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**UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF IDAHO**

WILDLANDS DEFENSE, ALLIANCE )  
FOR THE WILD ROCKIES, and NATIVE )  
ECOSYSTEMS COUNCIL )

Case No. 1:17-cv-408

*Plaintiffs,*

**COMPLAINT**

v. )

CECILIA SEESHOLTZ, in her official )  
capacity as Boise National Forest Supervisor; )  
TONY TOOKE, in his official capacity as )  
Chief of the United States Forest Service; )  
UNITED STATES FOREST SERVICE; and )  
UNITED STATES FISH AND WILDLIFE )  
SERVICE )

*Defendants.*

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## INTRODUCTION

1. Plaintiffs Wildlands Defense, Inc. (“WLD”), Alliance for the Wild Rockies (“AWR” or the “Alliance”), and Native Ecosystems Council (“NEC”) challenge the North Pioneer Fire Salvage and Reforestation Project (“North Pioneer Project”) and the South Pioneer Fire Salvage and Reforestation Project (“South Pioneer Project”; jointly the “North and South Pioneer Projects” or “Projects”) over the U.S. Forest Service’s failure to comply with the National Environmental Policy Act (“NEPA”) and its violations of the Nation Forest Management Act (“NFMA”). Plaintiffs also challenge the results of Endangered Species Act (“ESA”) informal consultations between the Forest Service Defendants and the U.S. Fish and Wildlife Service (“FWS”) over the Projects’ impacts to ESA-listed Columbia River bull trout and its designated critical habitats.

2. The North and South Pioneer Projects include management actions in response to the 2016 Pioneer Fire, a wildfire that yielded more than 190,000 acres of burned forest habitat within the Idaho City, Lowman, and Emmett Ranger Districts of the Boise National Forest, immediately north and south of the township of Lowman, Idaho.

3. Among the management actions of the North and South Pioneer Projects, a series of 11 salvage timber sales (collectively, the “Pioneer Fire Salvage Sales”) has been approved. Three separate salvage timber sales have been approved to extract approximately 32 Million Board Feet (“MMBF”) across 5,681 acres of post-burn forest in the North Pioneer Project and eight (8) separate salvage timber sales have been approved to log 36.5 MMBF across 9,072 acres of forest in the South Pioneer Project.<sup>1</sup>

4. The North and South Pioneer Projects include massive removal of trees,

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<sup>1</sup> Combined the North and South Pioneer Projects will extract over 68.5 MMBF across over 14,750 acres of post-burn habitat.

roading activities, and other significant disturbances occurring on highly erosive and landslide prone soils draining into the Boise River, the Payette River, and their tributaries. These watersheds include designated Critical Habitat for Columbia bull trout, an ESA-listed species which is also identified as a Management Indicator Species in the Boise National Forest's Forest Plan.

5. The Forest Service has rushed these projects through in an effort to recover the economic value of the trees within the project area despite the clear and obvious significant impacts a project of this magnitude will necessarily have to soils, water quality, imperiled fisheries, and other environmental values.

6. The challenged Environmental Assessments ("EAs"), Decision Notices and Findings of No Significant Impact ("DN/FONSI"), and associated ESA informal consultations mislead the public, unlawfully preclude necessary public involvement, completely ignore and omit from consideration valuable ecological attributes unique to post-wildfire habitats and the quality of the human environment, grossly underestimate the Projects' likely impacts to soils, water quality, ESA-listed fish and critical habitat, and other environmental values.

7. The EAs and DN/FONSI further violate the NFMA, the NEPA, and the ESA by failing to comply with Forest Plan Standards, omitting and ignoring well-established science that contradicts their predetermined outcomes, and by failing to adequately consider the indirect and cumulative impacts of the North and South Pioneer Projects.

8. Because the Forest Service is rapidly implementing its rushed decisions, there is a substantial risk of immediate and irreparable harm to soils,

wildlife, and ESA-listed Columbia bull trout and their designated critical habitats.

9. Plaintiffs thus seek judicial review and relief reversing and setting aside the Defendants' inadequate EAs, its unlawful Emergency Situation Determination ("ESD") decisions, its legally deficient DN/FONSI, and its inadequate Biological Assessments ("BAs"); and enjoining all field work related to the Projects pending full compliance with applicable laws.

### **JURISDICTION AND VENUE**

10. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; the National Forest Management Act, 16 U.S.C. § 1601 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* ("APA"); the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*

11. An actual, justiciable controversy now exists between Plaintiffs and Defendants. The requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 701-06.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, and the affected public lands and resources are located in this judicial district.

13. Plaintiffs have exhausted all required administrative remedies prior to bringing this action.

14. The federal government waived sovereign immunity in this action pursuant to Page 4 of 39<sup>5</sup> U.S.C. § 702.

## **PARTIES**

**15.** Plaintiff WILDLANDS DEFENSE is a regional, membership, nonprofit organization headquartered in Hailey, Idaho dedicated to protecting and improving the ecological and aesthetic qualities of the wildland and wildlife communities of the western United States for present and future generations. WLD advances its mission by means of landscape and wildlife monitoring and scientific research, by supporting and empowering active public engagement, by publishing and working in support of media outlets, and with legal and administrative advocacy. WLD is headquartered in Hailey, Idaho, has members in several western states, including members and staff that regularly work in and focus on public land and wildlife management in Idaho, and on the Boise National Forest in particular. As an organization and on behalf of its members, WLD has a particular interest in post-burned ephemeral habitats, landscapes, and the fishes and wildlife that inhabit them, including those occurring on the Boise National Forest. Members and staff of WLD live, work, and/or recreate throughout central Idaho, and surrounding region, and have worked and recreated on the Boise National Forest generally, and within the Idaho City, Lowman, and Emmett Ranger Districts specifically on a regular and continuing basis and intend to do so frequently in the immediate future. WLD brings this action on its own behalf and on behalf of its adversely affected members.

**16.** Plaintiff ALLIANCE FOR THE WILD ROCKIES is a tax-exempt, nonprofit public interest organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and its naturally functioning ecosystems. Its registered office is located in Missoula, Montana. The

Alliance has over 2,000 individual members, many of whom are located in Idaho in close proximity to the Boise National Forest. Members of the Alliance observe, enjoy, and appreciate Idaho's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future, including in the North and South Pioneer Project area. Alliance's members' professional and recreational activities are directly affected by Defendants' failure to perform their lawful duty to protect and conserve these ecosystems as set forth below. Alliance for the Wild Rockies brings this action on its own behalf and on behalf of its adversely affected members.

**17.** Plaintiff NATIVE ECOSYSTEMS COUNCIL is a non-profit corporation. Native Ecosystems Council is dedicated to the conservation of natural resources on public lands in the Northern Rockies. Its members use and will continue to use the Boise National Forest for work and for outdoor recreation of all kinds, including fishing, hunting, hiking, horseback riding, and cross-country skiing. The Forest Service's unlawful actions adversely affect Native Ecosystems Council's organizational interests, as well as its members' use and enjoyment of the Boise National Forest, including the North and South Pioneer Project areas. Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely affected members.

**18.** Defendant CECILIA SEESHOLTZ is the Forest Supervisor for the Boise National Forest, who signed the Decision Notice and Finding of No Significant Impact documents for the North and South Pioneer Projects. She is sued in her official capacity, for her actions as an employee of the United States Forest Service.

**19.** Defendant TONY TOOKE is the Chief of the United States Forest Service, the office that signed the decisions approving the Emergency Situation Determinations for

the North and South Pioneer Projects. He is sued in his official capacity.

20. Defendant UNITED STATES FOREST SERVICE is an agency or instrumentality of the United States, within the U.S. Department of Agriculture. The Forest Service is charged with the authority and duty to manage and protect the public lands and resources of the Boise National Forest.

21. Defendant U.S. FISH AND WILDLIFE SERVICE is an agency or instrumentality of the United States, within the U.S. Department of Interior. The US Fish and Wildlife Service is charged with administering the consultation provisions of the ESA for threatened and endangered terrestrial and freshwater aquatic species, including threatened Columbia River bull trout.

22. Defendants' violations of law, as alleged herein, injure the scientific, recreational, inspirational, spiritual, aesthetic, educational, journalistic, commercial, conservation, wildlife preservation, procedural and/or other interests and rights of Plaintiffs and their staff, supporters, and members. These are actual, concrete injuries caused by Defendants' violation of law, and the judicial relief sought would remedy, in whole or in part, Plaintiffs' injuries.

### **STATEMENT OF FACTS**

#### **The 2016 Pioneer Wildfire**

23. The Pioneer Fire began on July 18, 2016 and over the course of the hot, dry conditions of late summer grew to over 180,000 acres by September 15, 2016, spreading across 27 drainages in the Lowman, Idaho City, and Emmett Ranger Districts, eventually growing to over 190,000 acres.

24. Wildfire management crews battled the fire for sixty-four days. Local reports

indicated that the Pioneer Fire was one of the largest and most expensive fires in Idaho state history, its cost was estimated to approach \$100 million.

25. As the fire continued to burn, Forest Service managers assembled and deployed Burned Area Emergency Response (“BAER”) teams to assess actions the Forest Service deemed necessary to reduce imminent and unacceptable risk to human life and safety, property, and natural resources following the fire. The fire was 100 percent contained on November 3, 2016.

26. Immediately following the fire, BAER implementation teams treated the burned landscape by removing hazard trees, with road and trail maintenance projects and installations-including replacement of culverts and placement of warning signs, by aerial seeding and ground mulching of over 3,100 acres, with weed control efforts across 16,000 acres, among other management actions.

27. The Pioneer Fire left Idaho’s public lands a diverse natural habitat. The intensity of the fire varied, leaving a mosaic of burn patterns and consequent post-fire habitats, ranging from completely consumed patches to unburned islands.

#### **Post-Wildfire Habitat; A Living Landscape**

28. Science developed largely since the notorious Yellowstone fires of 1988 has found that the wildfires that have for so long been suppressed by Smoky the Bear’s mismanagement of timber resource values are events necessary to create invaluable wildlife habitat opportunities utilized by a greater diversity of species than even old-growth habitat.

29. In 1988, the country’s leading scientist today on wildfire ecology, University of Montana Prof. Richard Hutto, Ph.D., began his scientific inquiry by asking “[i]s there any value at all in all that destruction?” After decades of thorough research, what he found was

whole communities of fire specialists that have evolved to take advantage of wildfire habitat, but whose presence has become quite rare due to the obsession to stamp out fires since the big burns of 1910 in Idaho and Montana. While black-backed woodpeckers get most of the attention in this regard, with their preference for burned habitat directly proportional to the severity of the burn, other species in decline due to National Forest wildfire policies include boreal toads, mountain bluebirds, and olive-sided flycatchers, to name just a few. As Dr. Hutto points out, “fires often regarded as ‘unnatural’ and ‘destructive’ are the very fires that provide the best conditions for the most fire-dependent plant and animal species.” That’s just “scratching the surface,” according to Dr. Hutto. “If the public knew how special these burned areas are, our perception might change,” he states.

**30.** Retired USFS plant ecologist Peter Stickney pointed out to the Washington Post that “[l]ife doesn't end with a forest fire... The trees of the forest may be destroyed, but the forest community isn't destroyed—it's rejuvenated.” Stickney was commenting on studies of “unrestored” (by management) charred forests in Montana following the biggest fires since 1910. What they found was “absolutely amazing,” according to Ray Shearer, a plant ecologist with the USFS lab in Missoula. A natural succession of herbs and “mass flowerings,” followed by shrubs and then trees, including “surprise plants” that “can show up by the thousands that weren't there before,” Stickney said. “The seeds of these plants can lay dormant from 200 to 400 years, and they only germinate after a fire.”

**31.** According to one USFS researcher, the benefits of unmanaged wildfire are “quite extensive and complex, and it's very hard to list them all.”

**32.** Recent scientific studies reveal that “[u]p to 70 percent of the plant species in some forests in the northern Rocky Mountains are well adapted to survive severe

burning.”

33. Put simply; far from being depauperate, post-fire forest habitats exhibit unique and significant ecological values that contribute substantially to the quality of the environment.

### **Bull Trout**

34. Bull trout are members of the char subgroup of the family Salmonidae and are native to waters of western North America. Bull trout range throughout the Columbia River and Snake River basins, extending east to headwater streams in Montana and Idaho, into Canada, and in the Klamath River basin of south-central Oregon. Bull trout historically occurred in the Sacramento River basin, and were more widespread in general than they are now. The distribution of populations, however, is scattered and patchy (Goetz 1989, p. 4; Ziller 1992, p. 6; Rieman and McIntyre 1993, p. 3; Light et al. 1996, p. 44; Quigley and Arbelbide 1997, p. 1176). Bull trout have more specific habitat requirements than most other salmonids (Rieman and McIntyre 1993, p. 4). Habitat components that particularly influence their distribution and abundance include water temperature, cover, channel form and stability, spawning and rearing substrate conditions, and migratory corridors (Fraley and Shepard 1989, p. 138; Goetz 1989, p. 19; Watson and Hillman 1997, p. 247). Large patches of these components are necessary to support robust populations.

35. Bull trout exhibit a variety of migratory and nonmigratory life histories. Stream-resident bull trout complete their entire life cycle in the tributary streams where they spawn and rear. Most bull trout are migratory, spawning in tributary streams where juvenile fish usually rear from 1 to 4 years before migrating to either a larger river (fluvial) or lake (adfluvial) where they spend their adult life, returning to the tributary stream to

spawn (Fraley and Shepard 1989, p. 133). Resident and migratory forms may be found together, and either form can produce resident or migratory offspring (Rieman and McIntyre 1993, p. 2). Historically most bull trout populations may have included a migratory component, and any resident-only forms found today may often reflect a loss of the migratory component due to impacts such as habitat loss or migration barriers (Muhlfeld 2010, pers.comm.).

**36.** Bull trout exhibit a number of life history strategies. Stream-resident bull trout complete their entire life cycle in the tributary streams where they spawn and rear. Migratory bull trout spawn in tributary streams. Juvenile fish from migratory populations usually rear from 1 to 4 years in natal streams before migrating (typically downstream) to either a larger river (fluvial form) or lake (adfluvial form) where they spend their adult life, returning to the tributary stream to spawn (Fraley and Shepard 1989, p. 133). These migratory forms occur in areas where conditions allow for movement from upper watershed spawning streams to larger waters that contain greater foraging opportunities (Dunham and Rieman 1999, p. 646). Resident and migratory forms may be found together, and either form can produce resident or migratory offspring (Rieman and McIntyre 1993, p. 2).

**37.** The ability to migrate is important to the persistence of bull trout local populations (Rieman and McIntyre 1993, p. 2; Gilpin 1997, p. 4; Rieman and Clayton 1997, p. 6; Rieman et al. 1997, p. 1121). Bull trout of a variety of life stages rely on foraging, migration, and overwintering (“FMO”) habitat to complete extensive and important parts of their life cycle (Homel and Budy 2008, p. 875; Monnot et al. 2008, pp. 235-237). Juvenile and adult resident bull trout inhabit the spawning and rearing areas year

round. Some adult migratory forms inhabit spawning and rearing habitat after spawning into the early winter and can arrive in early summer to hold prior to spawning (Mulhfeld et al 2005, p. 801; Kellyringel and DeLaVergne 2010, p. 16), and subadults or alternate year migratory spawning adults may inhabit mid to lower river migratory corridors year round.

**38.** Habitat complexity including deep pools and cover are important habitat components in areas of both spawning and rearing and migration (Monnet et al. 2008, pp. 235- 237; Al-Chokhachy et al. 2010, pp. 469– 472). Migratory bull trout become much larger than resident fish, benefiting from the more productive waters of larger streams, lakes, and marine habitats, consequently leading to increased reproductive potential. Stream-resident populations are associated with headwater streams in mountainous regions where year-round cold water and velocity or other movement barriers are common. Typically, these streams are smaller and have higher gradients than those occupied by adfluvial and fluvial populations. In these headwater streams, resident bull trout are associated with deep pools and instream cover, and stream-resident individuals are typically small (McPhail and Baxter 1996, p. 12; Mullan et al. 1992, p. K- 413).

**39.** The use of migration habitat by bull trout can also increase potential for dispersion, facilitating gene flow among local populations (interbreeding groups) when individuals from different local populations interbreed, stray, or return to nonnatal streams. Importantly, local populations that have been extirpated by catastrophic events may become reestablished because of movements by bull trout through migration habitat (Rieman and McIntyre 1993, p. 7; MBTSG 1998, p. 45).

**40.** At all life stages, bull trout require complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Fraley and Shepard 1989, pp. 137–

138; Watson and Hillman 1997, p. 249). Many of these habitat features are dependent on watershed conditions as a whole (Howell 2010, pers.com). Juveniles and adults frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997, p. 368). McPhail and Baxter (1996, p. 11) reported newly emerged fry are secretive and hide in gravel along stream edges and side channels. They also reported juveniles are found mainly in pools but also in riffles and runs, maintain focal sites near the bottom, and are strongly associated with instream cover, particularly overhead cover such as woody debris or riparian vegetation. Undercut banks and coarse substrates provide cover and overwinter habitat for juvenile bull trout (peer review comments, R. Thurow 2010, p. 1).

**41.** Based on the needs described above and our current knowledge of the life history, biology, and ecology of the species and the characteristics of the habitat necessary to sustain the essential bull trout life-history functions, the U.S. Fish and Wildlife Service determined that the following PCEs are essential for the conservation of bull trout and may require special management considerations or protections: (1) Springs, seeps, groundwater sources, and subsurface water connectivity (hyporheic flows) to contribute to water quality and quantity and provide thermal refugia. (2) Migration habitats with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and freshwater and marine foraging habitats, including but not limited to permanent, partial, intermittent, or seasonal barriers. (3) An abundant food base, including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish. (4) Complex river, stream, lake, reservoir, and marine shoreline aquatic environments, and processes that establish and maintain these aquatic environments, with features such as large wood, side channels, pools, undercut banks and unembedded substrates, to provide a variety of depths,

gradients, velocities, and structure. (5) Water temperatures ranging from 2 to 15 °C (36 to 59 °F), with adequate thermal refugia available for temperatures that exceed the upper end of this range. Specific temperatures within this range will depend on bull trout life-history stage and form; geography; elevation; diurnal and seasonal variation; shading, such as that provided by riparian habitat; streamflow; and local groundwater influence. (6) In spawning and rearing areas, substrate of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. A minimal amount of fine sediment, generally ranging in size from silt to coarse sand, embedded in larger substrates, is characteristic of these conditions. The size and amounts of fine sediment suitable to bull trout will likely vary from system to system. (7) A natural hydrograph, including peak, high, low, and base flows within historic and seasonal ranges or, if flows are controlled, minimal flow departure from a natural hydrograph. (8) Sufficient water quality and quantity such that normal reproduction, growth, and survival are not inhibited. (9) Sufficiently low levels of occurrence of nonnative predatory (e.g., lake trout, walleye, northern pike, smallmouth bass); interbreeding (e.g., brook trout); or competing (e.g., brown trout) species that, if present, are adequately temporally and spatially isolated from bull trout.

### **Salvage Logging**

42. While there are certainly economic incentives for removing large, burned trees from recently burned forests, it turns out that “[s]uch trees are the most critical component of a biologically diverse post-fire ecosystem and that single component contributes significantly to the production of unique successional pathways and unique wildlife communities that we see after fire.”

43. In 2006, 540 independent Ph.D. scientists not associated with the Forest Service signed a letter to the United States Congress.<sup>2</sup> They provided a long list of peer-reviewed studies supporting their conclusion that “no substantive evidence supports the idea that fire-adapted forests might be improved by logging after a fire.”

44. Generally speaking, “the impacts of salvage logging can be classified into three broad categories: (1) impacts on the physical structure of forest stands and aquatic systems; (2) impacts on key ecosystem processes (e.g., hydrological cycles, nutrient cycling, and soil formation); and (3) impacts on particular elements of the biota and species assemblages. These impacts, considered below, are often interrelated and cumulative... Although salvage logging removes wood from burned areas, such practices generally do not help regenerate or save ecosystems, communities, or species (but see *Radeloff et al.* 2000) and often have the opposite effect” (*Franklin & Agee* 2003, pp. 951, 954).

45. That same year, *Science Magazine* published an article called “Post-wildfire logging hinders regeneration and increases fire risk” (Donato et al., Jan 20; 311(5759):352). Echoing the views of the 540 scientists who were trying to set Congress straight, the researchers in *Science Magazine* concluded: “Our data show that post-fire logging, by removing naturally seeded conifers and increasing surface fuel loads, can be counter-productive to goals of forest regeneration and fuel reduction. In addition, forest regeneration is not necessarily in crisis across all burned forest landscapes.”

46. A subsequent letter to Congress from 264 scientists simply stated that “[p]ost-fire logging does *far more harm* than good to public forests.”

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<sup>2</sup> <http://earthjustice.org/sites/default/files/library/signon/letter-from-over-540-scientists.pdf>

47. The foremost expert on salvage logging's potential for significant impact to wildlife, Dr. Hutto, on the common practice of salvage logging following fires:

Perhaps we need to change our thinking when it comes to logging after forest fires. With respect to birds, no species that is relatively restricted to burned-forest conditions has ever been shown to benefit from salvage harvesting. In fact, most timber-drilling and timber-gleaning bird species disappear altogether if a forest is salvage-logged. Therefore, if we want our land-use decisions to be based, at least in part, on whether a proposed activity affects the ecological integrity of our forest systems, burned forests should be the LAST, rather than the first places we should be going for our wood.

*Timber Harvest and Roading Impact to Fisheries*

48. Timber harvest and road building in or close to riparian areas can immediately reduce stream shading and cover, channel stability, and large woody debris recruitment and increase sedimentation and peak stream flows (Chamberlin et al. 1991, p. 180; Ripley et al. 2005, p. 2436). These activities can, in turn, lead to increased stream temperatures, bank erosion, and decreased long-term stream productivity. The effects of road construction and associated maintenance account for a majority of sediment loads to streams in forested areas; in addition, stream crossings also can impede fish passage. (Shepard et al. 1984, p. 1; Cederholm and Reid 1987, p. 392; Furniss et al. 1991, p. 301).

49. Sedimentation affects streams by reducing pool depth, altering substrate composition, reducing interstitial space, and causing braiding of channels (Rieman and McIntyre 1993, p. 6), which reduce carrying capacity for aquatic species such as Bull trout. Sedimentation negatively affects bull trout embryo survival and juvenile bull trout rearing densities (Shepard et al. 1984, p. 6; Pratt 1992, p. 6). An assessment of the interior Columbia Basin ecosystem revealed that increasing road densities were associated with declines in four nonanadromous salmonid species (bull trout, Yellowstone cutthroat trout

(*Oncorhynchus clarkii bouvieri*), westslope cutthroat trout (*O. c. lewisi*), and redband trout (*O. mykiss* spp.)) within the Columbia River basin, likely through a variety of factors associated with roads. Bull trout were less likely to use highly roaded basins for spawning and rearing and, if present in such areas, were likely to be at lower population levels (Quigley and Arbelbide 1997, p. 1183). These activities can directly and immediately threaten the integrity of the essential physical or biological features described in PCEs 1 through 6, *supra*.

*Impacts to Old Growth Biodiversity and Ecological Function*

**50.** The North Pioneers Project Decision Notice calls for the logging of more than 21,000 burned trees with greater than 20 inch diameters (measured at breast height), and cumulatively, it appears that as many as 50,000 trees in this larger category could be removed.

**51.** Not only is this an indication that what is being targeted is largely burned old-growth habitat, but also the most valuable habitat component in the shortest supply in our national forests; namely, large snags of the kind that were routinely removed from the forest for many decades in the 20th century - before their true value to wildlife could be appreciated.

**52.** These large snags persist longer as standing habitat components for wildlife than smaller snags, and are also more valuable for wildlife because their larger size serves wider habitat needs for a greater diversity of species.<sup>3</sup>

**53.** They also persist longer as wildlife habitat after they fall, providing even greater and more valuable potential for wildlife diversity, and function to “reduce soil erosion, aid soil formation, and nourish streams as their leaves fall or their trunks decay

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<sup>3</sup> They also possess greater economic value to loggers, and thus provide a political incentive to minimize the potential implications of removing such a critical ecological component from the post-fire landscape.

(*Henjum et al.* 1994)” (cited in *Karr et al.*, *infra.*, at 1031).

54. In other words, in ecological terms relevant to the Forest’s Service’s inquiry into the potential significance of impacts associated with the North and South Pioneer Projects, this is not a forest that has been “devastated” by wildfire, but rather a forest that is in a stage of development that is vital for eventually recovering levels of old-growth habitat that were severely depleted under the previous forest plan. *See ISC v. Rittenhouse*, 305 F.3d 957 (9th Cir. 2002).

55. In 1989 the Forest Service Chief directed each national forest to complete an inventory of its old-growth forests, in recognition of the ecological, economic, and social values they hold for the American people and components of the ecosystems (*Green et al.*, 1992).

56. Twenty-eight years following the Chief’s directive, and in spite of judicial findings that the Boise NF depleted such habitat below minimum levels necessary to insure the viability of diverse wildlife species (*supra*) - as well as having completed the forest plan revision process intended by Congress to be adaptive - the Boise National Forest has never completed a comprehensive inventory of old-growth habitat.

57. Instead, the revised forest plan altered the definition of old-growth habitat, precluding the designation of old-growth habitat in Southwest Idaho. In this context the findings by scientists that a burned forest habitat, such as now occurs following the Pioneer Fire, contains as much diversity of plant and wildlife species, if not more, in the years following the fire as would be found in adjacent old-growth habitats, is significant. *See Hutto* (1995), “The composition of bird communities following stand-replacement fires in northern Rocky Mountain (U.S.A.) conifer forests,” *Conservation Biology* 9:1041-1058.

58. These facts, based on peer-reviewed scientific research, clearly demonstrate that there is substantial controversy in the scientific community concerning the nature and scope of impacts from salvage logging.

Post-Fire Soils

59. According to the independent scientists reporting in the paper *Karr et al.*, (2004):

Fire-affected soils are especially vulnerable to additional disturbance (e.g., compaction or increased erosion). Soils deserve special care because soils and soil productivity are irreplaceable within human time scales and are crucial to forest recovery, stream conditions, and hydrologic processes... [H]igher-risk practices, such as logging with ground-based equipment, should not be used, and sensitive areas should be avoided to limit aquatic impacts. No logging should be done on moderately and severely burned areas and on other sites prone to soil damage and excessive sedimentation.

**The North Pioneer Project**

60. The North Pioneer Project area drains into the Payette River Watershed Basin via three subwatersheds of the South Fork Payette River subbasin and is comprised of landscape elevations ranging from 3,780 feet to 8,050 feet.

61. The USFWS designated Clear Creek and Long Creek as Bull trout critical habitat within the North Pioneer Project area.

62. In order to remove living hazard and salvage fire-killed trees from 7,223 acres of the 28,007 acre project area, approximately 32 MMBF of forest, maintenance of 115.1 miles of haul routes, including new construction and use of 7 miles of forest road will be constructed. The project also includes felling hazard trees along motorized and non-motorized trails within RCAs.

### **The South Pioneer Project**

**63.** The South Pioneer Project area drains into the Boise River Watershed Basin via four subwatersheds and is comprised of landscape elevations ranging from approximately 5,000 feet to 8,100 feet.

**64.** The USFWS designated Crooked River, Pikes Fork of the Crooked River, and Banner Creek as Bull trout critical habitat within the South Pioneer Project area.

**65.** In order to remove living hazard and salvage fire-killed trees from 9,276 acres of the 39,099 acres acre project area, approximately 54 MMBF of forest, maintenance of 175 miles of haul routes, including new construction and use of 3.6 miles, of forest road will be constructed. The project also includes felling hazard trees along motorized and non-motorized trails within RCAs.

### **PROCEDURAL HISTORY**

**66.** As the Pioneer Fire continued to burn, an initial BAER assessment team began field reconnaissance of a 58,128 acre burned area known as “Pioneer South” on August 17, 2016.

**67.** On September 6, 2016 Forest Supervisor Seesholtz and Regional Forester Nora B. Rasure submitted a funding request for emergency stabilization funds pursuant to a Burned-Area Report proposing Emergency Stabilization Treatments to, among other things, implement measures to mitigate sediment delivery, mud, and debris flows threatening the Crooked River, Pikes Fork Creek, Banner Creek, and South Fork Payette River watersheds, which constitute bull trout designated critical habitat and harbor the ESA listed fish within the “Pioneer South” assessment area.

68. On September 30, 2016 Forest Supervisor Seesholtz ordered a number of Area, Road and Trail Closures within the Idaho City Ranger District and Lowman Ranger District.

69. On October 28, 2016 Forest Supervisor Seesholtz issued a number of Road Restrictions within the Clear Creek watershed, covering much of the North Pioneer Project area, for the protection of public health and safety during restoration work given hazards associated with the Pioneer Fire.

70. Legal notice for the 30-day scoping comment period for the North and South Pioneer Projects were first published on January 28, 2017. The notice included the Forest's intention to request an Emergency Situation Determination for both projects, its intention to truncate and expedite the public's involvement, and eliminate the public's opportunity to administratively object to any decision.

71. On February 8 and February 27, 2017 Plaintiffs submitted scoping comments on the North and South Pioneer Projects.

72. The EA for the North Pioneer Project was released for a 30-day notice and comment period the week of April 18, 2017. The comment period ended May 22, 2017.

73. On April 21, 2017 the Forest Service issued its *North Pioneer Fire Salvage and Reforestation Project Biological Assessment*.

74. On April 24, 2017 the Forest Service issued its *Biological Assessment of Effects on Endangered, Threatened, or Proposed Wildlife, Fish, and Plant Species for the Pioneer South Fire Salvage and Reforestation Project*.

75. The EA for the South Pioneer Project was released for a 30-day notice and comment period the week of April 25, 2017. The comment period ended May 30, 2017.

76. On April 24 and May 17, 2017 Plaintiffs submitted comments on both the North and South Pioneer Project EAs.

77. On May 10, 2017 Forest Supervisor Seesholtz requested that the Regional Forester submit a request that an Emergency Situation Determination for the North and South Pioneer Projects be issued by the Chief of the U.S. Forest Service, pursuant to 36 CFR 218.21(d) in order to bypass the public pre-decisional objection process otherwise required by 36 CFR 218 and allow the Forest Service to solicit bids for salvage logging contracts prior to its issuance of a final decision.

78. On May 12, 2017 Intermountain Regional Forester Nora Rasure, requested approval of the Chief of the Forest Service for ESDs for the North and South Pioneer Projects “based on a need to avoid loss of commodity value in the trees to be salvaged” to avoid “reduced resources to perform much needed reforestation and restoration work... mak[ing] it difficult to provide for the health and safety of field personnel, forest users and permit holders in the fire area.”

79. In response to informal ESA consultation initiated by the Forest Service through Biological Assessments prepared under ESA Section 7, the US Fish and Wildlife Service issued its Letters of Concurrences (“LoCs”) for the North and South Pioneer Projects on May 23, 2017.

80. On or around May 30, 2017 the Forest Service became aware of “massive” storm and seasonal runoff events resulting in damage to two roads within the South Pioneer Project Area; National Forest Service Road (“NFSR”) 385 and NFSR 312. Damage impacting the NFS roads resulted in increased sedimentation and impact to Bull trout designated critical habitat in Banner Creek and Pikes Fork.

**81.** On May 31, 2017 the Chief of the Forest Service approved the ESD Requests for the North and South Pioneer Projects.

**82.** On June 7, 2017 the Forest Service notified select interested stakeholders of the Chief of the Forest Service's approval of the ESD requests for both the North and South Pioneer Projects. Approval of the ESDs allowed the Forest to implement the projects immediately following issuance of its DN/FONSI, without providing interested public an opportunity to administratively object to the Projects.

**83.** On June 11, 2017 the Forest Service sent correspondence to the US Fish and Wildlife Service with the subject line "RE: South Pioneer Salvage and Reforestation – Addendum to the Biological Assessment, addressing change in condition as a result of storm damage and spring run off, and review and update to Effects Analysis and determinations" notifying the USFWS of draft changes to its original BA it made given changed conditions in the project area associated with the storm event affecting baseline conditions not considered in the USFWS's LoC on the South Pioneer Project. Damages included road surface disturbances, drainage culvert plugging, a washout of a culvert, and other storm damages occurring to NFSR 312 along Pikes Fork of Crooked River, and storm and runoff "damage" to NFSR 385 along Banner Creek.<sup>4</sup> On June 14, 2017 the USFWS replied to the email with a single paragraph concurrence concluding the South Pioneer Project was not likely to adversely affect Bull trout, bull trout critical habitat, or

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[http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/105609\\_FSPLT3\\_4034886.pdf](http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/105609_FSPLT3_4034886.pdf)

[http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/105609\\_FSPLT3\\_4034887.pdf](http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/105609_FSPLT3_4034887.pdf)

Canada lynx, and not likely to jeopardize the existence of North American wolverine.

**84.** On June 23, 2017 Forest Supervisor Seesholtz issued the Forest Service's Final Environmental Assessment, Decision Notice, and Finding of No Significant Impact for the North Pioneer Fire Salvage and Reforestation Project and published them on the project website.

**85.** On June 30, 2017 United States Forest Service and US Fish and Wildlife Service Defendants received Plaintiffs' *Sixty-Day Notice of Intent to Sue Under Section 7 of the Endangered Species Act*.

**86.** On July 10, 2017 Forest Supervisor Seesholtz issued the Forest Service's Final Environmental Assessment, Decision Notice, and Finding of No Significant Impact for the South Pioneer Fire Salvage and Reforestation Project and published them on the project website. That same day, for the first time notifying the public of the intervening storm and runoff events occurring in Spring 2017 damaging ESA-listed Bull trout designated critical habitat, the Forest Service published its updated *South Pioneer Fire Salvage and Reforestation Project Biological Assessment* including the Addendum.

**87.** On July 17, 2017 the Forest Service Defendant awarded the Meadow Salvage Sale and the Whoop um Up Salvage Sale. On July 19, 2017 the Forest Service awarded the Sunset Ski Roadside Hazard Sale; on July 20 the Pikes Fork Roadside Hazard Sale; on July 25 the Banner Roadside Hazard Sale; on July 25 the Upper Rock Salvage Sale and Lower Rock Salvage Sale; on July 28 the Kempner Salvage Sale; on August 1, 2017 the Crooked Salvage Sale; on August 7 the Upper Beaver Salvage Reoffer Sale; on August 14 the Lamar Salvage Sale; and on September 25, 2017 the Forest Service awarded the Clear Creek Roadside Hazard.

**88.** On August 15, 2017 the Forest Service announced its timber salvage area closures for Project activities in the South Pioneer Fire Recovery Project area. All closures were announced to be in effect until December 31, 2017.

Maps of the North and South Pioneer Project sales are located online.<sup>5</sup>

**89.** On July 31, 2017 United States Forest Service and US Fish and Wildlife Service Defendants received Plaintiffs' updated *Sixty-Day Notice of Intent to Sue Under Section 7 of the Endangered Species Act*.

**90.** On information and belief, The China Fork Salvage Stewardship, Upper Beaver Salvage Stewardship, Clear Creek Salvage Stewardship Lower Beaver Salvage, China Fork Salvage Re-offer, and Clear Creek Salvage Re-offer timber sales were each offered with no bids and are being repackaged for additional re-offers.

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<sup>5</sup> <https://www.fs.usda.gov/detail/boise/home/?cid=fseprd552958>

**DEFICIENCIES IN PROJECTS AND SUPPORTING DOCUMENTS**

**91.** In an effort to immediately implement Projects to salvage the commercial value of recently burned trees, the Forest Service (1) rushed requests for the Chief to approve Emergency Situation Determinations, truncating the administrative procedures otherwise required and denying Plaintiffs’ involvement and administrative participation in the approval of the Projects and (2) in its haste, the Forest Service unlawfully failed to take a “hard look” at likely environmental consequences by refraining from considering science that forewarned of significant impact in order to sidestep the scientifically warranted determination that the project activities and cumulative effects may significantly affect the quality of the human environment.

**92.** Accordingly—and remarkably, the Forest Service denies that there may be any significant impacts of its approval of road work along 290 miles of existing roads, construction of 10.6 miles of new temporary/unauthorized roads, and of 11 timber sales extracting over 68.5 MMBF across over 14,750 acres on a dramatically varied topographical landscape with highly erodible soils, a substantial proportion of which occurs within watersheds designated as Bull trout critical habitat.

**93.** In order to expedite the Projects, the Forest Service assembled together a series of scientifically uncertain “Design Features, Monitoring Elements, and Adaptive Management Strategy” prescriptions and outcome oriented alterations of operational definitions to paper over compliance with existing Forest Plan Standards. These efforts to cherry-pick the Forest Service’s chosen scientific modeling and analysis unlawfully downplay, offset, and obfuscate the Forest Service’s assessments of environmental impacts in its EAs and BAs.

**94.** In its Finding of No Significant Impacts, the Forest Service relied upon the

flawed and cherry picked scientific modeling and analysis, routinely ignoring and/or outright denying the degree of both likely impact and the uncertainty that exists given the existing condition of the landscape.

**95.** The Forest Service’s reliance on design features and Best Management Practices to mitigate risk at best reduces, but cannot eliminate, inevitable and significant direct, indirect, and cumulative impacts of project activities, particularly given the scale and magnitude of the Projects. Despite this, the Forest Service failed to acknowledge such uncertainty, instead treating the design features and BMPs as though they will eliminate risk in its BAs and FONSI, even as ongoing events on the landscape invalidated key Forest Service assumptions.

**96.** The Forest Service’s EAs failed to take a “hard look” at the uncertainty and significance of existing ecosystem and watershed conditions critical to Bull trout recovery and the Forest Service’s BAs failed to consider best science in analyzing impacts to Bull trout and Bull trout designated critical habitat. Examples include, but are not limited to:

(A) Project activities occur on subwatersheds constituting Bull trout designated critical habitat. The Forest Service’s Pathways and Watershed Condition Indicators (“WCIs”) found that many condition measures pertinent to Bull trout recovery are currently functioning at risk (“FAR”) or functioning at unacceptable risk (“FUR”). Rather than acknowledging best science demonstrating that the sub-functional conditions leave a more narrow margin for additional direct, indirect, and cumulative effects before contributing to adverse affects to Bull trout and Bull trout designated critical habitat than if the watersheds were properly functioning, the Forest Service ignores the significance of the existing

condition while repeatedly relying on the proper function of ecosystem attributes to minimize and mitigate project activity impacts.

(B) The Forest Service BAs limited the analysis of direct, indirect, and cumulative impacts of project activities for Bull trout and critical habitat to areas within 240 feet of streams.

(C) The Forest Service failed to consider and use the best available science regarding the indirect and cumulative impacts of removing a significant component of post-fire watershed restoration. For example, large standing trees and upland vegetation are critical components contributing to post-fire natural forest recovery. Relevant to fisheries and Bull trout critical habitat, it is exactly the large trees and vegetation removed by project activities that would otherwise serve to stabilize soil cohesion and integrity, prevent erosion, and reduce likelihood of debris flow and mass movement events that adversely impact Bull trout and critical habitat. In addition to the immediate direct impacts, the disturbance and removal of large trees and vegetation retards natural recovery, prolonging the subwatersheds' and Bull trout's susceptibility and vulnerability to the events.

**97.** Existing Detrimental Soil Disturbance ("DD") is the alteration of natural soil characteristics resulting in immediate or prolonged loss of soil productivity and in diminished soil-hydrologic conditions. The Boise National Forest Plan Soil Standards require that at least 85% of an activity area should be in a non-detrimentally disturbed condition. Stated another way, no more than 15% of an activity area should have detrimentally disturbed soil after the management activities are completed. DD can occur where soil has been displaced, compacted, puddled, or severely burned.

**98.** In assessing the Projects' likely direct, indirect, and cumulative impacts, and consequent compliance with Forest Plan Soil Standards, the Forest Service precluded actual high soil burn severity condition soils from its designation of DD soils. The rationale the Forest uses to preclude high soil burn severity condition soils from the DD designation is the result of its operative definition of DD soils limiting the designation to only those soils impacted by management decisions. Because the Pioneer fire was not managed for resource benefits, high soil burn severity soils resulting from the Pioneer Fire were not considered anthropogenic impacts, thus not designated DD soils regardless of whether post-Pioneer Fire soils exhibited identical physical attributes and characteristics which would otherwise warrant designation as DD. Put another way, as the Pioneer Fire blazed across the landscape, had the Forest Service decided to manage the fire for "resource benefits," soils left in identical condition would be classified DD and Forest Plan Standards meant to ensure management does not inhibit soil productivity would apply.

**99.** Project activities exceed allowable Forest Plan Standards for Soils.

**100.** In addition, the Forest Service relied heavily upon the amount, extent, and location of "DD soils" as though the designation was a physical description of the actual condition of soils (factual description), rather than a management designation (legal description), in assessing and analyzing the significance of actual likely direct, indirect, and cumulative impacts in the Projects' EAs and BAs.

**101.** The Boise National Forest Plan Management Direction for Timberland Resources Standard for Salvage Harvesting prohibits salvage harvest in RCAs where the trees salvage would degrade or retard attainment of riparian, aquatic, hydrological, botanical, and terrestrial wildlife habitat desired conditions. Despite acknowledging that

salvage harvesting occurring within RCAs would retard attainment of desired conditions, the North and South Pioneer Projects permit salvage harvesting within RCAs.

**102.** The Boise National Forest Plan Management Direction for Soil, Water, Riparian, and Aquatic Resources Plan Standard for Hydrology and Watershed Processes prohibits management actions that will degrade or retard attainment of properly functioning soil, water, riparian, and aquatic desired conditions. Despite acknowledging that management actions would retard attainment of desired conditions, the North and South Pioneer Projects permit project activities that will degrade and retard attainment of properly function condition for soil, water, riparian, and aquatic desired conditions.

**103.** The Boise National Forest Plan Management Direction for Soil, Water, Riparian, and Aquatic Resources Plan Standard for Soil Processes and Productivity prohibits management actions that will result in activity areas exceeding 15% DD soils where there was less than 15% DD soils prior to project activities. The Forest Service failed to properly estimate and understand glossary definitions of *activity area*, *detrimental soil disturbance*, and *total soil resource commitment*. Project activities will result in project areas with greater than 15% DD soils where there were less than 15% DD soils prior to project activities.

**FIRST CLAIM FOR RELIEF**  
**Violations of NEPA and APA**

*Failure to Prepare an Environmental Impact Statement*

**104.** Plaintiffs reallege and incorporate by reference all previous paragraphs.

**105.** This First Claim for Relief challenges the Forest Service's violation of the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* and implementing NEPA

regulations in failing to prepare an environmental impact statement, in failing to rely on accurate scientific analysis and public scrutiny, and in failing to take a “hard look” at the environmental consequences of the proposed action. This claim is brought pursuant to the judicial review provisions of the APA. 5. U.S.C. § 706.

**106.** The Council on Environmental Quality (“CEQ”) promulgates regulations implementing NEPA, which are binding. 40 C.F.R. §§ 1500-1518.

**107.** NEPA requires federal agencies to make available to the public high-quality information, including accurate scientific analyses, expert agency comments, and public comments before decisions are made and actions are taken. The CEQ’s NEPA regulations require that information used to inform NEPA analysis “must be of high quality,” and that “[a]ccurate scientific analysis . . . and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). The analysis must be based on professional and scientific integrity. *Id.* § 1502.24.

**108.** NEPA further requires that agencies take a “hard look” at the environmental consequences of their proposed actions before the agency chooses a particular course of action, without favoring a pre-determined outcome.

**109.** In conducting NEPA, federal agencies are required to prepare an Environmental Impact Statement (“EIS”) for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

**110.** Federal regulations permit an agency planning a major federal action to conduct an Environmental Assessment (“EA”) in order to determine whether it must prepare an EIS. 40 C.F.R. §1508.9. If the EA shows that the proposed action will have no significant impact, the agency may issue a finding of no significant impact (“FONSI”) and Decision Notice. 40 C.F.R.

§1501.4; 36 C.F.R. §220.3.

**111.** If however, the EA shows that the proposed activity “may significantly affect the quality of the human environment,” 42 U.S.C. § 4332(2)(C), the federal agency must prepare an EIS before proceeding with the proposed activity.

**112.** In conducting an EA, an agency must consider all reasonable alternatives, 40 C.F.R. § 1502.14(a), and direct, indirect, and cumulative effects, *id.* § 1508(b); those impacts’ “effects on natural resources and on the component, structures, and functioning of affected ecosystems.” *Id.* § 1508.8.

**113.** Direct effects of an action occur at the same time and place as the proposed project. *Id.* § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distances, but are still reasonably foreseeable. *Id.* § 1508.8(b).

**114.** A “Cumulative impact” is:

[T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. §1508.7. A significant environmental effect may exist even if the federal agency believes that on balance the environmental effects of a proposal will be beneficial. 40 C.F.R. §1508.27(b)(1).

**115.** In making the determination of significance on an EA, the agency must consider various factors pursuant to 40 C.F.R. §1508.27(b), including: the degree to which the effects on the quality of the human environment are likely to be highly controversial, 40 C.F.R. §1508.27(b)(4); the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks, 40 C.F.R.

§1508.27(b)(5); the degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973, 40 C.F.R. §1508.27(b)(9); and, whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. 40 C.F.R. §1508.27(b)(7).

**116.** In evaluating reasonably foreseeable effects, an agency must clearly disclose incomplete, unavailable, or lacking information and either procure the information or include a statement detailing (1) that such information is incomplete or unavailable, (2) a statement of the information's relevance, (3) a summary of existing alternative credible scientific evidence, (4) the agency's evaluation of impacts. 40 C.F.R. § 1502.22.

**117.** Plaintiffs allege that the Forest Service violated NEPA and its implementing regulations in multiple ways through the issuance of its EA, DN, and FONSI for the North and South Pioneer Projects. Violations include, but are not limited to the following:

- (A) Failure to fully and accurately evaluate the indirect effects and cumulative impacts of the proposed action in association with past, present, and reasonably foreseeable actions including, but not limited to, its misleading manipulation of operational definitions used to analyze the scope, extent, and degree of potential impacts as they relate to existing Forest Plan Standards, endangered species and designated critical habitat, and natural resource values potentially impacted;
- (B) Multiple failures to use accurate and high-quality quantitative

scientific information and analysis, and to reveal any incomplete or unavailable data, including: failure to consider the best available science and information regarding post-wildfire salvage logging impacts; failure to quantify and disclose sediment discharges and accumulations in streams and reaches likely impacted by the decisions; failure to quantify, calculate, and disclose potential increases and/or reductions in sedimentation discharges and accumulations in streams and reaches of each alternative; failure to adequately disclose and consider limitations of science and models utilized; and others; and,

(C) failure to lawfully consider (1) the degree to which the effects on the quality of the human environment are likely to be highly controversial, (2) the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks, and (2) the degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973;

(D) failure to disclose incomplete, unavailable, or lacking information and failure to either procure the information or include a statement detailing (1) that such information is incomplete or unavailable, (2) a statement of the information's relevance, (3) a summary of existing alternative credible scientific evidence, (4) the agency's evaluation of impacts.

**118.** The Forest Service Defendants' reliance on legally-inadequate EAs and FONSI's in approving the DNs violates NEPA and is arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and in excess of statutory jurisdiction, authority, or limitations within the meaning of

the judicial review provisions of the APA; and accordingly the EAs and DN/FONSI for the North and South Pioneer Projects must be held unlawful and set aside under 5 U.S.C. § 706(2).

**119.** WHEREFORE, Plaintiffs pray for relief as set forth below.

SECOND CLAIM FOR RELIEF  
**Violation of NFMA and APA**  
**(Inconsistency with Forest Plan Requirements)**

**120.** Plaintiffs reallege and incorporate by reference all previous paragraphs.

**121.** Plaintiff's Second Claim for Relief challenges the Forest Service Defendants' violations of the National Forest Management Act, 16 U.S.C. § 1601 *et seq.*, and NFMA's implementing regulations by issuing the North and South Pioneer Project EAs and DN/FONSI, which are not consistent with the applicable Boise National Forest Plan. This claim is brought pursuant to the judicial review provisions of the APA. 5 U.S.C. § 706.

**122.** Under NFMA, all Forest Service agency actions, including site-specific management activities, must be consistent with the governing Forest Plan. 16 U.S.C. 1604(i).

**123.** An agency's failure to affirmatively demonstrate compliance with a Forest Plan is a violation of NFMA.

**124.** The Forest Plan for the Boise National Forest includes binding standards that apply to the North and South Pioneer Projects. The Forest Service's North and South Pioneer Project EAs and DN violate the Forest Plan and NFMA by failing to comply and failing to demonstrate compliance with the Forest Plan Standards including but not limited

to its Standards governing Soil Processes and Productivity (SWST02, SWST03, SWST04, SWST10), and Salvage Harvesting (TRST08).

**125.** The Defendants' violations of NFMA are arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA; and accordingly the EAs and DN's for the North and South Pioneer Projects must be held unlawful and set aside under 5 U.S.C. § 706(2).

**126.** WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CLAIM FOR RELIEF  
**Violation of the Endangered Species Act and APA**

**127.** Plaintiffs reallege and incorporate by reference all preceding paragraphs.

**128.** This Third Claim for Relief challenges the results of the ESA consultations of the North and South Pioneer Projects between the Forest Service and the US Fish and Wildlife Service. This claim seeks judicial review of final agency actions taken pursuant to the ESA, and is brought pursuant to the judicial review provisions of the APA. 5. U.S.C. § 706.

**129.** Section 7 of the ESA requires that a federal agency seeking to conduct an action that it authorizes, funds or carries out must ensure that the action does not "jeopardize" ESA-listed species or their critical habitat; and that federal action agencies must fulfill this duty by conducting consultation with the US Fish and Wildlife Service and/or NOAA Fisheries, pursuant to ESA Section 7(a)(2) and implementing regulations. 16 U.S.C. § 1536(a)(2).

**130.** ESA Section 7 requires that such consultation must be based on the "best

scientific and commercial data available.” 16 U.S.C. § 1536(a)(2).

**131.** The Chief of the US Forest Service issued its Emergency Situation Determination for the South Pioneer Project prior to the finalized South Pioneer Project BA and prior to the US Fish and Wildlife Service’s letter of concurrence. As such, the Forest Service took action which jeopardize ESA-listed species or their critical habitat prior to lawful consultation with the US Fish and Wildlife Service.

**132.** The Forest Service’s BAs for the Projects provided to the US Fish and Wildlife Service during the ESA consultations were not based on the best scientific and commercial data available, but in fact was premised on inaccurate assertions and omissions concerning the scope, nature, and probability of the potential impacts of the North and South Pioneer Projects, including but not limited to contentions that:

- (A) newly constructed and decommissioned roads would pose merely beneficial, discountable or insignificant risk to Bull trout and/or its designated critical habitat;
- (B) proposed actions outside designated 120-240 foot RCA buffers are not likely to affect Bull trout and/or its designated critical habitat; and thus were not analyzed.
- (C) others identified above or as will be presented to the Court in briefings.

**133.** The Forest Service and US Fish and Wildlife Service’s determination that Projects are not likely to adversely affect ESA-listed bull trout and designated bull trout critical habitat within the project areas is not based on the best scientific and commercial data available.

**134.** The US Fish and Wildlife Service relied upon the Forest Service's mischaracterizations, erroneous statements, and outright omissions about the Projects in issuing their respective concurrence letters for the Projects, rendering the concurrences arbitrary, capricious, and contrary to law.

**135.** Defendants' violations of the ESA are arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and in excess of statutory jurisdiction, authority or limitations within the meaning of the judicial review provisions of the APA; and accordingly the ESD approvals, BAs, EAs, and DN/FONSI must be held unlawful and set aside under 5 U.S.C. § 706(2).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court grant the following relief:

- A. Under any or all Claims for Relief above, order, adjudge, and declare that the North and South Pioneer Projects' EAs and FONSI/DNs are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law under the NEPA, NFMA, the ESA, and/or the APA, and reverse and set aside the EAs and FONSI/DNs;
- B. Under the Third Claim for Relief above, enter declaratory relief holding that the Forest Service's ESD for the South Pioneer Project and the Forest Service North and South Pioneer Project BAs and/or the US Fish and Wildlife Service's Letters of Concurrence are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with the law under the ESA and APA, and reverse and set them aside as well as the DNs that rely upon them;
- C. Enter such other temporary restraining orders(s) and preliminary or

permanent injunctive relief as hereafter prayed for by Plaintiffs;

- D. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation pursuant to 28 U.S.C. § 2412 et seq., the ESA, and all other applicable authorities; and/or
- E. Grant such further relief as the Court deems necessary or appropriate.

DATED this 29th day of September 2017.

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