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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PENDLETON DIVISION

**HELLS CANYON PRESERVATION
COUNCIL,**

Plaintiff,

v.

UNITED STATES FOREST SERVICE,

Defendant.

Civil Action No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Environmental Matter)

INTRODUCTION

1. This action seeks: 1) a declaration that the United States Forest Service's decision to construct new Off-Highway Vehicle ("OHV") trails and establish an extensive 144 mile motorized route network within the 38, 283-acre Sled Springs Area of the Wallowa-Whitman

National Forest is in violation of applicable laws and 2) to enjoin the implementation of this decision as delineated in the prayer for relief.

2. The Forest Service's Sled Springs OHV Trail System and Road Management Plan (Sled Springs OHV Project) violates federal environmental statutes, executive orders, and agency regulations intended to protect natural resources, native wildlife, and the overall ecological integrity of our public lands, and to insure informed and well-reasoned decision making.

3. The Forest Service violated the National Environmental Policy Act (NEPA) and its implementing regulations as follows:

a. By refusing to prepare an Environmental Impact Statement (EIS) despite ample evidence in the agency's own record indicating that the construction and designation of a large OHV "play area" may have a significant impact upon natural resources, particularly elk and elk habitat within the Sled Springs area. The Forest Service's failure to prepare an EIS and instead issue a Finding of No Significant Impact (FONSI) is even more unreasonable given the cumulative impact the Sled Springs OHV project will have when added to a landscape already heavily affected from past and present commercial logging, prescribed burning, widespread livestock grazing, and unauthorized OHV use. The Forest Service has also proposed future logging and livestock grazing projects that will continue impairing the wildlife habitat quality of the very same area in which the agency seeks to establish this colossal OHV trail network.

b. By failing to take the requisite 'hard look' required under NEPA by ignoring the negative effects of increased motorized disturbance on species like elk and by failing to gather and present in the Environmental Assessment (EA) information necessary to support the agency's finding of non-significance.

c. By failing to develop and analyze an adequate range of alternatives, in particular an alternative in which the Forest Service would implement the requirements of Executive Order 11644, as amended, and Forest Service Travel Management regulation, 36 C.F.R. § 212.5(b)(“Travel Management regulation”).

4. The Forest Service violated its own travel management regulations by failing to identify a “minimum road system” that fully conforms to the regulatory requirements found in 36 C.F.R. § 212.5(b). The Forest Service’s Appeal Response states that it did determine the “minimum system.” Appeal Response, p. 18. However, the Forest Service failed to disclose how the alleged “minimum road system” meets these regulatory requirements. In fact, neither the selected action nor any of the other action alternatives meet the requirements, and as such cannot be the “minimum road system” for the Sled Springs project area.

5. The Forest Service’s Sled Springs Decision fails to implement travel management regulations that fully apply the minimization criteria set forth in Executive Order 11644, as amended by Executive Order 11989. Specifically, the agency failed to develop and adopt an alternative that locates OHV areas and trails in a manner that minimizes impacts to natural resources, in particular an alternative that minimizes harassment to wildlife or significant disruption of wildlife habitats.

6. Lastly, the Forest Service violated the National Forest Management Act (NFMA), its implementing regulations, and the Wallowa Whitman Land and Resource Management Plan (Wallowa Whitman Forest Plan), which require the Forest Service to maintain viable populations of Management Indicator Species (MIS). The Forest Service failed to provide actual viability determinations for MIS such as Rocky Mountain Elk and Northern Goshawk in the EA. Consequently, there are no MIS viability findings in the record, based upon any particular

methodology for assessing species' viability, to support the agency's implicit conclusion that it complied with the NFMA. Moreover, the Sled Springs EA is replete with evidence indicating that the viability of affected MIS will be impaired. The Forest Service itself has cited numerous scientific studies that demonstrate motorized activities represent one of the greatest threats to elk viability. Defendant also repeatedly acknowledges its own uncertainty regarding the overall level of risk posed by the Sled Springs OHV project to the continued viability of MIS within the planning area.

7. The violations of law alleged in this complaint are arbitrary, capricious, and not in accordance with NEPA, NFMA, their implementing regulations, Executive Order 11644, as amended, and Forest Service Travel Management regulations. 5 U.S.C. § 706(2)(A), (D).

8. Plaintiff will seek an award of costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, should it prevail.

JURISDICTION AND VENUE

9. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 (federal question), § 2201 (declaratory relief), § 2202 (injunctive relief), and 28 U.S.C. § 1346 (United States as a defendant). This cause of action arises under the laws of the United States, including the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*; the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*; Executive Order 11644 (as amended by Executive Order 11989); Forest Service Travel Management regulations, 36 C.F.R. Part 212; the National Forest Management Act (NFMA), 16 U.S.C. §§ 1600 *et seq.*; and implementing regulations established pursuant to these federal statutes and executive orders. An actual, justiciable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. § 706.

10. The challenged agency action is final and subject to this Court's review pursuant to 5 U.S.C. §§ 702, 704, & 706.

11. Plaintiffs have exhausted any and all available administrative remedies.

12. Venue is proper in this Court under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, defendants reside in this district, and the public lands and resources and agency records in question are located in this district.

PARTIES

13. Plaintiff HELLS CANYON PRESERVATION COUNCIL ("HCPC") is a nonprofit organization based in La Grande, Oregon with approximately 1,000 members. HCPC works to protect and restore the wildlands, waters, unique habitats and biodiversity of the Hells Canyon-Wallowa and Blue Mountain ecosystems through advocacy, education and collaboration, advancing science-based policy, and protective land management. HCPC has been actively involved in regional and local travel management issues. A major focus of HCPC's work is to prevent and restore resource degradation resulting from motorized activities on federal public lands. HCPC's staff and members regularly visit the Sled Springs area and surrounding watershed. HCPC's staff and members seek to ensure that the Forest Service faithfully and fully implements and complies with federal law in its management of motorized recreation and the natural resources of the Sled Springs area as a means of ensuring that its members' interests are protected. HCPC participated in the underlying decision-making process giving rise to this challenge and brings this challenge on its own behalf and on behalf of its members.

14. HCPC's staff and members hike, hunt, camp, photograph scenery and wildlife, use, and engage in other vocational, scientific, commercial, and recreational activities within the Sled

Springs project area. HCPC's staff and members derive recreational, inspirational, scientific, commercial, and aesthetic benefit from their activities within the Sled Springs area. HCPC's staff and members intend to continue to use and enjoy the Sled Springs area and surrounding forested lands, waters, and canyons frequently and on an ongoing basis in the future.

15. The aesthetic, recreational, scientific, commercial, and spiritual interests of HCPC's staff and members have been and will be adversely affected and irreparably injured by the Forest Service's actions. Their injuries are predicated on unlawful Forest Service actions which have: increased the risk of unsupported and uninformed management and decision-making; compromised the Forest Service's ability to prohibit and mitigate harm to the public lands and wildlife of the Sled Springs area from motorized recreational use; increased the risk of actual, threatened, and imminent environmental harm; and created actual, concrete injuries to HCPC and its interests. Because HCPC seeks to ensure informed decision-making, compliance with Federal law, and the prevention of unacceptable harm to the Sled Springs area and the native species that occupy it from motorized use, HCPC's injuries would be redressed by the relief sought.

16. Defendant FOREST SERVICE is an agency of the United States and is a division of the Department of Agriculture. The Forest Service is responsible for implementing the NEPA, NFMA, their implementing regulations, Executive Order 11644, as amended, and Travel Management regulatory requirements for projects on national forests.

LEGAL BACKGROUND

National Environmental Policy Act

17. The National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, *et seq.*, represents "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1. NEPA recognizes "the critical importance of restoring and maintaining environmental quality," declares

that the Federal government has a continuing responsibility to use “all practicable means” to minimize environmental degradation, and directs that “to the fullest extent possible...the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter.” 42 U.S.C. §§ 4331(a) and 4332(1). NEPA further recognizes the right of each person to enjoy a healthful environment. 42 U.S.C. § 4331(c).

18. The Forest Service, pursuant to NEPA and its implementing regulations, must take a hard look at the direct and indirect environmental consequences of a proposed action to the human environment. *See* 42 U.S.C. § 4332(2)(C)(i); 40 C.F.R. §§ 1502.16, 1508.8, and 1508.14. The regulations ensure that federal agencies consider the environmental impacts of their actions *before* taking those actions.

19. NEPA requires “responsible [federal] officials” to prepare an Environmental Impact Statement (“EIS”) for any “major Federal actions significantly affecting the quality of the human environment.” Under NEPA, an agency must prepare an EIS when an action *may* have a significant environmental effect. 42 U.S.C. § 4332.

20. “Significantly,” for purposes of NEPA, requires the consideration of both context and intensity. 40 C.F.R. § 1508.27. Context refers to the location and interests that would be affected by the proposed action. *Id.* § 1508.27(a). Intensity refers to “the severity of the impact.” *Id.* § 1508.27(b). In evaluating intensity, the agency should consider impacts that may be both beneficial and adverse, unique characteristics of the geographic area, the degree to which effects are likely to be highly controversial, the degree to which effects are highly uncertain, the degree to which the action may establish a precedent for future actions with significant effects, whether the action is related to other actions with cumulatively significant impacts, the degree to

which the action may adversely affect threatened or endangered species or its habitat, and whether the action threatens a violation of federal, state, or local environmental laws. *Id.*

21. The federal agency must “study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. §§ 4332(2)(C)(iii), 4332(E). In considering alternatives, the federal agency must “[r]igorously explore and objectively evaluate all reasonable alternatives” to a proposed action including a “no action” alternative. 40 C.F.R. § 1502.14(a), (d).

Executive Orders 11644 & 11989 and Forest Service Travel Management Regulations

22. On February 8, 1972, President Richard Nixon signed Executive Order 11644 – “Use of Off-road Vehicles on the Public Lands.” The preface of Executive Order 11644 explains the necessity for the order:

The widespread use of [off-road] vehicles on the public lands – often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity – has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

23. Section 3 of Executive Order 11644 mandates that the Forest Service designate “specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted....”

24. Section 3 further mandates the Forest Service to implement travel management regulations that “minimize” adverse impacts to forest resources and “minimize conflicts” between off-road vehicle use and other forest users. Specifically, Section 3 requires the following:

(1) Areas and trails *shall* be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails *shall* be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails *shall* be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands...taking into account noise and other factors. (emphasis added).

25. On May 24, 1977, President Carter signed Executive Order 11989, amending Executive Order 11644 by adding a Section 9. Section 9 obligates the Forest Service to “immediately close” areas or trails “causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands” and to keep such areas or trails closed “until such time” that the Forest Service “determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.”

26. On November 9, 2005, the Forest Service published a “Travel Management Rule” (TMR) to “implement” Executive Order 11644, as amended by Executive Order 11989. 70 Fed. Reg. 68264 (Nov. 9, 2005). As noted in the final version of the TMR:

These Executive orders direct Federal agencies to ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

27. The TMR was promulgated not only to implement the Executive Orders, but to also revise outdated regulations. As the TMR explains:

Current regulations at 36 CFR part 295, which provide for allowing, restricting, or prohibiting motor vehicle travel, were developed when OHVs were less widely available, less powerful, and less capable of cross-country travel than today’s models. The growing popularity and capabilities of OHVs demand new regulations, so that the Forest Service can continue to provide these opportunities while sustaining the health of [National Forest System] lands and resources.

70 Fed. Reg. 68264, 68265.

28. The TMR mandates that each National Forest presumptively eliminate cross-country motor vehicle use and generally restrict motor vehicle use to designated roads and trails. As explained by the TMR, “the magnitude and intensity of motor vehicle use have increased to the point that the intent of [Executive Order] 11644 and [Executive Order] 11989 cannot be met while still allowing unrestricted cross-country travel.” 70 Fed. Reg. 68264, 68265.

29. Travel Management regulations specifically instruct the Forest Service to identify the “minimum road system” for each National Forest or unit therein that is “needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands.”

In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

36 C.F.R. § 212.5(b).

National Forest Management Act

30. The National Forest Management Act (“NFMA”) requires the Forest Service to develop comprehensive land and resource management plans (“Forest Plans”) for each unit of the National Forest System. 16 U.S.C. § 1604(a). Subsequent “plans, permits, contracts, and other instruments for the use and occupancy” of the national forests must be consistent with the local Forest Plan, in this case, the Wallowa-Whitman Forest Plan, issued in 1990. *Id.* § 1604(i); 36 C.F.R. § 219.10(e).

31. NFMA also requires the Forest Service to “provide for diversity of plant and animal

communities” in managing national forests. 16 U.S.C. § 1604(g)(3)(b). To ensure this diversity, NFMA’s implementing regulations, as promulgated in 1982, require that fish and wildlife habitat be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. 36 C.F.R. § 219.19.

32. NFMA regulations further require that “to estimate the effects of each alternative on fish and wildlife populations, certain vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species.” 36 C.F.R. § 219.19(a)(1). These species shall be selected because their population changes are believed to indicate the effects of management activities. *Id.* § 219.19(a)(2). Finally, NFMA regulations require that “habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.” *Id.* § 219.19.

33. To satisfy NFMA’s requirement of maintaining viable populations of MIS, the Wallowa-Whitman Forest Plan designated Rocky Mountain Elk as a MIS, to serve as the indicator of the habitat elk share with numerous other wildlife species, particularly the availability and quality of forage and security habitat (e.g. hiding cover). Elk also serve as a meaningful indicator for those species that are sensitive to human activities and thereby heavily depend upon adequate security habitat. The Sled Springs OHV project additionally raises concerns over Northern Goshawk, an MIS for old growth dependent species.

34. NFMA regulations further require population trends of MIS to be monitored and relationships to habitat changes determined. 36 C.F.R. § 219.19(a)(6). The Wallowa-Whitman Forest Plan provides further monitoring direction, requiring populations of both elk and goshawk to be continuously monitored, with results reported annually. Forest Plan, 5-10.

FACTUAL AND PROCEDURAL BACKGROUND

35. The 38,283-acre Sled Springs OHV project area is located north of Enterprise, Oregon, within the Wallowa Valley Ranger District of the Wallowa-Whitman National Forest. The geologic diversity of the Wallowa Mountains has been described as truly exceptional, and possibly one of the most geologically diverse mountain ranges in the country. The Wallowas rise more than a vertical mile above the sagebrush plains and grasslands of Northeast Oregon, with elevations ranging from 875 feet in neighboring Hells Canyon to the highest summits of the Eagle Cap Wilderness at 9845 feet. The Wallowa-Whitman provides habitat for over 400 species of wildlife. High levels of species diversity can be attributed to the area's diverse habitat conditions, which vary from the warm arid canyonlands of the Snake and Imnaha River drainages, to the montane forests and into the subalpine meadows and alpine tundra atop the high Wallowa mountain peaks.

36. The flat plateaus of the Sled Springs area offer majestic views of deep canyonlands and rimrocks of the Wenaha-Tucannon wilderness to the north. Conifer forest surrounds and extends down into the deep, rocky canyons. Stretches of the Grande Ronde River and its many tributaries wind through the project area and are home to Snake River steelhead, a federally listed threatened species, and Redband trout, an agency designated Sensitive Species. The project area also contains a rare and endemic variety of the Mariposa lily, a sensitive plant species, and management indicator species, including Rocky Mountain Elk, Northern Goshawk, and three woodpecker species. Various neotropical migratory birds also inhabit the project area.

37. The Sled Springs OHV Project area almost certainly serves as an important connectivity corridor for wide ranging carnivores such as gray wolves and wolverine, enabling these rare species to move between distant patches of high quality remote habitat.

38. From time immemorial, the lands and waters of the Sled Springs area have served as bountiful hunting and fishing grounds for the Nez Perce Tribe.

39. The larger Sled Springs Wildlife Management Unit (WMU), which encompasses the project area, continues to be a very popular deer and elk hunting unit for Oregon. Much of the unit's highest quality elk summer range exists within the project boundary. Human disturbance facilitated by roads is the primary factor that limits the quality of summer range on National Forest lands within the Sled Springs WMU.

40. Calf elk recruitment for the Sled Springs WMU has dramatically declined in recent years. Scientific studies have found that disturbance from humans to be a main factor in reduced calf elk survival and subsequent decreases in population growth. Disturbed calf elk expend energy to escape from human disturbance and cow elk that are displaced from their calves are unable to protect their offspring. Human disturbance can result in increased nutritional stress, desertion of offspring, and increased calf movement, all of which result in increased vulnerability to predation.

41. Scientific studies have found that the importance of year-round security areas for elk cannot be overstated if productive elk herds are an objective of public land management and that roads are a primary factor influencing distribution of elk across available habitat. Results from an off-road recreation study performed on the Starkey Research Area of the Wallowa-Whitman National Forest indicates that of the four modes of off-road human transportation studied, OHVs have the greatest effect to elk by causing a flee response at distances farthest from the source of the disturbance, and possibly by displacing elk from preferred security and foraging areas.

42. The Wallowa-Whitman Forest Plan establishes road density standards and guidelines. The intent of these Forest Plan standards and guidelines for roads is to maintain certain levels of

security habitat for elk (and the species for which they are indicators). The Sled Springs Decision authorizes combined motorized route densities (roads plus OHV trails) well in excess of Forest Plan road density standards for the majority of sub-watersheds within the project area.

43. The Sled Springs Decision would result in seventy-five percent of the project area being in a low quality habitat condition for elk, with approximately fourteen percent in moderate condition, and no more (and possibly much less) than eleven percent in high and optimal quality condition.

44. The Sled Springs Decision would also authorize motorized routes within three known Northern Goshawk nest stands. Motorized use would be allowed to occur within these nest stands during the goshawk breeding season. The breeding season is the period when goshawks are most sensitive to disturbance and most likely to fail or abandon nesting.

45. Portions of the project area also provide great opportunities for solitude and quiet recreation, such as the 8,674-acre Tope Creek Inventoried Roadless Area.

46. It is not uncommon for hikers, campers, and hunters to hear the persistent, high-pitched whine of Off-Highway vehicles in and around the project area. Unauthorized OHV use has even been documented in the Tope Creek Inventoried Roadless Area. Currently, the majority of the Wallowa-Whitman is open to unrestrained cross-country OHV use. However, under the direction of the 2005 Travel Management Rule, the Wallowa-Whitman national Forest is required to develop a plan by March, 2010 to close individual roads, trails, and areas to motorized use unless officially designated as “open” on the forest’s motor vehicle use map. Full and effective implementation of the TMR would eliminate most, if not all, cross-country OHV use for each National Forest in the country, including the Wallowa-Whitman.

47. Recreational use of OHVs on federal public lands has grown considerably in recent years. The Chief of the Forest Service has identified unmanaged recreation—especially impacts from OHVs—as one of the greatest threats facing the National Forests today. OHVs have significant, negative impacts on practically every aspect of the natural environment wherever they are used. For example, OHVs degrade air and water quality; impair others’ ability to enjoy natural sights, sounds and smells; and create safety hazards – for OHV users themselves and others. Most natural areas show damage due to the impacts of OHVs. These impacts include, but are not limited to, damage to soils and vegetation; the spread of invasive weeds; harm to wildlife and wildlife habitat; degraded water quality and riparian health; and destruction of cultural resources. Former Chief of the USFS, Dale Bosworth, described the harm OHVs can inflict on Forest Resources: “Each year, the national forests and grasslands get hundreds of miles of unauthorized roads and trails due to repeated cross-country use. We’re seeing more and more erosion, water degradation, and habitat destruction. We’re seeing more and more conflicts between users.” Dale Bosworth, “We Need a New National Debate,” Presentation to Izaak Walton League, 81st Annual Convention, July 17, 2003.

48. In or around September 2003, the Forest Service’s Wallowa Valley Ranger District received a grant from the Oregon State ATV (“All Terrain Vehicle”) Allocation Committee for preparing an environmental assessment (EA) for the development of an OHV trail system in the Sled Springs area.

49. In March, 2006 the Forest Service’s first version of the EA for the Sled Springs OHV project was available for public review and comment. In May, 2007 the Forest Service issued a Decision Notice (DN) and Finding of No Significant Impact (FONSI). In June, 2007 HCPC filed an administrative appeal. Subsequent to HCPC’s administrative appeal, in August, 2007, the

Forest Service acknowledged that its EA needed to be revised and withdrew the Sled Springs OHV Project until such revisions could be made.

50. In December, 2008 the Forest Service issued a revised EA, DN and FONSI. In January, 2009 HCPC filed another administrative appeal objecting to various aspects of the Sled Springs OHV project. In March, 2009 the Forest Service again decided to withdraw the Sled Springs OHV proposal and further revise the EA.

51. In May, 2009 the Forest Service issued the Revised EA, DN and FONSI challenged herein. HCPC timely filed an administrative appeal, which was denied by the Forest Service on September 3, 2009.

52. The Forest Service's selected action will establish a 144-mile OHV trail system, which includes: the construction of 17 miles of new OHV trails, 3 OHV trail bridges over streams, and 2 OHV staging areas; converting 54 miles of existing roads to OHV use only and 73 miles of existing roads to OHV and full size vehicle use; incorporating 25 miles of unauthorized OHV user-created trails as part of the official OHV trail system; closing 91 miles of existing roads to all use; fully decommissioning only 4.1 miles of existing roads; and allowing an OHV season of use from when dry conditions occur sometime after May 1st, through 3 days prior to archery season (usually late August).

FIRST CLAIM FOR RELIEF

The Forest Service's Failure to Prepare an Environmental Impact Statement Violates NEPA

53. HCPC hereby incorporates by this reference the allegations presented in all preceding paragraphs.

54. The Sled Springs OHV project constitutes a major federal action that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). Grounds for a finding of

significance include, but are not limited to: the intensity of the action's adverse impacts; the ecological importance of the Sled Springs area; the controversial nature of the Sled Springs OHV project; the uncertainty of the project's impacts on wildlife and native ecosystems and the effectiveness of the project's mitigation measures to reduce adverse impacts; the cumulative impact of the action considered together with other projects within the immediate project area and on adjacent private lands reducing the quantity and quality of available wildlife habitat; and the project's violations of other federal environmental laws.

55. Consequently, the Forest Service's failure to prepare an EIS is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. 5 U.S.C. § 706(2)(A), (D).

SECOND CLAIM FOR RELIEF

The Forest Service's Failure to Take a 'Hard Look' at Impacts Violates NEPA

56. HCPC hereby incorporates by this reference the allegations presented in all preceding paragraphs.

57. The Forest Service failed to adequately assess the impacts of its decision to construct new OHV trails and designate an extensive motorized route network on natural resources, particularly Management Indicator Species and their habitat. The Forest Service cites to numerous scientific studies in the Sled Springs EA regarding adverse impacts associated with OHVs and motorized disturbance on species like elk. The EA also acknowledges that the quality of wildlife habitat will be significantly reduced by the Sled Springs OHV project. However, the Forest Service then sweeps these and other negative findings under the rug for the sake of its conclusions, thereby ignoring pertinent data. The Forest Service additionally ignores its own findings on the environmental costs associated with existing individual roads that it will designate "open" to

motorized use under the challenged decision as well as the adverse effects of high route densities. The Forest Service failed to compile and present in the EA relevant data on Management Indicator Species necessary to support the agency's implicit conclusion that viable populations will be maintained. Lastly, the Forest Service did not adequately analyze the efficacy of mitigation measures or the economic impacts of the project in the Sled Springs EA.

58. Because the Forest Service failed to take the requisite hard look, the Sled Springs Decision is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. 5 U.S.C. § 706(2)(A), (D).

THIRD CLAIM FOR RELIEF

The Forest Service's Failure to Identify a "Minimum Road System" Compliant With 36 C.F.R. § 212.5(b) Violates the Agency's Travel Management Regulations

59. HCPC hereby incorporates by this reference the allegations presented in all preceding paragraphs.

60. Travel Management regulations require the Forest Service to identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. 36 C.F.R. § 212.5(b).

61. The minimum system is the road system "determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance."

Id.

62. The Forest Service states in its Appeal Response that it did determine the "minimum system." ("I find that the WWNF did determine the minimum system necessary to meet resource

and recreation management objectives while also meeting applicable statutory and regulatory requirements.” Appeal Response p. 18). However, neither the selected alternative nor any of the other action alternatives, propose a route system that fully conforms to the regulatory requirements of a “minimum road system” as set forth in 36 C.F.R. § 212.5(b).

63. The Forest Service failed to disclose how the purported “minimum road system” that is claimed in the appeal reviewing officer’s response meets these regulatory requirements. In fact, the transportation system selected in this Decision Notice clearly fails to meet these requirements, as do all the action alternatives in the EA, and as such none can be the “minimum road system” for the Sled Springs project area.

64. The Forest Service’s failure to adequately identify a “minimum road system” that meets the regulatory requirements is therefore arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law. 5 U.S.C. § 706(2)(A), (D).

FOURTH CLAIM FOR RELIEF

The Forest Service’s Failure to Implement the “Minimization Criteria” Violates Executive Order 11644

65. HCPC hereby incorporates by this reference the allegations presented in all preceding paragraphs.

66. Executive Order 11644, §3, as amended, obligates the Forest Service to implement travel management regulations requiring OHV trails to be located in a manner that *will* minimize damage to soil, watershed, vegetation and other public lands resources caused by OHV use, *will* minimize OHV harassment of wildlife or significant disruption of wildlife habitats, and *will* minimize conflicts between OHV use and other recreational uses.

67. The Forest Service has instead selected an alternative that will leave open for OHV use existing roads that are already documented as causing significant resource damage. The selected

action further authorizes combined motorized route densities (roads plus OHV trails) well in excess of Forest Plan road density standards. The EA demonstrates that new OHV routes will not be located to minimize damage to forest resources and conflicts with non-motorized recreation users.

68. The Forest Service’s Sled Springs Decision fails to implement travel management regulations that fully apply the minimization criteria set forth in Executive Order 11644, as amended, and as a result is arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law. 5 U.S.C. §§ 706(2)(A), (D).

FIFTH CLAIM FOR RELIEF

The Forest Service’s Failure to Develop and Analyze a Reasonable Range of Alternatives Violates NEPA

69. HCPC hereby incorporates by this reference the allegations presented in all preceding paragraphs.

70. The Forest Service, pursuant to NEPA, must consider “alternatives to the proposed action” and “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(2)(C)(iii), 4332(E).

71. The Forest Service failed to consider a reasonable range of alternatives, in particular by: 1) failing to develop, analyze, and present for public comment an alternative that identifies the “minimum road system” as defined by 36 C.F.R. § 212.5(b) and, 2) failing to develop and analyze an alternative that locates trails to minimize adverse impacts to forest resources. Instead, the range of alternatives analyzed is extremely narrow; all action alternatives provide high levels of motorized use.

72. The Forest Service's range of alternatives for the Sled Springs OHV Project is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. 5 U.S.C. §§ 706(2)(A), (D).

SIXTH CLAIM FOR RELIEF

The Forest Service's Failure to Insure Viable Populations of Management Indicator Species Violates NFMA

73. HCPC hereby incorporates by this reference the allegations presented in all preceding paragraphs.

74. The National Forest Management Act regulations require the Forest Service to manage forests for viable populations of native vertebrate and desired non-native species. 36 C.F.R. § 219.19. The regulations state that a viable population shall be regarded as "one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area." *Id.*

75. To assess population viability, the Forest Service regulations require the Forest Service to identify and monitor management indicator species (MIS). "[P]opulation trends of the management indicator species will be monitored and relationships to habitat change determined." 36 C.F.R. § 219.19(a)(6). The Wallowa-Whitman Forest Plan additionally requires populations of MIS species, such as elk and goshawk, to be continuously monitored with results reported annually. Forest Plan, 5-10.

76. The viability requirements of the 1982 NFMA implementing regulations, 36 C.F.R. § 219, continue to apply to this project and the Wallowa-Whitman Forest Plan because the plan was developed using the 1982 rule and specifically incorporates the viability provision. Forest Plan 2-9. Therefore, the Sled Springs OHV Project must meet 36 C.F.R. § 219.19 and provide a sufficient analysis of the project's effects on species viability.

77. The Forest Service has failed to adequately explain how the selected action 1) will provide habitat to support, at least, a minimum number of reproductive individuals for the MIS of concern, and 2) whether that habitat will be “well distributed” so that those individuals can interact with others in the planning area. The Forest Service fails to provide any explicit determinations as to whether the Sled Springs OHV project will impair elk or goshawk viability. The Forest Service fails to identify in the Sled Springs EA what constitutes the minimum number of reproductive individuals for elk and goshawk. The Forest Service also fails to describe the quantity and quality of habitat necessary to support a minimum viable population of elk and goshawk and fails to describe population trends for goshawk.

78. The Forest Service fails to establish a rational connection between the evidence in the record demonstrating detrimental impacts to affected MIS, evidence that for instance indicates that this action would result in seventy-five percent of the analysis area being in a low-quality condition for elk, and the agency’s unstated assumption that viability for MIS will not be impaired by implementation of the Sled Springs OHV project.

79. The Forest Service’s analysis and resulting decision are arbitrary, capricious, and not in accordance with NFMA and its implementing regulations. 16 U.S.C. § 1604(g)(3)(B); 36 C.F.R. § 219.19; 5 U.S.C. § 706(2)(A), (D).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Declare that Defendant violated the NEPA and NFMA, and their implementing regulations, Executive Order 11644, as amended by Executive Order 11989, and Forest Service Travel Management regulations. 5 U.S.C. § 706(2)(A), (D);

B. Declare that the May 2009 Sled Springs OHV Project EA/FONSI and Decision Notice are insufficient as a matter of law, and order the Defendant to undertake preparation of a legally sufficient travel management plan for the Sled Springs area that adequately identifies a minimum road system as defined by Forest Service regulations and includes an alternative that applies the minimization criteria;

C. Enjoin Defendant from implementing the following components of the Sled Springs OHV Project until it complies with all applicable laws: all new OHV trail construction; any construction associated with developing the Sled Springs area into an OHV “play zone” (e.g. OHV trail bridges or staging areas); conversion of existing roads to OHV trails; and designating unauthorized user-created OHV trails as officially “open” to motorized use. Allow Defendant to proceed with any road closures and road decommissioning in the Sled Springs project area, and allow Defendant to proceed with the cross-country travel closure for the area;

C. Retain continuing jurisdiction of this matter until the Forest Service fully remedies the violations complained of herein;

D. Award Plaintiff their costs of suit and attorneys fees; and

E. Grant Plaintiff such other and further relief as the Court deems just and equitable.

Dated this 23rd day of December, 2009.

Respectfully submitted,

Jennifer R. Schwartz (OSB #072978)

Of Attorneys for Plaintiff