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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

**CASCADIA WILDLANDS and OREGON WILD,**  
Oregon non-profit corporations,

Plaintiffs,

vs.

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

Defendant.

Civ. Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

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

## INTRODUCTION

1. Plaintiffs Cascadia Wildlands and Oregon Wild (collectively “Plaintiffs”), bring this civil action, arising under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, challenging the Bureau of Land Management (“BLM” or “Defendant”), for violating the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*
2. Plaintiffs bring this action for declaratory and injunctive relief to redress the injuries caused by the BLM’s violations of NEPA and the APA in the preparation and authorization of the Second Show timber sale (“Second Show”); the BLM’s actions are unlawful, arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.
3. By initiating this action, Plaintiffs seek: 1) a declaration that the BLM violated the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*, by failing to adequately analyze the cumulative impacts of the Second Show timber sale in conjunction with the 2014 Thinnings Project; 2) a declaration that the BLM violated the APA by failing to consider Plaintiffs’ administrative protest; and 3) an injunction prohibiting the BLM and its contractors, assigns, and other agents from proceeding with the Second Show Timber Sale, unless and until this Court determines that the violations of law set forth herein have been corrected.
4. The requested relief is necessary to preserve the status quo, to prevent illegal agency action, and to forestall irreparable injury to the environment.
5. In the event that Plaintiffs are the prevailing party in this action, they will seek an award of fees and costs pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412.

## JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question). The cause of action arises under the laws of the United States, including the APA and NEPA.

7. The relief requested is proper under 28 U.S.C. §§ 2201-2202 (declaratory judgment), and 5 U.S.C. §§ 701 *et seq.*

8. Venue in this Court is proper under 28 U.S.C. § 1391 because all or a substantial part of the events, actions, or omissions giving rise to the claims herein occurred within this judicial district. The BLM official who authorized this decision is headquartered in Springfield, Oregon, which is located within this district. Plaintiffs have offices within this district.

9. This case is filed properly in Eugene, Oregon pursuant to Local Rules 3.3 and 3.4 because the Second Show timber sale is located within Lane County, Oregon.

### **PARTIES AND STANDING**

10. Plaintiff **CASCADIA WILDLANDS** is a non-profit corporation headquartered in Eugene, Oregon, with approximately 12,000 members and supporters throughout the United States. Cascadia Wildlands educates, agitates, and inspires a movement to protect and restore wild ecosystems in the Cascadia Bioregion, extending from Northern California up into Alaska. Cascadia Wildlands envisions vast old growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascadia Bioregion. Cascadia Wildlands' members have used and will continue to use the Second Show timber sale area for activities such as hiking, mountain biking, bird watching, mushroom picking, and other recreational pursuits. The interests of Cascadia Wildlands and its members will be irreparably injured if the Second Show timber sale is allowed to proceed without compliance with the APA, NEPA, and other federal laws and regulations.

11. Plaintiff **OREGON WILD** is a non-profit corporation with approximately 10,000 members and supporters throughout the state of Oregon and the Pacific Northwest. Oregon Wild and its members are dedicated to protecting and restoring Oregon's lands, wildlife, and waters as

an enduring legacy. Oregon Wild members use the forest areas comprising the Second Show timber sale area for hiking, photography, bird watching, nature appreciation, and other recreational pursuits. Oregon Wild's members will not have the ability to use and enjoy the Second Show timber sale area if it is logged. The interests of Oregon Wild and its members will be adversely affected and irreparably injured if the Second Show sale is allowed to proceed without compliance with our federal environmental laws.

12. Defendant **BUREAU OF LAND MANAGEMENT** is an agency of the United States and is a division of the Department of Interior. The Bureau of Land Management is charged with managing the lands and resources within the Upper Willamette Resource Area of the Eugene District, in accordance and compliance with NEPA and other federal laws and regulations.

13. An actual, live, justiciable controversy exists between Plaintiffs and Defendant.

14. The aesthetic, recreational, scientific, educational, and other interests of the Plaintiffs and their members have been and will continue to be adversely affected and irreparably injured if Defendant BLM continues to act and fail to act out of compliance with federal laws, affirmatively implementing the action that Plaintiffs challenge with this litigation.

15. These are actual, concrete, and particularized injuries caused by Defendant's failure to comply with mandatory duties under NEPA and the APA. The relief sought in this Complaint would redress Plaintiffs' injuries.

## **LEGAL BACKGROUND**

### **Protests of Forest Management Decisions**

16. Congress declared that in administering public land statutes and exercising discretionary authority, it is the policy of the United States that the Secretary is 1) required to "establish

comprehensive rules and regulations after considering the views of the general public” and 2) required to “structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking.” 43 U.S.C. § 1701(a)(5).

17. The public is entitled to comment on, protest, and appeal agency forest management decisions. Protests are to be filed with the authorized officer, and shall contain a written statement of reasons for protesting the forest management decision. 43 C.F.R. § 5003.3(b).

18. The BLM’s Accepted Method for Filing Appeals and Protests, IM-OR-2013-016, is a policy document enacted in order to “implement a consistent approach for how different OR/WA BLM offices and programs receive (1) appeals of decisions . . . and (2) written protests which are authorized to be filed under the BLM regulations in 43 CFR.”

19. Under this policy document, the BLM accepts appeals and protests so long as they are postmarked on or before the last day of the filing period. For appeals, the “OR/WA BLM will only accept an appeal submitted on paper that is either delivered in person or mailed/postmarked on or before the last day of the appeal filing period.” For protests, the “BLM regulations also allow for parties to protest various BLM decisions or proposed decisions. . . . The OR/WA BLM has the same policy for written protests as is outlined above for appeals.”

20. Additionally, the BLM allows a grace period for filing protests under 43 C.F.R. § 4.401(a):

Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal in connection with which the document is required to be filed.

21. Under 43 C.F.R. § 4.401(c)(7), the BLM determines that delivery of a protest document occurs 5 days after the protest is sent:

In the absence of evidence to the contrary, delivery under paragraph (c)(6)(ii) of this section is deemed to take place 5 business days after the document was sent. A document is considered sent when it is given to the U.S. Postal Service (or deposited in one of its mailboxes), properly addressed and with proper postage affixed, or when it is given to a delivery service (or deposited in one of its receptacles), properly addressed and with the delivery cost prepaid.

22. When a protest is filed concerning a BLM decision, regulations require the BLM to reconsider its decision in light of the statement of reasons for the protest and other pertinent information available to the decision maker. 43 C.F.R. § 5003.3(d).

23. Upon denial of a protest, the authorized officer may then proceed with implementation of the forest management decision. 43 C.F.R. § 5003.3(f).

### **The National Environmental Policy Act**

24. Congress enacted NEPA in 1969, directing all federal agencies to assess the environmental impact of proposed actions that significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). 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's action.

25. The Council on Environmental Quality (CEQ) promulgated uniform regulations to implement NEPA that are binding on all federal agencies. 42 U.S.C. § 4342; 40 C.F.R. §§ 1500 *et seq.*

26. The regulations implementing NEPA require federal agencies to disclose and analyze the environmental effects of the proposed action 40 C.F.R. § 1500.1(b). Specifically, the regulation explains that "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The

information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.*

27. NEPA requires the agencies to prepare an Environmental Impact Statement (EIS) when a major federal action is proposed that *may* significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C), 40 C.F.R. § 1501.4(a)(1).

28. An EIS is a “detailed written statement” that “provide[s] full and fair discussion of significant environmental impacts and shall inform 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. §§ 1508.11 and 1502.1.

29. When it is not clear whether or not an action will significantly affect the environment (and thus require the preparation of an EIS), agencies are required to prepare a document known as an Environmental Assessment (EA) in order to determine whether an EIS is required. 40 C.F.R. §§ 1501.4(b), 1508.9. An EA is “a concise public document” that “[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” 40 C.F.R. §1508.9(a). An EA “shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.” 40 C.F.R. §1508.9(b).

30. In an EA, federal agencies are required to analyze the foreseeable environmental impacts, including direct, indirect, and cumulative impacts for all “major federal actions.” 42 U.S.C. § 4332(C)(i); 40 C.F.R. § 1508.7.

31. Cumulative impacts are defined as the impact resulting from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions.

*Id.* Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. *Id.*

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

33. An EA must “provide sufficient evidence and analysis for determining whether” the project will have a significant impact on the environment. 40 C.F.R. § 1508.9(a)(1).

### **The Administrative Procedure Act**

34. The 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 the law.” 5 U.S.C. § 706(2)(A).

## **FACTUAL BACKGROUND**

### **The Mohawk Watershed**

35. The Mohawk/McGowan Watershed is located northeast of Eugene and Springfield, covers 87,887 acres, and is classified as a fifth field watershed. Approximately a quarter of the watershed is federal BLM land, and the remainder is mostly industrial timber land. The majority of the BLM land in the watershed is matrix lands, where the emphasis of BLM efforts has been timber harvest, and road construction to facilitate this harvest.

36. The Mohawk watershed has experienced relatively high levels of logging and road construction.

37. In the Mohawk watershed, wildlife habitat is highly fragmented by the loss of habitat via past logging practices as well as by the existing number of roads. The Mohawk watershed has a road density of 4.6 miles per square mile on public lands. Road densities at this level raise concerns about water flow and sediment delivery to streams. A road density of 4.6 miles per



square mile on public lands exceeds the National Marine Fisheries Service “at risk” and “not properly functioning” standards for watersheds.

38. Water temperatures and minimum flow on salmonid (especially spring chinook) populations is a major concern for the Mohawk watershed. Surveys and sampling conducted over the past 60 years have repeatedly observed water flow levels regularly below the minimum threshold needed to maintain fish and wildlife populations throughout the watershed. This flow deficiency can be attributed to high road densities, soil compaction, removal of riparian vegetation, reduced large woody debris, and forest removal and haul during the winter season.

39. Road related erosion can be a significant source of sediment to streams, potentially degrading aquatic habitats, domestic water supplies, and water quality for other beneficial uses of water. High road densities within a watershed results in higher levels of surface drainage and an increased risks to water quality and watershed functions. Hauling timber on roads, particularly roads that parallel or cross waterways, involves a risk of sediment delivery to streams. This risk of sediment delivery is increased during winter haul.

40. Road renovation can occur in areas that are currently covered in vegetation. Road renovation that involves brushing occurs in areas that are covered in vegetation. Brushing can involve tree removal. Grading roads involves the use of heavy machinery or road graders to level land and set a foundation for a road. Grading can involve heavy soil displacement. Reestablishing ditch lines will involve the excavation of soil. Road renovation in vegetated areas will increase road densities in a watershed.

41. The interaction of maximum temperature and minimum flow on salmonid (especially spring chinook) populations is a major concern for the Mohawk watershed. An instream flow of 20 cfs at the Mohawk gage was established in 1962 to represent the minimum needed for the

maintenance of fish and wildlife populations in the watershed. Over 20 years of the 51 years surveyed at the Mohawk gage, low flows were observed below this minimum threshold and have averaged at just above the minimum at 21.5 cfs. This flow deficiency can be attributed to high road densities, soil compaction, removal of riparian vegetation, reduced large woody debris, and forest removal during the winter season.

42. Surveys and sampling have also raised red flags and concerns about the turbidity levels within the watershed. Turbidity sampling on Shotgun Creek within the Mohawk watershed has exceeded 50 Nephelometric Turbidity Units (NTU) which is a potential red flag because it affects the sight-feeding abilities of salmonids. These turbidity levels are elevated by run-off from roads and soil disruption.

43. Water quantity and water quality levels within the Mohawk watershed are impacted by the amount of large woody debris material, soil quality and compaction levels, road density and construction, and riparian logging. Regeneration harvest and clearcut logging practices and road construction activities in non-riparian areas can impact water flow and water quality levels.

44. Soil compaction and displacement associated with regeneration harvest logging and road construction alters slope hydrology and encourages erosion. Increased amounts of soil displacement results in an increased risk of sediment delivery to nearby riparian areas or waterways. Ground-based yarding results in soil compaction and displacement. Whole tree yarding results in soil displacement.

45. Coarse woody debris (CWD) is important in many ecological and physical processes in forest and stream ecosystems. The amount, structure, and dynamics of CWD in forests can influence species composition, nutrient cycling, productivity, and geomorphology. Across the

Mohawk watershed, past timber sale harvest has left little CWD, and there are low or insufficient levels of CWD in the Mohawk watershed.

46. In the Mohawk watershed, the vast amount of old growth and late successional forests have already been logged, less than 1 percent of forest lands are stands that are over 196 years old. Approximately .5 percent of forest lands are 81-195 years old. Only about 2,549 acres of mature and old forest habitat in the watershed remains in small patches scattered throughout this heavily fragmented landscape.

47. On private land, forest stands over 196 years old are all but eliminated, and less than one percent of forest lands are 81-195 years old. In the future, these older forests are expected to be eliminated.

48. Because the watershed does not contain enough acres of older forests to meet the 15 percent retention requirement of the NWFP, the Mohawk Watershed Analysis calls for retention of trees older than 81 years old on public lands.

49. The retention of older forests and the benefits those forests provide to a variety of resources such as recreation, wildlife, fisheries, and special forest products are strongly related to land ownership. BLM is required provide for these late successional resource values for the Mohawk watershed.

50. Remaining large tree dominated stands are important to meeting the biological needs for species that are riparian and old growth forest canopy dependent, including spotted owls and red tree voles.

51. Movement and dispersal of species associated with mature and older forests were much easier in the natural forests of the watershed that occurred in the 1800s and early 1900s than in the present landscape. Species such as the fisher—currently proposed for listing as threatened

under the Endangered Species Act—as well as the American marten, which historically may have occurred in the watershed, are now strongly believed to be absent as a result of habitat loss and fragmentation.

52. The remaining small isolated patches of old forest habitat across this heavily fragmented landscape support much smaller and less resilient wildlife populations (Faaborg et al. 1993). Forest management practices of the past 3 decades have also reduced the structural and vegetative complexity of early seral habitats (Spies and Franklin 1991) in the Mohawk watershed, eliminating many habitat components such as down logs and snags, which facilitate the dispersal of wildlife species. Higher road density levels within a watershed can also impact wildlife species.

53. The fragments of old forest that remain in the watershed provide key habitats for many wildlife species. These patches serve as refugia where small populations of older forest species persist, and are a source for recolonizing nearby habitats following disturbance or local extinctions. These small, isolated wildlife populations are extremely vulnerable to local extinction (Lehmkuhl and Ruggiero 1991), making it important to maintain as many of the existing refugia as possible, and for the agency to manage the surrounding landscape to minimize the external influences on these remaining patches (Saunders et al.).

54. Short-term forest management practices in the watershed should center on maintaining the integrity of wildlife refugia by minimizing edge effects through avoidance of further fragmentation, maintaining existing forest buffers around habitat patches, and promoting the rapid revegetation of adjacent early seral habitats, including decommissioning unnecessary roads.

### **The Second Show Timber Sale**

55. The Second Show timber sale is located in Lane County, Oregon, within the Mohawk fifth field watershed. The project includes 259 acres of regeneration harvest, with harvest of 70 to 80 year old stands in Matrix (169 acres) and Connectivity (90 acres) lands, 35 acres of commercial thinning on 60 to 80 year old stands in Matrix lands and Riparian Reserves, and over 11 miles of road reconstruction.

56. Regeneration harvest will remove all merchantable conifers greater than 8 inches diameter at breast height (DBH) within harvest openings, excepting reserved wildlife trees and any snags.

57. The Second Show timber sale was first disclosed to the public in a scoping notice in 2012 as a timber sale within the 2014 Thinnings Project.

58. The scoping notice described the commercial thinning of approximately 2000 acres and the regeneration harvest of approximately 350 acres across six distinct timber sale locations in the planning area, one of which was Second Show.

59. Cascadia Wildlands and Oregon Wild submitted scoping comments on the 2014 Thinnings Project on August 15, 2012 and September 12, 2012 respectively.

60. Staff and interested members of Cascadia Wildlands and Oregon Wild attended a field trip to the project area with BLM staff and others in August and expressed comments and concerns on the proposed project at that meeting.

61. The BLM published and completed its Environmental Assessment (EA) for the 2014 Thinnings Project on November 25, 2013. The 2014 Thinnings Project EA did not include an analysis of the Second Show timber sale that involved the regeneration harvest.

62. The 2014 Thinnings Project is composed of five separate timber sales. Three of the five timber sales have been auctioned off, specifically the Drury Combo, Crooked Line, McGowan

Too timber sales. These three sales have already been implemented, or are currently being implemented, or will be implemented in the near future. The remaining two timber sales, Middle Ridge and North Parsons, will be decided upon and auctioned off in the reasonably foreseeable future.

63. Cascadia Wildlands and Oregon Wild commented on the 2014 Thinnings EA.

64. The BLM published its Finding of No Significant Impact (FONSI) for the 2014 Thinnings timber sales on February 19, 2014.

65. On March 17, 2014, BLM published the Second Show EA.

66. Cascadia Wildlands and Oregon Wild both submitted comments on the Second Show EA on April 18, 2014.

67. The 2014 Thinnings Project is composed of past, present, and reasonably foreseeable timber sales in the context of the Second Show timber sale.

68. Harvest units of the 2014 Thinnings Project are adjacent in some places to the harvest units of the Second Show timber sale.

69. The 2014 Thinnings Project will use some of the same haul routes as the Second Show timber sale.

70. The 2014 Thinnings Project is in the same vicinity as the Second Show timber sale.

71. The Second Show EA does not contain a cumulative impacts section.

72. The Second Show EA does not mention the 2014 Thinnings Project.

73. On August 14, 2014, BLM published its FONSI for the Second Show timber sale.

74. On August 19, 2014, BLM published its Decision Record for the Second Show timber sale.

75. On August 29, 2014, Cascadia Wildlands and Oregon Wild submitted by certified mail its joint protest of the Second Show Decision Record. Plaintiffs' protest on the Second Show decision was post-marked August 29, 2014.

76. The due date for the Second Show Protest was September 4, 2014.

77. On August 30, 2014, the United States Postal Service (USPS) attempted to deliver the protest to the Eugene BLM office, but the business was closed. The USPS left a notice of the attempted delivery. The notice stated the protest was available for pickup.

78. The USPS again sent notice of the protest's availability on September 4, 2014.

79. The BLM has admitted to receiving notice of the protest on September 8, 2014.

80. The BLM claims to have not received the protest until September 12, 2014. The BLM denied the protest for being untimely.

81. On October 14, 2014, Cascadia Wildlands and Oregon Wild appealed the Second Show decision and protest denial to the Interior Board of Land Appeals (IBLA). Over 45 days have passed since the submission of the request for stay and appeal before the IBLA. Plaintiffs have exhausted all administrative remedies.

82. On December 11, 2014, Cascadia Wildlands received a notice from the BLM that the sale was awarded to the purchaser on December 8, 2014. The BLM stated in this notice, that the purchaser expressed a strong desire to commence operations this winter.

**FIRST CLAIM FOR RELIEF:**  
**Violation of NEPA**

83. Plaintiffs incorporate by reference all preceding paragraphs.

84. NEPA requires the analysis and consideration of the cumulative impacts that result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.25(a).

85. The NEPA analysis must provide a catalog of past projects and explain how those projects have impacted the environment.

86. An EA must “provide sufficient evidence and analysis for determining whether” the project will have a significant impact on the environment. 40 C.F.R. § 1508.9(a)(1).

87. An EA must fully address cumulative environmental impacts.

88. The BLM published its Final EA and FONSI for the Second Show Project on July 8, 2014 and August 14, 2014 respectively.

89. The BLM signed its FONSI for the 2014 Thinnings Project on February 19, 2014. The BLM has since published Decisions for three of the 2014 Thinnings Project’s timber sales, on February 25, 2014 and two on September 23, 2014.

90. Defendant BLM’s 2014 Thinnings Project timber sales are past, present, and/or reasonably foreseeable future actions.

91. The 2014 Thinnings Projects timber sales will use the same logging haul routes as the Second Show timber sale. The 2014 Thinnings Project timber sales are adjacent to or contiguous with several Second Show timber sale units. The 2014 Thinnings Project and the Second Show timber sale will impact the same owl home range or ranges in the planning area. The 2014 Thinnings Project and the Second Show timber sale occur within the same fifth field watershed. It is possible and likely that portions of the 2014 Thinnings Project and the Second Show timber sale will be implemented concurrently.

92. Combined, these projects could have synergistic and cumulative impacts on wildlife, soil productivity, road density in the watershed, water quality, water quantity, sediment delivery, and woody debris recruitment. These cumulative effects may be significant requiring the preparation of an EIS rather than an EA.



93. In violation of NEPA, the final EA for the Second Show timber sale fails to adequately disclose and analyze the cumulative impacts of the 2014 Thinnings timber sales or consider the 2014 Thinnings Project in conjunction with the Second Show timber sale. 42 U.S.C. § 4332(C)(i); 40 C.F.R. § 1508.7.

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

95. Plaintiffs are entitled to costs of this litigation, including reasonable attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412.

**SECOND CLAIM FOR RELIEF:**  
**Violation of APA**

96. Plaintiffs incorporate by reference all preceding paragraphs.

97. The BLM, in its administration of public land statutes and exercising discretion authority concerning these lands, is required to establish comprehensive rules and regulations concerning the objective administrative review of agency decisions. 43 U.S.C. § 1701(a)(5).

98. In the context of forest management, when a protest is filed concerning a BLM decision, regulations require the BLM to reconsider its decision in light of the statement of reasons for the protest and other pertinent information available to the decision maker. 43 C.F.R. § 5003.3(d).

99. Plaintiffs filed their protest with the BLM, postmark date August 29, 2014, seven days prior to the protest due date of September 4th, 2014.

100. The BLM claimed to not have received Plaintiffs' protest until September 12, 2014.

101. The BLM has 1) a policy of accepting protests and appeals based on the postmark date, 2) regulations which allow for a ten day grace period when the protest is filed not later than 10 days after it was required to be filed, and 3) regulations which state delivery is deemed to take

place 5 business days after the document was sent. IM-OR-2013-016, 43 C.F.R. § 4.401(a), 43 C.F.R. § 4.401(c)(7).

102. Based on the foregoing, Plaintiffs' protest was timely filed.

103. The BLM failed to reconsider its decision on the Second Show timber sale in light of the statement of reasons contained within Plaintiffs' protest.

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

105. Plaintiffs are entitled to costs of this litigation, including reasonable attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Declare that BLM violated the National Environmental Policy Act, the Administrative Procedure Act, and their implementing regulations in designing, analyzing and implementing the Second Show timber sale;
- B. Vacate the Final Decision and Decision Rationale for the challenged project;
- C. Order the BLM to withdraw the Second Show timber sale EA and FONSI until such time as the agency demonstrates to this Court that it has adequately complied with the law;
- D. Enjoin the BLM and its agents, contractors, or other authorized parties from proceeding with any ground-disturbing activity in the Second Show timber sale area unless and until the violation of federal law set forth herein have been corrected to the satisfaction of this Court;

F. Award Plaintiffs their costs of suit and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

G. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted this 15th day of January, 2015.

/s/ Nicholas S. Cady

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to FRCP 7.1, Plaintiffs state that they have not issued shares to the public and have no affiliates, parent companies, or subsidiaries issuing shares to the public.

Respectfully submitted and dated this 15th day of January, 2015.

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