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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PENDLETON DIVISION**

**CENTRAL OREGON LANDWATCH**, an  
Oregon non-profit corporation;

Plaintiff,

v.

**STACEY L. FORSON**, in her official capacity  
as Ochoco National Forest Supervisor; **JAMES  
M. PEÑA**, in his official capacity as Regional  
Forester for Region 6 of the United States Forest  
Service; and the **UNITED STATES FOREST  
SERVICE**, a federal agency of the United States  
Department of Agriculture,

Defendants.

Case No. 2:17-cv-01091

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

(5 U.S.C. § 706(2))

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

## NATURE OF ACTION

1. Plaintiff Central Oregon LandWatch brings this challenge under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, to the final administrative actions of Stacey L. Forson, James M. Peña, and the United States Forest Service (collectively “Forest Service” or “Defendants”). In approving the Record of Decision (“ROD”) for the Ochoco Summit Trail System Project (“Project”) on the Ochoco National Forest (“the Ochoco”), Defendants acted arbitrarily, capriciously, and contrary to the National Forest Management Act (“NFMA”), 16 U.S.C. §§ 1600–1614, and the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4370h.

2. The ROD authorizes the development of an extensive network of 137 miles of off-road vehicle (“ORV”) routes through sensitive old growth forests and scabland habitat. A wide body of empirical research and scientific literature demonstrates the significant environmental impacts of ORVs. ORVs degrade stream conditions and negatively affect native fish species like Redband trout by increasing fine sediment and increasing stream temperatures. ORV routes fragment habitat, reduce hiding cover, and inhibit movement, particularly for big game species like Rocky Mountain elk. ORV use displaces other recreational users of the forest like hunters, fishermen, equestrian riders, and hikers. The adverse ecosystem impacts of ORV use are additive to past, ongoing, and planned future livestock grazing and logging projects on the Ochoco.

3. In authorizing the ORV Project, the Forest Service did not comply with its substantive and procedural duties under NFMA and NEPA, including its duties to (1) ensure the Project is consistent with the Ochoco Land and Resource Management Plan (“Ochoco Forest Plan”) and the Inland Native Fish Strategy (“INFISH”); (2) take a hard look at the direct, indirect, and cumulative impacts of the Project; and (3) adequately involve the public in the decisionmaking process. Plaintiff seeks declaratory and injunctive relief. Should it prevail, Plaintiff will seek attorneys’ fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

## JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiff's claims present a federal question and 28 U.S.C. § 1346 because Plaintiff's claims involve the United States as 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.

5. Plaintiff exhausted its administrative remedies by submitting comments on the supplemental draft environmental impact statement ("SDEIS") and the supplemental final environmental impact statement ("SFEIS"). 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.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the Project is located within this judicial district. Forest Service employees who approved the Project are located in this district. Plaintiff maintains its primary place of business in this district.

7. This case is properly filed in the Pendleton Division pursuant to Local Rule 3-2 because the Ochoco is located in Crook, Grant, Harney, and Wheeler Counties in Oregon and the Project record is located in Prineville in Crook County. A substantial part of the events or omissions giving rise to this claim occurred in and the property that is subject to this action is situated in the Pendleton divisional venue.

## PARTIES

### Plaintiff

8. Plaintiff CENTRAL OREGON LANDWATCH ("LandWatch") is a public interest conservation organization based in Bend, Oregon, with over 200 members and supporters. LandWatch's mission is to achieve a responsible, balanced approach to planning for and conserving

Central Oregon's land and water resources, while recognizing the needs of future generations.

LandWatch works to protect and conserve the region's ecosystems and wildlife habitats, to foster thriving, sustainable communities, and to spread the costs and benefits of growth equitably across the community as a whole.

9. The members and supporters of LandWatch regularly visit and enjoy the Ochoco, including the Project Area. The members appreciate the aesthetics of the Ochoco and use the area to engage in recreational, scientific, and spiritual activities, such as hunting, hiking, camping, fishing, photography, watershed research, and observing wildlife.

10. LandWatch has an organizational interest in the proper and lawful management of the Ochoco. LandWatch and its members have participated extensively in relevant administrative actions and have actively participated in every stage Project's administrative process.

11. LandWatch, its members, and its staff would sustain injury to aesthetic, educational, recreational, spiritual, and scientific interests if the Project proceeds as authorized. LandWatch, its members, and its staff have concrete plans to return to the area where the Project is proposed. Unless this Court grants the requested relief, LandWatch, its members, and its staff will be adversely and irreparably harmed by the Project.

### **Defendants**

12. Defendant STACEY L. FORSON is the FOREST SUPERVISOR of the Ochoco. Ms. Forson is the Responsible Official for the Project, and she signed the ROD, constituting the final administrative determination. As Forest Supervisor, Ms. Forson has the responsibility to ensure that the Ochoco is managed in accordance with applicable laws and regulations. Plaintiff brings this action against Ms. Forson in her official capacity.

13. Defendant JAMES M. PEÑA is the REGIONAL FORESTER for Region 6 of the U.S. Forest Service. Mr. Peña is responsible for the actions of Deputy Regional Forester Dianne

Guidry, the Reviewing Officer for the Project who instructed Ms. Forson to proceed with approval of the ROD. Plaintiff brings this action against Mr. Peña in his official capacity.

14. Defendant the UNITED STATES FOREST SERVICE is an agency within the United States Department of Agriculture entrusted with the management of our national forests. The Forest Service is headquartered in Washington, D.C., and it has nine regions across the country. The national forests of Oregon are in Region 6. All or a significant portion of the actions and omissions alleged in this Complaint occurred in Region 6.

## **LEGAL BACKGROUND**

### **National Forest Management Act**

15. NFMA is the primary statute governing the administration of national forests. NFMA and its implementing regulations establish a two-step process for forest planning and management. 16 U.S.C. § 1604; 36 C.F.R. § 219.2(b)–(c).

16. First, NFMA requires the Forest Service to develop and implement a land and resource management plan (“forest plan”) for each unit of the National Forest System. 16 U.S.C. § 1604(a). Forest plans guide natural resource management activities by setting standards and guidelines, management area goals and objectives, and monitoring requirements. Each forest plan must “provide for diversity of plant and animal communities.” 16 U.S.C. § 1604(g)(3)(B).

17. In 1982, the Forest Service promulgated implementing regulations that interpret NFMA’s diversity requirement. The Ochoco Forest Plan was developed pursuant to the 1982 planning regulations, and it has not been revised under another planning regulation. Under the 1982 planning regulations, the Forest Service must manage fish and wildlife habitat “to maintain viable populations of existing native \* \* \* vertebrate species in the planning area.” 36 C.F.R. § 219.19 (2001). A “viable population” is one that has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. *Id.*

18. Second, once a forest plan is in place, the Forest Service develops project-level plans for “specific, on-the-ground actions,” such as plans for timber harvest and recreation. 16 U.S.C. § 1604(i). Each site-specific project must be consistent with the governing forest plan. *Id.*

**National Environmental Policy Act**

19. NEPA is our nation’s “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). It requires federal agencies to take a “hard look” at the environmental consequences of projects before taking action.

20. NEPA’s primary purposes are to ensure fully informed decisionmaking by the agency and to provide for public participation in the environmental analyses and decisionmaking process. 40 C.F.R. § 1500.1(b), (c).

21. To achieve these purposes, NEPA requires every federal agency to prepare an environmental impact statement (“EIS”) for “all major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

22. An EIS must describe the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided if the action is implemented, alternatives to the proposed action, the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitment of resources that would occur if the action is implemented. 42 U.S.C. § 4332(2)(C).

23. The Council on Environmental Quality (“CEQ”) promulgated regulations implementing NEPA and elaborating on the requirements of an EIS. 42 U.S.C. § 4342 (establishing CEQ); 40 C.F.R. §§ 1500–1508 (CEQ’s NEPA regulations).

24. An EIS shall “provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

25. An agency must always include and analyze a “No Action Alternative” in a NEPA assessment to establish baseline environmental conditions and predictable outcomes of other actions that may result from the selection of the No Action Alternative. 40 C.F.R. § 1502.14(d).

Specifically, an agency must “describe the environment of the area to be affected or created by the alternatives under consideration.” 40 C.F.R. § 1502.15. The baseline is a means by which to draw comparisons between action alternatives and their respective impacts on the environment.

26. NEPA requires adequate disclosure and consideration of all direct, indirect, and cumulative impacts of a proposed action. 40 C.F.R. §§ 1501.2(b), 1508.7–8. Direct impacts are those that are caused by the action and occur at the same time and place. 40 C.F.R. § 1508.8(a). Indirect impacts are also caused by the action, but occur later in time or are farther removed in distances. 40 C.F.R. § 1508.8(b). Cumulative impacts are the impacts of the proposed action, as well as impacts from other past, present, and reasonably foreseeable future actions, both federal and non-federal. 40 C.F.R. § 1508.7. “Cumulative impacts can result from individually minor but collectively significant actions.” 40 C.F.R. § 1508.7.

27. An agency must consider means to mitigate adverse environmental impacts. 40 C.F.R. §§ 1502.14(f), 1502.16(h). Mitigation includes avoiding, minimizing, rectifying, reducing or eliminating, and compensating for impacts. 40 C.F.R. § 1508.20.

28. The NEPA documentation must provide the decisionmaker and the public with adequate information, evidence, and analysis to fully assess the potential impacts of the proposed action before decisions are made. 40 C.F.R. §§ 1500.1(b), 1508.9. NEPA requires an agency to ensure the professional integrity, including the scientific integrity of an EIS. 40 C.F.R. § 1502.24.

29. NEPA seeks informed decisionmaking through public participation, and NEPA’s public comment procedures are at the heart of the NEPA review process. Agencies must “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human

environment.” 40 C.F.R. § 1500.2(d). An agency must make available the EIS, comments received, and any underlying documents. 40 C.F.R. § 1506.6(f).

30. If an agency prepares an appendix to an EIS, the appendix shall include materials prepared in connection with an EIS, materials that substantiate any analysis fundamental to an EIS, and materials that are analytic and relevant to the decision. 40 C.F.R. § 1502.18(a)–(c). This material shall be circulated with the EIS or be readily available upon request. 40 C.F.R. § 1502.18(d).

31. Agencies may incorporate materials into an EIS by reference to cut down on bulk without impeding the agency and public review of the action. The agency must cite and summarize the document, which must be reasonably available for inspection to interested parties within the time allowed to comment. 40 C.F.R. § 1502.21.

32. At the time of the decision, an agency must prepare a concise public record of decision. 40 C.F.R. § 1505.2. In the record of decision, the agency must identify all alternatives considered and designate the “environmentally preferable alternative.” 40 C.F.R. § 1505.2(b). Additionally, the agency must identify whether it has adopted all practicable means to avoid or minimize environmental harm from the alternative selected, and if it has not, the agency must explain why not. 40 C.F.R. § 1505.2(c).

### **Administrative Procedure Act**

33. The APA confers a right of judicial review on any person adversely affected by agency action within the meaning of a relevant statute. 5 U.S.C. § 702. “Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in court are subject to judicial review.” 5 U.S.C. § 704. Challenges brought under NEPA and NFMA are reviewed under the APA.

34. Upon review under the APA, a court shall “hold unlawful and set aside agency action \* \* \* found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance



with law \* \* \*.” 5 U.S.C. § 706(2). Furthermore, when an agency has taken action without observance of the procedure required by law, that action will be set aside. 5 U.S.C. § 706(2)(D).

35. Agency action is arbitrary and capricious where the agency: (1) relied on factors which Congress has not intended it to consider, (2) entirely failed to consider an important aspect of the problem, (3) offered an explanation for its decision that runs counter to the evidence before the agency, or (4) is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

### **FACTUAL BACKGROUND**

#### **The Ochoco National Forest**

36. The Ochoco is located in the heart of Central Oregon. Spanning 845,498 acres, the Ochoco is home to a diverse array of fish and wildlife species and unique habitats, and provides numerous opportunities for recreational pursuits including hunting, fishing, hiking, and wildlife viewing. Expenditures from these recreational pursuits—especially hunting—are an important staple of the local economies of Prineville, Mitchell, and other surrounding communities.

37. The Ochoco Forest Plan governs natural resources management on the Ochoco. The Ochoco Forest Plan sets both forest-wide Standards and Guidelines and management area-specific Standards and Guidelines. It also describes desired future conditions and identifies management areas within the Ochoco.

38. The Project Area has at least twenty different management areas. Management areas in the Project Area include General Forest (195,735 acres); General Forest Winter Forest Range (25,183 acres); Winter Range (17,827 acres); Old Growth (7,693 acres); and Riparian (overlays the entire Project Area whenever it is adjacent to water).

39. The Ochoco Forest Plan includes Standards and Guidelines regulating road density, fisheries and fish habitat, and Management Indicator Species (“MIS”). MIS are species in a forest

selected because their response to management actions can be used as an indicator of other species dependent upon similar habitat conditions.

40. The Ochoco Forest Plan seeks to provide, manage, and improve fish and wildlife habitats to maintain viable populations of existing native and desired non-native vertebrate species, including threatened, endangered, and sensitive species. The Ochoco Forest Plan defines “sensitive species” as those “[p]lant or animal species which are susceptible or vulnerable to activity impacts or habitat alterations \* \* \* that are recognized by the Regional Forester as needing special management to prevent placement on Federal or State lists.”

### **The Ochoco Summit Trails System Project—Overview**

41. On June 27, 2017, Defendant Forson signed the final ROD for the Project. The ROD authorizes implementation of a modified action alternative: Alternative 5 plus one route from Alternative 2. This Selected Alternative authorizes the Forest Service to implement a 137-mile route system with four staging areas. The Selected Alternative includes roughly 53 miles of new construction. The remaining 84 miles for the system require opening previously closed roads, converting some illegal user-created trails into routes, and re-designating some roads previously planned for decommissioning. The Selected Alternative requires four Ochoco Forest Plan amendments for the Project, to exempt the Project from Standards and Guidelines in Old Growth Management Areas and scablands.

42. The Selected Alternative authorizes the Forest Service to install signs and close and rehabilitate or conceal user-created trails and unauthorized routes that are located in inappropriate areas or that would cause confusion and attract use. The agency did not disclose the quantity or location of unauthorized routes it intends to close and rehabilitate or conceal. The agency intends to begin identifying unauthorized routes for closure in 2017 and continue identifications in 2018.

43. The Project would be located in two “Implementation Areas” situated within a 301,580-acre Project Area, which is over a third of the total acreage of the Ochoco.

44. The West Implementation Area includes ORV routes and two staging areas in the northwest portion of the Project Area. The ORV routes start in the area between Highway 26 and Forest Road 22. The routes then split, with some going south to the northern border of Big Summit Prairie and a connector route going north, following the southern border of Bridge Creek Wilderness Area, to connect the West and East route systems. There are no ORV routes in the West Implementation Area below the northern border of Big Summit Prairie.

45. As the connecting route travels to the East Implementation Area, it goes through Scott’s Campground and becomes two loops in the east-northeast portion of the Project Area, with one loop traveling through the Big Spring Campground and the other loop traveling through the Cottonwood Pit Campground. The East Implementation Area includes an additional two staging areas. The ORV routes in the East Implementation Area do not go below the southern border of Big Summit Prairie.

46. The Project Area continues for miles below the southern border of Big Summit Prairie. The Project Area encompasses a significant amount of acreage outside of the Implementation Areas, *i.e.*, where no ORV routes would be located.

47. The Forest Service claims it established the large Project Area to “encompass[] the watersheds where effects would occur.” The Project Area does not extend to watershed boundaries, and instead encompasses only portions of 9 fifth-field and 33 sixth-field subwatersheds.

#### **Off-Road Vehicles and Routes in the Ochoco**

48. ORVs include any motor vehicle designed for or capable of cross-country travel on land, water, sand, snow, ice, marsh, swampland, or other natural terrain. One type of ORV is an all-

terrain vehicle (“ATV”), which is a motorized ORV that is 50 inches or less in width and has three or more low-pressure tires.

49. National Visitor Use Monitoring findings reveal that only about 2.5% of annual recreation users who visit National Forests identified ORV use as their primary activity, with 3.1% identifying ORV use as their secondary activity. Data for the Ochoco show only 3.35% of users visit for ORV recreation.

50. In the national forests ORVs may travel on designated off-road routes, as well as “mixed-use roads,” which are roads authorized for both highway-legal and non-highway legal vehicles.

51. In Central Oregon on the Deschutes and Ochoco National Forests and Crooked River Grassland, there are 11,432 miles of roads, roughly 7,200 of which are mixed-use.

52. There are approximately 1,000 additional miles of specially designated ORV routes in Central Oregon. The Deschutes and Ochoco National Forests and Crooked River Grassland offer roughly 645 miles of specially designated ORV routes. Nearby U.S. Bureau of Land Management lands have an additional 348 miles of ORV routes.

53. There are currently 26 miles of routes designated for motorized ORV use in the Ochoco, as well as 1,388 miles of mixed-use roads open to ORV use. Within the Project Area, there are 1,738 miles of roads, 659 of which are open to ORVs.

54. Roads in the Ochoco receive administrative designations regarding their “operational maintenance levels” (“ML”). Operational maintenance levels define the degree of maintenance required for a specific road and the level of service that road provides.

55. ML 1 roads are existing roads that have been closed for at least one year but are necessary for future activities. ML 2 roads are managed and maintained for use by high-clearance vehicles. ML 3, 4, and 5 roads are available for use only by highway-legal vehicles.

56. According to a table provided by the Forest Service in the SFEIS, there are 1,738 miles of roads in the Project Area.

**Miles of Road by Maintenance Level**

<b>Operational Maintenance Level</b>	<b>Miles</b>
Unclassified Other Jurisdiction	270
ML 1 (Closed)	669
ML 2 (High Clearance Vehicles Allowed)	674
ML 3 (Passenger Car Allowed; Low Speed)	75
ML 4 (Passenger Car Accepted; Moderate Speed)	13
ML 5 (Passenger Car Encouraged; High Speed)	37

57. Elsewhere in the SFEIS, the Forest Service states there are 1,820 miles of roads in the Project Area. The Forest Service never explained the difference in these numbers.

58. Decommissioned roads are roads that are no longer part of the forest transportation system. They may have some type of physical closure or barrier to prevent use. The Forest Service did not disclose the mileage of decommissioned roads in the Project Area.

59. Cross-country motorized travel—*i.e.*, travel outside of open motorized roads and off-road routes—was lawful on the Ochoco prior to 2005. Since the Forest Service promulgated the 2005 Travel Management Rule and issued the 2011 Travel Management Decision, unauthorized route construction and operation of vehicles on non-designated roads and off-road routes is prohibited in the Ochoco.

60. ORV use is not authorized on user-created routes and roads that are not open to ORV use, *i.e.*, ML 1 and decommissioned roads, as well as ML 3, 4, and 5 roads that are not otherwise designated for non-street-legal ORV use.

61. Many user-created routes serve as an extension of the official transportation system by providing shortcuts and connectors between existing roads as well as longer cross-country riding opportunities. They are usually established by various users over time. Unauthorized and unplanned, non-sustainable routes are pervasive throughout the Ochoco, largely developed by ORV

users. These routes cause adverse impacts to the environment and other forest users through soil erosion, watershed and wildlife habitat damage, impacts to cultural sites, safety concerns, trespass and vandalism on private lands, and increased conflict between motorized and non-motorized recreational experiences.

62. Despite the prohibition on unauthorized motorized use, extensive use of user-created routes and administratively closed and decommissioned roads persists on the Ochoco.

63. The Forest Service has estimated nearly 700 miles of unauthorized ORV routes, including open and closed roads and user-created trails, in the Project Area. The Forest Service did not calculate the density of unauthorized ORV routes within the Project Area.

64. Regardless of an administrative designation, roads and off-road routes that are being driven adversely impact the fish and wildlife species, vegetation, and non-motorized recreational users. Authorized and unauthorized motorized use—including ORV use—of roads and off-road routes can have significant impacts on fish and wildlife populations.

65. Negative effects of ORV use on wildlife include wildlife mortality, decreased reproductive success, direct and indirect loss of habitat, displacement, and reduced habitat connectivity. These negative impacts are the result of a series of factors, including access for predators and people, fragmentation of habitat patches, behavioral changes in response to human use, increased noise, and physical alteration of habitat.

### **The Ochoco Summit Trail System Project**

#### *Administrative Process*

66. In February 2009 the Forest Service contacted stakeholders and determined the boundaries for the Project. In November 2009, the Forest Service began the scoping process, with four main issues identified: (1) concern that the proposed route system would be too small and lacks quality, (2) concern about the proposed route system's impact on big game habitat, (3) concern that

the proposed route system would impact water quality or cause degradation of fish habitat, and (4) concern that the proposed route system would create or exacerbate conflict between motorized and non-motorized recreation.

67. The Forest Service released a draft environmental impact statement (“DEIS”) in February 2013, receiving 235 separate comments. Most comments were critical of the Project. The agency released a final environmental impact statement (“FEIS”) and draft ROD in March 2014.

68. Pursuant to Forest Service regulations at 36 C.F.R. Part 218, twenty-four individuals and organizations filed administrative objections to the Project, including Plaintiff and the Oregon Department of Fish and Wildlife (“ODFW”). In July 2014, the Forest Service withdrew the FEIS and draft ROD.

69. The Forest Service released the SDEIS in February 2016, with little material changes from the Project as proposed in the 2014 draft ROD. On April 1, 2016, Plaintiff timely filed comments on the SDEIS. Plaintiff raised concerns over impacts to big game species and fisheries, and put the Forest Service on notice of the Project’s conflict with a number of provisions of the Ochoco Forest Plan. The Forest Service received over 1,100 comments on the SDEIS, including comments from ODFW.

70. The Forest Service released the SFEIS and draft ROD in September 2016, and held a 45-day objection period. On November 7, 2016 Plaintiff timely submitted administrative objections, along with ODFW and 26 others. The 28 objections were the most ever received by the Ochoco Forest Service for a site-specific project. Along with its objections, Plaintiff submitted expert declarations from Amy Stuart, a retired ODFW fisheries biologist, Mike Gerdes, a retired Forest Service and ODFW wildlife biologist, and Jonathan Rhodes, a hydrologist with over thirty years of experience as an expert consultant.

71. Plaintiff reiterated the concerns expressed in its SDEIS comments that were not remedied by the Forest Service in the SFEIS. In its objections, ODFW corroborated Plaintiff's concerns, including the substantial negative impacts on watersheds, fish, and wildlife. ODFW recommended that the Forest Service select Alternative 1, the No Action Alternative.

72. On January 23, 2017, Deputy Regional Forester Dianne Guidry responded to objections. In the response to objections, Ms. Guidry instructed the Forest Supervisor to address eleven items prior to releasing the final ROD, based on deficiencies in the SFEIS. The instructions included, *inter alia*, requirements to provide (1) a summary of watershed impacts across all alternatives, including the No Action Alternative, instead of comparing one alternative to another alternative; (2) a table that compares road densities by alternative that includes Ochoco Forest Plan Standards and Guidelines; and (3) a map of the exact route from Alternative 2 that was added to Alternative 5 to form the Selected Alternative.

73. Roughly five months later, Stacey Forson signed the final ROD, which was identical to the draft ROD in terms of the Project's scope but added new information and analysis in an attempt to address the response to objections. More specifically, the final ROD included four appendices addressing (1) impacts to water quality, (2) effects of the Forest Plan amendments, (3) completed restoration work in the Ochoco National Forest in recent years and planned restoration work for the future, and (4) a preliminary implementation plan for the Project. Additionally, the Forest Service expanded the discussion of the environmentally preferable alternative and alternatives considered but eliminated from detailed study.

74. The Forest Service's issuance of the final ROD constitutes a final agency action subject to judicial review pursuant to the APA, 5 U.S.C. § 706(2).



NEPA Analysis

75. In the SFEIS, the Forest Service analyzed five alternatives, including a No Action Alternative and four action alternatives.

76. Alternative 1, the No Action Alternative, was included as a baseline comparison of the continuation of existing conditions without implementing the proposed actions.

77. Although the No Action Alternative was intended to serve as a comparison against the action alternatives, the Forest Service in the SFEIS frequently did not compare the No Action Alternative—the baseline—to the action alternatives. Instead, many of the tables compare one action alternative to another action alternative.

78. For example, in the environmental consequences section of the SFEIS, when analyzing road and off-road route densities and stream crossings for the action alternatives, the Forest Service provided tables comparing Alternatives 2 and 3, Alternatives 2 and 4, Alternatives 2 and 5, and Alternatives 3 and 5.

79. For the No Action Alternative, the Forest Service assumed that unauthorized ORV use would continue. The Forest Service consistently assumed, without providing any support, that a well-designed route system under any of the action alternatives would lead to less unauthorized ORV use than under the No Action Alternative. A designated ORV route system can increase unauthorized ORV use by providing users with increased access to unauthorized routes.

80. Alternative 5, as described in the SFEIS, calls for a 135-mile route system in the Project Area, requiring 51 miles of new construction. SFEIS at 48. It adds 39 new stream crossings, bringing the total stream crossings for the 135-mile route system to 79. The Forest Service designated this alternative as the “environmentally preferable alternative.” The Forest Service made this determination based on the Project’s mitigation measures to rehabilitate unauthorized routes, offsetting effects of route creation. According to the Forest Service, while the No Action

Alternative would perpetuate unauthorized route use, Alternative 5 would restore unauthorized routes and add a thoughtfully located designated trail system.

81. All action alternatives require site-specific amendments to the Ochoco Forest Plan. Alternative 5 requires four amendments to the Ochoco Forest Plan, including three amendments to the prohibition of designated routes in specific Old Growth Management Areas and an amendment to the Standards and Guidelines limiting ORV use on scablands to snowmobiles operating on an adequate snow base. The Forest Service determined that these amendments are “non-significant.”

82. The Ochoco Forest Plan prohibits vegetation management, except prescribed livestock use, in Old Growth Management Areas. Each action alternative includes motorized routes located through Old Growth Management Areas and requires vegetation removal to construct the routes. Alternative 5 requires 4.4 acres of vegetation clearing in Old Growth Management Areas.

83. Scablands are areas with shallow soils. Scablands are recognized as among the most fragile ecosystems in the Ochoco. Damage to the soil and vegetation in scabland areas are nearly impossible to mitigate, and revegetation is virtually impossible. The Ochoco Forest Plan requires the Forest Service to analyze management activities’ effects on scablands prior to implementation, limiting erosion and soil compaction in scabland areas.

84. Each action alternative includes “resource protection measures.” The Forest Service discussed two forms of resource protection measures: “Project Design Criteria” and “Mitigation Measures.” Project Design Criteria are sideboards and assumptions used to develop the action alternatives. These include limitations on choosing route locations and construction of routes, such as timing restrictions on construction, re-construction, decommissioning, and maintenance activities.

85. Mitigation measures are used to address specific impacts of the Project such as impacts from a route. These include education, enforcement, maintenance, and monitoring, and these measures are an “integral component” of the design of the action alternatives.

86. Mitigation measures include monitoring the Project's impacts to wildlife. The SFEIS includes outdated and stale data of baseline conditions in the Project Area. The Forest Service included "conduct[ing] wildlife surveys pre-implementation to determine baseline" in the ROD's preliminary implementation strategy. The Forest Service has not identified any funding for this monitoring and instead includes an action item in the ROD to apply for grant funding in 2018 for wildlife monitoring.

87. The Forest Service relies on road closures that were mitigation for prior projects in the area to mitigate for the Project. The Forest Service notes that the Ochoco Creek Roads Analysis, Deep Creek Roads Analysis, and Mark Creek Roads Analysis proposed closing roads. The agency states that the closings from previous NEPA decisions would decrease road density in the Project Area and allegedly "compensate" for the increase in proposed routes from this Project.

88. The Forest Service plans to re-open some previously closed and decommissioned roads as part of this Project. The Forest Service does not provide any NEPA analysis for re-opening roads that were closed and decommissioned under previous NEPA documents. The Forest Service also proposed opening ML1 roads that were closed under the Travel Management Plan.

89. The Forest Service plans to close and rehabilitate or conceal user-created trails and other unauthorized routes that are located in inappropriate areas or that would cause confusion and attract use as a way to mitigate for this Project. Additionally, the Forest Service plans to install directional signing as needed. The Forest Service has not yet identified which routes it plans close and has not disclosed the quantity of routes it plans to close.

90. To complete this work, the Forest Service largely relies on the Central Oregon Combined Off-Highway Vehicle Operation ("COHVOPS") to implement the mitigation measures. COHVOPS relies on competitive grant funding. COHVOPS funding has declined in recent years.

91. In the ROD, the Forest Service disclosed that it recently received \$110,000 to implement unauthorized road closures and closure of existing closed roads in the East Implementation Area of the Project. In 2017, the Forest Service would use a portion of this funding to begin identifying routes for closure. The Forest Service did not disclose how many miles of unauthorized ORV routes in the Project Area it could close with this funding. According to the Forest Service, there is an estimated cost of \$2,000 per mile for road closures. The Forest Service did not disclose any timetable or plans to obtain funding for closures for the balance of routes in the East Implementation Area or for any routes in the West Implementation Area.

92. The Forest Service states that since 2011, it has invested approximately \$214,000 in road closures and decommissionings, as well as unauthorized route closures, focusing mainly on the McKay Creek and Deep Creek subwatersheds. Some of this funding went to rehabilitating dispersed campsites and other sites that were severely impacted by ORV use. The Forest Service has not disclosed the number of miles of road it has closed and decommissioned since 2011.

93. The Ochoco Forest Service does not have a good track record in terms of implementing restoration projects and mitigation activities. The Forest Service developed the Deep Creek Watershed Restoration Plan in 2004, which called for (1) replacement of 38 culverts; (2) creation of seven water developments, 227 acres of grazing enclosures, 342 acres of riparian pasture, and placement of large wood along 3.6 miles of stream to better distribute livestock; (3) repair of 37 headcut complexes and 18 exposed cutback; (4) closure, decommissioning, and reconstruction of 47 miles of road, and reconstruction of 0.25 miles of channel reaches; and (5) construction of 6 in-stream structures to promote pool habitat for fisheries. These activities were designed to move the watershed towards meeting INFISH Riparian Management Objectives. To date, in regards to road activities, only the following activities have been implemented: (1) installing two gates; (2) closing, decommissioning, or reconstructing 7.8 miles of road.

Public Disclosure

94. The Forest Service analyzed the impacts of the Project in multiple resource specialist reports: wildlife, hydrology and aquatics, geology, botany, soils, transportation, cultural resources, recreation, and range. These reports analyzed the current forest conditions, as well as possible environmental consequences to forest resources from the Project. The SFEIS included content from these specialist reports in whole or part. In some cases, where the content from the specialist report was included in part, the SFEIS incorporated the report by reference. In other cases, the SFEIS tells the reader that the “entire report is in the Ochoco Summit Trail System Project record, located at the Ochoco, Prineville, Oregon.”

95. The SFEIS, including the Response to Comments section, continuously discusses and relies upon the final specialist reports. When the Forest Service released the SFEIS on September 22, 2016, the final specialist reports were not available to the public as appendices to the SFEIS or on the Project website.

96. The Forest Service did not timely make the final specialist reports available for public review. Many of the draft reports were not made available to the public during the SDEIS comment period, and the final reports were made available only at the very late stages of the objection process—long after the SFEIS was released to the public.

97. During the objection period, on September 29, 2016, Ms. Stuart and Mr. Gerdes requested the final specialist reports and other Project-related documents be added to the Project website. Based on the Forest Service’s instruction, Mr. Gerdes submitted a formal Freedom of Information Act (“FOIA”) request for this information on October 2, 2016.

98. On October 17, 2016—over half way through the objection period—the Forest Service responded to the FOIA request, informing Mr. Gerdes and Ms. Stuart that the Forest Service would compile some of the requested information in the future. Regarding the specialist

reports, the Forest Service stated that the Final Wildlife Report and Final Aquatics and Hydrology Report were uploaded to the Project website, but all other specialist reports were not yet posted. Those two reports were uploaded on October 17, 2016.

99. The Forest Service posted the Final Geology Report to the Project website on October 19, 2016, and it posted the Final Soils Report and Final Transportation Report, as well as the appendices to the Final Aquatics and Hydrology Report, on November 2, 2016, less than one week before objections were due. The Forest Service posted the Final Botany Report on November 8, 2016, after objections were due.

### **Impacts of the ORV Project—Rocky Mountain Elk**

100. The Selected Alternative would result in significant impacts to big game species, including Rocky Mountain elk, an Ochoco MIS. Elk and elk habitat are present in the Project Area.

101. The Forest Plan designates elk as an MIS because their well-being can indicate the well-being of other species that use similar habitat. Under the 1982 Planning Regulations, incorporated into the Ochoco Forest Plan, the Forest Service must provide sufficient habitat on the forest to provide for viable, well-distributed populations of MIS, including elk.

102. Elk require a mosaic of early, forage-producing stages and later, cover-forming stages of forest, in close proximity. Many different habitats are crucial to elk survival, including calving grounds for elk to give birth, open foraging areas for elk to find food, wallow areas to attract mates, and concealed security habitat to provide elk with hiding cover. Old-growth forests provide important cover habitat, and Standards and Guidelines of the Ochoco Forest Plan protect old growth within the Old Growth Management Area from the adverse impacts of development activities like vegetation management.

103. Regarding calving habitat, Ochoco Forest Plan Standards and Guidelines require the Forest Service to protect the character of elk calving sites. The Forest Service must minimize disturbance from human activity during calving season, approximately May 15 to June 30.

104. The Forest Service claims to have located routes away from elk calving sites, but used telemetry data collected between 1989 and 1994. The Forest Service never explained why this data was representative of current conditions. The Forest Service did not provide the public with any maps or spatially explicit data about the location of elk calving sites.

105. The Forest Service claims it mapped “potential” elk calving habitat, based on areas within ¼ mile to meadows, aspen, and other riparian shrub habitats, where such areas occur on terrain with less than 25% slope. Under Alternative 5, 69 miles of designated routes occur within potential elk calving habitat. The Forest Service assumed that this would cause a reduction in potential elk calving areas by 11,040 acres.

106. More recent research better describes elk calving habitat in terms of proximity to water and distance to roads. This research was available to establish a baseline of potential elk calving sites.

107. Project Design Criteria include a restriction on construction, re-construction, decommissioning, and maintenance activities from May 15 through June 30 within known calving areas, including any identified new sites. There is no restriction on use of ORV routes during the calving season.

108. Another significant habitat for elk are “wallows.” Bull elk use wallows in areas of low disturbance to cover themselves in mud (and their own urine and feces) to attract cow elk during the fall of each year. The Ochoco Forest Plan requires protection of this sensitive habitat. The Forest Service must recognize the sensitivity of wallows and the potential for management activities to adversely affect wallows. The Forest Service must plan accordingly to minimize those

effects. Additionally, the Forest Service must protect wallows during rutting season, September 1 to October 15.

109. The Forest Service did not identify any elk wallows in the SFEIS or ROD. There are elk wallows in the Project Area. Project Design Criteria include a restriction on construction, re-construction, decommissioning, and maintenance activities from September 1 through October 15 near known elk wallows, including any identified new sites. There is no restriction on use of ORV routes during the rutting season.

110. Elk generally migrate between “summer range” and “winter range.” Elk winter range includes foothills and valley bottoms near rivers, whereas in the summer elk enjoy mountainous areas. Within the Project Area, 17,828 acres are designated “Winter Range,” 25,183 acres are “General Forest Winter Range,” and 195,735 acres are “General Forest” (summer range).

111. Under the Selected Alternative, the route system would be open for use beginning June 1 until September 30. Forage intake and nutritional quality during August and September are important determinants of winter survival for elk cows and calves.

112. Under the Ochoco Forest Plan, the Forest Service must manage the Ochoco to achieve elk population management objectives. The current population management objective for elk in the Ochoco is 4,600. The Forest Service has not met this management objective since 2007. In 2015, the elk population size was estimated to be 4,050, which is 88 percent of the management objective. The Ochoco Forest Plan requires the Forest Service to provide sufficient forage to meet management objectives for population levels.

113. Primary factors that influence elk habitat are the amount of timber harvest, selection of silvicultural systems, and the extent and use of the road system. More specifically, elk populations are “limited by habitat capability, which changes over time in response to vegetation manipulation and open road density.”



114. The Forest Service asserts that the Project would not substantially impact the amount or arrangement of forage and cover. Consequently, the Forest Service focused its impacts analysis only on road density and security habitat.

Road Density

115. The presence of roads on the landscape fragments elk habitat, and the use of roads by motorized vehicles, including ORVs, impacts the movement of elk.

116. Elk are highly susceptible to noise impacts; according to the Forest Service, disturbance associated with noise is assumed to be greatest within a “road effect zone” of 200 meters on each side of roads, as well as unauthorized routes via cross-country travel. Impacts decrease as distance from motorized route increases. At one mile or more from a motorized route noise and disturbance impacts are assumed to drop to the ambient level.

117. Movement rates by elk increase substantially during ORV activities. Elk may respond to ORV use by moving long distances (greater than 1,000 meters). Flight responses as a reaction to ORV use cause a reduction in feeding time. Flight responses can deplete fat reserves needed for over-winter survival.

118. Where there are multiple threats to elk, like threats from ORV activities and hunters, elk stay close to security cover. Thus, when elk experience greater disturbances, they will not travel as far from security habitat to forage, affecting nutritional intake.

119. To provide for suitable elk habitat, the Ochoco Forest Plan contains specific road density standards for Winter Range, General Forest Winter Range, and General Forest.

120. In general, the greater the motorized route density, the higher the elk harvest levels, including illegal harvest. In areas of higher road density, elk exhibit higher stress levels and increased movement rates. The Forest Service assumed that the effects of motorized use of open roads and ORV routes are the same or similar in terms of impacts to elk.

121. The chart below lists the Ochoco Forest Plan Standards and Guidelines for open road densities for management areas in the Project Area.

**Ochoco Forest Plan Standards and Guidelines  
for Open Road Densities**

<b>Management Area</b>	<b>Open Road Densities December 1–May 1</b>	<b>Open Road Densities May 2–November 30</b>
Winter Range	Less than 1 mi/mi <sup>2</sup>	Less than 3 mi/mi <sup>2</sup>
General Forest Winter Range	Less than 1 mi/mi <sup>2</sup>	Less than 3 mi/mi <sup>2</sup>
General Forest (summer range)	Less than 3 mi/mi <sup>2</sup>	Less than 3 mi/mi <sup>2</sup>

122. The Forest Service made the assumption that only the ML 2 or higher roads were “functionally open.” Only these routes were included in the road density analysis. The Forest Service assumed that all ML 1 roads were “functionally closed,” and thus did not include those routes in the road density analysis. Nor did the Forest Service include user-created routes.

123. Many ML 1 roads and user-created routes receive motorized use.

124. The Forest Service concluded that overall open road densities across the Project Area ranged from 1.83 mi/mi<sup>2</sup> under the No Action Alternative to 2.17 mi/mi<sup>2</sup> under Alternative 4. For the 301,580-acre Project Area (474.14 square miles), a road density of 1.83 mi/mi<sup>2</sup> would mean that the Forest Service analyzed only 861 miles of road for its road density analysis.

125. Elsewhere in the SFEIS, the Forest Service noted that there are a total of 1,820 miles of administratively open and closed roads under various private and public jurisdictions in the Project Area, which equates to a road density of 3.86 mi/mi<sup>2</sup> across the 301,580-acre Project Area under the No Action Alternative.

126. The Forest Service also noted that nearly 700 miles of user-created ORV routes exist in the Project Area. Adding these routes to the total miles of road in the Project Area (1,820 + 700 = 2,520) yields a road density of 5.35 mi/mi<sup>2</sup> in the 301,580-acre Project Area.

127. Alternative 5 would increase the length of open motorized routes by 105 miles. Based solely on analysis of administratively “open” (*i.e.*, ML 2–5 roads), the Forest Service stated that road densities would not exceed the standard of 3.0 mi/mi<sup>2</sup> in the General Forest allocation after implementation of this alternative.

128. Adding Alternative 5 new motorized routes to the total miles of roads in the Project Area, not including user-created routes (1,820 + 105 = 1,925), produces a road density of 4.08 mi/mi<sup>2</sup> in the 301,580-acre Project Area. Adding Alternative 5 new motorized routes to the total miles of roads in the Project Area, including user-created routes (2,520 + 105 = 2,625), produces a road density of 5.57 mi/mi<sup>2</sup> in the 301,580-acre Project Area.

*Security Habitat / Distance Banding*

129. A key element of elk habitat management is providing hiding cover and “security” areas. Hiding cover is vegetation that would hide ninety percent of an elk from the view of a human at a distance of 200 feet or less. In its analysis, the Forest Service relied on a study by Hillis et al. (1991) (“Hillis”) that defined elk “security” cover as forested stands greater than 250 acres in size and greater than ½ mile from an open route.

130. When disturbed by motor vehicles, elk will leave an area that lacks sufficient security cover. Elk avoid roaded areas in favor of areas with hiding cover. Roads and other access points lessen the amount of security habitat and increase the amount of land base subject to motorized disturbance.

131. The impacts from motorized disturbance include movement of elk from public to private lands, abandonment of entire herd ranges when roads densities exceed certain thresholds, higher stress levels and increased energetic costs that reduce productivity, and reduced local and regional populations.

132. The Forest Service used a distance banding analysis to evaluate the impacts of the Project on elk security habitat. For this analysis, the agency measured acreages within certain proximities to motorized routes (*i.e.*, “distance bands”) that have high potential for disturbance to big game. Relying on Hillis, the Forest Service defined “security” habitat as patches more than ½ mile from a motorized route. The Forest Service also defined “high value” elk security habitat as patches more than ½ mile from motorized routes and occurring in blocks at least 250 acres in size. The agency did not provide any biological justification for including acres of habitat blocks less than 250 acres in size as security habitat.

133. Hillis defined elk security habitat as *forested stands* greater than ½ mile from an open route. Hillis specifies that where cover is poor and terrain is gentle distance bands of greater than a ½ mile from motorized routes may be required. The Forest Service included all patches of land—regardless of whether they are forested and actually provide cover—in its calculations of security habitat. Much of the Project Area is comprised of non-forested scabland or other non-forested areas that do not provide cover for elk.

134. The Forest Service’s distance banding analysis only included ML 2–5 roads. Security habitat and high value security habitat are distance bands remote from “any motorized route.” Many of the closed roads and user-created routes in the Project Area are receiving motorized use.

135. The distributional pattern of open roads and motorized routes is important for determining the value of elk security habitat. The agency did not assess the spatial location of security habitat, or determine whether there would be any connectivity between security habitat patches.

136. The agency did not disclose that the metrics from Hillis were developed for bull elk during hunting seasons. The Project would impact all elk, not just bulls, and mostly outside of the

hunting season. Female elk or groups of elk with young offspring show greater flight responses than adult groups.

137. The Forest Service stated that the No Action Alternative would provide the highest amount of high value elk security habitat of any of the alternatives. Through the distance banding analysis, the Forest Service disclosed that for the No Action Alternative, a total of 47,969 acres of the Project Area would provide high value elk security habitat.

138. After implementation of Alternative 5, the Forest Service determined there would be a total of 42,431 acres of high value elk security habitat, or 14% of the Project Area.

139. Hillis found that elk vulnerability increases when less than 30% of an analysis unit is comprised of security areas. The Forest Service did not disclose this fact. After implementation of Alternative 5, eight of the nine 5th-field watersheds would have more than 30% of the Project Area as either elk security habitat or high value elk security. One of the 5th-field watersheds, Deep Creek, currently contains only 6.9% high value elk security habitat, which would decrease to 1.8% after the implementation of Alternative 5.

140. In addition to Hillis, the Forest Service's Blue Mountain Elk Nutrition and Habitat Model ("Blue Mountain Model") can predict elk habitat quantity and quality in the Project Area. ODFW and the Forest Service's Pacific Northwest Research Station and La Grande Forestry and Range Science Lab released this model in 2012. The model represents the best available science for evaluating elk habitat use on summer range relative to road densities. The Forest Service did not include, reference, or summarize the Blue Mountain Model in the SDEIS.

141. ODFW, along with several others, commented on the failure to consider the Blue Mountain Model. The Forest Service claimed it did not include the Blue Mountain Model because the model was still in beta testing. After publication of the SDEIS, the Forest Service ran the Blue Mountain Model and included the results in an appendix to the Final Wildlife Report.

142. The Forest Service did not incorporate the results of the Blue Mountain Model into the SFEIS or the main portion of the Final Wildlife Report. The Forest Service asserted that it “considered the data” because Appendix B of the Final Wildlife Report discussed the results of the Blue Mountain Model.

143. If the Forest Service had used the information from the Blue Mountain Model in its analysis of the Project, the agency could have examined the impacts of the entire road network and surrounding private lands to predict how elk would respond to added disturbance from the Project.

Private Lands

144. There are private lands within and around the Project Area. These lands provide quality big game habitat because of low road densities, restricted human access, and slope position that provides productive soils and water availability. Additionally, agricultural practices on these lands provide forage, which can attract elk to the lands.

145. The increase of roads and off-road routes on public lands, which fragments and eliminates elk habitat, displaces elk from public lands to private lands.

146. Elk security habitat is currently located on the outer edges of the Project Area. The Project would further fragment elk habitat and connectivity corridors, stranding elk in the security areas along the edge of the forest. Because they would already be on the edges of the forest, within two miles of private lands, elk are more likely to utilize the private lands for forage and hiding cover.

147. Elk typically move onto private lands that surround the Ochoco in the winter. With the increase in ORV use in the summer, as a result of the Project, elk would be more likely to move to private lands during the summer. As a result, elk would deplete nutritional resources on private lands that are traditionally available to them in the winter, further straining forage availability.

148. Greater use by elk of private lands may aggravate landowners, who tolerate elk in winter but would likely oppose elk on their property in summer as well. ODFW has indicated that

displacement of elk onto private lands may result in a need to reduce elk populations, in order to prevent elk from agricultural damage on private lands in summer.

149. The Forest Service acknowledged the potential elk displacement as a result of the Project. To assess the Project impacts regarding elk displacement from public to private land, the Forest Service measured the acres of “secure cover” within two miles of private lands. Specifically, the Forest Service defined “secure cover” as areas of public lands with forested stands exceeding 40% crown closure at a distance of more than a ½ mile from a motorized route. The Forest Service did not cite any scientific support for this metric.

150. Using this metric, the Forest Service found that, under the No Action Alternative, there are 21,044 acres of secure cover within 2 miles of private land in the Project Area. Under Alternative 5, 20,471 acres would remain after implementation of the Project.

151. The Forest Service did not disclose or consider whether this amount of “secure cover” was sufficient to prevent elk displacement onto private land, nor did it discuss the potential impacts from displacement, such as elk depleting nutritional resources in summer that are typically available to them in winter and possible reductions in elk population management objectives.

#### Cumulative Impacts

152. In the SFEIS, the Forest Service disclosed 81,000 acres of recently implemented, ongoing, or reasonably foreseeable future vegetation treatment projects within the 301,580-acre Project Area. In the Botany section of the SFEIS, the Forest Service disclosed 130,000 to 150,000 acres of recently implemented, ongoing, or reasonably foreseeable future vegetation treatment projects within the 301,580-acre Project Area.

153. Vegetation treatment projects would result in a reduction in the amount of big game hiding cover.

154. The Forest Service did not disclose the specific locations of the vegetation treatment projects in relation to big game hiding cover in the Project Area. It did not provide any maps that show the location of hiding cover, after implementation of the Project, in relation to the acres proposed to be harvested for vegetation treatment projects. The SFEIS states that the effects of vegetative treatments on hiding cover are disclosed in the NEPA documents for those projects. The SFEIS does not incorporate any of the NEPA documents for the other projects by reference nor does it direct the reader to the relevant information related to hiding cover.

*Project Record*

155. During the NEPA process, Plaintiff requested underlying data related to the Forest Service's analysis of the Project's impacts on elk that was not provided in the SDEIS or SFEIS.

156. On July 19, 2016, Plaintiff submitted a FOIA request asking for GIS data layers and maps regarding the location of the proposed ORV routes for each alternative; open, closed, and decommissioned roads; elk security habitat; and vegetation and fuels treatment projects in the area.

157. The Forest Service provided a "partial response" on August 23, 2016, and stated that it expected to provide Plaintiff with additional records within the next two weeks.

158. On September 26, 2016, shortly after the Forest Service released the SFEIS, Plaintiff sent a follow-up letter noting that the Forest Service never provided additional materials or a final response letter. Because the 45-day period for objections had begun, Plaintiff emphasized the need for the remaining information as soon as possible.

159. On September 26, 2016, Plaintiff submitted another FOIA request for information about additional GIS data and projects in the area. The Forest Service combined this FOIA request with the July 19, 2016 FOIA request.

160. On April 10, 2017, Plaintiff received a final response to its FOIA requests. The response was still missing much of the requested information from the July 19, 2016 FOIA request,



and the response did not address or provide information relating to the September 26, 2016 request. On June 5, 2017, Plaintiff appealed the final response. The Forest Service acknowledged receipt of the appeal on June 6, 2017. Plaintiff has not received a final determination regarding its appeal.

### **The Impacts of the ORV Project—Redband Trout**

161. Redband trout are an inland native fish species indigenous to the streams, rivers, lakes, and reservoirs of the Project Area. Redband trout are designated as a Sensitive Species both by the Ochoco Forest Plan, and by the Forest Service, Region 6. Redband trout are also an Ochoco MIS by virtue of their being a subspecies of Rainbow trout.

162. Redband trout rely on healthy aquatic ecosystems for their survival. Attributes of a healthy aquatic ecosystem include: cold and clean water; clean channel substrates; stable streambanks; healthy streamside vegetation; complex channel habitat created by large wood, cobbles, boulders, streamside vegetation, and undercut banks; deep pools; and waterways free of barriers. Healthy riparian areas maintain adequate temperature regulation, nutrient cycles, natural erosion rates, and provide for instream wood recruitment.

163. There are approximately 138 miles of fish bearing streams within Project Area subwatersheds. These streams suffer from degraded conditions as a result of years of logging, road building, ORV use, grazing, and other land management activities that contribute to a reduction in suitable habitat and increase fish passage barriers. The amount and spatial extent of occupied Redband trout habitat in the Ochoco has decreased over the last century. Redband trout populations in the Project Area are considered depressed to less than 10% of historical numbers. Redband trout linear density studies show declining trends in all but one of the Project Area subwatersheds for which there is data.

Management Protections for Redband Trout and Aquatic Habitat

164. Ochoco Forest Plan Standards and Guidelines apply to riparian areas. Riparian areas include water and land adjacent to water, where plants that are dependent on a perpetual source of water occur. Riparian areas are among the most critical wildlife habitats on the Ochoco, and fully functional riparian areas are essential for the maintenance of viable fish populations.

165. Ochoco Forest Plan Standards and Guidelines that limit riparian activities in the Project area include: (1) the Forest Service must not allow more than 10 percent cumulative increase in stream turbidity; (2) no more than 10 percent of an activity area can be compacted or displaced to a degree which degrades vegetative productivity; (3) 80 percent of each stream must be shaded, or where this cannot be attained, 100 percent of the potential for shade must be retained; (4) when a road crosses a riparian area, the road should not alter stream or groundwater flow characteristics to a degree which will impact the riparian characteristics; and (5) where conflicts develop in riparian management areas, riparian objectives take precedence over dispersed recreational needs.

166. The Forest Service adopted INFISH in 1995, which amends the forest plans of 22 forests throughout the inland west, including the Ochoco Forest Plan.

167. INFISH is a strategy designed to reduce the risk of loss of inland native fish, like Redband trout, and reduce the potential negative impacts to aquatic habitat. Specifically, INFISH requires the Forest Service to “maintain and restore” water quality to the degree necessary to provide stable and productive riparian and aquatic habitats.

168. INFISH provides indicators of ecosystem health, called “Riparian Management Objectives” (“RMOs”). RMOs are quantifiable measures of stream and streamside conditions that define good fish habitat and serve as indicators against which attainment or progress toward attainment of goals will be measured. INFISH sets RMOs for the following habitat features: (1) pool frequency; (2) water temperature; (3) large woody debris; (4) bank stability; (5) lower bank

angle; and (6) width:depth ratio. Actions that reduce habitat quality, whether conditions are better or worse than RMOs, are inconsistent with the purpose of INFISH.

169. RMOs are considered to be the best watershed scale information available; the Forest Service may modify RMOs for specific watersheds only in two scenarios: (1) after completion of a watershed analysis; or (2) in the absence of a watershed analysis, where watershed or stream reach specific data support the change.

170. INFISH establishes Riparian Habitat Conservation Areas (“RHCAs”). RHCAs are portions of watersheds where riparian-dependent resources receive primary emphasis and where management activities are subject to specific Standards and Guidelines. These areas include traditional riparian corridors, wetlands, intermittent streams, springs and seeps, and other areas to help maintain the integrity of the aquatic ecosystems.

171. INFISH sets Standards and Guidelines for activities inside RHCAs, such as road building and recreation. For the Project, the Forest Service had a duty to demonstrate compliance with INFISH Standards and Guidelines related to two management activities: Roads Management and Recreation Management. With respect to Roads Management, applicable INFISH Standards and Guidelines include:

- a. RF-2, which requires the Forest Service to meet RMOs and avoid adverse effects to inland native fish by, *inter alia*, completing watershed analyses prior to construction of new roads or landings in RHCAs within priority watersheds, minimizing road and landing locations in RHCAs, avoiding sediment delivery to streams from the road surface, and avoiding disruption of natural hydrologic flow paths.
- b. RF-5, which requires the Forest Service to provide and maintain fish passage at all road crossings of existing and potential fish-bearing streams.

172. With respect to Recreation Management, applicable INFISH Standards and Guidelines include:

- a. RM-1, which requires the Forest Service to (1) design, construct, and operate recreation facilities, including trails and dispersed sites, in a manner that does not retard or prevent attainment of the RMOs and avoids adverse effects on inland native fish; (2) complete watershed analysis prior to construction of new recreation

facilities in RHCAs within priority watersheds; (3) assure that, for existing recreation facilities inside RHCAs, the facilities or the use of the facilities would not prevent attainment of RMOs or adversely affect inland native fish; and (4) relocate or close recreation facilities where RMOs cannot be met or adverse effects on inland native fish cannot be avoided.

- b. RM-2, which requires the Forest Service to adjust dispersed and developed recreation practices that retard or prevent attainment of RMOs or adversely affect inland native fish, and, if adjustment measures are not effective in meeting RMOs and avoiding adverse effects on inland native fish, to eliminate the practice or occupancy.

173. To “retard” means to slow the rate of recovery below the near natural rate of recovery if no additional human caused disturbance was placed on the system thus moving away from attainment of the RMOs. “Adverse effects” include short- or long-term direct or indirect management-related impacts of an individual or cumulative nature, such as mortality, reduced growth, or other adverse physiological changes; harassment of fish; physical disturbance of redds; reduced reproductive success; delayed or premature migration; or other behavioral changes.

Baseline Conditions for Project Area Watersheds

174. The Forest Service evaluated riparian impacts from the Project on a subset of watersheds in the Project Area—four watersheds and nine subwatersheds. Those watersheds that do not contain streams within 300 feet of proposed routes were not evaluated as part of the hydrology/aquatics analysis.

175. To measure the relative health of Project Area subwatersheds, the Forest Service evaluated a series of “habitat indicators.” Indicators were used for nine features of aquatic habitat: shade, temperature, bank stability, pool frequency, pool quality, bank width:depth ratio, physical barriers, fine sediment, and Large Woody Debris (“LWD”). Based on whether each habitat indicator met certain criteria, the Forest Service rated each habitat indicator as Properly Functioning (Good – Meets Forest Plan Standards), Functioning at Risk (Fair), or Not Properly Functioning (Poor – Does Not Meet Forest Plan Standards).

176. For the analysis of baseline conditions for habitat indicators in the Project Area subwatersheds, the Forest Service used some INFISH RMOs, but not others. For the modified RMOs, the Forest Service did not first complete a watershed analysis or use stream-specific data to support the change.

177. For the analysis of baseline conditions, the majority of data used by the Forest Service was outdated or missing. For example, for the Howard Creek subwatershed, the Forest Service used data from 21 surveys for non-temperature habitat indicators; 18 were from before the year 2000. The most recent data is from the year 2001. For the stream temperature habitat indicator, the Forest Service used data from 12 surveys; ten were from before the year 2000. The most recent survey was from the year 2001. The Forest Service lacked any site-specific data for the fine sediment and width:depth ratio habitat indicators.

178. Of the nine subwatersheds analyzed in the SFEIS, the Forest Service rated eight as exhibiting overall (*i.e.*, the aggregation of all habitat indicators) “poor” habitat conditions and one as exhibiting “fair” habitat conditions.

179. Due to past and ongoing management actions in the Project Area, such as ORV use, logging, road building, and cattle grazing—in addition to impacts from recent fires—more recent data for Project Area subwatersheds would likely reveal habitat conditions are worse than disclosed in the SFEIS. The Forest Service has no data to support an improving trend in habitat conditions.

*Direct and Indirect Effects*

180. Construction of ORV routes and their ongoing use create a host of disturbances to riparian areas and aquatic habitat, including increasing sediment deposition and turbidity, increasing temperature, lengthening of the drainage network, widening channels, decreasing the volume and frequency of pools, and removing LWD. Increasing route densities in riparian areas has enduring, negative consequences for aquatic habitat.

181. ORVs driving on gravel and dirt routes create a disturbance to route surfaces that causes sedimentation in streams. Sediment is a natural feature of aquatic ecosystems and gets transported through the system in healthy aquatic ecosystems. But increased sediment above natural levels can cause aggradation—*i.e.*, filling—of stream beds. Aggradation results where the supply of sediment is greater than the amount of sediment the system is able to support. Aggradation leads to the filling of pools, which results in a decline in pool frequency and volume, and the widening of channels, which in turn enlarges width:depth ratios. Reducing pool volume reduces hiding cover, and resting and feeding areas. Aggradation of sediment smothers fish eggs and fry (juvenile fish), increases mortality, and smothers insects, which reduces food for all life stages of fish.

182. Stream crossings—*i.e.*, where routes cross streams by fords or bridges, or where routes are constructed over streams by use of culverts—are a major source of sediment to streams. Stream crossings cause changes in channel width both upstream and downstream of the crossings. Stream crossings significantly widen stream channels by obliterating stream banks. Bank erosion can account for most of the sediment load in a drainage system.

183. Increased sedimentation into streams also increases turbidity and fine sediment levels. Increased turbidity and fine sediment levels negatively impact aquatic species. Fine sediments and turbidity reduce spawning habitat, egg and fry survival, and food production of insects. Fine particles from soils can clog the gills of fish; promote excessive algae growth; reduce dissolved oxygen; and impair visibility, increasing feeding difficulties. Fine sediments levels in excess of 20 percent produce an embedded channel, triggering severe consequences for aquatic organisms.

184. When trees are removed for construction of routes near streams and for stream crossings, LWD recruitment is permanently impaired. LWD is an important measure of habitat complexity, and plays an important role in the formation of pools and the stabilization of banks.

High densities of LWD per stream mile, coupled with ample recruitment potential, are critical for healthy aquatic ecosystems in forested streams.

185. The reduction of pool volume and widening of stream channels increases stream temperatures. Removal of riparian vegetation to build stream crossings reduces the amount of stream shade—a key habitat feature for maintaining water temperatures. High route densities in riparian areas negatively affect stream temperatures.

186. The impacts from stream crossings—declines in pool frequency and volume, widening of channels, enlarging width:depth ratios, increasing turbidity and fine sediment levels, and impairing LWD—retard the near natural rate of recovery and move streams further away from attaining INFISH RMOs.

187. When analyzing sedimentation in the SFEIS, the Forest Service assumed that routes cause increased sedimentation only when they were located within 300 feet of streams. The sediment delivery zone for ORV routes can extend to distances much greater than 300 feet. The Forest Service stated that sediment delivery from ORV routes can occur up to 800 feet from streams. The Forest Service underestimated sedimentation impacts.

188. Implementing the No Action Alternative would have the least adverse impacts to streambanks across Project Area watersheds. There would be no ORVs crossing streams, directly impacting streambanks at crossing locations. There would be no further effects to entrenchment, width:depth ratios, or sediment yield beyond currently levels. Less sediment would be delivered to streams and wetlands, resulting in improved water quality compared to the action alternatives. Improved water quality would then improve fish habitat in the Project Area. The agency determined Alternative 1, the No Action Alternative, would have “No Impact” on Redband trout.

189. The Forest Service evaluated impacts of Alternative 2 by subwatershed. The Forest Service did not measure impacts of Alternative 2 against baseline conditions for habitat indicators.

Instead, the agency only assessed impacts of Alternative 2 on habitat indicators in qualitative and generalized terms. The SFEIS did not evaluate impacts of Alternative 5 by subwatershed, and instead compared impacts from Alternative 5 to impacts from Alternative 2.

190. The Forest Service acknowledged that implementation of Alternative 5 would result in more impacts to the streams and watersheds within the Project Area as compared to the No Action Alternative. Alternative 5 would have more impact on stream banks, with increased stream crossings and disturbance during culvert or bridge installation. The Forest Service stated that Alternative 5 would have fewer impacts compared to Alternative 2. Confusingly, the Forest Service also stated that Alternative 2 would reduce impacts relative to water quality as compared to the No Action Alternative.

191. Alternative 5 had the following effects determination for Redband trout: “May Impact Individuals or Habitat, but Will Not Likely Contribute to a Trend Towards Federal Listing or Cause a Loss of Viability to the Population or Species.”

192. The addition of 137 miles of permanent ORV routes would make riparian habitat conditions for Redband trout worse than existing conditions. Sediment from construction and use of the system within the sediment delivery zone and installation of new crossings would contribute additional sediment to Project Area streams, affecting Redband trout habitat by filling pools and streambeds used by spawning and rearing fish.

193. Proposed routes in Alternative 5 would increase the overall route density and stream crossing density in the Project Area. Increased route densities increase drainage density, resulting in increased stream connectivity and magnitude of peak flows. Alternative 5 adds 17.3 miles of new routes within 300 feet of Project Area streams. After implementation, total route densities would be “high”—*i.e.*, above 2.4 miles per square mile—in every subwatershed, ranging from 4.2 to 7.1 miles per square mile.



194. Alternative 5 would add 39 new stream crossings, in addition to 40 crossings on existing, open mixed-use roads. The Forest Service did not disclose the site-specific location of new stream crossings. In total, there would be 571 stream crossings in Project Area subwatersheds following implementation of Alternative 5.

195. Alternative 5 would add 12.4 miles of routes in RHCAs. The final ROD includes new maps overlaying the proposed trails under the Selected Alternative with RHCAs and overlaying the proposed trails under the selected alternatives with meadows. The Forest Service did not provide the public with this information during the NEPA comment or objection periods.

196. The Forest Service stated that, for Alternative 5, potential routes that parallel stream courses and potential routes near sensitive areas, such as seeps, springs, wet meadows, and wetlands, were largely avoided when locating potential ORV route networks. In the SFEIS, the Forest Service did not provide the public with any maps or data showing proposed or potential ORV routes in relation to stream courses or sensitive areas.

197. The Forest Service made the unsubstantiated claim that Alternative 5 would not exacerbate existing water quality issues because of appropriate design criteria and proper management and maintenance. In the SFEIS, the Forest Service did not reconcile how increasing route densities within 300 feet of streams and in the RHCAs, adding more than three dozen stream crossings, and increasing route density in RHCAs would not exacerbate water quality issues.

198. Despite the well-documented effects of increasing route density in riparian areas and increasing the number of stream crossings to cause increased stream sedimentation, the Forest Service attempted to discount the Project impacts because of the Project Design Criteria. The Forest Service stated, without providing any support, that there would only be a short-term effect to pools from stream crossings and route construction sites within 300 feet of streams, when pools

would decrease in volume following construction, but would be scoured out after the next large flow and would return to pre-project levels.

199. The Forest Service maintained that application of Project Design Criteria would “minimize” sediment delivery during construction. The Forest Service never assessed whether Project Design Criteria for “minimizing” sediment delivery could be effective. Impacts from route construction, maintenance, and use by riders have been well documented to cause increased sediment and turbidity regardless of design criteria and best management practices.

200. According to the Forest Service, route construction would have “no effect” on stream temperatures because little removal of riparian vegetation is expected. There are no construction Project Design Criteria specific to removal of riparian vegetation.

201. The Forest Service acknowledged that bank stabilizing vegetation would be removed at new stream crossing sites. But the agency stated, without providing any support, that bank disturbance and vegetation removal would be so minimal that there would be “no effect” on width:depth ratios.

202. The Forest Service stated that removal of large wood would be so localized and minimal that implementation of any of the action alternatives would have “no effect” in Project Area watersheds as a whole. The Forest Service did not explain why it was reasonable to measure LWD at the watershed scale. The Forest Service recognized the importance of providing at least 69 pieces of LWD per mile at the site-specific scale. The Forest Service provided no quantitative measurement of the loss of LWD and recruitment potential at the site-specific level by subwatershed.

203. The Forest Service stated that ORV routes would contribute “insignificant” amounts of sediment to Project Area streams, and thus there would be “no effect” on pools. The Forest Service compared the level of sediment attributed to the Project to natural “background” levels of

sediment, but did not measure sediment impacts from past, present, and reasonably foreseeable future projects, and ongoing livestock grazing, upon which Project impacts would be additive.

204. Following any disturbance, runoff and sediment delivery on ATV routes increase by 56% and 625%, respectively, compared to the forest floor. There may be six times more sediment production from ATV routes, when compared to forest roads. For estimating sediment delivery from the Project, the Forest Service used a sediment delivery model based on forest roads, not ATV off-road routes.

205. The Forest Service relied on statistics from a 1983 study by R. Stowell, and others (“Stowell”), to determine the impacts of the Project on Redband trout. Stowell developed equations for predicting levels of cobble embeddedness and fine sediment following land management activities and plotted results on “sediment-habitat response curve” graphs. Based on levels of cobble embeddedness and fine sediment, Stowell also developed equations for predicting impacts on salmonid populations at various life cycle stages and plotted results on “habitat-fish response curve” graphs.

206. The Forest Service estimated the predicted level of sediment generated by the ORV Project for each subwatershed, and compared these estimates to estimated levels of background sediment. Citing Stowell, if percentage increases over background were below 35%, the Forest Service found “no effect” on cobble embeddedness. Citing Stowell, if percentage increases over background were below 50%, the Forest Service found no increases in fine sediment to the point of adversely affecting fry emergence (one of the critical life cycle stages).

207. The Forest Service found the increases in sediment yield caused by the Project to be below these thresholds for each of the Project Area subwatersheds. On these bases, the Forest Service found that Redband trout would be “unaffected” by implementation of the Project in each of the Project Area subwatersheds.

208. The Forest Service improperly utilized and relied on Stowell. The Forest Service did not apply the equations in Stowell. Instead, it cherry-picked statements from the narrative that are meaningless in the absence of application of the equations. The Forest Service used a model for estimating sediment delivery, called WEPP: Road, even though the equations in Stowell were expressly calibrated with a different sediment delivery model, called R1-R4. The Forest Service failed to measure existing levels of fine sediment and cobble embeddedness, where Stowell requires existing data for cobble embeddedness and fine sediment levels as the starting place for estimating impacts. The Forest Service failed to measure cumulative sediment delivery to streams, where the use of Stowell specifically requires an estimate of cumulative sediment delivery.

209. Through correspondence with Plaintiff's expert, one of the principal authors of Stowell specifically criticized the Forest Service's reliance on and application of Stowell, given the errors described above.

210. The Forest Service included updated sediment delivery calculations in the final ROD, based on new modeling. The sediment delivery figures are different than what the Forest Service provided the public in the SFEIS. The public never had an opportunity to comment on the sediment delivery modeling provided in the ROD.

211. Based on the updated sediment delivery figures, the Forest Service concluded that Alternative 5 would result in the least sediment delivery compared to the other alternatives, including the No Action Alternative. For the No Action Alternative, the Forest Service assumed that all unauthorized trails that extend from administratively open roads and within 300 feet of streams would continue receiving "light" to "heavy" motorized traffic, and therefore, continue delivering sediment. The Forest Service assumed that these unauthorized trails would be blocked or rehabilitated under all the action alternatives, and therefore, no sediment delivery would occur. The Forest Service did not provide a rational explanation for its assumptions.

212. Motorized travel on unauthorized routes is unlawful on the Ochoco, under the No Action Alternative, or any action alternative. The funding identified in the ROD for route closures is available for any of the alternatives, including the No Action Alternative.

213. Motorized use of unauthorized routes within the sediment delivery zone contributes sediment to streams, regardless of whether a trail extends from an administratively open road. Unauthorized ORV use continues on closed and decommissioned routes.

214. The ROD only authorizes closure of routes that are located in “inappropriate areas” or that would “cause confusion and attract use”—not all routes that extend from administratively open roads that are within 300 feet of streams. The Forest Service did not state how many miles of unauthorized routes are contributing delivery sediment to streams. The Forest Service did not state how many routes it plans to close or rehabilitate. The Forest Service does not have a plan for blocking and rehabilitating unauthorized routes. The Forest Service estimates that road closures cost \$2,000 per mile. The Forest Service did not provide an estimate for the cost of road rehabilitation. Road rehabilitation costs more than road closure.

215. The ROD does not include decommissioning unauthorized routes as part of the Project. Route closures and/or rehabilitation are not as effective at arresting sediment delivery as decommissioning.

216. The Forest Service did not explain or analyze how long it would take to block or rehabilitate unauthorized routes. The Forest Service did not explain or analyze whether blocking or rehabilitating unauthorized routes would prevent sediment delivery. Blocking or rehabilitating routes can take many years. Blocked and rehabilitated routes continue to contribute sediment to streams. The Forest Service does not intend to begin route closures until 2019.

Cumulative Effects

217. In the “Cumulative Effects” analysis for hydrology and aquatic species, the Forest Service did not evaluate the effects of past and present actions, stating that effects of those actions are described under the direct and indirect effects sections. Data on habitat indicators for many Project Area watersheds is more than 15 years old. Data older than 15 years does not account for the effects of actions completed within the past 15 years.

218. The Forest Service concluded that cumulative effects from ongoing and future projects to the sediment and flow regimes are anticipated to be negligible, and that there would be no measureable increased cumulative effects beyond the ORV Project’s direct and indirect effects.

219. Ongoing and planned future management activities and events, including wildfires, vegetation and management projects, and grazing, are contributing and will contribute negative impacts to Project Area watersheds. Recent fires have increased sediment loads into streams due to increased surface and bank erosion.

220. Tree harvest in or near riparian areas can significantly impair watershed system function. The Forest Service stated that the future and ongoing logging activities in the Project Area would not increase “Equivalent Harvest Acres” above the thresholds listed for forest watersheds by sensitivity class. Table 121 of the SFEIS shows percentages of “Equivalent Harvest Acres” for four Project Area watersheds, but the agency never explained what “Equivalent Harvest Acres” is a measurement of, nor why it provides an accurate assessment of cumulative watershed effects.

221. The SFEIS lists nine vegetation and management projects that have the potential to cumulatively impact the flow and sediment regimes in the Project Area, but Table 121 only lists percentages of Equivalent Harvest Acres for four projects. Omitted were vegetation management with project areas of 39,200 acres (Spears), 54,609 acres (Jackson), 38,145 acres (Gap), and 200,000 acres (Blue Mountain). Other recent vegetation and fuels treatment projects in the 2000s in the

Project Area with harvest acres not reported by the Forest Service include Jungle, Gray, Barn, Blackbear, Summit, Fryton, Flat Bucket, and Biscuitroot. These projects were not included in the cumulative impacts analysis because they are not captured in the baseline data, or the Forest Service's discussion of ongoing and future projects.

222. Ongoing and future vegetation management projects have the potential to negatively impair aquatic ecosystems through road building activities. The Forest Service did not estimate sediment delivery to Project Area watersheds from ongoing and future vegetation management projects. The Forest Service only quantified future road densities and stream crossing densities.

223. Table 122 of the SFEIS purports to quantify the miles of new temporary roads constructed for ongoing and future vegetation management projects, but lists only 16.6 miles. In the narrative description of ongoing and future vegetation management projects, the Forest Service lists at least 24 miles of new and new temporary road construction and re-use of existing temporary roads. The Forest Service did not explain this inconsistency. In the narrative description, the Forest Service also lists the reconstruction of at least 118 miles of roads for ongoing and future vegetation management projects. The Forest Service did not explain why miles of reconstructed road should not be counted toward cumulative road densities.

224. In measuring cumulative road and off-road route density, the Forest Service subtracted the miles of future decommissioned roads from the total, without acknowledging that future decommissioning may not occur for 10 years or more. For example, the Deep Creek Watershed Restoration Project Decision proposed to close or decommission 31.4 miles. In the past 13 years since the decision was signed in June 2004, 5.5 miles have been decommissioned and 0.7 miles were closed—less than 20% of the proposed work. For the past 13 years, these roads have continued to contribute adverse impacts.

225. Table 123 of the SFEIS purports to show the additional stream crossings attributable to ongoing and future vegetation management projects, but the Forest Service lists only 14 new crossings. One vegetation project alone, Jackson, will have between 11 and 43 skid trail stream crossings. No other information on stream crossings is provided for the other vegetation projects.

226. The Forest Service acknowledged livestock grazing as a potential impairment of riparian areas, but did not discuss the extent or spatial location of grazing, or attempt to quantify cumulative impacts to aquatic habitat. There are 25 active grazing allotments in the Project Area with 24 for cattle and 1 for sheep. There is scientific consensus that grazing contributes to the degradation of stream conditions, including bank alteration, increased sedimentation, elevated temperatures, and reduced pool frequency. The Forest Service also acknowledged that livestock may be displaced by high use on ORV trails and cause greater grazing impacts on riparian areas.

227. In the SFEIS Forest Service did not analyze, qualitatively or quantitatively, the impacts to Project Area subwatersheds from the existence and use of unauthorized ORV routes. There are cumulative effects to aquatic ecosystems from user-created routes.

Project Record

228. The Forest Service evaluated aquatic and riparian habitat conditions in the SFEIS effects section on Hydrology and Aquatic Species. The SFEIS states that a specialist report on Hydrology and Aquatic Species is incorporated by reference and can be found in the project record. Even though that report is dated September 1, 2016, the Forest Service did not publish the report on the Project website until October 17, 2016, over halfway through the objection period. The Forest Service did not post the appendices to this specialist report until November 2, 2016, less than one week before objections were due.

229. Plaintiff's FOIA requests during the administrative process asked for information related to the Project's impacts on watersheds. Specifically, Plaintiff requested GIS data layers of



streams in the implementation area, because the Forest Service had not provided any maps or other information showing the location of the proposed ORV routes in relation to Project Area streams. Stream data was not included in the Forest Service's August 23, 2016 partial FOIA response, or in the April 10, 2017 final FOIA response.

230. There are numerous inconsistencies in the Forest Service's analysis of hydrology and aquatic impacts. These inconsistencies inhibited the public's ability to discern the scope and magnitude of the Project's impacts and provide meaningful feedback.

231. For example, the Forest Service did not provide complete data regarding stream crossings, including the number of stream crossings on re-opened or decommissioned roads. Instead, the Forest Service only disclosed the number of stream crossings on "new" versus "existing" roads. Re-opening decommissioned and closed routes for ORV use would increase sediment delivery at crossings to a greater degree than allowing ORV use on existing open roads.

232. The Forest Service provided incomplete information in Appendix D of the Aquatics and Hydrology Specialist Report without explanation. Appendix D provides tables that summarize the information regarding stream crossings for each alternative. The Forest Service failed to identify the type of stream crossing (*e.g.*, ford, culvert, or bridge) for existing and new crossings. The adverse impacts of stream crossings vary depending on the type of stream crossing and the requirements for that stream crossing. In the Response to Comments and in conjunction with the SFEIS, the Forest Service informed the public that the Project planning team is currently in the process of collecting data relating to stream crossings at crossing sites. The Forest Service did not explain why this information was not provided as part of the NEPA analysis.

233. There are inconsistencies with the data provided in Appendix D. For example, in Table 1 of Appendix D, the Forest Service lists the total miles of routes within each class of RHCAs for Alternative 5: Class I streams—2.1 miles, Class II streams—7.9 miles, Class III streams—0.9

miles, and Class IV streams—1.9 miles (12.8 total). The Forest Service summarizes Alternative 5 by stating that Alternative 5 requires a total of 10.7 miles of routes in RHCAs.

234. The incomplete and inconsistent data in the Aquatics and Hydrology Specialist Report, as well as the Forest Service's failure to provide underlying data in its response to Plaintiff's FOIA requests, inhibited Plaintiff's ability to understand and meaningfully comment on the Project.

**FIRST CLAIM FOR RELIEF:**  
**(NFMA and APA Compliance)**

235. Plaintiff re-alleges and incorporates all preceding paragraphs into each count below.

**Count One: Violations of the Ochoco Forest Plan Standards and Guidelines Protecting Rocky Mountain Elk, a Management Indicator Species**

236. To comply with NFMA and its implementing regulations, the Forest Service must demonstrate that the Project is consistent with the Standards and Guidelines of the Ochoco Forest Plan. 16 U.S.C. § 1604(i). The Ochoco Forest Plan contains Standards and Guidelines applicable to Project Area management areas that protect elk and elk habitat, including, but not limited to: (1) road density standards; (2) restrictions on activities that would impact elk calving and wallows habitats; and (3) a prohibition on vegetation management in old growth management areas.

237. It is not clear from the record that the Forest Service is in compliance with the applicable Standards and Guidelines of the Ochoco Forest Plan.

238. The Forest Service failed to provide road density calculations specific to each management area, failed to incorporate all functionally open roads into its analysis, and failed to offer a rational explanation for its conclusions that road density standards would not be exceeded.

239. The Forest Service failed to adequately address the ORV Project's impacts on elk calving and wallows habitats. In assessing elk calving sites, the Forest Service relied on stale data despite the availability of more recent data. The Forest Service failed to disclose or consider the

location of elk wallowing sites. The Forest Service failed to place any restrictions on ORV use during either the elk calving or rutting seasons.

240. To facilitate route construction in old growth management areas, the Forest Service has authorized the clearing of vegetation in corridors up to 10 feet wide. The Ochoco Forest Plan prohibits vegetation management activities within old growth management areas, except in limited circumstances that are not present here.

241. By failing to demonstrate that the Project is consistent with Standards and Guidelines for protection of MIS Rocky Mountain elk, the Forest Service's approval of the Project is arbitrary, capricious, an abuse of discretion, not in accordance with, and without observance of procedure required by NMFA and its implementing regulations, in violation of 5 U.S.C. § 706(2).

**Count Two: Violations of INFISH and the Ochoco Forest Plan Standards and Guidelines Protecting Riparian Areas**

242. To comply with NFMA and its implementing regulations, the Forest Service had a duty to demonstrate that the Project is consistent with the Ochoco Forest Plan and INFISH. 16 U.S.C. § 1604(i). Standards and Guidelines of the Ochoco Forest Plan require the Forest Service to prioritize protections for riparian areas. INFISH sets forth Standards and Guidelines that prohibit or restrict land management activities in RHCAs that would retard or prevent attainment of RMOs or adversely affect inland native fish.

243. In the SFEIS, the Forest Service failed to demonstrate compliance with Ochoco Forest Plan Standards and Guidelines relating to sediment, turbidity, soil compaction, stream shading, and road crossings in riparian areas. The Forest Service failed to prioritize riparian objectives over dispersed recreational needs.

244. In assessing compliance with INFISH, the Forest Service failed to articulate a rational connection between the facts found and the decision made, failed to consider important

aspects of the problem, offered explanations that run counter to the available evidence, and failed to observe the procedures required by law.

245. The Forest Service only assessed consistency with INFISH Standards and Guidelines that it believed to be “appropriate” to the Project: RF-4, RF-5, RM-1, and RM-2. The Forest Service did not explain why other INFISH Standards and Guidelines were not “appropriate” to the Project.

246. The Forest Service stated that the Project is consistent with the “appropriate” INFISH Standards and Guidelines. The Forest Service stated that the Project would not retard or prevent attainment of INFISH RMOs under any action alternative.

247. In making its INFISH consistency determination, the Forest Service lacked the requisite data—for baseline conditions, cumulative impacts, and the ORV Project’s direct and indirect impacts—to make a rational conclusion that the Selected Alternative would not “retard or prevent attainment” of INFISH RMOs.

248. The Forest Service never defined the near natural rate of recovery.

249. The Forest Service modified some INFISH RMOs without undertaking a watershed analysis or gathering site-specific data to support the modification.

250. The Forest Service’s data show that Project Area subwatersheds uniformly are not properly functioning, when measured against INFISH RMOs or the modified habitat indicators. The Selected Alternative would increase route densities in riparian zones, remove riparian vegetation, and increase the number of stream crossings—retarding or preventing attainment of INFISH RMOs and adversely affecting native fish.

251. In making its INFISH consistency determination, the Forest Service relied on arbitrary assumptions about continued illegal use of user-created routes under the No Action

Alternative, but not under the action alternatives. Rather, the addition of a new ORV route system could provide more access to unauthorized routes, and consequently increase use.

252. In making its INFISH consistency determination, the Forest Service relied on arbitrary statements about “minimal” impacts, where INFISH Standards and Guidelines require a showing that a project would not “retard or prevent attainment” of INFISH RMOs or adversely affect native fish.

253. By failing to provide a rational explanation for how the ORV Project is consistent with the Ochoco Forest Plan and INFISH, the Forest Service’s approval of the ORV Project is arbitrary, capricious, an abuse of discretion, not in accordance with, and without observance of procedure required by NFMA and its implementing regulations, in violation of 5 U.S.C. § 706(2).

**SECOND CLAIM FOR RELIEF:**  
**(NEPA and APA Compliance)**

254. Plaintiff re-alleges and incorporates all preceding paragraphs into each count below.

**Count One: The Forest Service’s Presentation of the Status Quo was Arbitrary and Unlawful.**

255. NEPA requires an agency to “describe the environment of the areas to be affected or created by the alternatives under consideration.” 40 C.F.R. § 1502.15. Moreover, an agency must include a “no action alternative” in a NEPA assessment to provide a baseline of environmental conditions and create predictable outcomes for the other alternatives. 40 C.F.R. § 1502.14(d).

256. The Forest Service failed to properly present an accurate and complete picture of the environmental baseline and the No Action Alternative, which taken together, represent the status quo of resource conditions in the Project Area. The consequence of the Forest Service’s arbitrary and unlawful presentation of the status quo was that the agency could not properly calibrate the environmental impacts of the action alternatives.

257. In terms of the environmental baseline, the Forest Service did not provide sufficient data regarding the baseline conditions in the Project Area to support its conclusions. For example, the Forest Service failed to adequately assess current conditions for elk in the Project Area, relying on stale data from 1989–94 despite the presence of more current and accurate information.

258. The Forest Service also relied on stale data with respect to watershed conditions, oftentimes relying on stream habitat conditions from surveys completed in the 1990s.

259. In the final ROD, the Forest Service acknowledged its lack of current data by indicating that it would conduct wildlife surveys to determine baseline conditions. However, by conducting surveys post-NEPA, the public and the decisionmaker are unable to assess and accurately compare the baseline with the action alternatives.

260. The Forest Service failed to disclose the number of and location of routes in the Project Area that are currently receiving motorized use, including decommissioned roads, ML 1 roads, and unauthorized off-road routes. Any route receiving motorized use contributes environmental impacts—regardless of whether it is a system road administratively designated as “open.”

261. The Forest Service attributed numerous benefits to resource conditions upon implementation of any of the action alternatives, but not under the No Action Alternative. For instance, the Forest Service assumed for the No Action Alternative that unauthorized ORV use in the Project Area would continue. In contrast, the Forest Service assumed that unauthorized ORV use would cease or decrease upon implementation of any of the action alternatives. Under either the No Action Alternative or any of the action alternatives, unauthorized ORV use is unlawful.

262. The Forest Service also assumed, arbitrarily, that other benefits would accrue upon implementation of any of the action alternatives—and not under the No Action Alternative—such as route closures. For example, in the ROD, the Forest Service attributed sediment delivery to streams from unauthorized routes under the No Action Alternative, but not the action alternatives.

The Forest Service has not explained when—or even if—the Forest Service intends to close all unauthorized routes in the sediment delivery zone.

263. Additionally, the Forest Service assumed, arbitrarily, that implementation of the Selected Alternative was the “environmentally preferable” alternative, despite the fact that it would create a 137-mile route network. In contrast, under the No Action Alternative there would be no destination route system created. Expert scientists, including from ODFW, repeatedly told the Forest Service that the No Action Alternative was the “environmentally preferable” alternative.

264. Moreover, the Forest Service frequently failed to compare the No Action Alternative to the action alternatives, instead only comparing the action alternatives to each other. This approach defeats the purpose of the No Action Alternative, which is meant to serve as baseline against which the impacts of the action alternatives are evaluated.

265. The Forest Service’s failure to provide accurate and complete data in its baseline analysis, and failure to accurately present the No Action Alternative is arbitrary, capricious, an abuse of discretion, not in accordance with, and without observance of procedure required by NEPA, in violation of 5 U.S.C. § 706(2)(A).

**Count Two: The Forest Service Failed to Adequately Disclose and Consider Direct and Indirect Impacts, and Failed to Adequately Address Mitigation Measures.**

266. An agency must consider the direct and indirect impacts of a proposed action. 40 C.F.R. §§ 1501.2(b), 1508.8. An agency must also consider means to mitigate adverse environmental impacts. 40 C.F.R. §§ 1502.14(f), 1502.16(h). Mitigation includes avoiding, minimizing, rectifying, reducing, or eliminating, and compensating for impacts. 40 C.F.R. § 1508.20. In assessing direct and indirect impacts and mitigation measures, the agency must utilize high quality data and information. “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).

267. The Forest Service failed to take a hard look at the direct and indirect impacts of the Project and failed to properly account for mitigation measures to ameliorate environmental harms.

268. The agency identified both impacts to big game habitat and degradation of fish habitat as significant issues for study in the SFEIS, but there are substantive gaps and flaws in the agency's analysis with respect to both of these issues—including the reliance on stale data, the failure to apply the best available science and disclose limitations of its modeling, and the arbitrary presentation of data.

269. Regarding impacts to elk, the Forest Service failed to consider important aspects of the problem, misapplied or ignored the best available science, and attempted to dilute the Project's impacts. For example, the agency did not include administratively closed roads or unauthorized off-road routes in its road density or distance banding analyses—despite heavy motorized traffic on many of these routes and likely increases after creation of a destination route system. Nor did the Forest Service include temporary or new roads from vegetation treatment projects in its road density analysis. Motorized routes—regardless of their administrative designation—contribute significant impacts to elk during a number of critical life cycle stages. By only considering administratively “open” system roads in its direct effects analysis, the Forest Service assumed, arbitrarily, that road densities would stay below management area thresholds.

270. For its distance banding analysis, the Forest Service misapplied the relevant scientific literature, and failed to utilize the best available science. Scientifically supported tools were available to the agency, including the Blue Mountain Model, but the agency refused to utilize this model during the administrative process.

271. In addition, the geographic scope of the Project Area was arbitrarily large, thereby diluting the magnitude of the Project's impacts. The Forest Service claimed that after implementation of Alternative 5, there would be 42,431 acres of elk security habitat in patches



greater than 250 acres remaining in the Project Area, but the majority of those patches are remote from the Project implementation areas, at the margins of the Ochoco.

272. Moreover, the Forest Service did not adequately consider displacement of elk onto private lands, relying on an unsupported methodology that was specifically critiqued by ODFW.

273. As a final example, elk viability was asserted by the Forest Service but never demonstrated. The SFEIS and Wildlife Report contain conflicting references for the viability assessment, incomplete data, and data and facts from other project planning documents that are not relevant to this Project.

274. Regarding impacts to stream conditions and riparian species like Redband trout, the Forest Service failed to provide a rational basis for its conclusions, misapplied or ignored the best available science, and failed to consider important aspects of the problem. For example, in the SFEIS, when analyzing increased sedimentation from new ORV routes, the agency assumed routes contribute sedimentation only when located within 300 feet of streams when in fact, routes further than 300 feet from a stream contribute sedimentation. In the SFEIS, the Forest Service did not account for sediment caused by unauthorized routes within the sediment delivery zone.

275. As another example, when discussing effects to pools from stream crossings, the Forest Service stated that there would only be short-term effects. Implementation of the Project would require the removal of vegetation along stream crossings, permanently impairing large woody recruitment and, consequently, impacting pools permanently.

276. The agency asserted that the Project would only cause de minimis impacts to Redband trout based on stated “thresholds,” but it took those “thresholds” out of context, and otherwise failed to substantiate its conclusion.

277. Once the agency identified potentially significant impacts to Project Area species and their habitat, it had a duty to provide a full and fair accounting of the ways in which those impacts

could be mitigated. The Forest Service, however, failed to disclose mitigation measures in sufficient detail—let alone address their potential effectiveness—to satisfy its duty under NEPA.

278. The public does not know and the Forest Service has not determined which routes or how many miles of routes the Forest Service would need to close to offset the impacts of this Project. The ROD authorizes the Forest Service to close and rehabilitate or conceal an unspecified number of user-created trails and other unauthorized routes that are located in inappropriate areas or that would cause confusion and attract use. The Forest Service has not identified any of those routes.

279. The Forest Service largely relied on speculative grant funding to implement, enforce, maintain, and monitor the Project and its impacts. But the Forest Service never disclosed or analyzed the impacts that would occur if the agency does not receive funding for Project mitigation. Nor did the agency address a contingency plan if grant funding does not come through.

280. The Forest Service also relied on closures and decommissionings from other projects to mitigate for this Project, even though those closures and decommissionings may have been to mitigate the impacts of those other projects.

281. The Forest Service relied heavily on the Project Design Criteria to “minimize” sediment delivery, but it never evaluated the effectiveness of the Project Design Criteria.

282. The Forest Service’s failure to properly consider direct and indirect impacts, as well as mitigation measures, is arbitrary, capricious, an abuse of discretion, not in accordance with, and without observance of procedure required by NEPA, in violation of 5 U.S.C. § 706(2)(A).

**Count Three: The Forest Service Failed to Adequately Disclose and Consider Cumulative Impacts.**

283. An agency must consider cumulative impacts of a proposed action, including impacts from other past, present, and reasonably foreseeable future actions. 40 C.F.R. §§ 1508.7, 1508.25.

284. The Forest Service failed to adequately analyze cumulative impacts of the Project when combined with the impacts from the past, ongoing, and future actions including (1) use of unauthorized routes, (2) grazing, and (3) other projects within and adjacent to the Project Area.

285. The Forest Service used an arbitrary methodology for evaluating past and present actions in the cumulative effects analysis. For example, regarding stream conditions, the Forest Service relied on baseline conditions as a “proxy” for past and present effects. However, data on baseline conditions for most stream habitat indicators are more than 15 years old, and so does not include the impacts from past and present actions in the last 15 years.

286. Unauthorized routes are pervasive throughout the Project Area, and the combined impacts from the illegal and legal route systems will have significant cumulative adverse impacts on elk and aquatic species. These impacts were not adequately discussed in the SFEIS. The Forest Service acknowledged more than 700 miles of unauthorized routes in the Project Area. But rather than fully and fairly address the impacts from the ongoing use of these unauthorized routes, the Forest Service simply assumed, without providing support, that use of unauthorized routes would cease upon implementation of any of the action alternatives.

287. The Forest Service provided only a cursory discussion of the significant historical and continuing impacts of grazing, and failed to provide the public with any useful analysis on how these impacts would combine with the impacts from the Project.

288. The SFEIS does not provide a robust discussion of reasonably foreseeable projects in the area, such as the Black Mountain Vegetation Project and the Blue Mountains Fire Resiliency Project, and instead simply lists some possible effects without providing quantified and detailed information. For example, regarding impacts to elk, the Forest Service simply listed recently implemented and future vegetation management projects that reduce hiding cover, but it did not

disclose the location of these projects or tabulate the amount hiding cover that would be lost, when combined with the impacts of the ORV Project.

289. The Forest Service's failure to adequately consider cumulative impacts in its analysis is arbitrary, capricious, an abuse of discretion, not in accordance with, and without observance of procedure required by NEPA, in violation of 5 U.S.C. § 706(2)(A).

**THIRD CLAIM FOR RELIEF:**  
**(NEPA and APA Compliance)**

290. Plaintiff re-alleges and incorporates all preceding paragraphs into each count below.

**Count One: The Forest Service Failed to Provide the Public With Critical Underlying Data, and Failed to Include Key Documents in the SFEIS Appendices.**

291. An agency must make relevant information available to the larger audience so that it may play a role in both the decisionmaking process and the implementation of the decision. An agency must include in or attach to its EIS any documents "which substantiates any analysis fundamental to the environmental impact statement." 40 C.F.R. § 1502.18. Under 40 C.F.R. § 1502.21, an agency may incorporate materials into an EIS by reference, but only where the agency summarizes the incorporated document and makes it reasonably available for public inspection within the time allowed to comment.

292. The Forest Service failed to disclose key documents and underlying data to the public in a time and manner sufficient to foster meaningful public participation in the decisionmaking process.

293. The SDEIS and SFEIS purport to rely on and/or incorporate data and analyses from specialist reports and other sources, but the Forest Service did not provide the public with the underlying data and analyses. The Forest Service failed to timely provide the public with access to specialist reports even though it purportedly relied on and/or incorporated these reports by reference in the SFEIS. The public did not have access to these specialist reports while preparing

comments and had substantially diminished access to these reports while preparing objections, having received some specialist reports within a week of the objections deadline. Plaintiff and Plaintiff's experts would have identified issues in these specialist reports in their comments and objections if they had received the reports when they received the SDEIS and SFEIS.

294. For example, there are significant discrepancies between the summary tables in the Draft Aquatics and Hydrology Specialist Report and the Final Aquatics and Hydrology Specialist Report. The Draft Report has different data than the Final Report for every single subwatershed for Alternative 5. For some subwatersheds, the Forest Service lists more stream crossings in the Draft Report, and for other subwatersheds, the Forest Service lists fewer stream crossings in the Draft Report. The Forest Service made no effort to reconcile the inconsistent figures.

295. The Forest Service claims to have chosen routes based on avoiding sensitive habitat features. In particular, the Forest Service claims that potential routes that parallel stream course and potential routes near sensitive areas such as seeps, springs, wet meadows and wetlands were largely avoided when locating potential ORV route networks. The Forest Service did not describe the location of sensitive habitat features, and only included a map with some of this information in the final ROD. Thus, the public's ability to corroborate the agency's assertions, or suggest alternatives, was severely impeded.

296. The Forest Service claims to have made an attempt to avoid RHCAs and stream crossings to the extent possible while still proposing a "sustainable" route network. The Forest Service did not include a map showing the stream crossing locations.

297. The Forest Service claims to have relied on elk range data in selecting ORV routes, but the agency did not make available any maps or underlying data regarding the location of elk range in relation to the proposed ORV routes.

298. Plaintiff and Plaintiff's experts attempted to obtain key Project data multiple times throughout the public participation process, including through FOIA requests. The Forest Service failed to timely provide the information requested, including data on elk security habitat, other projects in the area, and user-created route locations.

299. The Forest Service's failure to include, adequately incorporate by reference, or make available to the public documents and data that are critical to the analysis is arbitrary, capricious, an abuse of discretion, not in accordance with, and without observance or procedure required by NEPA and its implementing regulations, in violation of 5 U.S.C. § 706(2)(A).

### **PRAYERS FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and issue the following relief:

A. Declare the Forest Service has violated the National Forest Management Act and its implementing regulations by authorizing a project that is inconsistent with the governing forest plan;

B. Declare that the Forest Service has violated the National Environmental Policy Act and its implementing regulations by issuing the SFEIS and ROD without satisfying its legal obligations to take a hard look at impacts of the Ochoco Summit Trail System Project and its legal obligation to meaningfully involve the public in the decisionmaking process;

C. Declare that the Forest Service's issuance of the SFEIS and ROD is arbitrary, capricious, an abuse of discretion, not in accordance with, and/or without observance of procedure required by law under the APA, 5 U.S.C. § 706(2)(A), (D);

D. Set aside and vacate the Ochoco Summit Trail System Project SFEIS and ROD and remand to the Forest Service for additional consideration;

E. Issue preliminary and permanent injunctive relief prohibiting the Forest Service from authorizing implementation of the Project until such time as the Forest Service can demonstrate

compliance with the requirements of the National Forest Management Act, the National Environmental Policy Act, and the Administrative Procedure Act;

F. Award Plaintiff its reasonable fees, costs, expenses and disbursements, including reasonable attorneys' fees associated with this litigation pursuant to the Equal Access to Justice Act or other applicable statutes; and

G. Grant such additional relief as the Court deems just and proper.

DATED this 13th day of July 2017.

Respectfully submitted,

s/ Oliver J. H. Stiefel

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Email: ralph@crag.org

Crag Law Center

917 SW Oak St., Suite 417

Portland, Oregon 97205

Fax: (503) 296-5454

*Attorneys for Plaintiff*

JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Central Oregon LandWatch

(b) County of Residence of First Listed Plaintiff Deschutes  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address and Telephone Number)  
Emma Bruden, Crag Law Center  
917 SW Oak Street, Suite 417, Portland, OR 97205  
(503) 525-2725

**DEFENDANTS**

Stacey L. Forson, Forest Supervisor of the Ochoco National Forest;  
James M. Peña, Regional Forester for U.S. Forest Service Region 6;  
and the United States Forest Service

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION (Place an "X" in One Box Only)**

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)**

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT (Place an "X" in One Box Only)**

Click here for [Nature of Suit Code Descriptions](#)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care: Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 751 Family and Medical Leave Act		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>Habeas Corpus:</b>		<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 850 Securities Commodities Exchange
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 530 General Other:			<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input checked="" type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 555 Prison Condition			<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing Accommodations	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment				<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other				
	<input type="checkbox"/> 448 Education				

**V. ORIGIN (Place an "X" in One Box Only)**

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)  
5 U.S.C. § 706(2); 16 U.S.C. §§ 1600-1614; 42 U.S.C. §§ 4321-4370h

Brief description of cause:

Challenge to agency action approving the Ochoco Summit Trail System Project in violation of federal law

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_  
CHECK YES only if demanded in complaint  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE Patricia Sullivan

DOCKET NUMBER 2:17-cv-01004-SU

DATE

07/13/2017

SIGNATURE OF ATTORNEY OF RECORD

*Emma Bruden*

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

Central Oregon LandWatch

Plaintiff(s)

v.

Stacey L. Forson, James M. Peña, and the United States Forest Service

Defendant(s)

Civil Action No. 2:17-cv-01091

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Stacey L. Forson, Forest Supervisor
Ochoco National Forest
3160 NE Third Street
Prineville, Oregon 97754

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Emma Bruden
Crag Law Center
917 SW Oak St., Suite 417
Portland, Oregon 97205

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 2:17-cv-01091

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

Central Oregon LandWatch

Plaintiff(s)

v.

Stacey L. Forson, James M. Peña, and the United States Forest Service

Defendant(s)

Civil Action No. 2:17-cv-01091

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) James M. Peña, Regional Forester
U.S. Forest Service Region 6
1220 SW 3rd Avenue
Portland, Oregon 97204

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Emma Bruden
Crag Law Center
917 SW Oak St., Suite 417
Portland, Oregon 97205

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 2:17-cv-01091

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

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designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**Reset**

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

Central Oregon LandWatch

Plaintiff(s)

v.

Stacey L. Forson, James M. Peña, and the United States Forest Service

Defendant(s)

Civil Action No. 2:17-cv-01091

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) U.S. Forest Service
Department of Agriculture
1400 Independence Ave, SW
Washington, DC 2025

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Emma Bruden
Crag Law Center
917 SW Oak St., Suite 417
Portland, Oregon 97205

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 2:17-cv-01091

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I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**