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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

SIERRA CLUB, ENVIRONMENTAL PROTECTION )  
INFORMATION CENTER, CALIFORNIA )  
WILDERNESS COALITION, KLAMATH FOREST )  
ALLIANCE, CENTER FOR BIOLOGICAL DIVERSITY, )  
KLAMATH-SISKIYOU WILDLANDS CENTER, and )  
FOREST CONSERVATION COUNCIL, )

Plaintiffs, )

v. )

DALE BOSWORTH, in his official capacity as Chief of )  
the United States Forest Service, and UNITED STATES )  
FOREST SERVICE, an agency of the Unites States )  
Department of Agriculture, )

Defendants. )

Case No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is a civil action for declaratory and injunctive relief. Plaintiffs seek a declaration that defendants violated federal laws in developing and approving the Fuels Reduction for Community Protection, Phase 1 post-fire logging project (hereinafter, Phase 1

logging project ) on the Lower Trinity Ranger District of the Six Rivers National Forest.

Plaintiffs also seek injunctive relief to redress the injuries caused by these violations of law.

2. Should plaintiffs prevail, plaintiffs will seek an award of costs and attorneys fees pursuant to the Equal Access to Justice Act, 28 U.S.C./2412.

### **JURISDICTION**

3. Jurisdiction is proper in this Court under 28 U.S.C./1331 and 28 U.S.C./1346, because this action involves the United States as a defendant, and it arises under the laws of the United States, including the Administrative Procedure Act ( APA ), 5 U.S.C./701 et seq.; the National Environmental Policy Act ( NEPA ), 42 U.S.C./4321 et seq.; and the National Forest Management Act ( NFMA ), 16 U.S.C./1600 et seq. An actual, justiciable controversy exists between plaintiffs and defendants. The requested relief is proper under 28 U.S.C./2201 & 2202, and 5 U.S.C./705 & 706.

4. Defendants have exempted this project from the automatic stay provision of 36 C.F.R./215.10(d) by determining that an emergency situation exists. As a result, logging and road construction may commence immediately, before any administrative appeals have been received, considered, or resolved. Any available administrative remedies have therefore been exhausted. 7 U.S.C./6914(e). The challenged agency action is final and subject to this Court s review under 5 U.S.C./702, 704, and 706.

### **VENUE AND INTRADISTRICT ASSIGNMENT**

5. Venue is proper in this Court pursuant to 28 U.S.C./1391(e). Plaintiffs Sierra Club, Environmental Protection Information Center, and California Wilderness Coalition each have offices, employees, and members located and residing within the district. The Phase 1 logging project is located on the Lower Trinity Ranger District of the Six Rivers National Forest, which is proposed for parts of Humboldt County, within this Court s district. The Six Rivers National Forest has its main office in Eureka, California, which is within this Court s district. Assignment is proper in this district and division. L.R. 3-2(d), 3-5(b). The Six Rivers National

Forest is headquartered in Humboldt County, and plaintiffs have offices and members in Humboldt and San Francisco Counties. Id.

### **PARTIES**

6. Plaintiff SIERRA CLUB is a national nonprofit organization of over 700,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Redwoods Chapter of the Sierra Club has over 9,000 members. The Sierra Club brings this action on behalf of itself and its members.

7. Plaintiff ENVIRONMENTAL PROTECTION INFORMATION CENTER (EPIC) is a non-profit corporation dedicated to the preservation, protection, and restoration of biodiversity, native species, watersheds and natural ecosystems in northern California. EPIC has over 3,000 members, many of whom reside within the watersheds that flow through the Six Rivers National Forest. EPIC maintains its offices in Humboldt County, California.

8. Plaintiff CALIFORNIA WILDERNESS COALITION defends the pristine landscapes that make California unique, provide a home to our wildlife, and preserve a place for spiritual renewal. The California Wilderness Coalition protects wilderness for its own sake, for ourselves, and for generations yet to come. The Coalition identifies and protects the habitat necessary for the long-term survival of California's plants and animals. Since 1976, through advocacy and public education, the Coalition has enlisted the support of citizens and policy-makers in its efforts to preserve California's wildlands.

9. Plaintiff KLAMATH FOREST ALLIANCE is dedicated to promoting sustainable ecosystems and sustainable communities within the Klamath Mountains (SW Oregon and NW California), the Klamath River Basin, the Southern Cascade Range, and the Modoc Plateau. The Alliance's Forest Protection Program focuses on logging and road building

practices, protection of roadless lands and key wildlife habitats, enforcement of Clean Water Act provisions including non-degradation, wilderness and wild and scenic rivers legislation, forest roads, fire suppression and fire risk reduction, tougher logging rules, and better enforcement of these rules in order to protect and restore salmon and steelhead fisheries. The Alliance's home office is in Etna, California.

10. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit corporation with over 5,000 members, and offices in San Diego and Berkeley, California, Tucson and Phoenix, Arizona, Shaw Island, Washington, and Silver City, New Mexico. The Center for Biological Diversity is dedicated to the preservation, protection, and restoration of biological diversity, native species and ecosystems in the Western United States and elsewhere. The Center for Biological Diversity protects endangered species and wild places of western North America and the Pacific through science, policy, education, and environmental law.

11. Plaintiff KLAMATH-SISKIYOU WILDLANDS CENTER (KS Wild) is a 501(c)(3) Oregon nonprofit corporation dedicated to the preservation and restoration of biological diversity in the Klamath-Siskiyou region of southwest Oregon and northern California. KS Wild frequently files citizen suits to stop activities that violate local, state, or federal environmental laws and cause harm to the environment. KS Wild's area of interest includes the Trinity River basin in Trinity and Humboldt Counties, California. KS Wild brings this action on its own behalf and on behalf of its adversely affected members and staff.

12. Plaintiff FOREST CONSERVATION COUNCIL's mission is to protect and restore the native biological diversity of forests and woodlands throughout the United States. FCC believes that the vast array of services provided by healthy forest ecosystems are vital components of sustainable economics, and essential for the survival of countless species of fish, wildlife, and plants. FCC accomplishes its mission through public education, political advocacy, research, conservation planning, litigation, and organizing. FCC's Western Regional Office is located in Santa Fe, New Mexico. FCC currently has over 2000 individual and active members,

and 500 business and organizational members throughout the United States, including several active members in southern Oregon and northern California that use and enjoy the project area.

13. Plaintiffs members use and enjoy the Six Rivers National Forest, including the Lower Trinity Ranger District, for hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, and recreational activities. Plaintiffs members derive recreational, inspirational, religious, scientific, educational, and aesthetic benefit from their activities within this national forest. Plaintiffs members intend to continue to use and enjoy this national forest frequently and on an ongoing basis in the future, including this summer.

14. The aesthetic, recreational, scientific, educational and religious interests of plaintiffs members has been and will be adversely affected and irreparably injured if defendants proceed to further implement the Fuels Reduction for Community Protection, Phase 1, logging project. These are actual, concrete injuries caused by defendant s failure to comply with mandatory duties under NEPA, NFMA, and the APA. The injuries would be redressed by the relief sought.

15. Plaintiffs and their members submitted extensive, written comments concerning the Fuels Reduction for Community Protection, Phase 1, logging project. Reviewable final agency action exists that is subject to this Court s review under 5 U.S.C.//702 & 704.

16. Defendant DALE BOSWORTH is the Chief of the United States Forest Service and is sued in this official capacity.

17. Defendant UNITED STATES FOREST SERVICE is responsible for the lawful management of the national forests, including the Six Rivers National Forest.

#### **SUMMARY OF FACTS AND GENERAL ALLEGATIONS**

18. The Six Rivers National Forest and Shasta-Trinity National Forest are located adjacent to one another in Northwest California.

19. For the past 80 years, the Forest Service has engaged in aggressive fire suppression on the Six Rivers and Shasta-Trinity National Forests.

20. On August 23, 1999, a lightning storm ignited a number of wildfires on the Big Bar Ranger District of the Shasta-Trinity National Forest. The wildfires, known as the Big Bar Complex Fires, included three main fires: Onion, Fawn, and Megram. On September 19, 1999, the Megram and Fawn Fires burned together and became known as the Megram Fire. The wildfires eventually spread through significant portions of the Six Rivers National Forest, the Shasta-Trinity National Forests, and the Hoopa Valley Indian Reservation.

21. The Forest Service attempted to contain the 1999 Big Bar wildfires through various fire-fighting and fire-suppression techniques. Based on the information that plaintiffs have been able to obtain, bulldozers were used to construct roughly 50 miles of firelines, ranging from approximately 12 to 50 feet wide. An additional 100 miles of hand-lines were constructed, with a width of 2 to 6 feet. The bulldozer firelines and hand-lines were at times constructed on steep slopes, in riparian areas, and directly through streams and creeks. The Forest Service intentionally burned over 20,000 acres during its fire-fighting operations. The Forest Service applied at least 280 tons of chemical fire retardant on the wildfires, including over 100 tons of Fire-trol, which contains a potential carcinogen and yields ferrous cyanide as a by-product.

22. Despite the Forest Service's aggressive fire fighting tactics, the Megram Fire burned uncontrolled until significant rainfall was received on October 27, 1999, more than two months after the fires began.

23. The Megram Fire burned a total of 125,000 acres, including 59,220 acres on the Six Rivers National Forest, 63,340 acres on the Shasta-Trinity National Forest, and 1,680 acres on the Hoopa Valley Indian Reservation. The Onion Fire primarily affected the Shasta-Trinity National Forest.

24. Soon after the fires were extinguished, the Forest Service began developing a recovery strategy for the areas that were impacted.

25. On November 9, 1999, the Forest Supervisor for the Shasta-Trinity National Forest submitted an initial funding request to the Regional Forester for Burned Area Emergency Rehabilitation (BAER) for the Big Bar Complex Fires on the Shasta-Trinity and Six Rivers National Forests. Initial action included aerial seeding, erosion control, and road repairs.

26. As part of the overall recovery strategy the Six Rivers and Shasta-Trinity National Forests prepared a number of logging projects for the areas impacted by the Big Bar Complex Fires. The Forest Service chose not to prepare a comprehensive EIS to consider and address the overall impacts of the 1999 wildfires, and the multiple post-fire logging projects. The Forest Service instead prepared separate NEPA analysis for each proposal.

27. In May, 2000, the Six Rivers and Shasta-Trinity National Forests completed an Environmental Assessment (EA) for the Megram Fire Hazard Tree Removal Project, which proposed to remove trees along Forest Service roads that were determined to be a hazard as result of the 1999 wildfires. A Decision Notice and Finding of No Significant Impact were issued on July 6, 2000, and the project is currently being implemented. Hazard tree removal will occur on 114.6 miles of Forest Service roads throughout the Megram Fire area, including the roads that will be used to access the Phase 1 logging project.

28. The Shasta-Trinity National Forest prepared NEPA analysis for the Big Bar Hazard Tree Removal Project, for lands directly adjacent to the Megram Hazard Tree Project. The project includes hazard tree removal on 60 miles of Forest Service roads in the Onion and Megram fire areas.

29. On July 18, 2000, the Six Rivers National Forest signed the Decision Memo for the Happyman Plantation Project. This project logged 191 acres of severely burned areas on the Six Rivers National Forest, including units adjacent to Phase 1 logging project units on Waterman Ridge.

30. On June 8, 2001, the Six Rivers National Forest issued the FEIS for the Phase 1 logging project, which assesses only the logging of trees in the most severely burned areas of

the Megram Fire. The project area includes the Waterman Ridge, Lone Pine Ridge, and Mill Creek areas of the Megram Recovery Strategy area.

31. For the Phase 1 logging project, which is the subject of this complaint, the Six Rivers National Forest published the Notice of Intent to prepare the EIS in the Federal Register on October 30, 2000. A notice of availability of the Draft EIS was published on March 16, 2001.

32. The Record of Decision for the Phase 1 logging project was signed on July 9, 2001. The Six Rivers National Forest chose to proceed with Alternative 2, which includes approximately 820 acres of commercial logging, including 254 acres of tractor logging. The project includes 1.7 miles of road construction and reconstruction, and 1.4 miles of roads would be reopened.

33. The Six Rivers National Forest is currently preparing a draft EIS for Phase 2" of the Fuels Reduction for Community Protection proposal, which will propose to log the trees in the moderately burned areas of the Megram Fire.

34. The neighboring Shasta-Trinity National Forest is currently preparing an EA titled New River Community Protection and Burned Area Restoration project to log and construct fuel breaks on 4300 acres within the Onion and Megram Fire areas on the Shasta-Trinity National Forest.

35. On June 21, 2001, the Six Rivers National Forest issued a scoping notice for the Plantation Precommercial Thinning, Release and Fuels Treatment. Much of the project is located within the Phase 1 project area, within the Megram Recovery Strategy area. On approximately 219 acres, the project will create strategic fuel breaks for use in wildfire suppression.

36. On June 28, 2001, the Six Rivers National Forest issued a scoping notice for the Plantation Planting, Site Preparation, and Fuels Treatment project, which would treat 696 acres within the Phase 1 project area.

37. Additional post-fire logging has occurred in the Mill Creek watershed, within the Megram Fire area, on the neighboring Hoopa Valley Indian Reservation.

38. The Phase 1 logging project proposes to reduce fuels in the high severity burned stands within strategically located fuel breaks and fuel treatment areas within the Waterman Ridge, Lone Pine Ridge, and Mill Creek areas, burned by the Megram Fire. Merchantable fire killed timber would be removed from 863 acres, and non-merchantable timber would be removed from 187 acres. Commercial harvest would occur on 90 units using tractor (224 acres) cable skyline (198 acres) and helicopter (441 acres) harvest systems. Over 20 million board feet of timber would be commercially harvested, which is roughly equivalent to 4,000 log-trucks of trees. Approximately 1.65 miles of new and previously used temporary roads, and 1.4 miles of non-system roads, would be reopened to haul commercial timber to the main road system accessing the area.

39. According to the FEIS, the Phase 1 logging project is first of a series of planned forest fuel reduction projects for the area. In the terminology of the FEIS, fuel reduction is a euphemism for logging. This Phase 1 project implements the first phase of the Megram Recovery Strategy and is aimed at protecting local communities from catastrophic wildfires. According to the FEIS, a future proposal, Phase 2, would continue and complement the work that is proposed in Phase 1 by reducing fuels in unburned and moderately burned areas within the strategic fuel breaks. As stated in the FEIS, connecting the high severity and less severely burned fuel treatment areas would create a more continuous and effective fuel break.

40. Pursuant to Forest Service regulations, concerned members of the public are normally allowed 45 days to administratively appeal Forest Service decisions that are subject to appeal, including Records of Decision. 36 C.F.R. 215.9. Once an administrative appeal of a Forest Service project is timely filed, the regulations prohibit the implementation of the project until 15 days after the administrative appeals have been resolved. 36 C.F.R./215.10(b). A project decision is exempt from the automatic stay only if the Chief of the Forest Service

determines that an emergency situation exists with respect to a decision. An emergency situation is defined as an unexpected event or situation requiring urgent action. 36 C.F.R. 215.10(d).

41. On May 14, 2001, Six Rivers National Forest Supervisor Lou Woltering wrote to the Regional Forester to request an exemption to the automatic stay provision for the commercial harvest portions of the Phase 1 logging project. The letter requested an exemption under 36 C.F.R. 215.10(d)(ii), alleging hazardous or unsafe situations as a result of wildfire or other circumstances. According to the May 14 letter, without logging, there is a high probability that future wildfires will exhibit the extreme fire behavior that occurred during the Megram Fire, posing a significant threat to nearby communities. The letter provides no scientific evidence or support for these assertions. The Regional Forester forwarded the letter to the Chief of the Forest Service, Dale Bosworth.

42. On May 25, 2001, Chief Bosworth granted the emergency exemption to address the potential significant risk to human health and safety to the local communities in the affected area.

43. The Phase 1 logging project FEIS, along with the May 14 and May 25, 2001, emergency determination letters, fail to establish that an emergency situation exists. The Phase 1 FEIS acknowledges that there is no immediate threat of intense wildfire. According to the Phase 1 FEIS, in the short-term, fire behavior is low because most of the smaller fuels on the ground and ladder fuels were consumed during the Megram Fire. According to the Phase 1 FEIS, current fuel loading is mainly in the standing trees, so it is generally not available to burn, and most of the surface fuels were already consumed.

44. The Phase 1 logging project FEIS, and the May 14 and May 25, 2001, emergency determination letters, fail to provide data, analysis, or scientific evidence to support the assertion that the commercial removal of dead trees in the post-fire landscape will decrease the possibility or intensity of future wildfire on that site, or that protection for the communities of Willow Creek, Denny, Hawkins Bar, Salyer, and Hoopa will be increased by the logging project.

45. There is no available scientific evidence to support the assertion that the commercial removal of dead trees in the post-fire landscape will reduce the possibility or intensity of future wildfire on that site.

46. The Phase 1 logging project FEIS acknowledges that the proposed harvest areas are geographically removed from the immediate vicinity of the local communities. In fact, the proposed harvest units for the Phase 1 logging project are located miles away from any of the communities that it purports to protect.

47. In June, 1999, Forest Service scientist Jack Cohen produced a report entitled, Reducing the Wildland Fire Threat to Homes: Where and How Much?, (Cohen Report). According to the Cohen Report, effective fuel modification for reducing potential [wildland-urban interface] fire losses need only occur within a few tens of meters from a home, not hundreds of meters or more from a home. This research indicates that home losses can be effectively reduced by focusing mitigation efforts on the structure and its immediate surroundings. The findings and recommendations of the Cohen Report are not disclosed or addressed in the FEIS.

48. In March, 1995, a team of university and agency scientists headed by Dr. Robert Beschta produced a report entitled Wildfire and Salvage Logging, Recommendations for Ecologically Sound Post-Fire Salvage Logging and Other Post-Fire Treatments on Federal Lands in the West (hereinafter, the Beschta Report). The objective of the Beschta Report was to propose guidelines concerning wildfires, salvage logging, and other post-fire treatments, that will maintain or improve the integrity of ecosystems and landscapes. The Beschta Report states we are aware of no evidence supporting the contention that leaving large dead woody material significantly increases the probability of reburn. The findings and recommendations of the Beschta Report are not disclosed or addressed within the FEIS.

49. In August, 1995, Richard Everett of the Forest Service prepared a response to the Beschta Report entitled Review of Recommendations for Post-Fire Management (Everett

Report ). The Everett Report in part concurs with the Beschta Report, stating: [t]here is no support in the scientific literature that the probability for reburn is greater in post-fire tree retention areas than in salvage logged sites. Everett also concludes that the Beschta Report authors are correct that the intense reburn concept is not reported in the literature. Everett further states that current research suggests that salvage logged areas may have elevated fire hazard over unlogged sites for the first twenty years. Everett concludes, [t]he urgency to remove woody biomass is not based on reducing short-term fire hazard, but on the capture of economic values and reduction of long-term fire hazard. The urgency comes from removing wood before it decays, becomes less economically feasible to extract, and makes further reductions in fuel loading more expensive to the American taxpayer. The findings and recommendations of the Everett Report are not disclosed or addressed in the FEIS.

50. In January, 2000, the Forest Service's Pacific Northwest Research Station reviewed 21 postfire logging studies and prepared a report entitled Environmental Effects of Postfire Logging: Literature Review and Annotated Bibliography (hereinafter, Literature Review ). The Forest Service's Literature Review found no studies documenting a reduction in fire intensity in a stand that had previously burned and then been logged. The findings and recommendations of the Literature Review are not disclosed or addressed in the FEIS.

51. The Phase 1 logging project FEIS repeatedly asserts that the proposed post-fire logging project, which will take place in the most severely burned areas, will have either negligible or beneficial environmental impacts. The FEIS fails to acknowledge or address the considerable scientific evidence that directly refutes these assertions.

52. The Beschta Report, which the Phase 1 logging project FEIS does not address, concluded that there is no ecological need for immediate intervention on the post-fire landscape. The Report finds that post-fire logging will likely cause significant adverse impacts.

There is considerable evidence that persistent, significant adverse environmental impacts are likely to result from salvage logging, based on many past cases of salvage projects,

plus our growing knowledge of ecosystem functions and land-aquatic linkages. These impacts include soil compaction and erosion, loss of habitat for cavity nesting species, loss of structurally and functionally important large woody debris.

The Beschta Report recommends that all post-fire salvage logging in sensitive areas be prohibited. Salvage logging by any method must be prohibited on sensitive sites, including: in severely burned areas (areas with litter destruction), on erosive sites, on fragile sites, in roadless areas, in riparian areas, on steep slopes, or any site where accelerated erosion is possible. In addition, the building of new roads in the burned landscape should be prohibited.

53. The Forest Service officially recognized the importance of the Beschta Report for post-fire projects. The Regional Forester for Region 6 (Oregon and Washington) has provided direction for Forest Supervisors requiring that this report be considered within the NEPA documentation for site-specific projects. As stated by Region 6, [c]learly this information needs to be considered in ongoing analysis . . . For each project or group of similar projects, review the Beschta paper (along with other information sources) to determine applicability given site-specific conditions and issues in the project area.

54. The importance of the Beschta Report for post-fire logging projects has also been addressed by the United States Court of Appeals for the Ninth Circuit. On December 2, 1998, the Ninth Circuit enjoined the on-going Big Tower post-fire salvage project in Eastern Oregon, and specifically discussed the Beschta Report. The Regional Forest Supervisor directed that the Beschta report recommendations be addressed in post-fire environmental review documents, but the Forest Service failed to disclose the report s recommendations in the Big Tower EA. Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1213 (9th Cir. 1998). The Ninth Circuit concluded, We do note that its failure to discuss and consider the Beschta report s recommendations lends weight to BMBP s claim that the Forest Service did not take the requisite hard look at the environmental consequences of post-fire logging instead of letting nature do the healing.

55. Plaintiffs squarely brought the Beschta Report, and its findings and recommendations, to the attention of the Six Rivers National Forest in comments on the Phase 1 logging project. Despite explicit direction to consider the report at the project level, and the recent Ninth Circuit guidance, the Six Rivers National Forest summarily and arbitrarily responded as follows: the Forest Service researchers review of Beschta's paper that the respondent found that it is not a balanced scientific paper and does not apply to project level decision-making. No further explanation was provided.

56. A primary stated purpose of the Phase 1 logging project is to create strategic fuel breaks. According to the FEIS, the overall plan for the area is to maintain permanent fuel breaks in strategic areas. The FEIS fails to address or analyze how the fuel breaks will be maintained over time.

57. Due to the costs of manually maintaining an extensive system of remote fuel breaks, the Forest Service typically is forced to rely upon herbicides, which must be regularly applied in perpetuity to effectively maintain the viability of the fuel breaks as fire suppression infrastructure. The Phase 1 logging project FEIS fails to disclose or analyze the potential likelihood and environmental impacts of applying herbicides to these fuel breaks.

58. The Phase 1 logging project FEIS fails to discuss or disclose the numerous miles of firelines that were constructed in and around the project area, in 1999, as part of fire-fighting and fire-suppression activities. The amount, location, and types of the firelines are not disclosed. The numerous miles of firelines, often constructed with bulldozers, had direct, indirect, and cumulative impacts that have never been disclosed within a NEPA document.

59. The Phase 1 logging project FEIS fails to discuss or disclose the tons of chemical fire retardant that were applied in and around the project area, in 1999, as part of fire-fighting and fire-suppression activities. The application of fire retardant had direct, indirect, and cumulative impacts that have never been disclosed within a NEPA document.

60. On the Six Rivers National Forest, there are 41 fish and wildlife species that have been selected as management indicator species (MIS), including the northern spotted owl, pileated woodpecker, black bear, American Marten, Pacific fisher, and black-tailed deer. MIS are used by the Forest Service as indicators of the health of various ecosystems in which the species live. The FEIS for the Phase 1 logging project includes no discussion or analysis of the impacts of the project on MIS within the environmental consequences section.

61. According to the FEIS for the Phase 1 logging project, approximately 27% of the old growth seral stage was affected by the high severity fire. According to the FEIS, the Megram Fire resulted in a net loss of 23% of suitable goshawk habitat, a net loss of 31% of suitable American marten habitat, and a net loss of 23% of suitable Pacific fisher habitat.

62. The Shasta-Trinity National Forest prepared, outside of the context of its post-fire logging project, a New River Watershed Analysis. This analysis recognized that wildlife issues such as late successional/old growth habitat and related species cross watershed and National Forest boundaries, requiring more coordination to accurately analyze the effects. Despite this admission by the Forest Service itself, the Phase 1 FEIS fails to include an analysis of the cumulative impacts for the ongoing hazard tree removal projects, the proposed Phase 2 logging project, and the proposed New River Community Protection and Burned Area Restoration logging project, on wildlife species or habitat.

63. According to the FEIS for the Six Rivers National Forest Plan, soil is a fundamental resource on the forest, and is the foundation of all terrestrial life. All the inherent values of the forest ecosystem depend on soil and its productive capacity. Soil is the balance wheel of the ecosystem and is the oldest and most important component of the forest system. Soil is considered a nonrenewable resource because of the length of time required for soil formation.

64. According to the FEIS for the Six Rivers National Forest Plan, management activities may reduce soil productivity by increasing soil erosion, reducing soil porosity through

compaction, reducing site organic matter, depleting soil nutrients by removal of nutrient bearing organic debris, and by removing soil from productive uses for roads and other administrative uses.

65. According to the FEIS for the Six Rivers National Forest Plan, timber harvest and road construction have the greatest potential to affect the soil through compaction, displacement, or erosion. The degree of adverse impacts to soils from forest management depends on the extent of soil-disturbing activities, such as road and skid trail construction, landing construction, and broadcast burning.

66. According to the Beschta Report, soils are particularly vulnerable in a burned landscape. The Beschta Report recommends that any activities that accelerate erosion or create soil compaction be prohibited.

67. The FEIS for the Phase 1 logging project acknowledges that organic matter is a key soil component that provides both productivity and structure. The FEIS further acknowledges that impacts on soil productivity are an important consideration for this project.

68. The Phase 1 logging project proposes to construct and reconstruct roads to remove approximately 4,000 logging-truckloads of trees. The FEIS prepared for the project fails to disclose the likely amount of soil compaction and reduced soil productivity caused by the project. The FEIS fails to address the medium and long-term impacts of the logging project on soil cover, organic matter, erosion, and soil productivity. The FEIS fails to address soil impacts resulting from the construction of roads and landings.

69. The Six Rivers National Forest Plan requires that for each timber harvest unit, soil porosity will be maintained to at least 90 percent of its natural condition over at least 85 percent of the project area. The Phase 1 logging project FEIS fails to insure that this standard is maintained.

70. The Six Rivers National Forest Plan requires that soil organic matter, in the upper 12 inches of soil, be at least 85 percent of the total soil organic matter found under undisturbed

conditions for the same or similar soils. The Phase 1 logging project FEIS fails to insure that this standard is maintained.

71. The Six Rivers National Forest Plan requires that large woody material include at least 5 logs per acre, in contact with the soil surface. The Phase 1 logging project FEIS fails to insure that this standard is maintained.

72. The Phase 1 logging project FEIS includes a no action alternative, plus three action alternatives. The FEIS acknowledges that there are only slight differences among the action alternatives. All action alternatives propose between 790 and 863 acres of commercial logging, between 224 and 254 acres of tractor logging, between 0.4 and 0.5 miles of new road, and between 1.2 and 1.25 miles of reconstructed roads. Comments submitted by the Environmental Protection Agency state that the three action alternatives are relatively similar in terms of the potential environmental effects.

73. There are Forest Service grazing allotments within the proposed project area. The environmental impacts of the grazing allotments were not considered by the Forest Service or disclosed to the public within the analysis of cumulative impacts for the Phase 1 logging project FEIS.

74. On January 12, 2001, a Roadless Area Conservation final rule was published in the Federal Register. 66 Fed. Reg. 3243. The Roadless Area final rule greatly restricted logging and road building activities in 58.5 million acres of inventoried roadless areas on national forest lands. On May 12, 2001, the United States District Court for the District of Idaho preliminarily enjoined implementation of the Roadless Area final rule.

75. On June 7, 2001, Forest Service Chief Dale Bosworth wrote a letter to the Regional Foresters regarding the interim protection of inventoried roadless areas. Chief Bosworth reserved for himself the authority to allow (or prohibit) timber sales and road construction in inventoried roadless areas, defined as the areas mapped in Volume 2 of the Roadless Area Conservation FEIS. The letter states that Chief Bosworth will follow the June 7

letter with an Interim Directive in the Forest Service Manual to adjust the delegation of authorities to reflect the change.

76. The Phase 1 logging project includes units that are located within the Orleans Mountain inventoried roadless area, and included in Volume 2 of the Roadless Area Conservation FEIS.

77. Chief Bosworth did not sign the Record of Decision for the Phase 1 logging project, contrary to his June 7, 2001, direction.

78. The Phase 1 logging project FEIS treats impacts on the roadless area as non-significant and therefore does not address the potential environmental impacts to the roadless characteristics of the Orleans Mountain inventoried roadless area.

#### **FIRST CLAIM FOR RELIEF**

Defendants May 25, 2001, Emergency Determination for the Phase 1 Logging Project is Unsupported by the Record and Contrary to the Available Science

\_\_\_\_ 79. Plaintiff incorporates by reference all preceding paragraphs.

80. Pursuant to Forest Service regulations, if an administrative appeal of a proposed project is filed with the Forest Service, implementation of the project may not occur until 15 days following the date of the appeal disposition. 36 C.F.R./215.10(b).

81. The regulations provide a limited exception to the automatic stay provision where the Chief of the Forest Service determines that an emergency situation exists, in accordance with the requirements of 36 C.F.R./215.10(d). An emergency is defined as an unexpected event, or a serious occurrence, or a situation requiring urgent action. 36 C.F.R./215.10(d)(1). Examples include hazardous or unsafe situations as a result of wildfire or other circumstances, damage to water quality caused by siltation due to fire or flooding, and sudden outbreaks of forest pests and diseases. 36 C.F.R./215.10(d)(1)(I-v).

82. On May 14, 2001, the Forest Supervisor for the Six Rivers National Forest requested an emergency situation determination for the 863 acres of commercial timber harvest associated with the Phase 1 logging project.

83. Forest Service Chief Dale Bosworth granted the request on May 25, 2001. The request was granted to address the potential significant risk to human health and safety to the local communities in the affected area, including the Hoopa Valley Indian Reservation, if actions are not initiated this summer.

84. The May 14 and May 25 letters, along with the Phase I FEIS and Record of Decision, fail to provide scientific support for the emergency situation determination. The Forest Service's rationale for the emergency determination is unsupported by scientific evidence, hard data, or objective analysis.

85. The May 14 and May 25 letters, along with the Phase I FEIS and Record of Decision, fail to consider, analyze, and address the considerable scientific evidence that directly contradicts the emergency determination.

86. The Forest Service's emergency determination for the Phase 1 logging project, and decision to exempt the project from the automatic stay requirement, is arbitrary, capricious, an abuse of discretion, and contrary to law. See 5 U.S.C./706. Accordingly, the emergency determination should be set aside, and the automatic stay immediately implemented until 15 days following the date that all administrative appeals have been properly considered and resolved. Id.; 36 C.F.R./215.10(b).

### **SECOND CLAIM FOR RELIEF**

#### **The Final EIS Prepared for the Fuels Reduction for Community Protection, Phase I Logging Project is Legally Inadequate and is in Violation of NEPA**

87. Plaintiffs incorporate by reference all preceding paragraphs.

88. NEPA directs federal agencies to prepare a detailed environmental impact statement (EIS) for major federal actions that may significantly affect the quality of the environment. 42 U.S.C./4332(2)(C). The EIS must address all adverse environmental effects which cannot be avoided should the proposal be implemented, alternatives to the proposed action, and any irreversible and irretrievable commitment of resources which would be involved. Id.

89. The Council on Environmental Quality (CEQ) has promulgated regulations to implement NEPA, which are binding on all federal agencies. 40 C.F.R./1507.1. The CEQ regulations establish a standard format for EISs, including a summary, purpose and need for action, alternatives, affected environment, and environmental consequences. 40 C.F.R./1502.10.

90. The information presented in an EIS must be of high quality. 40 C.F.R./1500.1(b). Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Id.

91. Agencies shall insure the professional integrity, including scientific integrity, of the decisions and analysis in environmental impact statements. 40 C.F.R./1502.24. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. Id.

92. The alternatives section is the heart of the EIS, and should sharply define the issues and provide a clear basis for choice among options by the decisionmaker and the public. 40 C.F.R./1502.14. Within the alternatives section, agencies shall rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. 40 C.F.R./1502.14(a).

93. The FEIS prepared for the Fuels Reduction for Community Protection, Phase 1" logging project is legally inadequate, and in violation of NEPA, for a number of reasons, including the following:

a) the FEIS fails to provide hard data and analysis, and scientific evidence, to support its stated purpose and need for commercial logging, which includes the alleged need to reduce large fuels in order to reduce the risk of future high intensity wildfire, and thereby protect communities that are located miles from the proposed harvest units;

b) the FEIS fails to address or disclose the science and scientific reports that include findings and recommendations directly contrary to the stated purpose and need ;

c) the FEIS fails to rigorously explore and objectively evaluate all reasonable alternatives;

d) the FEIS fails to address or disclose science and scientific reports concerning post-fire logging that recommend no commercial logging or road building in severely burned areas;

e) the FEIS misleads and/or misinforms the public as to the current body of science and potential impacts on the environment resulting from post-fire logging;

f) the FEIS misleads and/or misinforms the public as to the current body of science concerning the probability and risk of reburn in the wake of wildfire and subsequent logging;

g) the FEIS fails to provide the public with adequate or sufficient information on the potential environmental impacts of the proposed logging and road building project. The FEIS is inadequate in its discussion and analysis of wildlife, fish, water quality, soils, and reforestation issues, and fails to include an adequate cumulative impacts analysis for any of these issues that fully considers past, present, and reasonably foreseeable actions, specifically including the 1999 wildfires and associated fire-fighting and suppression tactics, along with all other related post-fire projects that are proposed within and near the project area;

h) the FEIS fails to address the environmental impacts of maintaining the proposed fuel breaks;

I) the FEIS fails to insure the viability of all management indicator and sensitive wildlife species;

j) the FEIS fails to insure that timber will be harvested only where soils will not be significantly impaired or irreversibly damaged;

k) the FEIS fails to insure that soil porosity will be maintained to at least 90 percent of its natural condition over at least 85 percent of the project area; and

l) the FEIS fails to address the potential environmental impacts to the roadless characteristics of the Orleans Mountain inventoried roadless area.

94. The Fuels Reduction for Community Protection, Phase 1 FEIS does not satisfy the purpose, intent, or mandatory requirements of NEPA. Defendants' failure to prepare an adequate, objective, and scientifically supported FEIS is not in accordance with law (NEPA), not in accordance with procedures required by law (NEPA), and constitutes arbitrary and capricious agency action, and an abuse of discretion. See 5 U.S.C./706. Accordingly, the Record of Decision to proceed with the Phase I logging project should be set aside, and the project should be permanently enjoined until an adequate and legally sufficient FEIS is prepared. Id.

### **THIRD CLAIM FOR RELIEF**

Defendants Failed to Address the Environmental Impacts of the 1999 Big Bar Wildfires, and All Connected, Cumulative, and Similar Post-Fire Projects, within a Single EIS

95. Plaintiffs incorporate by reference all preceding paragraphs.

96. To determine the appropriate scope for an EIS, the NEPA regulations direct federal agencies to consider connected, cumulative, and similar actions. 40 C.F.R./1508.25. Connected actions are actions that are closely related and therefore should be discussed in the same EIS. 40 C.F.R./1508.25(1). Cumulative actions are those which would have cumulatively significant impacts and should therefore be discussed in the same EIS. 40 C.F.R./1508.25(2). Similar actions are those with similarities that provide a basis for evaluating their environmental consequences together in the same EIS, such as common timing or geography. 40 C.F.R./1508.25(3).

97. The Fuels Reduction for Community Protection, Phase 1 logging project, and the subsequent Phase 2" project which is currently being developed, along with the hazard tree

removal projects on the Six Rivers and Shasta-Trinity National Forests, and the other post-fire logging projects on the Shasta-Trinity and Six Rivers National Forests, are connected, cumulative, and similar actions that must be considered in a single EIS.

98. No document has been prepared to explore and disclose the collective impacts of these multiple post-fire projects, along with the 1999 wildfires and associated fire-fighting and suppression activities. The failure to prepare a single EIS to address the overall, environmental impacts of all connected, cumulative, and similar actions for the Big Bar Complex Fire area constitutes arbitrary and capricious agency action, an abuse of discretion, and is in violation of NEPA. See 5 U.S.C./706. Accordingly, the Record of Decision to proceed with the Phase I logging project should be set aside, and the project should be permanently enjoined until a comprehensive EIS is prepared. Id.

#### **FOURTH CLAIM FOR RELIEF**

##### **Forest Service Chief Bosworth Did Not Authorize Timber Harvest within the Orleans Inventoried Roadless Area**

99. Plaintiffs incorporate by reference all preceding paragraphs.

100. On June 7, 2001, Chief Bosworth reserved for himself the decision authority for timber sales and road construction in inventoried roadless areas, defined as the areas mapped in Volume 2 of the Roadless Area Conservation FEIS. The letter states that Chief Bosworth will follow the June 7 letter with in Interim Directive in the Forest Service Manual to adjust the delegation of authorities to reflect the change.

101. The Phase 1 logging project includes units that are located within the Orleans Mountain inventoried roadless area, and included in Volume 2 of the Roadless Area Conservation FEIS.

102. Chief Bosworth did not sign the Record of Decision for the Phase 1 logging project, contrary to his June 7, 2001, direction. The decision to proceed with the sale is therefore arbitrary and capricious agency action, an abuse of discretion, and is in violation of the Forest

Service directive. See 5 U.S.C./706. Accordingly, the Record of Decision to proceed with the Phase I logging project should be set aside. Id.

### **FIFTH CLAIM FOR RELIEF**

#### **The Phase 1 Logging Project FEIS Fails to Insure the Viability of Management Indicator and Sensitive Species, in Violation of the National Forest Management Act**

103. Plaintiffs incorporate by reference all preceding paragraphs.

104. The National Forest Management Act (NFMA) imposes a substantive duty on the Forest Service to provide for diversity of plant and animal species. 16 U.S.C./1604(g)(3)(B). Regulations promulgated to ensure such diversity mandate that fish and wildlife habitat be managed to maintain viable populations and the diversity of species across the planning area. 36 C.F.R./219.19, 219.27.

105. In order to estimate impacts on fish and wildlife species, certain species must be identified as management indicator species ( MIS ). 36 C.F.R./219.19. The planning alternatives are to be evaluated in terms of the quality of habitat and the population trends of the MIS. Id. The MIS for the Six Rivers National Forest include, but are not limited to, the Northern spotted owl, pileated woodpecker, black bear, American marten, Pacific fisher, Black-tailed deer, flammulated owl, and white-headed woodpecker.

106. In addition to MIS, the Forest Service designates sensitive species, defined as those species whose viability is of concern due to significant downward trends in numbers or habitat. See Forest Service Manual,/2670.5(19). The sensitive species on the Six Rivers National Forest include, but are not limited to, the Peregrine falcon, Northern goshawk, American marten, and Pacific fisher.

107. The Phase 1 logging project FEIS fails to adequately ensure the diversity and viability of all MIS and sensitive species which are or may be present in the project area.

108. The Phase 1 logging project FEIS fails to provide sufficient information to allow the public or the decision maker to accurately determine the population trends, or the potential direct and cumulative impacts of the extensive logging project, on MIS or sensitive species. Therefore, the Forest Service has not ensured the viability or diversity of the MIS or sensitive species. The decision to proceed with the sale is therefore arbitrary and capricious agency action, an abuse of discretion, and is in violation of NFMA. See 5 U.S.C./706. Accordingly, the Record of Decision to proceed with the Phase I logging project should be set aside, and the project should be permanently enjoined the viability of all MIS and sensitive species is ensured. Id.

#### **SIXTH CLAIM FOR RELIEF**

The Phase 1 Logging Project FEIS Fails to Insure that Soil Resources Will be Conserved, and that Soils Will Not be Significantly Impaired or Irreversibly Damaged, in Violation of the National Forest Management Act

109. Plaintiffs incorporate by reference all preceding paragraphs.

110. NFMA requires the Forest Service to insure that timber will be harvested only where soils will not be irreversibly damaged. 16 U.S.C./1604(g)(3)(E)(I).

111. All management prescriptions must conserve soil resources and not allow significant or permanent impairment of the productivity of the land. 36 C.F.R./219.27(a)(1).

112. All management prescriptions that involve the vegetative manipulation of tree cover for any purpose shall avoid permanent impairment of site productivity and ensure conservation of soil resources. 36 C.F.R./219.27(b)(5).

113. Pursuant to NFMA, the conservation of soil resources involves the analysis, protection, enhancement, treatment, and evaluation of soil resources and their response under management, and shall be guided by instructions in official technical handbooks. 36 C.F.R./219.27(f). These handbooks must show specific ways to avoid or mitigate damage, and maintain or enhance productivity on specific sites. Id.

114. The Phase 1 logging project FEIS fails to provide sufficient information to allow the public or the decision maker to accurately determine whether soils will be significantly impaired or irreversibly damaged, or whether soil resources will be conserved. The decision to proceed with the sale is therefore arbitrary and capricious agency action, an abuse of discretion, and is in violation of NFMA. See 5 U.S.C./706. Accordingly, the Record of Decision to proceed with the Phase I logging project should be set aside. Id.

### **SEVENTH CLAIM FOR RELIEF**

#### **The Phase 1 Logging Project FEIS Fails to Insure that the Proposed Timber Sale Will Not Violate Forest Plan Standards and Guidelines Designed to Protect Soils**

115. Plaintiffs incorporate by reference all preceding paragraphs.

116. Pursuant to NFMA, all site-specific projects proposed on the Six Rivers National Forest must comply, and be consistent with, the Six Rivers National Forest Plan. 16 U.S.C./1604(I).

117. Pursuant to the Six Rivers National Forest Plan, for each timber harvest unit, soil porosity must be maintained to at least 90 percent of its natural condition over at least 85 percent of the project area. Forest Plan, p. IV-71. Soil organic matter in the upper 12 inches of soil must be at least 85 percent of the total soil organic matter found under undisturbed conditions for the same or similar soils. Forest Plan, Appendix L-1. Large woody material must be at least 5 logs per acre in contact with the soil surface. Id.

118. The Phase 1 logging project FEIS fails to provide sufficient information to allow the public or the decision maker to accurately determine whether the applicable Forest Plan standards for soils will be maintained. The decision to proceed with the sale is therefore arbitrary and capricious agency action, an abuse of discretion, and is in violation of NFMA. See 5 U.S.C./706. Accordingly, the Record of Decision to proceed with the Phase I logging project should be set aside. Id.

### **RELIEF REQUESTED**

Plaintiffs respectfully request that the Court:

- A. Declare that May 25, 2001, Emergency Determination for the Phase 1 logging project is arbitrary, capricious, an abuse of discretion, and in violation of 36 C.F.R./215.10(d);
  - B. Declare that defendants decision to approve and proceed with the Phase 1 logging project without preparing a sufficient and legally adequate FEIS is arbitrary, capricious, an abuse of discretion, and in violation of NEPA;
  - C. Declare that defendants failure to address all connected, cumulative, and similar post-fire projects within a single EIS is arbitrary, capricious, and in violation of NEPA;
  - D. Declare that defendants decision to approve and proceed with the Phase 1 logging project without adequate assurance that the project will ensure the diversity and viability of MIS and sensitive species is arbitrary, capricious, an abuse of discretion, and in violation of NFMA;
  - E. Declare that defendants decision to approve and proceed with the Phase 1 logging project without adequate assurance that the project will not significantly impair or irreversibly damage soils, and comply with applicable Forest Plan standards, is arbitrary, capricious, an abuse of discretion, and in violation of NFMA;
  - F. Enjoin the defendants from taking any further action to implement the Phase 1 logging project, including advertising, offering for sale, or awarding any contracts, until such time as defendants have adequately analyzed and disclosed all potential and cumulative environmental impacts in a legally sufficient EIS, and can demonstrate full compliance with all applicable provisions of NFMA;
  - G. Award plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees under applicable law; and
  - H. Grant plaintiffs such further relief as may be just, proper, and equitable.
- DATED this \_\_\_\_ day of July, 2001.

Respectfully submitted,

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