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13 **UNITED STATES DISTRICT COURT,**
14 **WESTERN DISTRICT OF WASHINGTON**

15 **BIODIVERSITY NORTHWEST,**) Case No.:
16 **GIFFORD PINCHOT TASK FORCE, and**)
17 **NORTHWEST ENVIRONMENTAL**) **COMPLAINT FOR DECLARATORY**
18 **DEFENSE CENTER,**) **AND INJUNCTIVE RELIEF**
19)
20 Plaintiffs,) **(NEPA and APA)**
21 vs.)
22)
23 **UNITED STATES FOREST SERVICE, an**)
24 agency of the United States Department of)
25 Agriculture, and **HARV FORSGREN, in his**)
official capacity as Regional Forest Supervisor)
for Region Six of the United States Forest)
Service,)
Defendants.)

26 **INTRODUCTION**

27 1. This is a civil action for declaratory and injunctive relief. Plaintiffs, Biodiversity
28 Northwest, Gifford Pinchot Task Force and Northwest Environmental Defense Center, challenge
29 the actions of the United States Forest Service in approving the Lock and Swell timber sales
30 (hereinafter, “Lock” and “Swell”) on the Mt. Adams Ranger District of the Gifford Pinchot

1 National Forest (hereinafter, “GPNF”), located in Southwest Washington.

2 2. This action arises under and alleges violations of the National Environmental
3 Policy Act (“NEPA”), 42 U.S.C. §§ 4321 et seq., the Council of Environmental Quality’s
4 regulations implementing NEPA, 40 C.F.R. §§ 1500-1508, and the Administrative Procedure Act
5 (“APA”), 5 U.S.C. §§ 551 et seq.

6 3. Plaintiffs seek: (1) a declaratory judgment that approving and proceeding with
7 Lock and Swell without preparing an Environmental Impact Statement (“EIS”) is in violation of
8 NEPA, an abuse of discretion, and arbitrary and capricious agency action under the APA, 5
9 U.S.C. § 706; (2) a declaratory judgment that the EAs for Lock and Swell prepared by
10 defendants are legally insufficient pursuant to NEPA; and (3) an injunction barring defendants or
11 any of defendants’ agents from permitting or initiating logging, road building, or otherwise
12 proceeding with Lock and Swell until defendants have completed a legally sufficient and
13 scientifically supported NEPA analysis.

14 4. Plaintiffs also seek an award of costs and attorneys’ fees pursuant to the Equal
15 Access to Justice Act, 28 U.S.C. § 2412.

16 **JURISDICTION AND VENUE**

17 5. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 and 28 U.S.C. § 1346,
18 because this action involves the United States as a defendant and arises under the laws of the
19 United States, including the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq.; the
20 National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq.; and the Equal Access to
21 Justice Act (“EAJA”), 28 U.S.C. § 2412 et seq. An actual and justiciable controversy now
22 exists between plaintiffs and defendants, and the requested relief is proper under 28 U.S.C. §§
23 2201-2202 and 5 U.S.C. §§ 701-706.

1 10. Plaintiffs’ officers, staff and members reside near and/or regularly visit the Mt.
2 Adams Ranger District on the GPNF, including the Lock and Swell timber sale analysis areas.
3 Plaintiffs’ officers, staff and members derive recreational, inspirational, religious, scientific, and
4 aesthetic benefit from their activities within the Mt. Adams Ranger District, including the area in
5 and around the Lock and Swell timber sales, and they intend to continue to use and enjoy these
6 areas frequently and on an ongoing basis in the future.

7 11. Plaintiffs have an ongoing interest in the proper and lawful management of the
8 Mt. Adams Ranger District of the GPNF. Plaintiffs’ aesthetic, recreational, scientific and
9 religious interests have been and will be adversely affected and irreparably injured if defendants
10 continue to act as alleged in this complaint. These are actual, concrete injuries caused by
11 defendants’ failure to comply with mandatory duties under NEPA and the APA. The relief
12 sought would redress plaintiffs’ injuries.

13 12. Plaintiffs have all participated extensively in administrative actions to protect
14 their interests in the GPNF. Plaintiffs actively participated in the administrative processes for
15 Lock and Swell, including submitting substantive comments and filing an administrative appeal
16 of the challenged decision with the Region Six of the U.S. Forest Service. Plaintiffs have
17 exhausted any and all available administrative remedies. A reviewable agency action exists that
18 is subject to this Court’s review pursuant to 5 U.S.C. §§ 702 and 704.

19 13. Defendant UNITED STATES FOREST SERVICE is an agency of the United
20 States Department of Agriculture. It and its officers are responsible for the lawful management
21 of the GPNF.

22 14. Defendant HARV FORSGREN is the Regional Forester for Region Six of the
23 U.S. Forest Service and is responsible for the proper and lawful management of the GPNF,
24 including the decisions complained of herein. Regions Six denied plaintiffs’ administrative
25 appeal of the Lock and Swell timber sales without issuing a decision on the merits of the appeal.

1 **SUMMARY OF FACTS AND GENERAL ALLEGATIONS**

2 15. Defendants propose to log 7.51 million board feet of timber, the approximate
3 equivalent of 1,500 logging trucks, as a part of the Lock timber sale on the Mt. Adams Ranger
4 District of the GPNF. The Lock Timber Sale would log 391 acres of forest within the Trout
5 Lake Creek Watershed.

6 16. Defendants propose to log 8.48 million board feet of timber, the approximate
7 equivalent of 1,700 logging trucks, in conjunction with the Swell timber sale on the Mt. Adams
8 Ranger District of the GPNF. The Swell timber sale would remove trees from 616 acres of forest
9 within the Trout Lake Creek Watershed.

10 17. The Mt. Adams Ranger District issued a separate Environmental Assessment
11 (EA) for both the Lock timber sale and the Swell timber sale, instead of a more comprehensive
12 and detailed Environmental Impact Statement (EIS).

13 18. The EA for the Lock timber sale was issued in April of 1998. On August 6, 1998,
14 the District Ranger for the Mt. Adams District issued a Decision Notice approving the sale and a
15 Finding of No Significant Impact, which concluded that preparation of an EIS was not required
16 because the sale would not have any significant effects.

17 19. The EA for the Swell timber sale was issued in February of 1998. On July 13,
18 1998, the District Ranger for the Mt. Adams District issued a Decision Notice approving the sale
19 and a Finding of No Significant Impact, which concluded that preparation of an EIS was not
20 required because the sale would not have any significant effects.

21 20. On September 21st, 1998 and August 28th, 1998, respectively, plaintiffs appealed
22 the decisions to approve the Lock and Swell timber sales to the office of the Regional Forest
23 Service Supervisor, Harv Forsgren.

24 21. Region Six of the Forest Service refused to consider the merits of the plaintiffs'
25 administrative appeals and instructed plaintiffs to deem their appeals denied without providing a

1 reasoned response to plaintiffs' substantive allegations. Defendant may have avoided this
2 litigation had they analyzed and responded to plaintiffs' administrative appeals.

3 22. In conjunction with Lock and Swell, defendants plan to heavily log late-
4 successional and old-growth forest, leaving very few trees over large areas of land. Late-
5 successional and old-growth forest provides for critical wildlife habitat and protects water quality
6 and the habitat of aquatic species. Logging operations in late-successional and old-growth forest
7 have been proven to remove the multi-story cover required by many species of wildlife, removes
8 the snags and standing dead tress that shelter many species of wildlife, removes the food source
9 and cover and alters micro-climates required by many species of wildlife, damages the soil and
10 results in high levels of erosion and sedimentation that damage water quality and aquatic
11 resources.

12 23. Lock and Swell would generally affect the same types of wildlife (including some
13 of the very same pairs of spotted owls), would utilize some of the same roads to remove logs,
14 would rely on similar mitigation measures, and would both potentially affect conditions
15 downstream in Trout Lake.

16 24. The planning areas for the Lock and Swell timber sales lie between key
17 wilderness and roadless areas such as Indian Heaven Wilderness, Mt. Adams Wilderness, and the
18 Big Lava Beds. These wilderness and roadless areas represent high quality, interior habitat for
19 numerous late-successional and old-growth dependent species, such as spotted owl, pileated
20 woodpecker, goshawk, pine marten, fisher and Hammond's flycatcher. The areas impacted by
21 Lock and Swell provide a link between these larger areas of interior habitat and allow for
22 interaction between populations of late-successional and old-growth dependent species that
23 would otherwise be isolated.

24 25. Lock and Swell would occur in areas that have already been degraded by past
25 Forest Service logging and road building. The Forest Service acknowledges that less than one

1 quarter of the Trout Lake Creek Watershed functions as interior habitat that is required by
2 sensitive, threatened, endangered and other rare wildlife species such as the spotted owl, pileated
3 woodpecker, goshawk, pine marten, fisher and Hammond's flycatcher. Once vast stretches of
4 interior late-successional and old-growth forest habitat have been reduced to a fragmented
5 patchwork woven together by remnant stands of late-successional and old-growth forest.

6 26. Despite the substantial impacts of past logging and road construction in the areas
7 that would be logged as a part of Lock and Swell, numerous threatened and sensitive species,
8 including the northern spotted owl and Oregon spotted frog, continue to use the project area or
9 would be adversely affected by the planned sales.

10 27. Because of the impacts from past management, the areas that would be affected
11 by Lock and Swell and a host of timber sales planned for areas adjacent to the Lock and Swell
12 sales are highly sensitive to additional impacts that could adversely affect late-successional and
13 old-growth forest habitat, water quality, and terrestrial and aquatic species.

14 28. Defendants' determination that Lock and Swell would not individually or in
15 combination have significant effects is undermined by the lack of current and accurate
16 information about existing conditions within the Lock and Swell planning areas. For example,
17 the spotted owl surveys for the areas that would be logged are outdated and no longer valid.
18 Similarly, defendants lack information about current water quality problems in the planning area
19 or basic information about the status or locations of sensitive aquatic species in and near the
20 planning areas. Defendants also lack information about important habitat characteristics, such as
21 the number of standing snags critical for some bird species.

22 29. In addition to Lock and Swell, defendants have planned numerous past, present
23 and reasonably foreseeable timber sales that are contiguous to, or are otherwise near, the Lock
24 and Swell analysis areas. These timber sales include: Alpha, Bare, Beta/ Omega, Bug, Edit,
25 Goose Egg, Louie/Rosey, P/B, Pace, Page, Skeeter, Tag, Whiz, and Whip. In conjunctions with

1 these sales, the Forest Service Plans to remove 67.7 million board feet of timber from 3,060
2 acres. All of these sales lie within the same area of the GPNF that provides a critical link
3 between the key roadless and wilderness areas.

4 30. Each of these timber sales will cause or has caused the loss of late-successional
5 and old-growth forest habitat and will adversely affect the same and similar species dependent on
6 such habitats as would Lock and Swell.

7 31. The planning areas for Lock, Swell, Alpha, and Beta/Omega are contiguous, and
8 defendants planned these sales contemporaneously. Logging units in Beta/Omega, for example,
9 are less than 500 yards from units in Lock.

10 32. Defendants analyzed Lock and Swell in isolation from the extensive logging
11 operations planned in adjacent areas of the GPNF. The EAs for the Lock and Swell timber sales
12 fail to even mention Alpha and Beta/Omega, and they also fail to mention all the other timber
13 sales in the same vicinity that will impact late-successional and old-growth forest and the species
14 that depend on that habitat. Defendants failed to disclose to the public that Lock and Swell could
15 have a cumulative impact on late-successional and old-growth wildlife habitat and the species
16 that depend on these areas. Once plaintiffs raised this issue with defendants, they simply refused
17 to consider the issues in the administrative appeals and decided to move forward in the absence
18 of any appropriate analysis. As a result, defendants plan to log these areas without adequate
19 information on the cumulative impacts to species that depend on old-growth habitat and without
20 adequate disclosure to the public regarding the cumulative impacts of these activities.

21 33. Lock and Swell will also have adverse direct, indirect and cumulative effects on
22 migratory birds and their habitat.

23 34. The EAs for Lock and Swell both failed to adequately consider or disclose the
24 impacts to migratory birds and their habitat.

1 35. Congress enacted NEPA in 1969, directing all federal agencies to prepare an EIS
2 for proposed actions that may significantly affect the quality of the environment. 42 U.S.C. §
3 4332(2)(C). NEPA’s disclosure goals are two-fold: (1) to insure that the agency has carefully
4 and fully contemplated the environmental effects of its action, and (2) “to insure that the public
5 has sufficient information to challenge the agency.” Idaho Sporting Congress v. Thomas, 137
6 F.3d 1146, 1151 (9th Cir. 1998).

7 36. The Council on Environmental Quality (“CEQ”) promulgated uniform regulations
8 to implement NEPA that are binding on all federal agencies. 42 U.S.C. § 4342.

9 37. An agency shall prepare an EIS if a proposed action would normally be expected
10 to have a significant impact on the environment. 40 C.F.R. § 1501.4(a)(1). The agency can also
11 determine that the proposed action is not likely to have a significant impact on the environment if
12 it the action is categorically excluded. 40 C.F.R. § 1501.4(a)(2). For all other actions, an agency
13 must prepare an EA to determine whether it needs to prepare an EIS. 40 C.F.R. § 1501. In the
14 EA, the agency must disclose to the public sufficient information and analysis to determine
15 whether the agency must prepare an EIS, or in the alternative, a Finding of No Significant Impact
16 (“FONSI”). 40 C.F.R. § 1508.9

17 38. Agencies must consider both the context and the intensity of the proposed action
18 in determining whether a proposed action may significantly affect the environment. 40 C.F.R. §
19 1508.27. The context of the action includes consideration of the affected region and locale.
20 “Significance varies with the setting of the proposed action.” 40 C.F.R. § 1508.27(a). NEPA
21 regulations also require that agencies consider and disclose to the public the effects from other
22 similar, cumulative, and connected actions when determining whether the effects of a proposed
23 action are significant. 40 C.F.R. § 1508.27(b)(7). In analyzing the intensity of the impacts, the
24 agency must consider the unique characteristics of the geographic area (e.g. proximity to
25

1 ecologically critical areas) and the degree to which impacts are likely to be highly controversial
2 or highly uncertain. 40 C.F.R. § 1508.27(b)(3)-(5).

3 39. The agency must provide a detailed analysis of cumulative impacts. The agency
4 must disclose to the public “[w]hether the action is related to other actions with individually
5 insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7). A cumulative
6 impact is defined as the impact resulting from the incremental impact of the proposed action
7 when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. §
8 1508.7. Cumulative impacts can result from individually minor but collectively significant
9 actions taking place over a period of time. *Id.* Cumulative actions, which when viewed with
10 other proposed actions have cumulatively significant impacts, should be discussed in the same
11 impact statement. 40 C.F.R. § 1508.24(a)(2). The agency cannot avoid significance by breaking
12 down a proposed project into small component parts. 40 C.F.R. § 1508.27(b)(7).

13 **FIRST CLAIM FOR RELIEF**

14 Defendants’ Decision to Approve the Lock and Swell Timber Sales
15 Without Preparing an Environmental Impact Statement is Arbitrary, Capricious,
16 and Not in Accordance with Law.

17 40. Plaintiffs incorporate by reference all preceding paragraphs.

18 41. NEPA requires the defendants to prepare an EIS when a major federal action is
19 proposed which may significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C).
20 In making a determination of whether the Lock and Swell timber sales may have significant
21 environmental effects, defendants must evaluate and consider the direct and indirect impacts of a
22 given action. 40 C.F.R. § 1502.16.

23 42. Defendants must also evaluate and assess the cumulative impacts that may result
24 from Lock and Swell when considered together and in conjunction with all other timber sales in
25 the same area of the GPNF. 40 C.F.R. §§ 1508.7; 1508.27(b)(7). NEPA regulations also

1 require defendants to consider cumulative, connected or similar actions as a part of the same
2 environmental review. 40 C.F.R. § 1508.25.

3 43. Lock and Swell are likely to have significant direct, indirect and cumulative
4 effects on late-successional and old-growth forest habitat and the threatened, sensitive, and
5 management indicator species that depend on such habitat.

6 44. Lock and Swell are likely to have significant direct, indirect and cumulative
7 impacts on migratory bird nesting habitat and migratory birds.

8 45. Lock and Swell are also likely to have significant direct, indirect and cumulative
9 effects on aquatic habitat in streams and lakes, as well as aquatic species that depend on such
10 habitats.

11 46. Defendants did not adequately evaluate these impacts or disclose these impacts to
12 the public. Defendants did not even disclose to the public that Lock and Swell would have
13 cumulative impacts in combination with several other timber sales planned near or adjacent to
14 the Lock and Swell planning areas.

15 47. In light of these impacts, defendants' decision not to prepare an EIS for Lock and
16 Swell is contrary to the requirements of NEPA and its implementing regulations.

17 48. Defendants' decision to proceed with Lock and Swell should be set aside, and
18 defendants' should be enjoined from implementing Lock and Swell until they prepare a legally
19 sufficient EIS.

20 49. Plaintiffs are entitled to recover their costs, disbursements, and reasonable
21 attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

22 **SECOND CLAIM FOR RELIEF**

23 The Environmental Assessments for the Lock and Swell Timber Sales
24 Fail to Adequately Evaluate and Disclose the Direct, Indirect and Cumulative
25 Effects of the Proposed Timber Sales.

1 50. Plaintiffs incorporate by reference all preceding paragraphs.

2 51. NEPA requires an adequate public disclosure of all environmental impacts and
3 specifically requires federal agencies to discuss the potential cumulative impacts of their
4 proposed actions. 40 C.F.R. §§ 1501.2(b), 1508.7. Defendants must produce NEPA
5 documentation that provides the decision-maker and the public with adequate information,
6 evidence, and analysis to fully assess the potential direct, indirect and cumulative impacts of the
7 proposed actions. 40 C.F.R. § 1508.9.

8 52. The individual EAs for Lock and Swell fail to adequately evaluate or disclose to
9 the public and the decision maker sufficient information about the likely direct and indirect
10 effects of Lock and Swell.

11 53. Similarly, the EAs for Lock and Swell fail to adequately consider or disclose the
12 cumulative effects of these sales when considered together and with the effects of past, present
13 and reasonably foreseeable timber sales, road construction and road management around the
14 Lock and Swell planning areas. Defendants failed to even identify the fact that Lock and Swell
15 would have cumulative effects to late-successional and old-growth forest and habitat as well as
16 the habitat for aquatic species in conjunction with other timber sale planned adjacent to the Lock
17 and Swell planning areas.

18 54. Defendants' decision to proceed with Lock and Swell should be set aside, and
19 defendants should be enjoined from proceeding with Lock and Swell until they prepare an
20 adequate and legally sufficient NEPA analysis that discloses to the public the direct, indirect and
21 cumulative environmental impacts of the projects.

22 55. Plaintiffs are entitled to recover their costs, disbursements, and reasonable
23 attorneys' fees under the Equal Access to Justice Act. 28 U.S.C. § 2412(d).

1 **WHEREFORE, Plaintiffs respectfully request that this Court:**

2 1. Declare that Defendants' decision to approve and proceed with the Lock and
3 Swell timber sales without preparing an EIS is an arbitrary and capricious agency action, and in
4 violation of NEPA;

5 2. Declare that the EAs for the Lock and Swell timber sales are legally insufficient
6 pursuant to NEPA;

7 3. Enter a permanent injunction prohibiting defendants and its agents from taking
8 any further action to implement the Lock and Swell timber sales including advertising, offering
9 for sale, or awarding any contracts, until such time as the defendants have fully complied with
10 the National Environmental Policy Act and the Administrative Procedure Act;

11 4. Allow plaintiffs to recover costs, including expenses, expert witness fees, and
12 reasonable attorney fees under applicable law; and

13 5. Grant plaintiffs such further relief as may seem to this Court to be just, proper and
14 equitable.

15 DATED this ____ day of _____, 2002

16 Respectfully submitted,

17
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