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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CONSERVATION CONGRESS, a non-profit organization,

Plaintiff,

vs.

UNITED STATES FOREST SERVICE,  
UNITED STATES FISH AND WILDLIFE SERVICE,

Defendant.

)  
) Case No.: \_\_\_\_\_  
)  
) **COMPLAINT FOR DECLARATORY**  
) **AND INJUNCTIVE RELIEF**  
)  
)  
) (National Environmental Policy Act, 42  
) U.S.C. §§ 4321 *et seq.*; National Forest  
) Management Act, 16 U.S.C. §§ 1601, *et seq.*,  
) Endangered Species Act, 16 U.S.C. § 1531 *et*  
) *seq.*, Administrative Procedure Act, 5 U.S.C.  
) §§ 701 *et seq.*)  
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**STATEMENT OF THE CASE**

1  
2 1. Plaintiff is challenging Defendant United States Forest Service’s decision to  
3 authorize the Bagley Hazard Tree Abatement Project (Bagley timber sale) Environmental  
4 Assessment (EA), Decision Notice (DN), and Finding of No Significant Impact (FONSI) on the  
5 Shasta-Trinity National forest (STNF). Plaintiff is also challenging Defendant United States  
6 Fish and Wildlife Service’s decision to issue a concurrence letter for the biological assessment  
7 issued by the Forest Service pursuant to the Bagley timber sale.

8 2. The Forest Service’s EA, DN, and FONSI are arbitrary and capricious under the  
9 Administrative Procedures Act, 5 U.S.C. §§ 701 *et seq.*, because the Bagley timber sale fails to  
10 comply with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, and the  
11 National Forest Management Act (NFMA), 16 U.S.C. §§ 1601, *et seq.* The Fish and Wildlife  
12 Service’s concurrence letter is arbitrary and capricious under the APA because it fails to utilize  
13 the best available science and other obligations pursuant to the Endangered Species Act, 16  
14 U.S.C. §§1531 *et seq.*

**JURISDICTION AND VENUE**

15  
16 3. This court is vested with jurisdiction under 28 U.S.C. §1331(a) (action for  
17 declaratory and injunctive relief arising under the constitution and laws of the United States); 28  
18 U.S.C. §§2201, 2202 (power to issue declaratory or injunctive relief in cases of actual  
19 controversy); and 5 U.S.C. §§702-706, because (1) the action arises under the laws of the United  
20 States, (2) defendant is sued in its official capacity; and (3) there is a present and actual  
21 controversy between the parties.

22 4. The actions giving rise to this complaint took place in this District; thus, venue is  
23 properly vested in this court pursuant to 28 U.S.C. §1391(e) and 5 U.S.C. § 703.

24 5. There exists now between the parties hereto an actual, justiciable controversy.

25 6. Plaintiff will file an administrative appeal of the Bagley timber sale; however,  
26 because an Emergency Situation Determination was granted, logging will begin immediately.

**PARTIES**

27  
28 7. Plaintiff CONSERVATION CONGRESS (Plaintiff) is a non-profit 501 (c) (3)

1 organization incorporated in the state of California, dedicated to maintaining, protecting, and  
2 restoring the native ecosystems of northern California. Plaintiff has an organizational interest in  
3 the proper and lawful management of National Forests located in northern California, especially  
4 the Shasta-Trinity National Forest. Plaintiff's members, staff, and board members participate in  
5 a wide range of wildlife viewing, bird watching, and other recreational activities on the Shasta-  
6 Trinity National Forest and the Shasta Lake and McCloud Ranger District, including the Bagley  
7 timber sale project area. The interests of Plaintiff and its members will be irreparably harmed if  
8 Defendant continues its violations of law.

9 8. Plaintiff has members who live or work in communities located near or adjacent  
10 to the Bagley timber sale project area. Its members use and enjoy the Shasta-Trinity National  
11 Forest, including the area of the Bagley timber sale, for a variety of purposes including, but not  
12 limited to, hiking, backpacking, photography, scientific study, wildlife observation, hunting, and  
13 fishing. They intend to continue to do so in the future. Plaintiff's members derive recreational,  
14 spiritual, professional, aesthetic, educational, and other benefits and enjoyment from these  
15 activities.

16 9. The Forest Service's implementation of the Bagley timber sale, as well as the Fish  
17 and Wildlife Service's concurrence letter, will harm and injure the interests of plaintiff and its  
18 members by causing or threatening irreversible adverse effects to the Shasta-Trinity National  
19 Forest, including the project area, and to the wildlife and other objects of interest therein. The  
20 Defendants' actions would deprive plaintiff and its members of the recreational, spiritual,  
21 professional, aesthetic, educational, and other benefits they presently derive from the Shasta-  
22 Trinity National Forest and the project area. Additionally, Defendants' actions deny Plaintiff  
23 and its members their right to have the laws implemented and enforced, and the satisfaction and  
24 peace of mind associated with witnessing the enforcement of this nation's environmental  
25 protection laws.

26 10. Plaintiff and its members and supporters are adversely affected and irreparably  
27 injured by the Defendant's impending implementation of the Bagley timber sale. These injuries  
28 are actual and concrete and would be redressed by the relief sought herein. Plaintiff has no

1 adequate remedy at law.

2 11. Defendant UNITED STATES FOREST SERVICE is the agency within the  
3 United States Department of Agriculture charged with complying with NEPA and NFMA while  
4 making management decisions on national forests.

5 12. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is the agency  
6 within the United States Department of the Interior with the mission to work with others to  
7 conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit  
8 of the American people.

### 9 **FACTUAL BACKGROUND**

#### 10 **The Shasta-Trinity National Forest**

11 13. The Bagley timber sale is contained within the Shasta-Trinity National Forest.

12 14. The Shasta-Trinity National Forest is located in northern California, and it is the  
13 largest national forest in California.

14 15. Numerous timber sales and private lands logging have occurred, are occurring, or  
15 will occur on and around the Bagley timber sale project area throughout the Shasta-Trinity  
16 National Forest.

#### 17 **The Bagley Fire**

18 16. The Bagley Fire was ignited by lightning strikes during August of 2012 on the  
19 Shasta Lake Ranger District and spread into the McCloud Ranger District of the Shasta-Trinity  
20 National Forest.

21 17. The Bagley Fire burned over 46,000 acres on both private and public land  
22 administered in Shasta County. Approximately 70% of the burned area occurred on land  
23 administered by the Shasta-Trinity National Forest and approximately 30% of the burned area  
24 occurred on the privately managed land.

25 18. The Forest Service characterized 70% of the burned area as very low to low  
26 severity.

27 19. Within the Bagley Fire footprint, 95 miles of open roads cross through land  
28 administered by the Forest Service, and the roads experienced varying degrees of fire severity.

1 **The Bagley timber sale**

2 20. The Bagley timber sale is located in the Shasta Lake and McCloud Ranger  
3 Districts on the Shasta-Trinity National Forest.

4 21. The purpose and need for the Bagley timber sale is to:

- 5 • Increase safe use of the National Forest Transportation System  
6 within the burned area;
- 7 • Retain open roads on the Forest transportation system that will be  
8 needed for future activities;
- 9 • Satisfy contractual and legal obligations include cost-share  
10 agreements under the FRTA easements;
- Quickly recover the monetary value of wood through salvage and  
sale, where feasible and appropriate, to offset the cost to the public  
while reducing excessive fuel loading.

11 22. The Bagley timber sale will log within designated northern spotted owl critical  
12 habitat. The Bagley timber sale project area contains 22,517 acres within the critical habitat unit.

13 23. The Bagley timber sale will log within the Iron Canyon Late Successional  
14 Reserve (LSR). The Bagley timber sale project area contains 23,842 acres within the Iron  
15 Canyon LSR.

16 24. The Bagley timber sale will log within Inventoried Roadless Areas (IRAs). The  
17 Bagley timber sale project area contains 15,965 acres of the East Girard IRA and 1,097 acres of  
18 the Kettle Mountain IRA.

19 25. The Bagley timber sale will log approximately 28 million board feet of timber.

20 26. The Bagley timber sale will log trees along 95 miles of open national forest  
21 system roads or approximately 5,430 acres; log and remove trees along 19 segmented miles of  
22 national forest system roads or approximately 776 acres; treat activity-created fuels in excess of  
23 10 tons per acre.

24 27. The Bagley timber sale will log along class 2 and 3 roads. The DN, FONSI, and  
25 EA fail to disclose how many miles of class 3 roads will be logged.

26 28. Class 3 roads are assigned to roads open and maintained for travel by a prudent  
27 driver in a standard passenger car. Warning signs and traffic control devices are provided to  
28 alert motorists of situation that may violate expectations. Roads in this maintenance level are

1 typically low speed with single lanes and turnouts.

2 29. Class 2 roads are assigned to roads open for use by high clearance vehicles.  
3 Warning signs and traffic control devices are not provided with the exception of signs stating  
4 “No Traffic Signs” at some intersections. Motorists should have no expectation of being alerted  
5 to potential hazards while driving these roads. Traffic is typically minor, usually consisting of  
6 one or a combination of administrative, permitted, dispersed recreation, or other specialized uses.

7 30. Federal timber sales and private lands logging is, has, and will continue to occur  
8 interspersed throughout the checkerboard arrangement of lands around and adjacent to the  
9 Bagley timber sale.

### 10 **The Northern Spotted Owl**

11 31. The northern spotted owl is listed as threatened under the Endangered Species  
12 Act.

13 32. The northern spotted owl relies on large, old trees, as well as snags (*i.e.* dead,  
14 standing trees).

15 33. The northern spotted owl is declining in most areas.

16 34. The two main threats to the northern spotted owl are habitat loss and competition  
17 from the barred owl.

18 35. The Bagley timber sale contains nesting, roosting, and foraging habitat for the  
19 northern spotted owl. Burned habitat is beneficial to the northern spotted owl.

20 36. The Bagley timber sale will log within critical habitat for the northern spotted  
21 owl.

### 22 **Procedural Background**

23 37. On March 7, 2013, the scoping letter for the Bagley timber sale was published.

24 38. On March 8, 2013, an additional scoping letter for the Bagley timber sale was  
25 published.

26 39. On June 28, 2013, USFS issued a request for comments on the Bagley timber  
27 sale.

28 40. On July 2, 2013 USFS issued a Draft Environmental Assessment.

1 41. On July 18, 2013, the Forest Service Chief granted an Emergency Situation  
2 Determination (ESD), allowing implementation of the Bagley timber sale to begin immediately  
3 after publication of the a legal notice of the Decision, expediting felling and removal of trees.

4 42. On July 22, 2013 FWS issued a Letter of Concurrence.

5 43. On August 29, 2013 USFS issued an Environmental Assessment and Decision  
6 Notice.

7 44. On September 12, 2013 USFS auctioned the Bagley Complex forests.

8 45. An administrative appeal of the Bagley timber sale is due by October 17, 2013.

9 46. Because of the ESD, logging will occur immediately and prior to the resolution of  
10 Plaintiff's administrative appeal.

## 11 STATUTORY FRAMEWORK

### 12 The National Environmental Policy Act

13 47. The National Environmental Policy Act ("NEPA") is our "basic national charter  
14 for protection of the environment." 40 C.F.R. § 1500.1(a). Congress enacted NEPA in 1969,  
15 directing all federal agencies to assess the environmental impact of the proposed actions that  
16 significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). NEPA's primary  
17 goals are to insure fully informed decision-making and to provide for public participation in  
18 environmental analyses and decision-making. *See id.* § 1500.1(b), (c). The Council on  
19 Environmental Quality ("CEQ") promulgated uniform regulations implementing NEPA that are  
20 binding on all federal agencies. 40 C.F.R. §§ 1500 *et seq.*

21 48. NEPA is a procedural statute that requires federal agencies to take a "hard look"  
22 at the environmental consequences of its action and consider a reasonable range of alternative  
23 actions.

24 49. NEPA also requires that agencies adequately consider and disclose cumulative  
25 effects. Cumulative effects result from the incremental impact of the action when added to other  
26 past, present, and reasonably foreseeable future actions. 40 C.F.R. 1508.25(a).

27 50. NEPA requires that federal agencies prepare a detailed EIS for "major Federal  
28 actions significantly affecting the quality of the human environment." 42 U.S.C § 4332(2)(C).

1 If it is uncertain whether the proposed action may have a significant effect on the environment,  
2 the agency must prepare an EA analyzing the effects of the action. 40 C.F.R. § 1501.3.

3 51. In addition to assisting an agency's determination whether to prepare an EIS, an  
4 EA serves to help an agency comply with NEPA even when no EIS is necessary by including a  
5 discussion of the need for the action, the consideration of alternatives to the action, the  
6 environmental impacts of the action, and a listing of the agencies and persons contacted and  
7 consulted. 40 C.F.R. § 1508.9.

### 8 **The National Forest Management Act**

9 52. The National Forest Management Act (NFMA) requires that the Forest Service  
10 carry out activities on national forest lands "consistent with the land management plans." 16  
11 U.S.C. § 1604(i).

12 53. The Shasta-Trinity National Forest Plan sets forth standards and guidelines, and  
13 each site-specific project on the Shasta-Trinity National Forest must comply with that forest  
14 plan.

### 15 **The Endangered Species Act**

16 54. The Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et seq.*, was enacted "to  
17 provide a means whereby the ecosystems upon which endangered species and threatened species  
18 depend may be conserved." 16 U.S.C. § 1531(b). The ESA protects species that are listed as  
19 "endangered" or "threatened." 16 U.S.C. § 1533. The northern spotted owl is listed as a  
20 threatened species.

21 55. Section 7 of the ESA prohibits actions that may jeopardize the survival and  
22 recovery of a listed species or adversely modify its critical habitat:

23 "[e]ach federal agency shall, in consultation with and with the assistance of the Secretary,  
24 insure that any action authorized, funded, or carried out by such agency ... is not likely to  
25 jeopardize the continued existence of any endangered species or threatened species or  
26 result in the destruction or adverse modification of habitat of such species which is  
27 determined by the Secretary ... to be critical ...."

28 16 U.S.C. § 1536(a)(2).



1           56. Section 7 of the ESA establishes an interagency consultation process to assist  
2 federal agencies in complying with their duty to avoid jeopardy to listed species or destruction or  
3 adverse modification of critical habitat.

4           57. Where Fish and Wildlife Service determines that listed species may be present,  
5 the action agency shall conduct a biological assessment for the purpose of identifying any  
6 endangered species or threatened species that is likely to be affected by the action. 16 U.S.C. §  
7 1536(c); 50 C.F.R. § 402.12(a). For those actions that may adversely affect a species, FWS must  
8 review all information provided by the action agency, as well as any other relevant information,  
9 to determine whether the proposed action is likely to jeopardize a listed species or destroy or  
10 adversely modify its designated critical habitat. 50 C.F.R. § 402.14(h)(3). This determination is  
11 set forth in in a biological opinion from Fish and Wildlife Service. *Id.*; 16 U.S.C. §  
12 1536(b)(3)A).

13           58. ESA regulations require that “[a] biological assessment shall evaluate the  
14 potential effects of the action on a listed and proposed species.” 50 C.F.R. § 402.12. In a  
15 biological assessment, the action agency must assess direct and indirect impacts against the  
16 backdrop of the environmental baseline and any changes expected from future private, state, and  
17 federal activities. 50 C.F.R. § 402.02. ESA regulations further define the scope of the  
18 geographic area, or “action area,” to be analyzed in a biological assessment. The “action area” is  
19 defined as “all areas to be affected directly or indirectly by the Federal Action and not merely the  
20 immediate area involved in the action.” 50 C.F.R. § 402.02.

21           59. The impacts to be analyzed include those effects that will manifest themselves  
22 immediately, those that will occur later in time, and those that will become notably harmful only  
23 when added to the baseline or combined with the impacts of other similar activities. *See id.* §  
24 402.02 (definition of “effects of the action”). “Cumulative effects” are defined as “those effects  
25 of future State or private activities, not involving Federal activities that are reasonably certain to  
26 occur within the action area of the Federal action subject to consultation.” 50 C.F.R. § 402.02.  
27 “Indirect effects” are defined as those effects “that are caused by the proposed action and are  
28 later in time, but still are reasonably certain to occur.” *Id.* “Interrelated actions are those that are

1 part of a larger action and depend on the larger action for their justification.” *Id.* Interrelated  
2 actions are identified by through “but for” causation.

3 60. According to the ESA Consultation Handbook, the analysis of whether the  
4 activities are interrelated to the proposed action under consultation should be conducted by  
5 applying a “but for” test. The biologist should ask whether another activity in question would  
6 occur “but for” the proposed action under consultation. If the answer is “no,” that the activity in  
7 question would not occur but for the proposed action, then the activity is interrelated and should  
8 be analyzed with the effects of this action.” ESA Consultation Handbook at 4-27.

9 61. In carrying out the requirements of section 7, each agency shall use the best  
10 scientific and commercial data available. 16 U.S.C. § 1536(a)(2).

11 62. The Forest Service, as the action agency, must make a preliminary determination  
12 of whether actions that may affect the listed species are likely or not likely to adversely affect the  
13 species. 50 C.F.R. § 402.14(a)-(b). If the Fish and Wildlife Service concurs in writing with the  
14 action agency’s determination that an action is not likely to adversely affect the listed species,  
15 the consultation process is concluded and FWS need not prepare a biological opinion. 50 C.F.R.  
16 §§ 402.114, 402, 14.14(b)(1).

17 63. The requirements for a “not likely to adversely affect” finding are stringent. As  
18 explained in the Fish and Wildlife Service Handbook for Procedures for Conducting  
19 Consultation Under Section 7, if the Fish and Wildlife Service is going to provide the action  
20 agency with a written concurrence that the proposed action “is not likely to adversely affect”  
21 listed species – and thereby excuse the action agency from engaging in formal consultation – the  
22 Fish and Wildlife Service’s decision must be “based on review of all potential effects, direct and  
23 indirect” which is “documented in the concurrence letter.” Consultation Handbook at 3-12. If  
24 the “nature of the effects cannot be determined, benefit of the doubt” must be given to the  
25 species, and the Director cannot concur with the not likely to adversely affect determination and  
26 formal consultation must be initiated. *Id.* The Fish and Wildlife Service must conclude that a  
27 project is likely to adversely affect “if *any* adverse effects to listed species *may* occur as a direct  
28

1 or indirect result of the proposed action or its interrelated actions,” unless the effect is  
2 discountable or insignificant. *Id.* at 3-13 (emphasis added).

3 64. At the culmination of the consultation process, the Fish and Wildlife Service may  
4 issue an incidental take statement that specifies terms and conditions necessary to minimize the  
5 impact of the take of listed species. 16 U.S.C. § 1536(b)(4). An incidental take statement  
6 exempts any take in compliance with its terms and conditions from the take prohibition. 16  
7 U.S.C. § 1536(o)(2).

### 8 **The Administrative Procedure Act**

9 65. The Administrative Procedure Act, or “APA,” provides for judicial review of  
10 final agency action. 5 U.S.C. §§ 701, 706.

11 66. Under the authority of the APA, a reviewing court must hold unlawful and set  
12 aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of  
13 discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2).

## 14 **FIRST CLAIM FOR RELIEF**

### 15 **Forest Service Violation of NEPA and the APA**

#### 16 **The Forest Service failed to prepare an Environmental Impact Statement for the Bagley 17 timber sale**

18 67. Plaintiff incorporates by reference all preceding paragraphs.

19 68. The Forest Service failed to prepare an EIS even though significant and unique  
20 areas will be logged, including IRAs, LSRs, and designated northern spotted owl critical habitat;  
21 and there exists a significant controversy over the environmental impacts of the Bagley timber  
22 sale.

23 69. NEPA requires federal agencies to prepare a detailed Environmental Impact  
24 Statement (“EIS”) prior to taking action that could “significantly” affect the quality of the human  
25 environment. 42 U.S.C. § 4332(2)(C).

26 70. An agency must prepare an EIS if substantial questions are raised as to whether a  
27 project *may* cause significant degradation of some human environmental factor.  
28

1 71. The Forest Service prepared an EA for the Bagley timber sale. An EA must  
2 contain "sufficient evidence and analysis for determining whether to prepare an environmental  
3 impact statement or a finding of no significant impact." 40 C.F.R. § 1508.9(a)(1).

4 72. The environmental impacts of the Bagley timber sale are significant within the  
5 context of the regulatory factors used to evaluate intensity and significance. 40 C.F.R. §  
6 1508.27.

7 73. The Forest Service's authorization of the Bagley timber sale without preparing an  
8 EIS violates NEPA because the Bagley timber sale is a major federal action significantly  
9 affecting the quality of the human environment.

10 74. Defendant's actions as described above are arbitrary, capricious, not in accordance  
11 with law, and without observance of procedures required by law, within the meaning of the APA,  
12 5 U.S.C. § 706.

13 75. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with  
14 this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412.

15 **SECOND CLAIM FOR RELIEF**

16 **Forest Service Violation of NEPA and the APA**

17 **The Forest Service failed to adequately disclose and analyze the cumulative effects of the**  
18 **Bagley timber sale**

19 76. NEPA requires federal agencies to analyze and disclose the past, present, and  
20 foreseeable environmental impacts, including cumulative impacts, of "major federal actions." 42  
21 U.S.C. § 4332(c)(I); 40 C.F.R. § 1508.7.

22 77. Cumulative effects result from the incremental impact of the action when added to  
23 other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.25(a).

24 78. A federal timber sale is a major federal action as defined by NEPA.

25 79. An Environmental Assessment (EA) must "provide sufficient evidence and  
26 analysis for determining whether" the project will have a significant impact on the environment.  
27 40 C.F.R. § 1508.9(a)(1).

1 80. Private and public lands logging is occurring around, adjacent to, and in close  
2 proximity to the Bagley timber sale.

3 81. The Forest Service failed to adequately disclose or analyze the cumulative effects  
4 from nearby past, present, and reasonably foreseeable timber sales.

5 82. Accordingly, the decision to proceed should be set aside, and the Bagley timber  
6 sale should be enjoined until the Forest Service prepares a NEPA document that includes an  
7 adequate cumulative effects analysis.

8 83. Defendant's actions as described above are arbitrary, capricious, not in accordance  
9 with law, and without observance of procedures required by law, within the meaning of the APA,  
10 5 U.S.C. § 706.

11 84. Plaintiff is entitled to its reasonable fees, costs, and expenses associated with this  
12 litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

### 13 **THIRD CLAIM FOR RELIEF**

#### 14 **Forest Service Violation of NEPA and the APA**

#### 15 **The Forest Service failed to consider a reasonable range of alternatives for the Bagley** 16 **timber sale**

17 85. Plaintiff incorporates by reference all preceding paragraphs.

18 86. NEPA requires the Forest Service to consider a reasonable range of alternatives to  
19 the proposed action. The alternatives section is the “heart” of the agency’s environmental  
20 analysis, and the Forest Service must rigorously explore and objectively evaluate all reasonable  
21 alternatives. 40 C.F.R. §1502.14.

22 87. Defendant Forest Service considered only near-identical alternatives.

23 88. Defendant Forest Service failed to consider an alternative that does not enter  
24 designated northern spotted owl critical habitat; late successional reserves; or inventoried  
25 roadless areas.

26 89. Defendant Forest Service prepared an unreasonably narrow purpose and need  
27 statement.

1           90.      Accordingly, the decision to proceed should be set aside, and the Bagley timber  
2 sale should be enjoined until the Forest Service prepares a NEPA document that includes the  
3 evaluation of a full range of reasonable alternatives.

4           91.      Defendant's actions as described above are arbitrary, capricious, not in accordance  
5 with law, and without observance of procedures required by law, within the meaning of the APA,  
6 5 U.S.C. § 706.

7           92.      Plaintiff is entitled to its reasonable fees, costs, and expenses associated with this  
8 litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

9                                   **FOURTH CLAIM FOR RELIEF**

10                                   **Forest Service Violation of NEPA and the APA**

11           **The Forest Service failed to take a hard look at the environmental impacts of the Bagley**  
12                                   **timber sale**

13           93.      Plaintiff incorporates by reference the preceding paragraphs

14           94.      The National Environmental Policy Act (NEPA) requires federal agencies to  
15 analyze the foreseeable environmental impacts, including direct and indirect impacts, of "major  
16 federal actions." 42 U.S.C. § 4332(c)(I); 40 C.F.R. § 1508.7.

17           95.      A federal timber sale is a major federal action as defined by NEPA.

18           96.      An Environmental Assessment (EA) must "provide sufficient evidence and  
19 analysis for determining whether" the project will have a significant impact on the environment.  
20 40 C.F.R. § 1508.9(a)(1).

21           97.      The EA failed to adequately analyze the direct and indirect effects of the timber  
22 sale, including but not limited to the following:

23                    A. Northern spotted owl and northern spotted owl designated critical habitat;

24                    B. Late Successional Reserves;

25                    C. Inventoried Roadless Areas;

1 98. Defendant's actions as described above are arbitrary, capricious, not in accordance  
2 with law, and without observance of procedures required by law, within the meaning of the APA,  
3 5 U.S.C. § 706.

4 99. Plaintiff is entitled to its reasonable fees, costs, and expenses associated with this  
5 litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

6 **FIFTH CLAIM FOR RELIEF**

7 **Forest Service Violation of NFMA and the APA**

8 **The Forest Service failed to Comply with the Forest Plan Standards and Guidelines that**  
9 **Require Management Consistent with Recovery Plans**

10 100. Plaintiff incorporates by reference the preceding paragraphs

11 101. The National Forest Management Act (NFMA) requires that all projects comply  
12 with the relevant forest plan.

13 102. The Shasta-Trinity National Forest Plan requires that the Forest Service manage  
14 threatened and endangered species under existing recovery goals identified in species' recovery  
15 plans; to maintain and/or enhance habitat for threatened and endangered species consistent with  
16 species' recovery plans; and that activities required by recovery plans for threatened and  
17 endangered species take precedence over certain other standards and guidelines.

18 103. Defendant's actions as described above are arbitrary, capricious, not in accordance  
19 with law, and without observance of procedures required by law, within the meaning of the APA,  
20 5 U.S.C. § 706.

21 104. Plaintiff is entitled to its reasonable fees, costs, and expenses associated with this  
22 litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

23 **SIXTH CLAIM FOR RELIEF**

24 **Fish and Wildlife Service Violation of the APA and ESA**

25 **The United States Fish and Wildlife Service issued an arbitrary and capricious**  
26 **concurrence letter**

27 105. Plaintiff incorporates by reference the preceding paragraphs.  
28

1 106. In carrying out its ESA section 7 consultation obligations, the Fish and Wildlife  
2 Service must determine whether the action is likely to adversely affect listed species, thus  
3 requiring formal consultation.

4 107. If the nature of the effects cannot be determined, the “benefit of the doubt must be  
5 given to the species, and the Director is not to concur that formal consultation is not necessary.  
6 Consultation Handbook at 3-12.

7 108. Pursuant to its obligations under the ESA, the Forest Service prepared a biological  
8 assessment that determined that the Project would “not likely adversely affect” the northern  
9 spotted owl.

10 109. The Fish and Wildlife Service issued a letter concurring in the Forest Service’s  
11 decision that the Bagley timber sale would “not likely adversely affect” the northern spotted owl.  
12 The Fish and Wildlife Service’s concurrence letter is arbitrary and capricious because it was not  
13 based on the best available scientific and commercial data, the cumulative effects of the action,  
14 and other considerations under the ESA.

15 110. Defendant's actions as described above are arbitrary, capricious, not in accordance  
16 with law, and without observance of procedures required by law, within the meaning of the APA,  
17 5 U.S.C. § 706.

18 111. Plaintiff is entitled to its reasonable fees, costs, and expenses associated with this  
19 litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

20 **PLAINTIFF’S PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment in favor of  
22 Plaintiff and issue the following relief:

23 112. declare that Defendant Forest Service violated NEPA and the APA;

24 113. declare that Defendant Forest Service violated NFMA and the APA;

25 114. declare that the Defendant Fish and Wildlife Service violated the APA pursuant to  
26 its obligations under the ESA;

27 115. declare that the Defendants’ actions as set forth in this complaint are arbitrary,  
28 capricious, an abuse of their discretion, are not in accordance with law and are without



1 observance of procedures required by law and therefore must be set aside pursuant to the APA, 5  
2 U.S.C. §706 (2);

3 116. vacate and remand the EA, DN, and FONSI;

4 117. vacate and remand the concurrence letter to the FWS;

5 118. enjoin Defendant Fish and Wildlife Service from relying on the concurrence  
6 letter;

7 119. enjoin Defendant Forest Service from continuing the operation of any timber sale  
8 pursuant to the project until Defendants have complied with NEPA;

9 120. award Plaintiff its reasonable fees, costs, and expenses associated with this  
10 litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 or other authority;

11 121. and grant Plaintiff such additional and further relief as the Court deems just and  
12 equitable.

13  
14 Respectfully submitted this 16th day of September 2013,

15  
16 /s/ Rachel Fazio  
17 RACHEL FAZIO

18 /s/ Sean Malone (as authorized on 9/16/2013)  
19 SEAN MALONE  
20 *Pro Hac Vice Application Pending*

21 /s/ Elisabeth A. Holmes (as authorized on  
22 9/16/2013)  
23 ELISABETH A. HOLMES  
24 *Pro Hac Vice Application Pending*

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28 Attorneys for Plaintiff