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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

OREGON WILD, an Oregon nonprofit corporation; and **WILDEARTH GUARDIANS**, a New Mexico nonprofit corporation;

Plaintiffs,

v.

UNITED STATES FOREST SERVICE,
MICHAEL RAMSEY, in his official capacity as Lakeview Ranger District Ranger;
JEANNETTE WILSON, in her official capacity as Silver Lake Ranger District Ranger;
RANDY MOORE, in his official capacity as Chief of the U.S. Forest Service;
and **THOMAS VILSACK**, in his official capacity as Secretary of Agriculture,

Defendants.

Case No. 1:22-cv-01007

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(5 U.S.C. § 706(2))

(Environmental Matters –
National Environmental Policy Act and
Administrative Procedure Act)

GLOSSARY OF TERMS

Agency	United States Forest Service
APA	Administrative Procedure Act
CE	Categorical Exclusion
CE-6	36 C.F.R. § 220.6(e)(6)
CEQ	Council on Environmental Quality
Defendants	All named Defendants
EA	Environmental Assessment
EIS	Environmental Impact Statement
Forest	Fremont-Winema National Forest
Forest Service	United States Forest Service
Girdling	A method of killing trees without cutting them down. This method is often used to create “snags,” which are standing, dead trees that provide important habitat for a variety of wildlife.
Impact or Effect	Used synonymously to describe ecological, aesthetic, historic, cultural, economic, social, or health consequences of an action, whether direct, indirect, or cumulative. “Direct” effects are caused by an action and occur at the same time and place. “Indirect” effects are caused by an action and are later in time or farther removed in distance. “Cumulative” effects result from the incremental effect of an action when added to other past, present, and reasonably foreseeable future actions.
Logging	Any silvicultural method employed for the purpose of cutting down trees. Logging can be accomplished through commercial or noncommercial means, and can involve a variety of techniques including “thinning,” “clearcutting,” etc. Logging operations can involve felling trees, skidding felled trees to landings, building and maintaining roads, hauling logs on roads, and other associated activities.
NEPA	National Environmental Policy Act
Plaintiffs	All named Plaintiffs
Projects	South Warner, Baby Bear, Bear Wallow

NATURE OF ACTION

1. Plaintiffs Oregon Wild and WildEarth Guardians (collectively, “Wild”) bring this challenge under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, to the final administrative actions of the United States Forest Service, Michael Ramsey, Jeanette Wilson, Randy Moore, and Thomas Vilsack (collectively, “Forest Service,” “agency,” or “Defendants”).

2. In approving the South Warner Project, the Bear Wallow Project, and the Baby Bear Project (collectively, the “Projects”) on the Fremont-Winema National Forest (“Forest”), Defendants acted arbitrarily, capriciously, and contrary to the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4370h. Wild also brings an as-applied challenge under NEPA to the categorical exclusion (“CE”) under which each of the Projects was approved.

3. The Projects all authorize “commercial thinning,” a type of logging whereby merchantable trees are cut and removed from the forest for their commercial value. In total, the Projects authorize commercial thinning on up to 29,000 acres, or about 45 square miles. For the large-scale commercial logging operations authorized by the Projects, the Forest Service did not prepare an Environmental Impact Statement (“EIS”), or even a less intensive Environmental Assessment (“EA”) to review the Projects’ environmental effects pursuant to NEPA. Instead, the agency approved all three Projects pursuant to a CE.

4. CEs apply to categories of small, low-impact, and routine actions that the Forest Service has determined—in notice and comment rulemaking—pose no significant environmental effects either individually or cumulatively, and therefore require no further analysis under an EIS or EA. The agency approved the Projects pursuant to a CE applicable to “timber stand and/or wildlife habitat improvement” activities. 36 C.F.R. § 220.6(e)(6) (“CE-6”). Wild challenges the Forest Service’s reliance on CE-6 to authorize the Projects’ commercial logging operations.

5. First, CE-6 is inapplicable to the Projects. The Forest Service failed to articulate a rational explanation as to why CE-6 permits projects of the type and scale of the Projects, each of which involve thousands of acres of commercial logging operations. The Forest Service was required to prepare EISs or EAs, which would force the agency to take the required “hard look” at—and publicly disclose—the Projects’ environmental impacts, consider alternatives, solicit informed public comments, and fulfill the agency’s other obligations under NEPA.

6. Second, in the alternative, if CE-6 does permit the Forest Service to approve the Projects’ commercial logging operations, then CE-6 itself violates NEPA and its implementing regulations, 40 C.F.R. §§ 1500–1508 (2019). As applied to commercial logging operations like those authorized by the Projects, the Forest Service acted arbitrarily, capriciously, and in excess of its authority in promulgating CE-6 because the agency never made the required findings that commercial logging operations cause no individually or cumulatively significant environmental effects. Moreover, an interpretation of “no cumulatively or individually significant effect” as permitting commercial logging operations on thousands of acres—with no upper limit—flatly contradicts the language and purpose of NEPA and its implementing regulations, and is inconsistent with the Forest Service’s CE regulatory regime—in which the agency has promulgated CEs specifically for commercial logging purposes, all with acreage caps.

7. Wild respectfully requests that this Court vacate the Projects’ approvals of commercial logging operations, declare such operations beyond the scope of CE-6, and remand to the Forest Service for preparation of EISs or EAs containing full and fair analyses of the Projects’ environmental impacts. In the alternative, if the Projects do fall within the scope of CE-6, Wild respectfully requests that this Court hold unlawful and set aside CE-6 as applied to commercial logging operations.

8. If necessary, Wild intends to seek narrowly tailored injunctive relief during the pendency of this litigation to protect sensitive species and their habitats and other resources that are adversely affected by commercial logging operations.

9. Should it prevail, Wild will seek attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, 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 Wild's claims present a federal question, and 28 U.S.C. § 1346 because the United States is a defendant. 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. Wild has 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 areas are located within this District. Defendants maintain an office in this District. Plaintiffs Oregon Wild and WildEarth Guardians maintain offices in this 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' offices where the decisions were signed, are located in Lake 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 Lake and Klamath Counties.

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