

# EXHIBIT A

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25 UNITED STATES DISTRICT COURT  
26 NORTHERN DISTRICT OF CALIFORNIA  
27 SAN FRANCISCO DIVISION

28 KARUK TRIBE, ENVIRONMENTAL )  
PROTECTION INFORMATION CENTER, ) Civ. No. 16-01079  
CENTER FOR BIOLOGICAL DIVERSITY, )  
KLAMATH RIVERKEEPER, and KLAMATH- ) **[PROPOSED] SECOND**  
SISKIYOU WILDLANDS CENTER, ) **SUPPLEMENTAL AND AMENDED**  
 ) **COMPLAINT**  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
PATRICIA A. GRANTHAM, Klamath National )  
Forest Supervisor; and UNITED STATES )

1 FOREST SERVICE, )  
 )  
 2 Defendants, )  
 )  
 3 and )  
 )  
 4 SISKIYOU COUNTY, a political subdivision )  
 5 of the State of California, AMERICAN )  
 6 FOREST RESOURCE COUNCIL, an Oregon )  
 7 nonprofit corporation, GARY RAINEY, and )  
 8 GEORGE HARPER, )  
 )  
 9 Defendant-Intervenors. )  
 )  
 )

10 **INTRODUCTION**

11 1. This is a civil action against the United States Forest Service (“USFS”) of the United  
 12 States Department of Agriculture. Plaintiffs allege the USFS violated the National  
 13 Environmental Policy Act and National Forest Management Act when it issued a Record of  
 14 Decision (“ROD”) approving the Westside Fire Recovery Project on the Klamath National  
 15 Forest.

16 2. The Karuk Tribe has occupied lands along the Klamath River since time immemorial.  
 17 Today, some of these lands comprise the Klamath National Forest, the location of the Westside  
 18 Fire Recovery Project (“Project” or “Westside”) challenged in this case.

19 3. The Karuk Tribal People continue to maintain a unique relationship with the land and  
 20 value many resources as sacred. The resources utilized within the planning area consist of  
 21 traditional subsistence uses such hunting, trapping and fishing, nut and seed harvesting,  
 22 mushroom and berry gathering, medicinal plant gathering, and gathering of basketry-artisan  
 23 materials. Sacred sites, gathering areas, hunting camps and fishing spots, and other prehistoric,  
 24 historic, and contemporary use areas are scattered across the Karuk Tribe’s entire ancestral  
 25 territory.

26 4. Prior to settlement by Europeans, the mid-Klamath River watershed fire regime was  
 27 characterized by frequent (occurring every 8–15 years) light surface fires of predominately low  
 28 and moderate intensity, but fire suppression has changed the fire regime to less frequent but

1 higher-intensity fires. The results of these changed conditions include increases in dead and live  
2 fuel, development of ladder fuels, and a closed canopy that can sustain a crown fire.

3 5. In addition to promoting fire-resilient forests, regular burning also hastens the  
4 development of complex old-growth or late-seral forest characteristics, such as basal scars,  
5 snags, cavities and large, downed woody debris. Karuk environmental management has shaped  
6 the region's ecological conditions within carefully observed natural processes and limits for  
7 millennia.

8 6. Karuk cultural environmental management practices sustain biodiversity by working with  
9 ecological processes, fostering habitat complexity, and enhancing the productivity and resilience  
10 of forest, grassland, and aquatic ecosystems. Karuk management supported ecological dynamics,  
11 properly functioning ecological processes in turn supported the Tribe's cultural, ceremonial, and  
12 subsistence practices.

13 7. However, the local terrestrial and aquatic ecosystems no longer provide the diversified  
14 resource access on an adequate scale that is vital to the perpetuation of Karuk culture.

15 8. Federal management of Karuk ancestral homelands has decimated many sacred sites. The  
16 Tribe's primary cultural lands—Panamaniik, Katimiin, Aamaikiaraam, Helkau, and Inam—have  
17 all experienced major disturbances from mining, logging, road construction, fire exclusion and  
18 suppression, post-fire logging, and unsustainable recreational uses.

19 9. The Karuk Tribe has used fire as a land management tool for thousands of years because  
20 fire is a natural part of this area's ecosystem. For the past 100 years, however, Forest Service  
21 policies have disrupted the natural fire regime by suppressing fire, preventing indigenous  
22 burning, and promoting large clear cuts of commercially valuable trees followed by plantation  
23 style re-planting of conifers. These policies have led to an increase in fire risk and severity, a loss  
24 of biodiversity, impaired water quality, and declining fisheries.

25 10. Without frequent fires, open meadows became choked with dense conifer trees. Plant  
26 communities changed as invasive non-native species replaced native plants. Animal communities  
27 changed as habitat disappeared or became fragmented, and salmon spawning and rearing  
28

1 grounds were filled with sediment from past and current federal land management policies and  
2 activities.

3 11. The Wild and Scenic Klamath, Salmon and Scott Rivers are within Karuk Ancestral  
4 Territory and are the lifeblood of the Karuk people.

5 12. These rivers are all listed as impaired under the Clean Water Act but still provide some of  
6 the last strongholds and cool water refugia for wild salmon.

7 13. The project contains over 100 miles of threatened Coho salmon Critical Habitat, such as  
8 Grider and Walker Creeks.

9 14. A vast majority of the project activities are within Late Successional Reserves, which  
10 serve as Critical Habitat for the threatened Northern Spotted Owl.

11 15. These forests also provide vital habitat connectivity for candidate species, such as the  
12 fisher and rare and endemic species such as the Siskiyou Mountains Salamander.

13 16. The project is adjacent to the Marble Mountain and Russian Wilderness Areas; the  
14 Pacific Crest Trail; and within designated and eligible Wild and Scenic River Corridors, such as  
15 South Russian, Grider, and Elk Creeks, which are also watersheds designated by the Northwest  
16 Forest Plan for the highest level of protection for salmonids.

17 17. Despite the calls for an approach that would garner broad community support and meet  
18 multiple objectives, Defendant Klamath National Forest Supervisor Patricia Grantham remains  
19 committed to implementing an aggressive logging plan that is not only incompatible with  
20 community needs, but also is inconsistent with the Northwest Forest Plan other applicable  
21 federal laws.

## 22 **JURISDICTION**

23 18. This Court has jurisdiction pursuant to 28 U.S.C. § 1331. The USFS's final  
24 environmental impact statement ("FEIS") and record of decision ("ROD") comprise final agency  
25 actions subject to judicial review under the Administrative Procedure Act ("APA").

26 19. This Court may issue declaratory relief pursuant to 28 U.S.C. § 2202.

27 20. This Court may issue injunctive relief pursuant to 28 U.S.C. § 2201, 5 U.S.C. § 702, and  
28 5 U.S.C. § 706.

1 21. An actual, justiciable controversy exists between Plaintiffs and Defendants.

2 **INTRADISTRICT ASSIGNMENT**

3 22. Venue in this court is proper under 28 U.S.C § 1391(1)(b). Plaintiffs Karuk Tribe,  
4 Environmental Information Protection Center, Klamath Riverkeeper, and Center for Biological  
5 Diversity reside in this District.

6 **PARTIES**

7 23. Plaintiff KARUK TRIBE is a federally-recognized Indian Tribe that occupies aboriginal  
8 land along the middle course of the Klamath and Salmon Rivers in Northern California. The  
9 Karuk Tribe's Aboriginal Territory has been previously mapped, and includes an estimated 1.38  
10 million acres within the Klamath River Basin. Nearly all of Karuk Aboriginal Territory is located  
11 within lands administered by the Klamath National Forest and the Six Rivers National Forest.  
12 Karuk Tribe trust lands are composed of individual and Tribal Trust properties scattered along  
13 the Klamath River between Yreka and Orleans, California, with Tribal centers and administrative  
14 facilities located in Happy Camp, Orleans, Somes Bar, and Yreka. The Karuk Tribe values the  
15 interests and wellbeing of the Karuk People. The values associated with this well-being are  
16 primarily health, justice, economic security, education, housing, self-governance, as well as the  
17 management and utilization of cultural/natural resources within and adjacent to the Karuk  
18 Aboriginal Territory now and forever. The Karuk Tribe also values the interests and well-being  
19 of the general public, and applicable Tribal services and management principals are extended to  
20 the general public as a secondary benefit. It is a belief of the Karuk Tribe that the values stated  
21 above must be managed in a manner consistent with Karuk tradition, custom, culture and  
22 ceremonial principles in order to ensure cultural perseverance.

23 24. The Karuk Tribe has a unique vested interest in these lands because of their location and  
24 relation to their aboriginal homelands. The families from the villages in the Karuk Aboriginal  
25 Territory, as well as other Tribal members, have occupied and utilized the cultural/natural  
26 resources throughout the territory since time immemorial. Tribal People continue to maintain a  
27 unique relationship with the land and value many forest resources as sacred. The Karuk Tribe  
28 would be irreparably injured by the Westside Project.

1 25. Plaintiff ENVIRONMENTAL PROTECTION INFORMATION CENTER (“EPIC”) is a  
2 nonprofit public benefit corporation organized under the laws of California. Since 1977, EPIC  
3 has defended the wildlife and wild places of the Klamath Mountains and North Coast Range.  
4 EPIC’s mission is science-based protection and restoration of Northwest California’s forests and  
5 seeks to ensure that a connected landscape exists for species survival and climate adaption.  
6 EPIC’s advocacy utilizes community organizing, public education, collaboration, and litigation  
7 and submits substantive comments on projects that would negatively impact public and private  
8 forestlands. EPIC maintains an office in Arcata, California. Most of the 2,000 members and  
9 13,000 supporters live in northern California. EPIC’s members and staff use, enjoy, and recreate  
10 on public lands and Wild and Scenic Rivers, including those within the project area on the  
11 Klamath National Forest, and would be irreparably injured by the Westside Project.

12 26. Plaintiff KLAMATH RIVERKEEPER is a community-based non-profit organization  
13 based in the Klamath Basin of Northern California and Southern Oregon. Klamath Riverkeeper’s  
14 mission is to restore water quality and fisheries in the Klamath Basin, bringing vitality and  
15 abundance back to the rivers and the people who depend on them. Klamath Riverkeeper works  
16 closely with the Klamath River tribes, fishing communities, and recreational groups in all aspects  
17 of its programs. Klamath Riverkeeper has an active membership of people from all over the  
18 Klamath Basin that use the Klamath National Forest for recreation, education, fishing, aesthetic  
19 enjoyment and spiritual renewal. This use includes observing and studying the migration of  
20 anadromous fish. Klamath Riverkeeper is a membership organization and has members who  
21 would be irreparably injured by the Westside Project.

22 27. Plaintiff KLAMATH-SISKIYOU WILDLANDS CENTER (“KS Wild”) is a domestic  
23 non-profit corporation organized and existing under the laws of the State of Oregon. KS Wild’s  
24 main offices are in Ashland, Oregon. KS Wild has 3,500 members in over 10 states, with most  
25 members concentrated in southern Oregon and northern California. On behalf of its members,  
26 KS Wild advocates for the forests, wildlife, and waters of the Rogue and Klamath Basins and  
27 works to protect and restore the extraordinary biological diversity of the Klamath-Siskiyou  
28 region of southwest Oregon and northwest California. KS Wild uses environmental law, science,

1 education, and collaboration to help build healthy ecosystems and sustainable communities.  
2 Through its campaign work, KS Wild strives to protect the last wild areas and vital biological  
3 diversity of the Klamath region. KS Wild is a leader in protecting California’s national forests  
4 and routinely participates in commenting, monitoring, and litigation affecting public lands in  
5 California. KS Wild is a membership organization and has members who would be irreparably  
6 injured by the Westside Project.

7 28. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a California nonprofit  
8 public benefit corporation with more than 48,000 members dedicated to the preservation,  
9 protection, and restoration of biodiversity and ecosystems in northern California and throughout  
10 the world. On behalf of its members, the Center works to insure the long-term health and  
11 viability of animal and plant species and to protect the habitat those species need to survive. The  
12 Center also has a procedural interest in the proper management of these lands in full compliance  
13 with mandatory public land and environmental laws and regulations. The Center is a membership  
14 organization and has members who would be irreparably injured by the Westside Project.

15 29. Defendant PATRICIA GRANTHAM is the Forest Supervisor for the Klamath National  
16 Forest. Ms. Grantham is sued in her official capacity. Ms. Grantham signed the ROD.

17 30. Defendant UNITED STATES Forest Service (“Forest Service”) is an agency within the  
18 U.S. Department of Agriculture. The Forest Service manages the Klamath National Forest.

## 19 **SUMMARY OF LAW AND FACTS**

### 20 **Administrative Procedure Act**

21 31. The Administrative Procedure Act (“PA”) confers a right of judicial review on any  
22 person that is adversely affected by agency action. 5 U.S.C. § 702. Upon review, the court shall  
23 “hold unlawful and set aside agency actions...found to be arbitrary, capricious, an abuse of  
24 discretion or otherwise not in accordance with law.” 5 U.S.C. § 706(2).

### 25 **National Forest Management Act**

26 32. The National Forest Management Act (“NFMA”) requires the Forest Service to develop  
27 comprehensive land and resource management plans (“LRMPs”) for each unit of the National  
28 Forest System. 16 U.S.C. § 1604(a).



1 33. Subsequent “plans, permits, contracts, and other instruments for the use and occupancy”  
2 of the national forests must be consistent with the local LRMP, in this case, the Klamath  
3 National Forest Land and Resource Management Plan, as amended. 16 U.S.C. § 1604(i); 36  
4 C.F.R. § 219.10(e).

5 **National Environmental Policy Act**

6 34. Congress enacted the National Environmental Policy Act (“NEPA”) in 1969, directing all  
7 federal agencies to assess the environmental impact of proposed actions that significantly affect  
8 the quality of the environment. 42 U.S.C. § 4332(2)(C).

9 35. NEPA’s disclosure goals are two-fold: (1) to insure that the agency has carefully and  
10 fully contemplated the environmental effects of its action; and (2) to insure that the public has  
11 sufficient information to challenge the agency’s action.

12 36. The Council on Environmental Quality (“CEQ”) promulgated uniform regulations to  
13 implement NEPA that are binding on all federal agencies. 42 U.S.C. § 4342; 40 C.F.R. §§ 1500  
14 et seq.

15 37. NEPA requires the agencies to prepare an Environmental Impact Statement (EIS) when a  
16 major federal action is proposed that may significantly affect the quality of the environment. 42  
17 U.S.C. § 4332(2)(C), 40 C.F.R. § 1501.4(a)(1).

18 38. An EIS is a “detailed written statement” that “provide[s] full and fair discussion of  
19 significant environmental impacts and shall inform decisionmakers and the public of the  
20 reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality  
21 of the human environment.” 40 C.F.R. §§ 1508.11 and 1502.1.

22 39. NEPA requires that environmental information be made available to public officials and  
23 citizens before decisions are made and before actions are taken. 40 C.F.R. §1500.1 (b). The  
24 information must be of high quality, and the Forest Service must insure the “scientific integrity  
25 of the discussions and analyses in environmental impact statements.” *Id.* § 1502.24. The purpose  
26 of these requirements is to ensure that the public has information that allows it to question and  
27 understand the decision made by the agency.

1 40. The CEQ regulations require that action agencies prepare a supplemental NEPA analysis  
2 when “major federal action” remains to occur and the initial NEPA document does not  
3 adequately discuss “significant new circumstances or information relevant to environmental  
4 concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

5 41. NEPA also states that the agency “shall prepare, circulate, and file a supplement to a  
6 statement in the same fashion (exclusive of scoping) as a draft and final statement....” 40 C.F.R.  
7 § 1502.9(c)(4).

### 8 **The Northwest Forest Plan**

9 42. In 1994, the Bureau of Land Management and the United States Forest Service issued a  
10 Record of Decision for the Northwest Forest Plan (“NFP”), which established management  
11 requirements for all Forest Service land within the range of the northern spotted owl and  
12 amended all National Forest LRMPs within the range of the owl, including the Klamath National  
13 Forest LRMP.

### 14 *Late-Successional Reserves*

15 43. Late-Successional Reserves (“LSRs”) are land use allocations under the NFP where the  
16 primary objective is to protect and enhance the conditions of old-growth forests that serve as  
17 habitat for the northern spotted owl and other late-successional habitat-associated species by  
18 creating a network of large “reserves” or blocks of habitat.

19 44. The NFP requires the Forest Service to manage LSRs to “protect and enhance conditions  
20 of late-successional and old-growth forest ecosystems, which serve as habitat for late-  
21 successional and old-growth related species.”

22 45. The NFP permits logging in LSRs, but restricts the timing, location, type, and amount of  
23 salvage logging that may occur.

24 46. First, the NFP requires salvage logging within LSRs to be consistent with LSR  
25 Objectives, including the “development of old-growth forest characteristics including snags.”  
26 Snags are standing dead trees.

1 47. Second, the NFP states that within LSRs, “while priority should be given to salvage in  
2 areas where it will have a positive effect on late-successional forest habitat, salvage operations  
3 should not diminish habitat suitability now or in the future.”

4 48. Third, the NFP states that following stand replacing events such as wildfire, the Forest  
5 Service must “focus on retaining snags that are likely to persist until late-successional conditions  
6 have developed and the new stand is again producing large snags.”

7 49. Finally, the NFP states that in LSRs, “salvage will not be driven by economic...factors.”

8 50. The lands affected by the Westside Project lie largely within two Klamath Late  
9 Successional Reserves: the Seiad LSR and Eddy Gulch LSR.

10 51. The Seiad LSR, given its size and juxtaposition to the Marble Mountain Wilderness,  
11 plays an important role in providing large refugia for spotted owls and numerous other late-  
12 successional associated species.

13 52. The Seiad LSR also provides direct refugia for anadromous species.

14 53. The Eddy Gulch LSR has its origin as a Habitat Conservation Area under early northern  
15 spotted owl protection regimes, and the intent of the designation was to provide habitat that  
16 would support 20 pairs of northern spotted owls in the future.

17 54. In addition to northern spotted owl habitat, the Eddy Gulch LSR contributes to  
18 anadromous fish refugia primarily in the form of high quality water and watershed habitat  
19 elements such as large downed wood and gravel, to downstream habitat.

### 20 *Aquatic Conservation Strategy*

21 55. The Aquatic Conservation Strategy (“ACS”) of the NFP was developed to restore and  
22 maintain the ecological health of watersheds and aquatic ecosystems contained within them, and  
23 to protect salmon and steelhead habitat on federal lands.

24 56. The ACS accomplishes its goals through mandatory compliance with nine Aquatic  
25 Conservation Strategy Objectives (“ACSOs”).

26 57. The nine ACSOs are: (1) Maintain and restore the distribution, diversity, and complexity  
27 of watershed and landscape-scale features to ensure protection of the aquatic systems to which  
28 species, populations and communities are uniquely adapted; (2) Maintain and restore spatial and

1 temporal connectivity within and between watersheds. Lateral, longitudinal, and drainage  
2 network connections include floodplains, wetlands, upslope areas, headwater tributaries, and  
3 intact refugia. These network connections must provide chemically and physically unobstructed  
4 routes to areas critical for fulfilling life history requirements of aquatic and riparian-dependent  
5 species; (3) Maintain and restore the physical integrity of the aquatic system, including  
6 shorelines, banks, and bottom configurations; (4) Maintain and restore water quality necessary to  
7 support healthy riparian, aquatic, and wetland ecosystems. Water quality must remain within the  
8 range that maintains the biological, physical, and chemical integrity of the system and benefits  
9 survival, growth, reproduction, and migration of individuals composing aquatic and riparian  
10 communities; (5) Maintain and restore the sediment regime under which aquatic ecosystems  
11 evolved. Elements of the sediment regime include the timing, volume, rate, and character of  
12 sediment input, storage, and transport; (6) Maintain and restore in-stream flows sufficient to  
13 create and sustain riparian, aquatic, and wetland habitats and to retain patterns of sediment,  
14 nutrient, and wood routing. The timing, magnitude, duration, and spatial distribution of peak,  
15 high, and low flows must be protected; (7) Maintain and restore the timing, variability, and  
16 duration of floodplain inundation and water table elevation in meadows and wetlands; (8)  
17 Maintain and restore the species composition and structural diversity of plant communities in  
18 riparian areas and wetlands to provide adequate summer and winter thermal regulation, nutrient  
19 filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply  
20 amounts and distributions of coarse woody debris sufficient to sustain physical complexity and  
21 stability; and (9) Maintain and restore habitat to support well-distributed populations of native  
22 plant, invertebrate, and vertebrate riparian-dependent species.

23 58. In order to make the finding that a project or management action “meets” or “does not  
24 prevent attainment” of the ACS objectives, project-level analysis must include a description of  
25 the existing condition, a description of the range of natural variability of the important physical  
26 and biological components of a given watershed, and how the proposed project or management  
27 action maintains the existing condition or moves it within the range of natural variability.  
28

1 59. “Management actions that do not maintain the existing condition or lead to improved  
2 conditions in the long term would not “meet” the intent of the ACS and thus, should not be  
3 implemented.”

4 60. The Westside Project will impact two core facets of the ACS: Riparian Reserves and Key  
5 Watersheds.

6 ***Riparian Reserves***

7 61. Riparian Reserves are a land allocation under the NFP covering “portions of watersheds  
8 where riparian-dependent resources receive primary emphasis and where special standards and  
9 guidelines apply.”

10 62. The Northwest Forest Plan Standards and Guidelines “prohibit and regulate activities in  
11 Riparian Reserves that retard or prevent attainment of the Aquatic Conservation Strategy  
12 objectives.”

13 63. Riparian Reserves generally parallel “standing and flowing water, intermittent stream  
14 channels and ephemeral ponds, and wetlands,” and “also include other areas necessary for  
15 maintaining hydrologic, geomorphic, and ecologic processes” such as geologically “unstable and  
16 potentially unstable” areas.

17 64. The NFP requires the Forest Service to designate all Riparian Reserves, and to protect  
18 them from disturbance via no-entry or no-harvest buffers.

19 65. For geological Riparian Reserves (i.e., unstable areas), the NFP states that “at a  
20 minimum, the Riparian Reserves must include: (a) The extent of unstable and potentially  
21 unstable areas (including earthflows); (b) The stream channel and extend to the top of the inner  
22 gorge; (c) The stream channel or wetland and the area from the edges of the stream channel or  
23 wetland to the outer edges of the riparian vegetation; and (d) Extension from the edges of the  
24 stream channel to a distance equal to the height of one site-potential tree, or 100 feet slope  
25 distance, whichever is greatest. A site-potential tree height is the average maximum height of the  
26 tallest dominant trees (200 years or older) for a given site class.”

27 66. Riparian Reserves are designed to protect the integrity of aquatic ecosystems, so the NFP  
28 prohibits logging within a Riparian Reserve unless the Forest Service can demonstrate that

1 logging is “required to attain,” “is needed to attain,” and “will not adversely affect” the nine  
2 Aquatic Conservation Strategy Objectives that are designed to protect water quality.

3 67. In addition to the standards and guidelines for Riparian Reserves in the NFP, the Klamath  
4 National Forest’s Forest Plan requires that “vegetation on geologically unstable lands (including  
5 active landslides, all inner gorges, margins and toe zones of dormant landslides and severely  
6 weathered and dissected granitic lands)” be managed “to maintain or enhance slope stability and  
7 soil productivity according to Riparian Reserve standards and guidelines.”

8 68. The Westside Project would allow significant logging within Riparian Reserves. The  
9 Westside FEIS states: “There are about 3,900 acres of salvage units proposed on steep,  
10 weathered granitic lands (geological riparian reserves) in the proposed action as scoped; in  
11 refined alternative 2, salvage is proposed on geological Riparian Reserves on about 2,000 out of  
12 3,900 acres of salvage units and other action alternatives propose the same amount or less.”

13 69. The Westside FEIS designates up to 4,400 acres of roadside hazard tree removal, 3,900  
14 acres of fuel hazard treatments and about 960 acres of site preparation and planting on unstable  
15 lands considered to be geological Riparian Reserves.

### 16 ***Key Watersheds***

17 70. Key Watersheds are “large refugia comprising watersheds that are crucial to at-risk fish  
18 species and stocks and provide high quality water,” and are not a unique land classification but  
19 overlay other land use classification such as Late-Successional Reserves, Riparian Reserves, and  
20 Matrix lands.

21 71. Tier 1 Key Watersheds are designed to contribute to the conservation of at-risk  
22 anadromous and non-anadromous fish stocks; Tier 2 Key Watersheds provide high quality water,  
23 and may also contain at-risk fish stocks; and non-Key Watersheds meet neither description.

24 72. Key Watershed designations “place additional management requirements...on activities in  
25 those areas.”

26 73. The Westside Fire Recovery Project lies largely within three Tier 1 Key Watersheds:  
27 Salmon River, Elk Creek, and Grider Creek.

### 28 **The Klamath-Siskiyou Bioregion**

1 74. The Klamath National Forest makes up the heart of the Klamath-Siskiyou Bioregion, an  
2 ecoregion covering approximately 10 million acres, stretching from the Umpqua River in Oregon  
3 to Mendocino County, California to the south, from the Pacific Ocean in the west to the Cascade  
4 Mountains in the east.

5 75. By its location, the bioregion serves as a junction and transition zone between Great  
6 Basin, the Oregon Coast Range, the Cascades Range, the Sierra Nevada, the California Central  
7 Valley, and Coastal Province of Northern California.

8 76. The Klamath-Siskiyou Bioregion is marked by its complex geology, a tangled knot of  
9 steep, rugged mountains and numerous cold-water rivers.

10 77. Located just outside of the southern terminus of glaciers in recent ice ages, the Klamath-  
11 Siskiyou Bioregion has remained largely undisturbed and has acted as biological refuge,  
12 allowing for the preservation and adaptation of numerous fauna and flora.

13 78. The forest and mountains of the region have been shaped by wildfire and by cultural fires  
14 managed by Native Americans, creating biodiversity here that is fire-dependent, meaning that it  
15 is largely reliant on fire and its effects for survival.

16 79. Owing its rugged and wild nature, the bioregion has largely escaped human development  
17 and is sparsely populated. The bioregion is home to the largest concentration of roadless areas  
18 and designated Wilderness areas on the contiguous West Coast of the United States.

19 80. As a result of the areas' unique natural history and natural heterogeneity, the bioregion is  
20 home to nearly unparalleled biodiversity, earning it the nickname of the "Galapagos of North  
21 America."

22 81. The region is perhaps most famous for its record setting conifer diversity, including 36  
23 different species, some of which, like the Port Orford cedar, are found only in the bioregion, and  
24 others, like the Alaska yellow cedar, exist at the far end of their range.

25 82. The bioregion is also home to 3,500 vascular plant species, 280 of which are endemic.

26 83. The bioregion also supports abundant wildlife such as coho salmon, northern spotted  
27 owls, and bald eagles.

1 84. The Klamath River and two of its larger tributaries, the Scott, and Salmon River are  
2 components of the National Wild and Scenic River System. They were designated for their  
3 outstandingly remarkable anadromous fisheries values.

4 85. Despite their important habitat and cultural values, the Klamath River, Scott River, and  
5 the North Fork of the Salmon River are all listed as impaired under section 303(d) of the Clean  
6 Water Act, meaning that these waters currently do not meet water quality standards.

7 86. In addition to major tributaries, other minor tributaries are likewise important to the  
8 health of the Klamath River and its aquatic wildlife. Minor tributaries particularly impacted by  
9 the Westside Project include Grider Creek and Walker Creek.

### 10 **Westside Fire Complex**

11 87. In 2014, wildfires burned on the Happy Camp/Oak Knoll and Salmon/Scott River Ranger  
12 Districts of the Klamath National Forest.

13 88. The Happy Camp Complex fires were ignited by lightning near the town of Happy Camp.  
14 Of the 19 fires comprising the complex, three escaped containment, burning separately for  
15 several weeks before eventually growing together. In total, the Happy Camp Complex burned  
16 approximately 117,000 acres.

17 89. The Beaver Fire occurred on the north side of the Klamath River about 30 miles east of  
18 Happy Camp, and eventually consumed approximately 32,400 acres.

19 90. The July Complex was comprised of the Log and Whites Fires, and burned  
20 approximately 37,000 acres within the Scott and North Fork Salmon River watersheds.

21 91. Combined, the Beaver Fire, Happy Camp Complex, and Whites Fire burned a total of  
22 183,100 acres, including 162,580 acres of National Forest System lands and 20,910 acres of  
23 private land.

24 92. Together, these fires are known as the Westside Fire Complex.

25 93. The fires burned with mixed severity, which means that within the Westside Fire  
26 Complex, there was a mosaic of none, light, moderate, and severely burned areas within each  
27 fire.



1 94. Within the complex as a whole, twenty-two to thirty percent (22-30%) of the burned  
2 areas were rated as medium in severity. Within the complex, one to six percent (1-6%) of the  
3 burned areas were rated as high in severity. Sixty-four percent (64%) of the burned areas were  
4 neither medium nor high in severity.

#### 5 **Development of the Westside Fire Recovery Project and the Present Litigation**

6 95. Before the Happy Camp Complex was contained, the Forest Service initiated scoping for  
7 the Westside Fire Recovery Project.

8 96. The project planning area is within Karuk Aboriginal Territory.

9 97. On March 13, 2015, the Forest Service issued a draft environmental impact statement  
10 (“DEIS”) to assess the environmental consequences of the Westside Project.

11 98. Plaintiffs Karuk Tribe, Klamath Riverkeeper, EPIC, KS Wild, and the Center submitted  
12 comments on the DEIS.

13 99. In order to facilitate implementation of the project, Defendants sought an Emergency  
14 Situation Determination (“ESD”) from the Chief of the Forest Service pursuant to 36 C.F.R.  
15 § 218.21.

16 100. The Chief of the Forest Service granted the Defendants an ESD on May 15, 2015.

17 101. Consequently, there is no provision for administrative review of, and challenge to, the  
18 Westside Project.

19 102. In July 2015, the Forest Service released a final environmental impact statement (“FEIS”)  
20 for the Westside Project.

21 103. The National Marine Fisheries Service prepared a Biological Opinion for the Project on  
22 January 15, 2016.

23 104. On February 29, 2016, the USFS issued a ROD approving the Westside Project.

24 105. On March 3, 2016, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief in  
25 this court. ECF #13. That Complaint named William Stelle, the Regional Administrator for the  
26 West Coast Region of the National Marine Fisheries Service, and National Marine Fisheries  
27 Service (NMFS), an agency within the U.S. Department of Commerce and a subdivision of the  
28 National Oceanic and Atmospheric Administration, as federal Defendants.

1 106. On March 15, 2016, Plaintiffs filed a First Amended Complaint. ECF #14.

2 107. On April 18, 2016, Plaintiffs filed a motion for a Temporary Restraining Order to  
3 prohibit some aspects of the Project from being implemented. ECF #36.

4 108. Defendant Forest Service lodged the Administrative Record on April 20, 2016. ECF # 48.

5 109. Logging began in the Project area in May 2016.

6 110. After the parties briefed the Temporary Restraining Order motion and the Court heard  
7 oral argument, the Court denied the motion, as well as Plaintiffs' motion for a preliminary  
8 injunction, and a stay pending appeal. ECF #59.

9 111. On May 4, 2016, Plaintiffs filed a notice of appeal of that order. ECF #62.

10 112. On May 5, 2016, Plaintiffs filed in the Ninth Circuit an emergency motion for a stay  
11 pending appeal. *Karuk Tribe v. Stelle*, Ninth Cir. No. 16-15818, ECF #8.

12 113. On May 16, 2016, the Ninth Circuit denied that motion. Ninth Cir. No. 16-15818, ECF  
13 #11.

14 114. The parties then briefed Plaintiffs' appeal of the Court's denial of its motion for a  
15 preliminary injunction and, in an unpublished memorandum opinion issued on December 5,  
16 2016, the Ninth Circuit affirmed the district court's denial of a preliminary injunction.

17 115. The Ninth Circuit issued its mandate on January 31, 2017.

18 116. Plaintiffs subsequently filed this Second Amended Complaint.

19 **Elements of the Westside Project**

20 117. The Westside Project includes a project area encompassing 218,000 acres: 187,100 acres  
21 of National Forest System land and 31,500 acres of private land; the logging challenged in this  
22 action will take place on National Forest System lands.

23 118. The Westside Project area is divided into three subparts: project area A (Beaver Fire),  
24 project area B (Happy Camp), and project area C (Whites Fire).

25 119. The Westside Project includes 5,760 acres of post-fire clear-cut logging of live and dead  
26 trees in some of the most steep and wild mountains on the West Coast.

27 120. The Westside Project would yield approximately 75 million board feet of merchantable  
28 timber that will require over 15,000 log trucks to remove.

- 1 121. Acres to be logged are within eleven fifth field watersheds.
- 2 122. The Westside Project also proposes to clear and construct over 100 landing sites, cleared  
3 areas in the forest where cut trees are yarded or skidded for loading onto log trucks.
- 4 123. Nearly 2,000 acres of this “salvage” sale include “units” to be logged that include  
5 geologically unstable landslide terrain.
- 6 124. Standing dead, dying, and fire damaged trees at least 14 inches in diameter at breast  
7 height (“dbh”) will be selected for logging.
- 8 125. Commercial salvage harvest is expected to be completed over a two-year period.
- 9 126. Without logging, large dead, dying, and fire damaged trees may stand for decades.
- 10 127. Without logging, standing dead, dying, and fire damaged trees contribute to the  
11 complexity of regenerating forests, and are critical components of complex early seral habitat.
- 12 128. The Westside Project authorizes logging on approximately 3,700 acres along about 320  
13 miles of roadways, including an estimated 1,200 acres of concentrated hazard tree removal in  
14 higher severity burn areas, and an estimated 2,500 acres of scattered hazard tree removal in  
15 lower severity burn areas.
- 16 129. In addition, additional hazard tree removal along 11.2 miles roads used by the public and  
17 for administrative use was authorized under separate authority.
- 18 130. Hazard tree removal is intended to protect public health and safety.
- 19 131. Plaintiffs do not contest or challenge hazard tree removal along roads.
- 20 132. The Westside Project authorizes “fuel reduction treatments” on approximately 24,450  
21 acres where the 2014 wildfires caused moderate and high vegetation mortality.
- 22 133. Of the approximately 24,450 acres of fuel reduction treatments, approximately 3,594  
23 acres are located in riparian reserves.
- 24 134. Trees up to 16-inches in diameter will be cut and felled in riparian reserves as part of fuel  
25 reduction treatments.
- 26 135. The Forest Service has not secured funding for fuel reduction treatments.
- 27 136. Funding for fuel reduction treatments is speculative.

28

1 137. Prescribed burning may continue for several years following completion of other  
2 vegetation treatment activities.

3 138. The Westside Project includes site preparation, artificial reforestation, and release on  
4 approximately 12,700 acres. Site preparation means the reduction of fuels in areas that have  
5 previously been logged, and where fuel loads exceed seven tons per acre or in previous  
6 plantations identified as unable to naturally recover. Artificial reforestation means the planting of  
7 conifer species to aid in the artificial reforestation of an area. Reforestation may be necessary to  
8 establish forests in areas that have been salvage logged, as logging inhibits the natural  
9 regeneration of forests. Release means actions taken to reduce competition for conifers, such as  
10 cutting back competing brush, to encourage faster tree growth. Cumulatively, these actions are  
11 intended to decrease the time to establish a new conifer forest.

12 139. Artificial reforestation and release are unlikely to be funded from revenue from timber  
13 receipts and, as such, are uncertain to occur.

14 140. Artificial reforestation is likely to produce less complex forests than naturally reoccurring  
15 reforestation.

16 141. Currently, natural forest regeneration (conifer and vegetative regrowth) is occurring  
17 within the planning area, including within units proposed for salvage and replanting.

18 142. Flushing, a resurgence of new green needles, is currently occurring on many of the  
19 Ponderosa pine trees within the salvage units of the project area.

20 143. The Westside Project includes “legacy sediment site treatments” at approximately 158  
21 locations that are intended to reduce sediment mobilization and delivery into streams.

22 144. These treatments will occur along Forest Service roads and at stream crossings, and some  
23 legacy sites are located on existing landings or on roadbeds.

24 145. Legacy treatments include culvert upgrades at 45 sites; “diversion prevention” at 51 sites;  
25 “aquatic organism passage improvement” at 3 sites; “retaining wall construction” at 7 sites; “fill  
26 reduction” at 16 sites; “fill removal” at 27 sites; and “culvert/ditch infrastructure repair or  
27 maintenance” at 16 sites.

28 146. Legacy site treatment is limited to the Elk Creek watershed.

1 147. The majority of project work (i.e., salvage logging) likely to contribute sediment  
2 pollution will occur in the Grider Creek and Walker Creek watersheds.

3 148. Grider and Walker Creeks are bordered by geologic Riparian Reserves and have a long  
4 and well-documented history of landslides and road-related sediment issues.

5 149. Treatment of legacy sites for the Westside Project may begin in 2019.

6 150. Treatment of legacy sites may take up to 20 years or longer to complete.

7 151. Treatment of legacy sites is dependent on funding.

8 152. The economic analysis for the Westside Project was predicated on the Forest Service  
9 receiving between \$100 and \$240/thousand board foot (“mbf”) for various species of tree to be  
10 harvested.

11 153. The Forest Service sold the first Westside timber sales for \$6-\$10/mbf.

12 154. The Forest Service sold some timber sales for five cents (\$.05) per thousand board foot of  
13 timber.

14 155. No timber sales sold for a value equal to or more than that estimated in the FEIS.

15 156. The environmental effects analysis in the FEIS was predicated on full implementation of  
16 the suite of “actions that are part of the Selected Alternative” described in the Westside ROD.

17 157. Those “actions that are part of the Selected Alternative” are: 1) “Salvage Harvest (about  
18 5,570 treatment acres within 6,890 acres of units); 2) “Roadside Hazard Treatment (about 320  
19 miles of roadways being evaluated; 4,200 acres of estimated treatment); 3) “Hazardous Fuels  
20 Reduction (about 24,450 acres); 4) “Site Preparation, Reforestation, and Release (about 12,700  
21 acres); and 5) “Hand Treatment in Riparian Reserves.”

22 158. Plaintiffs do not challenge the roadside hazard treatments.

23 159. The Amendment to the Socioeconomic Report, which supports the analysis in the FEIS  
24 and ROD, states that the “estimated total logging and log hauling cost” is \$31,171,000 for  
25 Alternative 3 Modified, the implemented alternative.

26 160. The Amendment to the Socioeconomic Report also states that in addition to the estimated  
27 total logging and log hauling cost for Alternative 3 Modified, the “estimated required costs to  
28 restore [the] project landscape” is \$27,487,000.

1 161. It may take up to twenty years to implement actions that are part of the Selected  
2 Alternative.

3 162. The ROD identifies additional “regulatory agency requirements” that are obligatory  
4 actions the Forest Service must undertake to comply with other federal and state laws.

5 163. For example, to comply with the Clean Water Act, “the North Coast Regional Water  
6 Quality Control Board (Water Board) may require treatment of a number of existing “legacy  
7 sites” as conditions for enrolling the Westside Recovery Project under the Waiver of Waste  
8 Discharge Requirements for Nonpoint Source Discharges Related to Certain Federal Land  
9 Management Activities on National Forest System Lands in the North Coast Region (Order No.  
10 R1-2015-0021; hereinafter “Waiver”).”

11 164. These “Legacy site treatments proposed in Elk Creek were analyzed in the final EIS and  
12 are part of this decision.”

13 165. The North Coast Regional Water Quality Control Board required treatment of  
14 approximately 68 legacy sites as a condition for enrollment in its Waiver to ensure compliance  
15 with the Clean Water Act on April 19, 2016.

16 166. The estimated cost of the Westside Fire Recovery Project (i.e., the estimated total logging  
17 and log hauling costs plus the estimated required costs to restore the project landscape) do not  
18 include the cost of implementing legacy site treatments.

19 167. It may take up to twenty years to implement actions related to regulatory agency  
20 requirements.

21 **CLAIMS FOR RELIEF**

22 **FIRST CLAIM FOR RELIEF**

23 **The Authorization of Large Snag Removal from the**  
24 **Seiad and Eddy Gulch LSRs Violates NFMA**

25 168. Plaintiffs incorporate by reference all preceding paragraphs.

26 169. NFMA requires the Forest Service to design and implement projects that are consistent  
27 with the applicable LRMP. 16 U.S.C. §§ 1604(i); 36 C.F.R. § 219.10(e).

1 170. The Northwest Forest Plan, which amended the Klamath LRMP, permits logging in  
2 LSRs, but restricts the timing, location, type, and amount of salvage logging that may occur.

3 171. First, the NFP requires salvage logging within LSRs to be consistent with LSR  
4 Objectives.

5 172. An important LSR Objective is “development of old-growth forest characteristics  
6 including snags.”

7 173. Snags are standing dead trees.

8 174. The Westside Project will remove snags, critical old-growth forest features, from the  
9 planning area.

10 175. Second, the NFP states that within LSRs, “while priority should be given to salvage in  
11 areas where it will have a positive effect on late-successional forest habitat, salvage operations  
12 should not diminish habitat suitability now or in the future.”

13 176. The Westside Project permits the removal of large diameter snags, which the FEIS  
14 recognizes are critical components of late-successional habitat. KS Wild Scoping Comments, 3.

15 177. The FEIS recognizes that spotted owls – a late-successional-associated species – depend  
16 on large diameter snags for survival, and that their numbers and habitat will decline under the  
17 selected alternative.

18 178. The FEIS also recognizes that logging will degrade habitat for bald eagles - another late-  
19 successional-associated species - by removing potential future nest trees in the Caroline Creek  
20 eagle area, creating a “high risk” that these eagles will not find future nest trees.

21 179. The FEIS states that habitat quality for other late-successional-associated species will  
22 decline as a result of project implementation.

23 180. Third, the NFP states that following stand replacing events such as wildfire, the Forest  
24 Service must “focus on retaining snags that are likely to persist until late-successional conditions  
25 have developed and the new stand is again producing large snags.”

26 181. Scientific literature indicates that snags greater than 16” dbh are likely to persist on the  
27 landscape until the new forest is again producing snags, in about 80 years. The average diameter  
28 of snags to be logged from the Westside project is 16” dbh.

1 182. Finally, the NFP states that in LSRs, “salvage will not be driven by economic...factors.”

2 183. However, a principle purpose and need of the Westside Project is an “economically  
3 viable project” that benefits local communities.

4 184. The removal of large diameter, economically valuable snags from the Seiad and Eddy  
5 Gulch LSRs “diminishes habitat suitability now or in the future,” is inconsistent with the LSR  
6 Objective of developing of snags, and does not “focus on retaining snags likely to persist until  
7 the next stand develops.” Consequently, the Westside Project is in contravention to the  
8 requirements of the NFP and Klamath LRMP. The decision to implement the Westside Project is  
9 arbitrary, capricious, and not in accordance with NFMA. 5 U.S.C. § 706(2)(A).

10 185. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this  
11 litigation pursuant to EAJA. 28 U.S.C. § 2412.

## 12 **SECOND CLAIM FOR RELIEF**

### 13 **Logging in Riparian Reserves Violates NFMA**

14 186. Plaintiffs incorporate by reference all preceding paragraphs.

15 187. NFMA requires the Forest Service to design and implement projects that are consistent  
16 with the applicable LRMP. 16 U.S.C. §§ 1604(i); 36 C.F.R. § 219.10(e).

17 188. The Northwest Forest Plan and the Klamath LRMP require the Forest Service to  
18 designate “unstable and potentially unstable” slopes as Riparian Reserves; Defendants have  
19 termed these areas “geologic riparian reserves.”

20 189. The NFP and KNF LRMP require the Forest Service to designate Riparian Reserves and  
21 “Prohibit[s] timber harvest, including fuelwood cutting, in Riparian Reserves, except...where  
22 catastrophic events such as fire, flooding, volcanic, wind, or insect damage result in degraded  
23 riparian conditions, allow salvage and fuelwood cutting if required to attain Aquatic  
24 Conservation Strategy objectives” (emphasis added).

25 190. The Westside Project will log 2,000 out of 3,900 acres on steep and unstable lands  
26 considered to be Geological Riparian Reserves, in violation of the NFP and KNF LRMP.



1 191. The Westside Project FEIS and ROD do not demonstrate that post-fire logging within  
2 Geologic Riparian Reserves is “required to attain Aquatic Conservation Strategy Objectives”  
3 (emphasis added).

4 192. Because the Forest Service has failed to demonstrate that post-fire logging within  
5 Riparian Reserves is required to attain Aquatic Conservation Strategy Objectives, the decision to  
6 implement the Westside Project is arbitrary, capricious, and not in accordance with NFMA. 5  
7 U.S.C. § 706(2)(A).

8 193. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this  
9 litigation pursuant to EAJA. 28 U.S.C. § 2412.

### 10 **THIRD CLAIM FOR RELIEF**

#### 11 **The Forest Service’s Failure to Prepare New or** 12 **Supplemental Environmental Analysis Violates NEPA**

13 194. Plaintiffs incorporate by reference all preceding paragraphs.

14 195. NEPA requires an agency to prepare a supplemental NEPA analysis when “[t]he agency  
15 makes substantial changes in the proposed action that are relevant to environmental concerns;  
16 or...[t]here are significant new circumstances or information relevant to environmental concerns  
17 and bearing on the proposed actions or its impacts.” 40 C.F.R. § 1502.9(c)(1).

18 196. NEPA also states that the agency “shall prepare, circulate, and file a supplement to a  
19 statement in the same fashion (exclusive of scoping) as a draft and final statement....” 40 C.F.R.  
20 § 1502.9(c)(4).

21 197. The Westside FEIS and ROD analyzed the environmental consequences of a suite of  
22 actions (“Salvage Harvest (about 5,570 treatment acres within 6,890 acres of units)”; “Roadside  
23 Hazard Treatment (about 320 miles of roadways being evaluated; 4,200 acres of estimated  
24 treatment)”; “Hazardous Fuels Reduction (about 24,450 acres)”; “Site Preparation, Reforestation,  
25 and Release (about 12,700 acres)”; “Hand Treatment in Riparian Reserves”; and “Legacy site  
26 treatments proposed in Elk Creek”).

27 198. Because salvage harvest and roadside hazard treatments – the activities that resulted in an  
28 economic return to the government – were undertaken at a unit value substantially less than that

1 analyzed in the FEIS and ROD, the Forest Service may not be able to undertake the remaining  
2 actions that are part of the Selected Alternative and regulatory agency requirements that  
3 supported the decision to implement the Westside Project.

4 199. If the Forest Service is unable to undertake the remaining actions that are part of the  
5 Selected Alternative and regulatory agency requirements, the environmental consequences that  
6 were projected to flow from the Westside Project may be different than that presented in the  
7 FEIS.

8 200. The FEIS did not address the environmental consequences of the Westside Project if only  
9 the salvage harvest and roadside hazard treatments, and not the hazardous fuels reduction; site  
10 preparation, reforestation, and release; hand treatments in Riparian Reserves; or legacy site  
11 treatments, were completed.

12 201. There are significant new circumstances or information relevant to the environmental  
13 impacts of the Westside Project, including but not limited to: the failure to implement all actions  
14 that are part of the Selected Alternative and regulatory agency requirements due to the lack of  
15 funding to carry out those actions from either receipts from timber harvest or other sources.

16 202. The Forest Service's failure to prepare a new or supplemental EIS for the Westside  
17 Project in light of this new information is arbitrary, capricious, and not in accordance with  
18 NEPA. 5 U.S.C. § 706(2)(A).

19 203. In the alternative, the Forest Service's failure to prepare a new or supplemental EIS for  
20 the Westside Project in light of this new information is agency action unlawfully withheld or  
21 unreasonably delayed. 5 U.S.C. § 706(1).

22 204. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this  
23 litigation pursuant to the EAJA. 28 U.S.C. § 2412.

#### 24 **PRAYER FOR RELIEF**

25 Based upon the foregoing, Plaintiffs respectfully request that the Court:

26 1. Declare that the Forest Service violated the National Forest Management Act, the  
27 National Environmental Policy Act, Administrative Procedure Act, and their implementing  
28

1 regulations in designing, analyzing, and implementing the Westside Fire Recovery Project FEIS  
2 and ROD;

3 2. Declare that the Forest Service violated the Northwest Forest Plan and Klamath National  
4 Forest Land and Resource Management Plan in designing and implementing the Westside Fire  
5 Recovery Project FEIS and ROD;

6 3. Declare that the Forest Service violated the National Environmental Policy Act in failing  
7 to supplement the Westside Fire Recovery Project FEIS to reflect significant new information  
8 relevant to environmental concerns and bearing on the proposed Westside Project or its impacts;

9 4. Enjoin the Forest Service and its agents from proceeding with the Westside Fire  
10 Recovery Project, or any portion thereof, unless and until the violations of federal law set forth  
11 herein have been corrected to the satisfaction of this court;

12 5. Award Plaintiffs their costs of litigation, including reasonable attorney fees under the  
13 Equal Access to Justice Act. 28 U.S.C. § 2412.; and

14 6. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

15  
16 Date: April 3, 2017.

15  
16 Respectfully submitted,

17 /s/ Susan Jane M. Brown

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