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

COUNTY OF VENTURA,

Plaintiff,

v.

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

Defendants.

) Case No. 2:22-cv-02802

)

) **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)

)

)

JURISDICTION AND VENUE

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

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

INTRODUCTION

3. Plaintiff challenges the United States Forest Service’s authorization of the Reyes Peak Forest Health and Fuels Reduction Project (“Reyes Peak Project” or “Project”) located on Pine Mountain in Los Padres National Forest. The Project will involve logging and mastication of more than 750 acres of public land, including in the Sespe-Frazier Inventoried Roadless Area (“IRA”). Plaintiff County of Ventura,

^{1/} The Roadless Rule appears in the 2001-2004 editions of the Code of Federal Regulations (“C.F.R.”), at 36 C.F.R. §§ 294.10-14. In 2005, it was replaced by the State Petitions 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* (N.D. Cal. 2006) 459 F.Supp.2d 874, *aff’d* (9th Cir. 2009) 575 F.3d 999.) 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.

1 including its residents and employees, as well as visitors to the County, regularly use the
2 Reyes Peak area for cultural, educational, scientific, aesthetic, and recreational purposes,
3 and seeks to prevent the area's wild character from being harmed by the Project. The
4 Forest Service intends to log thousands of trees in the Project area, including an
5 unlimited number of old-growth trees as large as sixty-four inches in diameter.
6 Furthermore, the agency plans to masticate old-growth chaparral, a shrub dominated
7 ecosystem that is native to the area and is important for wildlife. Mastication means a
8 tractor-like machine is used to chop the chaparral into small chips.

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

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

26 6. The Forest Service violated the NEPA when approving the Reyes Peak Project.
27 The agency wrongly relied on categorical exclusions ("CEs") instead of conducting an
28 environmental assessment ("EA") or preparing an environmental impact statement

1 (“EIS”), thereby short-circuiting public involvement and the consideration of
2 alternatives. This matters because alternatives to the Project could have avoided harm to
3 the wild character of the Project area and the cultural sites it contains.

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

13 8. Furthermore, 36 C.F.R. § 220.6(e)(6) cannot be used for the Project because
14 36 C.F.R. § 220.6(e)(6) does not authorize commercial thinning. It also does not
15 authorize the logging of large trees that contain dwarf mistletoe, or the removal of snags
16 or downed wood.

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

27 10. An EA or EIS is also required here because NEPA regulations preclude the
28 use of CEs when there are “extraordinary circumstances” present. (36 C.F.R.

§ 220.6(b), (c).) “Extraordinary circumstances” exist here because the Project may cause serious harm to local “resource conditions” including Native American religious and cultural sites, rare wildlife, and a proposed wilderness area and the Sespe-Frazier IRA. (*Ibid.*) To the degree that there is uncertainty regarding impacts to these resources, further analysis is required under NEPA. (Forest Service Handbook 1909.15.31.2 [“If the degree of potential effect raises uncertainty over its significance, then an extraordinary circumstance exists, precluding use of a categorical exclusion”].)

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

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

13. Moreover, the Project violates NFMA, which requires that projects in National Forests be consistent with the Forest’s Forest Plan. (16 U.S.C. § 1604(i).) The Reyes Peak Project contravenes the Forest Plan for Los Padres National Forest because the removal of trees and shrubs from the Project area fails to protect the area’s “High Scenic Integrity” and its “undeveloped character and natural appearance.” (See, e.g., Los Padres National Forest Plan, part 3, standards 9 and 10.) In addition, the Project

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