

Nicholas S. Cady (OSB # 113463)
Cascadia Wildlands
P.O. Box 10455
Eugene, Oregon 97440
Tel: 541-434-1463
Email: nick@cascwild.org

Meriel L. Darzen (OSB #113645)
Crag Law Center
3141 E. Burnside Street
Portland, Oregon 97214
Tel: 503-525-2725
Email: meriel@crag.org

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

CASCADIA WILDLANDS, an Oregon non-profit corporation; OREGON WILD, an Oregon non-profit corporation,

Plaintiffs,

vs.

UNITED STATES FOREST SERVICE, a federal agency,

Defendant.

Civ. Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Violations of National Environmental Policy Act, Endangered Species Act, Freedom of Information Act, and Administrative Procedure Act)

INTRODUCTION

1. Cascadia Wildlands and Oregon Wild (“Plaintiffs”) bring this civil action for declaratory and injunctive relief under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, for claims arising under the laws of the United States, including the National

Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, and the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* (“ESA”), regarding the unlawful actions of the United States Forest Service (“Forest Service” or “Defendant”).

2. In 2020, fires burned through various Forest Service timber sale project areas throughout the Willamette National Forest. These fires burned at a variety of severities, and affected parts of the forest that were slated for previously approved but unimplemented timber sales. These areas included parts of two unimplemented projects that Plaintiffs participated in developing: the Green Mountain Project and the Lang Dam Project.

3. The Green Mountain Project was in large part designed to mimic the effects of fire on the landscape and involved logging of live green trees. The Forest Service reasoned that because “[p]ast logging practices and fire exclusion have resulted in dense, uniform species stands,” commercial logging was designed to mitigate these negative impacts by mimicking “natural disturbance patterns” and restore these stands by thinning and adding more snags and downed wood. Additionally, the project was designed to create “early seral habitat,” or post-fire habitat, because it was lacking on the landscape.

4. The Forest Service signed a final record of decision for the Green Mountain project in 2017.

5. The Lang Dam project was designed to use commercial thinning to restore forest stands that had high tree-density, only moderate amounts of downed wood, and few snags. Again, the logging prescriptions targeted live trees and were designed to mimic the effects of a mixed severity fire that would result in natural mortality and density reduction while creating a substantial amount of downed wood and snags.

6. Both projects affected resident endangered species and required ESA Section 7 consultation.

7. At the time fires burned through these areas in 2020, portions of these two projects remained unimplemented.

8. The 2020 fires drastically changed the Green Mountain and Lang Dam project areas. The fires reduced tree density and created snags and downed wood.

9. Across the project area, the fires created substantial amount of complex early-seral habitat.

10. In other words, the fires naturally created much of the habitat conditions the Forest Service's Green Mountain and Lang Dam projects were designed to mimic.

11. After the fires were contained, the Forest Service "repackaged" several timber sales from the Green Mountain and Lang Dam projects and changed the logging prescriptions from restoration thinning to post-fire clearcutting and salvage logging.

12. These changes were made without any public process, NEPA analysis, or ESA consultation. Plaintiffs happened to discover that the logging was occurring and connected the dots to the previous projects.

13. In the wake of this discovery, Plaintiffs requested records pertaining to the changes from the Forest Service.

14. The Forest Service did not provide the requested documents and stopped responding to Plaintiffs' email inquiries.

15. The Forest Service removed the documents and project files associated with the Green Mountain and Lang Dam timber sales from the Forest Service website.

16. On June 7, 2021, Cascadia Wildlands submitted a Freedom of Information Act (“FOIA”) request for records pertaining to the project changes. This request was acknowledged by the Forest Service, but the agency has yet to produce any documents.

17. The post-fire logging on the Lang Dam and Green Mountain projects must be analyzed under NEPA. The ongoing post-fire logging has impacts on the human and natural environment that have not been considered in any existing NEPA document. Further, the post-fire landscape in which this logging is currently taking place has never been analyzed by the Forest Service in any NEPA document.

18. The 2020 fires and the changes from green tree prescriptions to post-fire salvage amount to significant new information and changed circumstances that require supplementation of Green Mountain and Long Dam NEPA documents and reinitiation of ESA consultation.

19. Plaintiffs seek declaratory and injunctive relief to redress the injuries caused by these violations of laws and prevent the irreparable degradation of these post-fire complex seral habitats which the Forest Service previously claimed were needed in the Green Mountain and Long Dam project areas.

20. Further, Defendant has violated FOIA by failing to provide any responsive documents to Cascadia Wildlands’ request for records relating to the project changes in the wake of the 2020 fires. The Forest Service acknowledged the request, but to date has failed to provide any responsive documents or definitely state when it might do so. Accordingly, the Forest Service is unlawfully withholding the records by failing to search for and provide all responsive records as required by FOIA.

21. By initiating this action, Plaintiff seeks to: 1) obtain a declaration that post-fire modification of these existing projects violates NEPA; 2) obtain a declaration that Defendant’s failure to reinitiate Section 7 consultation violates the ESA; 3) obtain a declaration that

Defendants' failure to timely make determinations on the FOIA request is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A); 4) order the Forest Service to search for and produce all responsive records to the FOIA request sought in this action by a reasonable date certain; and 5) enjoin the Forest Service, its contractors, assigns, and other agents from moving forward with any further activity within these project areas unless and until this court determines that the violations of law set forth herein have been corrected.

JURISDICTION AND VENUE

22. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (federal question), 2201 (injunctive relief), 2202 (declaratory relief), and 28 U.S.C. § 1346 (United States as a defendant). This cause of action arises under the laws of the United States, including the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*, the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(4)(B), and the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.* An actual, justiciable controversy exists between Plaintiffs and Defendant, and the requested relief is therefore proper under 28 U.S.C. § 1651, 28 U.S.C. §§ 2201-02, and 5 U.S.C. §§ 701-06.

23. Venue in this court is proper under 26 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, Plaintiffs and Defendant reside in this district, and the public lands and resources at issue are located in this district. Plaintiffs Cascadia Wildlands and Oregon Wild have offices in Eugene, Oregon. Pursuant to Local Rule 3-2(b), this case is properly filed in the Court's Eugene Division in Eugene, Oregon.

PARTIES

24. Plaintiff CASCADIA WILDLANDS is a non-profit corporation headquartered in Eugene, Oregon, with approximately 12,000 members and supporters throughout the United

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.