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15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
17 **SACRAMENTO DIVISION**

18 KLAMATH-SISKIYOU WILDLANDS
19 CENTER, ENVIRONMENTAL PROTECTION
20 INFORMATION CENTER, and KLAMATH
21 FOREST ALLIANCE,

22 Plaintiffs,

23 vs.

24 UNITED STATES FOREST SERVICE,

25 Defendant.

26 Civ. Case No. 05-299 MCE-PAN

27 **FIRST AMENDED COMPLAINT FOR
28 DECLARATORY AND INJUNCTIVE
RELIEF**

(National Environmental Policy Act,
National Forest Management Act, Clean
Water Act, and Administrative Procedure
Act)

29 **JURISDICTION**

30 1. This is a civil action for declaratory and injunctive relief under the Administrative
31 Procedure Act (APA), 5 U.S.C. §§ 551-706. The claims arise from Defendant's violations of the
32 National Forest Management Act (NFMA), 16 U.S.C. §§ 1600 et seq., and its implementing
33 regulations, 36 C.F.R. §§ 219.1-219.29 (1982); the National Environmental Policy Act (NEPA),

1 42 U.S.C. §§ 4321-4370(d), and its implementing regulations, 40 C.F.R. §§ 1500 et seq.; and the
2 Clean Water Act (CWA), 33 U.S.C. §§ 1251 et seq., and its implementing regulations, 40 C.F.R.
3 §§ 104 et seq. This action is brought pursuant to the right of review provision of the APA, 5
4 U.S.C. § 702.

5 2. This Court properly has jurisdiction over this action under 28 U.S.C. § 1331 (federal
6 question), and 28 U.S.C. § 1346 (United States as defendant). Judicial review is authorized by 5
7 U.S.C. § 706 because Plaintiffs are adversely affected within the meaning of the relevant
8 statutes.

9 3. Plaintiffs Klamath-Siskiyou Wildlands Center, Environmental Protection Information
10 Center, and Klamath Forest Alliance, allege that the Defendant, the United States Forest Service
11 (Forest Service), violated federal law in its preparation of the Meteor timber sale in the Salmon
12 River watershed of the Salmon River Ranger District, Klamath National Forest.

13 4. Plaintiffs challenge the failure of Defendant to comply with the Record of Decision on
14 Management of Habitat for Late-Successional and Old-Growth Forest Related Species within the
15 Range of the Northern Spotted Owl (Northwest Forest Plan, or NFP) and the Klamath National
16 Forest Land and Resource Management Plan (LRMP) in its planning and implementation of the
17 Meteor timber sale.

18 5. The NFP was adopted in 1994.

19 6. The LRMP was adopted by the Klamath National Forest in 1990 and incorporates the
20 NFP.

21 7. Plaintiffs challenge Defendant's failure to meet its procedural and substantive duties
22 required by NEPA by failing to adequately perform environmental review procedures in its
23 Environmental Impact Statement (EIS) for the Meteor timber sale and associated Record of
24 Decision (ROD).

25 8. Plaintiffs also challenge Defendant's failure to comply with the CWA, including water
26 quality standards in the Basin Plan, in its planning and implementation of the Meteor timber sale.

27 9. Plaintiffs seek an order:
28

1 a. declaring that Defendant violated NFMA and the APA by failing to comply with
2 the Klamath National Forest LRMP and the ROD when it planned the Meteor timber sale;

3 b. declaring that Defendant failed to comply with NEPA, NFMA, CWA, and the
4 APA when it prepared the Meteor FEIS;

5 c. enjoining Defendant and its contractors, agents, etc. from undertaking any
6 activities related to the Meteor timber sale, unless and until Defendant has complied with
7 NFMA, NEPA, CWA, and the APA.

8 d. awarding Plaintiffs their reasonable attorneys fees and costs incurred in this action
9 pursuant to the EAJA, 28 U.S.C. § 2412; and

10 e. granting Plaintiffs such additional and further relief as the Court deems just and
11 equitable.

12 10. The requested relief is necessary to preserve the *status quo*, to prevent illegal agency
13 action, and to forestall irreparable injury to the environment.

14 **VENUE AND BASIS FOR RELIEF**

15 11. The decision giving rise to this complaint was made in Vallejo, California by the Forest
16 Service's regional office. Venue is properly vested in this Court by 28 U.S.C. § 1391(e).

17 12. Declaratory relief is appropriate under 28 U.S.C. § 2201. Injunctive relief is appropriate
18 under 28 U.S.C. § 2202.

19 13. If Plaintiffs prevail, Plaintiffs will seek an award of costs and fees, including attorneys'
20 fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

21 **PARTIES**

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

1 15. Plaintiff ENVIRONMENTAL PROTECTION INFORMATION CENTER (EPIC) is a
2 non-profit corporation organized under the laws of California. EPIC is a grassroots organization
3 dedicated to the protection and restoration of forests, watersheds, and biodiversity in northern
4 California. EPIC maintains its offices in Humboldt County, California. Most of EPIC's
5 approximately 2,000 members live in northern California. EPIC's members use, enjoy, and
6 recreate on public lands, including the Klamath National Forest.

7 16. Plaintiff KLAMATH FOREST ALLIANCE (KFA) is a non-profit corporation organized
8 under the laws of California. The mission of KFA is to promote sustainable ecosystems and
9 sustainable communities in the Klamath Mountains and Klamath River Basin of Northern
10 California and Southern Oregon. KFA has approximately 300 members. KFA directly supports
11 the work of about twenty citizen activists who are volunteers. About one-third of KFA's
12 members are from Siskiyou County, California; about one-third from elsewhere in California;
13 and about one-third from elsewhere in the United States.

14 17. Members of the Plaintiff organizations visit and enjoy the forests of the Salmon River
15 watershed for educational, recreational, and scientific activities, including hiking, camping,
16 photography, and observing wildlife. Plaintiffs would sustain injury to their interests if the
17 Meteor timber sale is undertaken in the absence of a legally and scientifically sufficient analysis
18 of the project's environmental impacts. The interests of Plaintiffs and their members would
19 sustain further injury because the project will degrade water quality, diminish aesthetic value,
20 and harm fish and wildlife in and around the project area.

21 18. Plaintiffs commented on and administratively appealed the Meteor timber sale.

22 19. Defendant UNITED STATES FOREST SERVICE is a federal agency within the U.S.
23 Department of Agriculture. Defendant is, by law, responsible for the management policies and
24 actions undertaken with respect to the public lands. By statutory authority, and the agency's own
25 regulations, Defendant is also responsible for implementing NFMA, NEPA, and other land
26 management laws and regulations pertaining to actions and decisions on lands administered by
27 Defendant.

1 woodpecker, western gray squirrel), River/Stream (rainbow trout, steelhead, tailed frog, cascades
2 frog, American dipper, northern water shrew, and long-tailed vole), and Snag (downy,
3 woodpecker, red breasted sapsucker, hairy woodpecker, black backed woodpecker, white-headed
4 woodpecker, pileated woodpecker, and Vaux's swift).

5 **B. The National Environmental Policy Act**

6 25. Congress enacted NEPA in 1969, directing all federal agencies to assess the
7 environmental impact of proposed actions that significantly affect the quality of the environment.
8 42 U.S.C. § 4332(2)(C). NEPA's disclosure goals are two-fold: (1) to insure that the agency has
9 carefully and fully contemplated the environmental effects of its action, and (2) to insure that the
10 public has sufficient information to challenge the agency's action.

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

14 27. The Forest Service is required under NEPA to prepare an EIS for any "major federal
15 actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

16 28. An adequate EIS must consider both direct and indirect environmental impacts of the
17 proposed action. 40 C.F.R. § 1508.8. Direct effects are caused by the action and occur at the
18 same time and place as the proposed project. Id. § 1508.8(a). Indirect effects are caused by the
19 action and are later in time or farther removed in distance, but are still reasonably foreseeable.
20 Id. § 1508.8(b). Both types of impacts include "effects on natural resources and on the
21 components, structures, and functioning of affected ecosystems," as well as "aesthetic, historic,
22 cultural, economic, social or health [effects]." Id.

23 29. NEPA requires that environmental information be made available to public officials and
24 citizens before decisions are made and before actions are taken. 40 C.F.R. §1500.1 (b). The
25 information must be of high quality. Id. The purpose of this requirement is to ensure that the
26 public has information that allows it to question and understand the decision made by the agency.
27
28

1 30. The Forest Service must also consider whether “the action threatens a violation of
2 Federal, State, or local law or requirements imposed for the protection of the environment,” such
3 as State water quality standards. 40 C.F.R. § 1508.27(10).

4 31. An adequate EIS must consider a reasonable range of alternatives. 40 C.F.R. § 1502.41.
5 CEQ and the courts have described the alternatives requirement as the “heart” of NEPA and the
6 “linchpin” requirement. The Forest Service must “rigorously explore and objectively evaluate
7 all reasonable alternatives” and must also explain why any alternatives were eliminated. 40
8 C.F.R. § 1502.41(a).

9 **C. The Meteor Timber Sale**

10 32. On August 30, 2004, Defendant issued a Final Environmental Impact Statement (FEIS)
11 for the Meteor timber sale.

12 33. The Meteor FEIS proposes two nearly identical action alternatives in the North and South
13 Forks of the Salmon River Watershed, near the towns of Sawyers Bar, Forks of Salmon, and
14 Cecilville, approximately 55 miles southwest of Yreka, California. Alternative 2 proposes
15 logging timber and conducting associated activities on 744 acres in 39 units; Alternative 3
16 proposes logging timber and conducting associated activities on 650 acres in 34 units.

17 34. On August 30, 2004, Klamath National Forest Supervisor Margaret Boland signed a
18 Record of Decision for the Meteor timber sale, implementing Alternative 2.

19 35. The Meteor timber sale calls for logging approximately 6.0 million board feet on 744
20 acres of forest within a Key Watershed for salmon recovery, Hydrological and Geological
21 Riparian Reserves, Northern Spotted Owl Critical Habitat, and Wild and Scenic River (WSR)
22 corridors. The sale also calls for “temporary” road construction, yarding, piling, and hauling
23 activities.

24 36. Defendant proposes a variety of logging methods that range from regeneration harvest
25 and group selection of old-growth to thinning, allegedly aimed at “thinning smaller and
26 intermediate trees within excessively dense conifer stands that are highly susceptible to wildfire
27 destruction (over 310 acres within 20 units including thinning).” FEIS, F-49.

28 37. Defendant concluded that these proposed logging methods, some of which occur within

1 Wild and Scenic River corridors, would “increase the vigor and large tree character of the forest
2 canopy. The openness within the forest canopy, as well as forest floor vegetation diversity,
3 would be increased.” FEIS, 3-98.

4 38. The FEIS deceptively characterizes on the ground units designated for “group selection,”
5 “regeneration harvest,” “sanitation harvest,” “salvage,” “thinning,” and the acres of harvest
6 designed to eliminate natural forest pathogen mistletoe. The units actually marked for logging
7 are primarily large-diameter old-growth canopy trees and wildlife snags, rather than the “smaller
8 and intermediate trees” indicated in the FEIS. For example, in units 82 through 86, 88, and 255,
9 Defendant marked to cut significant portions of old-growth canopy and large wildlife snags,
10 while primarily leaving “smaller and intermediate trees” unmarked. FEIS 3-98, F-47.

11 39. In the FEIS, Defendant claimed that the timber sale is consistent with the NFP and the
12 LRMP, and dismissed all of the Plaintiffs' concerns about the effects of the sale on water quality,
13 sensitive, threatened and endangered species, MIS, and adverse cumulative effects.

14 40. Plaintiffs commented on and administratively appealed the Meteor timber sale.

15 41. The regional forester upheld the adequacy of the Meteor FEIS and ROD on December 1,
16 2004.

17 **D. The Wild and Scenic Salmon River**

18 42. Portions of the Meteor timber sale are within the Wild and Scenic Salmon River,
19 designated under the National Wild and Scenic Rivers Act. 16 U.S.C § 1271-87.

20 43. Specifically, units of the Meteor timber sale are located within “scenic” and
21 “recreational” portions of the Salmon River. FEIS, 3-91. Segment 4 of the South Fork Salmon
22 River from St. Claire Creek to Matthews Creek is classified “scenic”; all other segments within
23 the analysis area are classified “recreational.” Unit 119 is within the designated South Fork
24 Salmon River WSR corridor in a “recreational” segment. In addition, units 77, 85, 86, 137, 138,
25 139 and 141 are within segments recommended for designation as “recreational.”

26 44. The “outstanding remarkable” value for the designated WSRs within the assessment area
27 is anadromous fish. The “outstanding remarkable” values within the project area’s
28 recommended WSR segments include anadromous fisheries, wildlife, and cultural history.

1 **E. Northern Spotted Owl**

2 45. The Meteor timber sale will log in a designated critical habitat unit (CHU) for the
3 northern spotted owl (*Strix occidentalis caurina*).

4 46. The U.S. Fish and Wildlife Service listed the northern spotted owl in 1990 as threatened
5 under the Endangered Species Act, 16 U.S.C. §§ 1532(20), 1533(c)(1).

6 47. The Meteor timber sale and other sales in the area have reduced or will reduce suitable
7 spotted owl nesting, roosting, and foraging habitat.

8 **F. Cumulative Watershed Effects**

9 48. The baseline conditions in the Salmon River Watersheds are already heavily degraded
10 and the Meteor timber sale would contribute to cumulative watershed effects (CWEs).

11 49. Several subwatersheds are exceeding threshold watershed conditions. For example, the
12 Kanaka/Olsen watershed currently has mass wasting of 409 percent more than background
13 levels, even before the Meteor timber sale is implemented.

14 50. Seventh field watersheds range from 2,500 to 10,000 acres in size. Fifth field watersheds
15 are larger, ranging from 40,000 to 250,000 acres in size.

16 51. The Salmon River is listed as impaired under Section 303(d) of the CWA because it fails
17 to meet water quality standards for nutrients and temperature.

18 52. The FEIS uses “inference points” for the Surface Erosion Model of eight hundred percent
19 (800%) over background levels, and two hundred percent (200%) over background levels for the
20 Mass Wasting Model.

21 53. Defendant fails to disclose how it determined that these inference points represent the
22 midpoint of the transition zone where disturbances become great enough to cause concern about
23 initiating or contributing to adverse cumulative watershed effects.

24 54. When analyzing the CWEs from the Meteor timber sale, Defendant failed to adequately
25 analyze the effects of the Meteor sale, in conjunction with other past and future timber sales, on
26 the seventh and fifth field watersheds of the North and South Fork Salmon River, including the
27 Knob, Glassups, and Upper South Fork timber sales.

28 55. In particular, Defendant signed a Decision Notice for the Knob timber sale, which

1 overlaps with many of the subwatersheds proposed for logging in the Meteor timber sale. In
2 fact, the Meteor and Knob sales grew out of the same project, which was formerly called the
3 “Comet” project. Units of the Comet project in which rare mollusks were present became part of
4 the Meteor sale, and those which contained no such mollusks became the Knob sale so as to
5 expedite the logging of those old-growth stands. On March 22, 2004, the Department of
6 Agriculture and Department of the Interior signed the Record of Decision to Remove or Modify
7 the Survey and Manage Mitigation Measure Standards and Guidelines in Forest Service and
8 Bureau of Land Management Planning Documents Within the Range of the Northern Spotted
9 Owl, eliminating the Survey and Manage Standard. The Meteor timber sale was finalized on
10 December 1, 2004. Defendant did not adequately disclose and analyze the cumulative watershed
11 effects of Knob in conjunction with Meteor.

12 56. In the FEIS, Defendant admits that dormant landslides are common in the Meteor Project
13 area, including in the Methodist, St. Claire, Brown’s Knob, Johnson Creek, and Jessups areas.
14 FEIS, 3-30. Two 7th field watersheds, Kanaka-Olsen and Negro-Hotelling, were identified as
15 Areas with Watershed Concerns in the LRMP. Id. This means Defendant must promote
16 watershed restoration activities in these watersheds, and avoid activities worsening the already
17 elevated watershed risk.

18 57. While Defendant discloses the landslide potential in Jones Gulch, a watershed within the
19 Kanaka-Olsen 7th field watershed, Defendant completely ignores the landslide potential of any
20 areas outside Jones Gulch. FEIS, 3-30-36. Defendant failed to disclose and analyze the effect of
21 the Meteor timber sale on the geology and landslide potential of any areas outside Jones Gulch.

22 **G. Clean Water Requirements**

23 58. The CWA requires each state to implement its own water quality standards with which
24 federal agencies must comply. See 33 U.S.C. §§ 1313, 1323. Pursuant to the Porter-Cologne
25 Water Quality Control Act (Porter-Cologne), CA Water Code § 13000 et seq., the Regional
26 Water Quality Control Boards must develop Basin Plans to “ensure the reasonable protection of
27 beneficial uses” of waters and setting forth “[w]ater quality conditions that could reasonably be
28 achieved. . .” CA Water Code § 13241. Among other water quality objectives necessary to

1 protect these uses, the Basin Plan provides that “[t]urbidity shall not be increased more than 20
2 percent above naturally occurring background levels.” North Coast Regional Water Quality
3 Control Board, Basin Plan, 3-3.00.

4 59. The inference points for the Surface Erosion Model and the Mass Wasting Model may
5 permit an increase in turbidity above the maximum increase permitted under the Basin Plan,
6 which is 20 percent over naturally occurring background levels.

7 60. The Forest Service fails to state whether the inference points are measuring percentage
8 increases over managed or naturally occurring background levels. Furthermore, the FEIS fails to
9 provide adequate information indicating that the Forest Service knows the natural background
10 levels within the Meteor planning area.

11 **H. Management Indicator Species**

12 61. The Meteor timber sale area is home to numerous species designated as MIS by the
13 Klamath National Forest LRMP.

14 62. MIS Assemblages in the project area include Hardwood (acorn woodpecker, western gray
15 squirrel), River/Stream (rainbow trout, steelhead, tailed frog, cascades frog, American dipper,
16 northern water shrew, and long-tailed vole), and Snag (downy, woodpecker, red breasted
17 sapsucker, hairy woodpecker, black backed woodpecker, white-headed woodpecker, pileated
18 woodpecker, and Vaux’s swift). Many of these species would be adversely affected by increased
19 forest fragmentation caused by the Meteor timber sale.

20 63. Defendant failed to adequately analyze impacts to these species. 36 C.F.R. §§ 219.12(d),
21 (k); § 219.19(a)(6); § 219.26; § 219.19(a)(2); LRMP, 5-2-3.

22 64. Defendant did not provide any analysis and/or data on current populations of MIS to
23 support its conclusion that the viability of these species is not likely to be threatened by the
24 increased forest fragmentation from the Meteor timber sale. 36 C.F.R. §§ 219.12(d), (k); §
25 219.19(a)(6); § 219.26; § 219.19(a)(2); LRMP, 5-2-3.

26 **I. Sensitive Species**

27 65. The Meteor timber sale area is also home to numerous species designated as sensitive
28 species by the LRMP. The Standards and Guidelines in the LRMP provide, “Project areas

1 should be surveyed for the presence of Sensitive species before project implementation. If
2 surveys cannot be conducted, project areas should be assessed for the presence and condition of
3 Sensitive species habitat.” LRMP, 4-22.

4 66. Except for goshawk, Defendant did not conduct protocol surveys.

5 67. On July 10, 2003, U.S. Fish and Wildlife Service (FWS) announced a “90-day finding”
6 regarding a petition to list the Pacific fisher as endangered under the Endangered Species Act
7 (ESA), 16 U.S.C. §§ 1531 et seq., throughout its West Coast range, including portions of
8 California, Oregon, and Washington, and concurrently to designate critical habitat for the fisher.
9 68 Fed. Reg. 41169, 41169 (July 10, 2003). In this finding, FWS determined that the petition
10 presented “substantial information” that ESA listing of the fisher may be warranted, and initiated
11 a status review, including a solicitation for comments. Id.

12 68. On April 8, 2004, FWS announced a finding that the current status of the Pacific fisher
13 does warrant protection for the fisher under the ESA as an endangered species. 69 Fed. Reg.
14 18770, 18770 (April 8, 2004). But FWS refused to formally list the fisher because listing was
15 precluded by higher priority actions, and instead placed the fisher on the “candidate species” list.
16 Id.

17 69. Defendant did not provide any analysis or data on current populations of the Pacific
18 fisher to support its conclusion that the viability of this species is not likely to be further
19 threatened by the increased fragmentation from the Meteor timber sale.

20 **J. Gopher Baiting**

21 70. The Meteor timber sale authorizes the application of strychnine-treated grain to kill
22 gophers. The Forest Service states that gopher baiting has been analyzed in many assessments,
23 including the Granite Gopher Baiting Environmental Assessment (EA) (USDA FS 1998b), the
24 Scott River Gopher Control EA (USDA 2000b), and the Gopher Baiting BA (USDA FS 1999b).

25 71. Defendant may not tier from an EIS to an EA, an analysis of lesser scope. 40 C.F.R. §§
26 1502.20, 1508.28.

1 **COUNT I**

2 **Violation of NEPA**

3 **Failure to Adequately Disclose**

4 **Environmental Impacts**

5 72. Plaintiffs incorporate by reference all preceding paragraphs.

6 73. The Meteor FEIS fails to adequately disclose the environmental impacts of the project as
7 required by NEPA. 40 C.F.R. § 1500.1(b). NEPA mandates that the disclosure of high quality
8 information detailing the environmental impacts of the project be made to public officials and
9 citizens before actions are taken. 40 C.F.R. § 15001(b).

10 74. While the Meteor FEIS indicates that the trees marked for logging are primarily “smaller
11 and intermediate trees,” Defendant fails to disclose that the trees actually marked for logging are
12 primarily old growth canopy and large wildlife snags.

13 75. The FEIS fails to disclose the effect of the Meteor timber sale on the geology and
14 landslide potential of any areas outside of the Jones Gulch watershed.

15 76. The FEIS fails to disclose the natural background levels for turbidity within the Meteor
16 planning area to determine whether the Meteor timber sale will violate the water quality standard
17 for turbidity in the Basin Plan.

18 77. The FEIS fails to disclose how Defendant determined that the Surface Erosion Model and
19 Mass Wasting Model inference points represent the midpoint of the transition zone where
20 disturbances become great enough to cause concern about initiating or contributing to adverse
21 cumulative watershed effects.

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

25 79. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
26 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

1 **COUNT II**

2 **Violation of NEPA**

3 **Failure to Adequately Analyze**

4 **Environmental Impacts**

5 80. Plaintiffs incorporate by reference all preceding paragraphs.

6 81. The Meteor FEIS fails to identify and evaluate the cumulative impacts of the project as
7 required by NEPA. 40 C.F.R. § 1508. Cumulative effects are defined as “the impact on the
8 environment which results from the incremental impact of the action when added to other past,
9 present, and reasonably foreseeable future actions regardless of what agency or person
10 undertakes such other actions. Cumulative impacts can result from individually minor but
11 collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

12 82. The Meteor FEIS fails to analyze the direct, indirect, and cumulative effects of past,
13 present, and reasonably foreseeable future timber sales, including the Knob, Glassups, and Upper
14 South Fork Timber Sales, and other projects on soil resources, wildlife (including sensitive
15 species), sediment regimes, management indicator species, vegetation, fire and fuels, air quality,
16 geology, water quality, fisheries, riparian reserves, scenery and recreation, and the Wild and
17 Scenic Salmon River.

18 83. The FEIS fails to analyze the direct, indirect, and cumulative effects of past, present, and
19 reasonably foreseeable future timber sales, including the Knob, Upper South Fork, and Glassups
20 Timber Sales, and other projects on the Salmon River, which is listed as impaired under Section
21 303(d) of the CWA for nutrients and temperature.

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

25 85. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
26 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

1 **COUNT III**

2 **Violation of NEPA**

3 **Failure to Analyze an**

4 **Adequate Range of Alternatives**

5 86. Plaintiffs incorporate by reference all preceding paragraphs.

6 87. In preparing an EIS, NEPA requires the agency to "study, develop and describe
7 appropriate alternatives to recommended courses of action in any proposal which involves
8 unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 102(2)(E).

9 88. In the Meteor FEIS, Defendant refused to consider an adequate range of alternatives.
10 Instead, it proposed only two nearly identical action alternatives.

11 89. Recognizing the action alternatives are strikingly similar, Defendant analyzed the two
12 action alternatives together in the FEIS. Defendant admitted that the two action alternatives: (1)
13 would respond to key indicators for vegetation similarly; (2) would respond to key indicators for
14 fire and fuels similarly; (3) have similar air quality effects; (4) have similar effects on soil; (5)
15 have similar effects on wildlife habitat for species of concern; (6) have similar effects on Wild
16 and Scenic Rivers; (7) have similar effects on scenery and recreation; (8) have similar effects on
17 social elements; and (9) would treat roads similarly. Both action alternatives call for logging old
18 growth trees in northern spotted owl critical habitat, within Wild and Scenic River corridors, in
19 Key Watersheds, and in Areas with Watershed Concerns.

20 90. These two nearly identical alternatives do not present the adequate range required by
21 NEPA. The Forest Service acted arbitrarily and capriciously by failing to provide the decision
22 maker and the public with an adequate range of alternatives to the proposed Meteor timber sale.

23 91. These actions were taken not in accordance with law, without observance of procedures
24 required by law, and are arbitrary and capricious within the meaning of the APA. 5 U.S.C. §
25 706.

26 92. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
27 litigation pursuant to the EAJA, 28 U.S.C. § 2412.
28

1 **COUNT IV**

2 **Violation of NEPA**

3 **Improper Tiering**

4 93. Plaintiffs incorporate by reference all preceding paragraphs.

5 94. The NEPA regulations define “tiering” as “the coverage of general matters in broader
6 environmental impact statements. . . with subsequent narrower statements or environmental
7 analyses.” 40 C.F.R. § 1508.28. The regulation goes on to explain that tiering is appropriate
8 when the sequence of statements or analyses is from an analysis of greater scope to an analysis
9 of lesser scope. Id.

10 95. In the Meteor EIS, the Defendant authorizes the use of strychnine to kill gophers in the
11 project area. In addressing the effects of this activity, Defendant relies on and tiers to numerous
12 environmental assessments.

13 96. NEPA permits the Forest Service to tier the analysis contained in the FEIS, but
14 Defendant may not tier from an EIS to an EA, an analysis of lesser scope.

15 97. The Forest Service’s tiering of the environmental analysis regarding the effects of
16 strychnine use in the planning area to several environmental assessments is not in accordance
17 with NEPA. 5 U.S.C. § 706(2)(A).

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

21 99. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
22 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

23 **COUNT V**

24 **Violation of NEPA**

25 **Failure to Disclose Environmental Effects**

26 100. Plaintiffs incorporate by reference all preceding paragraphs.

27 101. NFMA mandates that Defendant’s activities carried out on National Forests “shall be
28 consistent with the land management plans.” 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e).

1 102. The Klamath National Forest LRMP is a “land management plan.”

2 103. The Klamath LRMP, as amended by the NFP, requires the Forest Service to retain snags
3 (standing dead trees) “within the harvest unit at levels sufficient to support species of cavity-
4 nesting birds at 40 percent of potential population levels based on published guidelines and
5 models.” NFP ROD, C-42. The NFP also requires the Forest Service to “retain at least 15
6 percent of the area associated with each cutting unit (stand)” as unlogged forest. Id., C-41.

7 104. The prescriptions for several units call for leaving only “1 or 2 trees per acre larger than
8 24” DBH through the stand.”

9 105. The Defendant has failed to demonstrate that retaining only one or two trees per acre will
10 provide for 40 percent of potential population levels of cavity excavator bird species, or that this
11 retention level equates to 15 percent of the harvest unit, as required by NEPA. 42 U.S.C. §
12 4332(2)(C). Without disclosing this information, it is impossible for the public and the
13 decisionmaker to determine whether or not the Meteor project complies with the substantive
14 requirements of the Klamath LRMP and the Northwest Forest Plan.

15 106. The Forest Service’s failure to disclose information regarding whether the Defendant’s
16 snag and green tree retention prescriptions comply with the NFP and Klamath LRMP is
17 arbitrary, capricious, and not in accordance with NEPA, and without observance of procedures
18 required by law, within the meaning of the APA. 5 U.S.C. § 706(2)(A).

19 107. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
20 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

21 **COUNT VI**

22 **Violation of NFMA**

23 **Failure to Comply with**

24 **Klamath National Forest LRMP**

25 108. Plaintiffs incorporate by reference all preceding paragraphs.

26 109. NFMA further mandates that Defendant's activities carried out on National Forests "shall
27 be consistent with the land management plans." 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e).

28 110. The Klamath National Forest LRMP is a "land management plan."

1 111. The decision and accompanying decision documents for the Meteor timber sale violate
2 NFMA and its implementing regulations by failing to ensure compliance with the LRMP, in one
3 or more of the following particulars:

4 a. failure to conduct project-level surveys for sensitive species or provide reasons
5 why project-level surveys cannot be done;

6 b. failure to provide monitoring information or analysis of the effects of the sale on
7 the species comprising the three assemblages of MIS;

8 c. improperly relying on habitat quality rather than the population trends of MIS and
9 sensitive species.

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

13 113. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
14 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

15 **COUNT VII**

16 **Violation of NFMA**

17 **Failure to Comply with Diversity**

18 **Requirement of NFMA**

19 114. NMFA imposes a duty on the Forest Service to “provide for diversity of plant and animal
20 communities.” 16 U.S.C. § 1604(g)(3)(B); see 36 C.F.R. § 219. The Forest Service implements
21 this requirement by monitoring and maintaining viable populations of MIS. 36 C.F.R. § 219.19;
22 §§ 219.19(a)(1), (a)(2), (a)(6); § 219.26.

23 115. The Forest Service violated its requirements to maintain viable populations of MIS by
24 failing to provide monitoring information or analysis of the effects of the Meteor timber sale on
25 the species comprising the three assemblages of MIS, and by improperly relying on habitat
26 quality rather than the population trends of MIS.
27
28

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

4 117. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
5 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

6 **COUNT VIII**

7 **Violation of NFMA**

8 **Failure to Comply with**

9 **Water Quality Standards**

10 118. Plaintiffs incorporate by reference all preceding paragraphs.

11 119. NFMA requires that “forest planning shall provide for. . . compliance with requirements
12 of the Clean Water Act, the Safe Drinking Water Act, and all substantive and procedural
13 requirements of Federal, State, and local government bodies with respect to the provision of
14 public water systems and the disposal of waste water.” 36 C.F.R. § 219.23(d).

15 120. Pursuant to both federal and state law, Regional Boards develop Basin Plans to set forth
16 water quality standards. See 33 U.S.C. §§ 1313, 1323; CA Water Code § 13241. Federal
17 agencies must comply with these standards. See 33 U.S.C. §§ 1313, 1323.

18 121. The Basin Plan for the North Coast Regional Water Quality Control Board provides that
19 “[t]urbidity shall not be increased more than 20 percent above naturally occurring background
20 levels.” See Basin Plan, 3-3.00.

21 122. The inference points for the Surface Erosion Model and the Mass Wasting Model used to
22 measure the CWEs permit an increase in turbidity above the maximum increase in turbidity
23 permitted under the Basin Plan, in violation of both the CWA and Porter-Cologne.

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

27 124. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
28 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

1 **COUNT IX**

2 **Violation of CWA**

3 **Failure to Comply with**

4 **Water Quality Standards**

5 125. Plaintiffs incorporate by reference all preceding paragraphs.

6 126. Pursuant to both federal and state law, Regional Boards develop Basin Plans to set forth
7 water quality standards. See 33 U.S.C. §§ 1313, 1323; CA Water Code § 13241. Federal
8 agencies must comply with these standards. See 33 U.S.C. §§ 1313, 1323.

9 127. The Basin Plan for the North Coast Regional Water Quality Control Board provides that
10 “[t]urbidity shall not be increased more than 20 percent above naturally occurring background
11 levels.” See Basin Plan, 3-3.00.

12 128. The inference points for the Surface Erosion Model and the Mass Wasting Model used to
13 measure the CWEs permit an increase in turbidity above the maximum increase in turbidity
14 permitted under the Basin Plan, in violation of both the CWA and Porter-Cologne.

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

18 130. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
19 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

20 **RELIEF REQUESTED**

21 Plaintiffs seek an order:

22 a. declaring that Defendant violated NFMA and the APA by failing to comply with
23 the Klamath National Forest LRMP and the ROD when it planned the Meteor timber sale;

24 b. declaring that Defendant failed to comply with NEPA, NFMA, CWA, and the
25 APA when it prepared the Meteor FEIS;

26 c. enjoining Defendant and its contractors, agents, etc. from undertaking any
27 activities related to the Meteor timber sale, unless and until Defendant has complied with
28 NFMA, NEPA, CWA, and the APA.

