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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DISTRICT**

11
12 CITY OF OJAI,

13 Plaintiff,

14 v.

15 UNITED STATES FOREST SERVICE;
16 KARINA MEDINA, District Ranger,
United States Forest Service; TOM
17 VILSACK, Secretary of Agriculture,
United States Department of Agriculture;
18 and UNITED STATES FISH AND
WILDLIFE SERVICE,

19 Defendants.

CASE NO.: _____

Assigned to the Hon. Judge

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(National Environmental Policy Act, 42
U.S.C. § 4321 *et seq.*; Administrative
Procedure Act, 5 U.S.C. § 551 *et seq.*;
Endangered Species Act, 16 U.S.C. §
1531 *et seq.*; National Forest
Management Act, 16 U.S.C. § 1604;
Healthy Forest Restoration Act, 16
U.S.C. §§ 6591b & 6591d; and The
Roadless Area Conservation Rule, 36
C.F.R. §§ 294.12 & 294.13)

Filing Date:
Trial Date:
Discovery Cut-off:
Motion Cut-off:

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26 **JURISDICTION AND VENUE**

27 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
28 (federal question), 28 U.S.C. § 1346 (United States as a defendant), and 5 U.S.C. §§

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

10 2. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e)(1) because the
11 City is located in this District, Defendants reside in this District, and a substantial part
12 of the events or omissions giving rise to the City’s claims occurred in this District. The
13 City is located in Ventura County, California, and this case challenges approval of a
14 logging project located in Ventura County, California.

15 **INTRODUCTION**

16 3. The City challenges the United States Forest Service’s authorization of the
17 Reyes Peak Forest Health and Fuels Reduction Project (“Reyes Peak Project” or
18 “Project”) located on Pine Mountain in the Los Padres National Forest. The Project will
19 involve logging and mastication of more than 750 acres of public land, including in the
20 Sespe-Frazier Inventoried Roadless Area (“IRA”). The Forest Service intends to log
21 thousands of trees in the Project area, including an unlimited number of old-growth
22 trees as large as sixty-four inches in diameter. Furthermore, the agency plans to
23 masticate old-growth chaparral, a shrub dominated ecosystem that is native to the area
24

25
26 ¹ The Roadless Rule appears in the 2001-2004 editions of the Code of Federal
27 Regulations, at 36 C.F.R. §§ 294.10-14. In 2005, it was replaced by the State Petitions
28 Rule. 70 Fed. Reg. 25,654 (May 13, 2005). When that replacement was set aside the
following year, the Roadless Rule was reinstated. *California ex rel. Lockyer v. USDA*,
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

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1 and is important for wildlife. Mastication means a tractor-like machine is used to chop
2 the chaparral into small chips.

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

13 5. The Reyes Peak Project is also located entirely within ancestral lands of
14 the Chumash people, and Pine Mountain (known by its traditional name of “Opnow”),
15 is a sacred peak that is significant to the spiritual and religious beliefs of the Chumash.
16 The Project area contains culturally significant sites, as well as items like grinding
17 bowls and medicinal plants that could be destroyed by the Project. Tribal members also
18 visit Pine Mountain and Reyes Peak for prayer and ceremony, and the Project would
19 permanently alter the landscape where they pray.

20 6. The Forest Service violated the National Environmental Policy Act
21 (“NEPA”) when approving the Reyes Peak Project. The agency wrongly relied on
22 categorical exclusions (“CEs”) instead of conducting an environmental assessment
23 (“EA”) or environmental impact statement (“EIS”), thereby short-circuiting public
24 involvement and the consideration of alternatives. This matters because alternatives to
25 the Project could have avoided harm to the wild character of the Project area and the
26 cultural sites it contains.

27 7. Moreover, the Forest Service ignored the requirements of the categorical
28 exclusions that were relied upon. All Forest Service “categorical exclusions,” which are

1 found at 36 C.F.R. § 220.6 (2020), require what is called “scoping.” 36 C.F.R.
2 § 220.4(e) (2020); 36 C.F.R. § 220.6(c) (2020). Scoping is how the Forest Service
3 ensures that the public is provided notice of, and the ability to comment on, any Forest
4 Service project. Here, the Forest Service did not state in its scoping letter that the agency
5 intended to rely upon the categorical exclusion found at 36 C.F.R. § 220.6(e)(6) (2020),
6 and consequently the public was not properly notified that the agency would be using
7 that particular CE. The Forest Service is therefore in violation of its own regulations
8 and cannot proceed under 36 C.F.R. § 220.6(e)(6) (2020).

9 8. Furthermore, 36 C.F.R. § 220.6(e)(6) (2020) cannot be used for this
10 Project because 36 C.F.R. § 220.6(e)(6) (2020) does not authorize commercial thinning.
11 It also does not authorize the logging of large trees that contain dwarf mistletoe, or the
12 removal of snags or downed wood.

13 9. The Forest Service likewise ignored the requirements of the other
14 categorical exclusions it relied upon—16 U.S.C. §§ 6591b, 6591d. In order for the
15 Forest Service to utilize these HFRA statutory CEs, the agency must maximize the
16 retention of old-growth and large trees, consider the best available scientific
17 information, and develop and implement the Project using a collaborative process. Here,
18 the Forest Service wrongly authorized the logging of old-growth and large trees, ignored
19 the best available science with respect to maintaining the integrity of the area’s forest
20 and chaparral ecosystem, failed to collaborate with local Native American tribes and
21 other community stakeholders when developing the Project, and violated the terms of
22 the Los Padres National Forest’s Land Management Plan.

23 10. An EA or EIS is also required here because NEPA regulations preclude
24 the use of CEs when there are “extraordinary circumstances” present. 36 C.F.R.
25 § 220.6(b), (c) (2020). “Extraordinary circumstances” exist here because the Project
26 may cause serious harm to local “resource conditions” including Native American
27 religious and cultural sites, rare wildlife, and a proposed wilderness area and the Sespe-
28 Frazier IRA. *Id.* To the degree that there is uncertainty regarding impacts to these

1 resources, further analysis is required under NEPA. Forest Service Handbook
2 1909.15.31.2 (“If the degree of potential effect raises uncertainty over its significance,
3 then an extraordinary circumstance exists, precluding use of a categorical exclusion.”).

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

14 12. In addition, the Sespe-Frazier IRA is protected by the Roadless Rule. This
15 Rule forbids logging in any IRA except in very limited circumstances, such as the
16 logging of small diameter trees. 36 C.F.R. § 294.13 (2005). Here, the Forest Service
17 violated the Roadless Rule by authorizing the unlimited logging of trees up to sixty-
18 four inches in diameter in the Sespe-Frazier IRA, thereby failing to protect the IRA’s
19 wild character.

20 13. Moreover, the Project violates NFMA, which requires that projects in
21 National Forests be consistent with the Forest’s Land Management Plan (“Forest Plan”).
22 16 U.S.C. § 1604(i). The Reyes Peak Project contravenes the Forest Plan for the Los
23 Padres National Forest because the removal of trees and shrubs from the Project area
24 fails to protect the area’s “High Scenic Integrity” and its “undeveloped character and
25 natural appearance.” *See e.g.*, Los Padres National Forest Plan, Part 3, Standards 9 and
26 10. In addition, the Project does not adhere to the Forest Plan’s findings regarding
27 safeguarding communities from wildfire because the Project is not located within the
28 defense zone or threat zone of the wildland urban interface (“WUI”). *See e.g.*, Los

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