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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

KLAMATH FOREST ALLIANCE, a
California non-profit corporation;

Plaintiff,

v.

SCOTT J. BLOWER, in his official capacity
as Wild Rivers District Ranger; **MERV**
GEORGE JR., in his official capacity as
Rogue River-Siskiyou National Forest
Supervisor; and the **UNITED STATES**
FOREST SERVICE,

Defendants.

Case No. 1:21-cv-00781

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(5 U.S.C. § 706(2))

(Environmental Matters –
Endangered Species Act, National Forest
Management Act, National Environmental
Policy Act, and Administrative Procedure
Act)

NATURE OF ACTION

1. Plaintiff Klamath Forest Alliance (“KFA”) brings this challenge under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, to the final administrative actions of Scott J. Blower, Merv George Jr., and the United States Forest Service (collectively “Forest Service” or “Defendants”). In approving the Decision Memorandum (“DM”) for the Slater Fire Safe Re-entry Project (“Slater Roadside Project” or “Project”) on the Rogue River-Siskiyou National Forest (“Forest” or “RRSNF”), Defendants acted arbitrarily, capriciously, and contrary to the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4370h, the National Forest Management Act (“NFMA”), 16 U.S.C. §§ 1600–1614, and the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531–1544.

2. The DM authorizes the felling of “danger” trees (also called “hazard” trees) affected by the 2020 Slater Fire along approximately 146 miles of identified travel corridors, and the restoration and rehabilitation of site conditions through site-specific seeding and planting of native grasses, shrubs, and trees in identified roadsides and other areas affected by high intensity burn.

3. Under NEPA, the Forest Service did not prepare an Environmental Impact Statement (“EIS”) or even a less intensive Environmental Assessment (“EA”), and instead approved the Project pursuant to two Categorical Exclusions (“CE”). CEs apply to categories of actions that the Forest Service has determined pose no significant environmental effects, either individually or cumulatively. The Forest Service approved the roadside tree felling portions of the Project pursuant to a CE applicable to “repair and maintenance” of roads. 36 C.F.R. § 220.6(d)(4). The Forest Service approved the restoration and rehabilitation portions of the

Project pursuant to a CE applicable to “post-fire rehabilitation activities.” *Id.* § 220.6(e)(11). KFA does not challenge the restoration and rehabilitation portions of the Project.

4. KFA challenges the application of the “road repair and maintenance” CE to a project of this magnitude. Along 85 miles of road—covering approximately 4,106 acres—trees would be felled if they are (1) within 200 feet of the roadway, and (2) pose some hazard risk in the next five years. Most of these felled trees would be removed pursuant to commercial timber sale contracts, producing an estimated 30 million board feet of timber. The Forest Service has failed to articulate a rational explanation as to why such a major “salvage” logging project constitutes “road repair and maintenance” such that the Forest Service may avoid preparation of an EIS or even an EA.

5. KFA acknowledges that felling of some danger trees along some travel corridors is necessary for the safety of the public and agency personnel, and the Forest already has conducted operations to address specific danger trees that pose immediate threats to human life and property pursuant to an emergency response. Now, however, the Forest Service has planned and authorized a major logging project targeting tens of thousands of trees posing no immediate hazard risk. Before approving a project of this magnitude, the Forest Service is obligated to prepare an EIS or EA.

6. Proper review under an EIS or EA would force the Forest Service to take a “hard look” at the Project’s environmental impacts, including impacts to ESA-listed northern spotted owls and important habitat classified as “Late Successional Reserves.” In fact, the Forest Service concedes that the Project is “likely to adversely affect” owls, but failed to inform the public and decisionmaker of the scope and magnitude of the impacts or consider any alternatives that would lessen such impacts. Nor did the Forest Service engage in required consultation with the expert

wildlife agency, the U.S. Fish and Wildlife Service, pursuant to Section 7 of the ESA. And the Forest Service did not evaluate the Project's impacts to Late Successional Reserves at all.

7. KFA respectfully requests this Court to vacate the DM and remand to the Forest Service for preparation of an EIS or EA for a full and fair analysis of the Project's impacts.

8. If necessary, KFA intends to seek narrowly tailored injunctive relief during the pendency of this litigation to protect sensitive species and their habitats but which would still permit the felling of any remaining hazardous trees posing an imminent risk along essential public travel corridors.

9. Should it prevail, KFA will seek attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, the ESA, 16 U.S.C. § 1540(g)(4), and/or any other applicable authorities.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiff's claims present a federal question. A present, actual, and justiciable controversy exists between the parties. The requested relief for a declaratory judgment is proper under 28 U.S.C. § 2201, and the requested injunctive relief is proper under 28 U.S.C. § 2202.

11. Plaintiff exhausted its administrative remedies by submitting scoping comments. The challenged agency action is subject to this Court's review under 5 U.S.C. §§ 702, 704, and 706. Defendants have waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the Project area is located within this judicial district. Defendants maintain an office in this judicial district.

13. This case is properly filed in the Medford Division pursuant to Local Rule 3-2 because a substantial part of the Project area, and Defendants' office where the decision was

signed, are located in Josephine County. A substantial part of the events or omissions giving rise to this claim occurred and the property that is subject to this action is situated in the Medford Division.

PARTIES

Plaintiff

14. Plaintiff KLAMATH FOREST ALLIANCE (“KFA”) is a non-profit community organization founded in 1989, based in Orleans, California. KFA has 500 members and supporters. Its mission is to promote sustainable ecosystems and sustainable communities of the Klamath-Siskiyou Mountain region. KFA participates in forest planning through agency engagement, substantive comments, and collaboration. KFA uses law, science, place-based knowledge and conservation advocacy to defend the biodiversity, wildlife, waters, and mature forests of the Klamath-Siskiyou bioregion. KFA’s members and supporters use and enjoy the Project area and would be irreparably harmed if the Project moves forward.

15. Plaintiff’s members and supporters regularly visit and enjoy the Forest, including the Project area, and intend to do so again in the near future. The members and supporters appreciate the aesthetics of the Forest, including its waters and wildlife, and use the area to engage in recreational, scientific, and spiritual activities, such as hunting, hiking, camping, fishing, photography, watershed research, and observing wildlife.

16. Plaintiff has organizational interests in the proper and lawful management of the Forest. Plaintiff and its members and supporters have participated extensively in relevant administrative actions and have actively participated in the Project’s administrative process.

17. Plaintiff, its members, supporters, and staff would sustain injury to aesthetic, educational, recreational, spiritual, and scientific interests if the Project proceeds as authorized.

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