

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

GAINESVILLE DIVISION

GEORGIA FORESTWATCH and )  
SIERRA CLUB )

Plaintiffs, )

v. )

UNITED STATES FOREST SERVICE, an )  
agency of the United States Department of )  
Agriculture, )

Defendant. )

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**Introduction**

1. Georgia ForestWatch and the Sierra Club through its Georgia Chapter (“Conservation Groups”) challenge the Cooper Creek Project (“the Project”), the United States Forest Service’s proposal to log, burn, and/or apply herbicide to thousands of acres of the Chattahoochee-Oconee National Forest including in prohibited areas without required environmental review. The Project is located southwest of Blairsville, Georgia, and will affect Duncan Ridge, the Duncan Ridge Trail, and the Cooper Creek, Youngcane Creek, and Coosa Creek watersheds.

2. Conservation Groups seek declaratory and injunctive relief for violations of the National Forest Management Act (“NFMA”), 16 U.S.C. § 1600 *et seq.*, and National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* This action arises under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

3. NFMA requires the Forest Service to develop a Land and Resource Management Plan (“Forest Plan”) for each national forest. All activities on a national forest must comply with the applicable forest plan. Forest plans delineate forests into geographically discrete areas. These noncontiguous areas are called “prescriptions” on the Chattahoochee-Oconee National Forest. Each prescription is managed to emphasize particular values through prescription-specific standards and objectives.

4. NFMA requires the Forest Service to identify lands that are “unsuitable” for timber production. Timber production is the purposeful growing and harvesting of trees for industrial or consumer use. The “suitable” or “unsuitable” distinction on the Chattahoochee-Oconee National Forest is made by prescription area. Prescriptions are designated unsuitable for timber production if, among other reasons, the Forest Plan for the Chattahoochee-Oconee National

Forest (“CONF Forest Plan”) commits to manage those areas for values incompatible with timber production.

5. NFMA prohibits timber harvests in prescriptions designated unsuitable for timber production, except for salvage sales and sales necessitated to protect other multiple-use values.

6. Neither exception is applicable to the Cooper Creek Project. Because the Project purports to authorize timber production activities in a prescription designated unsuitable for timber production, it violates NFMA.

7. NEPA requires the Forest Service to consider reasonable alternatives to proposed actions. Conservation Groups repeatedly asked the Forest Service to consider an alternative that fulfilled the Project’s purpose but would have avoided timber production in prescriptions designated unsuitable for timber production. Conservation Groups even prepared and presented the agency with a specific, highly detailed alternative to consider. Instead of considering the alternative, the Forest Service arbitrarily rejected it, violating NEPA.

8. NEPA also requires the Forest Service to disclose and take a hard look at the environmental effects of proposed actions. Conservation Groups asked the Forest Service to disclose the effects the Cooper Creek Project would have on two areas that are un-fragmented by roads, utility corridors, and past logging, and are

eligible for inclusion in the next potential wilderness inventory (“roadless areas”). NEPA requires the Forest Service to disclose to the public the effect of the Cooper Creek Project on these unique areas and whether the Project will preclude these areas from being considered in the future for designation as wilderness. The Forest Service’s refusal to do so violated NEPA.

9. The Forest Service violated NFMA by treating prescriptions unsuitable for timber production as if they were suitable. It violated NEPA by refusing to consider an alternative that would avoid timber production in unsuitable prescriptions. And it violated NEPA by failing to assess and disclose the impact of the Cooper Creek Project on roadless areas.

10. Conservation Groups therefore seek a declaration that the Forest Service’s authorization of the Cooper Creek Project is unlawful and otherwise arbitrary and capricious, and an injunction forbidding the implementation of the Cooper Creek Project until the Forest Service complies with the requirements of law.

#### **Jurisdiction and Venue**

11. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question) because this action arises under the laws of the United States, including the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; the National

Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; and the National Forest Management Act, 16 U.S.C. § 1600 *et seq.* This Court may issue a declaratory judgment and further relief under 28 U.S.C. §§ 2201 (declaratory relief) and 2202 (injunctive relief).

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the Cooper Creek Project lies entirely within the Northern District and a substantial part of the events or omissions giving rise to the claims herein occurred within this District. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because the Forest Service is an agency of the United States, the Forest Service maintains its office and records related to the Cooper Creek Project in this District, Conservation Groups' members reside in this District, and the public lands and resources in question are located in this District.

13. Conservation Groups have exhausted their administrative remedies.

#### **Parties**

14. Plaintiff Georgia ForestWatch ("ForestWatch") is a nonprofit organization founded in 1986 to promote sustainable management that leads to naturally diverse and healthy forests and watersheds on the Chattahoochee-Oconee National Forest; to engage and educate the public to join in this effort; and to preserve this legacy for future generations. ForestWatch's mission is specific to

national forest lands in Georgia. ForestWatch has approximately 700 members and supporters. ForestWatch was heavily engaged in the most recent revision of the CONF Forest Plan, including advocating that certain areas be designated unsuitable for timber production under NFMA.

15. Plaintiff Sierra Club is a national nonprofit organization with 67 chapters and about 800,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass protection of wilderness and public lands, including the Chattahoochee-Oconee National Forest. The Sierra Club's particular interest in this case stems from the Forest Service's failure to protect roadless areas and areas designated unsuitable for timber production within the Chattahoochee-Oconee National Forest and the ecological health of the Cooper Creek area. The Georgia Chapter has approximately 12,000 members who reside in Georgia, many of whom recreate and otherwise spend time within the Chattahoochee-Oconee National Forest.

16. Conservation Groups' members are active participants in the management and conservation of the Chattahoochee-Oconee National Forest,

participating in forest management decisions through comments, site visits, monitoring, scientific analysis, research and education, and meetings with agency staff. Conservation Groups have participated in formal and informal public comment opportunities, meetings, and site visits for the Cooper Creek Project since it was first proposed in 2014.

17. Conservation Groups bring this action on behalf of their members who visit, observe, photograph, work, hunt, fish, volunteer, recreate in, or otherwise use and enjoy the Cooper Creek Project area, surrounding forest lands, and the area's recreational resources including the Duncan Ridge Trail. These members derive scientific, aesthetic, educational, professional, spiritual, and recreational benefits from these areas and are harmed by the Forest Service's actions, which put these benefits at risk. Conservation Groups' member(s) have observed and are aware of the negative impacts to forests, soils, and waters caused by logging in nearby portions of the Chattahoochee-Oconee National Forest. Conservation Groups' member(s) have observed such negative impacts in recent projects on this Ranger District, including in areas designated unsuitable for timber production.

18. Conservation Groups' member(s) have personally hiked, led group hikes, and taken photographs in the Cooper Creek Project area, including within

the specific areas where logging will occur; made scientific observations of the forests in the Cooper Creek Project area, including within areas where logging will occur; fished Bryant Creek and Pretty Branch for native brook trout in the Cooper Creek Project area in the immediate vicinity and downstream of where logging will occur; enjoyed scenic driving in the Cooper Creek Project area, including on roads from which areas that will be logged can be observed; and derived spiritual and aesthetic enjoyment from spending time in the Cooper Creek Project area, with the intention to do so again in the future. If the Cooper Creek Project is implemented, Conservation Groups' members' use and enjoyment of the Cooper Creek Project area would be harmed by the removal of forest, damage to soils, and sediment pollution.

19. Conservation Groups' members value those areas of the Chattahoochee-Oconee National Forest that are relatively untouched by man and specifically seek out those areas for solitude and backcountry experiences. Those areas are becoming increasingly rare on the forest. The Project would negatively impact two large, contiguous, un-fragmented blocks of forest that overlap the Cooper Creek Project area: an area called Duncan Ridge and another called Board Camp. Conservation Groups' members currently visit these areas because of their relatively pristine condition but will do so less if the Project is implemented.



20. Defendant United States Forest Service is a federal agency located within the Department of Agriculture, and is charged with managing the public lands and resources in the Chattahoochee-Oconee National Forest, including the Cooper Creek Project area, in accordance and compliance with applicable federal and state laws and regulations.

### **Legal Background**

#### **National Forest Management Act**

21. NFMA requires the Forest Service to “develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System.” 16 U.S.C. § 1604(a).

22. Forest plans must “provide for multiple use and sustained yield . . . and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness.” *Id.* § 1604(e)(1).

23. Coordination of multiple uses is achieved through two mechanisms under the Forest Service’s 1982 Forest Planning Rule (under which the CONF Forest Plan was written). First, forest plans must include “multiple-use goals and objectives” that apply forest-wide. 36 C.F.R. § 219.11(b) (1982).

24. Second, forest plans must also provide “prescriptions,” *id.* § 219.11(c), which detail “[m]anagement practices . . . to attain multiple-use and

other goals and objectives,” *id.* § 219.3. The “prescription” applies to a “specific area,” not forest-wide. *Id.* § 219.3. Each prescription has “associated standards and guidelines.” *Id.* § 219.11(c). The combination of different management prescriptions across the forest is designed to meet the overall, forest-wide management objectives for the various multiple uses. *See id.* § 219.14(c).

25. NFMA requires the Forest Service to identify lands “which are not suited for timber production.” 16 U.S.C. § 1604(k). Timber production is the “purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.” 36 C.F.R. § 219.3 (1982). Lands are designated unsuitable if, among other reasons, timber production would limit “[o]ther management objectives” for the area. *Id.* § 219.14(c)(2).

26. On lands unsuitable for timber production, the Forest Service “shall assure that, except for salvage sales or sales necessitated to protect other multiple-use values, no timber harvesting shall occur on such lands.” 16 U.S.C. § 1604(k).

27. On the Chattahoochee-Oconee National Forest the suitability determination is documented as a standard for each prescription. *See, e.g.*, CONF Forest Plan, 3-7. Changing a prescription from unsuitable to suitable requires amending a forest plan.

28. All site-specific projects, including the Cooper Creek Project, must be consistent with the CONF Forest Plan. 16 U.S.C. § 1604(i). The CONF Forest Plan must be consistent with NFMA.

### **National Environmental Policy Act**

29. NEPA requires the Forest Service to specify the underlying purpose and need for a project. *See* 40 C.F.R. § 1502.13 (1978).

30. The Forest Service then uses the purpose of the project to develop and assess reasonable alternatives to its proposed action. Ultimately, NEPA requires the Forest Service to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E); *see* 40 C.F.R. § 1502.14(a), 1508.9(b) (1978).

31. NEPA also requires the Forest Service to disclose and analyze the environmental effects of a proposed action. 40 C.F.R. § 1500.1(b) (1978). Specifically, “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.*

32. For actions that may significantly affect the human environment, NEPA requires federal agencies to prepare an Environmental Impact Statement (“EIS”). 42 U.S.C. § 4332(C). The Forest Service may prepare an Environmental Assessment (“EA”) in order to determine whether an EIS is required. 36 C.F.R. § 220.7(a) (2008).

33. An EA should be more concise than an EIS, but it still must “provide sufficient evidence and analysis for determining whether to prepare an [EIS].” 40 C.F.R. § 1508.9 (1978).

34. The EA must discuss, among other things, “the environmental impacts of the proposed action and alternatives.” *Id.* Consideration of impacts must include direct, indirect, and cumulative impacts. 40 C.F.R. §§ 1508.8, 1508.7, 1502.16 (1978).

35. The EA must also consider the context and intensity of proposed actions. 40 C.F.R. § 1508.27 (1978). To consider context, “the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality.” *Id.* § 1508.27(a). Intensity “refers to the severity of impact.” *Id.* § 1508.27(b). When assessing intensity, agencies must consider unique characteristics of the area; the degree to which the action may represent a decision in principle about a future

consideration; and the degree to which effects on the environment are likely to be highly controversial. *See id.*

36. Under these regulations, the Forest Service must consider the effects of logging and road building on roadless areas that are eligible for inclusion in the National Wilderness Preservation System, 16 U.S.C. § 1131, regardless of whether those areas have been formally designated as an “inventoried roadless area” or “potential wilderness area,” or whether they simply meet the relevant roadless criteria (now found in Forest Service Handbook 1909.12, Ch. 70 (2015)) with no formal designation. The consequences of logging in roadless areas must be considered for at least two reasons. First, roadless areas have certain attributes – such as water resources, soils, wildlife habitat, and recreation opportunities – that possess independent environmental significance and must be analyzed. Second, impacts to roadless areas must be disclosed because of their potential for designation as wilderness areas under the Wilderness Act of 1964.

37. If the EA reveals that the action may have significant impacts, then an EIS must be prepared. Otherwise, the action may proceed with a Decision Notice and Finding of No Significant Impact (together, “DN and FONSI”). 36 C.F.R. § 218.2 (2013).

38. For all projects subject to NEPA requirements, the Forest Service must consider and respond to “public and agency comments” on the agency’s NEPA documents. 36 C.F.R. § 220.4(c)(2) (2008).

### **Administrative Procedure Act**

39. The Administrative Procedure Act (“APA”) requires a reviewing court to set aside final agency action if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. § 706. Questions of law are reviewed de novo, while findings of fact are reviewed under the arbitrary and capricious standard. Under the arbitrary and capricious standard, the reviewing court must look at whether the agency relied on factors that Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a different view or the product of agency expertise. The reviewing court may not supply a reasoned basis for the agency’s action that the agency itself has not given.

### **Factual Background**

#### **Forest Plan and Suitability for Timber Production**

40. Areas are designated suitable or unsuitable for timber production during the forest plan revision process. 16 U.S.C. § 1604(k). The Chattahoochee-

Oconee Forest Plan was last revised in 2004 using the Forest Service's 1982 Forest Planning Rule, 36 C.F.R. Part 219 (1982), which has now been superseded. Any amendments to the CONF Forest Plan would be subject to the Forest Service's 2012 Planning Rule, 36 C.F.R. Part 219 (2012).

41. The 2004 CONF Forest Plan revision took years to complete and an important issue was deciding which areas of the forest should be designated suitable for timber production. Ultimately, the CONF Forest Plan divided the forest into 42 noncontiguous management prescriptions. CONF Forest Plan at 3-3 to 3-4. Each prescription was designated suitable or unsuitable for timber production. Over half of the Chattahoochee-Oconee National Forest was allocated to prescriptions designated suitable for timber production.

42. Two prescriptions on the Chattahoochee-Oconee National Forest emphasize dispersed recreation. Prescription 7.E.1 "Dispersed Recreation Areas" was designated unsuitable for timber production because timber production would preclude the achievement of other non-timber management objectives for that prescription. CONF Forest Plan, App'x F, F-12. The prescription is managed "to improve the settings for non-formal outdoor recreation in a manner that protects and restores the health, diversity, and productivity of the watersheds." CONF Forest Plan 3-123. "The predominant landscape is natural appearing..." *Id.*

43. Prescription 7.E.2 “Dispersed Recreation Areas with Vegetation Management” was designated suitable for timber production “in order to maintain the long-term goals of a diverse and vigorous forest for scenery, recreation, and wildlife.” CONF Forest Plan, 3-126. Prescription 7.E.2 is to be managed “to provide a diversity of wildlife habitats to enhance the dispersed recreation experience, including bird watching, fishing, hunting, and wildlife viewing.” CONF Forest Plan, 3-128.

44. Timber production occurs on the Chattahoochee-Oconee National Forest, but the Forest Service does not plan timber sales on the forest for the *sole* purpose of timber production. Instead, timber production is paired with other forest objectives and timber is produced “as a result of providing desired conditions of wildlife habitat, visual quality, forest health or other vegetation-associated values.” CONF Forest Plan, App’x F, F-31; *see also* CONF Forest Plan 2-25 (“wood products” are provided “as an outcome of achieving non-timber objectives”). “Among wildlife habitats, the greatest attention will often focus on the provision of early successional habitat.” CONF Forest Plan, App’x F, F-31. Early-successional forest is generally defined as forest 0-10 years old. *Id.* at F-32. Restated, timber production through “[r]egular, periodic timber harvest . . . is



associated in the . . . Forest plan with an early-successional wildlife habitat objective.” Forest Plan Final Environmental Impact Statement, 3-541.

45. The early-successional wildlife habitat objective for unsuitable Prescription 7.E.1 limits early-successional habitat created naturally or otherwise to 4-percent or less of the area. CONF Forest Plan, 3-125. Prescription 7.E.1 can have *no* early-successional habitat and comply with the Prescription’s objectives and standards. The early-successional wildlife habitat objective for suitable Prescription 7.E.2 is four to ten percent of the area. CONF Forest Plan, 3-128.

#### **The Cooper Creek Project**

46. The Cooper Creek Project is located on the Blue Ridge Ranger District of the Chattahoochee-Oconee National Forest, in Union County, GA, near Blairsville. The stated purpose of the Project is to “restore native plant communities, enhance wildlife habitat conditions, and improve forest health.” Cooper Creek Final Environmental Assessment (“Final EA”), 2 (July 2018). Timber production activities proposed in the Project will occur in Prescriptions 7.E.1 (unsuitable) and 7.E.2 (suitable), among others.

47. In May 2014, the Forest Service released a scoping notice for the Cooper Creek Project contemplating 2,315 acres of commercial timber harvest, 1,679 acres of noncommercial vegetation treatments (felling trees and leaving them

onsite), and 11,842 acres of prescribed burning. The scoping notice disclosed that the Project was intended to further eight goals, including the creation of early-successional habitat, none of which are specific to Prescription 7.E.1.

48. The scoping notice did not disclose to the public that the Forest Service was proposing commercial logging operations in a prescription designated unsuitable for timber production under NFMA.

49. Comparing the Project proposal to maps of the area and CONF Forest Plan requirements, Conservation Groups discovered that the agency was proposing approximately 850 acres of commercial timber harvest to further general, forest-wide goals in unsuitable Prescription 7.E.1, including regeneration harvests to create early-successional habitat. The agency was also proposing approximately 861 acres of “midstory” treatments in Prescription 7.E.1.

50. Midstory treatments involve cutting mid-canopy trees and leaving them onsite. Midstory treatments are described in the Forest Plan as a “prep cut” for a future shelterwood timber harvest. Forest Plan, App’x F, F-26. The shelterwood silvicultural approach encourages new tree growth, through management activities such as midstory treatments, beneath an existing canopy of trees. Once the new tree growth is sufficient, the existing canopy is removed through timber harvest. *See id.*

51. The midstory treatments for the Cooper Creek Project are intended to grow oaks “at least 4.5 feet tall in preparation for stand regeneration,” *i.e.*, a future timber harvest. Final EA, 13.

52. The CONF Forest Plan recognizes the important values roadless and unroaded areas provide, instructing the Forest Service to “[m]anage wilderness, roadless, and other un-roaded areas to provide the social and ecological benefits that only they can offer.” CONF Forest Plan, 2-37. But the Cooper Creek Project scoping notice also did not disclose that the Project would overlap with roadless areas including the Board Camp and Duncan Ridge areas.

53. The Board Camp and Duncan Ridge areas meet current criteria from the Forest Service Handbook 1909.12, chapter 70, for inclusion in the next potential wilderness inventory.

54. The Board Camp area is approximately 5,654 acres in size. It only contains low-standard roads which dead-end into the area, and there are no recent timber harvests in the area. In its current condition, the Board Camp area would be eligible for inclusion in the next potential wilderness inventory.

55. The Duncan Ridge area is approximately 7,119 acres in size. This area lacks permanent roads and there are no recent timber harvests in the area. In

its current condition, the Duncan Ridge area would be eligible for inclusion in the next potential wilderness inventory.

56. The Cooper Creek Project will log and build temporary roads in both of these areas, which will negatively impact their predominantly natural appearance and roadless nature.

57. Conservation Groups identified the Project's overlap with unsuitable prescriptions and roadless areas during their review of the Forest Service's proposal and timely brought those issues to the Forest Service's attention.

58. On June 6, 2014, Conservation Groups submitted scoping comments advising the Forest Service that the commercial logging and midstory treatment proposed for Prescription 7.E.1 violated the Prescription's unsuitable designation under NFMA. It was not necessary to site either activity in Prescription 7.E.1 to fulfill the Project's purpose or to meet Forest Plan goals identified by the Forest Service as priorities for the Project; those goals could have been met in other prescriptions.

59. In their comments, Conservation Groups noted that commercial timber harvest was authorized in unsuitable Prescription 7.E.1 in another recent timber project in the Blue Ridge Ranger District. *See* Scoping Comments, 21. That project was called the Brawley Mountain Project.

60. The purpose of the Brawley Mountain Project was to create habitat for a specific migratory bird, the Golden-winged Warbler. Harvest activities to benefit the Golden-winged warbler were located in Prescription 7.E.1 because the only population of Golden-winged Warblers in Georgia was located within that prescription.

61. Unlike the Brawley Mountain Project, which required activities in a specific area to benefit a specific species, Conservation Groups noted in their comments that the objectives of the Cooper Creek Project did not necessitate specific activities in unsuitable Prescription 7.E.1. Scoping Comments, 21-22.

62. Conservation Groups included with their comments photos documenting adverse impacts to soils and forest resources from the Brawley Mountain Project in Prescription 7.E.1.

63. Conservation Groups asked the Forest Service to redraw the Project to avoid timber production and midstory treatments in areas designated as unsuitable under the CONF Forest Plan. In their scoping comments, Conservation Groups also asked the Forest Service to develop a project alternative that, among other things, “avoids commercial logging or activity in preparation for future commercial logging in prescription 7.E.1 . . . [and] focuses solely on sound,

scientifically supported ecological restoration which is appropriate for the site proposed.” Scoping Comments, 33.

64. Conservation Groups’ scoping comments also noted that the Project contemplated logging and temporary road construction in roadless areas including the Board Camp and Duncan Ridge areas. Conservation Groups explained that “the project’s impacts on their roadless qualifications, roadless characteristics, and unroaded attributes must be considered, under NEPA.” Scoping Comments, 30.

65. In December 2015, the Forest Service published a draft Environmental Assessment (“December 2015 EA”) for the Project. The December 2015 EA again failed to disclose to the public that the Forest Service was proposing logging activities in a prescription designated unsuitable for timber production under NFMA. The December 2015 EA did not identify compliance with NFMA and its restrictions on activities in unsuitable areas as a “relevant issue.” December 2015 EA, 6-8. “Relevant issues” were used to formulate alternatives and analyze environmental effects. *Id.* at 6.

66. The December 2015 EA did not disclose the existence of the Board Camp and Duncan Ridge roadless areas nor assess impacts to their roadless character or wilderness eligibility. The December 2015 EA also did not assess the context or intensity of those impacts.

67. In the December 2015 EA the Forest Service presented a new project alternative developed in “response to the issues raised in scoping and factors such as access and operability.” December 2015 EA, 18. The new alternative, however, retained commercial logging and “midstory treatments” in the unsuitable Prescription 7.E.1.

68. The Forest Service’s December 2015 EA refused to consider the project alternative requested by Conservation Groups’ scoping comments based on the assertion that the:

restrictions on forest management activities proposed in this alternative would not meet the purpose and need for the project for a number of reasons including . . . Commercial logging and non-commercial activities are permitted in Management Prescription[] 7.E.1 . . . to meet Forest Plan Goals and Objectives which would be substantially reduced if restricted in this manner.

December 2015 EA, 28.

69. Conservation Groups submitted timely comments on the December 2015 EA on February 5, 2016. The comments again requested that the Forest Service abandon or relocate the commercial timber harvest and midstory treatments proposed for Prescription 7.E.1.

70. Conservation Groups also explained that the Forest Service violated NEPA by refusing to consider their proposed alternative merely because it “may not allow the agency to meet its objectives to the same degree” as the proposed

action. December 2015 EA Comments, 53. Conservation Groups reiterated their request that the Forest Service consider an alternative that, among other things, avoided timber production activities in prescriptions designated unsuitable for timber production.

71. Conservation Groups' comments also explained that the Board Camp and Duncan Ridge roadless areas met the agency's criteria for inclusion in the next inventory of areas eligible for potential wilderness designation. As a result, Conservation Groups noted that the Forest Service was obligated to explain the effect the Project would have on their existing wilderness character and their potential for inclusion in the wilderness inventory.

72. On March 30, 2016, Conservation Groups met with the Forest Service to discuss the concerns raised in their comments on the December 2015 EA. At that meeting, Georgia ForestWatch offered to submit a set of specific changes to the Cooper Creek Project which the Forest Service agreed to review.

73. In April 2016, Conservation Groups presented to the Forest Service a full project alternative developed by the forest ecologist at ForestWatch. The alternative was developed through field inspections of areas. The alternative avoided commercial logging and midstory treatments in Prescription 7.E.1.



74. Conservation Groups' alternative recommended specific vegetation management techniques (commercial and noncommercial) in specifically identified areas. The majority of the areas proposed for vegetation management were also selected for vegetation management in Forest Service alternatives. Conservation Groups explained how their alternative met the purpose for the Project. Instead of proposing commercial logging in unsuitable Prescription 7.E.1, Conservation Groups recommended new areas in suitable prescriptions for commercial timber harvest to help the agency meet timber production objectives. Conservation Groups' alternative also incorporated commercial timber harvest in suitable prescriptions that was included in Forest Service alternatives. In total, Conservation Groups' alternative proposed 820 acres of commercial timber harvest in suitable prescriptions.

75. On November 12, 2016, Conservation Groups wrote the Forest Service offering to discuss the alternative presented to the agency in April 2016. As of that date, the Forest Service had not responded to Conservation Groups' proposal.

76. On March 16, 2017, Conservation Groups met with the Forest Service to further discuss the proposed commercial logging and midstory treatments in

unsuitable Prescription 7.E.1. Conservation Groups followed that meeting with a May 24, 2017, letter further explaining their concerns.

77. In January 2018 the Forest Service released a revised EA (“January 2018 EA”) and Draft Decision Notice and Finding of No Significant Impact (“Draft DN and FONSI”).

78. For the first time, the Draft DN and FONSI disclosed to the public that the Forest Service was planning commercial timber harvest and midstory treatments in prescriptions designated unsuitable for timber production under NFMA. The Draft DN and FONSI confirmed that the midstory treatments were in preparation for a future commercial timber harvest: “[a]lthough the midstory treatments are a noncommercial activity, they are considered a preparatory step toward commercial harvest activity in the future.” Draft DN and FONSI, 3.

79. The Forest Service also reduced the midstory treatment acreage in Prescription 7.E.1 “to 4% of the area to match the Early Successional Forest Habitat Objective” for the prescription. *Id.* Midstory treatment does not create early-successional habitat, though the CONF Forest Plan would limit creating early-successional habitat through future regeneration timber harvests, in excess of the four-percent maximum for the Prescription.

80. The January 2018 EA rejected the alternative proposed by Conservation Groups using the same language, quoted verbatim, that the Forest Service used to reject the request for such an alternative in the December 2015 EA. *Compare* December 2015 EA, 28 *with* January 2018 EA, 27-28. The January 2018 EA further stated that “[b]ecause [the alternative] does not address the purpose and need of this project it has been eliminated from detailed study.” January 2018 EA, 28.

81. The Project’s purpose (namely, “to restore native plant communities, enhance wildlife habitat conditions, and improve forest health,” January 2018 EA, 2) is not specific to any prescription or location.

82. Conservation Groups explained how their proposed alternative met the Project’s purpose. Conservation Groups’ alternative proposed the exact same types of vegetation treatments the Forest Service proposed in its preferred alternative, with only one exception: Conservation Groups omitted attempts to create a specific type of forest called woodlands from their alternative. The Project’s purpose does not require woodland creation.

83. Neither the January 2018 EA nor the Draft DN and FONSI disclosed the existence of the Board Camp and Duncan Ridge roadless areas, nor assessed the Project’s effects on the wilderness character or future eligibility of those areas.

The Forest Service included an appendix titled “Response to Comments” with the January 2018 EA that rejected Conservation Groups’ concerns, stating: “The project don’t [*sic*] cover any Roadless areas in the forest. The effects of logging and road construction is [*sic*] disclosed in the EA.” January 2018 EA, App’x K, 426.

84. Conservation Groups filed a timely objection to the Draft DN and FONSI on March 19, 2018.

85. The Forest Supervisor responded to Conservation Groups’ objection in writing on July 17, 2018, stating that “[b]oth the National Forest Management Act . . . and the [1982 planning regulations] allow for the harvesting of timber on lands classified as ‘not suited for timber production’ under certain conditions.” Response to Objection, 6. Without further explanation, the Forest Supervisor then concluded that the Project’s “proposed harvesting activities on the lands that are classified as not suited for timber production meet those conditions.” *Id.*

86. The Forest Supervisor also instructed the District Ranger to revise the sentence in the Draft DN and FONSI stating that the proposed midstory treatments were “a preparatory step toward commercial harvest activity in the future.” Response to Objection, 4. That sentence was deleted from the Final Decision Notice and Finding of No Significant Impact (“Final DN and FONSI”).

87. The Forest Service issued its final agency decision by releasing a Final DN and FONSI and Final EA in August 2018. The final Project includes over 1,330 acres of commercial timber harvest, approximately 600 acres of noncommercial vegetation management, 589 acres of herbicide application, and 11,842 acres of prescribed burning.

88. The Final EA asserts that the Project furthers eight goals from the Forest Plan that apply forest-wide, including the creation of early-successional wildlife habitat. Final EA, 3-5. None of those goals, nor the Project's purpose and need, are specific to Prescription 7.E.1.

89. The final Project retains nearly 300 acres of commercial logging, including regeneration harvests to create early-successional habitat, in Prescription 7.E.1.

90. The final Project also includes approximately 110 acres of midstory treatments in unsuitable Prescription 7.E.1 intended to prepare for "stand regeneration." Final EA, 13.

91. The Final DN and FONSI asserts that "[t]he purpose and need for all vegetation management treatments approved in [Prescription] 7.E.1 is to benefit non-game and game wildlife." Final DN and FONSI, 16.

92. Nowhere does either the Final DN and FONSI or Final EA explain that the proposed commercial logging and midstory activities must necessarily be located in Prescription 7.E.1.

93. The Forest Service added a new appendix to its Final EA comparing the alternative Conservation Groups presented to the agency in April 2016 with the chosen alternative. The appendix explained that the Forest Service did not “consider” Conservation Groups’ proposal to exclude commercial timber harvest from Prescription 7.E.1 because “[e]liminating all commercial timber harvest [in the prescription] . . . would not meet the Forest Plan Goals and Objectives or purpose and need of the project.” Final EA, App’x L, 1. The appendix did not offer an explanation why eliminating commercial timber harvest in Prescription 7.E.1 and replacing it with commercial timber harvest in another prescription would not meet the purpose and need of the project.

94. The purpose and need for the Cooper Creek Project is not specific to Prescription 7.E.1. None of the eight goals cited in the Final EA that the Project was designed to further are specific to Prescription 7.E.1.

95. The Forest Service also rejected several other elements of Conservation Groups’ alternative, asserting that they did not meet CONF Forest Plan Goals and Objectives or the purpose and need of the Project. Conservation

Groups' proposal to create early-successional habitat in younger stands of trees outside of Prescription 7.E.1 was rejected because the identified stands of trees were "likely . . . of marginal commercial value and as a result likely would not be feasibly implemented with a commercial timber sale." *Id.* at 4.

96. The Final EA acknowledged Conservation Groups' comments related to the Board Camp and Duncan Ridge roadless areas but dismissed them, stating that "[b]ecause the Forest Service is not proposing any new permanent roads, the project would not diminish the unroaded character of these . . . areas of concern." Final EA, 8. The Forest Service further found that "the potential impacts of the proposed silvicultural treatments and the proposed temporary road segments would not be an irreversible and irretrievable commitment of resources that would alter the characteristics within the . . . areas for reconsideration as possible wilderness areas using the criteria established in the revised Forest Service Handbook 1909.12, chapter 70." *Id.* at 8-9.

97. The criteria in the revised Forest Service Handbook 1909.12, chapter 70 state that "vegetation treatments," and "logging and prior road construction" can preclude areas from inclusion in the potential wilderness inventory when those treatments, logging, or road construction are substantially noticeable. Forest Service Handbook 1909.12, Ch. 71.22b (2015).

**Claims for Relief**

**Count 1: Forest Service Approval of the Cooper Creek Project Violated the National Forest Management Act**

98. Conservation Groups incorporate and restate by reference the allegations of paragraphs 1 through 97 of this Complaint as if set forth in full.

99. The commercial timber harvests, including regeneration harvests to create early-successional habitat, proposed for Prescription 7.E.1 constitute timber production.

100. The midstory treatments in preparation for future commercial logging proposed for Prescription 7.E.1 constitute timber production.

101. Under NFMA, timber harvest is prohibited on lands designated unsuitable for timber production except under two exceptions: 1) salvage sales, and 2) “sales necessitated to protect other multiple-use values.” 16 U.S.C. § 1604(k). The Cooper Creek Project meets neither exception to the prohibition on timber harvesting in unsuitable prescriptions.

102. The Cooper Creek Project is not a salvage sale.

103. The commercial logging and midstory treatments proposed by the Forest Service in Prescription 7.E.1 are not “necessitated to protect other multiple-use values.”



104. The Forest Service indicates that it intends to log in Prescription 7.E.1 to advance forest-wide goals for improving wildlife habitat, including creating early-successional habitat. Those goals can be met by pursuing logging elsewhere on the forest, including in suitable prescriptions; the goals are not specific to Prescription 7.E.1 or the locations slated for logging within Prescription 7.E.1. The Forest Service can advance forest-wide goals related to wildlife habitat without the commercial logging and midstory treatments proposed for Prescription 7.E.1.

105. Timber production on the Chattahoochee-Oconee National Forest serves the dual purpose of advancing forest-wide goals including improving wildlife habitat. The Forest Service has explained it will produce timber by creating early-successional habitat in particular. However, unless habitat improvement is specifically necessitated in an unsuitable prescription, the general objective of improving wildlife habitat does not relieve the Forest Service of complying with NFMA's prohibition on timber production in unsuitable areas. The Forest Service's contrary approach – that it may pursue general, forest-wide goals in unsuitable prescriptions even if those activities include timber production – eliminates any distinction between areas designated suitable for timber production and unsuitable areas, a distinction required by NFMA.

106. If the Forest Service is unable to meet desired levels of timber harvest for early-successional habitat and timber production without logging in unsuitable areas, its recourse is to amend the CONF Forest Plan.

107. The Forest Service's interpretation and application of NFMA, as applied to the Cooper Creek Project, is contrary to law and is subject to de novo review and reversal pursuant to 5 U.S.C. § 706.

**Count 2: The Forest Service Erred in Refusing to Consider the Reasonable Alternative Recommended by Conservation Groups**

108. Conservation Groups incorporate and restate by reference the allegations of paragraphs 1 through 107 of this Complaint as if set forth in full.

109. Under NEPA, the Forest Service must "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E).

110. Conservation Groups presented the Forest Service with a reasonable project alternative in their June 2014 scoping comments, in their comments on the December 2015 draft EA, and through formal correspondence including an April 2016 letter explaining the project alternative in detail.

111. The Forest Service refused to consider the alternative in detail, asserting the alternative “would not meet the Forest Plan Goals and Objectives or purpose and need for the project.”

112. That explanation runs counter to the evidence before the agency. The alternative presented by Conservation Groups will meet CONF Forest Plan Goals and Objectives and the purpose and need for the Cooper Creek Project. Conservation Groups’ alternative proposed the same treatments being proposed by the Forest Service only in different areas and in different quantities, with the exception of woodlands. The purpose for the Project is not specific to woodlands. The purpose also does not require management activities in specific areas or in specific quantities.

113. The Forest Service’s unreasoned rejection of Conservation Groups’ proposed alternative, and failure to objectively consider the alternative, violates NEPA and its implementing regulations and is arbitrary, capricious, otherwise not in accordance with law, and subject to reversal pursuant to 5 U.S.C. § 706.

**Count 3: The Forest Service Failed to Assess and Disclose the Environmental Impacts of the Cooper Creek Project on Roadless Areas**

114. Conservation Groups incorporate and restate by reference the allegations of paragraphs 1 through 113 of this Complaint as if set forth in full.

115. An EA must disclose and assess “the environmental impacts of the proposed action and alternatives.” 40 C.F.R. § 1508.9(b) (1978). In order to determine if an EIS is necessary, an EA must assess and disclose the unique characteristics of the geographic area where a project will take place and the degree to which the action may represent a decision in principle about a future consideration. *Id.* § 1508.27(b). This includes assessment and disclosure of a project’s impact on roadless areas that meet wilderness inventory criteria from the Forest Service Handbook 1909.12, chapter 70 (2015).

116. The Board Camp and Duncan Ridge roadless areas meet the criteria from the Forest Service Handbook 1909.12, chapter 70 (2015) for inclusion in the next potential wilderness inventory.

117. The Cooper Creek Project proposes logging and temporary road construction in the Board Camp and Duncan Ridge roadless areas.

118. The Forest Service did not acknowledge that these two areas would be affected until after the objection process concluded and after opportunities for public comment.

119. The Final EA states that the Cooper Creek Project will not diminish the unroaded character of these areas because the Forest Service is not proposing to construct any new permanent roads in the areas.

120. Nowhere does the Forest Service disclose the effect that logging and temporary road construction will have on the unroaded character of the Duncan Ridge and Board Camp roadless areas. Logging and temporary road construction can diminish the present character and future eligibility of these areas. By ignoring the effect of logging and temporary road construction on the areas, the Forest Service failed to consider an important aspect of the problem.

121. The Final EA also states that logging and temporary road construction in these areas will not preclude their consideration for inclusion in the potential wilderness inventory because logging and temporary road construction are not “an irreversible and irretrievable commitment of resources.” That finding is contrary to law.

122. The agency’s assessment and disclosure of the impact of the Cooper Creek Project on the Duncan Ridge and Board Camp roadless areas is arbitrary, capricious, contrary to law, and subject to reversal pursuant to 5 U.S.C. § 706.

**Request for Relief**

WHEREFORE, Conservation Groups respectfully request that this Court enter a judgment in favor of Conservation Groups and against the Forest Service and enter an Order:

A. Declaring that the Forest Service's approval of the Cooper Creek Project violated the National Environmental Policy Act and the National Forest Management Act;

B. Vacating the Final DN and FONSI for the Project;

C. Granting preliminary and permanent injunctive relief to ensure that the Forest Service complies with the requirements of the National Forest Management Act and National Environmental Policy Act, and ensuring the Forest Service takes no further action to implement the Cooper Creek Project until complying with the law;

D. Allowing Conservation Groups to recover their costs, including reasonable attorneys' fees, incurred in connection with this action, 28 U.S.C. § 2412(d);

E. Granting any further relief as the Court considers just in order to protect the interests of Conservation Groups, to remedy the violations of law alleged in this Complaint, and to protect public lands and the public interest.

This 18<sup>th</sup> day of April 2019.

/s/ Megan Huynh

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sevans@selcnc.org  
*pro hac vice pending*





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

*Chief Office*  
RECEIVED APR 23 2019

**UNITED STATES DISTRICT COURT**  
for the  
Northern District of Georgia

Georgia ForestWatch; Sierra Club )

\_\_\_\_\_ )  
*Plaintiff(s)* )

v. )

United States Forest Service, an agency of the )  
United States Department of Agriculture )

\_\_\_\_\_ )  
*Defendant(s)* )

Civil Action No. 2:19-cv-77-RWS

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* Vicki Christiansen  
Chief  
United States Forest Service  
1400 Independence Ave., SW  
Washington, DC 20250

A lawsuit has been filed against you.

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

Megan Huynh  
Southern Environmental Law Center  
Ten 10th Street NW, Suite 1050  
Atlanta, GA 30309  
(404) 521-9900  
mhuynh@selcga.org

Patrick Hunter  
Sam Evans  
Southern Environmental Law Center  
48 Patton Ave., Ste. 304, Asheville, NC 28801  
(828) 258-2023  
phunter@selcnc.org; sevans@selcnc.org

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

CLERK OF COURT  
JAMES N. HATTEN

Date: April 19, 2019



s/Daniel Ross  
*Signature of Clerk or Deputy Clerk*

Civil Action No. 2:19-cv-77-RWS

**PROOF OF SERVICE**

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

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

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

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

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

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

Other *(specify)*:

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

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

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

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

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

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

Additional information regarding attempted service, etc:

JS44 (Rev. 6/2017 NDGA)

**CIVIL COVER SHEET**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

<p><b>I. (a) PLAINTIFF(S)</b> Georgia ForestWatch; Sierra Club</p> <p><b>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF</b> <u>Lumpkin County</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) ATTORNEYS</b> (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)  (see attached)</p>	<p><b>DEFENDANT(S)</b> U.S. Forest Service, an agency of the U.S. Dept. of Agriculture</p> <p><b>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT</b> _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p> <p><b>ATTORNEYS</b> (IF KNOWN)</p>
--	---

**II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)

<input type="checkbox"/> 1 U.S. GOVERNMENT PLAINTIFF	<input type="checkbox"/> 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
<input checked="" type="checkbox"/> 2 U.S. GOVERNMENT DEFENDANT	<input type="checkbox"/> 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

PLF	DEF	PLF	DEF	
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	CITIZEN OF THIS STATE INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	CITIZEN OF ANOTHER STATE INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY FOREIGN NATION

**IV. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

<input checked="" type="checkbox"/> 1 ORIGINAL PROCEEDING	<input type="checkbox"/> 2 REMOVED FROM STATE COURT	<input type="checkbox"/> 3 REMANDED FROM APPELLATE COURT	<input type="checkbox"/> 4 REINSTATED OR REOPENED	<input type="checkbox"/> 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)	<input type="checkbox"/> 6 MULTIDISTRICT LITIGATION - TRANSFER	<input type="checkbox"/> 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
<input type="checkbox"/> 8 MULTIDISTRICT LITIGATION - DIRECT FILE						

**V. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

5 U.S.C. s 706; 42 U.S.C s 4332; 16 U.S.C. s 1604

unlawful decision approving logging project on Chattahoochee-Oconee National Forest

**(IF COMPLEX, CHECK REASON BELOW)**

<input type="checkbox"/> 1. Unusually large number of parties.	<input type="checkbox"/> 6. Problems locating or preserving evidence
<input type="checkbox"/> 2. Unusually large number of claims or defenses.	<input type="checkbox"/> 7. Pending parallel investigations or actions by government.
<input type="checkbox"/> 3. Factual issues are exceptionally complex	<input type="checkbox"/> 8. Multiple use of experts.
<input type="checkbox"/> 4. Greater than normal volume of evidence.	<input type="checkbox"/> 9. Need for discovery outside United States boundaries.
<input type="checkbox"/> 5. Extended discovery period is needed.	<input type="checkbox"/> 10. Existence of highly technical issues and proof.

**CONTINUED ON REVERSE**

<b>FOR OFFICE USE ONLY</b>			
RECEIPT # _____	AMOUNT \$ _____	APPLYING IFP _____	MAG. JUDGE (IF) _____
JUDGE _____	MAG JUDGE _____ <i>(Referral)</i>	NATURE OF SUIT _____	CAUSE OF ACTION _____

**VI. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

**CONTRACT - "0" MONTHS DISCOVERY TRACK**

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

**CONTRACT - "4" MONTHS DISCOVERY TRACK**

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

**REAL PROPERTY - "4" MONTHS DISCOVERY TRACK**

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

**TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK**

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

**TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK**

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

**BANKRUPTCY - "0" MONTHS DISCOVERY TRACK**

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

**CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK**

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

**IMMIGRATION - "0" MONTHS DISCOVERY TRACK**

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

**PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK**

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

**PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK**

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

**FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK**

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

**LABOR - "4" MONTHS DISCOVERY TRACK**

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

**PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK**

- 820 COPYRIGHTS
- 840 TRADEMARK

**PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK**

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

**SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK**

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

**FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK**

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

**OTHER STATUTES - "4" MONTHS DISCOVERY TRACK**

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

**OTHER STATUTES - "8" MONTHS DISCOVERY TRACK**

- 410 ANTI-TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

**OTHER STATUTES - "0" MONTHS DISCOVERY TRACK**

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

**\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

**VII. REQUESTED IN COMPLAINT:**

- CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ \_\_\_\_\_
- JURY DEMAND  YES  NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

**VIII. RELATED/REFILED CASE(S) IF ANY JUDGE \_\_\_\_\_ DOCKET NO. \_\_\_\_\_**

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

- 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. \_\_\_\_\_, WHICH WAS DISMISSED. This case  IS  IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

*Megan Hopkins (By J. Patrick Hule)*  
SIGNATURE OF ATTORNEY OF RECORD

4/18/19  
DATE