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1 Sean T. Malone, OSBar # 084060 (LEAD COUNSEL)
2 seanmalone8@hotmail.com
3 624 W. 24th Ave
4 Eugene, OR 97405
5 Telephone: (303) 859-0403
6

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7 Ralph O. Bloemers, OSB # 984172 (COUNSEL)
8 ralph@crag.org
9 Tanya Sanerib, OSB # 025526
10 tanya@crag.org
11 Crag Law Center
12 917 SW Oak St., Suite 417
13 Portland, OR 97205
14 Tel: (503) 525-2727
15 Fax: (503) 296-5454
16

17
18 Attorneys for Plaintiffs
19
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21 UNITED STATES DISTRICT COURT
22 DISTRICT OF OREGON
23

LEAGUE OF WILDERNESS
DEFENDERS-BLUE MOUNTAINS
BIODIVERSITY PROJECT, an Oregon
non-profit corporation, **THE SIERRA**
CLUB, a California non-profit corporation,

Plaintiffs,

vs.

KEVIN MARTIN, in his official capacity as
Forest Supervisor of the Umatilla National
Forest, **UNITED STATES FOREST**
SERVICE, a federal agency,

Defendants.

Case No. CV'09-1023 SJ

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(National Environmental Policy Act, and
Administrative Procedure Act)

20773

1 **INTRODUCTION**

2 1. Plaintiffs League of Wilderness Defenders-Blue Mountains Biodiversity Project
3 (“Blue Mountains Biodiversity Project” or “BMBP”) and the Sierra Club (collectively
4 “Plaintiffs”) respectfully file this civil action against Defendants Kevin Martin, in his official
5 capacity as Forest Supervisor of the Umatilla National Forest, and the United States Forest
6 Service (“Forest Service”). This action challenges the decision by Defendants to authorize the
7 Wildcat Fuels Reduction and Vegetation Management Project (“Wildcat Project” or “Project”) in
8 the Heppner Ranger District of the Umatilla National Forest.

9 2. Defendants’ action approving the forest management activities described above is
10 arbitrary, capricious, not in accordance with law, and without observance of procedures required
11 by law, within the meaning of the Administrative Procedure Act (“APA” – 5 U.S.C. § 706).

12 3. The Wildcat Project Environmental Assessment (“EA”) is legally deficient under
13 the National Environmental Policy Act (“NEPA” – 42 U.S.C. § 4321 et seq.). The Wildcat
14 Project EA fails to assess significant environmental impacts in an Environmental Impact
15 Statement. The Wildcat Project EA is also insufficient because it fails to take a hard look at the
16 environmental impacts of logging in roadless areas, and fails to disclose and analyze information
17 necessary to inform the public and the decision maker about impacts to roadless areas as required
18 by NEPA. The EA also fails to disclose scientific controversy of management activities, and
19 fails to satisfy the purpose and need for the Wildcat Project. Defendants’ action, therefore, is
20 arbitrary, capricious, not in accordance with law, and without observance of procedures required
21 by law, within the meaning of the APA.

22 4. Plaintiffs seek:

23 a declaration that the Wildcat Project EA violates the NEPA;

24 a declaration that the Wildcat Project EA violates the APA;

25 a declaration that the Forest Service failed to prepare an Environmental Impact

26 Statement;

27 a declaration that the Wildcat Project EA fails to sufficiently analyze and disclose
28 logging in Uninventoried Roadless Areas;

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1 a declaration that the Wildcat Project EA fails to sufficiently disclose the environmental
2 impacts to other roadless areas, including Wilderness Potential Areas, Inventoried Roadless
3 Areas, and vast Contiguous Roadless Expanses;

4 a declaration that the Wildcat Project EA fails to disclose scientific controversy;
5 a declaration that the Wildcat Project fails to satisfy the purpose and need for the project;
6 and

7 an order enjoining Defendants from undertaking certain activities in the Wildcat Project
8 implicated by the violations described above, unless and until they comply with NEPA and the
9 APA.

10 JURISDICTION AND VENUE

11 5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 706, as
12 Plaintiffs allege violations of the National Environmental Policy Act (“NEPA”) of 1969, 42
13 U.S.C. § 4321 et seq., its implementing regulations, 40 C.F.R. § 1500 et seq., and the
14 Administrative Procedure Act (“APA”) of 1946, 5 U.S.C. § 500 et seq.

15 6. Venue is proper in the United States District Court for the District of Oregon
16 pursuant to 28 U.S.C. § 1391(e)(2) because the events or omissions giving rise to the claims
17 raised herein occurred in this district.

18 7. Reviewable final agency action exists that is subject to this court’s review under 5
19 U.S.C. § 702 and 5 U.S.C. § 704. This court may issue declaratory relief pursuant to 28 U.S.C. §
20 2201. This court may hold unlawful and set aside the challenged agency action, 5 U.S.C. §
21 706(2), and issue injunctive relief pursuant to 5 U.S.C. § 705, and 28 U.S.C. § 2202. An actual
22 controversy exists between Plaintiffs and Defendants.

23 PARTIES

24 Plaintiffs

25 8. Plaintiff Blue Mountains Biodiversity Project is an independent non-profit
26 organization that is a project of the League of Wilderness Defenders. Blue Mountains
27 Biodiversity Project’s mission is to increase regional and national awareness of the Blue
28 Mountains ecosystems, to ensure the protection for and reintroduction of diverse native wildlife

1 species, to promote ecologically sound restoration, and to address the root causes of ecological
2 and community instability.

3 9. Since 1991, BMBP has monitored proposed timber sales and other Forest Service
4 projects in the four forests in the Blue Mountains ecosystem by submitting public comments,
5 visiting proposed project sites, meeting with the Forest Service, participating in collaborative
6 groups and submitting appeals and filing lawsuits when necessary to protect this diverse
7 ecosystem.

8 10. BMBP engages in collaboration, participates in the public process, and brings
9 legal challenges on its own institutional behalf and on behalf of its members who regularly have
10 engaged in, and will continue to engage in educational, recreational, and scientific activities on
11 the Umatilla National Forest. With members and volunteers throughout the Northwest, BMBP
12 regularly uses the Umatilla National Forest, including the project area for hiking, ecological
13 study, watching wildlife, viewing plants, and studying avian species.

14 11. BMBP participated throughout the public NEPA process for the Wildcat Project.
15 BMBP and its members reviewed the initial project notice and submitted scoping comments;
16 reviewed and participated in meetings and a field trip with agency planning staff; conducted
17 independent field trips and surveys throughout the Wildcat Project area and surrounding lands to
18 inform its views of the project and its impacts; and submitted lengthy comments on the EA for
19 the project. When these steps were not enough to protect the important resources in the area,
20 BMBP administratively appealed the Wildcat Project pursuant to 36 C.F.R., Part 215, 215.6, and
21 the notice of appeal contained all relevant requirements as set forth in 36 C.F.R. § 215.14.

22 12. The Wildcat Project, if implemented, would degrade ecological integrity, native
23 forest species habitat viability, waterways and aquatic habitat, water quality, areas that are
24 currently unimpaired by roads, and natural recreational quality of the project area. The project
25 would irreparably harm the interests of BMBP's members and volunteers by diminishing and
26 irreparably altering the quality and value of the areas for recreational, educational, natural,
27 aesthetic, and other activities throughout the greater project area. The project, as planned, will
28

1 likely also increase the risk of severe fires and insect outbreaks in and around the greater project
2 area, which would diminish the ability of BMBP's members to enjoy the area.

3 13. The Sierra Club is a non-profit corporation that represents over 20,000 members
4 throughout Oregon, including over 1,000 members in its Juniper Group, which focuses its efforts
5 on environmental issues in central and eastern Oregon. The Sierra Club promotes conservation
6 of Oregon's natural environment.

7 14. The Sierra Club advocates for the protection of roadless areas, mature and old
8 growth forests, and investment in ecological restoration of fish and wildlife habitat damaged by
9 past logging and roadbuilding activities.

10 15. The Sierra Club participated throughout the public process for the Wildcat
11 Project. The Sierra Club, its staff and its members reviewed the initial project notice and
12 submitted scoping comments, reviewed and participated in meetings and a field trip with agency
13 planning staff, and conducted independent field trips and surveys throughout the Wildcat Project
14 area and surrounding lands. The Sierra Club submitted an administrative appeal for the Wildcat
15 Project pursuant to 36 C.F.R., Part 215, 215.6, and the notice of appeal contained all relevant
16 requirements as set forth in 36 C.F.R. § 215.14.

17 16. The Sierra Club brings suit on its own behalf and on behalf of its members who
18 regularly enjoy hiking, camping, birding, wildlife watching, recreation, and ecological study
19 within the Umatilla National Forest. Sierra Club's members regularly visit the area within the
20 Heppner Ranger District of the Umatilla National Forest where the Wildcat project is proposed
21 to occur.

22 17. The Wildcat Project, if implemented, would adversely degrade the ecological
23 integrity, native forest species habitat viability, waterways and aquatic habitat, water quality,
24 areas that are currently unimpaired by roads, and natural recreational quality of the project area.
25 The project would irreparably harm the interests of Sierra Club members, volunteers, and
26 supporters by diminishing and irreparably altering the quality and value of the areas for
27 recreational, educational, natural, aesthetic, and other activities throughout the greater project
28

1 area. The project as planned will also likely increase the risk of severe fires in and around the
2 greater project area.

3 18. Plaintiff's recreational, aesthetic, spiritual, scientific, and educational interests
4 will be adversely affected and irreparably injured if Defendants implement the Wildcat Project
5 out of compliance with federal environmental laws. See First Declarations of Karen Coulter and
6 Asante Riverwind. By moving ahead with the Wildcat Project without complying with NEPA
7 and the APA, defendants have caused injury to BMBP, the Sierra Club, and its members. The
8 relief sought in this action will remedy those injuries.

9 **Defendants**

10 19. Defendant Kevin Martin is the Responsible Official for the Wildcat Project.
11 Defendant Martin is the Umatilla National Forest Supervisor.

12 20. Defendant the Forest Service is a federal agency within the United States
13 Department of Agriculture.

14 21. Defendants are responsible for ensuring that projects implemented on National
15 Forest System lands comply with the NEPA and the APA.

16 22. Plaintiffs sue Defendant Kevin Martin in his official capacity as Forest Supervisor
17 of the Umatilla National Forest. Plaintiffs sue Defendant Forest Service as the agency
18 responsible for administering the Umatilla National Forest.

19 23. Plaintiffs repeatedly identified specific aspects of the Wildcat Project that are
20 contrary to federal law and social consensus. The issues that Plaintiffs identified include
21 insufficient NEPA analysis, insufficient analysis and disclosure of logging within Uninventoried
22 Roadless Areas, failure to meet the project's purpose and need, and failure to disclose and
23 analyze the science in opposition to the project and disclose the science in support of the project.

24 **PROCEDURAL BACKGROUND**

25 24. The Forest Service noticed and began scoping the Wildcat Project in the winter
26 2007 quarterly edition of the Umatilla National Forest Schedule of Proposed Activities.

27 25. On March 2, 2007, scoping letters were sent to tribal agencies, interested
28 organizations, individuals, and other agencies. The Forest Service received comment letters

1 from Oregon Wild, the Sierra Club, and the League of Wilderness Defenders – Blue Mountains
2 Biodiversity Project.

3 26. The comment letters and subsequent appeal raised the issues put forth below in
4 this complaint.

5 27. A field trip to the project area to discuss project design was held on May 24,
6 2007.

7 28. On July 13, 2007, a newsletter containing information on the project status was
8 mailed to the Plaintiffs.

9 29. In March 2008, a draft EA was submitted for public comment and plaintiffs
10 submitted detailed comments.

11 30. In March 2009, a final EA was submitted for public comment and plaintiffs
12 submitted detailed comments.

13 31. On March 6, 2009, Kevin Martin, Forest Supervisor for the Umatilla National
14 Forest and Responsible Official for the Wildcat Project, issued a Decision Notice (“DN”) and a
15 Finding of No Significant Impact (“FONSI”) for the Wildcat Project. Kevin Martin determined
16 that the Wildcat Project “will not have a significant effect on the quality of the human
17 environment considering the context and intensity of impacts.” DN at 2; see 40 C.F.R. §
18 1508.27.

19 32. The FONSI was allegedly based upon Kevin Martin’s review of the context and
20 intensity of the project. Among other conclusions, the “intensity” review determined that

- 21 • “[t]here will be no significant effects on unique characteristics of the area,
22 because there are no wilderness, or wild and scenic rivers, or Inventoried
23 Roadless Areas within the project area boundary”
- 24 • “[t]here are no . . . ecologically critical areas that would be affected by this
25 action.”

- 1 • “[t]he effects on the quality of the human environment are not likely to be highly
2 controversial because there is no known scientific controversy over the impacts of
3 the project”;
- 4 • “[n]o significant disagreements have been identified with the disclosure of effects
5 in Chapter 3 of the EA”;
- 6 • “[t]he action will also not cause loss or destruction of significant scientific . . .
7 resources”; and
- 8 • “[t]he action will not violate Federal, State, and local laws or requirements for the
9 protection of the environment.”

10 DN at 13-16.

11 33. The environmental effects from the Wildcat Project do not support a FONSI.

12 34. On April 24, 2009, the Sierra Club and BMBP appealed the DN, FONSI, and EA
13 for the Wildcat Project.

14 35. The issues raised in this Complaint were previously raised before the agency in
15 the administrative appeal for the Wildcat Project. The failure to provide for sufficient
16 environmental analysis in the form of an EIS was noted at pages 18-23 of the administrative
17 appeal; the failure to adequately analyze and disclose logging in Uninventoried Roadless Areas
18 was noted at pages 33 and 42-47 of the appeal; the failure to sufficiently disclose scientific
19 controversy was noted at pages 29-32 of the appeal; and the failure to meet the purpose and need
20 of the project was noted at pages 23-25 of the appeal.

21 36. On June 8, 2009, Calvin Joyner, the Deputy Regional Forester and Appeal
22 Deciding Officer, denied the appeal. Calvin Joyner’s decision upheld Kevin Martin’s DN and
23 FONSI for the Wildcat Project.

24 **RELEVANT STATUTORY AND REGULATORY BACKGROUND**

25 **National Environmental Policy Act**

26 37. The National Environmental Policy Act (“NEPA”) is our “basic national charter
27 for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA’s primary goals are to insure
28

1 fully informed decision-making and to provide for public participation in environmental analyses
2 and decision-making. See id. § 1500.1(b), (c). The Council on Environmental Quality (“CEQ”)
3 promulgated uniform regulations implementing NEPA that are binding on all federal agencies.
4 40 C.F.R. §§ 1500 et seq.

5 38. NEPA is a procedural statute that requires federal agencies to take a “hard look”
6 at the environmental consequences of its action and consider a range of alternative actions, and
7 by complying with NEPA the Forest Service can chose among a range of outcomes and mitigate
8 significant impacts. *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d 1059, 1070 (9th Cir.
9 2002).

10 39. If there are no potential significant impacts, then the agency must issue a FONSI,
11 40 C.F.R. §§ 1501.4(e), 1508.9, accompanied by a convincing statement of reasons to explain
12 why a project’s impacts are insignificant.

13 40. Determining the significance of an action “requires considerations of both context
14 and intensity.” 40 C.F.R. § 1508.27. The CEQ regulations, at 40 C.F.R. Section 1508.27, list
15 criteria to evaluate intensity

- 16 • “[i]mpacts that may be both beneficial and adverse. A significant effect may exist
17 even if the Federal agency believes that on balance the effect will be beneficial”;
- 18 • “[t]he degree to which the proposed action affects public health or safety”;
- 19 • “[u]nique characteristics of the geographic area such as proximity to historic or
20 cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers,
21 or ecologically critical areas”;
- 22 • “[t]he degree to which the effects on the quality of the human environment are
23 highly uncertain or involve unique or unknown risks”;
- 24 • “[t]he degree to which the possible effects on the human environment are highly
25 uncertain or involve unique or unknown risks”;
- 26
- 27
- 28

- 1 • “[t]he degree to which the action may establish a precedent for future action with
2 significant effects or represents a decision in principle about a future
3 consideration”;
- 4 • “[w]hether the action is related to other actions with individually insignificant but
5 cumulatively significant impacts. Significance exists if it is reasonable to
6 anticipate a cumulatively significant impact on the environment. Significance
7 cannot be avoided by terming an action temporary or by breaking it down into
8 small component parts”;
- 9 • “[t]he degree to which the action may adversely affect districts, sites, highways,
10 structures, or objects listed in or eligible for listing in the National Register of
11 Historic Places or may cause loss or destruction of significant scientific, cultural,
12 or historical resources”;
- 13 • “[t]he degree to which the action may adversely affect an endangered or
14 threatened species or its habitat that has been determined to be critical under the
15 Endangered Species Act of 1973”;
- 16 • and “[w]hether the action threatens a violation of Federal, State, or local law or
17 requirements imposed for the protection of the environment.”

18 40 C.F.R. §§ 1508.27(b)(1)-(10).

19 41. If the agency’s action is environmentally “significant” according to the criteria,
20 then the agency must prepare an EIS. If an agency’s action is environmentally significant
21 according to any of the criteria, then the agency must prepare an EIS.

22 42. NEPA requires that federal agencies prepare an EIS for “major Federal actions
23 significantly affecting the quality of the human environment.” 42 U.S.C § 4332(2)(C). If it is
24 uncertain whether the proposed action may have a significant effect on the environment, the
25 agency must prepare an EA analyzing the effects of the action. 40 C.F.R. § 1501.3.

26 43. If substantial questions are raised whether a project may have a significant effect
27 upon the human environment, an EIS must be prepared.

1 review, the court shall “hold unlawful and set aside agency actions...found to be arbitrary,
2 capricious, an abuse of discretion or otherwise not in accordance with law.” 5 U.S.C. § 706(2).

3 **FACTUAL BACKGROUND**

4 **The Umatilla National Forest**

5 50. The Umatilla National Forest (“UNF”) is located in the northern portion of the
6 Blue Mountains in northeastern Oregon and southeastern Washington. UNF LRMP 1-4. The
7 UNF contains 1.4 million acres of national forest land. *Id.* The UNF is fragmented by Interstate
8 Highway 84. *Id.* The UNF lies within the headwaters of four large drainage basins: Umatilla,
9 John Day, Wall Walla, and Grande Ronde river basins. *Id.*

10 51. The Wildcat Project area is located in the eastern portion of the Heppner Ranger
11 District in Morrow and Grant counties, Oregon, about 15 miles south of the town of Heppner.

12 52. The project area comprises roughly 25,450 acres within the National Forest
13 boundary in the Little Wall Creek-Skookum Creek and Swale Creek subwatersheds located
14 within the Wall Creek watershed, which drains into the North Fork John Day River.

15 53. The northern portion of the project area is comprised mostly of cold and moist
16 upland forest. EA at 1-4. The southern portion of the project area is comprised of dry upland
17 forests of the watershed.

18 54. Bark beetles are a continuing source of mortality in ponderosa pine and lodgepole
19 pine throughout the UNF. EA at 1-4.

20 55. The Umatilla Land and Resource Management Plan (“LRMP” or “Forest Plan”)
21 guides all management activities and establishes management standards and guidelines for the
22 UNF. The Umatilla Forest Plan was prepared pursuant to the National Forest Management Act
23 (“NFMA”), 16 U.S.C. § 1600 *et seq.*

24 56. The Umatilla Forest Plan contains various management areas. The Wildcat
25 Project Area contains nine management areas, including A4 (Viewshed 2), C1 (Dedicated Old
26 Growth), C2 (Managed Old Growth), C3 (Big Game Winter Range), C4 (Wildlife Habitat
27 Emphasis), C5 (Riparian Wildlife), C8 (Grass-Tree Mosaic), E1 (Timber/Forage), and E2
28 (Timber and Big Game).

1 **Purpose and Need**

2 57. The Forest Service's stated "purpose" for the Wildcat project is to (a) reduce the
3 risk of stand loss due to competition between individual trees, insect, and disease caused
4 mortality and wildfire; and (b) to provide wood products and opportunities for jobs as a result of
5 vegetation management in accordance with the Forest Plan. DN 2.

6 58. The Wildcat Project EA cites a need to (a) move structural conditions toward the
7 historic range of variability; (b) reduce stocking in stands dominated by trees less than 21 inches
8 in diameter at breast height to promote growth and development of large trees; (c) restore
9 historic amount of stands dominated by large trees; (d) reduce the levels of mortality of existing
10 large diameter trees within the late and old structured stands by reducing understory competition;
11 (f) protect and enhance the vegetative conditions of aspen by increasing the vigor of existing
12 stands; (g) reduce insect and disease susceptibility and mortality in forested stands by reducing
13 competition between trees; (h) reduce ladder fuels to reduce risk of fire spread into the upper
14 canopy; (i) reduce ground fuels that would contribute to wildfire intensity and resource damage;
15 and (j) reduce fuel densities to allow for the reintroduction of prescribed fire on a historical
16 occurrence level. DN at 2.

17 59. The Wildcat Project, as proposed, will not meet the stated purpose and need in the
18 EA.

19 **Alternative 2: The Proposed Action**

20 60. Alternative 2 (or the "Proposed Alternative") proposes a variety of treatments for
21 the Wildcat project area. This includes commercial thinning, aspen restoration, old-growth
22 logging, non-commercial thinning, mechanical fuels treatment, prescribed burning, road
23 construction, and forest plan amendments.

24 61. The Heppner Ranger District proposes vegetation and fuels management on about
25 13,900 acres. EA at 1-8. Vegetation management treatments include commercial thinning of
26 about 2,218 acres; mechanical fuels treatment of 2,113 acres of standing dead and downed
27 woody material and reduction of conifer regeneration; noncommercial thinning of about
28 3,289 acres and treatment of surface fuels on about 10,288 acres; and maintenance of existing

1 roads (39 miles of open and 41 miles closed), construction of a new system for 2.2 miles, and
2 construction of about 3.6 miles of temporary road will be required for access and haul purposes.

3 *Id.*

4 62. The duration of the Wildcat Project will be approximately 5 to 7 years. *Id.*

5 **Modified Alternative 2: The Selected Alternative**

6 63. Based on concerns raised by the public, including Plaintiffs, about impacts to
7 water quality, sedimentation, and big game habitat, Kevin Martin selected a slightly modified
8 version of Alternative 2 for the Wildcat Project.

9 64. The Modified Alternative 2 includes significant actions on the ground: (a)
10 commercial thinning on 1,943 acres; (b) mechanical fuels treatment on 2,113 acres; (c)
11 noncommercial thinning on 2,978 acres; (d) aspen stand treatment on 40 acres; (e) associated
12 road use/activity on 88 miles of roads, including constructing 5.3 miles of temporary roads; and
13 (f) prescribed fire on 10,288 acres.

14 65. The DN modified Alternative 2 in the following manner: commercial thinning
15 will not occur in units 63, 67, 68, 177, and 191 within the C3 (Big Game Winter Range)
16 management area; commercial thinning will not occur in units 14 and 30 within the C4 (Wildlife
17 Habitat Emphasis) Management Area; unit boundaries will be modified in units 32, 33, and 74
18 within the C4 management Area; non-commercial thinning will not occur within 6 mechanical
19 fuels treatment units (units 1, 10, 94, 99, 101, and 117); non-commercial thinning will not occur
20 in units 222, 225, 227; implement variable density thinning in units 39, 895, 111, the east half of
21 the unit 43, and the southwest finger of unit 27; and the 2.2 mile specified road designed to
22 access the mechanical fuels units in the north portion of the project area will be constructed as a
23 temporary road.

24 66. The chosen alternative purports to modify upland-forest stand to a species
25 composition and structure compatible with the historical range of variability; and reduce fuel
26 load and fire density to a level that re-introduces low-intensity surface fire; and reduce dead and
27 down fuel load. EA at 2-3. The Wildcat Project, however, fails to disclose the scientific
28

1 controversy of the project's impacts. The Forest Service does not disclose the science in
2 opposition to or in support of the proposed management prescriptions.

3 67. On roughly 2,218 acres, logging activities would utilize skidders, harvesters,
4 forwarders, and skyline systems. EA at 2-3. Significant environmental impacts will result from
5 these timber extraction methods.

6 68. Though significant impacts will likely result from mechanical means, the EA does
7 not specify whether chainsaws or mechanical means will be used on 2,113 acres of mechanical
8 fuels treatment, including forwarders and skyline systems. EA at 2-4.

9 69. Commercial thinning, non-commercial thinning, mechanical fuels treatment, and
10 fuels reduction would occur in logging units contiguous to Inventoried Roadless Areas ("IRAs").

11 70. Activities are proposed on four broad forest types: lower-elevation dry ponderosa
12 pine; mid-elevation moist, mixed conifers; higher-elevation cool and moist subalpine forests; and
13 groves of aspen.

14 Roadless Areas

15 71. Roadless areas have been the subject of federal legislation and litigation at least
16 since the passage of the Wilderness Act of 1964, 16 U.S.C. §§ 1131 *et seq.* Roadless areas are
17 significant because of their potential for designation as Wilderness Areas. Roadless areas are
18 also significant because they contain unique environmental benefits, including, but not limited to
19 high quality water resources, high quality soils, wildlife habitat, and opportunities for recreation.

20 72. In the 1970s, two large inventorying projects – Roadless Area Review and
21 Evaluation ("RARE I" and "RARE II") – were undertaken to catalogue roadless areas for
22 possible inclusion as Wilderness Areas under the Wilderness Act.

23 73. Designation as an Inventoried Roadless Area can be the first step to designation
24 as a Wilderness Area. *See generally Nat'l Audubon Soc'y v. U.S. Forest Serv.*, 46 F.3d 1437,
25 1439-40 (9th Cir. 1994) (describing the history of Inventoried Roadless Areas).

26 74. Roadless areas that meet certain criteria continue to be designated as Wilderness
27 Areas.

1 75. In national forests, roads are continual sources of significant erosion and
2 fragmentation.

3 76. The Wildcat Project Area either contains or is contiguous with Inventoried
4 Roadless Areas, Wilderness Potential Areas, Uninventoried Roadless Areas, and Contiguous
5 Roadless Expanses.

6 77. There are no designated wilderness areas within the Heppner Ranger District. EA
7 3-163.

8 78. The Wildcat Project EA cites "Roadless Areas and Areas without Roads" as a
9 major issue. EA 1-15.

10 **Uninventoried Roadless Areas**

11 79. Uninventoried Roadless Areas often contain Wilderness characteristics and
12 unique roadless characteristics not found in areas containing roads and areas with high road
13 density.

14 80. The Wildcat Project area is generally bisected by Forest Service road 2100 that
15 runs east-west and creates the northern and southern portion of the project area, which creates
16 two large Uninventoried Roadless Areas that are comprised of smaller contiguous Uninventoried
17 Areas.

18 81. Logging units are contained within and contiguous to Uninventoried Roadless
19 Areas.

20 82. The Northern Contiguous Uninventoried Roadless Area in the northern portion of
21 the project area includes the Tupper Butte, Skookum Creek, Texas Butte, Copple Butte, and
22 Swale Creek Uninventoried Roadless Areas. The Northern Contiguous Uninventoried Roadless
23 Area is roughly 10,000 acres.

24 83. The Southern Contiguous Uninventoried Roadless Area in the southern portion of
25 the project area includes the Skookum Creek, Bear Creek, Little Bear Creek, Swale Creek, Little
26 Wall Creek, Mahogany Flat, Mulligan Stew Canyon, Buckhorn Spring, Hidden Spring, Grouse
27 Spring, Boneyard Canyon, North Wall Creek, Gillman Canyon, and Black Rock Canyon
28

1 Uninventoried Roadless Areas. The Southern Contiguous Uninventoried Roadless Area is
2 roughly 13,000 acres.

3 84. Road construction will occur in the Northern Contiguous Uninventoried Roadless
4 Area and the Southern Contiguous Uninventoried Roadless Area.

5 85. The EA does not disclose the existence of these Uninventoried Roadless Areas,
6 does not disclose the acreage contained within these Uninventoried Roadless Areas, does not
7 contain sufficiently detailed maps of these areas indicating the location of these Uninventoried
8 Roadless Areas, does not sufficiently disclose that logging units that are proposed for within and
9 adjacent to the Uninventoried Roadless Areas, and does not sufficiently analyze roadless
10 characteristics, qualities, and other factors unique to roadless areas.

11 Wilderness Potential Areas

12 86. The Forest Service prepared an inventory of the forest for areas with Wilderness
13 potential. EA at 3-163. The Forest Service alleges that lands with characteristics consistent with
14 the criteria meet the statutory definition of wilderness and were designated as Wilderness
15 Potential Areas. *Id.*

16 87. The Wildcat Project area contains two Wilderness Potential Areas.

17 88. The Texas Butte Wilderness Potential Area is contained in the northern portion of
18 the project area. EA at 3-165. The Texas Butte Wilderness Potential Area is an estimated 303
19 acres. EA at 3-164. The Texas Butte Wilderness Potential Area is contiguous with the Texas
20 Butte IRA (*see infra*). EA at 3-165. The Texas Butte Wilderness Potential Area is also
21 contiguous with the Northern Contiguous Uninventoried Roadless Areas.

22 89. Logging units exist immediately adjacent to the Texas Butte Wilderness Potential
23 Areas. The EA does not disclose that logging would occur immediately adjacent to Wilderness
24 Potential Areas, nor does it disclose the environmental impacts from logging immediately
25 adjacent to the Wilderness Potential Area. Finally, the EA does not disclose the effect on future
26 potential Wilderness Area designation due to logging in immediately adjacent units.

27 90. The Skookum Wilderness Potential Area is contained within the southern portion
28 of the project area. EA at 3-164. The Skookum Wilderness Potential Area is an estimated 1,810

1 acres. *Id.* The Skookum Wilderness Potential Area is contiguous with the Skookum IRA. EA at
2 3-165. The Skookum Wilderness Potential Area is contiguous with the Southern Contiguous
3 Uninventoried Roadless Area.

4 91. Logging units exist near the Skookum Wilderness Potential Areas. The EA does
5 not disclose the environmental impacts of logging near the Wilderness Potential Area.

6 92. The Forest Service states that the reason other lands were excluded from
7 designation as Wilderness Potential Area is because, *inter alia*, the “areas were too small (less
8 than 5,000 acres)” and “they were not contiguous with existing wilderness and/or inventoried
9 roadless areas.” EA at 3-163.

10 **Inventoried Roadless Areas**

11 93. An Inventoried Roadless Area (“IRA”) contains Wilderness Area characteristics
12 and is often the first step in becoming a Wilderness Area.

13 94. In the 1970s, IRAs were allocated during two large inventorying projects:
14 Roadless Area Review and Evaluation (“RARE”) I and II. These projects were undertaken to
15 catalogue roadless areas for possible inclusion as wilderness areas under the Wilderness Act. No
16 similar large scale inventorying project has occurred since then.

17 95. The Wildcat Project area is contiguous with two significant IRAs: the Texas
18 Butte IRA and the Skookum IRA.

19 96. Logging units are planned immediately adjacent to the Texas Butte IRA. The EA
20 does not disclose the environmental impacts of logging immediately adjacent to the Texas Butte
21 IRA.

22 97. The Texas Butte IRA is roughly 6,871 acres. EA at 3-163. The Texas Butte IRA
23 is contiguous with the Texas Butte Wilderness Potential Area. EA at 3-165. The Texas Butte
24 IRA is also contiguous with the Northern Contiguous Uninventoried Roadless Area.

25 98. Logging units are planned near the Skookum IRA. The EA does not disclose the
26 environmental impacts of logging near the Skookum IRA.

1 project area, failed to disclose the acreage of Contiguous Roadless Expanses, failed to disclose
2 maps with adequate detail identifying Contiguous Roadless Expanses, and failed to disclose the
3 environmental impacts unique to Contiguous Roadless Expanses.

4 106. The Forest Service must disclose and analyze the impacts on the Contiguous
5 Roadless Expanses and, by so doing, the Forest Service would concomitantly consider a broader
6 range of alternatives that avoids impacts to these areas.

7 **SIGNIFICANT EFFECTS**

8 107. The Wildcat Project will result in significant impacts to the human environment.

9 108. The Wildcat Project will harvest timber on a previously undeveloped tract of land.

10 109. The Wildcat Project will harvest timber in significant roadless areas, which
11 contain unique characteristics not found in areas with roads or areas with a high density of roads.

12 110. The Wildcat Project will have significant effects on unique characteristics of the
13 area.

14 111. The Wildcat area contains ecologically critical areas, including a 23,000 acre and
15 17,000 acre Contiguous Roadless Expanses.

16 112. The Project contains highly controversial science over, *inter alia*, insect outbreaks
17 and increased vigor of the remaining trees to an insect outbreak. This controversy, though cited
18 repeatedly by Plaintiffs in their administrative comments, has not been disclosed by the Forest
19 Service. The Forest Service did not disclose or consider the science in support and in opposition
20 to the prescriptions it proposed to accomplish the purpose and need of the project.

21 113. The Wildcat Project will cause loss and destruction of significant scientific
22 resources.

23 114. The Wildcat Project will result in violation of Federal laws for the protection of
24 the environment.

25 115. The Wildcat Project will utilize prescribed burning on 10,288 acres of the project
26 area.

27 116. The Wildcat Project will result in significant cumulative effects.

1 117. The Wildcat Project will unnecessarily harvest old-growth trees greater than 21”
2 diameter breast height. Old-growth trees are significantly depleted across the Umatilla National
3 Forest, as well as Eastern Oregon.

4 118. The Wildcat Project will utilize ground-based logging systems across the entire
5 project area, including tractor, forwarder, and skyline systems.

6 119. The Wildcat Project will construct 5.3 miles of allegedly “temporary” roads.
7 “Temporary” roads have permanent adverse environmental effects, even if decommissioned.

8 120. Road construction will occur in significant Contiguous Roadless Expanses,
9 including a 23,000 acre and 17,000 acre roadless expanse.

10 121. The Wildcat Project area contains potential habitat for sensitive species and
11 management species, including the painted turtle, northern bald eagle, American peregrine
12 falcon, upland sandpiper, yellow-billed Cuckoo, gray flycatcher, gray wolf, California wolverine,
13 Canada lynx, Columbia spotted frog, Rocky Mountain bighorn sheep, mid-Columbia steelhead,
14 interior redband trout, and California floater.

15 122. The Wildcat Project area contains species of concern, including neotropical
16 migrant birds, goshawk, pygmy, flammulated owls, gray owls, Townsend’s big-eared bat,
17 several cavity excavator species, flying squirrels, and rare forest plants.

18 123. Forest Service policy generally mandates that decisions for EAs will be made by
19 the District Ranger and decisions for Environmental Impact Statements (“EIS”) will be made by
20 the Forest Supervisor. The decision for the Wildcat Project EA, however, was made by the
21 Forest Supervisor.

22 **CLAIMS FOR RELIEF**

23 **COUNT I**

24 **Violation of NEPA**

25 **Failure to Prepare an Environmental Impact Statement**

26 124. Plaintiffs restate and incorporate all foregoing allegations.

27 125. NEPA requires the Forest Service to prepare an EIS for all “major Federal actions
28 significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

1 126. An agency must prepare an EIS if “substantial questions are raised as to whether a
2 project may cause significant degradation of some human environmental factor.” *Greenpeace*
3 *Action v. Franklin*, 14 F.3d at 1324, 1332 (9th Cir. 1992).

4 127. The Forest Service prepared an EA for the Wildcat Project. An EA must contain
5 “sufficient evidence and analysis for determining whether to prepare an environmental impact
6 statement or a finding of no significant impact [FONSI].” 40 C.F.R. § 1508.9(a)(1).

7 128. The environmental impacts of the Wildcat Project are significant within the
8 context of the regulatory factors used to evaluate intensity and significance. 40 C.F.R. §
9 1508.27.

10 129. The Forest Service’s authorization of the Wildcat Project without preparing an
11 EIS violates NEPA because the Wildcat Project is a major federal action significantly affecting
12 the quality of the human environment.

13 **COUNT II**

14 **Violation of NEPA**

15 **Failure to Disclose, Analyze, and Take a Hard Look at Impacts to Roadless Areas**

16 130. Plaintiffs restate and incorporate the foregoing allegations.

17 131. NEPA requires the Forest Service to carefully consider detailed information. 42
18 U.S.C. § 4332(2)(c). NEPA further requires that environmental information is made available to
19 deciding officials and the public before decisions are made and before actions are taken. 40
20 C.F.R. § 1500.1(b). Information contained within NEPA documents must be of high quality and
21 must concentrate on significant issues. *Id.*

22 132. The Forest Service is required to take a hard look at the impacts of the Wildcat
23 Project.

24 133. The Forest Service prepared an EA for the Wildcat Project.

25 134. An EA must aid an agency’s compliance with NEPA. 40 C.F.R. § 1508.9(a)(2).
26 An EA must include discussions of the environmental impacts of the proposed action and
27 alternatives. 40 C.F.R. § 1508.9(b).

1 135. The Forest Service is required to assess the independent environmental
2 significance of roadless values, including, but not limited to, water resources, soils, wildlife
3 habitat, and recreation opportunities.

4 136. The Forest Service must, at the very least, disclose that development will affect a
5 5,000 acre roadless area.

6 137. Contiguous Uninventoried Roadless Areas, Wilderness Potential Areas, and
7 Inventoried Roadless Areas (“IRAs”) must be assessed and analyzed in the aggregate as a single
8 Contiguous Roadless Expanse, not in isolation.

9 138. The EA fails to disclose the size of the Uninventoried Roadless Areas subject to
10 logging activities within the Project Area.

11 139. The EA fails to disclose the location of Uninventoried Roadless Areas subject to
12 logging and road building activities within the Project Area.

13 140. The EA fails to disclose impacts to IRAs from logging activities in Uninventoried
14 Roadless Areas immediately adjacent to IRAs, potentially precluding them from future
15 Wilderness allocation.

16 141. The EA fails to analyze impacts to Wilderness Potential Areas, including the
17 potential for precluding Wilderness Potential Areas from Wilderness allocation, due to logging
18 in immediately adjacent Uninventoried Roadless Areas.

19 142. The EA fails to adequately address impacts to wilderness characteristics and
20 roadless characteristics.

21 **Count Three**

22 **Violation of NEPA**

23 **Failure to Disclose and Analyze Scientific Opinion Supporting and**

24 **Opposing the Efficacy of the Wildcat Project**

25 143. Plaintiffs restate and incorporate the foregoing allegations.

26 144. The Forest Service has an affirmative duty to disclose and analyze scientific
27 information counseling against the activities proposed by the agency, or that call into question
28 the expected environmental effects of the proposed action. 40 C.F.R. §§ 1402.9(b), 1502.24; *see*

1 also 40 C.F.R. § 1508.27(b)(4). This information must be discussed in the body of the
2 environmental analysis.

3 145. A purpose and need for the Wildcat Project is to “reduce conditions favorable to
4 insect and disease outbreaks” by “reducing competition between trees.” The Wildcat proposes to
5 engage in commercial logging to accomplish this purpose and claims without support that this
6 prescription will make conditions less favorable to future insect outbreak.

7 146. The Forest Service has not demonstrated that the Wildcat Project will meet the
8 stated purpose and need of insect outbreaks because the agency does not disclose any scientific
9 support or respond to any of the peer-reviewed scientific studies or other scientific information
10 that runs counter to these claims and was provided to the Forest Service during project planning
11 and as part of the administrative appeal of the project. Therefore, the Forest Service is proposing
12 to implement an alternative that it has not shown will meet the purpose and need of the project.

13 147. The scientific literature indicates that up to two-thirds of the trees would need to
14 be removed to increase resistance adequately enough to withstand another outbreak. The Forest
15 Service has failed to disclose and analyze the scientific information on this issue in the body of
16 the Wildcat EA.

17 148. The Forest Service itself has not provided any scientific evidence that supports its
18 hypothesis that this project will help the remaining trees withstand an insect outbreak.
19 Nevertheless, the agency has proposed a project based on removing healthy trees to reduce this
20 risk. NEPA requires the agency to disclose and analyze in the environmental analysis the
21 scientific information that contradicts the intended effect of the proposed project.

22 149. The Forest Service has failed to demonstrate that the proposed project will satisfy
23 one of the primary purposes of the project, which is to make the conditions less favorable to
24 insect outbreaks. The Forest Service’s failure to disclose and analyze scientific information
25 counseling for or against the activities proposed by the agency, or that call into question the
26 expected environmental effects of the proposed action, and to insure that the proposed alternative
27 supports the purpose and need, is arbitrary, capricious, and not in accordance with law. 5 U.S.C.
28 § 706(2)(A).

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PRAYER FOR RELIEF

Plaintiff respectfully requests the following relief:

(a) a declaration that the Wildcat Project EA violates the NEPA and the APA;

(b) an order preventing Defendants from undertaking activities in the Wildcat Project that violate federal law and policy until they demonstrate compliance with the NEPA and the APA;

(c) an order setting aside the Wildcat Project EA and the Wildcat Project FONSI;

(d) an order that Plaintiff recover its costs, including reasonable attorneys' fees, incurred in connection with this action, as provided for under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and other applicable law; and

(e) an order of such other equitable, declaratory, injunctive, and further relief that the Court deems just and proper.

Dated this 28th day of August, 2009

Respectfully submitted,



Sean Malone OSB # 084060
624 W. 24th Ave
Eugene, OR 97405
Telephone: 303.859.0403
Email: seanmalone8@hotmail.com

Ralph O. Bloemers, OSB # 98417
Tanya Sanerib, OSB # 025526
Crag Law Center
917 SW Oak St., Suite 417
Portland, OR 97205
Telephone: (503) 525-2727
Email: ralph@crag.org

Attorneys for Plaintiff