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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
SANTA FE DIVISION

WILD WATERSHED, MULTIPLE CHEMICAL SENSITIVITIES TASK FORCE, Dr. ANN MCCAMPBELL, M.D., and JAN BOYER, Plaintiffs, vs. SANFORD HURLOCKER, District Ranger, Santa Fe National Forest, JAMES MELONAS, Supervisor, Santa Fe National Forest, CAL JOYNER, Southwest Regional Forester, U.S. Forest Service, and VICTORIA CHRISTIANSEN, Chief of the U.S. Forest Service, an agency of the U.S. Dept. of Agriculture, Defendants.	**CV-** **COMPLAINT FOR INJUNCTIVE RELIEF**

I. INTRODUCTION

1. This is a civil action for judicial review under the citizen suit provision of the Administrative Procedure Act of the U.S. Forest Service authorizations, analyses, and Finding of No Significant Impact related to the Hyde Park Wildland Urban Interface Thinning and Prescribed Fire Project (Project).

2. Plaintiff Wild Watersheds attests that the recent decisions of Defendants which authorized conifer reduction and prescribed burning across public lands within the Hyde Park Inventoried Roadless Area (IRA) are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law.

3. Defendants' actions or omissions violate the National Environmental Policy Act (NEPA), 42 U.S.C. 4331 *et seq.*, the National Forest Management Act (NFMA), 33 U.S.C. § 1601 *et seq.*, the Wilderness Act, 16 U.S.C.§§ 1131-1136, the Healthy Forest Restoration Act (HFRA), 16 U.S.C. § 6501 et seq., and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 et seq., by failing to take a hard look at the potential direct, indirect and cumulative effects of habitat manipulation within the Hyde Park IRA, by making arbitrary and capricious decisions, or otherwise not being in accord with applicable law.

4. Plaintiff requests that the Court set aside the Project pursuant to 5 U.S.C. § 706(2)(A) and enjoin implementation pending preparation of an Environmental Impact Statement (EIS) pursuant to NEPA.

5. Plaintiffs seek a declaratory judgment, injunctive relief, the award of costs and expenses of suit, including attorney and expert witness fees pursuant to the Equal

Access to Justice Act (EAJA) 28 U.S.C. § 2412, and such other relief as this Court deems just and proper.

II. JURISDICTION

6. This action arises under the laws of the United States and involves the United States as a Defendant. Therefore, this Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 28 U.S.C. §§ 1331, 1346.

7. An actual controversy exists between Plaintiff and Defendants. Plaintiffs' members use and enjoy the Santa Fe NF and specifically the Hyde Park IRA for hiking, bird-watching, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, spiritual, and recreational activities. Plaintiff's members intend to continue to use and enjoy the area frequently and on an ongoing basis in the future.

8. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiff's members have been and will be adversely affected and irreparably injured if Defendants continue to implement the Project. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under NEPA, NFMA and the APA. The requested relief would redress these injuries and this Court has the authority to grant Plaintiffs' requested relief under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

9. Plaintiffs submitted timely written comments and objections concerning the Project in the available administrative review process, thus they have exhausted

administrative remedies. Therefore, the Court has jurisdiction to review Plaintiffs' APA claims.

III. VENUE

10. Venue in this case is proper under 28 U.S.C. § 1391(e) and LR 3.2(b)(1)(C). It involves a dispute over management of the Santa Fe National Forest, and one or more of the Defendants lives in Santa Fe County, as do the Plaintiffs. Thus, venue is appropriate in the Santa Fe Division of the United States District Court for the District of New Mexico.

IV. PARTIES

11. Plaintiff WILD WATERSHED is a Santa Fe, New Mexico based organization that advocates for aquatic conservation and wilderness preservation on the Santa Fe National Forest. Since 2005 Wild Watershed has attended meetings, written comments and conducted breeding bird surveys in the area where Hyde Park Wildlands Urban Interface Project is situated, and it expects to continue to do so in the future. Elsewhere on the Santa Fe National Forest, Wild Watershed participated in and developed conservation alternatives for the Santa Fe Municipal Watershed Project that borders the Hyde Park Project, the Gallinas Municipal Watershed Wildlands Urban Interface Project near Las Vegas, New Mexico and the Travel Management Plan that regulates motorized use on the Santa Fe National Forest. Wild Watershed is directly affected by Defendants' failure to perform their lawful duty to protect and conserve the ecological integrity of the

Hyde Park area as set forth below, and these potential harms will be avoided and/ or mitigated by appropriate relief in this matter.

12. Plaintiff MULTIPLE CHEMICAL SENSITIVITIES TASK FORCE (MCSTF) is a statewide New Mexico advocacy organization comprised of chemically sensitive New Mexicans and supporters. The organization is dedicated to increasing awareness of multiple chemical sensitivities and educating others about the hazards of high and low level chemical exposure. MCSTF has filed comments and submitted health related information to the Forest Service regarding the impacts of smoke from intentionally started fires to people diagnosed with chemical sensitivities. MCSTF is directly affected by Defendants' failure to perform their lawful duty to manage National Forests in a manner that does not compromise the health and well being of chemically sensitive citizens.

13. Plaintiff ANN McCAMPBELL, MD is co-chair of the Multiple Chemical Sensitivities Task Force of New Mexico, a statewide advocacy organization comprised of chemically sensitive New Mexicans and supporters. Dr. McCampbell is dedicated to increasing awareness of multiple chemical sensitivities and educating others about the hazards of high and low level chemical exposure. In 2010, Dr. McCampbell served as a member of the Smoke Management Program Working Team convened by the NM Environment Department Air Quality Bureau to revise state burning regulations. Dr. McCampbell filed comments on the Hyde Park project in which she expressed concern that the potential health impacts from smoke had not been adequately

evaluated and suggested mitigation measures to better protect people with chemical sensitivities and asthma from toxic smoke resulting from intentionally started fires. She also hikes and photographs in the Hyde Park project area and plans to continue to do so in the future. Dr. McCampbell is directly affected by Defendants' failure to perform their lawful duty to manage National Forests in a manner that does not compromise the health and wellbeing of chemically sensitive and other citizens.

14. Plaintiff JAN BOYER is a member of "Once a Forest," a Santa Fe, New Mexico based organization that supports living forests and community-inclusive decision making in the Santa Fe National Forest. Jan Boyer has written comments, attended meetings and distributed information to the public concerning impacts of the proposed activities to human health and wildlife in the Hyde Park project area. In addition, she hikes, photographs and views wildlife in the Hyde Park area and plans to continue to do so in the future. Jan Boyer is directly affected by Defendants' failure to perform their lawful duty to protect human health and conserve wildlife in the Hyde Park area as set forth below.

15. Defendant VICTORIA CHRISTIANSEN is the Chief of the U.S. Forest Service and has the appropriate delegated statutory authority and responsibility to comply with federal law in the management of the federal public lands at issue in this litigation. She is sued solely in her official capacity.

16. Defendant CAL JOYNER is the Regional Forester for the U.S. Forest Service Southwest Region, and in that capacity approved the proposal for treatments in

the Black Canyon and Thompson Peak Inventoried Roadless Areas of the Hyde Park Project on January 3, 2018. He is sued solely in his official capacity.

17. Defendant SANFORD HURLOCKER is a District Ranger for the Santa Fe NF who signed the decision memorandum at issue in this litigation. He is sued solely in his official capacity.

18. Defendant JAMES MELONAS is the Supervisor of the Santa Fe NF responsible for ensuring that projects and decisions are consistent with the Santa Fe National Forest Plan and related authorities. He is sued solely in his official capacity.

V. FACTUAL ALLEGATIONS

PROCEDURAL BACKGROUND

19. The Agricultural Act of 2014 (P.L. 113-79, the 2014 farm bill) was signed into law by President Obama on **February 7, 2014**. Section 602 of that Bill provided that: "(b) DESIGNATION OF TREATMENT AREAS.—(1) INITIAL AREAS.—Not later than **60 days after the date of enactment** of the Agricultural Act of 2014, **the Secretary shall**, if requested by the Governor of the State, **designate** as part of an insect and disease treatment program is directly affected by Defendants' failure to perform their lawful duty to manage National Forests in a manner that does not compromise the health and well being of chemically sensitive citizens. am 1 or more landscape-scale areas, such as subwatersheds (sixth-level hydrologic units, according to the System of Hydrologic Unit Codes of the United States Geological Survey), in at least 1 national forest in each State that is experiencing an insect or disease epidemic. (2) ADDITIONAL AREAS.—**After**

the end of the 60-day period described in paragraph (1), the Secretary may designate additional landscape-scale areas under this section as needed to address insect or disease threats." (emphasis added)

20. On May 20, 2014 - 98 days after the date of enactment of the Farm Bill - Defendant Forest Service Chief designated National Forest lands in New Mexico, including the lands at issue in this litigation, for eligibility to be excluded from NEPA study and analysis pursuant to Section 8204 of the Agriculture Act of 2014 (Public Law 113-79), amending Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 et seq.).

21. The effect of the May 20, 2014 Farm Bill designation is to permit exclusion of fuels treatment projects from the normal environmental analysis and review requirements of NEPA, including the pubic involvement in decision-making that normally attaches to projects subject to the requirement to prepare an Environmental Assessment or Environmental Impact Statement.

22. No NEPA analysis, solicitation of public comment, or administrative review and appeal process was made available for this sweeping designation by the Chief, though the Hyde Park Project would not have been eligible for a categorical exclusion from NEPA without it. As such, Plaintiffs have exhausted their administrative remedies in relation to the 2014 designation, and now challenge it in the context of implementation at the site-specific level.

23. The Forest Service released a Scoping Notice for the Hyde Park Project together with the Pacheco Canyon Fire Resiliency Project on February 14, 2017.

According to the Notice, "These two projects are part of a larger effort sponsored by the Greater Santa Fe Fireshed Coalition…"

24. The Hyde Park Project was proposed to be categorically excluded from the requirements to prepare an environmental assessment under NEPA pursuant to section 603 of the Healthy Forests Restoration Act, which establishes a categorical exclusion for qualifying insect and disease projects as designated areas of National Forest System lands. An insect and disease project that may be categorically excluded under this authority is a project that is designed to reduce the risk or extent of, or increase the resilience to, insect or disease infestation.

25. As the Forest Service stated in applying this categorical exclusion: "This category of action is applicable because the Hyde Park WUI Project is situated within a landscape designated by the Secretary of Agriculture as part of an insect and disease program in accordance with Title VI, Section 602 of the Healthy Forest Restoration Act, as amended by Section 8204 of the Farm Bill of 2014."

26. Wild Watershed provided scoping comments in a timely manner. This was the only opportunity afforded to groups like Wild Watersheds for input into the Project, prior to the availability of supporting documentation from Forest Service experts concerning potential environmental impacts.

27. The Forest Service issued a Decision Memorandum (DM) for the Hyde Park Project, signed by Defendant Hurlocker, on March 21, 2018.

28. As part of the DM, the Forest Service found that the Project did not present any of the extraordinary circumstances listed in Forest Service Handbook 1909.15 (Ch 30) which would preclude categorical exclusion of the Project.

HYDE PARK PLANNING AREA & ACTIVITIES

29. The planning area for the Hyde Park Project is located in the Santa Fe National Forest, and is "part of an effort by the Greater Santa Fe Fireshed Coalition (GSFF) to change conditions across a landscape… of more than 100,000 acres."

30. The Hyde Park Project "represent[s] the type of action[] the Coalition would like to see on a larger scale."

31. According to a Forest Service map, submitted as part of a WorkPlan to the GSFFC, there are 75,953 acres of Santa Fe National Forest lands within the 107,626 acre Santa Fe Fireshed. At the time of this work plan, there were 21,896 acres of projects either ongoing or planned, including Hyde Park and Pacheco (4,383 ac.) with approximately 5,483 acres on national forest land within the Santa Fe NF.

32. According to NEPA Regulations, "Categorical exclusion" is defined as "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations (§1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for

the reasons stated in §1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." 40 C.F.R. §1508.4.

33. Under the Farm Bill, eligible projects under 3,000 acres are "considered [to be] an action categorically excluded from the requirements of" NEPA. According to the U.S.F.S. public information website explaining the Farm Bill's new categorical exclusion for Insect and Disease Area Designations:

> [T]hese designations do not change or exempt the Forest Service from complying with any other existing law, regulation and policy, such as the National Environmental Policy Act, Endangered Species Act… *and any other applicable law, regulation, and/or policy* that affects the designated areas.

(emph. added).[1] One such policy is found in the Forest Service Handbook, which provides further clarification regarding consistency with NEPA and its regulations:

> The Council of Environmental Quality regulations provide for categorical exclusions… [that] allow Federal agencies to exclude from documentation in an environmental assessment or environmental impact statement categories of actions that do not individually or cumulatively have a significant effect on the human environment. Based on the Agency's experience and knowledge, the responsible official can conclude that if the action fits within an identified category and analysis shows there are no extraordinary circumstances, then the action would not have significant effects.

USFS Handbook 1909.15, Ch. 30.

[1] http://www.fs.fed.us/farmbill/areadesignations.shtml

34. Under NEPA regulations, a "cumulative impact" is defined 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.

35. A continuation of similar treatment projects in the vicinity of the Project Area are therefore not only foreseeable, but from the GSFF's perspective expected, and it is only by breaking the effort "to change conditions across a landscape of more than 100,000 acres" down into projects under 3,000 acres that the Forest Service is able to avoid an Environmental Assessment or programmatic Environmental Impact Statement under NEPA.

36. Approximately 40% of the 100,000 acre landscape that the GSFF would like to see treatments on is Inventoried Roadless Area. The Forest Service has already scoped another treatment project in the Pacheco Canyon, approximately half of which is Inventoried Roadless Area.

37. Of the 1,840 acre Project Area, 1,711 acres (93%) are situated in the Black Canyon and Thompson Peak Inventoried Roadless Areas (IRAs). The Forest Service determined as part of the decision-making process that the Project is consistent with the 2001 Roadless Area Rule (CFR Part 294).

38. In 1964, Congress passed the Wilderness Act, creating the National Wilderness Preservation System. In addition to designating 9 million acres of National Forest

System land as Wilderness, the Act directed the Secretary of Agriculture to complete a study of 34 administratively designated "primitive areas" and determine their suitability for Wilderness designation by September 2, 1974.

39. In 1971 the Forest Service expanded the scope of the review to include all roadless areas in the inventory and evaluation. This process was known as the Roadless Area Review and Evaluation (RARE). The Final Environmental Impact Statement (FEIS) for RARE was released in 1973. The FEIS identified 247 roadless areas to be studied further for possible wilderness status as part of the multiple-use planning process used at the time. The National Forest Management Act of 1976 (NFMA) replaced that process with the requirement for an integrated Land and Resource Management Plan (LRMP) for each forest and grassland.

40. By June of 1977, concerns were expressed that the NFMA land management planning process would be too slow to allow timely completion of review of the 247 study areas identified in RARE. Concerns were also raised that some areas might have been overlooked, and that RARE did not adequately inventory the National Grasslands and the Eastern National Forests. In response to these concerns, the Secretary of Agriculture initiated a nationwide administrative study of roadless areas referred to as RARE II. The FEIS for RARE II was released in January of 1979.

41. In June, 1979 the State of California initiated a lawsuit (California v. Block) challenging a RARE II decision to designate certain roadless areas in California as non-wilderness. In June of 1980 the U.S District Court ruled that the Rare II

FElS did not comply with the National Environmental Policy Act (NEPA). The Ninth Circuit Court of Appeals affirmed this decision and identified the following deficiencies:

i. “Failure to identify distinguishing wilderness characteristics of each roadless area.”

ii. “Failure to adequately assess the wilderness value of each area and to evaluate the impact of non-wilderness designation upon each area's wilderness characteristics and value.”

iii. “Failure to consider the effect of non-wilderness classification upon future wilderness opportunities.”

iv. “Failure to weigh the economic benefit attributable to development in each area against the wilderness loss each area will suffer from development.”

42. The decision was largely based on the Court's interpretation that NFMA regulations precluded further consideration of wilderness features in assessing environmental consequences of development projects in areas not recommended for wilderness. Because of this lack of discretion, the Court concluded that "[t]he critical decision to commit these areas for non-wilderness uses, at least for the next ten to fifteen years is irreversible and irretrievable.”

43. Following the Circuit Court's decision, the Department of Agriculture revised the NFMA regulations regarding evaluation of roadless areas in forest planning (36 CFR 219.17 [1982]). These changes included:

i. “Establishment of new forest planning procedures for evaluating roadless lands for recommendation as wilderness.”

ii. “Removal of language that the Ninth Circuit Court interpreted to mean the Forest Service was foreclosed from considering the roadless character of a roadless area if specific projects were proposed and evaluated in areas allocated to non-wilderness management.”

44. The 1982 regulations allowed adequate discretion over development of Inventoried Roadless Areas, after approval of forest plans, by making non-wilderness allocation of roadless lands not a "critical decision" or an "irreversible and irretrievable" commitment of resources to development. This legal premise has since been affirmed by the Ninth Circuit in the case *City of Tenakee Springs v. Block*, 778 F.2d 1402 (9th Cir.1985), where the Court found that non-wilderness multiple-use management prescriptions on the Tongass National Forest Plan were permissive rather than a mandate or commitment to development. The concurring opinion also agreed that NEPA documents for projects proposed under the forest plan in roadless areas assigned to a non-wilderness management prescription must examine the issue of whether to treat, not just how to treat, such areas in order to comply with the Wilderness Act.

45. In 1994 the 9th Circuit Court of Appeals further addressed the need to analyze the effects of proposed treatment areas to roadless areas. In *Smith v. USFS,* the Court reaffirmed the legal requirement to consider a no-action alternative when proposing such treatments, citing *Idaho Conservation*, 956 F.2d at 1515, in order

to "preserve the possibility that the area might someday be designated as wilderness."

46. The 9th Circuit again reaffirmed the significance of development in roadless areas in *Lands Council v. Martin* (2008), where the Court states:

> "In Smith, 33 F.3d at 1078-79, we held that there are at least two separate reasons why logging in roadless areas is environmentally significant, so that its environmental consequences must be considered. First, roadless areas have certain attributes that must be analyzed. Those attributes, such as water resources, soils, wildlife habitat, and recreation opportunities, possess independent environmental significance. Second, roadless areas are significant because of their potential for designation as wilderness areas under the Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136. *Lands Council*, 479 F.3d at 640; *Smith*, 33 F.3d at 1078-79."

47. According to the Forest Service's analysis of these cases, dealing with their continuing obligations under the Wilderness Act: "Based on court history and past direction from the Chief, projects within roadless areas must analyze the environmental consequences, including irreversible and irretrievable commitment of resources on roadless area attributes, and the effects for potential designation as wilderness under the Wilderness Act of 1964…. The purpose of the analysis on the roadless resource is to disclose potential effects to roadless and wilderness attributes and determine if, or to what extent it might affect future consideration for wilderness recommendations. This analysis focuses on the potential effects of project activities on wilderness characteristics as defined in the Forest Service Handbook (FSH) 1909.12 (72.1). Wilderness characteristics, as defined at FSH 1909.12 (72.1) and evaluated here include the following:

1. Natural – The extent to which long-term ecological processes are intact and operating.

2. Undeveloped – The degree to which the impacts documented in natural integrity are apparent to most visitors.

3. Outstanding opportunities for solitude or primitive unconfined recreation – Solitude is a personal, subjective value defined as the isolation from sights, sounds, and presence of others and from developments and evidence of humans. Primitive recreation is characterized by meeting nature on its own terms, without comfort and convenience of facilities.

4. Special features and values – Unique ecological, geographical, scenic, and historical features of an area.

5. Manageability – The ability to manage an area for wilderness consideration and maintain wilderness attributes."

48. Concerning the potential for cumulative effects of proposed treatments within an IRA, the Forest Service has described the following steps:

- Identify the cumulative effects boundary in space and in time.
- Describe the cumulative effects boundary – this will be the roadless area expanse. Describe what factors this is based on.
- Describe the temporal boundary – this will be how long affects of the action will occur on the landscape. Describe what factors this is based on.
- Describe the past actions and their effects on current conditions. Describe what past actions were considered and summarize how they affected the five wilderness attributes described above. If there are comments that other past actions should have been considered discuss why they were or were not.
- Contrast the effects of proposed actions with past actions. Describe how past actions were developed in relation to the roadless resource and how this proposal considered the roadless resource in its design (e.g. summarize the past actions that occurred, whether or not the actions occurred before or after the forest plan was established, whether or not those past actions were designed to minimize effects on the roadless resources (and if so whether or not they were effective) and how this proposed action contrast with those past actions.
- Describe the effects of ongoing and reasonably foreseeable actions. Identify what actions were considered. If there are comments that others should have been considered discuss why they were or were not. Describe how these actions could affect the five wilderness attributes.

- Describe the combined effects from past, proposed, ongoing, and reasonably foreseeable future actions. Describe the cumulative effects of the proposed action, in addition to the past, present and reasonably foreseeable actions on the five wilderness attributes. Describe whether or not there would be irreversible or irretrievable commitment of resources.

49. The full extent of the Defendant Regional Forester's analysis of the potential impacts of the Hyde Park Project on the wilderness character and potential for inclusion as wilderness is contained in the following two paragraphs:

> Roadless characteristics include: high quality or undisturbed soil, water and air, sources of public drinking water, diversity of plant and animal communities, habitat for threatened, endangered, proposed, candidate and sensitive species. Other roadless characteristics include: primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation, as well as natural appearing landscapes with high scenic quality, traditional cultural properties, sacred sites and other locally identified unique characteristics. The proposed action is expected to protect and maintain these characteristics by increasing resiliency and reducing the risk of catastrophic wildfire. There would be short term impacts to resources from the treatment activities, but the long-term effects would benefit the characteristics of the IRA and protect an important watershed and water supply for the City of Santa Fe.
>
> The project is consistent with the 2001 Roadless Area Rule (36 CFR Part 294) guidance. The project would maintain or improve the IRA characteristics and protect the watershed and habitat for the Northern Goshawk. No critical habitat for the Mexican Spotted Owl exits in the project area. The scenic quality would be maintained and there are no cultural properties within the project area. No new roads would be constructed to implement this project. No existing roads would require reconstruction. Existing Forest Roads within and adjacent to the project area would be used during the proposed activities. Timber harvesting would be a small component of the project focusing on small diameter trees in the form of limited amounts of personal and commercial fuelwood use. Harvesting would be in accordance with 36 CFR 294.13, b.l (ii) To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period. The project is proposed to reduce the risk of an

uncharacteristic wildfire, which would greatly alter the area and put the City of Santa Fe's water supply at risk.

50. The USFS Roadless Rule prohibits timber harvest in IRAs with certain limited exceptions. 36 CFR 294.13. The Hyde Park Project is based on the following exception: "To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period."

51. Multiple lines of evidence suggests that mixed conifer and ponderosa pine forests such as those found in the project area are characterized by mixed-severity fire that include ecologically significant amounts of weather-driven, high-severity fire.

52. The ecological importance of large, infrequent, and often severe natural disturbances in structuring historical landscapes and maintaining their biological diversity is well established.

53. According to recent (Sept 2017) Congressional testimony from the Chief Scientist of the nonprofit organization, Geos Institute, which works with agencies, landowners, and decision makers in applying the best science to climate change planning and forest management:

A. Wildfires are necessary natural disturbance processes that forests need to rejuvenate. Most wildfires in pine and mixed-conifer forests of the West burn in mixed fire intensities at the landscape scale that produce large and small patches of low to high tree mortality. This tapestry of burned patches is associated with extraordinary plant and wildlife diversity, including habitat for many big game and bird species that thrive in the newly established forests. From an ecosystem perspective, natural disturbances like wildfires are not an ecological catastrophe;

B. Increased logging and decreased environmental review in response to wildfires and insect outbreaks is not science driven, in many cases may make problems worse, and will not stem rising wildfire suppression costs;
C. Wildfires burn most intensely in previously logged areas, while they burn in natural fire mosaic patterns in wilderness, parks, and roadless areas, thereby, maintaining resilient forests;
D. given expansion of homes in the WUI, the best way to limit damage to homes is to reduce fire risks by working from the home-outward instead of the wildlands-inward (Syphard et al. 2013). For instance, if a fire-brand travels miles ahead and lands on a flammable roof that home is very likely to burn compared to a home that has a fire resistant roof and cleared vegetation within a narrow defensible space of 100-200 feet immediately surrounding the home (Cohen 2000). Logging outside of this narrow zone does not change home ignition factors;
E. There is a very low probability of a thinned site actually encountering a fire during the narrow window when tree density is lowest. For example, the probability of a fire hitting an area that has been thinned is about 3-8% on average, and thinning would need to be repeated every 10-15 years (depending on site productivity) to keep fuels at a minimum (*Rhodes and Baker* 2008).

54. Suppressing large fires results in multiple adverse impacts that include: (1) declining and potentially threatened native animals dependent on severely burned patches (Hutton 2008 and Hanson 2014); (2) loss of biologically diverse early-successional habitat (Swanson et al. 2001 and Della Salla et al. 2014); reduction in fire-stimulated native shrubs and trees that were historically abundant (Baker 2014 and Vankat 1978); and simplification of landscape heterogeneity that is key to landscape resilience to future climate-change effects (Millar et al. 2007).

55. The Forest Service claims there is more than a 90 percent probability of a large crown fire in the Santa Fe Watershed in the next 20 years. While this may be true at a landscape scale, the probability that such a fire will occur in a relatively small area on the order of the Project Area is, by comparison, much less-likely-than-not.

Rhodes and Baker (2008) estimate the probability of a moderate to high intensity fire in any given area of Southwestern ponderosa pine forests as .0025% per year, or 15% over 60 years.

56. Since fuels reduction treatments may be effective for only 10-20 years (Agee and Skinner 2005), the treatment area approved for the Hyde Park Project is unlikely to encounter the fire it has been designed to withstand.

57. Thus, according to Rhodes and Baker (2008): "Potentially adverse treatment effects on watersheds are not counterbalanced by benefits from reduced fire severity" in projects like the Hyde Park Project.

58. According to new reference data and records of high-severity fire from 1984–2012 across all dry forests (25.5 million ha) of the western USA, Baker (2015) found that "the rate of recent high-severity fire in dry forests is within the range of historical rates, or is too low, overall across dry forests and individually in 42 of 43 analysis regions," including the Santa Fe NF, and thus "[p]rograms to generally reduce fire severity in dry forests are not supported and have significant adverse ecological impacts, including reducing habitat for native species dependent on early-successional burned patches and decreasing landscape heterogeneity that confers resilience to climatic change."

59. Restoration ecology uses the historic range of variability (HRV) to set achievable goals (Shinneman, Baker and Lyon, 2008). Under HRV fires in the ponderosa pine—Douglas fir landscapes such as found in the Hyde Park project area typically burned in a mixture of low and high severity.

60. Low intensity fires as well as infrequent large fires burning under severe weather conditions are characteristic of the project area.

61. While fires may have declined since EuroAmerican settlement, there is little evidence that fuels in ponderosa pine—Douglas fir forests have built up to abnormal levels, that tree density is abnormally high or fires are more severe (Baker 2009, 266).

62. Whether current forest stand conditions are far enough outside of past conditions as to be considered outside the historic range of variability is a matter of increasing debate. The scientific basis for restoration is dependent on fire-scar studies. These studies suggest that the drier forests composed of lower elevation ponderosa pine and Douglas fir burned frequently and thus kept density low with park-like open stands of mostly larger trees. However, the methods of these studies are biased towards shorter intervals, and numerous flaws have been pointed out, leading to recommendations from experts that the underlying assumptions of fire scar studies should be carefully evaluated to make sure they are not skewed towards a shorter rotation that actually does not characterize the area accurately before any restoration activities are approved.

63. The Hyde Park Project decision is based in part on an assumption that fire return intervals in mixed conifer forests are 5-25 years, based on a 1983 study, and no interval is given for the Ponderosa pine forests. All of the studies cited by the Forest Service on the fire ecology issue in the Forest Vegetation Report are at

least 20 years old, and are not representative of the best scientific information currently available.

64. More recent studies, from this century and this decade when the issue of fire has become of much greater interest to academics and researchers, have found that the intervals between fires is much longer then previously suspected; and, just as significantly, that stand replacement blazes (where most of the trees are killed) were likely more common among lower-elevation dry forests then previously thought.

65. According to the best available scientific information currently available, the kind of wildfire the Hyde Park Project is intended to avoid would not be uncharacteristic for this forest, and would instead be within the "range of variability that would be expected to occur under natural disturbance regimes of the current climatic period."

66. Because of the scientific controversy attending fuels treatments like the Hyde Park Project, Plaintiffs presented the Forest Service with a *Citizen's Restoration Plan for the Greater Santa Fe Fireshed 1.0* ("CRP"), which plan provides seven strategies and numerous management prescriptions to reduce the effects of crown fire with minimum environmental impact, and asked the agency to prepare an EIS that included a hard look at this alternative. In the long-term, the CRP is designed to create a more resilient landscape by allowing fire to burn at the seasons, frequencies and intensities to which forests in the fireshed are historically adapted.

67. According to a recent (2015) study included in the National Institute of Health's Library of Medicine, "Given the increase in PM2.5 [particulate matter ≤ 2.5 microns in size] concentrations during smoke events, there is a need to understand the influence of prescribed burning smoke exposure on human health. This is important especially since adverse health impacts have been observed during wildfire events when PM2.5 concentrations were similar to those observed during prescribed burning events. Robust research is required to quantify and determine health impacts from prescribed burning smoke exposure and derive evidence based interventions for managing the risk." See: https://www.ncbi.nlm.nih.gov/pubmed/25947317

68. According to the study referenced in the preceding paragraph, "Unlike wildfires that are of high intensity, prescribed fires are cool low-intensity burns and produce relatively short plumes… While low-intensity prescribed burns (low heat, light emissions) cause minimal risk to life and property, they can however emit large amounts of smoke particulates… As a result, smoke from prescribed burning can have a ***substantial impact*** on rural/regional areas, along with potential to impact urban airsheds due to long-range transport of smoke particles. (emph. added) Heikerwal et al., "Impact of smoke from prescribed burning: Is it a public health concern?" *Journal of the Air & Waste Management Assoc.*, Volume 65, 2015 - Issue 5. https://www.tandfonline.com/doi/full/10.1080/10962247.2015.1032445

69. Heikerwal et al. found that "adverse health impacts due to PM related wildfire smoke exposure have been observed at comparatively low PM concentrations, well within current air quality standards" and "…there is no known safe level of pollutant exposure below which adverse health impacts are not observed." Ibid.

70. According to the Forest Service, "Smoke also contains a number of toxic air pollutants such as aldehydes (including formaldehyde and acrolein) and organic compounds such as polycyclic aromatic hydrocarbons (PAHs) and benzene (U.S. EPA 2013). Acrolein and formaldehyde are potent eye and respiratory irritants. Benzene is a known carcinogen that can cause headaches, dizziness, and breathing difficulties." NWCG Smoke Management Guide for Prescribed Fire, p. 33.

71. According to the Forest Service: "The acute (short-term) effects of smoke exposure range from irritation of the eyes and respiratory tract to more serious injury of the respiratory tract resulting in bronchitis, pneumonia and acute injury of the lungs. These injuries may cause symptoms of persistent cough, phlegm production, wheezing, and physical discomfort when breathing. The exposure can result in reduced lung function, even in healthy people. In addition, exposure to the PM in smoke may aggravate underlying medical conditions of the heart and lungs. Inhaled particles can also alter immune function by diminishing the ability of immune cells to remove foreign materials like pollen and bacteria from the lung, predisposing a person to lung infections. Respiratory complications of

smoke exposure may be of particular concern in the very young, and in older individuals (Delfino *et al.* 2009)." Ibid., p. 34.

72. According to the Forest Service: "Where heavy metals occur in the soils (e.g., copper, chromium, lead, zinc, or mercury), certain plants can uptake those metals and concentrate them in the tissues (Haque *et al.* 2008). If this vegetation is burned, it could represent a significant source of metal emissions. Furthermore, if heavy metals are precipitated onto the plant surface from other pollutant sources (e.g., factories and automobiles) there is a potential these metals could be emitted into the atmosphere upon burning." Ibid., p. 126.

73. The Mercury Inventory for New Mexico (New Mexico Environment Department 2008) estimated the total amount of mercury released in 2002 to the state's air, water and land from all sources, including forest fires, is 5,854 pounds. Wildfires and prescribed burns account for the second highest total amount of mercury released in New Mexico, approximately 20% of the total or 1171 pounds.

74. Mercury is a neurotoxin and can damage the brain, kidneys and lungs. Unborn and young children are the most susceptible to the toxic effects of mercury. Pregnant and nursing mothers can pass mercury to the developing fetus or infant.

75. Vulnerable populations to mercury and other hazardous compounds include the young, the elderly, asthmatics, chemically sensitive, pregnant women and those with cardiovascular disease. The total percentage of these vulnerable populations in New Mexico amounts to 87% of the general population.

76. Mercury released into the atmosphere is eventually deposited into soil, vegetation and surface waters. Biological processes in water and soil convert elemental and inorganic mercury into methylmercury, which is taken up by small organisms in the food web. The concentrations of atmospheric mercury in New Mexico are the highest in the U.S. (New Mexico Environment Department 2008).

77. When the Forest Service previously proposed prescribed burns in the Hyde Park Project Area (2009), a local law firm wrote them concerning a potential class action lawsuit due to the elevated sensitivities of the local population to toxic air pollutants, noting that "There are several highly regarded physicians in our community whose medical practices are devoted to assisting individuals whose immune systems are seriously compromised and who are therefore endangered by even a minimal amount of toxins released into the atmosphere by man-made activity." Comment letter from Bennett Law Firm, March 23, 2009.

78. The Farm Bill Categorical Exclusion requires the Forest Service to base its decision on consideration of the best available scientific information.

79. In considering the potential significance of air pollution and release of toxic substances from prescribed fires so close to Santa Fe, the Forest Service failed to base their assessment on the best available scientific information currently available.

80. National Forests function as a critical carbon pool in the global balance of greenhouse gases. Tree clearing projects adds carbon to the global carbon budget. Depro et al. (2008) calculated that if all tree cutting ceased on National Forests,

the rate of carbon storage on those lands would increased by an average of 30 percent over the next five decades. The Hyde Park project alone will produce 6162 tons of carbon dioxide and over 13 tons of methane as the result of prescribed burning.

81. The Global Climate Change Prevention Act of 1990, sections 6701(b)5 and (c)3, requires that all federal agencies analyze climate change effects in decision-making and propose alternatives that mitigate the adverse effects of climate change.

82. According to the CEQ, finding that a land management action represent only a small fraction of global emissions is not an appropriate basis for deciding whether or to what extent to consider climate change impacts under NEPA.

83. When the Hyde Park fuels treatment project was last proposed, with an environmental assessment, the Air Quality Bureau of the New Mexico Environmental Department noted in their comments that: "There is no discussion in the impacts section of the document on the impact of any of the proposed actions [] on climate change. The document should address the impact of the project on climate change, specifically emissions of greenhouse gases." (March 23, 2009).

84. The Forest Service response to the need to consider the impacts of the proposed project on climate change presumes that they are avoiding a wildfire by treating less than 2000 acres in a 107,000 acre fireshed, and that such a wildfire would be

worse, but does not consider the cumulative effects of repeated and continual prescribed burning of the entire fireshed.

85. Bill West, an experienced birder and resident of Hyde Park, has documented bird species found in both the general Hyde Park area and in the project area itself. His survey from May and June of 2015 documented: Grace's Warbler, White-winged Dove, Gray Flycatcher, Western Tanager, Flammulated Owl, Violet green Swallow, Black-throated Gray Warbler, Warbling Vireo, Orange-crowned Warbler, Yellow-rumped Warbler, Hermit Thrush, Plumbeous Vireo, Cordilleran Flycatcher, Common Poorwill, Western Screech Owl and Common Nighthawk. His survey in May and June of 2016 include all of the above plus: Northern Goshawk, Cooper's Hawk, Sharp-shinned Hawk, Ash-throated Flycatcher, Western Wood Pewee and Townsend's Solitaire. On the morning of July 24, 2006, Mr. West identified 23 bird species within the Hyde Park project area, including several pairs and juveniles, indicating that the project area provides excellent bird breeding habitat. Nine species were cavity nesters that would be killed by felling occupied snags during the breeding season.

86.The Northern Goshawk was designated by the Forest Service as a sensitive species in 1982 to meet its duty under the National Forest Management Act to provide for the diversity of animal communities. Large trees, high tree densities and dense canopies have been demonstrated to be important components of Goshawk foraging habitat (*Austin*

1993; *Bright-Smith and Mannan* 1994; *Hargis et al.* 1994; *Beier and Drennan* 1997; *Drennan and Beier* 2003).

87. The Santa Fe Forest Plan was amended in 1996 with guidelines to protect Goshawk habitat mandating a 40 percent average canopy cover in all mid-aged, mature and old growth forests (VSS 4, 5 and 6) outside of Mexican spotted owl restricted and protected habitat. These guidelines must be complied with to be consistent with the Forest Plan.

88. Canopy cover in the Project Area currently averages between 50-70%. The intent of the Project is to reduce average canopy cover levels down to 35-40% in thinned areas, by removing trees up to 15.9" dbh. Only in Mexican spotted owl habitat does the decision provide that canopy closure will not be reduced below 40%.

89. The Goshawk canopy closure requirement is a bare minimum. Arizona Game and Fish Department (1993) contend that a denser canopy closure is needed by non-hibernating, non-migratory prey species, such as Abert's squirrel (infra.) that Goshawks utilize for winter prey.

90. Openings (clearcuts) up to 5-acres in size are approved in the project area where categories VSS 4 and 5 forests are found, which is inconsistent with the best scientific information on goshawk conservation, one principle of which is that no openings be generated in these areas in class VSS 4, 5 or 6 forest habitats.

91. The Goshawk, and the bird species listed above, are protected by the Migratory Bird Treaty Act ("MBTA") 50 C.F.R. 10:13 and the international migratory bird treaties implemented through the Act. Under the MBTA it is unlawful "at any

time, by any means or in any manner to . . . kill . . . any migratory birds" 16 U.S.C. 703-711.

92. The MBTA applies to federal agencies and their employees who may not intend to kill migratory birds but whose actions nonetheless result in unauthorized "incidental take" of migratory birds (incidental take is the unintentional death of adults, juveniles, nestlings, fledgings or eggs resulting from an activity although that is not the purpose of the activity). *Humane Society v. Glickman*, 217 F. 3d 882 (D.C. Cir. 2000).

93. It is a violation of the MBTA to cause the unintended but foreseeable death of individuals of protected species by clear cutting stands of "decadent" aspen and removing thousands of ponderosa pine trees, thereby killing nestlings, fledglings and destroying eggs.

94. New Mexico law imposes penalties on "any person or persons" that in any manner destroys any songbird. NMSA 1978, Section 17-2-13 (2006); NMAC 19.30.2.7.

95. Abert's squirrel is one wildlife species that is particularly affected by the kinds of forest-thinning projects represented by Hyde Park. It is considered to be an indicator for the presence of interlocking canopies in ponderosa pine.

96. Abert's squirrel is a habitat specialist that depends on ponderosa pine for basically all its life necessities and requires diversity of age classes and tree densities. Pine twigs, pine cones, pine seeds, pine bark, as well as truffles are used by the Abert's squirrel. Patches of interlocking pine canopies, which are associated with mature

and undisturbed ponderosa pine forests, are an increasingly rare habitat element on the national forests of the Southwest and are the target of most thinning operations.

97.Abert's squirrel is ecologically dependent on ponderosa pine for both nesting sites and food (*Keith* 1965). Nests are usually located 20-59 ft (5-18 m) above the ground on the south side of a ponderosa pine that has a crown comprising 35-55% of the total tree height and greater than 14 in DBH (36 cm DBH; *Farentinos* 1972a, *Flyger and Gates* 1982). Suitable nests trees are generally greater than 100 years old and located adjacent to trees of similar size with interlocking canopies to provide escape routes (*Flyger and Gates* 1982, *Brown* 1984). Nests are typically constructed of twigs or excavated in dwarf mistletoe (*Arceuthobium pusillum*) "witches broom" infections (*Farentinos* 1972a, 1972b).

98. Thinning of interlocking canopy trees in the Hyde Park Project Area will reduce the basal area (a measure of tree density) required by the Abert's squirrel, a species integral to the proliferation of ponderosa pine forests. Optimum Abert's squirrel habitat consists of groups of even-aged ponderosa pine spaced within an uneven-aged stand. *Flyger and Gates* (1982) recommended that these stands should have open understories and densities of 496 - 618 ponderosa pines per hectare (200 - 250 ponderosa pines per acre) with an average diameter at breast height (dbh) of 11-13 inch (28-33 cm) dbh.

99. In the neighboring Carson National Forest, the Abert's squirrel is far below what is considered to be a healthy population. Because the Santa Fe National Forest does not have information such as this available, extreme prudence is advised while initiating vegetative manipulative projects such as the Hyde Park Project. In spite of this, the Project Biological Evaluation does not evaluate the potential direct, indirect and cumulative impacts of thinning and prescribed burns on Abert's squirrel.

100. The SNF Plan has datailed minimum criteria for old growth habitat that includes the following 7 criteria: live trees in main canopy; variation in tree diameters; dead trees (standing snags and downed logs); tree decadence; number of tree canopies; total basal area; and, total canopy cover (percent).

101. According to the Forest Service, "[t]he oldest trees are ponderosa pine many of which are 180 years old" in the Hyde Park Project Area.

102. A 180 years old ponderosa pine forest, as well as a mixed conifer forest with a 180 years old ponderosa pine overstory, is old enough to qualify as old growth habitat.

103. In spite of the IRA's never having been commercially logged, and in spite of the fact that the Forest Service has been proposing treatments in the Hyde Park Project Area for more than a decade, the Forest Service still is unable to provide surveys comparing the habitat conditions in the Hyde Park Project Area to the minimum criteria for old growth habitat from the forest plan, and thus is unable to disclose the effects of the treatments on old growth habitat.

104. The Biological Evaluation for the Hyde Park Project states that "retention of existing old growth in accordance with forest plan old growth standards and guidelines" would be required, but nowhere discloses existing old growth habitat in the Project Area.

105. While asserting that they are maximizing retention of large trees in accordance with the Farm Bill requirements in the Decision Memorandum, the Forest Service never explains why it chose a 16" cut-off for tree retention, and rejected recommendations to adopt a 12" cut-off instead.

VI. CLAIMS FOR RELIEF FIRST CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF

Defendant Chief violated NEPA in implementing the Farm Bill Categorical Exclusion.

1. All above paragraphs are incorporated by reference.

2. NEPA allows a federal agency to adopt a categorical exclusion for a "category of actions which do not individually *or cumulatively* have a significant effect on the human environment." 40 C.F.R. §1508.

3. In implementing the Insect & Disease Categorical Exclusion created under the Farm Bill, it was incumbent upon the Chief, in the exercise of her delegated authority, to consider the potential significance of cumulative indirect impacts from designation, and to designate eligible areas in such a manner as to avoid cumulative effects on the human environment.

4. Because designating "treatment areas" pursuant to 16 U.S.C. § 6591(a) has the indirect effect of allowing projects in those areas to proceed under NEPA without an EA or EIS (eligible projects in designated areas "may be . . . considered an action categorically excluded" pursuant to § 6591b), such designations could potentially have cumulatively significant impacts on the human environment.
5. Designating multiple Inventoried Roadless Areas near the Pecos Wilderness in the Santa Fe NF is an example of how such an exercise of statutory authority could create the potential for significant cumulative environmental impacts, potentially degrading the wilderness characteristics and reducing the likelihood that these IRAs will be considered for inclusion as wilderness in the future, and thus result in a violation of NEPA and its implementing regulations.
6. In order to avoid such potentially significant cumulative impacts in designating treatment areas in New Mexico pursuant to 16 U.S.C. § 6591(a), which constitutes a programmatic decision that effectively changes the way national forests are to be managed, the Chief was obligated to conduct NEPA analysis prior to any final designations.
7. Had the Chief solicited public input on proposed designations of the forest lands included for eligibility in his programmatic decision implementing 16 U.S.C. § 6591(a), one issue that would surely have been raised is the potential cumulative impacts on wilderness and Inventoried Roadless Areas in the Santa Fe National Forest.

SECOND CLAIM FOR RELIEF

The Hyde Park Decision violate NEPA and the APA

1. All above paragraphs are incorporated by reference.
2. The Forest Service violated NEPA by pre-determining the outcome of the Hyde Park Project.
3. The Forest Service violated NEPA by failing to examine the direct, indirect and cumulative impacts of the Hyde Park Decisions on the human environment. 40 C.F.R. § 1508.25(c).
4. NEPA requires federal agencies' environmental analysis to consider "any adverse environmental effects which cannot be avoided." 42 U.S.C. §4332(2)(C)(ii). When several actions may have cumulative or synergistic environmental impacts, Forest Service must consider these actions together and prepare a more comprehensive environmental analysis.
5. Direct impacts are "caused by the action and occur at the same place and time." 40 C.F.R. § 1508.8(a). Indirect impacts are "caused by the action and are later in time or further removed in distance but are still reasonably foreseeable." 40 C.F.R. § 1508.8(b). Cumulative impacts are "the impacts[s] on the environment which result from the incremental impact of the action when added to other past, present and reasonably foresable future actions, regardless of what agency (Federal or non-Federal) or person understands such actions." 40 C.F.R. § 1508.7.
6. The Hyde Park Project, along with the Pacheco Canyon Project, is part of a much larger and more ambitious program to treat a 107,000 acre fireshed, a large

proportion of which is within Inventoried Roadless Areas of the Santa Fe NF, and will thus likely cause significant adverse direct, indirect and cumulative impacts on the human environment - including but not limited to significant health effects for the surrounding community from regular and repetitive prescribed burns, as well as to wildlife communities that are commonly associated with dense forests like those the Project is intended to substantially alter, and on the wilderness characteristics, use and enjoyment of the IRAs by those users who appreciate untrammeled natural amenities and roadless areas in our national forests.

7. The Forest Service failure to prepare a programmatic EIS that examines the impacts of forest thinning across the entire 107,000 acre fireside project area on the human environment, was arbitrary and capricious and unlawful in violation of NEPA, 42 U.S.C. § 4332(2)(C), NEPA's implementing regulations, and the APA, 5 U.S.C. § 706.

THIRD CLAIM FOR RELIEF

The Hyde Park Decision violates NEPA, the Wilderness Act and the APA

1. All above paragraphs are incorporated by reference.
2. Roadless areas have certain attributes that must be analyzed in an EIS. Those attributes, such as wildlife communities, their habitats, and recreation opportunities, possess independent environmental significance inside large, contiguous roadless expanses. Roadless areas are also significant because of their potential for designation as wilderness areas under the Wilderness Act of 1964, 16 U.S.C. §§

1131-1136. See, e.g.: *Lands Council v. Martin*, 479 F.3d 636, at 640 (9th Cir. 2007); *Smith v. USFS,* 33 F.3d 1072, at 1078-79 (9th Cir. 1994).

3. While the HFRA does not exclude IRAs from its reach, the 3,000 acre limitation on projects that can be categorically excluded clearly indicates Congressional intent not to permit substantial alterations of habitats and landscapes across areas on the scale of the Greater Santa Fe fireshed, especially when the majority of that landscape occurs in protected roadless areas of the forest, without the benefit of the hard look that proceeds from the careful consideration of relevant science, scientific controversy, and a reasonable range of alternatives that would be required in the preparation of an environmental impact statement under NEPA.

4. The cumulative effects of slashing and burning wildlife habitat on the wilderness characteristics, and on the potential for future consideration as wilderness, of the Inventoried Roadless Areas in the Greater Santa Fe Fireshed have never been considered or disclosed in an environmental impact statement.

5. The Hyde Park Project was approved without adequate consideration of the potential direct, indirect and cumulative environmental impacts on the entire roadless expanse associated with the Inventoried Roadless Areas affected by the Project.

FOURTH CLAIM FOR RELIEF

The Hyde Park Decision violates NEPA, NFMA, HFRA, and the APA

1. All above paragraphs are incorporated by reference.

2. The National Forest Management Act of 1976 ("NFMA") imposes a substantive duty on the Forest Service to "provide for diversity of plant and animal communities

. . .” 16 U.S.C. § 1604(g)(3)(B). This statutory intent is reflected in NFMA’s 2005 implementing regulations by requiring the Forest Service to:

> document how the best available science was taken into account in the planning process; evaluate and disclose substantial uncertainties in that science; evaluate and disclose substantial risks associated with plan components based on that science and document that the science was appropriately interpreted and applied.

36 C.F.R. § 219.11(a)(1)-(4).

3. The Farm Bill CE portion of HFRA requires the Forest Service to “consider[] the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity” for categorically excluded projects.

4. The Forest Service may satisfy the 2005 regulations’ requirements through the use of “independent peer review, a science advisory panel, or other review methods to evaluate the consideration of science in the planning process.” 36 C.F.R. § 219.11(b).

5. The Forest Service failed to adequately demonstrate that it considered the best available science and scientific information in designing the Hyde Park Project, especially in relation to the controversy surrounding fire ecology science, protecting human health, and providing for a diversity of plant and animal communities that would be most affected by treatments, including but not limited to Abert’s squirrel, songbirds, and northern goshawk.

FIFTH CLAIM FOR RELIEF

The Hyde Park Decision violates HFRA and the APA

1. All above paragraphs are incorporated by reference.
2. It is not possible to determine the impact of removing all threes 15.9" and under in an area of the forest that has never been logged, followed by prescribed fire, on the old growth characteristics of the roadless area expanse, without any information on existing old growth characteristics, wildlife communities associated with those characteristics, and a description of the impacts to those characteristics and wildlife communities from the proposed treatments.
3. It is arbitrary and capricious to decide, without any reference to science or other explanations, that a 15.9" dbh tree is not a "large" tree, especially in a dry climate where trees tend to grow slowly, while a 16" tree is a large tree.
4. The decision and supporting documentation of the Hyde Park Project fail to demonstrate that the Project maximizes the retention of old growth and large trees.
5. The HFRA was intended to apply to projects under 3,000 acres in size, and it is an abuse of discretion to break a 107,000 acre project down into an unspecified number of projects under 3,000 acres in size to avoid a hard look under NEPA when the clear intention is to transform the entire landscape over time.

VII. RELIEF REQUESTED

For all of the above-stated reasons, Plaintiffs request that this Court award the following relief:

A. Declare that the Project is arbitrary, capricious, and/or otherwise not in accordance with law;

B. Enjoin implementation of the Project pending preparation of a programmatic EIS;

C. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees under EAJA; and

D. Grant Plaintiffs any such further relief as may be just, proper, and equitable.

Respectfully submitted this 23rd Day of May, 2018.

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