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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

KLAMATH-SISKIYOU WILDLANDS  
CENTER; CASCADIA WILDLANDS  
PROJECT; UMPQUA WATERSHEDS,

Plaintiffs,

vs.

THE BUREAU OF LAND MANAGEMENT,  
an administrative agency of the United States  
Department of the Interior,

Defendant.

Civ. Case No.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

(Violation of the National Environmental  
Policy Act and Administrative Procedure  
Act)

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**INTRODUCTION**

1. This is a civil action for declaratory and injunctive relief. This action arises under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 et seq., and alleges violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 et seq..

2. Plaintiffs Klamath-Siskiyou Wildlands Center (“KS Wild,”) Cascadia Wildlands Project (“CWP”), and Umpqua Watersheds (“UW”) seek a declaration that the Bureau of Land Management (“BLM” or “Defendant”) violated federal law in planning and approving the Snow

Creek Seneca Right-Of-Way Road Construction Project (“Snow Creek Project”) in the South Umpqua/Galesville Late-Successional Reserve in the Glendale Resource Area of the Medford District of the Bureau of Land Management. Plaintiffs also seek injunctive relief to redress the injuries caused by these violations of law.

3. This action is a challenge to the BLM’s June 19, 2007 Decision Record/Finding of No Significant Impact (DR/FONSI) for the Snow Creek Project, which authorizes construction of two roads through the South Umpqua/Galesville Late-Successional Reserve (LSR) and logging of live old-growth trees from within the Late-Successional Reserve.

4. Plaintiffs’ claim is that the BLM violated NEPA by failing to analyze, consider, or acknowledge the cumulative environmental effects of the Snow Creek Project when aggregated with the effects of past, present, and reasonably foreseeable future actions in and around the project area.

5. By initiating this action, Plaintiffs seek to: (1) obtain a declaratory judgment that the Snow Creek Project EA and DR/FONSI violate NEPA, are an abuse of discretion, and are arbitrary and capricious agency action under the APA, 5 U.S.C. § 706; (2) compel the BLM to modify the Snow Creek Project to comply with NEPA; and (3) enjoin the BLM and its contractors, assigns, and other agents from proceeding with the proposed Snow Creek Project, or any portion thereof, unless and until this court determines that the violations of law set forth herein have been corrected.

6. Should Plaintiffs prevail, Plaintiffs will seek an award of costs and attorney’s fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

#### **JURISDICTION AND VENUE**

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 (federal question), § 2201 (injunctive relief), § 2202 (declaratory relief), and § 1346 (United States as a defendant). This cause of action arises under the laws of the United States. There is a present, actual and justiciable controversy between the parties, and the requested relief is therefore proper

under 28 U.S.C. § 2201 (declaratory relief) and § 2202 (injunctive relief), and 5 U.S.C. §§ 701-706. Plaintiffs have exhausted their administrative remedies.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district. This case is properly filed in Eugene, Oregon pursuant to Local Rule 3.4 because the Snow Creek Project is located entirely in Douglas County, Oregon.

### **PARTIES**

9. Plaintiff KLAMATH-SISKIYOU WILDLANDS CENTER (“KS Wild”) is a non-profit corporation organized under the laws of Oregon. KS Wild is a 501(c)(3) tax exempt, public interest conservation organization based in Williams, Oregon and Ashland, Oregon. KS Wild's organizational mission is to conserve the globally outstanding biological diversity of the Klamath-Siskiyou region in Southern Oregon and Northern California. KS Wild seeks to protect the ecological resources of the region by protecting and preserving the little remaining mature and old-growth forests and associated species in the Klamath-Siskiyou ecoregion.

10. Plaintiff CASCADIA WILDLANDS PROJECT (“CWP”) is an Oregon non-profit corporation headquartered in Eugene, Oregon. CWP’s goals include defending the forests, waters and wildlife of the Cascadia bioregion, including Oregon, by monitoring environmentally destructive projects and educating, organizing and agitating for a more compassionate and responsible relationship with the ecosystems of the bioregion. CWP seeks to defend Oregon’s wild places against logging, road building, mining and other unsustainable resource extraction activities. CWP and its members participate in government decision-making with regard to public lands in the Medford BLM District and throughout Oregon. The aesthetic, recreational, scientific, and educational interests of CWP and its members have been, are being, and unless this Court grants the requested relief, will continue to be adversely and irreparably impaired by the Snow Creek Project.

11. Plaintiff UMPQUA WATERSHEDS (“UW”) is a public non-profit corporation based in Roseburg, Oregon. Umpqua Watersheds is dedicated to the protection and restoration of the watersheds of southern Oregon.

12. The members and staff of the plaintiff organizations visit and enjoy the South Umpqua/Galesville Late-Successional Reserve including the area in and around the Snow Creek Project for educational, recreational, and scientific activities including hiking, camping, photography, and observing wildlife. Plaintiffs would sustain injury to their interests if the Snow Creek Project were undertaken in the absence of a legally and scientifically sufficient analysis of the project’s environmental impacts. Plaintiffs and their members would sustain further injury because the project will degrade water quality, diminish aesthetic value, and harm fish and wildlife in and around the project area. Plaintiffs, their members, and their staff have firm plans to return to the South Umpqua/Galesville Late-Successional Reserve where the Snow Creek Project is proposed, and their interests will be adversely affected and irreparably harmed by the BLM’s disregard of its statutory duties pursuant to NEPA. Plaintiffs have no adequate remedy at law. An order of this Court will remedy the injury to Plaintiffs’ interests.

13. Plaintiffs commented on and administratively appealed the Snow Creek Project alleging, among other things, that the BLM’s failure to adequately analyze the cumulative impacts of this project and the failure to comply with the requirements of NEPA violated federal law.

14. Defendant BUREAU OF LAND MANAGEMENT (“BLM”) is a federal agency within the United States Department of the Interior. The BLM is responsible for ensuring that the environmental impacts of the Snow Creek Project are examined in a manner that complies with all applicable laws and regulations, including NEPA.

## LEGAL BACKGROUND

### National Environmental Policy Act

15. NEPA “is our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). It is a procedural statute that requires the BLM to assess the environmental consequences of its actions before those actions are undertaken. NEPA seeks to prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action. 42 U.S.C. § 4321. For “major federal actions significantly affecting the quality of the human environment,” 42 U.S.C. § 4332(2)(C), the BLM is required to prepare an environmental impact statement (“EIS”). An EIS is a thorough analysis of the potential environmental impacts that “provide[s] full and fair discussion of significant environmental impacts and ... inform[s] decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

16. Where an agency is unsure whether an action is likely to have “significant” environmental effects, it may prepare an EA: a “concise public document” designed to “[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement....” 40 C.F.R. § 1508.9. If the EA concludes that the action will not have a significant effect on the environment, the agency may issue a Finding of No Significant Impact and may then proceed with the action. 40 C.F.R. § 1508.13.

17. In determining whether a proposed action may significantly affect the environment, the agency must consider cumulative impacts. 40 C.F.R. § 1508.27(b)(7). A cumulative impact is defined in NEPA's implementing regulations as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-

Federal) or person undertakes such other actions.... Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

18. NEPA’s disclosure goals are two-fold: (1) to insure that the agency has carefully and fully contemplated the environmental effects of its action, and (2) to insure that the public has sufficient information to challenge the agency. By focusing the agency’s attention on the environmental consequences of its proposed action, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.

19. A central purpose of NEPA is to ensure that an agency will not act on incomplete information, only to regret its decision after it is too late to correct. NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.

### **Administrative Procedure Act**

20. The Administrative Procedure Act (“APA”) confers a right of judicial review on any person that is adversely affected by agency action. 5 U.S.C. § 702. Upon review, the court shall “hold unlawful and set aside agency actions . . . found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” 5 U.S.C. § 706(2).

### **FACTUAL BACKGROUND**

21. On June 19, 2007, Field Manager for the BLM’s Glendale Resource Area, Katrina Symons, signed the Decision Record for the Snow Creek Project, authorizing (1) the construction of two permanent logging roads 714 feet in length and 60 feet in width through the South Umpqua/Galesville Late-Successional Reserve and (2) logging and removal of the live old-growth trees that currently stand where the proposed roads are to be built. The purpose of the Snow Creek Project is to provide Seneca Jones Timber Company with more road access to its

private timberland in the area. EA, 6. There are already existing roads to all private lands in the watershed. Watershed Analysis (WA), 87.

22. The Snow Creek Project is located entirely within the South Umpqua/Galesville Late-Successional Reserve, which is approximately 66,900 acres in size and “is a major habitat link between the Coast Range and the Cascade Provinces.” “This LSR lies in a critical East-West connectivity area between two large valley systems... North and south of this LSR there are essentially no neighboring LSRs.” South Umpqua River/Galesville Late-Successional Reserve Assessment (LSRA) at 2. “The lack of federal ownership across the I-5 corridor in most of western Oregon points to this area as a vital link between major physiographic provinces.” *Id.*

23. At the site of the proposed road construction, canopy cover is approximately 60 percent, and contains dominant Douglas fir conifers greater than 30 inches diameter at breast height. Informal consultation regarding the Snow Creek Right-of-Way Permit (Log #1-15-06-I-0213)(USDI 2006). There is evidence of fire history within the stand. *Id.* The large conifers have many limbs, significant taper form typical of growing and healthy mature trees, and have little defect of decay. *Id.* The proposed road project is within the home range of the primary and alternate nest trees of one historic spotted owl site. *Id.* Annual surveys since 1998 document continuous pair occupancy at this site. *Id.* In the past nine years, this pair has successfully reproduced six times. *Id.* Surveys during 2006 determined the spotted owl pair had not nested, and their activity center occurred 1.3 miles from the proposed right-of-way.

24. The objective of Late-Successional Reserves is to protect and enhance conditions of late-successional and old-growth forest ecosystems, which serve as habitat for late-successional and old-growth related species. Northwest Forest Plan (NFP), C-9. While access to non-Federal lands has been recognized as one of the possible valid uses of Late-Successional

Reserves, “[n]ew road construction is generally not recommended unless potential benefits outweigh the impacts. New road construction should be designed and located to avoid late-successional habitat if possible and minimize adverse impacts. Where possible, new road construction should be limited to temporary roads which can be rehabilitated following use.” LSRA, 87. Non-silvicultural activities, such as road construction, within late-successional reserves are allowed only “where such activities are neutral or beneficial to the creation and maintenance of late successional habitat.” NFP, 8.

25. Road densities within the two affected drainages (the Upper Cow Creek-Galesville HUC 6 drainage and the Dismal Creek HUC 6 drainage) are currently at approximately 4.8 mi/mi<sup>2</sup> and 4.0 mi/mi<sup>2</sup> respectively. EA, 16. These road densities, the result of past road construction, are currently above recommended levels for properly functioning watershed condition. *Id.*

26. The Snow Creek Project would further increase road densities in the project area by adding 714 feet of permanent roads to the affected drainages. There is no plan or proposal to decommission or rehabilitate the roads following use.

27. Extensive harvesting on BLM lands occurred prior to the 1990 listing of the spotted owl as a threatened species, and the implementation of the NFP in 1994. EA, 34. Late-successional stands in the affected watersheds are highly fragmented and frequently isolated from other late-successional stands because of the checkerboard pattern of federal land ownership and past logging practices. *Id.* Harvesting on private lands continues to be extensive. *Id.* Most private land has been intensively harvested, much of it in the last few decades. *Id.* Other activities, such as quarry development, road building, herbicide application (private lands), and fire have additionally contributed to the loss of spotted owl suitable habitat. *Id.* The BLM



expects that habitat modification and removal of habitat will continue on private as well as federal lands within and surrounding the planning area and within the Cow Upper Section 7 watershed. *Id.*

## CLAIM FOR RELIEF

### **The Snow Creek Project Violates the National Environmental Policy Act**

28. Plaintiffs reallege all preceding paragraphs.

29. NEPA requires the BLM to consider the direct, indirect, and cumulative environmental impacts of the proposed action. 40 C.F.R. §§ 1508.7, 1508.8, 1508.27(b)(7). Proper consideration of the cumulative impacts of a project requires some quantified or detailed information in an EA or EIS; general statements about possible effects and some risk do not constitute the requisite “hard look” absent a justification regarding why more definitive information could not be provided. A cumulative effects analysis must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects. There are two critical features of a cumulative effects analysis: (1) it must not only describe related projects but also enumerate the environmental effects of those projects and (2) it must consider the interaction of multiple activities and cannot focus exclusively on the environmental impacts of an individual project. The time, type, place, and scale of past activities must be included in a cumulative effects analysis.

30. While the Snow Creek Project EA acknowledges that extensive habitat fragmentation and high road densities in the project area have already occurred, the BLM has entirely failed to analyze, disclose, or acknowledge the cumulative impacts of these past activities on both federal and private land within and around the Snow Creek Project area. The BLM has failed to describe past or related projects, enumerate the environmental effects of past

or related projects, or consider the interaction of the Snow Creek Project with other actions.

Most specifically, the BLM has failed to disclose or consider the time, type, place, or scale of past activities in and around the project area.

31. The BLM has failed to analyze, disclose, or acknowledge the cumulative impacts caused by other concurrent logging projects in the area including, but not limited to, Slim Jim, Big Jim, and the Roseburg Density Management Project. Most specifically, the BLM has failed to disclose or consider the time, type, place, or scale of these concurrent activities in and around the project area.

32. The BLM has failed to analyze, disclose, or acknowledge the cumulative impacts of the timber harvest that is associated with the proposed road construction, the age class of the trees to be logged and removed from public land, the impacts of yarding and hauling the logged trees in the proposed road location, or the impacts of building the infrastructures, such as landings, that would be constructed to facilitate the logging and removal of trees from the project area.

### **PRAYER FOR RELIEF**

Plaintiffs respectfully request that the Court:

1. Declare that the BLM violated the National Environmental Policy Act, the Administrative Procedure Act, and their implementing regulations in preparing and approving the DR/FONSI and EA for the Snow Creek Project;
2. Declare that the Defendant's actions as set forth in this complaint are arbitrary, capricious, an abuse of their discretion, not in accordance with law, and are without observance of procedures required by law and therefore must be set aside;

3. Order that the existing DR/FONSI and EA be rescinded, and that none of the proposed activities proceed unless and until a new DR/FONSI and EA are issued;
4. Enjoin the BLM and its contractors, assigns, and other agents from proceeding with the Snow Creek Project, or any portion thereof, unless and until the violations of federal law set forth herein have been corrected to the satisfaction of this court;
5. Award Plaintiffs their reasonable fees, costs and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 or other authority; and
6. Grant Plaintiffs such additional and further relief, as the Court deems just and equitable.

Dated this 24th day of September, 2007.

Respectfully Submitted,

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DANIEL KRUSE  
Attorney for Plaintiffs