

BEFORE THE REGIONAL FORESTER
USDA FOREST SERVICE REGION FIVE

ENVIRONMENTAL PROTECTION)
INFORMATION CENTER AND FOREST)
CONSERVATION COUNCIL)

Appellants)

V.)

BRIAN N. MORRIS)
DISTRICT RANGER)
SIX RIVERS NATIONAL FOREST)
P.O. BOX 228)
GASQUET, CA 95543-0228)

Responsible Official)

In Re: Appeal of the Decision Notice)
and Finding of No Significant)
Impact for the Dome Timber Sale,)
Six Rivers National Forest, Smith)
River National Recreation Area)

**NOTICE OF APPEAL
STATEMENT OF REASONS
REQUEST FOR RELIEF**

November 15, 2001

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NOTICE OF APPEAL

Notice of Appeal of the Dome Timber Sale (Sale) Decision Notice and Finding Of No Significant Impact (DN/FONSI), signed by Smith River National Recreation Area District Ranger Brian N. Morris on October 2, 2001, is hereby given on behalf of the Environmental Protection Information Center and Forest Conservation Council (Appellants), pursuant to 36 CFR/215. The DN/FONSI adopts Alternative 1 of the Environmental Assessment (EA) for the Sale, which would commercially thin approximately 153 acres and commercially thin 78 acres within the Shelly Creek, East Fork Patrick Creek, and West Fork Patrick Creek drainages on the Six Rivers National Forest, producing approximately 1.58 MMBF (2,882 CCF) of timber. In addition, four temporary roads (approximately 0.5 miles) will be built as well as 3 helicopter and 7 conventional landings.

Appellants charge that the DN/FONSI violate the legal requirements of the National Environmental Policy Act and its implementing regulations (NEPA); National Forest Management Act and its' implementing regulations (NFMA); federal Clean Water Act (CWA); Porter-Cologne Water Quality Control Act and North Coast Basin Plan (Basin Plan); federal

Endangered Species Act (ESA); Administrative Procedures Act (APA) Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (NWFP ROD); Multiple Use-Sustained Yield Act (MUSY); Forest and Rangeland Renewable Resources Planning Act (RPA); Global Climate Change Prevention Act (GCCPA"; Land and Resource Management Plan (LRMP) for the Six Rivers National Forest, Forest Service Manual (FSM); and Forest Service Handbook (FSH).

Appellants charge that the proposed activities will result in significant degradation of the natural environment, constituting an irretrievable and irreversible commitment of resources, and that the proposed activities will significantly affect the human environment by reducing the quality of the Appellants experience in the area.

Appellants charge that the DN/FONSI ignore and/or fails to adequately address significant issues raised by the Appellants. Appellants also charge that the Six Rivers National Forest, in issuing the DN/FONSI, acted arbitrarily and capriciously by failing to examine the relevant data to articulate a rational connection between the facts found and the decision made, and by failing to employ the best available scientific information as required by 16 USC 1536 (a)(2).

Appellant 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 use and enjoy the Six Rivers National Forest. EPIC maintains its offices in Humboldt County, California.

Appellant Forest Conservation Council ("FCC") is a national non-profit organization working to protect and restore the native biological diversity of forests and woodlands throughout the United States. FCC accomplishes its mission through public education, political advocacy, research, conservation planning, litigation, and organizing. FCC currently has over 2000 individual and active members, and 500 business and organizational members throughout the United States, including several active members in northern California. FCC s Western Regional Office is located in Santa Fe, New Mexico.

Appellant members use and enjoy the Six Rivers National Forest, including the Smith River National Recreation Area and Dome Timber Sale area, for hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, and recreational activities. Appellant members intend to continue to use and enjoy this National Forest frequently and on an ongoing basis in the future. However, the aesthetic, recreational, scientific, educational and religious interests of Appellant' members will be adversely affected and irreparably injured if the Six Rivers National Forest proceeds to implement the Dome Timber Sale. These are actual, concrete injuries caused by the Six Rivers National Forests' failure to comply with mandatory duties under NEPA, NFMA, ESA, CWA, PCWQCA, NFP ROD, LRMP, APA, RPA, GCCPA, MUSY, FSM, and FSH.

Appellants have standing to appeal the DN/FONSI because we expressed interest and provided comments on the project before the end of the 30-day comment period on the EA (previous comments are hereby incorporated into this appeal by reference). The Six Rivers National Forest has failed to address many of the significant concerns that we have raised in these comments, has

failed to perform mandatory duties in the planning and preparation of the project, and has failed to provide adequate environmental analyses of potential impacts from the proposed project, resulting in the violation of several laws and regulations. For these reasons and others, Appellants request administrative review of the EA, project record, and DN/FONSI to evaluate their legality. Appellants further seek and request relief in the form of a full remand of the DN/FONSI.

STATEMENT OF REASONS

Issue 1: The EA fails to adequately protect soils and long-term productivity.

A. The EA fails to analyze all direct, indirect, and cumulative impacts on soils and site-productivity.

The EA fails to analyze the direct and indirect impacts on soils and long-term productivity caused by logging, yarding, site preparation, landing construction and use, and helicopter landing pad construction. These activities are well known to cause direct adverse impacts to soils and long-term productivity, yet the EA completely fails to address them. The EA also fails to analyze the indirect and cumulative impacts on soils and long-term productivity caused by the removal of large woody debris and organic matter from the proposed logging. In addition, the EA and project record fail to provide any information or examine how the proposed project will impact soil integrity and long-term site productivity in combination with historical activities which have occurred within the stands. As many, if not all, of the proposed units are located in forest stands that have been previously entered, compaction and other long-term impacts to soils and productivity may still be present. The proposed activities would therefore cumulatively impact these areas, with long-term consequences. The EA and project record fail to address these direct and indirect impacts, and thus fail to adequately ensure that the project avoids impairment of site productivity. By failing to analyze all significant direct, indirect and cumulative impacts to soils and long-term productivity, the EA and DN/FONSI violate NEPA (40 CFR // 1508.8; 1502.16; 1508.7).

B. The EA fails to provide data or evidence to support the conclusion that soils impacts will be minimal.

The DN/FONSI declares that "The impact to the soil, long-term site productivity, soil compaction, and long-term organic debris input to soils will be minimal." (Appendix F, Response to EA Comments). However, the EA and project record do not contain any analysis, environmental data, methodologies, or evidence to support this conclusion, in violation of NEPA's implementing regulations, which require that "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses" and "shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions" (40 CFR / 1502.24). As the Ninth Circuit held in Idaho Sporting Congress v. Thomas, NEPA does not allow an agency to rely on the conclusions and opinions of its employees without providing hard data and analysis for both the public and the court to review (137 F.3D at 1150). Instead, "NEPA requires that the public receive the underlying environmental data from which a Forest Service expert derived her opinion." Id. See also Idaho Sporting Congress v. Rittenhouse, Civ. No. 98-0307-S-BLW (D. Idaho, Feb 25, 1999).

C. The EA fails to ensure that Soil Quality Standards are met.

Soil Quality Standards (SQS's) provide threshold values that indicate when changes in soil impairment and soil conditions would result in significant change or impairment of the productivity potential, hydrologic function, or buffering capacity of the soil. Detrimental soil disturbance is the resulting condition when threshold values are exceeded. Regional and Forest-level SQS's included threshold values for soil cover, soil porosity, soil organic matter, soil moisture regime, and soil hydrologic function. The EA and project record fail to contain any information or analysis to ensure that these SQS's will be met, in violation of FSH 2509.18 and the Six Rivers LRMP (p. IV-71; Appendix L).

D. The EA fails to ensure the conservation of soil resources.

As a result of the failure to address the direct, indirect, and cumulative impacts associated with the proposed activities, the EA fails to ensure that timber will be harvested only where soils will not be irreversibly damaged. In addition, the EA fails to identify and disclose technology and mitigation measures necessary to prevent irreversible damage to soils and site productivity from the proposed activities. Because the EA and project record do not adequately analyze impacts on soils and long-term productivity, they fail to ensure compliance with the LRMP for the Six Rivers National Forest, which requires the "maintenance of long-term soil productivity" (LRMP, p. IV-70). In addition, because of these deficiencies, the EA and project record also violate NFMA, which requires the Forest Service to: "insure that timber will be harvested from National Forest System lands only where soil, slope, or other watershed conditions will not be irreversibly damaged" (16 USC 1604(g)(3)(E)).

Issue 2: The EA fails to adequately analyze cumulative impacts.

A. The EA fails to adequately analyze cumulative impacts from mining.

The Cumulative Effects Analysis (CEA) for the sale (Appendix G) described historic mining in the project area, stating that "current stream and riparian conditions in Patrick and Shelley Creeks, and the Middle Fork Smith River are indicative of past mining and logging practices." However, the CEA does not analyze the cumulative impacts resulting from current or foreseeable future mining on vegetation, soils, riparian, and aquatic conditions in the area, in violation of NEPA (40 CFR//1502.24; 1508.25).

B. The EA fails to adequately analyze cumulative watershed effects.

The EA relies on the Region 5 Forest Service Equivalent Routed Acres (ERA) model as a method of addressing cumulative watershed effects (CWE) (EA, Appendix G). However, the EA fails to ensure that the ERA model is properly used, and fails to disclose the limitations, flaws, and uncertainties inherent in the method. In addition, the ERA methodology is technically flawed, and fails to account for cumulative impacts of most concern. As stated by Reid (1998):

"Administratively, the ERA method is convenient and useful. ...Unfortunately, the method contains flaws that undermine its technical adequacy. For example, coefficients for recovery refer to recovery at the site of land use but not to recovery from the off site impacts of that activity. ...In addition, because only one set of coefficients is used to describe each activity, the method implicitly assumes either that only one mechanism for impact is possible in an area or

that some composite variable is meaningful. However, a tractor logged slope might be very much like a road in terms of sediment production but very different in terms of hydrologic change. If both hydrologic and sediment impacts are of concern, then two different sets of coefficients should be used to compare roads and logging. ...Other problems arise from the manner in which the ERA method is applied. For example, the procedure requires calibration of many coefficients for each area, and such calibration ordinarily would be based on a lot of monitoring data for each activity. Monitoring is expensive and time-consuming, however, so the necessary coefficients are usually estimated using professional judgement. This approach might not present a problem if the results of activities were then monitored to test the predictions, or if the entire program were tested by statistical comparisons between prediction and reality, but no such monitoring has been carried out. Furthermore, those applying the method rarely specify the impact mechanisms important in the area of application. ... These considerations suggest that the apparent simplicity of the index approach is deceptive. To use such an approach appropriately would require that different indices in impacts, impact mechanisms, and recovery trajectories. appropriate use would also require a tremendous monitoring effort both to calibrate the method for a variety of conditions present and to test the validity of the results"

As stated by Beschta et al. (1995):

"Many of the historically utilized approaches to cumulative effects assessments of water resources involved designating an arbitrary limit or threshold. This threshold typically represented a specific percentage of the watershed area that could be affected by a particular forest practice within a specified time period. In many cases, the threshold was defined as the percent of the basin area harvested at which a significant shift in system behavior (such as change in peak flow) was expected to occur. Unfortunately, there is often insufficient data available to support limitations on the amount of basin harvesting that occur at any one time nor is there good evidence or an agreed upon procedure for determining what the magnitude of those limitations or thresholds should be. Other problems of current cumulative effects methodologies is their general emphasis on peak flows as the driving force behind downstream channel changes ... In addition, there is very little allowance made in many methods for natural variability amongst basins. Finally, many cumulative effects methods fail to identify monitoring needs that will confirm whether cumulative effects goals are being attained."

The ERA method is not adequate to address cumulative watershed effects of most concern. The meaningless and arbitrary nature of the ERA analysis is revealed when the results of the ERA analysis are compared with a description of existing baseline conditions in the affected area. For example, the CEA states that "The CWE ERA analysis for Patrick/Shelly watershed indicates that the current condition (2.26% ERA) is well below the TOC of 13%." However, the CEA also states that "For Patrick Creek watershed as a whole, the indicators of woody debris, pool quality, stream bank condition, road density, and disturbance history are at-risk of not properly functioning to maintain or restore the aquatic and riparian ecosystem." Actual conditions within the watershed indicate that significant cumulative watershed effects are indeed present, contradicting the results of the ERA model analysis. Monitoring and validation based on empirical data are necessary for the proper use of any model. The lack of this data in the EA leads to unreliable, inaccurate, and meaningless results.

The EA and CEA do not provide any physical mechanisms for impacts, and fail to provide any empirical or monitoring data to support the determination of coefficients, and to validate and justify the CWE analysis, even though this is required in order for proper use of the ERA model.

The EA and CEA do not address the criticisms and concerns outlined above by Reid (1998) and Beschta et al. (1995), fail to disclose the inherent limitations, flaws, and uncertainties of the ERA method, and fail to provide the information necessary to determine that the ERA methodology was properly used, in violation of NEPA (40 CFR/1502.24). Because of these deficiencies, the EA and project file fail to adequately analyze cumulative watershed effects in violation of NEPA (40 CFR/1508.25(2)).

Issue 3: The DN/FONSI fails to analyze the adequacy, effectiveness, and likely implementation of proposed mitigation measures and project design features.

A. The EA fails to analyze the adequacy, effectiveness, and likely implementation of proposed mitigation measures and project design features to reduce water quality impacts.

The EA assumes that water quality will be protected if BMPs and mitigation measures are implemented. However, while prevention of minimization of adverse impacts at the project site is indeed necessary, it is not sufficient to avoid cumulative effects (CEQ 1997). The argument that applying a BMP while conducting a specific forest practice minimizes site-specific effects and thus also minimizes cumulative effects is logically flawed. Every BMP is an action and has an effect. Thus generally, the more the BMPs are applied, the greater the cumulative effect. Only by minimizing the number of actions, i.e., the number of individual applications of BMPs, would cumulative effects be minimized (Beschta et al. 1995). However useful BMPs are in minimizing effects of individual actions, they still do not address the cumulative effects of multiple actions occurring in the watershed which, though individually "minimized" through application of site-specific BMPs, may still be significant and have undesirable consequences for beneficial uses such as clean water and fish habitat. The EA fails to address the potential cumulative effects associated with all potential activities, despite the implementation of BMPs and other mitigation measures, in violation of NEPA (40 CFR/1502.14; 1502.16; 1508.14).

The EA and project record fail to provide any data that shows that these measures will be effective. Simply listing BMP's in the project specifications (Appendix I) is not sufficient to comply with NEPA's requirement that the FS take a hard look at the effects and base their management on adequate scientific data. The EA also fails to meet the standards under NEPA which require the Forest Service to provide analytical data or research which substantially supports the efficacy of the proposed mitigation measures designed to minimize or prevent significant environmental damage to the soils and water quality in the project area (40 CFR/1502.24) (See Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1149-50 (9th Cir. 1998)).

By failing to discuss or disclose the adequacy, effectiveness, and likely implementation of proposed mitigation measures and other project design features, the EA and project record violate NEPA (40 CFR/1502.14; 1502.16; 1508.14) and the Forest Service Handbook, which states: "For each alternative, estimate the direct, indirect, and cumulative environmental effects, including the effectiveness of the mitigation measures, that would result from implementing each of the alternatives, including the no action alternative." (FSH 1909.15(10)(15)).

Issue 4: The DN/FONSI fails to adequately analyze impacts to MIS fish and wildlife species.

In evaluating potential impacts to Management Indicator Species (MIS) from proposed projects, the Forest Service is required to discuss each MIS that may be impacted by the project along

with the Forest Plan standards for each MIS and adequately explain how the project will maintain those standards. Failure to do so is in violation of both NFMA (36 CFR 219.19) and NEPA (See Neighbors of Cuddy Mountain v. United States Forest Service (137 F.3d 1372, 1379 (9th Cir. 1998) and Idaho Sporting Congress v. Thomas (137 F.3d 1146, 1150 (9th Cir. 1998)). The EA, BA, and BE do not address or consider all MIS species within the project area that may be impacted from the proposed actions. For many of these species, the Forest Service has no up-to-date population data describing population numbers, locations, and trends, nor monitoring data on which the agency can rely to determine that the actions proposed in the context of the Dome Timber Sale will maintain numbers and distribution of these species sufficient for insuring long-term viability. The analysis on which the Forest has relied is inadequate, flawed, and biased, rendering any potential decision arbitrary and capricious.

Case law such as Sierra Club v. Martin (168 F.3d 1 (11th Cir. 1999)), Sierra Club v. Glickman (No. 97-41274 August 16, 1999), and Forest Guardians et al. v. USFS (No. CV 00-714 October 2, 2001) demonstrates that actual estimates of population and population trend on MIS are necessary to accurately gauge the environmental effects of a proposed action. NFMA's fish and wildlife regulations create a substantive duty to maintain viable wildlife populations (36 CFR/219.19). In carrying out this mandate, the Forest Service is also required to designate and monitor management indicator species in order to estimate the effects of each [action] alternative on fish and wildlife populations. (36 CFR/219.19). This duty cannot be carried out merely by conducting habitat monitoring, but requires the collection of population data. NFMA requires that "each Forest supervisor shall obtain and keep current inventory data appropriate for planning and managing the resources under his or her administrative jurisdiction." (36 CFR 219.12(d)). Also, "population trends of the management indicator species will be monitored and relationships to habitat changes determined." (36 CFR 219.12(6)).

In preparing the EA and Biological Assessment and Biological Evaluation for the Dome Timber Sale, the SRNF did not obtain, and therefore did not adequately consider, population inventory and population trend data for all MIS fish and wildlife species as required by NFMA. Therefore, the EA has failed to ensure the viability and diversity of MIS and sensitive species in the project area.

Issue 5: The DN/FONSI fails to adequately analyze impacts to T&E fish and wildlife species.

Because of the above-listed problems, the EA does not adequately address impacts to all T&E fish and wildlife species, including the Northern Spotted Owl and Coho salmon, in violation of the Endangered Species Act..

Issue 6: The EA fails to protect water quality and aquatic habitat.

The EA states: "There is some potential for short-term ground Disturbance within RRs and upland habitat areas from the cutting, felling, and yarding of trees. Potential for direct sedimentation to stream channels from yarding will be negligible due to the relative low harvest level." (Appendix G). The DN/FONSI states that there would be a "negligible change to erosion rates related to sedimentation and turbidity" (p. 3). However, the EA and project record fail to provide any scientific evidence or data to support these conclusions, in violation of NEPA's implementing regulations, which require that "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses" and "shall identify any

methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions" (40 CFR/1502.24). By failing to adequately protect water quality and aquatic habitat, the EA violates the Northwest Forest Plan Aquatic Conservation Strategy, the Clean Water Act, and the North Coast Region Water Quality Control Plan.

Issue 7: The EA fails to analyze and disclose all socio-economic effects.

A. The EA fails to ensure that the project will maximize net social and economic benefits, and fails to disclose the legally required Present Net Value (PNV).

First, the EA fails to acknowledge the fact that the Decision to implement the Dome Timber Sale is the product of Inter-related Planning Decisions at the National, Forest, and Project Levels. The Forest Service's decision to implement the Dome Timber Sale is the end result of inter-related planning decisions and analyses made at the national, forest, and project level (36 C.F.R. / 219.4). At the national level, the Forest Service prepares the Renewable Resources Program (RPA), which determines output levels for all national forest resources based upon a comprehensive environmental and economic assessment of present and anticipated demands for and supply of renewable resources from forests in all ownership. At the forest level, the Forest Service has prepared the Six Rivers National Forest Land and Resource Management Plan (LRMP), which is an extension of the RPA Program and which identifies lands that are suitable for Timber Sales, the amount of timber to be offered each year, and under what conditions Timber Sales will be offered. At the project level, the Forest Service makes decisions about the specific configuration of individual Timber Sales, including Dome Timber Sale. At each level, the Forest Service must engage in environmental and economic analyses of its decisions as required by the National Environmental Policy Act.

Second, the Six Rivers National Forest fails to incorporate all natural resource benefits into timber sale planning decisions at the National, Forest, and site-specific level. In making the site-specific decision to implement the Dome Timber Sale as well as programmatic decisions to adopt the Six Rivers National Forest LRMP and the RPA Program, the Forest Service failed to incorporate information about the economic value of unlogged forests. (See Declarations of Ed Whitelaw, Thomas Power, Randal O Toole, Karyn Moskowitz, Jeff Debonis, and John Talberth, incorporated here by reference and on file with the Regional Forester). These include the economic benefits associated with:

- 1) recreational opportunities and tourism;
- 2) commercial and recreational fisheries within the boundaries of the Six Rivers National Forest and downstream and offshore;
- 3) habitat for important game species and hunting both within and outside of the Six Rivers National Forest;
- 4) water for cities, industries, businesses, and individual households downstream from the Six Rivers National Forest;
- 5) the regulation of water flowing through rivers and streams, including flood control;
- 6) non-timber forest products such as wild mushrooms, herbs, and medicinal plants;
- 7) mitigation of global climate change through absorption and storage of vast amounts of carbon;
- 8) enhancing the quality of life of neighboring communities;
- 9) harboring biological resources that either have value now or have as yet unknown but potentially large economic and social value;

- 10) harboring biological and genetic resources that can improve the long-term productivity of all forest land;
- 11) pest-control services provided by species that prey on agriculture and forest pests, and;
- 12) pollination services provided by species that pollinate important forest and agricultural crops.

These are important economic benefits generated by National Forests in every part of the nation, including the Six Rivers National Forest. (See Declarations of Robert Costanza, Rex Cullum, Laura Erickson, Al Espinosa, Larry Evans, Brock Evans, Timothy McDevitt, Ron Mitchell, Karyn Moskowitz, Jerry Murphy, Ronel Paddock, Thomas Power, John Talberth, Mary Vogel, Thomas Vuyovich, and Ed Whitelaw, incorporated here by reference and on file with the Regional Forester). The Forest Service has extensive literature and sources of data that it can rely upon to quantify the magnitude of these economic benefits at the national, forest, and project level. (See Declarations of Robert Costanza, Ed Whitelaw, Thomas Power, John Talberth, and Karyn Moskowitz, incorporated here by reference and on file with the Regional Forester). Failure to incorporate information about these benefits into the Dome Timber Sale decision, the Six Rivers National Forest LRMP, and the RPA violates numerous statutes, regulations, and rules governing Forest Service management activities described below.

Third, the Six Rivers National Forest fails to incorporate externalized costs into timber sale planning decisions at the National, Forest, and Site Specific Level. In making the site-specific decision to implement the Dome Timber Sale as well as programmatic decisions to adopt the Six Rivers National Forest LRMP and the RPA Program, the Forest Service failed to incorporate information about externalized costs passed on to communities, businesses, and individuals when National Forests are logged. (See Declarations of Ed Whitelaw, Thomas Power, Randal O Toole, Karyn Moskowitz, Jeff Debonis, and John Talberth, incorporated here by reference and on file with the Regional Forester). These include the direct, indirect, and cumulative economic costs associated with:

- 1) lost recreational opportunities and decreased tourism;
- 2) degraded commercial and recreational fisheries within the boundaries of the Six Rivers National Forest and downstream and offshore;
- 3) degraded habitat for important game species and loss of hunting opportunities both within and outside of the Six Rivers National Forest;
- 4) increased pollution of water for cities, industries, businesses, and individual households downstream from the Six Rivers National Forest and increased costs of water filtration;
- 5) increased flooding and disruption of the normal flows in rivers and streams.
- 6) loss of non-timber forest products such as wild mushrooms, herbs, and medicinal plants;
- 7) exacerbation of global warming through release of greenhouse gasses;
- 8) diminished quality of life of neighboring communities;
- 9) loss of biological resources that either have value now or have as yet unknown but potentially large economic and social value;
- 10) loss of biological and genetic resources that can improve the long-term productivity of all forest land;
- 11) diminished pest-control services provided by species that prey on agriculture and forest pests;
- 12) diminished pollination services provided by species that pollinate important forest and agricultural crops.

- 13) lost jobs and income associated with timber production on private lands that is displaced by Six Rivers National Forest Timber Sales;
- 14) lost jobs and income associated with the production of alternative and recycled products that is displaced by subsidized Six Rivers National Forest Timber Sales;
- 15) death, injury, and property damage associated with logging on the Six Rivers National Forest, and;
- 16) increased risk of wildfires caused by adverse changes in microclimate, increased human access, and slash generated by Timber Sales.

These externalized costs are generated by National Forest logging in every part of the nation, including the Six Rivers National Forest (See Declarations of Garrick Beck, Robert Costanza, Rex Cullum, Laura Erickson, Al Espinosa, Larry Evans, Brock Evans, Timothy McDevitt, Ron Mitchell, Karyn Moskowitz, Jerry Murphy, Cara Nelson, Ronel Paddock, Thomas Power, John Talberth, Mary Vogel, Thomas Vuyovich, and Ed Whitelaw, incorporated here by reference and on file with the Regional Forester). The Forest Service has extensive literature and sources of data that it can rely upon to quantify the magnitude of these externalized costs at the national, forest, and project level. (See Declarations of Robert Costanza, Ed Whitelaw, Thomas Power, John Talberth, and Karyn Moskowitz, incorporated here by reference and on file with the Regional Forester). Failure to incorporate externalized costs into the Dome Timber Sale decision, the Six Rivers National Forest LRMP, and the RPA violates numerous statutes, regulations, and rules governing Forest Service management activities described below.

By failing to incorporate important natural resource benefits and externalized costs into the Dome Timber Sale decision, the Six Rivers National Forest LRMP, and the RPA, the Forest Service has violated the Multiple Use and Sustained Yield Act. Without incorporating natural resource benefits and externalized costs into these decisions, the Forest Service cannot meet MUSY's requirements to administer National Forests for all of their resources, to maximize public benefits, and to give due consideration to the relative resource values of all National Forest resources (16 U.S.C.// 528; 529; 531).

By failing to incorporate natural resource benefits and externalized costs into the Dome Timber Sale decision, the Six Rivers National Forest LRMP, and the RPA, the Forest Service has violated the Forest and Rangeland Renewable Resources Planning Act and the National Forest Management Act. Without incorporating natural resource benefits and externalized costs into these decisions, the Forest Service cannot meet the RPA and NFMA's requirements to secure the maximum benefits of multiple use sustained yield management, to conduct comprehensive economic assessments of all National Forest resources, to identify all costs and all benefits associated with RPA Program outputs, to insure consideration of the economic aspects of renewable resource management, to improve Forest Service accountability when it prepares annual budgets and reports to Congress on the costs and benefits of its programs, and to conserve forests and promote the use of recycled products (16 U.S.C.// 1600(7); 1601(d)(1); 1600(3); 1602(2); 1604(g)3; 1606(a); 1606(b); 1606(c); 1606(d)).

By ignoring important natural resource benefits and externalized costs, the Forest Service also runs afoul of regulations implementing the RPA and NFPA which require that the Forest Service maximize net public benefits, evaluate the relative values of all National Forest resources, consider all market and non-market costs and all benefits of management decisions, and assign monetary values to goods and services to the extent that they can be assigned (36 CFR// 219.1; 219.4(a)1; 219.4(b)1ii; 219.12; 219.13; 219.14).

By failing to incorporate important natural resource benefits and externalized costs into the Dome Timber Sale decision, the Six Rivers National Forest LRMP, and the RPA, the Forest Service has violated the National Environmental Policy Act. Without incorporating important natural resource benefits and externalized costs into these decisions, the Forest Service cannot meet NEPA's requirements to fully disclose the direct, indirect, and cumulative economic impacts of the Timber Sale program and to give appropriate consideration to environmental amenities in decision-making (42 USC//4332 (C); 4332 (B)).

By failing to utilize appropriate professional expertise capable of disclosing all natural resource benefits and externalized costs, the Forest Service is in violation of NEPA's mandate to rely upon a systematic and interdisciplinary approach to decision making (42 USC/4332 (A)).

By ignoring important natural resource benefits and externalized costs, the Forest Service also runs afoul of regulations implementing NEPA which require full disclosure of direct, indirect, and cumulative economic impacts, identification of environmental effects and values in adequate detail so that they can be compared with economic and technical analyses, rigorous analysis of the benefits of implementing the no action alternative in Timber Sales, and use of appropriate professional expertise (40 CFR// 1501.2(a); 1501.2(b); 1502.6; 1502.16; 1502.24; 1507.2(a); 1507.2(b); 1508.7; 1508.8; 1508.27).

The Forest Service is also in violation of its Environmental Policy and Procedures Handbook, which reiterates requirements set forth in NEPA and the CEQ Regulations implementing NEPA (FSH 1909.15). These requirements also appear in the Forest Service Manual (FSM 1950).

Logging National Forests exacerbates adverse changes in global climate by reducing the carbon absorption function of National Forests and by releasing carbon stored by these forests into the atmosphere. The adverse ecological and economic effects of increases in atmospheric carbon caused by National Forest Timber Sales has not been disclosed nor incorporated into decision-making by the Forest Service when it prepared and authorized the Dome Timber Sale, the Six Rivers National Forest LRMP, and the RPA. This failure is a violation of the Global Climate Change Prevention Act (7 USC/6701(b)).

By failing to incorporate important natural resource benefits and externalized costs into the Dome Timber Sale decision, the Six Rivers National Forest LRMP, and the RPA, the Forest Service has violated the Administrative Procedures Act. Sources of information and methodologies for quantifying these benefits and costs are readily available and used by the Forest Service and other federal agencies outside the context of the Timber Sale program. In light of this, the decision to ignore these benefits and costs violates the APA's prohibitions on making decisions that are arbitrary, capricious, and unreasonable (5 USC/706).

By failing to incorporate important natural resource benefits and externalized costs into the Dome Timber Sale decision, the Six Rivers National Forest LRMP, and the RPA, the Forest Service has violated provisions of its Economic and Social Analysis Handbook requiring that the Forest Service maximize net public benefits and fully account for all market and non-market benefits and costs in the context of market studies, economic efficiency analysis, and economic impact assessments of its plans and programs (FSH 1909.17.11.1; 1909.17.14.1; 1909.17.14.11; 1909.17.14.6; 1909.17.23).

By failing to incorporate important natural resource benefits and externalized costs into the Dome Timber Sale decision, the Six Rivers National Forest LRMP, and the RPA, the Forest Service has violated provisions of its Timber Sale Preparation Handbook requiring that all marketed and non-marketed costs and benefits be addressed in analyses of the financial and economic efficiency of individual Timber Sales and the Timber Sale program, as a whole (FSH 2409.18.13.1; 2409.18.32).

By failing to incorporate important natural resource benefits and externalized costs into the Dome Timber Sale decision, the Six Rivers National Forest LRMP, and the RPA, the Forest Service has violated numerous provisions of the Forest Service Manual. These include provisions that require the Forest Service to manage the Timber Sale program so that total benefits exceed total costs, to account for non-timber economic effects in its Timber Sale analyses, to ensure that economic values used in economic efficiency and economic impact assessments adequately reflect biological, economic, and social conditions, and that economic and social impacts and costs and benefits inform all decisions (FSM 2403.4; 2403.5; 1971.5; 1970.1(1), (2), (3); 1970.2; 1970.3(1), (5)).

REQUEST FOR RELIEF

As documented in the STATEMENT OF REASONS, the Dome Timber Sale EA and DN/FONSI violate the National Environmental Quality Act; the National Forest Management Act; the Six Rivers National Forest Land and Resource Management Plan; federal Clean Water Act, North Coast Region Water Quality Control Plan, Forest Service Manual and Handbook; and the Administrative Procedures Act.

Appellant desire and request the following relief:

1. Declare that the decision to approve and proceed with the Dome Timber Sale without preparing a sufficient and legally adequate EIS is arbitrary, capricious, an abuse of discretion, and in violation of NEPA, NFMA, and FSM;
2. Declare that decision to approve and proceed with the Dome Timber Sale 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;
3. Declare that decision to approve and proceed with the Dome Timber Sale without adequate assurance that the project will ensure the diversity and viability of federally threatened species is arbitrary, capricious, an abuse of discretion, and in violation of the federal ESA;
4. Declare that the decision to approve and proceed with the Dome Timber Sale 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;
5. Declare that the decision to approve and proceed with the Dome Timber Sale without adequate assurance that the project will ensure that water quality and beneficial uses will not be impaired is arbitrary, capricious, an abuse of discretion, and in violation of the federal CWA, PCWQCA, and North Coast Basin Plan;
6. Declare that the decision to approve and proceed with the Dome Timber Sale without adequate assurance that the project will address all socio-economic impacts is arbitrary and capricious, and abuse of discretion, and in violation of the MUSY, RPA, GCCPA, NFMA, and NEPA.

7. Immediately withdraw the DN/FONSI and prohibit the Six Rivers National Forest from taking any further action to implement the Dome Timber Sale, including advertising, offering for sale, or awarding any contracts, until such time as the Six Rivers National Forest has 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 NEPA, NFMA, ESA, NFP ROD, CWA, PCWQCA, MUSY, RPA, GCCPA, Basin Plan, LRMP, and FSM.

Submitted this 15th Day of November, 2001.

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For the Appellants

LITERATURE CITED

- Beschta, R.L., J.R. Boyle, C.C. Chambers, W.P. Gibson, S.V. Gregory, J. Grizzel, J.C. Hagar, J.L. Li, W.C. McComb, M.L. Reiter, G.H. Taylor, and J.E. Warila. 1995. Cumulative effects of forest practices in Oregon. Oregon State University, Corvallis, OR. Prepared for the Oregon Department of Forestry, Salem, OR. 593 p.
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- Reid, L.M. 1993. Research and cumulative watershed effects. General Technical Report PSW-GTR-141. Pacific Southwest Research Station, Forest Service, U.S. Department of Agriculture, Albany, CA. 118 p.
- Reid, L.M. 1998. Cumulative watershed effects and watershed analysis. Pp. 475-501 *In* R.J. Naiman & R.E. Bilby (eds) River ecology and management: lessons from the Pacific coastal ecoregion, springer-Verlag, N.Y., N.Y.

EXHIBITS AND DECLARATIONS

(on file with Regional Forester and hereby incorporated as if repeated verbatim):

Exhibit: Talberth, J. and K. Moskowitz, 1999. The Economic Case Against National Forest Logging. Forest Conservation Council Publication, December 1999. 75 pp.

Declarations:

Robert Costanza
Randal O Toole
Ed Whitelaw

Tom Vuyovich
Mary Vogel
Ronel Paddock

Jeff DeBonis
Laura Erickson
Rex Cullum
Larry Evans
Brock Evans
Al Espinosa
Kayrn Moskowitz
Cara Nelson
Thomas Power
Timothy McDevitt
Garrick Beck

Ron Mitchell
Jerry Murphy
Will Harling