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IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF OREGON
PENDLETON DIVISION

OREGON HUNTERS ASSOCIATION,
an Oregon nonprofit corporation,

Plaintiff,

vs.

UNITED STATES FOREST SERVICE, an
agency of the United States Department of
Agriculture; and **STACEY FORSON,**
Ochoco National Forest Supervisor, in her
official capacity,

Defendants.

Case Number: 2:17-cv-1366

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

(National Forest Management Act,
National Environmental Policy Act)

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief. Oregon Hunters Association (“OHA” or “plaintiff”) challenges the actions of the United States Forest Service (“USFS”) and Stacey Forson, the Ochoco National Forest Supervisor, in approving the Record of Decision for the Ochoco Summit Trail System Project and denying Plaintiff’s objections to the Ochoco Summit Trail System Project on the Ochoco National Forest in Eastern Oregon.

2. This action arises under and alleges violations of the National Forest Management Act (NFMA), 16 U.S.C. §§ 1600-1614, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, the Council of Environmental Quality’s regulations implementing NEPA, 40 C.F.R. §§ 1500-1508, and the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.*

3. The Summit Trail System Project Record of Decision (“ROD”) and its associated Supplemental Final Environmental Impact Statement (“SFEIS”), and the Forest Supervisor’s approval of the ROD and SFEIS (hereinafter “project” or “Summit Trail Project”), are in violation of the Ochoco National Forest Land and Resource Management Plan (LRMP or “Ochoco Forest Plan.”). The Summit Trail Project fails to undertake the required environmental analysis under NEPA for the analysis of impacts and effects to Rocky Mountain elk from the proposed project.

4. The Summit Trail System Project through Alternative 5 modified in the SFEIS proposes the establishment of 137 route miles of trails on approximately 301,580 acres of Forest Service land. The Summit Trail System project would be open to motorized vehicle use during certain times of the year. 142,432 acres of the Summit Trail System project area would be within 200 meters of an open road or motorized trail after implementation of the project is complete.

5. Plaintiff seeks: (1) a declaratory judgment that the Forest Service is violating NFMA by failing to insure that the Summit Trail System Project within the Ochoco National Forest is consistent with the Forest Service's LRMP as amended; (2) a declaratory judgment that approving and proceeding with the proposed Summit Trail System Project without preparing an environmental impact statement that adequately assesses and discloses (a) compliance with applicable standards and guidelines of the Ochoco Forest Plan to protect and analyze impacts to elk, (b) and the potential direct, indirect and cumulative effects of this project in conjunction with other past, present and reasonably foreseeable projects is in violation of NEPA, an abuse of discretion, and an arbitrary and capricious agency action under the APA, 5 U.S.C. § 706; (3) an order vacating the Summit Trail System ROD and SFEIS and remanding the ROD and SFEIS back to the Forest Service for further consideration; and (4) any other relief that may be just, equitable, or appropriate.

6. Plaintiff also seeks an award of costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 701-706 (APA); 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory relief), and 2202 (injunctive relief). Plaintiff has challenged final agency actions as defined by the APA, 5 U.S.C. § 704. Plaintiff has exhausted all administrative remedies and is seeking judicial review of a final administrative action of the USFS and the U.S. Department of Agriculture.

8. Venue is properly vested in this Court pursuant to 28 U.S.C. §1391(e) because Plaintiff OHA resides in this district, Defendant Forest Supervisor Stacey Forson resides in this district, and a substantial part of the events or omissions giving rise to the claim occurred in Oregon.

9. This case is properly filed in Pendleton, Oregon and properly before the Portland Division of this District pursuant to Civil Local Rule 3.2 because the Forest Supervisor whose office approved the ROD is headquartered in Prineville, Oregon which is in Crook County. The Summit Trail System Project will occur on the Ochoco National Forest, in Crook and Wheeler Counties, Oregon.

PARTIES

10. Plaintiff **OREGON HUNTERS ASSOCIATION** is an Oregon nonprofit corporation dedicated to protecting Oregon's wildlife, habitat, and hunting heritage and ensuring sound and scientific management of all huntable wildlife species. OHA has more than 10,000 members in 26 statewide chapters who reside across Oregon and the western U.S. Three chapters are in close proximity to the Ochoco National Forest: Bend (442 members); Redmond (404 members); and Ochoco-Prineville (166 members). OHA's principle office is in Medford.

11. Plaintiff's members, officers and staff hunt, hike, camp and engage in other recreational activities within the Ochoco National Forest, including the Summit Trail System planning area and adjacent lands.

12. Plaintiff's officers, staff and members reside near and/or regularly visit the Summit Trail System project planning area. Plaintiff's officers, staff and members derive recreational, inspirational, and aesthetic benefit from their activities within the Ochoco National Forest,

including the area in and around the project area, and intend to continue to hunt on and use and enjoy these areas frequently and on an ongoing basis in the near and distant future.

13. Plaintiff has an organizational interest in the proper and lawful management of the Ochoco National Forest. Plaintiff's aesthetic and recreational interests have been and will be adversely affected and irreparably injured if Defendants continue to act as alleged herein, and affirmatively implements the decision that Plaintiff challenges. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under NEPA, and other federal laws. The injuries would be redressed by the relief sought.

14. Plaintiff has participated extensively in administrative actions to protect plaintiff's interests within the Ochoco National Forest. Plaintiff actively participated in the administrative process for the Summit Trail System project, including submitting substantive comments and filing objections to the decision challenged herein. Plaintiff has exhausted any and all available administrative remedies. Reviewable final agency action exists that is subject to this Court's review under 5 U.S.C. §§ 702 & 704.

15. Defendant **UNITED STATES FOREST SERVICE** is the federal agency that has designed the Summit Trail System Project within the Ochoco National Forest in Eastern Oregon and has executed the SFEIS and ROD pursuant to the National Environmental Policy Act (NEPA).

16. Defendant **STACEY FORSON** is the Forest Supervisor for the Ochoco National Forest. Her office approved the ROD for the Summit Trail System project and denied Plaintiff's objections to the project. The January 23, 2017 Objection Response and Denial Letter was the

USFS's final agency action regarding the project. Forson is sued only in her official capacity as Forest Supervisor.

LEGAL BACKGROUND

National Forest Management Act

17. In 1976 Congress enacted the National Forest Management Act (NFMA), 16 U.S.C. §§ 1600-1614, which governs the Forest Service's management of the national forests.

18. NFMA establishes a two-step process for forest planning. It first requires the Forest Service to develop, maintain and revise "land and resource management plans" (LRMPs or Forest Plans) for each national forest. *Id.* § 1604(a); *see also* 36 C.F.R. § 219.10(a), (b). Forest Plans guide natural resource management activities forest-wide, setting standards, management area goals and objectives, and monitoring and evaluating requirements.

19. Implementation of a Forest Plan occurs at the site-specific level - that is, once a LRMP is in place, site-specific actions, such as the Summit Trail System Project are assessed by the Forest Service in the second step of the forest planning process. *See* 36 C.F.R. § 219.10(e). Site-specific decisions must be consistent with the broader Forest Plan. *Id.* *See also* 16 U.S.C. § 1604(i).

National Environmental Policy Act

20. The National Environmental Policy Act (NEPA) is our "basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). NEPA's primary purposes are to ensure fully informed decision-making and to provide for public participation in environmental analyses and decision-making. *Id.* §§ 1500.1(b), (c). The Council on Environmental Quality (CEQ)

promulgated uniform regulations implementing NEPA that are binding on all federal agencies. 40 C.F.R. § 1500 *et seq.*

21. Under NEPA, an Environmental Impact Statement (EIS) must be prepared for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). NEPA requires that the decision-maker, as well as the public, be fully informed so that “environmental information is available to public officials and citizens before decisions are made and before action is taken.” 40 C.F.R. § 1500.1(b).

22. NEPA requires adequate disclosure of all environmental impacts. The NEPA documentation must provide the decision-maker and the public with adequate information, evidence, and analysis to fully assess the potential impacts of the proposed actions. 40 C.F.R. § 1502.1.

23. To satisfy the disclosure requirements, NEPA specifically requires a federal agency to make available to the public high-quality information, including accurate scientific analysis, expert agency comments and public scrutiny, before decisions are made and actions are taken. 40 C.F.R. § 1500.1(b).

24. An adequate analysis of the environmental impacts of a project also must include a consideration of the direct, indirect, and cumulative impacts of the project resulting from all past, present and reasonably foreseeable future actions. 40 C.F.R. §§ 1508.7, 1508.8. Direct effects are caused by the action and occur at the same time and place. 40 C.F.R. § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Cumulative impacts are the impacts on the environment that result from

incremental impacts of the action when added to other past, present and reasonably foreseeable future actions. 40 C.F.R. §§ 1508.7, 1508.8.

FACTS GIVING RISE TO PLAINTIFF'S CAUSE OF ACTION

25. The sole purpose of the Summit Trail System project is to create motorized recreational opportunities in the Forest for Off-Highway Vehicle (OHV) users. OHVs include all-terrain vehicles, jeeps, quads, four-wheelers, three-wheelers, motorcycles, dirt bikes, and dune buggies.

26. The Summit Trail System project is located in the Ochoco National Forest and spans approximately 301,580 acres. The Summit Trail System Project proposes to establish a 137-mile motorized trail system which would be open to motorized use during part of the year. 142,432 acres of the Summit Trail System project are within 200 meters of an open road or motorized trail after implementation.

27. In March 2014, the Forest Service released the final EIS and draft ROD for the Ochoco Summit Trail System project. The final EIS and ROD was withdrawn later that year due to the Bailey Butte Fire which burned the project area and created significantly different conditions than were previously analyzed in the final EIS.

28. In September 2016, the Forest Service released a Supplemental Final Environmental Impact Statement (SFEIS) for the Summit Trail System project.

29. In November 2016, OHA submitted detailed Objections to the proposed Summit Trail System project to the Forest Service. OHA participated in an objection resolution meeting with the Forest Service on December 13, 2016.

30. In June 2017, Forest Supervisor Stacey Forson approved the ROD for the Summit Trail System project adopting Alternative 5 modified (the ROD adds approximately 7 additional road miles) and authorizing a 137-mile motorized trail system for use between June 1 and September 30 with some minor exceptions.

31. Mule deer use the project area year-round. Elk also use the project area year-round for summer range, winter range, calving sites, and rutting wallows.

32. One of the four primary issues identified in the environmental analysis of the project was that the trail system could impact big game habitat.

Forest Plan Standards and Guidelines for Rocky Mountain Elk Habitat

33. The Ochoco Forest Plan requires the Forest Service to protect the character of elk calving sites by minimizing disturbances from human activity during calving season which is defined as approximately from May 15 to June 30. The Forest Plan requires the Forest Service to protect rutting wallows during rutting season which is defined as from September 1 to October 15.

34. The Ochoco Forest Plan requires the Forest to provide high quality habitat for deer and elk. According to the Forest Plan, quality and quantity of cover and open road density are the main factors influencing high quality habitat. To achieve this goal of high quality habitat, the Forest Plan requires open road densities of less than 3.0 miles per square mile.

35. The Ochoco National Forest Plan designates mule deer and elk as management indicator species (MIS) in the forest, meaning that the health and robustness of these species and their habitat is a barometer for the health of other species and habitat in the forest. The Forest Plan requires the Forest Service to manage and provide habitat for big game, including elk. The

Forest Plan, from 1990, assesses habitat effectiveness by looking at the “main factors” of cover (*i.e.* forest density and crown closure) and road density.

The SFEIS

36. The SFEIS chooses to analyze impacts and effects on elk and elk habitat through road density, disturbance, and security habitat.

37. Road densities are analyzed against the Forest Plan standard requiring open road densities of 3.0 miles per square mile or less.

38. Disturbance is evaluated using distance banding for motorized routes.

39. Elk security habitat is evaluated based on distance from any motorized route of more than ½ mile.

40. Effects to big game from the different proposed alternatives are compared using a set of “key indicators” for the issues identified directly above. These are:

- Open road and trail miles available for motorized use within 5th field watersheds expressed in miles of route per square mile of National Forest System roads and trails.
- Number of 5th field and 6th field subwatersheds with an open route density of greater than 3.0 miles of National Forest System roads and trails open for motorized use.
- Acres of National Forest land greater than 1 mile from an open motorized route in the project area.
- Acres of National Forest land within 4 distance bands within 1 mile from an open motorized route and percent of the project area.
- Acres providing elk security habitat (>1/2 mile from an open motorized route)

- Acres providing elk security habitat (>1/2 mile from an open motorized route) in patches at least 250 acres in size.
- Potential for displacement of big game onto private land as expressed by acres of secure cover within 2 miles of private land.

41. Under the proposed action, only 15% of the project area acreage would be more than ½ a mile from an “existing road.” It is unclear from the SFEIS if these “existing roads” include the proposed trails from this project.

42. Under the proposed action, 41% of the project area would be within 660 feet of an open road or motorized trail.

43. The proposed action would decrease elk crucial winter range by 6%.

44. The proposed action would decrease elk calving areas by 9%.

Security Habitat and Disturbance

45. The SFEIS purports to rely on recent studies from the Starkey Experimental Forest near La Grande, Oregon. The Starkey Project began in 1989 and is one of the most comprehensive and successful field research projects ever implemented. The studies examined key questions about elk, timber, cattle, deer, recreation uses and nutrient flows on National Forests. The Starkey Project studies and research papers represent the current state of scientific knowledge on the effects of roads, motorized vehicles, and road densities on elk.

46. The distance banding analysis assumption in the SFEIS and ROD that elk security habitat occurs more than ½ mile from a motorized route is inconsistent with the Starkey research. The Starkey researchers concluded that measurable disturbances exist for approximately 1.1 miles

(1800 meters) from motorized roads, depending on vegetation and terrain. The researchers found that elk selection ratios increased linearly for each 360 meter distance band (approximately ¼ mile) from an open road and that elk response to open roads diminished markedly at 1,800 meters.

47. The SFEIS fails to quantify or address the impacts from motorized off-road recreation. The Starkey researchers found that movement rates by elk increased substantially during off-road activities (ATV use), displacing elk from preferred security and foraging areas.

48. The SFEIS fails to quantify, address or discuss numerous known, studies, and quantifiable direct and indirect adverse impacts from the Summit Trail System including habitat fragmentation from roads, increased legal and illegal harvest from increased open road density, permanent displacement of elk from habitat loss and fragmentation, permanent displacement of elk from public lands to private lands, impacts to elk from non-motorized recreation on new open roads, impacts to elk from the different levels of motorized traffic on new open roads, and the effectiveness of road closures. The Starkey research addresses all of these issues.

49. The SFEIS only discusses the cumulative impact of the proposed action in conjunction with past, present and reasonably foreseeable future timber sales and road densities, ostensibly (and erroneously) because the 1990 Forest Plan assesses habitat effectiveness by looking at the “main factors” of cover (*i.e.* forest density and crown closure) and road density.

50. The SFEIS fails entirely to adequately analyze and disclose the cumulative impacts of the proposed project in conjunction with past, present and reasonably foreseeable future actions such as timber sales, motorized and non-motorized off-road recreation, motorized and non-motorized impacts from the existing road and trail network in the project area, including 700 miles of user

created roads and trails not in the Forest Service open roads system, livestock grazing during critical forage times, legal and illegal harvest of elk, and motorized and non-motorized impacts from “closed” or restricted roads.

Road Density

51. There are approximately 700 miles of user created roads in the project area. It is unclear from the SFEIS and the ROD how many of these roads (if any) will be actively closed. *See* ROD at 12.

52. There are 1,820 miles of existing roads in the project area. An undisclosed portion of these roads are or will be considered “administratively closed” by the Forest Service. The project area is 471.14 square miles. The proposed alternative will add 137 miles of trail system with about 84 of these miles on existing roads. The SFEIS concludes that open road densities will be 2.06 miles per square mile under the proposed alternative 5. There is no explanation in the SFEIS how this road density is calculated.

53. Simple mathematical calculations reveal that the Forest Service is not considering the majority of existing roads in the project area in its open roads calculation. The total road density for all existing roads plus the additional 53 miles of roads created by this project is 5.46 miles per square mile.

Plaintiff’s First Claim for Relief

(Violation of the National Forest Management Act and 5 U.S.C. § 706(2)(A))

The Defendants’ failure to act consistently with the Ochoco LRMP was arbitrary, capricious, an abuse of discretion, and not in accordance with law.

54. Plaintiff realleges all preceding paragraphs.

55. The Summit Trail System Project ROD and SFEIS are inconsistent with the Ochoco Forest Plan and therefore violate NFMA. The Forest Service has violated NFMA because the agency has failed to comply with the Forest Plan standards and guidelines for Rocky Mountain Elk habitat for the Summit Trail System Project. The Forest Service made a clear error in judgment in the ROD and SFEIS by concluding that the Summit Trail System Project meets the requirements of the NFMA and the Ochoco Forest Plan. The ROD and SFEIS fail to consider many important aspects of motorized trail development and use and the subsequent impacts on elk habitat, security and disturbance. The ROD and SFEIS fail to support their conclusions that the project meets the requirement of the NMFA and the Ochoco Forest Plan with reasonable and reliable studies that are based on the current state of scientific knowledge.

56. Specifically, through the ROD and SFEIS, the Forest Service has failed to (1) manage the Forest to provide high quality habitat for elk (especially security habitat); (2) protect the character of elk calving sites and rutting wallows and minimize disturbance from human activity to calving sites, rutting wallows, and other elk habitat; (3) prevent the displacement of elk from the Ochoco National Forest onto private land, and (4) ensure that open road densities in the Forest remained less than or equal to three (3) miles per square mile.

57. By failing to ensure that the Summit Trail System Project is consistent with the Ochoco Forest Plan, and by erroneously concluding that the Summit Trail System Project is consistent with the Ochoco Forest Plan, the Summit Trail System ROD and SFEIS are inconsistent with the Forest Plan and in violation of the National Forest Management Act, 16 U.S.C. § 1604(i), and its implementing regulations.

58. The Forest Service's Summit Trail System ROD and SFEIS result in activities prohibited by the Ochoco Forest Plan and the NFMA and its implementing regulations, and as a result are arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(a)(A).

Plaintiff's Second Claim for Relief

(Violation of NEPA and 5 U.S.C. § 706(2)(A))

The Defendants' failure to adequately address, analyze and disclose the direct and indirect impacts of the proposed action on elk and elk habitat is arbitrary, capricious, an abuse of discretion and not in accordance with the law.

59. Plaintiff realleges all preceding paragraphs.

60. NEPA requires the Forest Service to take a hard look at the direct and indirect impacts of the proposed Summit Trail System project. 40 C.F.R. §§ 1501.2(b), 1508.8. In assessing direct and indirect impacts, the Forest Service must utilize high quality data, information, scientific analysis, expert agency comments, and public input. NEPA requires that this information be provided in the EIS of the project so that the public has an opportunity to comment on the decision.

61. Oregon Hunters Association provided multiple, detailed comments regarding the Starkey Experimental Forest research findings on elk security habitat, disturbance, and displacement. The Forest Service failed to adequately acknowledge and respond to OHA's comments which raised significant and well-founded scientific uncertainties regarding the proposed project's potential impacts on elk and elk habitat.

62. The Starkey research (which represents the current state of scientific knowledge on impacts and disturbance to elk and elk habitat from motorized trails) was before the Forest Service during the decision-making process and was ignored, misinterpreted and misapplied by the Forest Service.

63. By ignoring, minimizing, misinterpreting, and misapplying the Starkey research, the Forest Service failed to ensure the availability of high quality, accurate scientific analysis for review by the public.

64. By ignoring, minimizing, misinterpreting, and misapplying the Starkey Research, the Forest Service failed to ensure that the ROD and SFEIS are based on high quality, accurate scientific analysis.

65. Specifically, the Forest Service failed to take a hard look at the following direct and indirect impacts from the proposed project that are addressed by the Starkey research in its SFEIS: Habitat fragmentation from roads, increased legal and illegal harvest from increased open road density, permanent displacement of elk from habitat loss and fragmentation, permanent displacement of elk from public lands to private lands, impacts to elks from non-motorized recreation on new open roads, impacts to elk from the different levels of motorized traffic on new open roads, and the effectiveness of road closures.

66. The Forest Service failed to assess and disclose how the Summit Trail Project complies with the standards and guidelines in the Ochoco Forest Plan for protecting elk and elk habitat. For example, by failing to provide its road density calculations and by failing to explain how it considers a majority of the existing roads in the project area as “closed roads,” the Forest Service failed to analyze and disclose how the new roads created by this proposed project would not

violate the Forest Plan standard of open road density less than or equal to 3.0 miles per square mile on the Forest to protect elk habitat.

67. The Forest Service's failure to adequately analyze and disclose the impacts of the proposed project on elk security, disturbance, and displacement and failure to assess and adequately disclose how this proposed project complies with the Ochoco Forest Plan is a violation of NEPA and NEPA's implementing regulations and is arbitrary and capricious agency action under the APA. 42 U.S.C. 4321 et seq.; 40 C.F.R. § 1508.27; 5 U.S.C. § 706(2)(A).

Plaintiff's Third Claim for Relief

(Violation of NEPA and 5 U.S.C. § 706(2)(A))

The Defendants' failure to adequately address, analyze and disclose the cumulative effects of the proposed project in conjunction with past, present and reasonably foreseeable actions in the SFEIS is arbitrary, capricious, an abuse of discretion and not in accordance with law.

68. Plaintiff realleges all preceding paragraphs.

69. NEPA requires an adequate disclosure of all environmental impacts, and specifically requires federal agencies to discuss the potential cumulative impacts of their proposed actions. 40 C.F.R. §§ 1501.2(b), 1508.7, 1508.8. The NEPA documentation must provide the decision maker and the public with adequate information, evidence, and analysis to fully assess the potential impacts of the proposed actions. 40 C.F.R. § 1508.9.

70. The SFEIS fails entirely to consider the cumulative impacts of the proposed project in conjunction with past, present and reasonably foreseeable future actions on elk disturbance, security and displacement. Specifically, the Summit Trail Project SFEIS fails to adequately

assess and disclose the cumulative impacts of timber sales, motorized and non-motorized off-road recreation, motorized and non-motorized impacts from the existing road and trail network in the project area, including 700 miles of user created roads and trails not in the Forest Service open roads system, livestock grazing during critical forage times, legal and illegal harvest of elk, and motorized and non-motorized activity on “closed” roads and how these activities and existing conditions will cumulatively affect elk security, habitat, disturbance, and displacement in connection or combination with the proposed Summit Trail Project.

71. Without having assessed or disclosed the cumulative effects of past, present and reasonably foreseeable actions, the Forest Service lacked a reasonable basis for concluding that the environmental impact of the Summit Trail System Project would not adversely affect the elk and elk habitat.

72. The agency’s failure to consider, assess and/or disclose these cumulative impacts in conjunction with the Summit Trail System Project is a violation of NEPA and NEPA’s implementing regulations and is arbitrary and capricious agency action and therefore actionable under the APA. 42 U.S.C. 4321 et seq.; 40 C.F.R. §§ 1508.7, 1508.8, 1508.27; 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. A declaratory judgment that the Defendants’ Summit Trail System ROD and SFEIS area are prohibited by the Ochoco National Forest LRMP, violate the National Forest Management Act consistency requirement and is agency action that is arbitrary, capricious, and not in accordance with law under 5 U.S.C. § 706(2)(A);

2. A declaratory judgment that Defendants' failure to prepare an adequate EIS for the Summit Trail System Project was arbitrary, capricious, and in violation of the requirements of NEPA and the APA;
4. An order vacating the Summit Trail System Project ROD and SFEIS and remanding the ROD and SFEIS to the agency for additional consideration consistent with NFMA and NEPA;
5. An order awarding Plaintiff its costs of litigation, expenses, expert witness fees, and reasonable attorney fees under applicable law; and;
6. Such other and further relief as may seem to this Court to be just and proper.

Dated this 31st day of August 2017.

Respectfully submitted,

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