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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

IDAHO CONSERVATION LEAGUE,)	No. 4:15-cv-284
<i>Plaintiff,</i>)	
)	
vs.)	COMPLAINT
)	
U.S. FOREST SERVICE,)	
<i>Defendant.</i>)	

INTRODUCTION

1. Plaintiff IDAHO CONSERVATION LEAGUE (“ICL”) challenges the unlawful reliance by Defendant U.S. FOREST SERVICE (“Forest Service”) on its so-called “Categorical Exclusion No. 8” (hereafter, “CE #8”) to approve mining exploration activities without full public disclosure and analysis of potential environmental impacts, in violation of the National Environmental Policy Act (“NEPA”). The Forest Service has been broadly utilizing CE #8 to avoid NEPA disclosure of mining exploration projects in

our national forests, including the East Boulder Exploration Project on the Salmon-Challis National Forest, challenged here.

2. Specifically, Plaintiff challenges the Forest Service's July 10, 2015 Decision Memo approving a second year of operations for the East Boulder Exploration Project, in which the Forest Service relied on CE #8 to avoid public disclosure and analysis of potential environmental impacts, rather than preparing an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS") as required by NEPA.

3. CE #8 purports to authorize the Forest Service to avoid preparing an EA or EIS for certain mining exploration projects, which are "[s]hort-term (1 year or less)." 36 C.F.R. § 220.6(e)(8). However, the East Boulder Exploration Project does not qualify under CE #8, because this is the *second year in a row* the Forest Service approved activities under the Project.

4. Moreover, the Forest Service cannot rely on CE #8 to avoid preparing an EA or EIS for this Project, since it impacts sensitive resources—including protected wetlands and riparian areas on East Boulder Creek, which is a tributary to the Main Salmon River—and allows the Project applicant to drive motor vehicles through streams and to construct roads within the Napoleon Ridge Inventoried Roadless Area.

5. In its hasty approval, the Forest Service also failed to comply with the mineral management standards set forth in the Forest Plan for the Salmon-Challis National Forest designed to protect these sensitive resources, and failed to minimize and protect against adverse resource impacts, in violation of the National Forest Management Act ("NFMA") and the Forest Service Organic Administration Act of 1897 ("Organic Act").

6. Because the Forest Service's approval of the East Boulder Exploration Project is arbitrary, capricious, and contrary to law, ICL respectfully requests that this Court set aside and vacate, reverse, and remand the July 10, 2015 Decision Memo issued by the Forest Service; enjoin the Forest Service's approval of the Project; and enter other relief as prayed for below.

JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including NEPA, 42 U.S.C. § 4321 *et seq.*; NFMA, 16 U.S.C. § 1600 *et seq.*; the Organic Act, 16 U.S.C. § 473 *et seq.*; the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* ("APA"); the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* ("EAJA").

8. Venue is proper in the Court pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurs within this judicial district; and Plaintiff, Defendants, and affected lands and resources are located in this judicial district.

9. The actions challenged herein are final agency actions ripe for judicial review, for which the Defendants have waived sovereign immunity pursuant to the APA, 5 U.S.C. § 701 *et seq.*

PARTIES

10. Plaintiff IDAHO CONSERVATION LEAGUE ("ICL") is a non-profit conservation organization incorporated under the laws of Idaho with its principal place of

business in Boise, Idaho. ICL's mission is to protect Idaho's clean water, clean air, healthy families, and quality of life.

11. ICL and its approximately 25,000 supporters work to protect watersheds and ecosystems in Idaho, including in the Salmon-Challis National Forest and the Salmon River watershed where the East Boulder Placer Exploration Project is located. ICL has a longstanding interest in the protection of roadless areas, and a specific interest in the Napoleon Ridge Roadless Area in which the Project is located. ICL also has a longstanding interest in protecting the Salmon River watershed from the impacts of mining. ICL has an interest in the Forest Service's use of CE #8 and has researched, reviewed, commented on, and otherwise been involved with numerous mineral exploration projects approved or proposed for approval using CE #8.

12. ICL, its staff, members, and its supporters have used, currently use, and intend to continue using the Salmon-Challis National Forest and other public lands at, near and around the Project site, and areas downstream of the site including the Main Salmon River, for recreational, professional, scientific, and other purposes. ICL, its staff, members, and supporters derive health, spiritual, aesthetic, and other benefits from these uses. ICL staff, members, and supporters intend on continuing their visits to the Project site this year and into the future to continue using the Project site and surrounding lands and waters for hiking, boating, wildlife viewing, botanizing, hunting, fishing, and appreciation, experiencing the natural environment at the site and surrounding lands (including the Roadless Area), and other recreational, aesthetic, and conservation pursuits that will be adversely affected by the Project.

13. These interests of ICL, its staff, and its supporters are directly affected by the Forest Service's decision to approve the East Boulder Exploration Project without preparing an EA or an EIS and, thus, without adequately assessing the environmental impacts, involving the public, and engaging in the kind of informed decisionmaking NEPA fosters. These interests are also harmed by reopening roads and using motor vehicles in the Napoleon Ridge Roadless Area, drilling and digging in wetlands and riparian areas along East Boulder Creek, and other Project activities approved by the Forest Service that will adversely impact water quality, fish and wildlife, and roadless characteristics at the Project site and at nearby locations used by the Plaintiff. Plaintiff's interests have been, are being, and will continue to be irreparably harmed by these illegal activities unless the requested relief is granted.

14. Defendant U.S. FOREST SERVICE is an agency or instrumentality of the United States and is charged with managing the lands and resources of the Salmon-Challis National Forest in accordance and compliance with federal laws and regulations.

FACTS

The First East Boulder Project Proposal

15. On January 8, 2013, Bryan Stephens submitted a proposal to the Forest Service to conduct exploratory mining operations in the upper reaches of East Boulder Creek on the Salmon-Challis National Forest. East Boulder Creek is a tributary to the main Salmon River and is located within the Napoleon Ridge Roadless Area. The Project area is approximately three miles south of the main Salmon River and eleven miles west of North Fork, Idaho.

16. Mr. Stephens proposed to reopen an old half-mile-long non-system road in the Napoleon Ridge Roadless Area that is closed to motorized vehicles and does not appear on public Forest Service maps. He would reopen the road, transport heavy equipment to the Project site and drive all-terrain-vehicles on the road daily to access a wetland area for placer mining exploration. Dead trees would be cut to construct two temporary log bridges across East Boulder Creek.

17. After completing road work, Mr. Stephens would use an excavator to drill approximately 50 auger holes to a depth of 15 to 20 feet and excavate 4 trenches approximately 10 to 15 feet long, four feet wide, and up to 20 feet deep. An on-site machine would process the excavated material with water from East Boulder Creek to determine gold content. Process wastewater would be pumped into existing settling ponds, which have not been used for mining activities since the 1940s. Any wastewater in the ponds that does not subside would be sprayed on undisclosed locations on native vegetation for dispersal into the ground.

18. Not only is the Project located in a roadless area, but most if not all Project activities would take place within Riparian Habitat Conservation Areas (“RHCAs”) as designated by the PACFISH amendment to the Salmon National Forest Plan. RHCAs include designated areas on either side of East Boulder Creek, its tributaries, and wetlands and are to be protected from minerals activities, including many activities Mr. Stephens would undertake within RHCAs.

19. It appears that Mr. Stephens would construct roads, drill, trench, pump water, set up a camp, and store and dispose of wastewater and waste soils within RHCAs. Furthermore, the Project activities would occur in two identified wetlands. First, the

reconstructed road would pass directly through a wetland of 0.09 acres. Second, the places where Mr. Stephens would drill holes and excavate trenches are located within a larger wetland of 0.67 acres.

Forest Service Approval of the Project for 2014

20. The Forest Service issued a scoping notice and requested public comments on Mr. Stephens's proposal in July 2013. In its request for scoping comments, the Forest Service indicated that it expected the Project to qualify for a NEPA categorical exclusion (CE #8) and that the agency could avoid preparing an EA or EIS.

21. CE #8 reads in its entirety:

(8) Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard road, or use and minor repair of existing roads. Examples include but are not limited to:

- (i) Authorizing geophysical investigations which use existing roads that may require incidental repair to reach sites for drilling core holes, temperature gradient holes, or seismic shot holes;
- (ii) Gathering geophysical data using shot hole, vibroseis, or surface charge methods;
- (iii) Trenching to obtain evidence of mineralization;
- (iv) Clearing vegetation for sight paths or from areas used for investigation or support facilities;
- (v) Redesigning or rearranging surface facilities within an approved site;
- (vi) Approving interim and final site restoration measures; and
- (vii) Approving a plan for exploration which authorizes repair of an existing road and the construction of 1/3 mile of temporary road; clearing vegetation from an acre of land for trenches, drill pads, or support facilities.

See 2014 DM-1, p.12. (*citing* 36 C.F.R. 220.6(e)(8)).

22. ICL submitted scoping comments explaining that use of CE #8 would be inappropriate and that the direct, indirect, and cumulative effects of the Project could harm water quality, water quantity, protected riparian areas, native fish habitat, wildlife, wetlands, and the roadless area. Additionally, ICL commented that it was unclear how the proposal would comply with the Forest Plan. ICL recommended mitigation measures that would address some of its concerns.

23. On February 25, 2014, the Forest Service issued a Decision Memo (“DM-1”) authorizing the Project. U.S.F.S., DECISION MEMO: EAST BOULDER CREEK PLACER EXPLORATION PROJECT (Feb. 2014). Instead of preparing an EA or an EIS, the Forest Service determined that the Project qualified under CE #8.

24. ICL’s comments were largely unaddressed, and on April 10th, 2014, ICL appealed DM-1 through the Forest Service’s former administrative appeal regulations, alleging multiple violations of federal law. The Appeal Reviewing Officer issued a decision in ICL’s favor on May 10, 2014, recommending reversal of DM-1 for “failure to adequately analyze cumulative impacts of the project in a meaningful way.” Reviewing Officer Recommendation, East Boulder Placer Exploration Project, #14-13-0025-A215.

25. Next, without providing any opportunity for public comment, and without even notifying ICL, the Forest Service issued the second decision memo (“DM-2”) for the East Boulder Exploration Project on July 1, 2014. U.S.F.S., DECISION MEMO: EAST BOULDER CREEK PLACER EXPLORATION PROJECT (undated) p.11.

26. DM-2 is virtually identical to DM-1, except for the addition of a three-sentence paragraph that purports to evaluate cumulative impacts and the addition of some new reclamation requirements that appear to have been carelessly pasted from another

decision. The only new supporting document for DM-2 was a new Roadless Area Evaluation, which changed the Project's effects on soil, water, and air resources from "improving, long-term," to "stable, long term; degrading, short-term."

27. DM-2 failed to adequately address ICL's concerns or to comply with the May 10 Reviewing Officer Recommendation. But during the time between the issuance of DM-1 and DM-2, the administrative appeal regulations for CEs were eliminated by legislative action. *See* 79 Fed. Reg. 44291 (July 31, 2014). As a result, there was no longer an administrative appeal process available, and DM-2 authorized the Project to begin immediately.

Project Activities in 2014

28. Notwithstanding the deficiencies of DM-2, the East Boulder Exploration Project proceeded from July through October, 2014. Forest Service inspection reports detail numerous violations of Mr. Stephens's operating plan, including: driving an excavator excessively through East Boulder Creek; failing to have all-terrain-vehicles inspected for weeds and then driving them outside of authorized routes; failing to take required fuel containment precautions; performing unauthorized tree cutting; inadequately restoring disturbed areas and roads upon completion of operations; and failing to remove the "temporary" log bridges within East Boulder Creek.

29. Despite observing these violations, the Forest Service took little action to correct the problems or mitigate their adverse environmental impacts. The Forest Service's minerals administrator signed-off on Mr. Stephens's failure to complete stabilization and vegetation of roads and disturbed areas, and his failure to remove the two "temporary" log bridges within East Boulder Creek at the end of the operations.

The Proposal to Continue & Expand Operations Into 2015

30. On October 27, 2014, Mr. Stephens proposed continuing the Project for a second year. The Forest Service issued a scoping notice on March 31, 2015. Then, on April 16, 2015, Mr. Stephens made a new request, proposing 60 drill holes and one trench at the Project site. On April 22, 2015, he submitted a new plan and map.

31. Once again, Mr. Stephens would drive vehicles in the Napoleon Ridge Roadless Area. He would construct roads, drill, trench, pump water, dispose of wastewater and waste soils, setup a camp and undertake other activities within designated RHCAs along East Boulder Creek and its tributaries. And he would drill, trench, and dispose of rock and process wastewater within wetlands.

Forest Service Approval of the Project for a Second Year Using CE #8

32. Plaintiff ICL responded to the scoping notice by submitting comments to the Forest Service on April 10 and May 29, 2015. ICL pointed out numerous deficiencies with the proposal, including the inappropriate use of CE #8 to approve the Project for a second year, the failure to adequately consider cumulative impacts, and the failure to comply with the Forest Plan, among other deficiencies. ICL urged the Forest Service to prepare an EA, at a minimum, to adequately analyze the impacts and to further involve the public in the development of the Project.

33. Nevertheless, the Forest Service issued its third Decision Memo for the East Boulder Exploration Project on July 10, 2015, this time authorizing Mr. Stephens's proposal to continue and expand the Project into its second year, without preparing an EA or EIS. U.S.F.S., DECISION MEMO: EAST BOULDER CREEK PLACER EXPLORATION PROJECT (July 10, 2015) ("DM-3").

34. DM-3 is mostly copied from DM-2 with the addition of a “background” section, which explains that Mr. Stephens will be completing unfinished work approved last year under DM-2 as well as excavating an additional trench and drill holes, including new drill holes beyond the boundaries of the previous CE analysis area. DM-3 includes the same one-paragraph cumulative effects discussion that was in DM-2.

35. The Forest Service claims in DM-3 that the Project “mitigates and minimizes the opportunity for adverse impacts on surface resources,” that “no extraordinary circumstances related to the proposed action exist,” that “[t]here would be no effect to extraordinary circumstances that might cause this action to significantly affect the environment,” and that the Project “will have no significant effect on the human environment, individually or cumulatively.”

36. No further opportunity for public comment was available after scoping, and no administrative appeal, objection, or other process was available after DM-3 was issued.

37. Shortly after approving the Project, the Forest Service approved Mr. Stephens’s final Plan of Operations, authorizing him to proceed.

Flaws in the Forest Service’s Decision

38. In approving the Project for the second year, the Forest Service has improperly used CE #8 to avoid the agency’s NEPA duty to prepare an EA or EIS to consider the environmental impacts of the Project and to involve the public.

39. The Forest Service also failed to appropriately consider all cumulative effects when it issued DM-3. The cumulative effects analysis in DM-3, which consists of simply one paragraph copied from DM-2, is both factually incorrect and wholly

inadequate. For example, the cumulative effects paragraph incorrectly states that there is no livestock grazing in the Project area when, in reality, reports in the Project Record show that the Project site is grazed annually and that grazing is causing adverse impacts to the watershed.

40. The Forest Service's cumulative impacts paragraph also fails to adequately consider the impacts of Project activities from last year, including violations, with those activities now being approved. DM-3 fails to disclose and evaluate impacts from last year and relies on outdated specialist's reports prepared for DM-2 whose findings are based, in part, on the expectation that the Project would not extend beyond a few months and would comply with conditions and reclamation requirements for the Project, which it did not.

41. Not only did the Forest Service inappropriately use CE #8 for a second year, and fail to consider cumulative impacts, but the agency also failed to disclose important baseline information and failed to adequately assess and minimize potential impacts to multiple resources, including but not limited to roadless areas, floodplains and wetlands, special status fish species, RHCAs, surface water, and ground water.

FIRST CLAIM FOR RELIEF
NEPA Violations for
Failure to Prepare an EA or an EIS for a Multi-Year Project

42. Plaintiff realleges and incorporates by reference the preceding paragraphs.

43. This first claim challenges the Forest Service's violations of the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, and NEPA's implementing regulations in applying CE #8 to approve the East Boulder Exploration Project without

preparing an EA or an EIS. This claim is brought pursuant to the judicial review provisions of the APA. 5 U.S.C. § 706.

44. The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370(h), is America’s basic “charter for protection of the environment.” 40 C.F.R. § 1500.1(a). The Council on Environmental Quality (CEQ) promulgates regulations implementing NEPA, which are binding on all federal agencies. *Id.* §§ 1500–1518.4.

45. NEPA requires federal agencies to prepare an EA or an EIS to evaluate the environmental impacts of major federal actions. 42 U.S.C. § 4332(2)(C). However, actions that do not individually or cumulatively have a significant impact on the environment may be categorically excluded from the requirement to prepare an EA or EIS. 40 C.F.R. § 1508.4.

46. Agencies may establish their own regulations defining which categories of actions may be categorically excluded from NEPA. 40 C.F.R. § 1507.3(b)(2)(ii). The Forest Service has established a list of categorical exclusions at 36 C.F.R. § 220.6 (e)(1)–(20), which includes CE #8.

47. The language of CE #8 states that it may only be used for: “*Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard road, or use and minor repair of existing roads.*” 36 C.F.R. 220.6(e)(8) (emphasis added).

48. NEPA and its implementing regulations prohibit the segmentation of a single action to avoid environmental impact analysis. 40 C.F.R. § 1508.25.

49. By using CE #8 for a second year in a row, the Forest Service unlawfully avoided its duty to prepare an EA or an EIS when it issued DM-3 on July 10, 2015, approving continued and expanded operations under the East Boulder Exploration Project.

50. Because the Forest Service violated NEPA by approving the Project using CE #8, instead of preparing an EA or EIS, DM-3 is arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA; and must be held unlawful and set aside under 5 U.S.C. 706(2).

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CLAIM FOR RELIEF
NEPA Violations for Failure to Prepare an EA or EIS
in the Face of Extraordinary Circumstances & Potentially Significant Impacts

51. Plaintiff incorporates by reference all preceding paragraphs.

52. This second claim challenges the Forest Service's arbitrary, capricious, and unlawful determination on July 10, 2015, in DM-3 that the East Boulder Exploration Project will not have a significant impact on the environment, in violation of NEPA. This claim is brought pursuant to the judicial review provisions of the APA. 5 U.S.C. § 706.

53. Even if a proposed action meets the requirements of a specific CE category, the analysis does not end there. "A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA *only if there are no extraordinary circumstances* related to the proposed action. . . ." 36 C.F.R. § 220.6(a) (emphasis added).

54. To determine whether extraordinary circumstances exist, agencies are directed to consider the “existence of a cause-effect relationship between a proposed action and the potential effect on [listed] resource conditions, and if such a relationship exists, the degree of the potential effect.” 36 C.F.R. § 220.6(b)(2). “Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS” include, among others: federally listed threatened or endangered species or designated critical habitat or sensitive species; wetlands and floodplains; and inventoried roadless area. *Id.* § 220.6(b)(1).

55. Under NEPA and its implementing regulations, an agency must consider all direct, indirect, and cumulative environmental impacts of a project when reviewing extraordinary circumstance and considering whether a project may have significant impacts. *See* 40 C.F.R. §§ 1508.7, 1508.8, 1508.25(c). Cumulative impacts are the impacts on the environment that result from incremental impacts of the action when added to all other past, present, and reasonably-foreseeable future actions regardless of what agency or person undertakes such other actions. *Id.* § 1508.7. “Cumulative impacts can result from individually minor but collectively significant actions.” *Id.*

56. NEPA’s statutory framework, as well as the Forest Service’s regulatory policies enumerated in the Forest Service Handbook (“FSH”), Section 1909.15 *et seq.*, require the agency to consider potentially significant environmental effects, including cumulative impacts, before deciding to invoke a categorical exclusion and moving forward with a proposed action without preparing an EA or EIS. If the proposed action may have a significant effect, the Forest Service must prepare an EIS. *See* 36 C.F.R. §

220.6(c). If the Forest Service is uncertain whether the proposed action may have a significant effect, it must prepare an EA. *Id.* Accordingly, only where the potential effects of a proposed action are certain to be insignificant, and scoping does not reveal otherwise or raise uncertainty, may the Forest Service invoke a categorical exclusion.

57. As alleged hereinabove, and as will be presented in detail in further briefing before the Court, the Forest Service's decision to use a categorical exclusion is based upon misstatements, errors, omissions, and unsupported assumptions surrounding the Project's potential impacts, which render DM-3 defective and make the decision to approve the Project without preparing an EA or EIS unlawful for reasons including but not limited to:

- a) Failing to adequately consider all direct, indirect, and cumulative impacts of the Project, including impacts from last year's Project activities and from livestock grazing that has been documented to be causing adverse effects at the Project site, among other impacts;
- b) Ignoring the presence of, and impacts to, extraordinary circumstances, including adverse impacts to federally-listed and sensitive fish species, wetlands and floodplains, and inventoried roadless areas;
- c) Failing to gather and disclose sufficient baseline conditions and failing to adequately assess potentially significant impacts to wetlands and floodplains, federally-listed and sensitive fish species, inventoried roadless areas, surface water, groundwater, RHCAs, and other resources; and
- d) Otherwise failing to take the required "hard look" at the Project's impacts, alternatives, affected environment/baseline conditions.

58. Because the Forest Service has violated NEPA by approving the Project using CE #8, instead of preparing an EA or EIS, DM-3 is arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA, and must be held unlawful and set aside under 5 U.S.C. 706(2).

WHEREFORE, Plaintiff prays for relief as set forth below.

THIRD CLAIM FOR RELIEF
NFMA Violations for
Failing to Comply with the Forest Plan

59. Plaintiff incorporates by reference all preceding paragraphs.

60. This third claim challenges the Forest Service's violations of the National Forest Management Act, 16 U.S.C. § 1601 *et seq.*, and NFMA's implementing regulations by issuing DM-3 on July 10, 2015, approving the East Boulder Exploration Project. This claim is brought pursuant to the judicial review provisions of the APA. 5 U.S.C. § 706.

61. Under NFMA, the Forest Service must develop and regularly revise forest plans for each national forest. 16 U.S.C. §§ 1604(a), (e) & (g)(3)(B). Once a forest plan has been developed, all subsequent agency actions, including site-specific management activities, must be consistent with the governing forest plan. 16 U.S.C. § 1604(i).

62. The Forest Plan for the Salmon-Challis National Forest includes binding standards that apply to the East Boulder Exploration Project, including binding standards incorporated from PACFISH.

63. PACFISH minerals management standard MM-2 prohibits locating roads, structures, and support facilities within RHCAs unless the Forest Service first determines

that there is “no alternative” to doing so. MM-2 imposes further conditions and requirements when such incursions to RHCAs do occur, such as requiring roads constructed in RHCAs to be closed, obliterated, and revegetated when no longer needed.

64. Similarly, PACFISH standard MM-3 prohibits locating solid and sanitary waste facilities (including mining waste rock, spent ore, and tailings) in RHCAs, unless there is “no alternative” and “releases can be prevented and stability can be ensured.” MM-3 imposes further conditions and requirements when waste facilities are located in RHCAs, including to analyze the waste material to determine chemical and physical stability, to locate and design the facility to use the best conventional technique, to monitor waste and waste facilities, to reclaim and monitor waste facilities, and to require reclamation bonds adequate to ensure long-term stability and successful revegetation.

65. As alleged hereinabove, and as will be presented in detail in further briefing before the Court, the Forest Service has authorized Mr. Stephens to construct roads, drill, trench, dispose of waste, and setup a camp, among other activities, within RHCAs along East Boulder Creek, its tributaries, and wetlands without first determining that no alternative exists and without ensuring the other requirements are met and conditions are imposed under MM-2 and MM-3 before allowing incursions into designated RHCAs. The agency also failed to fully consider alternative(s) that would locate some or all roads, trenches, support facilities, and waste outside of RHCAs and failed to consider whether an alternative location outside of the RHCAs existed for each road, structure, support facility and waste dump/facility authorized by the agency.

66. Because the Forest Service has violated NFMA by failing to ensure that the Project complies with Forest Plan standards MM-2 and MM-3 incorporated from

PACFISH, DM-3 is arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of the judicial review provisions of the APA, and must be held unlawful and set aside under 5 U.S.C. 706(2).

WHEREFORE, Plaintiff prays for relief as set forth below.

FOURTH CLAIM FOR RELIEF
Organic Act Violations for
Failing to Minimize Impacts

67. Plaintiff incorporates by reference all preceding paragraphs.

68. This fourth claim challenges the Forest Service's violations of the Organic Act by issuing DM-3 on July 10, 2015, approving the East Boulder Exploration Project. This claim is brought pursuant to the judicial review provisions of the APA. 5 U.S.C. § 706.

69. On the National Forests, the Organic Act requires the Forest Service "to regulate their occupancy and use and to preserve the forests thereon from destruction." 16 U.S.C. § 551. The USFS mining regulations require that "all [mining] operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources." 36 C.F.R. § 228.8. In addition, the operator must fully describe "measures to be taken to meet the requirements for environmental protection in § 228.8." 36 C.F.R. 228.4(c)(3).

70. Because the Forest Service failed to minimize the Project's impacts and failed to meet the environmental protection requirements in its regulations, in violation of the Organic Act and its implementing regulations, DM-3 is arbitrary, capricious, an abuse of discretion, not in accordance with the law, without observance of procedure required by law, and/or in excess of statutory jurisdiction, authority, or limitations within the meaning of

the judicial review provisions of the APA, and must be held unlawful and set aside under 5 U.S.C. 706(2).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

A. Order, declare, and adjudge that the Forest Service's July 10, 2015 DM approving the East Boulder Exploration Project is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law under NEPA, NFMA, the Organic Act, and/or the APA;

B. Vacate, set aside, reverse, and remand the DM;

C. Enter such temporary, preliminary, or permanent injunctive relief as Plaintiff may hereafter seek;

D. Award Plaintiff reasonable costs, litigation expenses, and attorney's fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*, and all other applicable authorities; and

E. Grant such further and additional relief as the Court deems just and proper in order to remedy Defendants' violations of law and protect the public interest.

Dated this 24th day of July, 2015. Respectfully submitted,

/s/ Bryan Hurlbutt
Bryan Hurlbutt

Attorney for Plaintiff Idaho Conservation League