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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF MONTANA**  
16 **MISSOULA DIVISION**

17 NATIVE ECOSYSTEMS COUNCIL,  
18 ALLIANCE FOR THE WILD ROCKIES

19 Plaintiffs,

20 vs.

21 LESLIE WELDON, Regional Forester of  
22 Region One of the U.S. Forest Service, and  
23 UNITED STATES FOREST SERVICE, an  
24 agency of the U.S. Department of Agriculture,  
25 Defendants.  
26

CV-

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

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28

**I. INTRODUCTION**

- 1. This is a civil action for judicial review under the Administrative Procedure Act of the U.S. Forest Service’s Decision Notice and Finding of No Significant Impact (DN) authorizing implementation of the North Butte Salvage and Aquatic Improvements Project (Project) on the Beaverhead-Deerlodge National Forest, and the Record of Decision authorizing implementation of the revised Beaverhead-Deerlodge National Forest Land and Resource Management Plan (Revised Forest Plan).
- 2. Plaintiffs Alliance for the Wild Rockies and Native Ecosystems Council attest that the decisions approving the Project and Revised Forest Plan are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law.
- 3. Defendants’ approval of the Project as written is a violation of the National Environmental Policy Act (NEPA), 42 U.S.C. 4331 *et seq.*, the National Forest Management Act (NFMA), 16 U.S.C. § 1600 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*
- 4. Plaintiffs request that the Court set aside or remand the project decision pursuant to 5 U.S.C. § 706(2)(A) and that the Court enjoin the U.S. Forest Service from implementing the project.
- 5. Plaintiffs seeks a declaratory judgment, injunctive relief, the award of costs and expenses of suit, including attorney and expert witness fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and such other relief as this Court deems just and proper.

**II. JURISDICTION**

- 6. This action arises under the laws of the United States and involves the United States as a Defendant. Therefore, this Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 28 U.S.C. §§ 1331, 1346.
- 7. An actual controversy exists between Plaintiffs and Defendants. Plaintiffs’ members use and enjoy the Beaverhead-Deerlodge National Forest for hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, spiritual, and recreational activities. Plaintiffs’ members intend to continue to use and enjoy the area frequently and on an ongoing basis in the future.
- 8. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiffs’ members have been and will be adversely affected and irreparably injured if Defendants implement the Projects. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under NFMA, NEPA, and the APA. The requested relief would redress these injuries and this Court has the authority to grant Plaintiffs’ requested relief under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

1  
2 9. Plaintiffs submitted timely written comments concerning the Project and fully  
3 participated in the available administrative review and appeal processes, thus it has  
4 exhausted administrative remedies. Defendants’ denials of Plaintiffs’ administrative  
5 appeals were the final administrative actions of the U.S. Department of Agriculture Forest  
6 Service. Thus, the challenged decision is final and subject to this Court’s review under  
7 the APA, 5 U.S.C. §§ 702, 704, and 706.

8  
9  
10 **III. VENUE**

11 10. Venue in this case is proper under 28 U.S.C. § 1391(e) and LR 3.3(a)(1). Defendant  
12 Weldon, the chief representative for U.S. Forest Service Region One, resides within the  
13 Missoula Division of the United States District Court for the District of Montana.

14  
15 **IV. PARTIES**

16 11. Plaintiff ALLIANCE FOR THE WILD ROCKIES is a tax-exempt, non-profit public  
17 interest organization dedicated to the protection and preservation of the native  
18 biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and  
19 its naturally functioning ecosystems. Its registered office is located in Helena, Montana.  
20 The Alliance has over 2,000 individual members and more than 600 member businesses  
21 and organizations, many of which are located in Montana. Members of the Alliance work  
22 as fishing guides, outfitters, and researchers, who observe, enjoy, and appreciate  
23 Montana’s native wildlife, water quality, and terrestrial habitat quality, and expect to  
24 continue to do so in the future, including in the Project area in the Beaverhead-Deerlodge  
25 National Forest. Alliance’s members’ professional and recreational activities are directly  
26 affected by Defendants’ failure to perform their lawful duty to protect and conserve these  
27 ecosystems by approving the challenged Project. Alliance for the Wild Rockies brings  
28 this action on its own behalf and on behalf of its adversely affected members.

12. Plaintiff NATIVE ECOSYSTEMS COUNCIL is a non-profit Montana corporation with  
its principal place of business in Three Forks, Montana. Native Ecosystems Council is  
dedicated to the conservation of natural resources on public lands in the Northern  
Rockies. Its members use and will continue to use the Beaverhead-Deerlodge National  
Forest for work and for outdoor recreation of all kinds, including fishing, hunting, hiking,  
horseback riding, and cross-country skiing. The Forest Service's unlawful actions  
adversely affect Native Ecosystems Council’s organizational interests, as well as its  
members’ use and enjoyment of the Beaverhead-Deerlodge National Forest, including the  
Project area. Native Ecosystems Council brings this action on its own behalf and on  
behalf of its adversely affected members.

13. Defendant LESLIE WELDON is the Regional Forester for the Northern Region of the  
U.S. Forest Service, and in that capacity is charged with ultimate responsibility for  
ensuring that decisions made at each National Forest in the Northern Region, including

1 the Beaverhead-Deerlodge National Forest, are consistent with applicable laws,  
2 regulations, and official policies and procedures. In addition, the Regional Forester  
3 signed the Record of Decision for the Revised Forest Plan and denied Plaintiffs’  
administrative appeals of the Project.

4 14. Defendant UNITED STATES FOREST SERVICE (Forest Service) is an administrative  
5 agency within the U.S. Department of Agriculture, and is responsible for the lawful  
6 management of our National Forests, including the Beaverhead-Deerlodge National  
Forest.

7 **V. PROCEDURAL BACKGROUND**

8 15. On January 14, 2009, Defendant Weldon’s office signed the Record of Decision  
9 authorizing implementation of the Revised Forest Plan.

10 16. On Oct. 30, 2009, the Washington D.C. office of the Forest Service denied Plaintiffs’  
11 administrative appeals of the Revised Forest Plan.

12 17. On Oct. 8, 2010, the Forest Service signed a Decision Notice/Finding of No Significant  
13 Impact authorizing implementation of the project under the Revised Forest Plan. The  
14 project allows 413 acres of commercial logging, which will most likely be *de facto* clear-  
cutting, DN 2, the construction of 1.45 miles of new temporary road, and reconstruction  
15 of 0.4 miles of old roads, DN 3.

16 18. On Dec. 21, 2010, Plaintiffs filed a notice of intent to sue over the project and Revised  
Forest Plan for violation of the Endangered Species Act.

17 19. On Jan. 6, 2011, Defendant Weldon’s office dismissed the majority of claims in the  
18 administrative appeals filed by Plaintiffs over the project, and remanded with instructions  
19 on soils issues, constituting the final action of the U.S. Department of Agriculture.

20 20. The Forest Service indicated that it would likely remove the units that violate the soil  
standards and proceed with the project.

21 21. On Jan. 28, 2011, the Forest Service advertised the timber sale for the project and  
22 indicated that the project would be awarded no sooner than Feb. 11, 2011.

23 **VI. FACTUAL ALLEGATIONS**

24 **Background**

25  
26 22. The Forest covers 3.38 million acres, in Beaverhead, Butte-Silver Bow, Deer Lodge,  
Granite, Jefferson, Madison, Powell, and Gallatin counties, in southwestern Montana.  
27

- 1 23. The Forest straddles the mountains of the Continental Divide and contains nationally  
2 renowned trout streams, large elk populations, and uncrowded backcountry recreation.  
3 The Forest also provides some of last wild refuges for many threatened, endangered, and  
4 sensitive fish and wildlife species.
- 5 24. In particular, the project area provides habitat for grizzly bears, fishers, wolverines,  
6 Canada lynx, gray wolves, and westslope cutthroat trout.
- 7 25. The Forest Service states that “[o]ld growth forests are distinguished by old trees and  
8 structural characteristics only time can develop” and that “[t]hey are part of the  
9 biodiversity of the forest providing specialized wildlife habitats . . . .”
- 10 26. The Forest Service acknowledges that “[s]ome birds and other animals prefer a high  
11 proportion of unroaded forest in mature or old growth stages,” and that “structural  
12 diversity and species richness is highest in old stands.”
- 13 27. The Forest Service acknowledges that “[i]n southwest Montana, insects known . . . to  
14 provide some of the associated components of old growth such as snags and downed logs  
15 are mountain pine beetle. . . .”
- 16 28. Forests in the project area were heavily logged to support the mining industry around  
17 Butte, Montana in the early twentieth century.
- 18 29. Accordingly, the affected “landscape area” that encompasses the project area – the Upper  
19 Clark Fork Landscape Area – has the lowest percentage of old growth habitat in the  
20 entire Forest.
- 21 30. Additionally, the Upper Clark Fork Landscape Area has the lowest number of snags per  
22 acre on the entire Forest. More specifically, there are 0.0 snags per acre over 20 inches  
23 dbh. There are an estimated 2.2 snags per acre between 10.0 to 19.9 inches dbh, with  
24 potential for as low as 0.0 snags per acre in that size class.
- 25 31. The Forest Service acknowledges that “[s]nags are recognized as an important habitat  
26 component for many species.”
- 27 32. The Forest Service concedes that the project area already fails to meet the snag retention  
28 levels set forth in the Revised Forest Plan: “[w]e do not meet the 8 snags per acre in the  
project area,” and “[t]he project area as a whole does not have live trees or snags greater  
than 15.0 in. d.b.h .”
33. The Forest Service acknowledges that “[w]ithin the analysis area, historic logging has  
affected patch size, edge effect and amount of old growth.”
34. The project area’s intensive historic logging and failure to provide eight live or dead trees

1 per acre greater than 15 inches dbh raises significant questions about whether the project  
2 area provides any actual old growth habitat, which must have at least 150 year old trees,  
3 at a density of at least 12 trees per acre over 10 inches dbh.

4 35. The Forest Service did not map old growth in the project area.

5 36. The Forest Service states that 15% of the project area is old growth, but it did not disclose  
6 the basis for that estimation nor explain the discrepancy between that estimate and its  
7 statements that the area has been heavily logged and no longer has large trees and snags  
8 over 15 inches dbh.

9 37. In addition to logging, other historic land management activities, including road  
10 construction/use and livestock grazing, have significantly degraded the project area. The  
11 Forest Service notes that the “road system has probably had the greatest impact on the  
12 aquatic and riparian systems by contributing to stream sedimentation, allowing easier  
13 access to streamside areas for livestock, and altering the recruitment of large woody  
14 debris into these streams.”

15 38. High levels of stream sedimentation have degraded habitat for the sensitive westslope  
16 cutthroat trout to the point where the Forest Service has deemed the situation to be  
17 “precarious.”

18 39. The Forest Service concedes that “[w]estslope cutthroat trout populations are weak and  
19 appear to be declining, and recruitment into the populations is weak” in the project area.  
20 Moreover, “[t]heir numbers are low probably due to a combination of competition from  
21 eastern brook trout, poor habitat conditions, and poor reproduction rates.”

22 40. Regarding habitat conditions, the Forest Service concedes that “[p]ool quality is low and  
23 fine sediment levels are high,” and that [t]hese two attributes . . . limit [] recruitment into  
24 the population due to poor quality spawning and rearing habitat.”

25 41. Hail Columbia Gulch is a fish key watershed within the Project area, which means the  
26 watershed is critical for protection of westslope cutthroat trout and “not suitable for  
27 timber production.” Currently, “[t]he stream is characterized by high sediment loads and  
28 altered channel dimensions/stability.”

42. The other watersheds in the Project area also suffer from the legacy of past land  
management activities. The Forest Service concludes that “[t]he existing road network  
poses a high risk in all three analysis watersheds” in the Project area.

43. High road densities in the Project area have also degraded habitat for species such as elk,  
which require large areas with low road densities. The current open motorized road and  
trail density in the landscape area, outside of the five week fall rifle hunting season, is 2.0  
mi/sq mi. The current open motorized road and trail density during the five week fall

1 rifle hunting season in the affected hunting district, HD 215, is 1.9 mi/sq mi.

2 44. These density estimates of officially designated “open” roads and trails are likely lower  
3 than the actual density of motorized roads and trails in the area because the Forest Service  
4 admits that “[t]here are unauthorized routes in the project area that are identified as trails .  
5 . . . Most of the use is likely by off-highway vehicles.”

6 45. The best available science, Christensen et al (1993), recommends elk habitat effectiveness  
7 of 70% in summer range and at least 50% in all other areas where elk are one of the  
8 primary resource considerations. According to Figure 1 in Christensen et al (1993), this  
9 equates to a maximum road density of approximately 0.65 mi/sq mi. in summer range and  
10 approximately 1.79 mi/sq mi. in all other areas.

11 46. The Project area fails both of these recommendations.

12 47. The elk population itself is also failing to meet state agency population objectives for HD  
13 215.

14 48. The Forest Service did not provide an analysis of how much of the project area or  
15 landscape area provides “elk security area[s]” as defined by the Forest Plan and best  
16 available science, Christensen et al (1993), to be “comprised of contiguous 250 acre  
17 blocks of forested habitat .5 miles or more from open roads with these blocks  
18 encompassing 30% or more of the area.”

19 49. The Forest Service admits that “[t]he fisher, wolverine and black-backed woodpecker are  
20 sensitive species potentially affected by removal of dead trees or disturbance associated  
21 with the activity and the other proposed actions.”

22 50. These sensitive wildlife species, which are associated with old growth habitat attributes  
23 such as low road density, high canopy cover, snags, and down logs cannot be found in the  
24 Project area: surveys of the Project area failed to find a single wolverine (Forest Service  
25 sensitive species), fisher (Forest Service sensitive species), or black-backed woodpecker  
26 (Forest Service sensitive species).

27 51. The Forest Service concedes that only 3% of the entire analysis area provides suitable  
28 nesting habitat for the black-backed woodpecker due to the intensive historic logging in  
the project area.

52. Surveys of the Project area also failed to find a single goshawk, which is another species  
considered sensitive by the State of Montana and the Bureau of Land Management.

53. The Forest Service does not know the current population of any of these sensitive wildlife  
species.

1 54. The wolverine’s status has declined to the point where it is now “warranted” for listing  
2 under the Endangered Species Act, though it is currently on the candidate list waiting for  
3 official listing. 75 Fed. Reg. 78030 (Dec. 14, 2010). The USFWS found that “[s]ources  
4 of human disturbance to wolverines include . . . road corridors, and extractive industry  
5 such as logging . . . .”

6 55. The fisher’s status has declined to the point where it has received an official 90 day  
7 finding from the USFWS that it may be warranted for listing under the Endangered  
8 Species Act. 75 Fed. Reg. 19925 (April 16, 2010). In particular, USFWS found that  
9 listing the Northern Rockies fisher under the ESA may be warranted in primary part “due  
10 to the present and potential future modification and destruction of habitat from  
11 commercial timber harvest and commercial wood production by methods that may  
12 prevent succession to the mature forest stages preferred by fishers.”

13 56. The goshawk’s status has also declined in recent years to the point that it has been  
14 uplisted by the Montana Natural Heritage Program to a “Species of Concern” in Montana  
15 “based on declining population trends and/or ongoing threats to habitat that are likely to  
16 lead to population declines.”

17 57. Moreover, the only peer-reviewed, published, population trend monitoring of goshawks  
18 in the Northern Region of the Forest Service shows that goshawk populations in the  
19 Greater Yellowstone Area are likely declining, perhaps due to commercial logging of  
20 mature forests (Patla 2005).

21 **Forest Plan**

22 58. The Forest Service states that the Project “EA implements direction from the  
23 Beaverhead-Deerlodge Forest Plan and tiers to the Beaverhead-Deerlodge National Forest  
24 Final Environmental Impact Statement.”

25 59. The Forest Service asserts that “[t]he Forest Plan ensures viability for wildlife through  
26 application of the Forestwide goals, objectives and standards.”

27 Old growth

28 60. Although the draft EIS for the Revised Forest Plan (that was provided to the public for  
public comment) provided some required percentage of old growth retention and  
management in every NEPA alternative, the final version of the Revised Forest Plan  
completely eliminated any such provision and now does not set any enforceable standard  
to manage any particular percentage of the Forest as old growth forest habitat

61. The Revised Forest Plan only requires that in existing old growth stands, logging projects  
must retain “the age and number of large trees and basal area [set forth in] the ‘minimum  
criteria’ required for Eastern Montana old growth in Green et al, Table 3.”



1 62. There is no map of existing old growth stands in the Forest Plan, nor is there any  
2 disclosure in the Forest Plan as to how existing old growth stands will be determined on a  
3 project by project level.

4 63. The Forest Service admits that it cannot simply use the FIA database to determine old  
5 growth stands at the project level.

6 64. Despite the admitted unreliability of the FIA database to determine existing old growth  
7 stands at the project level, as well as the Forest Plan requirement to apply special  
8 management criteria to existing old growth stands, at both the Forest Plan and the project  
9 level, the Forest Service asserts that it does not need to map old growth habitat because  
10 “[t]here is no requirement in the planning regulations to map old growth.”

11 65. Moreover, the reference cited in the old growth standard, Green et al., itself explicitly  
12 cautions against relying solely on the minimum characteristics to define old growth:  
13 “there will . . . be some stands that meet minimum criteria that will not be suitable old  
14 growth. . . .”

15 66. The old growth standard adopted in the final Revised Forest Plan was never disclosed to  
16 the public as one of the possible NEPA alternatives. Thus, the Forest Service never  
17 provided an opportunity for public and scientific comment on this standard prior to the  
18 final adoption of the Forest Plan.

19 67. The Revised Forest Plan also “does not identify a minimum size” for stands of old growth  
20 forest, which means that forest stands could be one acre parcels surrounded by high road  
21 densities and clearcuts and still be considered old growth forest.

22 68. The Forest Service’s own science indicates that stands must be at least 80 acres or more  
23 to provide suitable habitat for most old growth species.

24 69. Green et al also admonishes the Forest Service to “[c]onsider the size of old growth  
25 blocks (large blocks have special importance) . . . .”

26 70. The Forest Service admits that “there are ‘old growth associated species’ and other values  
27 for which the [10% old growth] retention standard [was] designed to maintain.”

28 71. The Forest Service does not explain how the new standard, without a 10% retention  
provision, will maintain the viability of old growth associated species.

72. To the contrary, the Forest Service admits that under the new standard, there will be  
negative impacts to old growth associated species such as the sensitive Northern Rockies  
fisher: “treatments (both mechanical harvest and prescribed fire) could occur in old  
growth stands as long as the treatments do not cause the stands to no longer meet the  
minimum old growth stand characteristics standards described by Green et al. Such  
treatments in old growth are likely to reduce canopy cover and structural diversity. These  
treatments may . . . reduce the suitability of habitat for fishers.”

1 73. The Forest Service also states that the “historic percentage of old growth on the Forest  
2 remains undetermined.”

3 74. The Forest Service does not provide an adequate explanation as to why retaining only  
4 existing large trees in forests that have already been heavily logged (such as the project  
5 area) is necessarily sufficient to maintain old growth species viability in light of the fact  
6 that the agency does not even know what the historic old growth levels were in the Forest,  
7 is not planning to maintain a minimum stand size, and is not planning to maintain the  
8 high canopy closure levels necessary for certain species, such as the Northern Rockies  
9 fisher and the goshawk.

10 75. The Forest Service defends its old growth standard primarily by arguing that the  
11 “planning regulations do not require a scientific basis for old growth retention and  
12 replacement.”

13 76. The Forest Service admits that “there are wildlife species with a preference for old growth  
14 in portions of their life cycles,” and that “maintenance of old growth is critical to forest  
15 biodiversity.”

16 77. Despite these admissions, the Revised Forest Plan does not designate a management  
17 indicator species for old growth wildlife species.

18 78. Although the Forest Service asserts that the Forest Plan is sufficient to maintain the  
19 viability of old growth associated species, it also states that “[o]ld growth retention in the  
20 Northern Region and the BDNF is not specifically tied to vertebrate viability issues.”

21 79. The Forest Service does not explain how the Forest Plan can maintain old growth species  
22 viability if the old growth standard, i.e. the habitat proxy, is not “tied to” old growth  
23 species viability, and if there will also be no population monitoring of any old growth  
24 management indicator species.

25 Snag habitat

26 80. The Forest Service admits that “[s]nags are recognized as an important habitat component  
27 for many species . . . .”

28 81. The Revised Forest Plan does not provide a management indicator species for snag-  
dependent species.

82. The Forest Service states that “Wildlife standards 3 and 4 in the Forest Plan are expected  
to provide for snag dependent species.”

83. The Revised Forest Plan sets out snag retention numbers in Wildlife Standard 3 (retention  
of 3.6 to 8 snags over 15 inches dbh per acre depending on forest type) that cannot be met  
in many areas, including the project area, and thus permits logging that technically  
complies with the Forest Plan snag standard but has the actual effect of leaving no snags  
at all.

1 84. The Wildlife Standard 4, which is intended to leave live trees “to provide future snags,”  
2 requires retention of 0.6 to 1.4 live trees over 10 inches dbh per acre. This level of live  
3 tree retention would not meet the Wildlife Standard 3 snag retention standard of 3.6 to 8  
snags per acre when those live trees become snags.

4 Elk

5 85. Elk are one of the management indicator species in the Revised Forest Plan.

6 86. The 1982 NFMA planning regulations, which were used to promulgate the Revised  
7 Forest Plan, require the Forest Service to monitor the population trends of management  
8 indicator species and to state and evaluate land management alternatives “in terms of both  
9 amount and quality of habitat and of animal population trends of the management  
10 indicator species.” 36 C.F.R. § 219.19 (2),(6) (2000).

11 87. The Revised Forest Plan does not include a requirement to monitor population trends of  
12 elk.

13 88. The Revised Forest Plan does not have a single binding legal standard that limits the  
14 percentage of elk cover that can be logged, i.e. there is no hiding cover, thermal cover, or  
15 canopy cover retention standard.

16 89. The Revised Forest Plan does not prohibit motorized recreation and logging activities in  
17 elk winter range.

18 90. The Revised Forest Plan sets two “habitat proxy” standards for elk in the project area by  
19 (1) setting a maximum open motorized road and trail density of 2.0 mi/sq. mi. in the  
20 Upper Clark Fork Landscape year-round, except during the five week fall rifle hunting  
21 season, and by (2) setting a maximum open motorized road and trail density goal for  
22 Hunting District 215 at 1.5 mi/sq mi during the five week fall rifle hunting season.

23 91. The Revised Forest Plan allows unlimited increases in temporary road construction as  
24 long as there is no net increase above the maximum levels listed above.

25 92. The Forest Service cites Christensen et al (1993), Wisdom et al. (2004), and the “Grizzly  
26 Bear Amendment” as the scientific bases for the Revised Forest Plan’s elk road density  
27 thresholds.

28 93. Of those three citations, neither Wisdom et al (2004) nor the “Grizzly Bear Amendment”  
provides recommendations for numeric road density standards for elk. Only Christensen  
et al (1993) provides numeric road density threshold recommendations for elk.

94. Christensen et al (1993) recommends elk habitat effectiveness of 70% in summer range  
and at least 50% in all other areas where elk are one of the primary resource  
consideration. According to Figure 1 in Christensen et al (1993), this equates to a  
maximum road density of approximately 0.65 mi/sq mi. in summer range and  
approximately 1.79 mi/sq mi. in all other areas. These recommendations were not

1 followed in the Revised Forest Plan and the Forest Service fails to provide a rational  
2 justification for the deviation from these recommendations.

3 Wolverines

4 95. The wolverine is also a management indicator species in the Revised Forest Plan.

5 96. The 1982 NFMA planning regulations, which were used to promulgate the Revised  
6 Forest Plan require the Forest Service to monitor the population trends of management  
7 indicator species and to state and evaluate land management alternatives “in terms of both  
8 amount and quality of habitat and of animal population trends of the management  
9 indicator species.” 36 C.F.R. § 219.19 (2),(6) (2000).

10 97. The Revised Forest Plan does not include a requirement to monitor population trends of  
11 wolverines.

12 98. The “habitat proxy” standards for maintaining wolverine viability are the same as the  
13 habitat proxy standards for elk, discussed above.

14 99. The Forest Service provides no scientific basis or justification for how or why these  
15 standards should or could apply to wolverines when two of the references discuss only  
16 elk, and the other reference discusses only grizzly bears.

17 Westslope cutthroat trout

18 100. The Revised Forest Plan requires that “[n]ew projects will have a beneficial effect or no  
19 measurable negative effect on westslope cutthroat or bull trout in Fish Key Watersheds.  
20 Short term negative effects are acceptable if outweighed by long term benefits.”

21 **Project Description**

22 Purpose

23 101. The purpose of the salvage logging portion of the project is only to “to capture [] product  
24 value prior to deterioration” because “[a]fter the trees die, the value of the wood as a  
25 commercial product decreases as the wood deteriorates.”

26 102. To clarify that there is no other purpose for the proposed salvage logging, the Forest  
27 Service states the following:

- 28 • “[t]here is no wildlife purpose and need for this project;”
- the project “does not propose to protect forest values through logging;”
- “[r]educing and/or eliminating insect populations is not part of Purpose and Need for this project;”

- 1 • “[t]he salvage activities are not intended to mimic any natural disturbance process and  
2 have not been stated to do so;”
- 3 • the “purpose and need for the North Butte Project does not include addressing ‘the results  
4 of the beetle infestation in this area;”
- 5 • the “purpose and need for the North Butte Project does not include an objective to protect  
6 watersheds from catastrophic fires;”
- 7 • “[t]here is no claim from the Forest Service in the purpose and need (or anywhere else) of  
8 the North Butte EA that there is a problem with forest or tree density (created by fire  
9 suppression or otherwise) or that there is a proposed action to address this problem;”
- 10 • “[f]uel concerns were not a part of the purpose and need for the North Butte Project;”
- 11 • “[t]he North Butte Project purpose and need does not include a reduction in fire hazard;”
- 12 • “[l]ogging to change fire behavior by affecting severity or spread is not part of the  
13 purpose and need for the North Butte Project;”
- 14 • “[a]ssessing wildfire hazards are not part of the purpose and need;”
- 15 • “[t]he North Butte Project purpose and need does not include a reduction in wildfire  
16 risk;”
- 17 • the “North Butte Project is not a fuels reduction project;”
- 18 • the project “does not propose to harvest trees either to slow down the mountain pine  
19 beetle infestation or to reduce wildfire risk;”
- 20 • the “North Butte Project is not a thinning project;”
- 21 • the project “does not include a purpose and need to reduce hazardous fuels;”
- 22 • the “purpose and need does not include a reduction in the risk of crown fires, fireline  
23 intensity, or severity of wildfire;”
- 24 • the project “does not include a reduction in wildfire risk, severity, or occurrence;”
- 25 • the project “does not propose commercial harvesting for restoration;”
- 26 • the project “does not include any proposals to prevent decreases to yield, reduce fire  
27 hazard or losses to insects and disease, or to improve forest health or any proposed  
28 actions intended to meet such objectives;” and
- “reducing the threat of wildfire (or wildfire mitigation) and/or restoring historic forest  
structure are not part of the purpose and need for this project.”

1 Logging Activities

2 103. The project is located north of the city of Butte in southwest Montana, and the Project  
3 area encompasses a total of 25,971 acres.

4 104. The North Butte project area is defined by the Butte North Management Area, within the  
Upper Clark Fork Landscape.

5 105. The project allows commercial logging in 270 acres of lands suitable for logging and 134  
6 acres of nonsuitable forest lands.

7 106. The nonsuitable forest lands are within a fish key watershed - Hail Columbia Gulch.

8 107. The commercial logging will remove “[t]rees from 5.0 inches diameter at breast height  
9 (d.b.h.) up to 15.0 inches diameter at breast height. . . .”

10 108. As noted above, Forest Service acknowledges that there are few, if any, trees in the  
11 logging units that are *over* 15.0 inches dbh, due to intensive historic logging that removed  
the large trees.

12 109. Thus, many, if not all, of the units will resemble clearcuts after logging.

13 110. In the recent Rat Creek logging project on the Forest, which is the first timber sale to be  
14 started under the Revised Forest Plan, the logging units had a similar prescription to  
15 retain trees over 15 inches dbh and the units that have been logged now resemble  
clearcuts.

16 111. Indeed, the Forest Service itself referred to the logging methods as either “a two-aged  
stand clearcut with reserves” or “a stand clearcut with leave trees.”

17 112. One of these clearcuts will be a 96 acre clearcut within a fish key watershed.

18 113. Although commercial clearcut logging will occur on 134 acres of nonsuitable forest land  
19 in a fish key watershed, none of the “aquatic improvements” proposed in the project EA  
20 and DN will occur within that fish key watershed.

21 114. The Forest Service admits that “timber harvest and road construction activities have had  
22 the greatest impact on scenic resources,” and that after logging, “[u]nits 18, 19, 21, and  
23 22, would not meet the [Revised Forest Plan Scenic Integrity Objective (SIO)]of  
moderate until approximately 15 to 20 years following cessation of all project activities.”  
All four of these units are in the fish key watershed.

24 115. The Forest Service also admits that “the SIO of high for these units [15, 16, 18, and 19]  
25 as seen from the surveyed route of the Continental Divide National Scenic Trail, would  
not be met for approximately 30 years following cessation of project activities.”

26 116. The Forest Service acknowledges that the proposed logging “could lead to greater rates of  
27 spread should a fire event occur.”

1 Old growth impacts

- 2 117. The Forest Service states that the “North Butte analysis area is dominated by mature  
3 stands of lodgepole pine with various stages of mortality.”
- 4 118. In the EA, the Forest Service states that “[t]here are no proposed activities in old growth,  
5 potential old growth, or old growth recruitment stands.”
- 6 119. This statement conflicts with the actual findings of the field crew that did in fact identify  
7 several planned logging units as “potential old growth.” These units were later  
8 determined not be actual old growth.
- 9 120. The “potential old growth” finding was never disclosed to the public in the EA or DN.

10 Road density-related impacts

- 11 121. The project allows logging in “secure” habitat.
- 12 122. The project will decrease “secure” habitat by 186 acres in the summer and 395 acres in  
13 the winter.
- 14 123. The project allows logging in seven unroaded areas and will reduce unroaded areas by  
15 255 acres.
- 16 124. The project allows construction of 1.45 miles of temporary roads, and will therefore  
17 increase temporary road density in the project area.
- 18 125. The Forest Service admits that the logging and road use will “decrease elk security in  
19 some units and decrease cover as vegetation is removed, thereby increasing elk  
20 vulnerability.”
- 21 126. The Forest Service is planning another commercial logging project, the East Deerlodge  
22 project, directly adjacent to this project area.
- 23 127. The East Deerlodge project is in the same elk analysis area: Hunting District 215.
- 24 128. The East Deerlodge project is the same type of logging – beetle-killed tree salvage  
25 logging – as this project.
- 26 129. The East Deerlodge project will increase temporary road density in the same elk analysis  
27 area as this project.
- 28 130. The Forest Service admits that both projects will have “similar” effects.
131. The East Deerlodge project went through the NEPA scoping process in the same year as  
this project.
132. The East Deerlodge project had a draft NEPA analysis (draft EIS) published in the same  
year as this project.

1 133. The Forest Service did not disclose the cumulative temporary increase in road density that  
2 will occur when both projects are occurring.

3 134. The Forest Service acknowledges that log hauling on project roads “may pose a safety  
4 concern to local residents” and cause “traffic delays.”

5 Sedimentation

6 135. The Forest Service states that sediment delivery increases from log hauling on project  
7 roads will exist for three to four years.

8 136. The Forest Service states that sediment delivery from road construction will not reside to  
9 the base rate of delivery for 10 years.

10 137. Once sediment is delivered to the project area streams, the Forest Service admits that  
11 “[s]ediment deposited in streams may take decades to pass through the system.”

12 138. The Forest Service considers an effect to westslope cutthroat trout to be “long-term” if it  
13 lasts more than three years because the life span of one generation is only five to six  
14 years.

15 139. The project will increase pounds of annual sediment delivery for the modeled 900 foot  
16 road segments in all three watersheds in the project area: Browns Gulch: 13.4 to 18.9  
17 pounds; Flume Gulch: 49.1 to 84.5 pounds; and Hail Columbia Gulch: 15.6 to 23.5  
18 pounds. Thus, the percentage increase in sediment delivery in Browns Gulch is 41%, in  
19 Flume Gulch is 72%, and Hail Columbia Gulch is 50%.

20 140. The Forest Service also states that “[l]og hauling would result in an estimated total of  
21 about 700 pounds of sediment delivered per year, across the three analysis watersheds.”

22 141. Although the Forest Service discloses that “[s]tream channels exhibit high levels of fine  
23 sediment, and reduced pool numbers and quality” and that “[t]hese physical attributes  
24 limit the extent and quality of habitat available to support westslope cutthroat trout,” the  
25 Forest Service never discloses the threshold levels of fine sediment that are tolerated by  
26 breeding westslope cutthroat trout and whether post-project conditions will meet those  
27 levels. For example, the Gallatin National Forest sets a threshold level of 26% fine  
28 sediment for westslope cutthroat trout streams. The Forest Service did not survey Hail  
Columbia Gulch to determine fine sediment levels there, but found that fine sediment was  
50% in Brown Gulch and 52% in Flume Gulch.

142. The Forest Service acknowledges that ongoing and foreseeable activities “will continue[]  
to negatively impact westslope cutthroat trout.”

143. None of the “aquatic improvements” proposed for the Project are within the fish key  
watershed of Hail Columbia Gulch.



1 144. The Forest Service concedes that the “aquatic improvements” will have a minor impact:  
2 “there would be beneficial hydrologic effects from the proposed action realized from  
3 stream protections and restoration actions. However, they would not likely result in  
measurable improvements downstream on private lands.”

4 145. Additionally, these projects “would be completed over an 8 to 10-year period, or by  
5 2020.”

6 146. The Forest Service views the “aquatic improvements” discussed in the project EA and  
DN as “optional.”

7 147. The Forest Service concedes that the project allows “installation of new culverts and  
8 reconditioning of existing culverts.”

9 Economics

10 148. The Forest Service’s stated purpose for the salvage logging portion of the Project is that  
11 “[t]here is a need to salvage the dead and dying lodgepole pine in a timely manner to  
12 capture its product value prior to deterioration. After the trees die, the value of the wood  
as a commercial product decreases as the wood deteriorates.”

13 149. The Forest Service recognizes that there has been a “down swing of market conditions  
14 resulting from the slowdown in the housing market . . . .”

15 150. The Forest Service states that the present net value (PNV) “combines benefits and costs  
16 that occur at different times and discounts them into an amount that is equivalent to all  
economic activity in a single year.”

17 151. The present net value that was disclosed to the public in the EA/DN for the salvage  
18 logging portion of the project only includes the following costs: temporary road  
19 construction and obliteration; maintenance on haul roads; snowplowing; system road  
maintenance; sale preparation; sale administration; stands exams; weed spraying and  
monitoring; landing piling; and pile burning.

20 152. The present net value that was disclosed to the public in the EA/DN does not include the  
21 cost for the soil remediation that the Forest Service promised to complete in order to  
comply with regional soil quality standards.

22 153. The present net value that was disclosed to the public in the EA/DN does not include the  
23 costs of the aquatic improvements for the project.

24 154. The Forest Service did not included NEPA planning costs in the PNV.

25 155. The PNV for the salvage logging portion of the project is negative \$130, 904.00.

26 156. According to the Forest Service, “[a] positive PNV indicates that the alternative is  
27 financially efficient.”

1 157. Despite the fact that the PNV is *not* positive, the Forest Service nonetheless concluded  
2 that “the proposed action is financially efficient for the timber.”

3 158. The costs of the aquatic improvements are an additional negative \$29,900.00. .

4 159. The Forest Service acknowledges that the PNV is “the perspective of the taxpayer.”

5 **VII. CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**

7 The Forest Service’s failure to demonstrate compliance  
8 with the Revised Forest Plan violates NEPA and NFMA.

9 160. All previous paragraphs are incorporated by reference.

10 161. A violation of a forest plan provision is a violation of NFMA and NEPA.

11 162. A failure to show compliance with the provisions of a forest plan is a violation of NFMA  
12 and NEPA.

13 163. The Revised Forest Plan forbids logging projects in fish key watersheds unless there is a  
14 beneficial impact or no impact.

15 164. The project allows logging in a fish key watershed and will increase stream sedimentation  
16 in that watershed.

17 165. The “aquatic improvements” proposed for the project are not in the fish key watershed  
18 and are “optional” according to the Forest Service.

19 166. The project violates the Forest Plan fish key watershed protections.

20 167. The Revised Forest Plan contains provisions to protect scenic integrity.

21 168. The Forest Service admits that multiple logging units will not be in compliance with  
22 scenic integrity objectives after logging.

23 169. The project violates the Forest Plan scenic integrity protections.

24 170. The Revised Forest Plan defines “elk security area” as “comprised of contiguous 250 acre  
25 blocks of forested habitat .5 miles or more from open roads with these blocks  
26 encompassing 30% or more of the area.”

27 171. The project analysis did not acknowledge this definition nor apply it in the analysis of elk  
28 security.

172. Instead, the analysis used a definition for grizzly bear secure areas.

1 173. The project analysis fails to take a hard look at elk security and fails to demonstrate that  
2 the project complies with the elk security area definition.

3 174. These failures to demonstrate compliance with provisions of the Revised Forest Plan  
4 violate NEPA and NFMA.

5 SECOND CLAIM FOR RELIEF

6 The Forest Service's failure to ensure the viability of management indicator, sensitive, snag  
7 associated, and old growth associated wildlife species violates NFMA and NEPA.

8 175. All previous paragraphs are incorporated by reference.

9 176. The Revised Forest Plan was promulgated under the 1982 NFMA planning regulations.

10 177. The 1982 NFMA planning regulations require that a forest plan contain provisions to  
11 accomplish the following:

12 Fish and wildlife habitat shall be managed to maintain viable populations of  
13 existing native and desired non-native vertebrate species in the planning area. For  
14 planning purposes, a viable population shall be regarded as one which has the  
15 estimated numbers and distribution of reproductive individuals to insure its  
16 continued existence is well distributed in the planning area. In order to insure that  
17 viable populations will be maintained, habitat must be provided to support, at  
18 least, a minimum number of reproductive individuals and that habitat must be  
19 well distributed so that those individuals can interact with others in the planning  
20 area.

21 36 C.F.R. § 219.19 (2000).

22 178. In order to meet this viability mandate, the 1982 NFMA planning regulations require that  
23 the Forest Service select "management indicator species" whose "population changes are  
24 believed to indicate the effects of management activities." 36 C.F.R. § 219.19 (1) (2000).

25 179. The 1982 NFMA planning regulations require the Forest Service to monitor the  
26 population trends of these species and to state and evaluate land management alternatives  
27 "in terms of both amount and quality of habitat and of animal population trends of the  
28 management indicator species." 36 C.F.R. § 219.19 (2),(6) (2000).

180. Wolverines are one of the MIS chosen for the Revised Forest Plan and project area.

181. Wolverines have never been documented in the project analysis area.

182. The Forest Service does not know the population of wolverines on the Forest.

183. There is no requirement in the Revised Forest Plan to monitor wolverine population  
trends in response to management activities, in violation of the 1982 NFMA planning  
regulations.

- 1 184. The agency’s reliance on the wolverine to indicate effects of management actions in the  
2 Forest in general is arbitrary because the agency has no idea what the baseline population  
3 is nor does the agency intend to monitor populations after activities are implemented.
- 4 185. Additionally, the application of this MIS to the project area is further arbitrary because  
5 wolverines have never been documented in this project area.
- 6 186. The agency does not provide a scientific basis for the road density thresholds it relies  
7 upon as a “habitat proxy” for wolverine viability, thus its reliance on those habitat proxies  
8 is arbitrary.
- 9 187. Elk are one of the MIS chosen for the Revised Forest Plan and project area.
- 10 188. There is no requirement in the Revised Forest Plan to monitor elk population trends in  
11 response to management activities, in violation of the 1982 NFMA planning regulations.
- 12 189. The agency does not provide a scientific basis for the road density thresholds it relies  
13 upon as a “habitat proxy” for elk viability. The Forest Service cites Christensen et al  
14 (1993), Wisdom et al (2004), and the “Grizzly Bear Amendment” as the scientific basis  
15 for the elk road density thresholds in the Revised Forest Plan but none of these citations  
16 recommends the high permanent road densities and unlimited increases in temporary road  
17 densities adopted in the Revised Forest Plan thus its reliance on those habitat proxies is  
18 arbitrary.
- 19 190. The agency does not provide a scientific rationale for failing to discuss and/or adopt other  
20 well-established habitat proxies/protections for elk, such as retention of elk security  
21 blocks as defined by Hillis, retention of some level of canopy closure, hiding cover, or  
22 thermal cover, and restrictions against motorized use in winter range.
- 23 191. Due to the lack of effective habitat protections, elk are currently failing state population  
24 objectives.
- 25 192. Despite the lack of scientifically based habitat protections in the Revised Forest Plan and  
26 the poor elk population numbers in the affected analysis area, the project will increase  
27 temporary road density in the project area above the levels recommended in the best  
28 available science. In light of the above-noted issues, the Forest Service is not ensuring  
elk viability in the project area.
193. The Revised Forest Plan does not set forth a MIS for old growth associated species, nor is  
there a requirement in the Revised Forest Plan to monitor old growth MIS population  
trends in response to management activities, in violation of NFMA and the 1982 NFMA  
planning regulations.
194. The rationale provided in the Revised Forest Plan FEIS for not including an old growth  
MIS was that the Forest Service suspected that a 10% old growth habitat retention  
standard would ensure the viability of old growth associated species.

- 1 195. The final Revised Forest Plan dropped the 10% old growth retention standard, so there is  
2 no longer any rationale in the Revised Forest Plan EIS for the lack of an old growth MIS.
- 3 196. There is no discussion or explanation in the Revised Forest Plan as to how the new old  
4 growth standard will ensure the viability of old growth associated species in light of the  
5 fact that it (a) allows commercial logging and unrestricted road-building in *all* old growth  
6 stands, (b) does not require designation of replacement old growth stands in historically  
7 logged areas order to ensure that old growth is well-distributed throughout the Forest,  
8 (c) only requires retention of some large trees if they already exist in an old growth stand,  
9 (d) sets no minimum stand size for old growth stands despite the Forest Service's own  
10 findings that most old growth associated species need stands over 80 acres in size, and (e)  
11 allows the elimination of canopy cover in old growth stands to an extent that the stands  
12 will no longer be suitable for old growth associated species that require high levels of  
13 canopy closure.
- 14 197. Instead of providing a rational explanation for the old growth standard, the Forest Service  
15 simply asserts that the NFMA "planning regulations do not require a scientific basis for  
16 old growth retention and replacement." FP FEIS 687.
- 17 198. The Forest Service's reliance on an unscientific, invalid old growth habitat proxy  
18 standard that was never subjected to public comment violates NFMA and NEPA.
- 19 199. The Forest Service found that several proposed logging units in the project area were  
20 "potential old growth," and that in general the area is "mature" forest with "various stages  
21 of mortality."
- 22 200. The Forest Service asserts that 15% of the project area is old growth, but does not provide  
23 the basis for that calculation and asserts that it did not need to map the actual and/or  
24 potential old growth in the project area. Thus, the public has no idea what the 15% figure  
25 is based upon or where the actual and potential old growth units are in the project area.
- 26 201. Contrary to the 15% old growth estimate, it appears that there may not be any old growth  
27 at all in the analysis area, because all or most of the large trees were removed by historic  
28 logging about 100 years ago and there are very few trees remaining that are over 15  
inches dbh and no trees remaining over 20 inches dbh.
202. In light of the above-noted issues with the Revised Forest Plan old growth standard, the  
Forest Service's additional failures to map old growth habitat in the project area and  
disclose to the public in the EA/DN its initial findings that several proposed logging units  
were "potential old growth," violate NEPA and NFMA because the public cannot  
determine whether the Forest Service is ensuring old growth species viability in the  
project area.
203. The Revised Forest Plan does not set forth a MIS for snag dependent species, nor is there  
a requirement in the Revised Forest Plan to monitor snag dependent MIS population

1 trends in response to management activities, in violation of NFMA and the 1982 NFMA  
2 planning regulations.

3 204. Instead of designating a snag dependent MIS, the Forest Service asserts that two snag  
4 standards in the Revised Forest Plan will ensure the viability of snag dependent species.

5 205. The Forest Service's reliance on those habitat proxies is arbitrary because in some areas,  
6 such as the project area, the Forest Service is still in compliance with the snag retention  
7 standard even if it leaves no snags at all. The Forest Service does not explain how it can  
8 ensure viability of snag-dependent species with a habitat proxy that – in actual effect –  
9 may preserve no snag habitat whatsoever. Additionally, the live tree retention standard  
10 for future snags does not provide enough live trees to meet the numbers in snag retention  
11 standard.

12 206. Additionally, in order to comply with the best available science, the Forest Service must  
13 provide large blocks of insect-infested forests in order that they can have viable  
14 populations of woodpeckers which in turn will create cavities for all the other wildlife. It  
15 cannot simply retain a few snags in a clearcut, the snags must be retained as one element  
16 of a dynamic forest to fulfill their necessary ecological role.

17 207. The inadequacy of these habitat proxy standards has already been demonstrated by the  
18 logging in the Rat Creek project, which shows that the Forest Service can clearcut  
19 hundreds of acres and still be nominally in compliance with the Revised Forest Plan snag  
20 standard. Without population monitoring of a snag-dependent MIS, it is impossible to  
21 determine the effects of these clearcuts on snag-dependent species.

22 208. The Forest Service's insistence that there are sufficient snags in the project area to ensure  
23 the viability of sensitive, snag-dependent species such as the black-backed woodpecker  
24 rings hollow in light of its admission that it could not find a single black-backed  
25 woodpecker in the project area and that only 3% of the entire project area provides  
26 suitable nesting habitat for that sensitive species.

27 209. In conclusion, for all of the reasons discussed above, the Revised Forest Plan MIS  
28 provisions and "habitat proxy" provisions for elk, wolverine, old growth associated  
species, and snag-dependant species violate NFMA and the 1982 NFMA planning  
regulations.

### THIRD CLAIM FOR RELIEF

The Forest Service's approval of the project violates

the APA and NEPA because the project does not meet its own purpose.

25 210. All previous paragraphs are incorporated by reference.

26 211. The Forest Service repeatedly clarified that the sole purpose of the salvage logging  
27 portion of the project was economic: to recover commercial value of beetle-killed trees in

1 the project area.

2 212. The salvage logging portion of the project will actually result in a net economic loss to  
3 the Forest Service, i.e. the federal taxpayer, because the cost (to the agency) of building  
4 and maintaining logging roads exceeds the commercial value of the trees.

5 213. The Forest Service’s conclusion that the project is financially efficient is arbitrary and  
6 capricious because it runs counter to the evidence in the record that the project will result  
7 in a net economic loss of at least \$130,000.00.

8 214. The Forest Service’s failure to take a hard look at economics and provide a rational  
9 explanation for authorizing this project – in light of the fact that the logging project will  
10 not meet its only stated purpose – violates the APA and NEPA.

11 **FOURTH CLAIM FOR RELIEF**

12 The Forest Service’s approval of the project violates the APA and NEPA

13 because the agency failed to analyze point source discharges in the project area.

14 215. All previous paragraphs are incorporated by reference.

15 216. On August 17, 2010, the Ninth Circuit Court of Appeals issued a decision holding that  
16 runoff that flows from logging roads into a system of ditches, culverts, and channels and  
17 then into forest streams and rivers constitutes a point source under the Clean Water Act  
18 and requires a National Pollutant Discharge Elimination System permit. *Northwest*  
19 *Environmental Defense Center v. Brown*, 617 F.3d 1176 (9<sup>th</sup> Cir. 2010).

20 217. The Forest Service admits that there are existing culverts in the project area and that the  
21 project involves the installation of new culverts.

22 218. The Forest Service failed to recognize that storm water runoff from project logging roads  
23 that travels through ditches, culverts, and channels are “point sources” under the Clean  
24 Water Act per the new court decision.

25 219. The Forest Service failed to assess whether there will be any discharges of pollutants  
26 from any point sources because of the project per the new court decision.

27 220. The Forest Service failed to demonstrate that the Forest Service is complying with any  
28 applicable permit requirement under the Clean Water Act’s “National Pollutant Discharge  
Elimination System,” in light of the new court decision.

21. The Forest Service’s complete failure to disclose and discuss this legal requirement in the  
NEPA analysis for the project violates the APA and NEPA for failure to take a hard look  
and failure to consider an important factor.

FIFTH CLAIM FOR RELIEF

The Forest Service’s approval of the project violates the APA and NEPA  
because the cumulative effects analysis was inadequate.

222. All previous paragraphs are incorporated by reference.
223. A cumulative impact on the environment results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.
224. The Forest Service must analyze the cumulative impacts of a project in the NEPA document for that project.
225. A proper consideration of the cumulative impacts of a project requires some quantified or detailed information, and requires a discussion of the incremental impact that can be expected from successive projects, as well as how those individual impacts might combine or synergistically interact with each other.
226. The significance of an environmental impact cannot be avoided by breaking it down into smaller component parts.
227. Thus, if several projects are being planned in the same time frame and area and could have a cumulative environmental effect, the impacts of the projects must be considered in a single EIS.
228. The Forest Service is planning the East Deerlodge project directly adjacent to this project area and within the same elk analysis area as this project.
229. The East Deerlodge project is the same type of logging – beetle-killed tree salvage logging – as this project, and will increase temporary road density in the same elk analysis area as this project.
230. The Forest Service admits that both projects will have “similar” effects.
231. The East Deerlodge project went through the NEPA scoping process in the same year that this project went through the NEPA scoping process.
232. The Forest Service published a draft NEPA analysis (draft EIS) for the East Deerlodge project in the same year as it published the draft NEPA analysis (draft EA) this project.
233. In the North Butte EA, the Forest Service did not disclose the cumulative increase in temporary road density that will occur in the elk analysis area when both projects are occurring.
234. The Forest Service’s failure to analyze the East Deerlodge project and North Butte project in the same EIS, or alternatively to adequately disclose cumulative effects of the projects in the North Butte EA, violates NEPA.



1 235. In addition, the Forest Service’s failure to analyze and disclose the cumulative effects of  
2 concurrent roadside salvage logging projects in the area, and the North Butte and East  
3 Deerlodge salvage logging projects, on snag-dependent species, in the North Butte EA or  
in a joint EIS for the North Butte and East Deerlodge project, violates NEPA.

4 **VIII. RELIEF REQUESTED**

5 For all of the above stated reasons, Plaintiffs request that this Court award the following relief:

- 6 A. Declare that the project violates the law;
- 7 B. Enjoin implementation of the salvage logging portion of the project, including road  
8 construction and the sale of the Project timber sale(s);
- 9 C. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees  
under the EAJA fee provision; and
- 10 D. Grant Plaintiffs any such further relief as may be just, proper, and equitable.

11  
12 Respectfully submitted this 7<sup>TH</sup> Day of February, 2011.

13  
14 /s/Rebecca K. Smith

15 Rebecca K. Smith

16 Public Interest Defense Center, P.C.

17 Attorney for Plaintiffs  
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