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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO OR OAKLAND DIVISION
16

17 ENVIRONMENTAL PROTECTION
18 INFORMATION CENTER,

19 Plaintiff,

20 v.

21 ANN CARLSON, in her official capacity as
the Forest Supervisor of the Mendocino
22 National Forest; and the UNITED STATES
FOREST SERVICE,

23 Defendants.
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No.: 3:19-cv-6643

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Administrative Procedure Act, 5 U.S.C. §§
701 *et seq.*)

INTRODUCTION

1
2 1. This is a civil action for declaratory and injunctive relief, which stems from
3 Federal Defendants’ (the Forest Service’s) actions related to the seven roadside hazard tree
4 mitigation projects in the Mendocino National Forest, in which the Forest Service has proposed
5 to allow commercial logging of approximately 7,000 acres along hundreds of miles of roads in
6 the Ranch Fire area, located in the southern portion of the Mendocino National Forest and the
7 Berryessa-Snow Mountain National Monument. For all seven projects, including the Bartlett
8 Roadside Hazard Tree Maintenance Project (Bartlett Project), the Deer Valley Roadside Hazard
9 Tree Maintenance Project (Deer Valley Project), the Pine Horse Valley Roadside Hazard Tree
10 Maintenance Project (Pine Horse Valley Project), the M3/Felkner/M5 Roadside Hazard Tree
11 Maintenance Projects (M3/Felkner/M5 Projects), and the M10 Roadside Hazard Tree
12 Maintenance Project (M10 Project), the Forest Service has authorized these actions for
13 commercial salvage logging under the guise of “road maintenance.”

14 2. Plaintiff challenges these authorizations, which exceed the 250 acre limit of the
15 categorical exclusion for small timber sales, which includes salvage timber sales. Instead, to
16 comply with the National Environmental Quality Act (NEPA), Defendants must analyze these
17 projects with Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

18 3. After the Ranch Fire burned thousands of acres in the southern portion of the
19 Mendocino National Forest and the Berryessa-Snow Mountain National Monument, the Forest
20 Service proposed to mitigate public safety hazards from dead, dying, or living trees, which may
21 fall onto the roadway and OHV trails, by logging up to 200 feet from each side of hundreds of
22 miles of roads in the fire area. To avert hazards, the Forest Service has proposed to log and sell
23 the trees along these roads as timber salvage sales. In fact, as of the date of this complaint, the
24 Forest Service has already bid out and sold the Bartlett and M5 as timber salvage sales.

25 4. Logging in the Ranch Fire area has the potential to adversely affect habitat for the
26 Northern spotted owl, federally-listed as threatened under the Endangered Species Act, as well as
27 various Forest Service Sensitive Species.

28 5. And while these species’ populations and viability are in question and/or in

1 decline, the Forest Service has decided to forgo a detailed environmental analysis, even though
2 the logging will adversely affect these species. Instead, the Forest Service has categorically-
3 excluded these projects from detailed analyses in an Environmental Assessments (EAs) or
4 Environmental Impact Statements (EISs).

5 6. The Forest Service has violated NEPA by authorizing thousands of acres of
6 timber salvage projects using categorical exclusion (CE), greatly exceeding the 250 acre limit for
7 CEs of this type, and instead must prepare EAs or EISs. Plaintiff seeks a declaration that the
8 Forest Service has violated the National Environmental Policy Act (NEPA) by proceeding with
9 these roadside hazard tree projects without the necessary environmental analyses, an order
10 setting aside the authorizations for these projects, and, if necessary, an injunction to avert harms
11 from project activities on sensitive and threatened wildlife and their habitats in the Ranch Fire
12 area (but which would still permit the felling of imminently hazardous trees along essential
13 public travel corridors to avert public safety concerns until the Defendants have properly
14 complied with NEPA).

15 **JURISDICTION AND VENUE**

16 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal
17 question), 5 U.S.C. §§ 701 et seq. (Administrative Procedure Act) and 28 U.S.C. §§ 2201 and
18 2202 (Declaratory Judgment Act). Plaintiffs have exhausted all administrative remedies and the
19 violations of law claimed below are ripe for judicial review.

20 8. Venue lies in the Northern District of California, pursuant to 28 U.S.C. §
21 1391(e)(1), because a substantial part of the events or omissions giving rise to the claim occurred
22 on public lands in this District (Lake County), and because the Plaintiff, Environmental
23 Protection Information Center, resides within the District.

24 9. An actual judicable controversy exists between the parties hereto.

25 **INTRADISTRICT VENUE**

26 10. Similarly, because a substantial part of the public lands that are the subject of the
27 action is situated in Lake County—the Bartlett, Deer Valley, and Pine Horse Valley Projects—
28 and because Plaintiff will decline Magistrate jurisdiction, assignment to the San Francisco or

1 Oakland Divisions of this Court is proper under Civil Local L.R. 3-2(f) & 3-2(d).

2 **PARTIES**

3 11. Plaintiff ENVIRONMENTAL PROTECTION INFORMATION CENTER
4 (EPIC) is a non-profit corporation organized under the laws of California. EPIC is a grassroots
5 organization dedicated to the protection and restoration of forests, watersheds and biodiversity in
6 northern California. EPIC maintains an office in Arcata, Humboldt County, California. Most of
7 EPIC's 3,000 members live in northern California.

8 12. EPIC's members and staff use, enjoy, and recreate on public lands, including the
9 Mendocino National Forest and Berryessa-Snow Mountain National Monument, as well as the
10 specific project areas discussed in this case. EPIC's members and staff have a direct interest in
11 the proper management of the Mendocino National Forest and would be harmed by the activities
12 proposed in the post-fire roadside hazard projects discussed in this case.

13 13. The National Environmental Policy Act violations alleged in this Complaint have
14 injured and continue to injure the interests of the plaintiff organization and its members. Granting
15 the relief requested in this lawsuit would redress these injuries by compelling Forest Service
16 actions that Congress determined to be an integral part of the regulatory scheme for conserving
17 natural resources, such as the northern spotted owl, in the Mendocino National Forest.

18 14. Defendant ANN CARLSON is sued in her official capacity as the Forest
19 Supervisor of the Mendocino National Forest of the United States Forest Service. Supervisor
20 Carlson is directly responsible for forest management in the Mendocino National Forest and for
21 ensuring that all resource management decisions comply with applicable laws and regulations.
22 Supervisor Carlson signed all of the decisions challenged herein.

23 15. Defendant UNITED STATES FOREST SERVICE is a federal government
24 agency within the Department of Agriculture, which holds the National Forests in trust for the
25 American people and is responsible for actions in the Ranch Fire area.

26 **FACTS**

27 The Ranch Fire Area

28 16. The Ranch Fire started on July 17, 2018, north of the community of Upper Lake

1 and covered 410,203 acres in Colusa, Glenn, Lake and Mendocino counties. This included
2 approximately 288,000 acres of the Mendocino National Forest to the north and east of Clear
3 Lake near the communities of Upper Lake, Nice, and Lucerne, California.

4 17. The projects challenged in this case are located in the southern portion of the
5 Mendocino National Forest and the National Forest portion of the Berryessa-Snow Mountain
6 National Monument. These areas are draped by mixed conifer forest, oak woodlands, and are
7 interspersed by recovering burned, logged, and un-forested areas, including chaparral. The
8 conifer forests and oak woodlands, where logging is proposed, provide essential wildlife habitat,
9 hiding cover, and core habitat for old forest-dependent wildlife, including the threatened
10 Northern spotted owl.

11 18. The Ranch Fire burned with mixed severity, and the unlogged forest in the Ranch
12 Fire area continues to provide essential wildlife habitat for old forest-dependent species. The fire
13 also created new forest habitat types, including complex early seral forest habitat, also known as
14 “snag forest” habitat, which, if left unlogged, serves as important habitat for small mammals and
15 birds. Predators, including Northern spotted owls, seek out these burned areas due to their
16 abundance of small mammal prey species.

17 News Releases about the Bartlett Project and Other Future Projects

18 19. On March 26, 2019, the Forest Service sent out a “News Release,” which
19 announced plans for a series of hazard tree management projects on approximately 7,000 acres
20 adjacent to selected roads within the Ranch Fire area. The announcement stated that the Forest
21 Service would remove “merchantable” trees within 200 feet on both sides of selected roads and
22 within 100 feet of the roads that run adjacent to the Snow Mountain Wilderness.

23 20. The first announced project was the Bartlett Project on the Upper Lake Ranger
24 District, which involved about 500 acres around Bartlett Springs Road and arterial roads.

25 21. The announcement stated that areas proposed for hazard tree management would
26 be authorized under NEPA regulations at 36 CFR 220.6(d)(4), which provides the Forest
27 Service’s authority for repair and maintenance of roads, trails and landline boundaries.

28 22. The announcement provided a link to a map, available at

1 https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd615930.pdf (last visited on Oct. 6,
2 2019), which showed the extent of all the proposed roadside hazard tree mitigation projects and
3 locations for the M1, M3, M5, M10, Bartlett, and Felkner Projects. The announcement did not
4 include information about a Deer Valley or Pine Horse Valley projects. Upon information and
5 belief, these latter projects derived from and replaced the M1 project.

6 23. The March 26, 2019, “News Release” announcement did not request or seek input
7 from the public and did not provide a deadline for input or comments or any other schedule.

8 24. On March 26, 2019, EPIC’s Kimberly Baker and Tom Wheeler held a call with
9 Mendocino National Forest Supervisor Ann Carlson to discuss issues and concerns with regard
10 to the Ranch Fire Hazard project(s). As a follow-up to the call, Kimberly Baker sent an e-mail to
11 Supervisor Carlson, requesting additional information, including “(1) Detailed maps of the
12 project areas, preferably geo-referenced; (2) An accompanied list of Maintenance Levels and/or
13 reasonings for the inclusion of the chosen roads; and (3) Specialist reports, minus the sensitive
14 heritage reports.” Ms. Baker also stated: “We support the need for treating hazard trees,
15 however, given the magnitude of the project area we are concerned about the overarching
16 impacts it may have.”

17 25. Also on March 26, 2019, the Forest Service received a public comment from
18 Denise Boggs, which stated as follows:

19 I don’t think cutting and selling merchantable trees fits the category as described
20 below. I understand that legitimate hazard trees along roads need removal for
21 public safety, but this project is very large and includes interior units since it is
22 200 feet from both sides of the road. The project involves 7,000 acres of
23 merchantable trees which is a large timber sale for the Mendo. I believe
24 extraordinary circumstances exist in the project area and negative impacts will
25 occur to them. Please let me know how much designated critical habitat for NSO
26 is present (which unit?); if LSR or roadless lands are present in the project area;
27 and if surveys for NSO been conducted in 2019? How many NSO Activity
28 Centers are in the project area? What is the current N/R/F acreage in each Activity
Center? Will LOPs be used in the implementation of the project? Are there any
diameter limits for owl habitat? What other projects are in and around the 7,000
acre project area. We are concerned about cumulative effects. I would also request
a more detailed GIS map showing which roads are involved in the project. I
would greatly appreciate this additional information being provided to me so I can
provide more in-depth comments. When does the FS anticipate this project
beginning? Thank you.

36 CFR 220.6(d)(4)

1 (4) Repair and maintenance of roads, trails, and landline boundaries. Examples
include but are not limited to:

2 (i) Authorizing a user to grade, resurface, and clean the culverts of an
established NFS road;

3 (ii) Grading a road and clearing the roadside of brush without the use of
herbicides;

4 (iii) Resurfacing a road to its original condition;

5 (iv) Pruning vegetation and cleaning culverts along a trail and grooming
the surface of the trail; and

6 (v) Surveying, painting, and posting landline boundaries.

7 26. On May 22, 2019, the Forest Service responded to Denise Boggs and asserted that
8 maintenance along a road includes the removal of unwanted vegetation, which includes the
9 removal of hazard trees, asserting that it made the Bartlett project appropriate for the categorical
10 exclusion from NEPA at 36 C.F.R. § 220.6(d)(4). Moreover, the response stated that there were
11 four Northern spotted owl activity centers in the Bartlett project area, but that no surveys were
12 done in 2019, and further asserting that no surveys were needed due to a lack of past activity.
13 Even so, the Forest Service plans to implement limited operating periods for Northern spotted
14 owls.

15 27. Other than the information provided in the March 26, 2019, “News Release”
16 announcement, the Forest Service provided no further information to the public about any NEPA
17 analysis of the Bartlett Project, any decision to proceed with the Bartlett Project, or any analyses
18 or decisions to proceed with the various other proposed projects, including the M1, M3, M5,
19 M10, Felkner, Deer Valley, or Pine Horse Valley projects.

20 28. On June 27, 2019, the Forest Service issued a “News Release” announcing the
21 “Bartlett salvage sale,” which stated that the Forest Service would accept bids for the sale of
22 roughly 1.7 million board feet of timber and that these bids would be opened on July 10, 2019.

23 29. On August 23, 2019, the Forest Service issued a “News Release” announcing that
24 the “Bartlett salvage sale” had been awarded and that logging operations were expected to get
25 underway soon thereafter in the “500-acre Bartlett area” northeast of Clear Lake on the Upper
26 Lake Ranger District.

27 30. However, the “Categorical Exclusion Documentation” for Bartlett Roadside
28 Hazard Tree Maintenance Project was not signed by Forest Supervisor Ann Carlson until

1 September 5, 2019, after the Forest Service awarded the timber sale. This document states that
2 the Forest Service used 36 C.F.R. § 220.6(d)(4), the repair and maintenance of roads, trails, and
3 landline boundaries “categorical exclusion” to authorize this project.

4 The M3/Felkner/M5 Project News Releases and Timber Sales

5 31. On August 13, 2019, the Forest Service issued a “News Release” announcing the
6 “M5 Pacific Ridge salvage sale,” which stated that the Forest Service would accept bids for the
7 sale of roughly 6.5 million board feet of timber and that these bids would be opened on August
8 27, 2019.

9 32. Because the Forest Service received no bids, on September 10, 2019, the Forest
10 Service issued a “News Release” announcing they were reoffering the “M5 Pacific Ridge
11 salvage sale,” this time stating that the Forest Service would accept bids for the sale of roughly
12 2.8 million board feet of timber and that these bids would be opened on September 17, 2019.

13 33. The bid prospectus for the reoffered M5 Pacific Ridge salvage sale stated that the
14 three harvest units amounted to approximately 270 acres.

15 34. Upon information and belief as of October 3, 2019, the M5 Pacific Ridge salvage
16 sale has been awarded, and logging operations are expected to begin in mid-October, 2019.

17 35. Forest Supervisor Ann Carlson first signed “Categorical Exclusion
18 Documentation” for the “Grindstone District Roadside Hazard Tree Management Project M3,
19 Felkner, and M5” on July 8, 2019, but also signed a second “Categorical Exclusion
20 Documentation” for this same project on September 13, 2019. These documents state that the
21 Forest Service used 36 C.F.R. § 220.6(d)(4), the repair and maintenance of roads, trails, and
22 landline boundaries “categorical exclusion” to authorize these projects.

23 36. According to the Wildlife Biological Assessment document for projects in the
24 Grindstone District, the M3 Project includes roughly 1,311 acres, and the Felkner Project
25 includes roughly 424 acres.

26 The M10, M5 and OHV Trails Project

27 37. Forest Supervisor Ann Carlson first signed “Categorical Exclusion
28 Documentation” for the M10 project on Sept. 5, 2019. This document states that the Forest

1 Service used 36 C.F.R. § 220.6(d)(4), the repair and maintenance of roads, trails, and landline
2 boundaries “categorical exclusion” to authorize these projects.

3 38. According to the Wildlife Biological Assessment document for projects in the
4 Grindstone District, the M10, M5 and OHV Trails Project includes roughly 2,320 acres.

5 The Deer Valley and Pine Horse Valley Projects (formerly, the M1 Project)

6 39. Upon information and belief, the former M1 Project, displayed on the March 26,
7 2019, map that was provided with the “News Release,” was broken into two projects—the Deer
8 Valley and Pine Horse Valley Roadside Hazard Tree Maintenance Projects.

9 40. On September 9, 2019, Forest Supervisor Ann Carlson signed “Categorical
10 Exclusion Documentation” to proceed with the Deer Valley Project. This document states that
11 the Forest Service used 36 C.F.R. § 220.6(d)(4), the repair and maintenance of roads, trails, and
12 landline boundaries “categorical exclusion” to authorize the Deer Valley Projects. The Deer
13 Valley Project would log hazard trees along 150 miles of road in the Deer Valley area of the
14 Mendocino National Forest, Upper Lake District in Lake County.

15 41. At the time of the filing of this complaint, Plaintiff did not have detailed
16 information about the Pine Horse Valley Project. However, upon information and belief, it is
17 likely that the Forest Service will again use 36 C.F.R. § 220.6(d)(4), the repair and maintenance
18 of roads, trails, and landline boundaries “categorical exclusion” to authorize the Pine Horse
19 Valley Project.

20 Effects from Ground-based Logging, Skidding, and Yarding Operations

21 42. All of the projects challenged herein would use heavy equipment on post-fire soils
22 for logging, skidding, and yarding operations, to cut, move, and stack the cut trees from up to
23 200 feet from each side of the roads within each project area.

24 43. Timber harvest causes adverse impacts to soils from heavy logging equipment
25 and tree skidding, especially in a fragile post-fire landscape.

26 44. The Forest Service has acknowledged that cutting hazard trees and leaving them
27 on site to conserve soils and avoid erosion or other disturbances has fewer impacts than hazard
28 tree removal.

1 45. According to peer-reviewed scientific studies, including Beschta et al. 2004,
2 ground-based post-fire logging and the removal of large trees are generally inconsistent with
3 efforts to restore ecosystem functions after fire. Moreover, skidding logs and heavy equipment
4 disturb soils, causing erosion, which leads to runoff into streams and the resulting sedimentation
5 of streams and other adverse water quality impacts.

6 Effects on Threatened and Sensitive Wildlife Habitat

7 46. Logging, including the removal of hazard trees, causes habitat loss and
8 fragmentation for wildlife species, including the threatened Northern spotted owl and other
9 sensitive species.

10 Hazard Tree Logging along Permanently-Closed Roads and OHV Trails

11 47. Most of the projects would sell and remove trees from Maintenance Level 1
12 roads, which are permanently closed to the public for use of private motor vehicles, and are used
13 only for administrative purposes.

14 48. There is little danger to the public along Maintenance Level 1 roads, and there is
15 no more danger from hazard trees along these roads than in general forest areas away from these
16 roads.

17 49. Moreover, some of the projects would also sell and remove trees from off-
18 highway vehicle (OHV) trails, which are not essential travel routes.

19 The National Environmental Policy Act

20 50. Congress enacted the National Environmental Policy Act “[t]o declare a national
21 policy which will encourage productive and enjoyable harmony between man and his
22 environment; to promote efforts which will prevent or eliminate damage to the environment and
23 biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the
24 ecological systems and natural resources important to the Nation.” 42 U.S.C. § 4321.

25 51. To accomplish these purposes, NEPA requires all agencies of the federal
26 government to prepare a “detailed statement” that discusses the environmental impacts of, and
27 reasonable alternatives to, all “major Federal actions significantly affecting the quality of the
28 human environment.” 42 U.S.C. § 4332(2)(C). This statement is commonly known as an

1 environmental impact statement (“EIS”). The EIS must describe the adverse environmental
2 effects of the proposed action and alternatives to the proposed action. *Id.*

3 52. NEPA also requires that “all agencies of the Federal Government shall ... study,
4 develop, and describe appropriate alternatives to recommended courses of action in any proposal
5 which involves unresolved conflicts concerning alternative uses of available resources....” 42
6 U.S.C. § 4332(E); NEPA Section 102(2)(E); *see* 40 C.F.R. § 1507.2(d) (“This requirement of
7 section 102(2)(E) extends to all such proposals, not just the more limited scope of section
8 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.”).

9 53. The Council on Environmental Quality (CEQ) has promulgated regulations
10 implementing NEPA, which are binding on all federal agencies. 40 C.F.R. § 1507.1. The CEQ
11 regulations establish additional requirements for environmental impact statements (EISs) and
12 other requirements of NEPA. 40 C.F.R. § 1508.9. To further the purposes of NEPA, the Forest
13 Service has also promulgated its own NEPA regulations, *see* 36 C.F.R. § 220 *et seq.*, which are
14 binding upon the agency.

15 54. To determine whether a proposed action significantly affects the environment, the
16 agency must consider both the context and intensity of the proposed action, including whether
17 the project will take place in “ecologically critical areas,” whether it will affect endangered
18 species, whether the effects of the project are highly controversial or uncertain, and whether the
19 project is related to other actions with individually insignificant but cumulatively significant
20 impacts. 40 C.F.R. § 1508.27. In making its determinations, NEPA requires that the agency use
21 the best available data and ensure the scientific integrity, disclose opposing scientific viewpoints,
22 and follow specified procedures to address gaps in data and scientific uncertainty. 40 C.F.R. §§
23 1500.1, 1502.9, 1502.22, 1502.24.

24 55. To determine whether a proposed action significantly affects the environment,
25 and whether an EIS is required, the acting agency may first prepare an Environmental
26 Assessment (EA). 40 C.F.R. § 1508.9. An EA must provide sufficient evidence and analysis to
27 determine whether to prepare an EIS. *Id.* If the agency concludes that a project may have
28 significant impacts on the environment, it must prepare an EIS. 40 C.F.R. § 1501.4. If the EA

1 concludes that there are no significant impacts to the environment, the federal agency must
 2 provide a detailed statement of reasons why the project's impacts are insignificant and issue a
 3 "finding of no significant impact" (FONSI). 40 C.F.R. § 1508.13.

4 56. Certain proposed actions are considered "categorically excluded" from detailed
 5 NEPA analysis and do not require preparation of an EIS or an EA. *Id.* § 1508.4. The Forest
 6 Service has promulgated numerous categorical exclusions, which require a project or case file
 7 and decision memo to satisfy NEPA. *See* 36 C.F.R. § 220.6(e). In promulgating its CEs, the
 8 Forest Service has acknowledged that "only routine actions that have no extraordinary
 9 circumstances should be within categories for exclusion." 57 Fed. Reg. 43,180 (Sept. 18, 1992).¹

10 57. The two relevant categorical exclusions in this case are:

11 (4) Repair and maintenance of roads, trails, and landline boundaries.
 12 Examples include but are not limited to:

- 13 (i) Authorizing a user to grade, resurface, and clean the culverts of an established NFS road;
- 14 (ii) Grading a road and clearing the roadside of brush without the use of herbicides;
- 15 (iii) Resurfacing a road to its original condition;
- 16 (iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and
- 17 (v) Surveying, painting, and posting landline boundaries.

18 36 CFR 220.6(d)(4).

19 (13) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than 1/2 mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

- 20 (i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees, and
- 21 (ii) *Harvest of fire-damaged trees.*

22 36 C.F.R. § 220.6(e)(13) (emphasis added).

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 24
 25 ¹ *See* at 73 Fed. Reg. 43,084, 43,091 (July 24, 2008) (final rule placing CE rules from the Forest Service Handbook (FSH) to the CFR, explaining that "[t]his final rule is moving established categories and language on extraordinary circumstances from the Forest Service NEPA procedures previously located in FSH 1909.15 to 36 CFR 220.6. These categories and requirements were established following public review and comment, in consultation with CEQ and with CEQ's concurrence. The final rule does not add any new categories, nor does it substantively alter existing requirements regarding extraordinary circumstances.").

1 58. “Scoping is required for all Forest Service proposed actions, including those that
2 would appear to be categorically excluded from further analysis and documentation in an EA or
3 an EIS.” 36 C.F.R. § 220.4(e)(1).

4 59. If, based on scoping, the responsible official determines that “it is uncertain
5 whether [a] proposed action may have a significant effect on the environment,” an EA should be
6 prepared. 36 C.F.R. § 220.6(c). If, based on scoping, the responsible official determines “that
7 the proposed action may have a significant environmental effect,” an EIS should be prepared. *Id.*

8 60. Federal agencies are also required to “provide for extraordinary circumstances,”
9 which are circumstances “in which a normally excluded action may have a significant
10 environmental impact.” 40 C.F.R. § 1508.4. To comply with NEPA when evaluating a
11 particular project for categorical exclusion, an agency must first determine whether the proposed
12 action falls within a categorical exclusion and then determine whether “extraordinary
13 circumstances” exist that would prevent application of the exclusion. *Id.*

14 61. In providing for “extraordinary circumstances” sufficient to preclude use of its
15 categorical exclusions, the Forest Service has determined that:

16 Resource considerations that should be considered in determining whether
17 extraordinary circumstances related to a proposed action warrant further analysis
18 and documentation in an EA or an EIS [including]: (i) Federally listed threatened
or endangered species or designated critical habitat, species proposed for Federal
listing or proposed critical habitat, or Forest Service sensitive species;....

19 36 C.F.R. § 220.6(b)(1) (among others).

20 62. “When an agency decides to proceed with an action in the absence of an EA or
21 EIS, the agency must adequately explain its decision.” *Alaska Ctr. for Env’t v. U.S. Forest Serv.*,
22 189 F.3d 851, 859 (9th Cir. 1999). If the agency asserts that an activity will have an insignificant
23 effect on the environment, the agency “ ‘must supply a convincing statement of reasons why
24 potential effects are insignificant.’ ” *Id.* (quoting *The Steamboaters v. FERC*, 759 F.2d 1382,
25 1393 (9th Cir. 1985)).

26 CLAIM FOR RELIEF

27 National Environmental Policy Act (NEPA) Violations

28 63. The paragraphs above are incorporated herein by reference.

- 1 d) Enjoin Defendants from selling and removing felled trees and limit felling to imminently
2 hazardous trees along essential public travel corridors to avert public safety concerns
3 until the Defendants have properly complied with NEPA;
- 4 e) Enjoin Defendants from felling trees along the Maintenance Level 1 roads and off-
5 highway vehicle (OHV) trails within project areas;
- 6 f) Award Plaintiff their costs of litigation, including reasonable attorneys' fees under the
7 Equal Access to Justice Act, 28 U.S.C. § 2412; and
- 8 g) Provide such other relief as the Court deems just and proper.

9
10 Respectfully submitted this 16th day of October, 2019.

11 

12 _____
13 René Voss
14 Matt Kenna, *Applicant Pro Hac Vice*

15 *Attorneys for Plaintiff*
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