental
22 soil disturbance for each unit after logging and before mitigation. These
23 detrimental disturbance estimates were not disclosed to the public in the EA,
24 nor is there a reference in the EA that indicates where that information can
25 be found. A review of the Project File indicated that these detrimental
26 disturbance estimates by unit were never calculated.
27
28

1 52. The Forest Service did not disclose the expected percentage of detrimental
2 soil disturbance for each unit after logging and mitigation. These
3 detrimental disturbance estimates were not disclosed to the public in the EA,
4 nor is there a reference in the EA that indicates where that information can
5 be found. A review of the Project File indicated that these detrimental
6 disturbance estimates by unit were never calculated.

7
8
9 53. The Forest Service did not disclose population trends of its management
10 indicator species in the EA, nor did it reference in the EA where the data
11 and findings are located that document those population trends. A review of
12 the Project File indicated that the Forest Service in fact has not monitored
13 population trends of its management indicator species on the Gallatin
14 National Forest.

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16
17
18 54. The Forest Service did not address the best available science on goshawk
19 population trends in the Greater Yellowstone Area. The only published and
20 peer-reviewed scientific report on goshawk viability in the Greater
21 Yellowstone Area is Patla (2005), Monitoring Results of Northern Goshawk
22 Nesting Areas in the Greater Yellowstone Ecosystem: Is Decline in
23 Occupancy Related to Habitat Change? J. Raptor Res. 39(3):324-334. This
24 report found declining populations of goshawks in the area, and speculated
25 that the declines could be caused by the logging of older forests in the area.
26
27
28

1 55. The Project focuses on logging mature forest and large old trees, including
2 commercial logging in over 400 acres of designated old growth forest.
3

4 56. The Forest Service concluded that goshawk populations are healthy and that
5 the Project would have no effect on the goshawk, but its analysis completely
6 failed to address the responsible and opposing scientific view in Patla
7 (2005) that contradicts its unverified assumptions regarding goshawk
8 viability.
9

10
11 57. The discussion in the EA failed to disclose the scientific uncertainty of the
12 efficacy of logging to reduce wildfire risk. The Forest Service presented
13 that management theory as uncontroversial, and in doing so completely
14 failed to discuss the responsible and opposing scientific viewpoint
15 expressed in a growing body of scientific literature that finds that
16 commercial logging, especially the logging of large diameter trees, does not
17 reduce wildfire risk.
18
19
20

21 **D. Environmental Impacts of the Project**
22

23 **1. Grizzly bear**

24 58. From 1975 to March 29, 2007, grizzly bears in the Greater Yellowstone
25 Area were listed as a threatened species under the Endangered Species Act.
26
27 As the Forest Service has admitted:
28

1 Grizzly bears in the lower 48 states occupy less than 2 percent of
2 their historic range. Habitat loss and uncontrolled human-caused
3 mortality have been the primary reasons for the elimination of
4 bears from much of their former range. How and where bears use
5 existing habitat is primarily a function of available foods
6 moderated or precluded by the presence of humans. Management
7 of human activities in grizzly bear habitat is key for long-term
8 sustainability of grizzly bear populations.

9 59. The Forest Service has admitted the importance of limiting road density in
10 grizzly bear habitat:

11 The management of human use levels through access
12 route management is one of the most powerful tools
13 available to balance the needs of grizzly bears with the
14 needs and activities of humans. It has been documented
15 in several research projects, completed and ongoing, that
16 unregulated human access and development within
17 grizzly bear habitat can contribute to increased bear
18 mortality and affect bear use of existing habitat.

19 The Forest Service has further explained that the reason that motorized
20 access into grizzly bear habitat is a primary factor that leads to grizzly bear
21 mortality is because it facilitates human-grizzly interactions that lead to
22 bears being killed by people. Motorized access also harms bears by
23 displacing them from preferred foraging or denning habitat, increasing their
24 tolerance to humans (often leading to mortality), or attracting bears to
25 human food sources (also often leading to mortality).

26
27 60. The Project authorized over 5 miles of road construction, including some
28

1 new roads in designated secure habitat. The Forest Service admitted that
2 the road-building and associated logging activities could displace grizzly
3 bears.
4

5 61. The Forest Service concluded that grizzly bear displacement would not be
6 significant because the bears could relocate to adjacent areas.
7

8 **B. Moose**

9 62. Moose are an ecologically unique native species on the Gallatin National
10 Forest and the Forest Service admitted that the effect of the Project on
11 moose winter habitat is a “significant issue.”
12

13 63. The moose population trend in the area is “significantly downward”
14 according to the Montana Department of Fish, Wildlife, and Parks.
15

16 64. The Forest Service admitted that winter is a “critical time of year for
17 moose.” Moose need dense forest in the winter and generally use lodgepole
18 pine forests: the Forest Service admitted that “older lodgepole pine stands
19 are among the most important wintering areas.”
20

21 65. Moose do not use winter stands less than 100 years old, and prefer stands
22 over 300 years old.
23

24 66. There are 1760 acres of current moose winter range in the Project area. All
25 the logging units except Unit 30b, 30a, 31, and 32 are in moose winter
26 range.
27
28

1 67. The logging authorized by the Project will remove 9% of the remaining
2 moose winter range in the area and leave only 1610 acres of moose winter
3 range, which is less than 40% of the moose winter range that used to exist in
4 the area before it was eliminated by logging. Forest Service science dictates
5 that at least 40% of potential habitat must be conserved to ensure a
6 minimum viable population.
7

8
9 68. The Forest Service admitted that the Project will cause “adverse effects to
10 late winter moose habitat.”
11

12 69. Additionally, the Montana Department of Fish, Wildlife, and Parks agreed
13 with the Forest Service that the Project would “likely exacerbate [the]
14 current downward trend” in the moose population in the area.
15

16 **VII. CLAIMS FOR RELIEF**

17 **FIRST CLAIM FOR RELIEF**

18
19 The Forest Service violated either NFMA or NEPA because the Project authorizes
20 new roads in the Primary Conservation Area for the Yellowstone grizzly bear, and
21 the Forest Service did not take a hard look at cumulative impacts of allowing those
22 new roads.

23 70. All above paragraphs are incorporated by reference.

24 71. Amendment 19 to the Gallatin Forest Plan prohibits any increase in total
25 motorized access route density (TMARD) in the Primary Conservation
26 Area.
27

1 72. Amendment 19 was not removed by Amendment 27.

2 73. A violation of a Forest Plan is a violation of NFMA.

3
4 74. The Project authorized the construction of over 5 miles of road in the
5 Primary Conservation Area, which will increase TMARD. This renders the
6 Project in violation of the Forest Plan, and thus a violation of NFMA.

7
8 75. Alternatively, if Amendment 19 was removed by Amendment 27, the Forest
9 Service failed to address the cumulative impact of removing the
10 Amendment 19 access standard and allowing increases in TMARD over
11 222,000 acres of the Primary Conservation Area in the Gallatin National
12 Forest. This failure violates NEPA's requirement that agencies consider the
13 cumulative impacts of their actions.
14
15
16

17 **SECOND CLAIM FOR RELIEF**

18 The Forest Service violated NFMA because the Project will eliminate critical
19 moose winter range.

20
21 76. All above paragraphs are incorporated by reference.

22
23 77. The Gallatin Forest Plan requires that "big game winter range will be
24 managed to meet the forage and cover needs of . . . moose . . ."

25
26 78. A violation of a Forest Plan is a violation of NFMA.

27 79. The Forest Service must ensure the viability of all native wildlife species.
28

1 80. The Project will eliminate scarce and critical winter range for moose, and
2 likely exacerbate the significant downward population trend in the area.
3

4 81. The Project's elimination of moose winter range habitat violates the Forest
5 Plan's requirement to manage winter range to meet the needs of moose.
6
7 Additionally, the fact that the Project will exacerbate an already significant
8 downward population trend violates NFMA because the Forest Service is
9 failing to ensure a viable moose population in the area.
10

11 **THIRD CLAIM FOR RELIEF**

12 The Forest Service is violating NFMA because it is not meeting its Forest Plan old
13 growth standard and is not monitoring population trends of old growth indicator
14 species.

15 82. All above paragraphs are incorporated by reference.

16 83. The Forest Plan requires that the Forest Service maintain 30% old growth
17 habitat in the timber compartments affected by the Project.
18

19 84. The Forest Plan requires that the Forest Service monitor populations of its
20 old growth indicator species, the goshawk and the pine marten.
21

22 85. The Ninth Circuit Court of Appeals holds the Forest Service may only
23 abdicate its responsibility to monitor population trends of old growth
24 indicator species if it is meeting its Forest Plan old growth standard. If the
25 Forest Service is failing to meet its old growth standard, and has not
26 monitored population trends of management indicator species, it is violating
27
28

1 NFMA by failing to ensure the viability of old growth dependent species.

2
3 86. One of the timber compartments affected by the Project is Compartment
4 709. This timber compartment has only 21% of forested lands in old growth
5 habitat, and 14 % of all lands in old growth habitat.

6
7 87. The Forest Service's failure to meet the 30% Forest Plan old growth
8 standard in Compartment 709, and its concurrent failure to monitor
9 population trends of old growth indicator species, violates NFMA because it
10 is failing to ensure the viability of old growth dependent species.
11

12 **FOURTH CLAIM FOR RELIEF**

13
14 The Forest Service violated NEPA and NFMA because it failed to discuss Patla
15 (2005) in its analysis of the Project's effects on the goshawk.

16 88. All above paragraphs are incorporated by reference.

17 89. NFMA regulations require the Forest Service to take into account the best
18 available science.
19

20 90. NEPA requires that the Forest Service consider responsible opposing
21 scientific viewpoints.
22

23 91. Patla (2005) is the only published, peer-reviewed study that has monitored
24 goshawk populations in the Greater Yellowstone Area. The study found
25 declining populations, and suggested that population declines have been
26 caused by logging mature/old growth forests.
27
28

1 92. In the EA and DN, the Forest Service concluded that goshawk populations
2 and habitat availability are sufficient for goshawk viability, and that the
3 logging of mature and old growth forest authorized by the Project would
4 have no effect on the goshawk. This analysis did not consider the contrary
5 evidence and conclusions expressed in Patla (2005).
6
7

8 93. The Forest Service's failure to discuss Patla (2005) in its analysis of the
9 Project's effects on the goshawk violated NFMA's mandate that the Forest
10 Service take into account the best available science, as well as NEPA's
11 mandate that the Forest Service consider responsible opposing scientific
12 viewpoints.
13
14
15

16 **FIFTH CLAIM FOR RELIEF**

17 The Forest Service violated NEPA because it failed to discuss studies that have
18 found that commercial logging does not reduce wildfire risk.

19 94. All above paragraphs are incorporated by reference.
20

21 95. NEPA requires that the Forest Service consider responsible opposing
22 scientific viewpoints and take a hard look at the impact of its actions.
23

24 96. Numerous studies suggest that commercial logging, especially logging of
25 mature forest with large old trees, will exacerbate –not reduce – wildfire
26 risk.
27

28 97. The Forest Service stated that the logging authorized by the Project,

1 including the logging of large trees in mature and old growth habitat, will
2 reduce wildfire risk. The Forest Service failed to consider the responsible
3 opposing scientific viewpoints that contradict this conclusion.
4

5 98. The Forest Service's failure to consider the scientific reports that undermine
6 its conclusion regarding the efficacy of using commercial logging to reduce
7 wildfire risk violated NEPA's requirement that the Forest Service consider
8 responsible opposing scientific viewpoints, and violated NEPA's
9 requirement that the Forest Service take a hard look at the impact of its
10 actions.
11
12

13 **SIXTH CLAIM FOR RELIEF**

14
15 The Forest Service violated NEPA and NFMA because it did not determine and
16 disclose detrimental soil disturbance percentages for proposed logging units.

17 99. All above paragraphs are incorporated by reference.

18
19 100. NFMA requires that agency actions "ensure that timber will be harvested
20 from National Forest System lands only where [soil] will not be irreversibly
21 damaged." To implement this requirement, regional standards mandate that
22 the Forest Service must abstain from logging that would result in more than
23 15% detrimental soil disturbance in a logging unit.
24

25
26 101. NEPA requires that the Forest Service disclose the data and analyses
27 underlying its conclusions, and requires that the Forest Service take a "hard
28

1 look” at the environmental effects of its actions.

2
3 102. The Forest Service did not disclose – or even determine – the percentages
4 of detrimental soil disturbance for each proposed logging unit. Without this
5 information it is impossible to determine whether the Forest Service is
6
7 complying with its regional soil quality standards.

8 103. The Forest Service’s failure to determine and disclose detrimental soil
9 disturbance percentages in proposed logging units violates NEPA’s mandate
10 that the Forest Service disclose underlying data and analysis, NEPA’s hard
11 look requirement, and NFMA’s mandate to protect soil quality.
12
13

14
15 **VII. REQUEST FOR RELIEF**

16 For all of the above-stated reasons, Plaintiffs respectfully request that this Court:

17 A. Declare that the Project violates Forest Plan Amendment 19, or alternatively
18 that the Forest Service violated its NEPA duty to consider the cumulative
19 impacts of building new roads on 222,000 acres of land within the Primary
20 Conservation Area for the grizzly bear;
21

22
23 B. Declare that the Project violates the Forest Plan protection of moose winter
24 range and violates the NFMA/Forest Plan mandate to ensure viable moose
25 populations;
26

27 C. Declare that the Project violates the NFMA/Forest Plan mandate to ensure
28

1 viable populations of old growth dependent species;

2
3 D. Declare that the Project violates NEPA's requirement to consider opposing
4 science and take a hard look at environmental impacts regarding the Patla
5 (2005) study and the studies that find that logging will not reduce fire risk;

6
7 E. Declare that the Forest Service violated NFMA and NEPA by failing to
8 determine and disclose detrimental soil disturbance percentages for logging
9 units;

10
11 F. Declare that the Forest Service must complete an Environmental Impact
12 Assessment to fill the above-noted information gaps, and address the above-
13 noted scientific uncertainties and controversies;

14
15 G. Enjoin the sale of the Project units and the logging authorized by the
16 Project;

17
18 H. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable
19 attorney fees under EAJA; and

20
21 I. Grant Plaintiffs such further relief as may be just, proper, and equitable.

22
23 DATED this 30th day of January, 2009.

24 /s/ Rebecca K. Smith
25 Rebecca K. Smith

26 Attorney for Plaintiffs
27
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