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**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**EUGENE DIVISION**

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**CASCADIA WILDLANDS**, an Oregon  
non-profit organization, **OREGON WILD**,  
an Oregon non-profit organization,  
**UMPQUA WATERSHEDS**, an Oregon  
non-profit organization,

Plaintiffs,

v.

**UNITED STATES BUREAU OF LAND**  
**MANAGEMENT**, a federal agency,

Defendants.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Case No.: 6:26-cv-126

(Environmental Matters – Violations of  
Federal Land Policy and Management Act;  
National Environmental Policy Act;  
Administrative Procedure Act)

**GLOSSARY OF TERMS**

APA	Administrative Procedure Act
BA	Biological Assessment
BLM	Bureau of Land Management
BiOp	Biological Opinion
CEQ	Council on Environmental Quality
DR	Decision Record
EA	Environmental Assessment
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FWS	Fish and Wildlife Service (US)
FLPMA	Federal Land Policy & Management Act
FONSI	Finding of No Significant Impact
HLB	Harvest Land Base
LSR	Late Successional Reserve
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NSO	Northern Spotted Owl
Northwestern RMP	2016 Northwestern and Coastal Oregon Record of Decision and Resource Management Plan
NRF	Nesting, roosting, and foraging habitat
Programmatic FEIS	2016 Proposed Resource Management Plan/Final Environmental Impact Statement for the Resource Management Plans for Western Oregon
PDF	Project Design Feature
RMP	Resource Management Plan
RR	Riparian Reserve
42 Divide Plan	42 Divide Forest Management Plan
2016 RMP	2016 Southwestern Oregon Record of Decision and Resource Management Plan
VRH	Variable Retention Harvest
WDA	Wildland Developed Areas

## NATURE OF ACTION

1. Between the Cascades and the Coast Range, in the wild and winding Coquille River Watershed, lies a complex forest: diverse in species composition, elevation, forest type, past management, and fire history. Overlaying this diverse forest are several mantles of protection – reserved land for late successional and riparian species, and critical habitat for the iconic northern spotted owl, a federally threatened species.

2. This forest diversity expresses itself in many ways. The folds of the hills contain structurally complex, late-successional forest habitat, both dry and moist, where multiple tree species provide high-functioning habitat for northern spotted owls and other threatened and sensitive animals and plants. Interspersed with the older forests are fresh clearcuts, recent commercial thins, and stands logged decades ago where a spacious canopy of elder trees shelters a young understory.

3. Nestled into this diverse forest are several communities of rural residents, whose privately held land is often adjacent to, or even surrounded by, public land managed by the federal Bureau of Land Management (BLM).

4. In this complex pattern of dry and moist forest, young and old trees, public and private land, the Roseburg BLM has planned the 42 Divide Project, a multi-decade series of logging projects straddling Highway 42 and spanning four watersheds.

5. Plaintiffs Cascadia Wildlands, Oregon Wild and Umpqua Watersheds (collectively, “Plaintiffs”) support those aspects of the 42 Divide Project that are designed to restore natural ecosystem processes to forests that have departed from historical conditions (conditions present before settlers began altering the landscape with intensive logging and fire suppression in the early 20th century) or where the forested area has significantly departed from

its natural fire regime. This includes thinning saplings across the project area and thinning plantations (homogenous tree stands that are the result of past clearcut harvests).

6. However, many of the forest stands included in the 42 Divide Project area are properly functioning mature and old growth forest in protected reserves that do not need restoration. These too-rare forests provide high-quality habitat for northern spotted owls, marbled murrelets and other threatened and sensitive species. Neither scientific literature nor the applicable Resource Management Plan support using commercial logging prescriptions in mature and old-growth forests, especially moist mixed conifer forests, to artificially manipulate vegetation conditions and ecosystem processes currently within their natural range of variability.

7. This proposed logging will convert closed canopy forests to dry, open landscapes covered in slash, which will both remove unique old-growth habitat and exacerbate wildfire risk and hazards to the communities in the project area.

8. Because the BLM approved commercial logging for thousands of acres in a manner that does not comply with BLM's management standards, and without adequate analysis, Plaintiffs bring this challenge to the final administrative action of the Bureau of Land Management, Roseburg Oregon District, South River Field Office (collectively, "BLM" or "Defendant") under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 et seq. In issuing the 42 Divide Environmental Assessment ("EA"), Finding of No Significant Impact ("FONSI"), and the Decision Record ("DR") to implement the 42 Divide Forest Management Project ("42 Divide" or "Project"), Defendant acted arbitrarily and capriciously, in violation of the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 302 et seq. and contrary to the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321–4370h.

9. This action seeks: 1) a declaration that the BLM violated FLPMA and its implementing regulations by authorizing a project that is inconsistent with the governing Resource Management Plan; 2) a declaration that the BLM violated NEPA and its implementing regulations by failing to take a hard look at, and adequately analyze, the 42 Divide Project's significant impacts; and 3) the vacatur and remand of the 42 Divide Project to the BLM.

10. The requested relief is necessary to prevent unlawful agency action and to forestall irreparable injury to Plaintiffs and to the environment. If necessary, Plaintiffs intend to seek narrowly tailored injunctive relief during the pendency of this litigation.

11. Should Plaintiffs prevail, they will seek attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and/or any other applicable authorities.

#### **JURISDICTION AND VENUE**

12. This Court has jurisdiction under 28 U.S.C. §§ 1331 (Federal Question) and 1346 (United States as Defendant). Final agency action has occurred that is subject to judicial review pursuant to 5 U.S.C. §§ 704–706. An actual, justiciable controversy exists between Plaintiffs and Defendant. The Court has the authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

13. This cause of action arises under the laws of the United States, including the APA, 5 U.S.C. §§ 701 *et seq.*, FLPMA, 43 U.S.C. §§ 302 *et seq.*, and NEPA, 42 U.S.C. §§ 4321 *et seq.*

14. Plaintiffs have exhausted their administrative remedies through active participation in BLM's planning process for the 42 Divide Plan. The BLM's FONSI and Decision Record constitute final agency actions subject to review under 5 U.S.C. §§ 702, 704, and 706. Defendant has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

15. Venue in this Court is proper under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to this litigation occurred within this judicial district. BLM officials who authorized the decisions at issue maintain offices within this judicial district and the decisions were made and signed within this judicial district.

16. This case is properly filed in the Eugene Division pursuant to Local Rule 3-2. Defendant's office, where the EA, FONSI and Decision Record were signed, and the 42 Divide Project Area, are both in Douglas County, Oregon. The events and omissions giving rise to this claim occurred and are situated within the Eugene Division.

### **PARTIES**

17. Plaintiff CASCADIA WILDLANDS is a non-profit corporation headquartered in Eugene, Oregon with approximately 12,000 members and supporters throughout the United States. Cascadia Wildlands educates, agitates, and inspires a movement to protect and restore wild ecosystems in the Cascadia Bioregion, extending from Northern California into Alaska. Cascadia Wildlands envisions vast old-growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascade Bioregion.

18. Plaintiff OREGON WILD is a non-profit corporation with approximately 20,000 members and supporters throughout the state of Oregon and the Pacific Northwest. Oregon Wild is headquartered in Portland, Oregon, and maintains field offices in Bend, Eugene, and Enterprise, Oregon. Oregon Wild's wilderness, old-growth forest, and clean rivers/watersheds programs protect pristine drinking water, unparalleled recreation opportunities, and vital fish and wildlife habitat across Oregon. Plaintiffs and their members, supporters, and staff have concrete aesthetic, recreational, scientific, and professional interests in the 42 Divide Project Area.

19. Plaintiff UMPQUA WATERSHEDS is a nonprofit corporation headquartered in Roseburg, Oregon, with members throughout Oregon. Since 1986, the organization has been dedicated to protecting and restoring the Umpqua River watershed and forest lands through education, training, advocacy, and ecologically responsible stewardship. Umpqua Watersheds and its members, staff, and supporters frequently experience and appreciate the aesthetics of the forest and its wildlife. Several of Umpqua Watersheds' members live near, or adjacent to, units of the 42 Divide Project and will experience direct and adverse impacts from the logging.

20. Plaintiffs' members, supporters, and staff regularly visit the 42 Divide Project Area and have concrete plans to continue to do so. Plaintiffs' members, supporters, and staff use the Project Area to recreate, enjoy nature, attempt to observe wildlife (including northern spotted owls, marbled murrelet, Oregon Coast coho salmon, and northwestern pond turtles), photograph wildlife and forest ecosystems, and otherwise enjoy the aesthetics and scientific bounty of the 42 Divide Project Area.

21. Plaintiffs' members, supporters, and staff intend to return to the 42 Divide Project Area in the near future to recreate and otherwise enjoy the Project Area. Plaintiffs' members, supporters, and staff are less likely to revisit the Project Area if the 42 Divide Plan is implemented as approved; when Plaintiffs' members, supporters, and staff do return, their ability to observe wildlife and intact forest ecosystems will be significantly and permanently impaired by the Project activities.

22. Plaintiffs and their members, supporters, and staff would sustain concrete injury to their aesthetic, recreational, spiritual, scientific, and safety interests in the 42 Divide Project Area if BLM implements the 42 Divide Project as authorized.

23. Plaintiffs have organizational interests in the proper and lawful management of the Project Area. Plaintiffs and their members, supporters, and staff have actively participated in the Project's administrative processes. Plaintiffs and their members, supporters, and staff expend significant resources to track management activities on these lands, comment on agency proposals, work with BLM staff on the development of land management plans, and field-check federal projects on these lands.

24. Throughout the development of this project, Plaintiffs submitted extensive comments as well as scientific research to explain their concerns with aspects of the 42 Divide Project. BLM did not substantively respond to many of Plaintiffs' concerns or address contrary scientific research. Plaintiffs and their members, supporters, and staff are thus procedurally harmed by BLM's failure to comply with federal law.

25. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT is an agency or instrumentality of the United States and is charged with managing public lands and resources in accordance with and in compliance with federal laws and regulations. It issued the 42 Divide EA, FONSI, and Decision Record authorizing this Project.

### **LEGAL BACKGROUND**

#### **Administrative Procedure Act (APA)**

26. The APA confers a right of judicial review on any person adversely affected by agency action within the meaning of a relevant statute. 5 U.S.C. § 702. Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in court are subject to judicial review. *Id.* § 704.

27. Upon review under the APA, a court shall hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or

otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or without observance of procedure required by law. *Id.* § 706(2)(A), (C), (D).

**Federal Land Policy and Management Act**

28. Congress enacted FLPMA in 1976, in part “to provide for the management, protection, development, and enhancement of the public lands.” Pub. L. 94-579; *see also* 43 U.S.C. § 1701 *et seq.* Congress enacted FLPMA to ensure that the present and future use of public lands be “projected through a land use planning process” and “managed in a manner that will protect the quality of scientific, scenic, historical, environmental, air and atmospheric, water resource and archeological values.” 43 U.S.C. § 1701(a)(2), (8).

29. To achieve these goals, FLPMA requires BLM to develop Resource Management Plans (“RMPs”) that govern the use of the land BLM manages. 43 U.S.C. § 1712. Once the BLM has developed an RMP for a given area, BLM must ensure that all future site-specific actions comply with the RMP. 43 U.S.C. § 1732; 43 C.F.R. § 1610.5-3(a).

30. The BLM issued the 2016 Southwestern and Coastal Oregon RMP (“2016 RMP”), which includes lands administered by the South River Field Office of BLM’s Roseburg District. The 2016 RMP and its associated management directions and analysis govern the activities planned by the BLM in the 42 Divide Project.

**National Environmental Policy Act**

31. Congress enacted NEPA to “declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and

welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 U.S.C. § 4321.

32. To accomplish these purposes, NEPA and its implementing regulations set forth procedures designed to (1) ensure that federal agencies take a “hard look” at the environmental consequences of their proposed actions, and (2) foster meaningful public participation.

33. NEPA requires federal agencies to prepare, consider, publicly disclose, and approve a “detailed statement” describing the environmental impacts of and alternatives to any major federal action that may “significantly affect the quality of the human environment.” 42 U.S.C. § 4332(2)(C). This detailed statement, known as the Environmental Impact Statement, or “EIS”, must describe the environmental impacts of the proposed action and alternatives to the proposed action. *Id.* When issuing a notice of intent to prepare an environmental impact statement, federal agencies must “include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action.” *Id.* § 4336a(c).

34. If an agency is uncertain whether a proposed action may have a significant effect on the human environment, the agency may prepare an environmental assessment, or “EA.” *Id.* § 4336(b)(2). An EA should be a concise public document that briefly describes the proposal, the environmental impacts of the proposed action, and the environmental impacts of the alternatives considered. *Id.*; 43 C.F.R. § 46.310; 40 C.F.R. § 1508.1(j).<sup>1</sup>

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<sup>1</sup> In the 42 Divide EA, BLM recognizes that NEPA regulations are in a state of flux following recent Executive Orders. The BLM states that it complied with the requirements of NEPA, including the Department’s regulations and procedures implementing NEPA at 43 C.F.R. Part 46 and Part 516 of the Departmental Manual. The BLM has also voluntarily considered the Council on Environmental Quality’s rescinded regulations implementing NEPA, previously found at 40 C.F.R. Parts 1500–1508, as guidance to the extent appropriate and consistent with the requirements of NEPA and Executive Order 14154.

35. Whether in an EIS or EA, an agency must take a “hard look” at the direct, indirect, and cumulative environmental impacts of a proposed action. 43 C.F.R. § 46.310. Direct impacts are those that are caused by the action and occur at the same time and place. 40 C.F.R. § 1508.1(i)(1). Indirect impacts are also caused by the action but occur later in time or are farther removed in distance. 40 C.F.R. § 1508.1(i)(1). Cumulative impacts are the impacts of the proposed action, as well as impacts from other past, present, and reasonably foreseeable future actions, both federal and non-federal. 43 C.F.R. §§ 46.310, 46.115. Cumulative effects result from “actions with individually minor but collectively significant effects taking place over a period of time.” 40 C.F.R. § 1508.1(i)(3).

36. In determining whether a proposed action may have a “significant” environmental effect, an agency must consider its context and intensity. 40 C.F.R. § 1501.3(d). An action’s “intensity” depends on several factors, including the degree to which the action may adversely affect public health and safety; the degree to which the action may adversely affect unique characteristics of the relevant geographic area; whether the action may violate federal, state, or local law requirements impose for the protection of the environment; the degree to which the potential effects on the human environment are highly uncertain; and the degree to which the action may adversely affect an endangered or threatened species or its habitat. *Id.* § 1501.3(d)(2).

37. NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. To determine which aspects may require analysis, an agency should look to the considerations and values expressed in the substantive statute driving or enabling the proposed action. If a particular resource value is addressed by the substantive statute, it is relevant to the analysis and must be duly considered by the agency.

38. After analyzing a proposed action, an agency may determine that it will have no significant impact on the environment and thus does not require further analysis in an EIS. For an agency's decision to be considered reasonable, it must issue a decision record and finding of no significant impact ("DR/FONSI") that contains sufficient data and analysis to show the decision is reasonably supported by the facts. The agency must show a rational connection between the facts found and the decision rendered, and demonstrate that it considered all important aspects of a problem in its NEPA analysis.

39. Agencies can "tier" their NEPA documents to eliminate repetitive discussions of the same issues. 43 C.F.R. §§ 46.140, 46.120(d). A NEPA document that tiers to another broader NEPA document must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid or address any exceptions. *Id.* § 46.140.

40. After a programmatic analysis is completed, a subsequent environmental review may incorporate the earlier analysis by reference and "concentrate on the issues specific to the subsequent action." 40 C.F.R. § 1501.11(b)(1).

### **Endangered Species Act**

41. The Endangered Species Act ("ESA"), enacted in 1973, is meant to provide a means to conserve the ecosystems upon which endangered and threatened species depend and to provide a program to conserve such species. 16 U.S.C. § 1531(b).

42. Under the ESA, the U.S. Fish and Wildlife Service ("FWS") or the National Marine Fisheries Service ("NMFS") (collectively "the Services") must list a species as endangered if it is in danger of going extinct throughout all or a significant portion of its range and must list it as threatened if it is likely to become endangered in the foreseeable future.

Threatened species generally receive the same protections as endangered species. 16 U.S.C. § 1533(d); 50 C.F.R. § 17.31(a).

43. A federal agency that authorizes an activity that may affect a listed species or critical habitat must consult with the Services over the impacts of that activity to ensure that it does not jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(a)(2). Jeopardize means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. 50 C.F.R. § 402.02.

44. The ESA prohibits the “take” of endangered species. 16 U.S.C. § 1538(a). Among other things, “take” means to “harm” and “kill.” *Id.* § 1532(19). The take prohibition has been extended to threatened species unless otherwise specified by regulation. 50 C.F.R. § 17.31(a).

45. The Services must also designate “critical habitat” for listed species. 16 U.S.C. § 1533(a)(3)(A)(i). “Critical habitat” means “the specific areas . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.” *Id.* § 1532(5)(A)(i).

46. During the ESA consultation process, if the action agency concludes in a Biological Assessment (“BA”) that the activity is “not likely to adversely affect” the listed species or adversely modify its critical habitat, and the Service concurs with that conclusion, the consultation is complete. *Id.* §§ 402.12, 402.14(b). If, however, the action agency or the Service determines that the activity is “likely to adversely affect” the listed species or its critical habitat, then the Service completes a Biological Opinion (“BiOp”) to determine whether the activity will

jeopardize the species or result in destruction or adverse modification of critical habitat. *Id.* § 402.14.

47. If the Service determines that the action will jeopardize the species or adversely modify critical habitat, it may propose one or more reasonable and prudent alternative actions that would avoid such results. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(g)(5).

48. If the consulting agency reaches a “no jeopardy” determination, it may exempt the action agency from liability for incidental take of the species through an incidental take statement. 16 U.S.C. § 1536(b)(4)(C)(i); 50 C.F.R. § 402.14(i)(1)(i).

49. Consultation alone does not satisfy the action agency’s duty under the ESA. The action agency must independently ensure that its actions do not result in jeopardy or adverse modification of critical habitat and may not rely on a legally flawed biological opinion.

### **Oregon and California Revested Lands Act of 1937 (“O&C Act”)**

50. Enacted in 1937, the O&C Act provides that certain revested railroad lands in western Oregon “classified as timberlands . . . shall be managed . . . for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the princip[le] of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.” 43 U.S.C. § 2601.

### **FACTUAL BACKGROUND**

#### **The 2016 Southwestern Oregon Resource Management Plan**

51. The BLM planned the 42 Divide Forest Management Project pursuant to the 2016 Southwestern and Coastal Oregon Record of Decision and Resource Management Plan. (“2016 RMP”)

52. The 2016 RMP provides overall direction for the management of all natural resources on approximately 1.2 million acres of BLM-administered lands in southwestern Oregon, including the lands at issue here.

53. BLM adopted the 2016 RMP after preparing a Final Environmental Impact Statement (“RMP FEIS”), which analyzed both the 2016 RMP and the Northwestern Oregon RMP (“Northwestern RMP”), which covers an additional 1.3 million acres of BLM-administered lands. The RMP FEIS thus broadly described and analyzed a total of 2.5 million acres across Oregon. Vegetation, hydrology, geology, wildlife populations, fire history, proximity to human development, and past resource use vary widely across this enormous planning area.

54. The 2016 RMP contains management objectives that include, in relevant part, providing a sustained yield of timber, enhancing the health and resilience of forest stands, preventing the introduction of invasive species, contributing to the conservation and recovery of threatened and endangered species, providing clean water in watersheds, and restoring fire-adapted ecosystems. These objectives guide the management decisions for all BLM lands in Southwestern Oregon.

55. To achieve these objectives, the 2016 RMP divides BLM-administered land into different land use categories, including Late-Successional Reserves (“LSR”), Riparian Reserves (“RR”), and the Harvest Land Base (“HLB”). Each land use category has its own management goals, standards, and guidelines.

56. LSRs are managed to develop, maintain, and promote habitat for species that depend on mature and old-growth forests, including the northern spotted owl. In southern Oregon, spotted owl nesting-roosting habitat consists of conifer stands with a multi-layered,

multi-species canopy dominated by larger conifer overstory trees, canopy cover greater than 60% and an overstory tree diameter greater than 21” diameter at breast height (dbh).

57. The RMP instructs BLM to protect stands in LSRs that contain older, structurally complex forest that represents the highest value of spotted owl nesting-roosting habitat. “Protect” is defined as prohibiting harvesting activities in such forests. Felling hazard trees and the construction of rights of way, spur roads, yarding corridors, and other facilities, are allowed so long as the forest stand continues to support the same spotted owl habitat requirements.

58. BLM has broad discretion to sell or retain trees that are felled in LSRs for yarding corridors, skid trails, and road construction. However, if the trees are larger than 40 inches dbh and established prior to 1850, BLM must retain the cut trees as down woody material in the adjacent stand.

59. Spotted owl dispersal/recruitment habitat requires a canopy closure of at least 40%. Over time, dispersal/recruitment habitat can grow into nesting-roosting habitat.

60. In LSR stands that do not yet provide northern spotted owl nesting-roosting habitat, the RMP directs the BLM to apply silvicultural treatments to improve or speed the development of nesting-roosting habitat. Such treatments are limited to those that do not preclude or delay development of nesting-roosting habitat by 20 years or more, compared to development without treatment (the 20-year standard).

61. LSRs are further divided into “Dry” and “Moist” forest types. Dry LSRs are governed by the same management objectives and directions that apply to all LSRs generally, with an additional overlay of objectives and directions specifically applicable to Dry forest types, including the direction to harvest a set amount of Dry LSR acres per decade.

62. The 42 Divide Project consists primarily of lands categorized as LSR, both Moist and Dry, but also contains land categorized as Harvest Land Base, Riparian Reserve, and District Designated Reserves.

63. In the Harvest Land Base (HLB), the BLM may conduct silvicultural treatments to enhance timber values and reduce fire risk, restore and maintain habitat for sensitive species, provide complex early-seral ecosystems, promote the development of structural complexity, meet snag retention and creation levels; and retain large trees.

64. Within HLB, the RMP requires BLM to retain “all trees that are both greater or equal to 40” dbh, and that the BLM identifies were established prior to 1850, except where falling is necessary for safety or operational reasons and no alternative harvesting method is economically viable or practically feasible.” If such trees need to be cut for safety or operational reasons, BLM must “retain cut trees in the stand.”

65. BLM’s primary management objective for Riparian Reserves is to contribute to the conservation and recovery of ESA-listed fish species and their habitats. The requirement to protect old growth trees also applies in the Riparian Reserves, and logging or associated operations in Riparian Reserves must be designed to maintain and restore natural channel dynamics and the proper functioning condition of riparian areas, stream channels, and wetlands.

66. The 2016 RMP recognized that barred owls are a significant threat to northern spotted owls and, until a barred owl management plan is implemented, prohibits “timber sales that would cause the incidental take of northern spotted owl territorial pairs or resident singles from timber harvest.”

67. BLM is required to use the best science available at the time of the project to determine whether the northern spotted owl is actually present in the area affected by the proposed timber sale.

68. When approving projects, it is the BLM's responsibility to demonstrate that the project follows relevant management directions and achieves the 2016 RMP's objectives.

#### **The 42 Divide Forest Management Plan**

69. The 42 Divide Forest Management Project involves a combination of regeneration harvest, commercial and non-commercial thinning, and fuels treatments in the Olalla Creek-Lookingglass Creek, Middle Fork Coquille River, Lower Cow Creek, and West Fork Cow Creek watersheds in Douglas County, Oregon, north and south of Highway 42, near Camas Valley.

70. BLM's stated purpose for the project is to achieve specific objectives identified in the 2016 RMP for each land allocation. Specifically, BLM states the project is intended to address three overall needs: (1) Forest stand conditions in the LSR and LSR-Dry are not in line with promotion of future habitat for northern spotted owl and marbled murrelet, nor are forest stand conditions resilient to multiple forest stressors; (2) Stands in the Riparian Reserve exhibit high fuel loading and high relative density, lowering the resiliency to fire hazards; and (3) The 2016 RMP requires the South River Field Office to commercially harvest timber from HLB and LSR-Dry.

71. The 42 Divide Project proposes to log up to 6,039 acres with commercial treatments and conduct 850 acres of understory and pre-commercial thinning. The 42 Divide project area consists of 58% Late Successional Reserve, 24% HLB, 16% Riparian Reserves, and 2% District Designated Reserve. Approximately 10% of the LSR units in the 42 Divide Project are considered "Moist."

72. The selected alternative, a combination of Alternative 3 and the “sub-alternative,” includes approximately 15.2 miles of road construction and 122.9 miles of road renovation on BLM-administered land. Of this total, 3.5 miles are planned for decommissioning following project completion, resulting in a net increase of 11.7 miles of new road. The project also requires 68 acres to be cleared for yarding corridors in which to transport felled trees.

73. 49% of the project area is made up of forest that BLM categorizes as “structurally complex” (SC-Dev) or “mature multi canopy” (MMC), filled with trees that are several hundred years old. Stands classified as MMC and SC-Dev provide the large diameter trees, multiple canopies and abundant down wood that provide northern spotted owl nesting-roosting habitat and marbled murrelet nesting habitat.

74. On November 8, 2021, the BLM initiated the “scoping period” for the 42 Divide Stand Management Plan Environmental Assessment and Plaintiffs submitted timely scoping comments outlining concerns and questions that still persist.

75. The BLM released a draft Environmental Assessment (“EA”) and final draft Finding of No Significant Impact (“FONSI”) on May 1, 2025, and opened public comment on the draft documents. BLM did not publish or otherwise make available its Biological Assessment (“BA”). Plaintiffs submitted timely scoping comments, restating many concerns and questions raised in scoping comments that the EA did not address.

76. On June 23, 2025, BLM released an updated EA and invited public comment on the updates. Plaintiffs submitted comments on the updated EA. Again, no BA or Biological Opinion (“BiOp”) were available for public review.

77. On July 1, 2025, BLM temporarily canceled the Project “[d]ue to external and internal comments.” BLM stated that the cancellation “will allow for more time to align this environmental analysis with the Endangered Species Act Section 7 consultation timeline.”

78. On September 2, 2025, BLM released a new EA and an unsigned FONSI for the Project, stating that “the new release conforms with the new DOI NEPA Handbook formatting requirements and significance considerations.” The new EA stated that “a Biological Opinion is expected in November 2025.” Plaintiffs again submitted comments and continued to send the BLM additional information, questions and concerns about the project area.

79. Throughout this time, Plaintiffs repeatedly requested the BA and any other ESA consultation documents that BLM relied on in its analysis to better understand the project’s potential impacts on listed species. These efforts were to no avail.

80. Despite stating that the temporary cancellation of the Project would “allow for more time to align this environmental analysis with the Endangered Species Act Section 7 consultation timeline,” the BLM did not provide its BA, nor the FWS’s BiOp for public review before making the final decision on December 18, 2025.

81. FWS made the BiOp available to the public in the weeks after the BLM made its final decision about 42 Divide. The BLM has yet to release its BA to the public.

82. The final decision authorizes: “1,040 acres of variable-retention regeneration harvest within the HLB as well as 961 acres of selection harvest, 4,410 acres of commercial harvest, 11 acres of non-commercial harvest and 854 acres of understory treatments across all land use allocations.”

83. In the final decision, the BLM deferred or modified prescriptions across 629 acres (15 units) of logging and accompanying segments of road building in occupied northern spotted owl habitat.

84. The majority of logging would use a commercial thinning prescription, with skips and gaps. Skips are areas where all trees are left standing, and gaps are areas where all trees would be removed. Prescriptions for the Late Successional Reserves would bring the average stand relative density, which currently averages around 75%, down to 20 to 45%. Relative Density is a means of describing the level of competition among trees or site occupancy in a stand, relative to a theoretical maximum based on tree density, size, and species composition.

85. According to the BiOp, the variable-retention regeneration harvest (VRH) prescription will remove most trees from the harvest unit. Combined with post-harvest fuels reduction treatments, the BiOp predicts that the project will remove all the vegetation within the VRH unit boundaries.

86. Over the past two years, Plaintiffs' volunteer members spent hundreds of hours hiking the proposed 42 Divide Project units, collecting information about the conditions of the forest, waterbodies and roads in the planning area.

87. Plaintiffs' field data shows that, in many of the proposed logging units, the information BLM provided in its NEPA documents does not match the facts on the ground, especially regarding the baseline conditions of forest stands. Many LSR units have already been thinned and/or have naturally grown to exhibit the exact characteristics that the EA suggests logging is needed to create: a healthy forest canopy that is fire resilient and has a diverse mix of species in the mid-story and understory.

88. In comments, Plaintiffs also raised concerns about BLM’s failure to adequately disclose and analyze the abundant scientific opposition to logging large diameter trees and moist forests for the purpose of affecting fire behavior and the resulting increased risk of fire hazard that follows. Such logging removes fire-resilient trees, increases wind speeds in the logged area, increases flammable undergrowth response, and generates many tons of slash per acre. In the FONSI, BLM stated that the selected alternative “would increase wildfire hazard over current conditions.”

89. Plaintiffs also raised concerns about the increased danger to adjacent communities from the short- and medium-term increase in fire hazard from converting fire-resistant forest stands to young plantations and the rapid regrowth of ladder fuels in gaps and throughout Variable Retention Harvests. In many areas, wildfire hazard will be converted to high and persist at high hazard for decades.

### **Threatened and Endangered Species in the 42 Divide Project Area**

#### ***Northern Spotted Owl***

90. The lands affected by the 42 Divide Project occur within the range of the Northern Spotted Owl (spotted owl) (*Strix occidentalis caurina*).

91. The spotted owl occupies late-successional and old-growth forest habitat from southern British Columbia through Washington, Oregon, and northern California. Spotted owls require large trees in old forests with tall, closed canopies for nesting and roosting. These areas provide cavities, platforms, and other structures that spotted owls use for nesting, as well as suitable microclimates for thermoregulation and habitat for small mammals that comprise the owls’ prey base.

92. Due to concerns over widespread habitat loss and modification, as well as the lack of regulatory mechanisms to protect the species, the US Fish & Wildlife Service (“FWS”) listed the spotted owl as “threatened” under the Endangered Species Act on June 26, 1990.

93. The best available scientific and commercial information reveal that northern spotted owls are declining by at least 7% annually in the Oregon Coast Ranges, and that populations currently exhibit factors characteristic of an “extinction vortex.” Northern spotted owl populations in southern Oregon, including at research sites in Jackson, Josephine, and Douglas counties, continue their rapid decline.

94. Critical habitat was designated for the species in 1992, revised in 2008, and again in 2012. The 2012 critical habitat rule states that “primary constituent elements” of spotted owl critical nesting and roosting habitat typically include a moderate to high canopy cover (60 to over 80 percent); a multilayered, multispecies canopy with large overstory trees; a high incidence of large trees with various deformities (*e.g.*, large cavities, broken tops, mistletoe infections, and other evidence of decadence); large snags; large amounts of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for northern spotted owls to fly.

95. The entire 42 Divide project area is included in the Klamath West Critical Unit 9, subunit KLW-1. Subunit KLW-1 consists of approximately 131,936 acres in Douglas, Josephine, Curry, and Coos Counties, Oregon, and comprises lands managed by the State of Oregon and BLM. This subunit sits at the western edge of an important connectivity corridor between coastal Oregon and the western Cascades.

96. The rule designating this forest as Critical Habitat determined that all of the high functioning habitat in this subunit is essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of northern spotted

owl habitat. Increasing and enhancing northern spotted owl habitat is necessary to support viable populations of northern spotted owls over the long term by providing for population growth, successful dispersal, and buffering from competition with the barred owl.

97. In April 1992, FWS issued a draft recovery plan for the northern spotted owl, which was revised in 2008, and again in 2011. The 2011 Revised Recovery Plan identified competition with barred owls and the ongoing loss of spotted owl habitat from logging as two of the current leading range-wide threats to the spotted owl's survival and recovery.

98. Among owl species, the northern spotted owl is particularly intolerant of habitat disturbance. Habitat disturbance events known to particularly impair the essential behaviors and life history requirements of northern spotted owls—nesting, roosting, breeding, foraging, and dispersal—include the noise and physical disturbance from mechanical timber harvest, brushing, roadbuilding, and log hauling.

99. Logging and associated roadbuilding cause and contribute to habitat loss and fragmentation that may expose a local spotted owl population to heightened risk of mortality and other adverse outcomes during subsequent disturbance events or competitive interactions with barred owls. Logging that eliminates local foraging habitat may contribute to a heightened risk of depredation and starvation when individual owls are forced to travel further for foraging opportunities. Logging that modifies or degrades suitable habitat increases mortality risk and decreases the likelihood of successful dispersal among juvenile northern spotted owls.

100. Logging can also cause deferred harm to spotted owl populations when suitable, but unoccupied, habitat is logged, which precludes future territory establishment and occupancy. Recent scientific studies and the Revised Recovery Plan suggest that preserving forests with

stand characteristics suitable for spotted owl nesting and roosting is essential for their persistence and future recovery.

101. Barred owls (*Strix varia*) are native to eastern North America. Barred owls arrived recently in southern Oregon, after intensified wildland fire suppression and expanded tree plantations across the northern United States and southern Canadian provinces created a patchwork of suitable habitat across the landscape enabling westward colonization.

102. Barred owls are larger and more aggressive than northern spotted owls. Barred owls and northern spotted owls compete for the same habitat and prey. Barred owls use a wider range of habitat types than northern spotted owls and forage on a wider range of prey species. Barred owls consistently outcompete northern spotted owls across habitat types.

103. BLM identified 53 known spotted owl sites within the spotted owl analysis area and, based on surveys to date, seven of these sites are occupied in 2025.

104. The determination that these sites are occupied is based on two years of survey data (2023-2024). The BLM designated one owl site, 4047, as unoccupied, even though surveys in 2020, 2021, and 2024 located an owl or owls in the area.

105. In its Biological Opinion, FWS determined that Project activities are likely to adversely affect spotted owl habitat in 20 known spotted owl sites (three currently occupied) within the spotted owl analysis area.

106. Within the analysis area, all occupied northern spotted owl sites are habitat-limited in their home range and core-use area. The 2016 RMP EIS considers a northern spotted owl territory to be unstable when less than 40 to 50 percent of the land within the home range supports nesting-roosting habitat. None of the occupied owl territories have 40-50% of their

range in nesting-roosting, with six out of seven home ranges having less than 20% nesting-roosting habitat.

107. The Selected Alternative proposes commercial thinning on 1,661 acres of nesting-roosting habitat and 1,596 acres of dispersal/recruitment habitat. Road construction would remove and convert 11 acres of nesting-roosting and 22 acres of dispersal/recruitment to non-capable habitat. Overall, the proposed action will treat up to approximately 2,368 acres in designated critical habitat across sub-unit KLV-1.

108. In the EA, the BLM asserts that all commercial thinning in existing owl nesting-roosting habitat would not reduce canopy cover below 60% and thus will “modify” spotted owl habitat but not downgrade its existing nesting-roosting function.

109. BLM stated that its models made the “treatment assumption” that “commercial thinning in NRF/MMH would retain a minimum canopy cover of 60% and would maintain NRF/MMH habitat” but do not disclose more details about the logging prescription for each unit or the models BLM used to analyze whether the logging would in fact retain a 60% canopy cover in existing nesting-roosting habitat.

110. Plaintiffs searched all available documents for information about the current canopy cover in these units and the modeled outcomes from logging in functioning nesting-roosting habitat, but were unable to find any.

111. The EA also refers to models which show that all action alternatives would lead to dispersal/recruitment habitat developing into spotted owl nesting-roosting habitat and marbled murrelet habitat at similar rates or sooner than the no action alternative. This conclusion seems to be based on the assumption that, without the 42 Divide Project, dispersal habitat will not be able to naturally develop into nesting-roosting habitat over the next 60 years.

112. Plaintiffs' comments on the Project EA included models that BLM made for recent, similar timber sales that proposed identical logging prescriptions as the 42 Divide Project. These models show that treated stands would *not* return to the minimum canopy cover and basal area levels required for functional spotted owl habitat, even after 50 years.

113. The 42 Divide EA analysis also assumes that road construction and yarding corridors (areas cleared to move logs from where they are cut to roads) will "modify" the forests in these areas but maintain habitat function. Yarding corridors will remove trees from 33 acres in LSR and new road construction will result in total tree removal of 15.73 acres in the project area, including lands within reserve allocations. Another 149.7 miles of roads will be renovated to facilitate operations within the Project Area. Road renovation involves tree removal.

#### ***Marbled Murrelets***

114. Marbled murrelets (*Brachyramphus marmoratus*) are small sea birds found along the northwest coast of North America. Murrelets spend most of their lives at sea but fly inland up to 50 miles during the spring and summer months to nest in mature and old-growth forests.

115. Unlike other birds, murrelets do not build nests in trees but instead lay their eggs on thick, flat branches that are naturally covered with moss known as "platforms". The presence of these platforms is the most important characteristic of their nesting habitat. Generally, only very large, old trees contain suitable platforms, thus, murrelet nesting sites are closely associated with mature and old-growth forests.

116. Murrelets have high "site fidelity," meaning they return again and again to nest in the same forest stand and often in the same tree. This fidelity is consistent throughout the species' range.

117. To successfully reproduce, murrelets need large, unfragmented blocks of mature forest habitat. These large blocks of forest protect murrelet nest platforms from weather, windthrow, microclimate effects, and, most importantly, predators. Marbled murrelet nest sites are negatively associated with increasing amounts of forest fragmentation caused by logging and logging-related activities.

118. Logging and logging-related activities including road construction, landing construction, and yarding corridors, can harm murrelets not only by directly removing nesting sites and nesting trees, but also by fragmenting the landscape and degrading remaining habitat patches by exposing these nesting areas to threats.

119. Openings created by harvest can also influence the microclimate along the edges of remaining stands. This reduces moisture and increases temperature variability, which results in a loss of moss cover at nest sites, thereby indirectly eliminating the function of the platform for marbled murrelet nesting. Generally, microclimate effects can reach roughly 300 feet into old growth forests bordering clearcuts, roads, or similar sharp-gradient boundaries.

120. Generally, logging in or adjacent to murrelet habitat will result in the impairment of essential behaviors and result in fewer nesting attempts, failure to breed, lower nest abundance, reduced breeding population, lower nest success, and a lower rate of survival in adults.

121. Because of their strong site fidelity, murrelets do not typically relocate or nest elsewhere when nesting sites are lost or degraded.

122. FWS listed the marbled murrelet as a threatened species under the Endangered Species Act in California, Oregon and Washington on October 1, 1992. The loss of nesting habitat has been the most significant factor in murrelets' decline.

123. FWS originally designated murrelet critical habitat in Washington, Oregon and California on May 24, 1996, reaffirming and designating habitat on August 4, 2016. In 2010, FWS reaffirmed that murrelets “continue to be subject to a broad range of threats, such as nesting habitat loss, habitat fragmentation, and predation.”

124. In July of 2021, the marbled murrelet was classified as endangered under the Oregon Endangered Species Act.

125. The 42 Divide Project Area is within the range of the marbled murrelet. The 42 Divide Project area is located between 35-50 miles from the ocean and is thus within “Zone 2” for murrelet management direction purposes.

126. The murrelet analysis area for the 42 Divide Project intersects 24 occupied sites, totaling approximately 2,585 acres. This represents approximately 57% of the known occupied sites on the Roseburg District (42 sites), 5% of the known occupied sites on BLM-administered lands (476 sites), and 2% of the known occupied sites in the state of Oregon (1,130 sites).

127. BLM’s surveys revealed five new occupied sites. The BLM and FWS concluded that “[o]nly two of these 24 occupied sites would be directly impacted by commercial treatments.” However, BLM does not indicate how it determined that only two sites would be directly impacted. Notably, the EA deviates from the FONSI, which states that only one occupied site would be impacted by commercial treatments.

### ***Special Status Species***

#### Northwestern Pond Turtle (*Actinemys marmorata*)

128. The northwestern pond turtle is designated a “Bureau Special Status Species” and “Bureau Sensitive Species” by BLM. Special status species are species for which population viability is a concern, as evidenced by significant current or predicted downward

trends in population numbers or density and habitat capability that would reduce a species' existing distribution.

129. The 2016 RMP mandates that BLM “implement conservation measures to mitigate specific threats to Bureau Sensitive species during the planning of activities and projects.”

130. The northwestern pond turtle (*Actinemys marmorata*) (“NW pond turtle”) is one of only two native freshwater turtle species in Oregon and the only freshwater turtle native to southern Oregon. The NW pond turtle and southwestern pond turtle (*Actinemys pallida*) were considered one species—the “western pond turtle”—until 2017, when the scientific community recognized them as two distinct species.

131. On October 3, 2023, FWS determined that listing the NW pond turtle as threatened under the ESA is warranted and proposed the species for listing under the ESA. FWS has not issued a final rule listing the NW pond turtle as threatened.

132. The historic range of the western pond turtle extended along the Pacific coast from British Columbia, Canada to the northern part of Baja California, Mexico, primarily west of the Sierra Nevada and Cascade ranges. The NW pond turtle, which now ranges from Central California to Washington, has since been extirpated from Canada. In Washington state, the NW pond turtle was close to extirpation until the state listed the species as endangered and began supplementing the wild population with captive-bred NW pond turtles. The range of the NW pond turtle is now fragmented, with some sites extirpated, and in many cases, only small, isolated groups or individuals remain across much of its range.

133. In Oregon, the NW pond turtle is native to and occurs in watersheds west of the Cascades. The species is primarily associated with low- to mid-elevation rivers,

large-order streams, and wetland habitats, with the largest Oregon populations found in the Willamette, Umpqua, Rogue, and Klamath River drainages.

134. The NW pond turtle is a long-lived species that exhibits low reproductive output, which results in a slow population growth rate and limited capacity for recovery following population declines. Other characteristics that render the species particularly vulnerable to population declines are delayed sexual maturity, temperature-dependent sex determination, limited ability to disperse, and high egg and hatchling mortality.

135. Threats to the species include habitat loss and fragmentation, altered hydrology, predation, competition, road mortality, collection, contaminants, and climate change. Habitat loss and fragmentation have reduced the number of, and connectivity between, NW pond turtle populations, resulting in the isolation of NW pond turtle populations across the species' range. Isolated populations are at particular risk of extirpation from catastrophic events.

136. The NW pond turtle requires aquatic and upland, terrestrial habitats within close proximity and connected to one another for survival. Upland habitat is essential for key life stages including nesting and overwintering. In Oregon, the NW pond turtle has been observed to spend up to ten months a year total in upland habitat.

137. NW pond turtles commonly leave aquatic habitat in late summer or early fall to overwinter up to 1,500 feet upland in forest debris or duff, and do not return to aquatic habitat until spring. Many NW pond turtles exhibit site fidelity, returning to the same area annually to overwinter.

138. Nesting typically occurs from mid-May through July. Females excavate nests up to 350 feet from aquatic habitat and make several trips between aquatic habitat and a nest site

while excavating the nest. Hatchlings may emerge in late summer or early fall, but oftentimes overwinter in the nest, emerging in the spring.

139. FWS recognizes that habitat loss and fragmentation have reduced the availability of suitable NW pond turtle upland nesting habitat adjacent to aquatic habitat, with suitable nest sites increasingly scarce and vulnerable to nearby threats. Loss of habitat, including upland habitat, has resulted in the extirpation of many NW pond turtle populations. Any activity in upland habitat may destroy NW pond turtle nests or cause mortality to nesting females and overwintering NW pond turtles.

140. In the 42 Divide project area, Riparian Reserves vary depending on the waterbody from 25 feet to approximately 170 feet.

141. Roads negatively affect NW pond turtle viability through direct mortality and habitat fragmentation. NW pond turtles are susceptible to vehicle strike due to their regular movement between aquatic and upland areas for nesting and overwintering. There have been numerous reports of vehicle strikes in Oregon, with one study documenting a three percent decline in the local population over a four-month period. Another study documented a gravid female killed by a logging truck while moving to nest. Roads also affect NW pond turtles by reducing connectivity between aquatic and upland habitat.

142. Historically, NW pond turtles have been observed in 10 of the 16 sub-watersheds in the Project Area, with at least 20 turtle observations in the project area recorded in the last decade.

143. In the EA, BLM stated that “[no] currently occupied aquatic habitat is known in the analysis area, however, surveys of NW pond turtle aquatic habitat are not required and have not occurred.”

144. The 42 Divide EA acknowledges that “[l]oss of, or injury to, individual turtles may occur through crushing by equipment or falling and or moving of logs. Exposure of eggs and, or aestivating/overwintering turtles may result in predation and loss or injury, or reduction of body condition that may result in reduced fitness of the individual.”

145. The EA does not explain how this project will mitigate specific threats to this Bureau Sensitive Species, other than mentioning that effects to overwintering, nesting, and aestivating habitats *would occur* and would be minimized by implementation of the project design features (“PDFs”). The EA does not detail how the PDFs would minimize impact.

### **CLAIMS FOR RELIEF**

#### **Claim 1: Violations of the Federal Land Policy and Management Act**

##### ***Count 1: The EA Authorizes Activities that Do Not Protect Stands of Older, Structurally-Complex Conifer Forest in LSRs.***

146. Plaintiffs reallege and incorporate all preceding paragraphs herein by reference.

147. Pursuant to FLPMA, BLM is required to manage its lands in compliance with the governing RMP and ensure that all site-specific projects conform to the RMP. 43 U.S.C. § 1732; 43 C.F.R. § 1610.5-3(a).

148. The RMP instructs BLM to protect stands in LSRs that contain older, structurally complex forest that represent the highest value of spotted owl nesting-roosting habitat. “Protect” is defined as “prohibiting harvesting activities” in such forests, with limited exceptions.

149. 49% of the project area is made up of forest that BLM categorizes as “structurally complex” (SC-Dev) or “mature multi canopy” (MMC), which are forest stands up to 190 years old. These stands include the large diameter trees and structural complexity that provide optimal northern spotted owl nesting-roosting and marbled murrelet nesting habitat. BLM planned several harvest units in structurally complex and mature multi-canopy forests without

establishing a demonstrated need that these forests must be logged to be protected, which is necessary to overcome the prohibition on logging.

150. In addition, while the RMP does allow for felling old growth trees for logging infrastructure, this is only allowed if the stands still support the same northern spotted owl and marbled murrelet life history requirements. The BLM planned several roads and yarding corridors through pristine old growth LSRs which will result in the removal of nesting-roosting habitat and does not meet the exception to this standard.

151. The proposed logging in mature and old growth LSR does not comply with the RMP's directive to protect older, structurally complex stands by prohibiting harvest activities in these older, high-value forests except under very limited exceptions. The BLM's decision to approve logging violates FLPMA and is arbitrary, capricious, an abuse of discretion, and is otherwise not in accordance with law. 5 U.S.C. § 706(2).

***Count 2: The EA Authorizes Activities that Violate the 20-Year Standard for Developing Northern Spotted Owl Nesting-Roosting Habitat.***

152. Plaintiffs reallege and incorporate all preceding paragraphs herein by reference.

153. The RMP requires that logging in LSR stands that are not currently functioning as nesting-roosting habitat “speed the development of northern spotted owl nesting-roosting habitat or improve the quality of northern spotted owl nesting-roosting habitat in the stand or in the adjacent stand in the long term.”

154. Such logging is prohibited by the RMP if it would preclude or delay the development of nesting-roosting habitat by more than 20 years, as compared to development without treatment and it is the burden of the BLM to show that it complies with this standard.

155. The BLM has not demonstrated that it is able to implement heavy commercial thinning in LSRs and still achieve nesting-roosting habitat in a way that meets the 20-year standard.

156. In authorizing the 42 Divide Project, BLM approved logging prescriptions in LSR stands that are known to delay the establishment of nesting-roosting habitat conditions by more than 20 years compared to no treatment. The BLM's decision to approve logging that is inconsistent with RMP requirements violates FLPMA and is arbitrary, capricious, an abuse of discretion, and is otherwise not in accordance with law. 5 U.S.C. § 706(2).

**Claim 2: Violations of the National Environmental Policy Act (NEPA)**

***Count 1: BLM Violated NEPA by Failing to Prepare an Environmental Impact Statement for the 42 Divide Project.***

157. Plaintiffs reallege and incorporate all preceding paragraphs herein by reference.

158. Federal agencies are required to prepare an EIS when “substantial questions” are raised as to whether a major federal action “may” cause significant degradation of some human environmental factors. 42 U.S.C. § 4332(C).

159. The “threshold question in a NEPA case is whether the proposed action will ‘significantly affect’ the environment, thereby triggering the requirement for an EIS.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (citing 42 U.S.C. § 4332(2)(C)). “As a preliminary step, an agency may prepare an EA to decide whether the environmental impact of proposed action is significant enough to warrant preparation of an EIS.” *Id.* However, NEPA requires agencies “to the fullest extent possible” to prepare an EIS for “every . . . major Federal actio[n] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The EIS requirement is the heart of NEPA. *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 757 (2004).

160. When an agency decides not to prepare an EIS, it must supply a “convincing statement of reasons” to explain why a project’s impacts are insignificant. *Save the Yaak Comm. v. Block*, 840 F.2d 714, 717 (9th Cir. 1988) (citation omitted); *Blackwood*, 161 F.3d at 1212. To prevail on a claim that the agency violated NEPA by failing to prepare an EIS, a claimant need not show that significant effects will occur; it is enough to raise “substantial questions” whether a project may have a significant effect on the environment. See *Greenpeace Action v. Franklin*, 982 F.2d 1342, 1351 (9th Cir. 1992).

161. The 42 Divide Project has significant impacts requiring the BLM to prepare an EIS prior to authorizing the decision. For example, the 42 Divide Project authorizes commercial logging in ecologically critical areas (i.e. LSRs and designated critical habitat), which would adversely affect the threatened spotted owl and marbled murrelet. In addition, logging mature and old growth forest that is already properly functioning habitat in an attempt to influence fire behavior is highly controversial and involves a high degree of scientific uncertainty, and the effects of this large-scale timber sale on spotted owls, when combined with past and reasonably foreseeable future timber sales and barred owl encroachment, may result in a cumulatively significant environmental impact.

162. The 42 Divide Project will have a significant impact on the human environment, and the BLM’s failure to prepare an EIS violates NEPA, is arbitrary, capricious, an abuse of discretion, and not in accordance with law, which has caused or threatens serious prejudice and injury to Plaintiffs’ rights and interests. 5 U.S.C. § 706(2).

***Count 2: BLM Violated NEPA by Failing to Take a Hard Look at Several Environmental Factors in the 42 Divide Project.***

163. Plaintiffs reallege and incorporate all preceding paragraphs herein by reference.

164. “In reviewing an agency’s finding that a project has no significant effects, courts must determine whether the agency has met NEPA’s hard look requirement, ‘based [its decision] on a consideration of the relevant factors, and provided a convincing statement of reasons to explain why a project’s impacts are insignificant.’” *Bark v. U.S. Forest Serv.*, 958 F.3d 865, 869 (9th Cir. 2020) (citing *In Def. of Animals*, 751 F.3d at 1068). “An agency must articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Los Padres ForestWatch v. U.S. Forest Serv.*, 25 F.4th 649, 657 (9th Cir. 2022).

165. In taking “the requisite hard look,” an agency “‘may not rely on incorrect assumptions or data’ in arriving at its conclusion of no significant impacts.” *Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 872–73 (9th Cir. 2022) (citing *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005)).

166. The BLM has violated NEPA and its implementing regulations through its issuance of the 42 Divide Project EA/FONSI and Decision Notice. These violations include, but are not limited to:

- a) Failing to provide the high-quality data and analysis necessary to support its FONSI for the 42 Divide Project. This includes, but is not limited to: incomplete data, unsupported conclusions or contradictory findings, inaccurate baseline conditions for the project area, and the failure to incorporate the best available science; and
- b) Failing to consider important factors and take the requisite “hard look” at environmental impacts, including but not limited to: impacts to the sensitive northwestern pond turtle; impacts to threatened marbled murrelets from habitat loss and edge effects; impacts to spotted owls from losing resting-roosting and dispersal habitat; and adverse

impacts from increasing fire hazard by logging moist forests, changing stand structure and adding surface fuels in and around local communities.

167. BLM's failure to take the requisite hard look at the Project's direct, indirect, and cumulative effects, and failure to make a reasoned determination of non-significance violates NEPA and its implementing regulations, and is arbitrary, capricious, an abuse of discretion, not in accordance with law. 5 U.S.C. § 706(2).

### **REQUEST FOR RELIEF**

168. Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs and issue the following relief:

A. Declare that BLM's issuance of the 42 Divide Environmental Assessment, Finding of No Significant Impact, and Decision Record violates FLPMA and is arbitrary, capricious, an abuse of discretion, and contrary to law under the judicial review standards of the APA, 5 U.S.C. § 706(2);

B. Declare that BLM violated the National Environmental Policy Act and its implementing regulations by approving the 42 Divide Plan without preparing an EIS or taking the hard look necessary to determine if the impacts are significant;

C. Vacate and set aside the EA, FONSI, and DR for the 42 Divide Project, and order the BLM to withdraw any decisions or contracts made pursuant to the 42 Divide Project until the BLM can demonstrate that it has complied with applicable law;

D. Enjoin BLM and its contractors, assigns, and other agents from proceeding with implementing the 42 Divide Project until the BLM can demonstrate that it has complied with the law;

E. Enter such other declaratory relief, and temporary, preliminary, or permanent injunctive relief as may be subsequently requested by Plaintiffs;

F. Award Plaintiffs their reasonable fees, costs, expenses and disbursements, including reasonable attorneys' fees associated with this litigation pursuant to the Equal Access to Justice Act or other applicable statutes; and

G. Grant such further relief as the Court deems just, proper, and equitable.

Respectfully submitted and dated this 21<sup>st</sup> day of January, 2026.

/s/ Brenna Bell  
Brenna Bell (OSB #015199)

/s/ Peter Jensen  
Peter Jensen (OSB #235260)