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12
13 **UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 **WESTERN DIVISION**

15 LOS PADRES FORESTWATCH; KEEP) Case No. 2:22-cv-2781
16 SESPE WILD COMMITTEE; EARTH)
17 ISLAND INSTITUTE; AMERICAN)
18 ALPINE CLUB; CENTER FOR) **COMPLAINT FOR**
19 BIOLOGICAL DIVERSITY;) **DECLARATORY AND**
CALIFORNIA CHAPARRAL) **INJUNCTIVE RELIEF**
INSTITUTE,)
20 Plaintiffs,) (National Environmental Policy Act,
21 v.) 42 U.S.C. § 4321 *et seq.*;
22 UNITED STATES FOREST SERVICE;) Administrative Procedure Act, 5
KARINA MEDINA, District Ranger,) U.S.C. § 551 *et seq.*; Endangered
23 United States Forest Service; TOM) Species Act, 16 U.S.C. § 1531 *et*
24 VILSACK, Secretary of Agriculture,) *seq.*; National Forest Management
United States Department of Agriculture;) Act, 16 U.S.C. § 1604; Healthy
25 and UNITED STATES FISH AND) Forest Restoration Act, 16 U.S.C.
WILDLIFE SERVICE,) §§ 6591b & 6591d; and The
26) Roadless Area Conservation Rule, 36
27 Defendants.) C.F.R. §§ 294.12 & 294.13)
28)

JURISDICTION AND VENUE

1
2 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
3 (federal question), 28 U.S.C. § 1346 (United States as a defendant), and 5 U.S.C. §§
4 701-706 (Administrative Procedure Act, “APA”). The federal statutes and rules at issue
5 in this case include the National Environmental Policy Act (“NEPA”; 42 U.S.C.
6 §§ 4321-4370h), the Endangered Species Act (“ESA”; 16 U.S.C. § 1536), the Healthy
7 Forest Restoration Act (“HFRA”; 16 U.S.C. §§ 6591b & 6591d), the Roadless Area
8 Conservation Rule (“Roadless Rule”; Roadless Area Conservation Final Rule, 66 Fed.
9 Reg. 3,244 (Jan. 12, 2001) (to be codified in 36 C.F.R. pt. 294)),¹ and the National
10 Forest Management Act (“NFMA”; 16 U.S.C. § 1604). This Court has authority to grant
11 the requested relief pursuant to 28 U.S.C. §§ 2201-2202 (declaratory and injunctive
12 relief) and 5 U.S.C. §§ 701-706 (APA).

13 2. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e)(1) because
14 Plaintiffs Los Padres ForestWatch and Keep Sespe Wild Committee are located and
15 reside in this District, Defendants reside in this District, and a substantial part of the
16 events or omissions giving rise to Plaintiffs’ claims occurred in this District. Plaintiff
17 Los Padres ForestWatch’s office is located in Santa Barbara, California. Keep Sespe
18 Wild Committee is based in Ojai, California. Patagonia Works is headquartered in
19 Ventura, California. This case challenges approval of a logging project located in
20 Ventura County, California.

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23
24 ¹ The Roadless Rule appears in the 2001-2004 editions of the Code of Federal
25 Regulations, at 36 C.F.R. §§ 294.10-14. In 2005, it was replaced by the State Petitions
26 Rule. 70 Fed. Reg. 25,654 (May 13, 2005). When that replacement was set aside the
27 following year, the Roadless Rule was reinstated. *California ex rel. Lockyer v. USDA*,
28 459 F. Supp. 2d 874 (N.D. Cal. 2006), *aff’d*, 575 F.3d 999 (9th Cir. 2009)). However,
the General Printing Office has thus far not conformed the current published Code
accordingly. This complaint includes citations to 36 C.F.R. part 294.

INTRODUCTION

1
2 3. Plaintiffs challenge the United States Forest Service’s authorization of the
3 Reyes Peak Forest Health and Fuels Reduction Project (“Reyes Peak Project” or
4 “Project”) located on Pine Mountain in Los Padres National Forest. The Project will
5 involve logging and mastication of more than 750 acres of public land, including in the
6 Sespe-Frazier Inventoried Roadless Area (“IRA”). Plaintiffs regularly use the Reyes
7 Peak area for cultural, educational, scientific, aesthetic, and recreational purposes, and
8 seek to prevent the area’s wild character from being harmed by the Project. The Forest
9 Service intends to log thousands of trees in the Project area, including an unlimited
10 number of old-growth trees as large as sixty-four inches in diameter. Furthermore, the
11 agency plans to masticate old-growth chaparral, a shrub dominated ecosystem that is
12 native to the area and is important for wildlife. Mastication means a tractor-like machine
13 is used to chop the chaparral into small chips.

14 4. Reyes Peak is one of the most biologically-diverse hotspots in Los Padres
15 National Forest. Pine Mountain hosts the greatest diversity of coniferous tree species in
16 Ventura County, which occur next to large expanses of rare old-growth chaparral.
17 Moreover, Reyes Peak contains the only “sky island” near Santa Barbara or Los
18 Angeles, meaning it provides unique habitat to higher-elevation species that cannot
19 survive in the nearby lowland regions. The Reyes Peak and Pine Mountain ridgeline
20 form the northern rim of the Sespe watershed, at over 7,000 feet elevation. The ridge is
21 home to over 400 species of native plants, including dozens that are rare or sensitive. It
22 is also home to an abundance of wildlife including the endangered California condor,
23 California spotted owl, northern goshawk, and several sensitive bat species.

24 5. The Reyes Peak Project is also located entirely within ancestral lands of the
25 Chumash people, and Pine Mountain (known by its traditional name of “Opnow”) is a
26 sacred peak that is significant to the spiritual and religious beliefs of the Chumash. The
27 Project area contains culturally significant sites, as well as items like grinding bowls and
28

1 medicinal plants that could be destroyed by the Project. Tribal members also visit Pine
2 Mountain and Reyes Peak for prayer and ceremony, and the Project would permanently
3 alter the landscape where they pray.

4 6. The Forest Service violated NEPA when approving the Reyes Peak Project.
5 The agency wrongly relied on categorical exclusions (“CEs”) instead of conducting an
6 environmental assessment (“EA”) or environmental impact statement (“EIS”), thereby
7 short-circuiting public involvement and the consideration of alternatives. This matters
8 because alternatives to the Project could have avoided harm to the wild character of the
9 Project area and the cultural sites it contains.

10 7. Moreover, the Forest Service ignored the requirements of the CEs that were
11 relied upon. All Forest Service CEs, which are found at 36 C.F.R. § 220.6, require what
12 is called “scoping.” 36 C.F.R. § 220.4(e) (2008); 36 C.F.R. § 220.6(c) (2008). Scoping is
13 how the Forest Service ensures that the public is provided notice of, and the ability to
14 comment on, any Forest Service project. Here, the Forest Service did not state in its
15 scoping letter that the agency intended to rely upon the CE found at 36 C.F.R.
16 § 220.6(e)(6) (1992), and consequently the public was not properly notified that the
17 agency would be using that particular CE. The Forest Service is therefore in violation of
18 its own regulations and cannot proceed under 36 C.F.R. § 220.6(e)(6) (1992).

19 8. Furthermore, 36 C.F.R. § 220.6(e)(6) (1992) cannot be used for this Project
20 because 36 C.F.R. § 220.6(e)(6) does not authorize commercial thinning. It also does not
21 authorize the logging of large trees that contain dwarf mistletoe, or the removal of snags
22 or downed wood.

23 9. The Forest Service likewise ignored the requirements of the other CEs it
24 relied upon—16 U.S.C. §§ 6591b, 6591d. In order for the Forest Service to utilize these
25 HFRA statutory CEs, the agency must maximize the retention of old-growth and large
26 trees, consider the best available scientific information, and develop and implement the
27 project using a collaborative process. Here, the Forest Service wrongly authorized the

1 logging of old-growth and large trees, ignored the best available science with respect to
2 maintaining the integrity of the area's forest and chaparral ecosystem, failed to
3 collaborate with local Native American tribes and other community stakeholders when
4 developing the Project, and violated the terms of Los Padres National Forest's Land and
5 Resource Management Plan ("Forest Plan").

6 10. An EA or EIS is also required because NEPA regulations preclude the use
7 of CEs when there are "extraordinary circumstances" present. 36 C.F.R. § 220.6(b), (c)
8 (2008). "Extraordinary circumstances" exist here because the Project may cause serious
9 harm to local "resource conditions" including Native American religious and cultural
10 sites, rare wildlife, and a proposed wilderness area and the Sespe-Frazier IRA. *Id.* To the
11 degree that there is uncertainty regarding impacts to these resources, further analysis is
12 required under NEPA. *See* Forest Service Handbook 1909.15.31.2 ("If the degree of
13 potential effect raises uncertainty over its significance, then an extraordinary
14 circumstance exists, precluding use of a categorical exclusion.").

15 11. Wildlife impacts were also wrongly ignored under the ESA. The Project
16 area is home to the endangered California condor, which uses large trees for roosting.
17 The United States Fish and Wildlife Service ("FWS"), when concluding that the Project
18 would "not likely adversely affect" condors or their critical habitat, asserted that "[o]ne
19 of the project goals is to retain larger trees throughout the project area." FWS ESA
20 Section 7 Consultation Concurrence Letter ("FWS Concurrence") at 5. The Project, as
21 approved, however, allows large trees (up to sixty-four inches in diameter) that contain
22 dwarf mistletoe to be logged, and places no limit on the amount of such trees that can be
23 cut and removed. It was therefore not possible for the FWS to ensure that the Project
24 would not adversely affect important condor roosting trees.

25 12. In addition, the Sespe-Frazier IRA is protected by the Roadless Rule. This
26 Rule forbids logging in any IRA except in very limited circumstances, such as the
27 logging of small diameter trees. 36 C.F.R. § 294.13 (2001). Here, the Forest Service

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