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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

LEAGUE OF WILDERNESS DEFENDERS-)
BLUE MOUNTAINS BIODIVERSITY)
PROJECT, an Oregon non-profit corporation,)

Plaintiff,)

vs.)

UNITED STATES FOREST SERVICE;)
JOHN ALLEN, in his official capacity as)
Forest Supervisor, Deschutes National Forest,)
and BOV EAV in his official capacity as)
Director of the Pacific Northwest Research)
Station,)

Defendants)

Case No.: 10-6302-HO

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

(National Environmental Policy Act, 42
U.S.C. §§ 4321 *et seq*; and the Administrative
Procedure Act, 5 U.S.C. § § 701 *et seq*.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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1 **STATEMENT OF THE CASE**

2 1. This is a civil action for declaratory and injunctive relief. Blue Mountains
3 Biodiversity Project ("Plaintiff") challenges the decision by Forest Supervisor John Allen and
4 Director of the Pacific Northwest Research Station Bov Eav to approve the EXF Thinning, Fuels
5 Reduction, and Research Project ("EXF Project") located in the conifer forests of the eastern
6 Cascades within the Lookout Mountain Unit of the Pringle Falls Experimental Forest of the
7 Deschutes National Forest. The Lookout Mountain Unit is a geographically distinct portion of
8 the Experimental Forest that is physically separated from the other experimental forest units.

9 2. The forests in the EXF Project area are mature, old conifer forests that naturally
10 regenerated after a high-intensity wildland fire in 1845 killed most of the trees across the
11 Lookout Mountain Unit and the EXF Project area (EXF FEIS, p. 3). This 1845 wildfire occurred
12 naturally, prior to the influence of fire suppression policies or logging by settlers. While the
13 1845 fire resulted in significant mortality, like all fires do it burned in a mosaic pattern and today
14 the Lookout Mountain Unit is comprised of regenerated stands of mature conifers intermixed
15 with patches of, and individual, ancient trees which were not killed by the original fire. What
16 makes the EXF Project area so important and unique is that it was set aside as an addition to the
17 Pringle Falls Experimental Forest in 1937 (when the trees were beginning to reach maturity).
18 The area has been protected from intensive commercial logging activities for over a hundred and
19 fifty years.

20 3. The mature and old forest ecosystem which exists in the EXF Project area is one
21 of last remaining reference conditions in the eastern Oregon Cascades—if not the last remaining
22 reference condition—where significant tracts of native forest remain that have experienced
23 natural processes and have not been subjected to significant logging or management by man.
24 About two-thirds of the Lookout Mountain Unit is scheduled to be commercially logged through
25 the EXF Project.

26 4. Plaintiff's action follows Defendants' June 23, 2010 denial of Plaintiff's
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF 2

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1 administrative appeal of the Final Environmental Impact Statement (“FEIS”) and Record of
2 Decision (“ROD”), which were issued for the EXF Project on March 15, 2010. Plaintiff
3 submitted extensive comments during the formal comment period for the EIS.

4 5. The EXF Project, if implemented, would cut down and remove through
5 commercial logging live healthy trees, including mature and old trees because the project
6 alternatives do not provide for a diameter limit on the size of trees to be removed. The EXF
7 project would log approximately 2,554 acres within the 3,535-acre Lookout Mountain Unit of
8 the Pringle Falls Experimental Forest. The project proposes to remove 70% of the existing trees,
9 which would degrade and completely alter the forest ecosystem and structure now and into the
10 future. The commercial logging would render much of the last best remaining habitat in the
11 greater landscape unsuitable for numerous Management Indicator Species (MIS), and the
12 multiple other wildlife species which they represent, for up to a 150 years or more. In addition,
13 the extensive logging of most of the Lookout Mountain Unit as proposed by the EXF Project
14 would essentially erase this natural laboratory from the landscape and would preclude or
15 severely undermine future research where *natural* conifer regeneration and succession after
16 *natural* high-intensity fire can be studied, as well as the response of many wildlife species,
17 including cavity-nesting birds, to these *natural* successional processes over extended periods of
18 time.

19 6. In order to justify the EXF Project Defendants misrepresented projected mortality
20 from fire and insects in the Project area, creating a fictitious need for treatment. Defendants
21 informed the public that if they did not proceed with the project that “catastrophic mortality”
22 would occur. However, Defendants own studies and modeling projections show that
23 significantly fewer trees would be killed by fire and/or insects if no action was taken, then would
24 be killed and removed by the proposed logging. Defendants did not divulge this fact to the
25 public and instead misrepresented the effects of the two action alternatives relative to the No
26 Action alternative, arbitrarily rejected full consideration of a much less intensive action

1 alternative, and amended the region-wide forest plan to eliminate the upper diameter limit on the
2 trees to be cut in the EXF Project so that the commercial operators could remove large old
3 growth trees.

4 7. Accordingly, Defendants' actions in approving the EXF Project violate the
5 National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4361, its implementing
6 regulations, 40 C.F.R. § 1500 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. § 706(2).

7 **JURISDICTION AND VENUE**

8 8. This court is vested with jurisdiction under 28 USC §1331(a) (action for
9 declaratory and injunctive relief arising under the constitution and laws of the United States); 28
10 U.S.C. §1361 (action in the nature of mandamus to compel an officer or employee of United
11 States or any agency to perform their duties); 28 U.S.C. §§2201, 2202 (power to issue
12 declaratory or injunctive relief in cases of actual controversy); and 5 U.S.C. §§702-706, because
13 (1) the action arises under the laws of the United States, (2) defendants are sued in their official
14 capacities as officers of the United States and (3) there is a present and actual controversy
15 between the parties.

16 9. The actions giving rise to this Complaint took place in this District, thus venue is
17 properly vested in this court pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. §703.

18 10. There exists now between the parties hereto an actual justiciable controversy.

19 11. Plaintiff filed an administrative appeal, which was denied. All available
20 administrative remedies have therefore been exhausted. The challenged agency action is final
21 and subject to this Court's review under the Administrative Procedure Act, 5 U.S.C. §§ 701 *et*
22 *seq.*

23 **PLAINTIFF**

24 12. LEAGUE OF WILDERNESS DEFENDERS - BLUE MOUNTAINS
25 BIODIVERSITY PROJECT ("BMBP" or "Plaintiff") is an Oregon non-profit corporation
26 dedicated to protection of forest ecosystems in the northwestern USA. BMBP has many
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1 members throughout Oregon and Washington who use the national forests of the northwest,
2 including the Deschutes, for recreation, scenic beauty, and scientific study. BMBP's interests
3 would be harmed by the implementation of the EXF Project.

4 **DEFENDANTS**

5 13. UNITED STATES FOREST SERVICE is the federal agency that manages U.S.
6 national forest lands, including the Deschutes National Forest.

7 14. JOHN ALLEN is the Supervisor of the Deschutes National Forest, and is
8 responsible for the oversight and management of this forest, including the EXF Project area.

9 15. BOV EAV is the Director of the Forest Service's Pacific Northwest Research
10 Station, based in Portland, Oregon.

11 **STATUTORY AND REGULATORY BACKGROUND**
12 **GIVING RISE TO PLAINTIFF'S CAUSES OF ACTION**

13
14 **I. National Environmental Policy Act**

15 16. Under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, et
16 seq., any major federal action that significantly affects the quality of the human environment
17 requires the preparation of an EIS. NEPA §102(2)(C). The language and spirit of NEPA is
18 aimed at ensuring that an agency's single-minded approach to a proposed action is tempered by
19 consideration of a reasonable range of alternatives, including those with fewer adverse
20 environmental impacts than the proposed action. NEPA requires a "hard look" at the
21 environmental impacts of proposed federal actions and full disclosure of these impacts to the
22 public.

23 17. An agency must take a "hard look" at the alternatives and the environmental
24 impacts of each alternative. An agency must consider a full range of alternatives covering a full
25 spectrum of possibilities and demonstrate reasoned decision-making. The agency must also give
26 a reasoned explanation for rejecting each alternative.

1 18. NEPA requires that agencies provide hard data relied upon, and ensure scientific
2 accuracy and integrity of environmental analysis (40 C.F.R. § 1502.24).

3 19. Finally, the No-Action alternative is required to be analyzed at the same level of
4 detail as the proposed action.

5 **FACTS**

6 20. The United States Forest Service ("Forest Service") released the Draft
7 Environmental Impact Statement ("DEIS") for the EXF Project in the summer of 2009.

8 21. Blue Mountains Biodiversity Project ("Plaintiff") submitted comments on the
9 DEIS in October of 2009. Among other things, Plaintiff requested full and complete
10 consideration of an alternative that would limit thinning to small trees less than 12 inches in
11 diameter.

12 22. On March 15, 2010, John Allen, Supervisor of the Deschutes National Forest and
13 Bov Eav, Director of the Forest Service's Pacific Northwest Research Station in Portland,
14 Oregon ("Defendants"), issued a Final Environmental Impact Statement (FEIS) and signed the
15 Record of Decision ("ROD") for the EXF Project, selecting Alternative 2. Plaintiff filed an
16 administrative appeal on May 7, 2010 against the EXF Project FEIS and ROD. On June 23,
17 2010, the Forest Service rejected Plaintiff's administrative appeal.

18 23. The central stated purpose of the EXF Project is to prevent, through logging,
19 "catastrophic loss [of trees] to bark beetles and high risk of loss [of trees] to wildfire" (EXF
20 FEIS, pp. ES-1, 3-4). With regard to tree mortality from bark beetles, the FEIS identified an
21 "upper management zone" ("UMZ") of forest density, and asserted that, where "stands are
22 denser than the UMZ, there is imminent risk of catastrophic loss of overstory trees to bark
23 beetles" (FEIS, p. ES-1).

24 24. The EXF FEIS repeatedly claims that "catastrophic" or "high" tree mortality will
25 occur, due to insects and fire, if no action is taken in the EXF Project area, and the EXF FEIS

1 asserts that the Proposed Action, Alternative 2, must be implemented in order to prevent this
2 “catastrophic” tree mortality (EXF FEIS, pp. ES-1, 3-4).

3 25. The FEIS’s Proposed Action, Alternative 2, would log 2,554 acres, removing not
4 only small trees, but also larger, mature trees, including old trees over 21 inches in diameter
5 (EXF FEIS, pp. 18-22).

6 26. The only other action alternative fully considered by the EXF FEIS, Alternative 3,
7 differs from Alternative 2 in that it would log 2,182 acres instead of 2,554 acres (EXF FEIS, p.
8 ES-1).

9 27. The Proposed Action, Alternative 2, would cut down and remove about 70% of
10 the trees over 6 inches in diameter, reducing trees per acre from about 100 to about 30
11 immediately after logging (EXF, p. 92).

12 28. Basal area is the horizontal area (square feet) that tree trunks occupy in a forested
13 stand of trees. The basal area is measured at approximately 4 ½ feet above the ground (“breast
14 height”).

15 29. The Proposed Action, Alternative 2, would kill and remove, through logging,
16 approximately 45% of the existing basal area of trees, reducing basal area from about 170 square
17 feet per acre to about 93 square feet per acre (EXF FEIS, p. 91).

18 30. Defendants’ EXF FEIS stated that the No Action alternative would not
19 sufficiently prevent high tree mortality from insects and fire; that potential for high fire mortality
20 would increase over time; and that forest stands would experience increasing losses of live trees
21 due to insect mortality (EXF FEIS, pp. ES-1 through ES-3).

22 31. The EXF FEIS (pp. 104-105, 111-112) also stated that if no action is taken, under
23 extreme fire weather conditions, less than 1% of the Project area would experience “active crown
24 fire”, 47% would experience “passive crown fire”, and the remainder would experience “surface
25 fire”. However, the EXF FEIS does not divulge what this means in terms of actual tree mortality
26 in relation to the stated purpose and need of preventing “catastrophic” tree mortality.

1 32. Defendants' EXF FEIS failed to divulge that, based upon their own Forest
2 Vegetation Simulator (FVS) data, Alternative 2 (the chosen Alternative) would result in much
3 greater mortality of trees (from logging alone) than fire would cause under the No Action
4 alternative—even under extreme wildland fire weather/conditions. The FVS data shows that,
5 under the No Action alternative, even in extreme fire weather, an average of only about 18% of
6 the basal area would die as a result of the fire; and if a fire were to occur at some time in the
7 future, rather than now, natural tree mortality from fire would actually *decrease* with the passage
8 of time (e.g., only about 11% basal area mortality in extreme fire weather by the year 2022).

9 33. Defendants analyzed the EXF Project by dividing the Project Area into four
10 quadrants (or treatment "blocks"). According to Defendants' own FVS data, tree mortality from
11 fire would be less in all four quadrants of the EXF Project area under the No Action alternative
12 than the 45% basal area mortality that would result from logging under the Proposed Action,
13 Alternative 2.

14 34. Defendants' EXF FEIS failed to divulge the fact that Alternative 2 would result in
15 greater mortality of trees (from logging alone) than insects would cause under the No Action
16 alternative, based upon Defendants' own FVS data. Specifically, the FVS data shows that, under
17 the No Action, live tree basal area will increase by about 18% between now and 2032 (which is
18 the end of the time period analyzed).

19 35. Defendants also failed to divulge that their own FVS data shows that potential for
20 fire mortality under the No Action alternative steadily decreases over the coming decades:

21 36. Defendants failed to divulge that the scientific studies they cite in the EXF FEIS
22 generally contradict Defendants' claims regarding the potential for "catastrophic" insect
23 mortality. The studies in the record conclude that, when forest stands are at or exceed the UMZ
24 (upper management zone) stand density levels described by Defendants, insect mortality will
25 only result in a temporary reduction of about 5-20% of the live tree basal area.

1 37. These same studies also show that much *lower* levels of insect mortality will
2 occur, even at stand densities above the UMZ, when forest stands reach ages over 85 years old
3 (Plaintiff's Appeal Addendum, pp. 2-3; Dr. Hanson's Comments (pp. 2-3) attached to Plaintiff's
4 Appeal). The forest stands in the EXF Project area are about 165 years old (EXF FEIS, p. 3).

5 38. Defendants did not analyze an alternative which would limit logging activities to
6 the thinning of smaller trees (*i.e.*, 12 inches in diameter or less), as requested by Plaintiff, in the
7 main body of the EXF FEIS itself (EXF FEIS, pp. 36-38).

8 39. In Defendants' Response to Comments (p. 15), Defendants stated that the agency
9 refused to fully consider an alternative that would remove only small trees under 12 inches in
10 diameter based upon the rationale that an alternative focused only on smaller diameter trees
11 would not sufficiently prevent high tree mortality from insects because the stand density would
12 remain too high

13 40. Defendants also rejected the consideration of an alternative that would protect old
14 growth trees and would limit logging to trees under 21 inches in diameter. Defendants also
15 claimed that this alternative would not sufficiently reduce stand density for the purpose of
16 avoiding catastrophic mortality. (EXF FEIS, p. 38).

17 41. However, Defendants did not divulge in either its FEIS or its response to
18 comments, that the forest mortality caused by the logging under the Proposed Action (*i.e.*, about
19 45% basal area mortality) would *exceed* the estimated mortality that would result under the
20 small-tree thinning alternative (less than 12" diameter) proposed by Plaintiff.

21 42. The EXF FEIS and Response to Comments also did not divulge that, according to
22 Defendants' own modeling and the scientific studies it was relying upon, the forest mortality
23 caused by logging under the Proposed Action (*i.e.*, about 45% basal area mortality) would
24 exceed the mortality that would result if no action were taken, a fire occurred in extreme fire
25 weather conditions, or the predicted insect attack occurred.

1 43. In both comments and the administrative appeal, Plaintiff brought to Defendants'
2 attention new scientific studies which found that, contrary to Defendants' assumptions, Spotted
3 Owls benefit from patches of high-intensity fire (where most or all trees are killed), and the Owls
4 preferentially select these areas for foraging. Defendants did not analyze or consider this
5 important information in preparing this project and instead pursued two commercial logging
6 alternatives which it promoted to the public as protecting Spotted Owl habitat.

7 44. The EXF Project area comprises most of the Lookout Mountain Unit of the
8 Pringle Falls Experimental Forest on the Deschutes National Forest. The Lookout Mountain
9 Unit is one of last remaining research sites in the eastern Oregon Cascades, if not the last
10 remaining research site, where significant tracts of natural forest remain that have never been
11 subjected to significant commercial logging. With the exception of a few research plots that
12 comprise a small percentage of the total area, the Lookout Mountain Unit represents an
13 ecological research treasure, where natural conifer regeneration and succession after natural
14 high-intensity fire (in 1845) can be studied, as can the response of many wildlife species,
15 including cavity-nesting birds, to these natural successional processes. The EXF Project would
16 preclude or severely undermine future research into this extremely rare, largely unmanaged
17 eastern Cascades old forest ecosystem by unnecessarily cutting and removing nearly half of the
18 existing basal area, and 70% of the trees, across most of the entire Lookout Mountain Unit.

19 45. The Forest Service's own research indicates that there is a pervasive deficit of
20 large dead trees, or "snags", which are critically important for wildlife habitat, in Oregon's
21 conifer forests, and this deficit is most severe in the pine-dominated forests of the eastern Oregon
22 Cascades where the EXF Project is located (Donnegan et al. 2008; *see also* Dr. Hanson's
23 Comments, p. 5, attached to Plaintiff's Administrative Appeal). The Forest Service's report,
24 Donnegan et al. (2008), concludes that this deficit creates a risk that threatens many cavity-
25 nesting wildlife species, and recommends management actions designed to actively create new
26 large snags to maintain and sustain native wildlife populations.

1 46. The EXF FEIS states that the EXF Project area has moderate levels (an average of
2 about 7 per acre) of medium-sized snags (10-19.9 inches in diameter) and low densities (about 1
3 snag per acre on average) of large snags (greater than or equal to 20 inches in diameter) that are
4 most important to wildlife (EXF FEIS, pp. 186-187).

5 47. The EXF FEIS states that these levels of medium and large snags are less than
6 optimal, or provide low suitability, for numerous cavity-nesting birds and mammals that are
7 either Sensitive Species (meaning that there is a concern about their population viability) or
8 which serve as Management Indicator Species (MIS), meaning that they are bellwether species
9 that represent much larger groups of wildlife species with similar habitat requirements (EXF
10 FEIS, pp. 186-189). These species include the Black-backed Woodpecker (MIS), Northern
11 Three-toed Woodpecker (MIS), Williamson's Sapsucker (MIS), marten (MIS), Lewis's
12 Woodpecker (MIS and Sensitive), Pileated Woodpecker (MIS), and Pacific fisher (Sensitive)
13 (EXF FEIS, pp. 133-185).

14 48. The EXF FEIS states that the "existing low density of snags coupled with the
15 importance of large diameter snags to many of the MIS species, emphasizes the need
16 to...creat[e] conditions that will favor the recruitment of large snags", and also notes that the
17 "EXF project area is relatively unique in the watershed because it contains higher snags densities
18 and larger snags than other areas of the subwatersheds" (EXF FEIS, p. 188).

19 49. Having stated that the current densities of large snags are low in the EXF Project
20 area, and are even lower in the surrounding landscape, the EXF FEIS's Proposed Action,
21 Alternative 2, would severely reduce stand density for the express purpose of reducing
22 competition between trees in order to prevent future recruitment of snags, especially larger snags
23 (EXF FEIS, pp. ES-1 through ES-3 and pp. 3-4). The EXF FEIS (p. 94) states that this severe
24 reduction in stand density under Alternative 2 would effectively prevent snag recruitment in the
25 Project area for 30-55 years on 353 acres, 70-120 years on 471 acres, and over 150 years on

1 1,016 acres, while only retaining sufficient forest density on 714 acres to have some potential for
2 some snag recruitment.

3 50. The EXF Project would, overall, reduce the already low snag levels in future
4 decades due to reduced overall snag recruitment potential and the falling over time of existing
5 snags, rendering less than optimal habitat completely unsuitable for imperiled MIS and other
6 wildlife species for up to 150 years or more. The project would put populations of MIS and
7 other wildlife species at significant risk.

8 51. The EXF FEIS (p. 193) admits that the Proposed Action, Alternative 2, would
9 reduce future snag levels, and would exacerbate the current threats to cavity-nesting wildlife
10 species, but dismissed this concern without conducting any analysis of these adverse impacts of
11 the proposed actions. Contrary to the information in the record, the agency instead states that this
12 issue "did not seem to warrant" an analysis of its impacts.

13 52. Plaintiff raised the issue of impacts and cumulative impacts to snag levels and
14 cavity-nesting MIS species in their comments on the EXF DEIS and in their Administrative
15 Appeal, yet the EXF FEIS and Response to Comments nevertheless failed to include an analysis
16 of adverse impacts and cumulative effects to MIS and the species they represent, including the
17 increased threats to the population viability of these species as a result of further reducing snag
18 levels through this project.

19 **FIRST CLAIM FOR RELIEF**

20 **Violations of NEPA, NEPA Regulations and APA**

21
22 **Failure to Consider, Explore and Objectively Evaluate a Reasonable Range of Alternatives**

23
24 53. Plaintiffs incorporate by reference all preceding paragraphs.

25 54. In conducting the NEPA process, whether by Environmental Impact Statement or
26 Environmental Assessment, the agency must "study, develop, and describe appropriate
27 alternatives to recommended courses of action in any proposal..." 42 U.S.C. §4332(E). The
28 implementing regulations provide that this consideration of all reasonable alternatives is "the
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1 heart of” the environmental analysis. 40 CFR §1502.14.

2 55. Defendants failed to inform decisionmakers and the public of reasonable
3 alternatives that would avoid or minimize adverse impacts or enhance the quality of the human
4 environment and still satisfy the purpose and need for the EXF Project, and thus violated NEPA.
5 40 C.F.R. § 1502.14. Specifically, Defendants refused to consider an alternative that would limit
6 logging to non old-growth trees (trees less than 21 inches in diameter) or small trees under 12
7 inches in diameter, or any other lighter touch alternative even though these alternatives would
8 meet the purpose and need of the EXF project. The Defendants based their dismissal of these
9 reasonable alternatives on the factual misrepresentation that the only way to avoid “catastrophic
10 mortality” from fire or insects would be to extensively log the area. The refusal to fully consider
11 and compare any of these lighter touch alternatives violated NEPA.

12 56. The Defendants’ failure to consider, explore and objectively evaluate a reasonable
13 range of alternatives, is arbitrary, capricious, an abuse of discretion, or otherwise not in
14 accordance with law, and without observance of procedure required by law, in violation of the
15 APA 5 U.S.C. § 706(2); is in excess of its statutory jurisdiction, authority, or limitations under 5
16 U.S.C. § 706(2); and/or is agency action unlawfully withheld or unreasonably delayed under 5
17 U.S.C. § 706(1).

18 **SECOND CLAIM FOR RELIEF**

19 **Violations of NEPA, NEPA Regulations and APA**

20 **Failure to Ensure the Scientific Accuracy and Integrity of the EXF FEIS**

21 57. Plaintiffs incorporate by reference all preceding paragraphs.

22 58. The Forest Service is required to ensure scientific accuracy and integrity in NEPA
23 documents, and must also clearly divulge its methodologies for key findings, and present hard
24 data upon which those findings are based. 40 C.F.R. § 1502.24.

25 59. Defendants’ EXF FEIS failed to comply with this provision of NEPA by
26 misrepresenting actual tree mortality levels that would result from the Proposed Action relative
27

1 to the No Action alternative. Specifically, Defendants' EXF FEIS stated that intensive thinning
2 must be done in the EXF Project area to prevent catastrophic mortality from insects and fire, and
3 proposed Alternatives 2 (Proposed Action), which would remove about 70% of the trees over 6
4 inches in diameter, or about 45% of the basal area in the forest, including many larger, mature
5 trees.

6 60. Defendants' EXF FEIS stated that the No Action alternative would not
7 sufficiently prevent high tree mortality from insects and fire. Defendants stated that the potential
8 for high fire mortality would increase over time. Defendants stated that stands would experience
9 increasing losses of live trees due to insect mortality.

10 61. Defendants failed to divulge the fact that Alternative 2 would result in greater
11 mortality of trees than the No Action alternative—even under extreme wildland fire
12 weather/conditions, and even if the insect mortality predicted by Defendants occurred.
13 Defendants failed to divulge that their own data shows that the potential for fire mortality under
14 the No Action alternative steadily decreases over the coming decades and live trees are projected
15 to moderately increase—not “catastrophically” decrease—over the coming decades.

16 62. Defendants' failure to insure the scientific accuracy and integrity of the EXF FEIS
17 as required by 40 C.F.R. § 1502.24 is arbitrary, capricious, an abuse of discretion, or otherwise
18 not in accordance with law, and without observance of procedure required by law, in violation of
19 the APA 5 U.S.C. § 706(2); is in excess of its statutory jurisdiction, authority or limitations under
20 5 U.S.C. § 706(2)(A); or is agency action unlawfully withheld or unreasonably delayed under 5
21 U.S.C. § 706(1).

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24 //

25 //

1 **THIRD CLAIM FOR RELIEF**

2 **Violations of NEPA, NEPA Regulations and APA**

3 **Failure to Consider Impacts and Effects**

4
5 63. Plaintiffs incorporate by reference here the allegations of the proceeding
6 paragraphs of this Complaint.

7 64. NEPA requires agencies to prepare a detailed analysis of the environmental
8 impacts and adverse environmental effects of proposed actions. 42 U.S.C. § 4332(2)(C).

9 65. Effects and impacts as used in the CEQ regulations are synonymous terms and
10 include both direct, indirect and cumulative effects. 40 C.F.R. § 1508.8. For purposes of the
11 CEQ regulations, "effects" includes "ecological (such as the effects on natural resources and on
12 the *components*, structures and *functioning of affected ecosystems*). . . ." *Id.*, (emphasis added).

13 66. Defendants EXF FEIS violated 42 U.S.C. § 4332(2)(C) and 40 C.F.R. § 1508.9
14 3(b) (the "hard look" requirement of NEPA) by failing to adequately analyze the direct, indirect,
15 and cumulative environmental impacts of the EXF Project with regard to, among other things:

- 16 a) The actual tree mortality which will be caused by the logging itself as compared to
17 the predicted tree mortality from possible future fires or insects;
- 18 b) The effects of severe stand density reduction and the further reduction of already-
19 low snag levels on snag-dependent Management Indicator Species and all the
20 other wildlife species they represent and their future population viability in and
21 around the EXF Project area and the Deschutes National Forest; and
- 22 c) The effects of the proposed logging on the Northern Spotted Owl.

23 67. Defendants' failure to take a hard look at the impacts and effects of the Proposed
24 Action (Alternative 2) on the actual forest mortality that would result relative to the No Action
25 alternative (specifically, the fact that the No Action alternative would result in much lower tree
26 mortality, even under severe wildland fire conditions and projected insect mortality scenarios,

1 than the Proposed Action). Defendants' failure to analyze the impacts and cumulative effects of
2 severe stand density reduction and resulting future reduction of already-low snag levels on snag-
3 dependent MIS wildlife species and the Northern Spotted Owl is arbitrary, capricious, and an
4 abuse of discretion, or otherwise not in accordance with law; without observance of procedure
5 required by law, APA 5 U.S.C. § 706(2); is in excess of its statutory jurisdiction, authority or
6 limitations under 5 U.S.C. § 706(2)(A); or is agency action unlawfully withheld or unreasonably
7 delayed under 5 U.S.C. § 706(1).

8 **PRAYERS FOR RELIEF**

9 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in favor of
10 Plaintiffs and grant the following relief:

11 A. Declare that Defendants violated the National Environmental Policy Act (NEPA) and its
12 implementing regulations, in their preparation of the EXF FEIS by:

- 13 1) failing to fully consider a reasonable range of alternatives;
- 14 2) failing to ensure scientific accuracy and integrity with regard to actual tree
15 mortality; and
- 16 3) failing to take a "hard look" at the impacts of the EXF Project by: (i) failing to
17 divulge and analyze the fact that the No Action alternative would result in lower
18 tree mortality levels than the Proposed Action; and (ii) failing to analyze the
19 adverse impacts and cumulative effects of the severe stand density reduction
20 proposed by this logging project on future snag levels in the project area and the
21 effect this would have on snag-dependent wildlife, including the population
22 viability of snag-dependent management indicator species in this already snag-
23 deficient landscape.

1 B. Declare that Defendants' actions as set forth in this complaint are arbitrary,
2 capricious, an abuse of discretion, or otherwise not in accordance with law, and without
3 observance of procedure required by law, contrary to the Administrative Procedures Act.

4 C. Enjoin the implementation of any activities associated with the EXF Project until
5 and unless Defendants have prepared a new EIS that fully complies with NEPA.

6 D. Award Plaintiffs their reasonable fees, cost, and expenses associated with this
7 litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412 or other authority; and

8 E. Grant Plaintiffs such additional and further relief as the Court deems just and
9 equitable.

10 September 22, 2010

Respectfully submitted,

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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