

River (WSR), failing to prepare a management plan for the river, and denying the public its right to comment on and influence agency decisions that harm the river. Specifically, the Forest Service has illegally allowed livestock grazing and other activities to degrade wild salmon, water quality, riparian vegetation, and other values of the North Fork Eel WSR, and the agency has violated procedural laws giving the public the rights of notice and comment opportunities on agency decisions.

Jurisdiction and Venue.

2. This lawsuit alleges violations of the Wild and Scenic Rivers Act (WSRA), 16 U.S.C.//1274, et seq.; the National Forest Management Act (NFMA), 16 U.S.C.//1600 et seq., the National Environmental Policy Act (NEPA), 42 U.S.C.//4331 et seq.; the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiatives, for Assistance in the Recovery that Occurred at Oklahoma City, and Rescissions Act of 1995 (Rescissions Act), P.L. 104-19, 109 Stat. 194 (Jan. 4, 1995); and the Administrative Procedure Act (APA), 5 U.S.C.//701 et seq. This Court has jurisdiction pursuant to 28 U.S.C./1331. This Court may issue declaratory relief pursuant to 28 U.S.C./2201, and this Court may issue injunctive relief pursuant to 28 U.S.C./2202, 5 U.S.C./705, and 5 U.S.C./706(1).

3. The North Fork Eel WSR is located in Trinity and Mendocino Counties, California, and agency actions challenged herein were made in California. Venue is proper in this Court under 28 U.S.C./1391(e). The Northern District is the appropriate division for the filing of this suit. L.R. 3-12(b).

4. A present and actual controversy exists between the parties to this action. Any available administrative remedies have been exhausted. 7 U.S.C./6914(e). Reviewable final agency action exists that is subject to this Court s review under 5 U.S.C.//702 & 704. Plaintiffs may be entitled to attorneys fees and costs under the Equal Access to Justice Act, 28 U.S.C./2412(d).

Parties.

5. Plaintiff Center for Biological Diversity (Center) is a New Mexico non-profit corporation with offices in Phoenix and Tucson, Arizona; Silver City, New Mexico; and San Diego and Berkeley, California. The Center s primary office is in Tucson. The Center is actively involved in species and habitat protection issues throughout North America. The Center has members throughout North America, including northern California. The Center s members and staff include local residents with biological health, educational, scientific research, moral, and spiritual interests in the wild salmon, riparian vegetation, and water quality that are subjects of this suit. The Center s members and staff have participated in efforts to protect and preserve the North Fork Eel WSR and other related rivers, and benefit from the values provided by the land, wild fish, and other wildlife that rely upon the river. The Center brings this action on its own behalf and on behalf of its adversely affected members and staff.

6. Plaintiff Environmental Protection Information Center (EPIC) is a non-profit corporation registered in California that is dedicated to preserving, protecting, and restoring biodiversity, native species, watersheds and ecosystems in northern California. EPIC maintains an office in Garberville, California. EPIC s members and staff regularly use lands and waters throughout California, including the North Fork Eel WSR, to observe nature, enjoy wild fish and riparian plant communities, and pursue other recreational, scientific, and educational activities. EPIC s members and staff have researched, studied, observed, and sought protection for many species listed under the Endangered Species Act, including chinook salmon and steelhead trout. EPIC s members and staff derive scientific, recreational, conservation, spiritual and aesthetic benefits from the existence of wild salmonids. EPIC has actively opposed livestock grazing and other activities that harm coho salmon and their habitat, and would, if given the opportunity, comment upon and appeal Forest Service decisions that harm salmon in the North Fork Eel WSR. EPIC brings this action on behalf of itself and its adversely affected members and staff.

7. The aesthetic, recreational, and scientific interests of the members of Plaintiffs have been and will continue to be adversely affected and irreparably injured if the Forest Service continues to act and to fail to act as alleged herein, and to implement the actions that Plaintiffs challenge herein. These are actual, concrete injuries caused by the agency's violation of mandatory duties under WSRA, NFMA, NEPA, the Rescissions Act, and other federal laws. These injuries would be redressed by the relief that Plaintiffs seek.

8. Defendant Roberto Delgado is the district ranger for the Mad River Ranger District, Six Rivers National Forest, U.S. Forest Service. Mr. Delgado is sued in his official capacity. Mr. Delgado or his predecessors have executed instruments, made decisions, or failed to act as alleged herein.

9. Defendant Lou Woltering is the Supervisor of the Six Rivers National Forest. Mr. Woltering is sued in his official capacity. Mr. Woltering is responsible among other things to ensure that the Forest Service complies with the provisions of the Six Rivers National Forest Land and Resource Management Plan.

10. Defendant Ann Veneman is the Secretary of Agriculture. Ms. Veneman is sued in her official capacity. Ms. Veneman is ultimately responsible for the actions of individuals and agencies within the Department, including the U.S. Forest Service.

11. Defendant U.S. Forest Service is the agency empowered by Congress to administer the North Fork Eel WSR and adjacent lands in order among other things to protect and enhance the river's values; protect its free-flowing nature; and cooperate to eliminate or diminish pollution.

Specific Allegations.

12. The North Fork Eel River is one of three major forks of the Eel River in California. The headwaters of the North Fork Eel River are in Hettenshaw Valley. The river is approximately 40 miles long, and it flows through the Six Rivers National Forest. Approximately 40% of the 180,020-acre North Fork Eel watershed is administered by the Six

Rivers National Forest through the Mad River Ranger District. The watershed has a Mediterranean climate with cool wet winters and warm dry summers. Precipitation in the basin is approximately 50 inches a year.

13. On January 19, 1981, the Secretary of the Interior approved the Governor of California's application to designate a segment of the North Fork Eel as a federal wild and scenic river. The North Fork Eel WSR is 15 miles long. The designated segment of the river runs from the Old Gilman Ranch downstream to the confluence with the mainstem Eel River near Ramsey. The boundaries of the North Fork Eel WSR establish a river area comprised of roughly 1,558 acres. The upstream segment of the North Fork Eel WSR is administered by the Forest Service. Downstream segments of the North Fork Eel WSR flow through lands administered by the Bureau of Land Management or owned by the Round Valley Indian Nation.

14. The North Fork Eel WSR is classified as wild under WSRA. WSRA provides that the Forest Service must administer the North Fork Eel WSR primarily to protect and enhance its outstandingly remarkable values (ORVs). Anadromous fish are an ORV of the North Fork Eel WSR. Scenery is an ORV of the North Fork Eel WSR. Water quality is an ORV of the North Fork Eel WSR. Recreation is an ORV of the North Fork Eel WSR. Botany is an ORV of the North Fork Eel WSR. WSRA also provides that the Forest Service must cooperate with the U.S. Environmental Protection Agency and state water pollution control agencies in order to eliminate or diminish pollution in the North Fork Eel WSR.

15. Under NFMA, the Forest Service is required to manage fish and wildlife habitat to maintain viable populations of vertebrate species such as salmon and steelhead. In 1994, the Secretary of Agriculture and the Secretary of the Interior adopted an Aquatic Conservation Strategy to protect salmon and steelhead. The strategy has four components. One component is the designation of Tier 1 Key Watersheds. The North Fork Eel WSR is a Tier I Key Watershed. As such, the river is expected to help anchor the recovery of anadromous fish. Approximately 46.2 miles of anadromous fish habitat exists in the North Fork Eel River and its

tributaries. Forest Service lands within the North Fork Eel watershed contain much of the best remaining habitat for salmonids.

16. Chinook salmon (*O. tshawytscha*) and winter and summer steelhead trout (*O. mykiss*) exist in the North Fork Eel WSR. Chinook salmon are listed as threatened under the Endangered Species Act (ESA), and occupy habitat from the confluence of the Mainstem and North Fork Eel Rivers upstream and on to Forest Service lands. The quality of habitat for chinook salmon in the North Fork Eel WSR is influenced by the amount and quality of water in the species habitat. Winter and summer steelhead trout are listed as threatened under the ESA, and occupy habitat from the confluence of the Mainstem and North Fork Eel Rivers upstream to and beyond the upstream boundary of the North Fork Eel WSR. The quality of habitat for steelhead in the North Fork Eel WSR is influenced by the amount and quality of water in the species habitat.

17. The U.S. Environmental Protection Agency has approved the listing of the North Fork Eel River as water quality limited under the Clean Water Act for the parameter of temperature. The upper incipient lethal temperature limit for chinook salmon is 68 degrees fahrenheit. The upper incipient lethal temperature limit for steelhead trout is 71 degrees fahrenheit. Temperatures exceeding 80 degrees fahrenheit have been recorded in the North Fork Eel River. High water temperatures decrease dissolved oxygen, which makes it more difficult for salmonids to breathe. High water temperatures make salmonids lethargic, more vulnerable as prey, and less likely to spawn.

18. The U.S. Environmental Protection Agency has approved the listing of the North Fork Eel River as water quality limited under the Clean Water Act for the parameter of sediment. High sediment levels in the North Fork Eel WSR harm salmonids by reducing spawning and rearing habitat, decreasing aquatic invertebrate production, and increasing water temperatures.

19. The Forest Service authorizes livestock grazing on five allotments that include, border upon, or are adjacent to the North Fork Eel WSR. The allotments include Van Horn; Long Ridge; Hoaglin; Zenia; and Soldier Creek. The Forest Service authorizes livestock grazing on Forest Service lands by issuing a permit. The permit for the Van Horn allotment was issued in 1991 and expires on Dec. 31, 2001. The permit for the Long Ridge allotment was issued in 1991 and expires on Dec. 31, 2001. The permit for the Hoaglin allotment was issued in 1991 and expires on Dec. 31, 2001. The permit for the Zenia allotment was issued in 2000 and expires in 2010. The permit for the Solider Creek allotment was issued in 1991 but is currently ineffective because the allotment is currently vacant.

20. The issuance of a livestock grazing permit constitutes a major federal action that may affect the human environment and, therefore, requires preparation of an environmental impact statement under NEPA. In 1995, Congress enacted the Rescissions Act. Section 504(a) of the Rescissions Act requires each National Forest to establish and adhere to a schedule for the completion of NEPA analyses and decisions on all livestock allotments within the Forest for which NEPA analysis is needed. The Forest Service established a schedule for the completion of NEPA analyses for livestock allotments on the Mad River Ranger District, which includes the five allotments that include, border upon, or are adjacent to the North Fork Eel WSR. The schedule provides that NEPA analyses and decisions will be completed for the five livestock allotments by 1999. The Forest Service has not completed a NEPA analysis or decision for the five livestock allotments.

21. When it issued the permits to authorize livestock grazing on the five allotments, the Forest Service did not issue a decision notice under NEPA to give the public notice of its decision, or to allow any administrative appeals of the decisions to authorize grazing.

22. The Forest Service lacks baseline or comprehensive data related to the North Fork Eel WSR that would allow it to make informed decisions about the legality or propriety of livestock grazing that affects the river. In 1996, the Forest Service issued the North Fork Eel River

Watershed Analysis. The Analysis is the first and only iteration of any such watershed analysis. The data in the Analysis and other documents that the agency possesses indicate that grazing has degraded and will continue to degrade, or will prevent recovery of, native plant species, wild salmon, healthy soils, and water quality, and that grazing will detract from recreational values.

23. Along the North Fork Eel WSR, current grazing impacts are concentrated in riparian areas. Fifteen-to-twenty percent of the riparian reaches sampled in the North Fork Eel River watershed in 1995 showed some visible effects of livestock grazing, but no details of the effects of grazing were collected. Natural sedimentation rates are high in the North Fork Eel because of high uplift and stream incision rates into relatively weak bedrock units, which in combination has produced a fairly high incidence of debris slides adjacent to stream channels. Livestock grazing increases and exacerbates sedimentation from riparian zones entering the North Fork Eel WSR. Grazing practices along the North Fork Eel WSR have also caused adverse nutrient loading of stream waters. High nutrient loading causes filamentous algal blooms. An overabundance of these algal blooms alters habitat to a condition that is less favorable for salmonids. Nutrient loading also increases water temperatures, adversely affecting salmonids.

24. Livestock grazing along the North Fork Eel WSR has degraded native plant species and helped introduce or spread exotic plant species. Currently, plant communities include a dominance of annual grasses (such as *Bromus tectorum* and *Cynosorus echinatus*), some noxious forbs (such as *Hemizonia* and *Madia*), and clover (*Trifolium* sp.) in grasslands of the watershed that were once dominated by perennial grass species and native herbs.

25. Livestock grazing along the North Fork Eel WSR has diminished the quantity of water in the river and harmed its free flow. Among other things, livestock grazing has compacted the soil and degraded native riparian plants, which has inhibited the ability of soils to retain water and assist in the discharge of water into surface flows over a longer period. Data on

water flows in the North Fork Eel WSR are available from a gauging station near Mina. At periods during the summer, flow in the North Fork Eel River is slow to non-existent.

26. In 1995, the Forest Service issued the Six Rivers National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides that the Forest Service shall complete a management plan for the North Fork Eel WSR. In response to comments on the Forest Plan, the Forest Service stated that it would complete such a plan by 1997. The Forest Service has not completed a management plan for the North Fork Eel WSR. In the absence of a comprehensive management plan for the North Fork Eel WSR, the Forest Service has not adequately protected or enhanced the river s ORVs. In the absence of a comprehensive management plan, the Forest Service cannot make informed and legal decisions about proposed activities that affect the river, including livestock grazing.

Claims for Relief

Claim One: Violation of the Wild and Scenic Rivers Act.

27. Plaintiffs reallege paragraphs 1- 26.

28. WSRA provides that the Forest Service shall administer the North Fork Eel WSR primarily to protect and enhance its outstandingly remarkable values. 16 U.S.C. /1281(a). The Forest Service has violated this duty by allowing livestock grazing that among other things degrades native plants, harms wild salmonids, and adversely affects recreational opportunities.

29. WSRA provides that the Forest Service shall cooperate with the U.S. Environmental Protection Agency and state water pollution control agencies for the purpose of eliminating or diminishing pollution in the river. 16 U.S.C./ 1283(c). The Forest Service has violated this duty by allowing livestock grazing and associated activities that compact soils, denude riparian vegetation, and result in other impacts that cause or contribute to violation of water quality standards for the parameters of temperature, sediment, and other water quality standards.

30. WSRA provides that the Forest Service must administer the North Fork Eel WSR as a free-flowing river. 16 U.S.C.//1271(b), 1273(b), 1287(b). The Forest Service has violated this duty by allowing livestock grazing that compacts soils, denudes riparian vegetation, and causes other damage that depletes or diminishes the quantity of water in the river.

31. The Forest Service s actions constitute agency actions unlawfully withheld or unreasonably delayed, or are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C.//706(1) & (2)(A).

Claim Two: Violation of the National Forest Management Act

32. Plaintiffs reallege paragraphs 1 — 31.

33. The National Forest Management Act requires the Forest Service to establish in a forest plan standards for the management of congressionally designated lands such as federal wild and scenic rivers. 16 U.S.C./1604(i); 36 C.F.R./219.7(c). The Six Rivers National Forest established in the Six Rivers Forest Plan direction and standards for the management and use of the North Fork Eel WSR. The Six Rivers Forest Plan provides that the Forest Service shall prepare a comprehensive management plan for the North Fork Eel WSR. The Forest Service has not prepared a comprehensive management plan for the North Fork Eel WSR. The Forest Service s actions violate NFMA.

34. The Forest Service s actions constitute agency actions unlawfully withheld or unreasonably delayed, or are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C.//706(1) & (2)(A).

Claim Three: Violation of the National Environmental Policy Act.

35. Plaintiffs reallege paragraphs 1-34.

36. NEPA provides that the Forest Service must prepare an environmental impact statement for major federal actions that may significantly impact the human environment. 42 U.S.C./4332(C); 40 C.F.R./1501.4. The issuance of livestock grazing permits constitutes a major federal action that may significantly impact the human environment and requires

preparation of an environmental impact statement. The issuance of the five livestock grazing permits that authorize grazing on allotments that include, border upon, or are adjacent to the North Fork Eel WSR constitute major federal actions which have a cumulatively significant impact on the human environment. Further, to comply with NEPA, the Forest Service must issue a decision document under NEPA to implement any analyzed alternative. The Forest Service's failure to prepare environmental impact statements or any environmental analyses before issuing the permits, and its failure to issue decision documents, violates NEPA.

37. The Forest Service's actions constitute agency actions unlawfully withheld or unreasonably delayed, or are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. §§ 706(1) & (2)(A).

Claim Four: Violation of the Rescissions Act.

38. Plaintiffs reallege paragraphs 1-37.

39. In 1995, Congress enacted the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiatives, for Assistance in the Recovery that Occurred at Oklahoma City, and Rescissions Act, P.L. 104-19, 109 Stat. 194 (Jan. 4, 1995). Section 504 of the Rescissions Act provides that the Forest Service shall establish and adhere to a schedule for the completion of NEPA analyses and decisions for all livestock allotments for which such analyses are needed. The Forest Service established such a schedule for allotments in the Six Rivers National Forest. The schedule includes all allotments that include, border upon, or are adjacent to the North Fork Eel WSR. The Forest Service has not adhered to the schedule or completed NEPA analyses and decision for these allotments. The Forest Service's actions violate the Rescissions Act.

40. The Forest Service's actions constitute agency actions unlawfully withheld or unreasonably delayed, or are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. §§ 706(1) & (2)(A).

Relief Requested.

1. Declare that the Forest Service has violated WSRA, NFMA, NEPA, and the Rescissions Act, as alleged above;
2. Declare that the Forest Service's violation of these substantive and procedural laws constitute agency action unlawfully withheld or unreasonably delayed, or are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, under the Administrative Procedure Act;
3. Order the Forest Service to prepare a comprehensive management plan for the North Fork Eel WSR;
4. Set aside the permits authorizing livestock grazing on lands that include, border upon, or are adjacent to the North Fork Eel WSR;
5. Enjoin livestock grazing on lands that include, border upon, or are adjacent to the North Fork Eel WSR, until the Forest Service prepares a valid comprehensive management plan for the river;
- . Award Plaintiffs reasonable attorneys' fees and costs pursuant to 28 U.S.C./2412(d).
7. Grant such other relief as this Court deems necessary and proper.

Dated: December __, 2001.

Respectfully submitted,

JULIA A. OLSON

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