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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PENDELTON DIVISION

**BLUE MOUNTAINS BIODIVERSITY
PROJECT,**

an Oregon nonprofit corporation,

Plaintiff,

vs.

Craig P. Trulock, Forest Supervisor, Malheur
National Forest, in his official capacity; and
UNITED STATES FOREST SERVICE, an
agency of the United States Department of
Agriculture,

Defendants.

Case No.

**COMPLAINT FOR VACATUR OF
ILLEGAL AGENCY DECISION,
INJUNCTIVE AND DECLARATORY
RELIEF**

INTRODUCTION

1. This is a civil action brought by Plaintiff Blue Mountains Biodiversity Project (“BMBP”) for vacatur of an illegal agency decision, as well as declaratory and injunctive relief under the Administrative Procedure Act (“APA”) (5 U.S.C. §§ 551 *et seq.*). Plaintiff Blue Mountains Biodiversity Project (BMBP) challenges the Defendant United States Forest Service’s (“USFS”) Decision Notice and Finding of No Significant Impact (“FONSI”) (collectively referred to as the “Decision”), approving the Camp Lick Project (“the Project”) in the Malheur National Forest (“the Malheur” or “MNF”). Defendant Forest Supervisor Craig P. Trulock signed that Decision on May 27, 2020. Defendants USFS and Regional Forester Craig P. Trulock are collectively referred to herein as “defendants” or “Forest Service.” The Decision violates the National Forest Management Act (“NFMA”) and its implementing regulations and violates the National Environmental Policy Act (“NEPA”) and its implementing regulations.

2. The Camp Lick Project is located on the Blue Mountain Ranger District within the Malheur National Forest. The planning area is located in Grant County approximately 10 miles northeast of the city of John Day, Oregon. According to the Forest Service “The Camp Lick planning area is located in a regionally focused, priority watershed and encompasses approximately 40,000 acres in the Upper Camp Creek, Lower Camp Creek, and Lick Creek subwatersheds that drain into the Middle Fork John Day River.” August 2017 Final Environmental Assessment (“FEA”) at 3. These watersheds are all part of, and will be referred to as, the John Day River Middle Fork Watershed.

3. The Camp Lick Project features approximately 12,000 acres of commercial logging. FEA at 36. This includes nearly 10,000 acres of tractor yarding, a process where toppled

trees are dragged through the forest by heavy equipment, causing soil compaction and erosion. *Id.* Also included is 10 miles of “temporary” road construction. *Id.* Temporary roads are often active for years, and have permanent effects to the soil, including compaction and erosion like tractor yarding does. The tractors and “temporary” roads will be used to log large trees, over 21 inches Diameter at Breast Height (DBH), and trees inside protected old growth stands that are generally protected from logging by Forest Plan provisions, often referred to as the Eastside Screens, that prohibit the logging of such large trees and trees within old growth areas. The Camp Lick Project relies on illegal site-specific forest plan amendments to allow the logging of large trees and logging within old growth stands that are below the historical range of variability (HRV).

4. BMBP has participated in the Camp Lick Projects administrative process since the beginning. BMBP submitted scoping comments May 28th, 2016 about the scale of the project, the natural values of the project area, and the use of forest plan amendments to log large trees the Forest Service would otherwise not be allowed to log. BMBP commented on the draft Environmental Assessment on March 15th, 2017. When the USFS published the FEA and its draft decision on August 23, 2017, BMBP filed a timely objection on October 10th. Then, the Forest Service did not issue a final decision for more than two years.

5. BMBP submitted a Request for Supplemental Environmental Analysis and sent it to the Forest Service in January 2020, asking that significant changes in condition and new information about timber sales be incorporated into a new supplemental analysis. Without acknowledging our request, the Service released a three-page “Supplemental Information Report” stating that the new conditions and new timber sales, namely Ragged Ruby, Austin, and

Bark, would not change its analysis of the project's impacts and issued a Final Decision Notice and FONSI on May 27, 2020.

6. On June 1, 2020, BMBP filed a FOIA request, seeking information on the consultation process and the two-year delay. The response BMBP received to that FOIA request disclosed additional ways the underlying NEPA process was arbitrary, capricious, and illegal.

7. The Camp Lick Project's arbitrary, capricious, and illegal administrative process is in part a result of the Forest Service's continued effort to evade the Eastside Screens. The project in fact seeks to log many large trees that are legally protected by the Eastside Screens. BMBP has been involved in the public process for the Camp Lick Project at every level; we have seen this first-hand.

8. The project contains multiple violations of NFMA. These violations include:
-Violations of the Eastside Screens; an amendment to the applicable forest plan which prohibit the logging of trees with a Diameter at Breast Height (DBH) of 21 inches or larger and logging in designated old growth forest below its historic range of variability (HRV).

-Violations of binding precedent that require Site-Specific amendments to address site specific conditions; specifically, amendments that are intended to negate the Eastside Screens.

9. Furthermore, the project violates NEPA by:

-Failing to adequately analyze direct effects.

-Failing to adequately analyze indirect effects.

-Failing to adequately analyze cumulative effects.

-Including a failure to use a consistent scale of analysis.

- Failing to give a legally sufficient purpose and need statement.
- Failing to analyze a suitably broad range of alternatives.
- Failing to update the EA with two years' worth of relevant new information.
- Failing to analyze the project with an Environmental Impact Statement, as should have been done given the projects effects, scale, and use of Forest Plan Amendments and as was done recently for similarly sized projects in this same forest.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 701-706 (APA) and 28 U.S.C. §§ 1331 (federal question), and 2412 (costs and fees). Plaintiff has challenged a final agency action as defined by the Administrative Procedure Act (“APA”), 5 U.S.C. § 704. Plaintiff has exhausted all required administrative remedies provided by the USFS. Plaintiff thus seeks judicial review of final administrative actions of the USFS. *See* 5 U.S.C. § 704 (actions reviewable).

11. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because Defendant Malheur National Forest Regional Forester Craig P. Trulock , who signed the challenged Decision Notice, is headquartered in John Day, Grant Country, Oregon, and the events or omissions giving rise to the claims occurred in Oregon.

12. This case is properly filed in Pendleton, Oregon and properly before the Pendleton Division of this District pursuant to Local Rules 3-2 and 3-3 because Craig P. Trulock, the Malheur National Forest Supervisor who signed the challenged Decision Notice, is headquartered in John Day, Grant Country, Oregon.

PARTIES

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