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

IDAHO CONSERVATION LEAGUE,)	No. 1:16-cv-25
IDAHO RIVERS UNITED, and)	
GOLDEN EAGLE AUDUBON SOCIETY)	COMPLAINT
)	
<i>Plaintiffs,</i>)	
)	
vs.)	
)	
U.S. FOREST SERVICE)	
)	
<i>Defendant.</i>)	

NATURE OF THE ACTION

1. This case concerns the U.S. Forest Service’s failure to adequately protect water quality and rare plant habitat in authorizing a private mining company to drill up to 259 exploration holes—each 1,500 to 3,000 feet deep—throughout 2,885 acres of forest in the headwaters of the Boise River.

2. Specifically, this action challenges the U.S. Forest Service's approval of the CuMo Exploration Project, a 5-year mine exploration project in the Boise National Forest, for violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Forest Service Organic Act. The Forest Service approved the Project through a Supplemental Decision Notice and Finding of No Significant Impact issued on September 30, 2015 ("Supplemental DN/FONSI"), based on a Supplemental Environmental Assessment ("Supplemental EA") issued in August 2015.

3. As approved in the Supplemental DN/FONSI, American CuMoCo Mining Corporation (CuMoCo) would clear vegetation to build over 10 miles of new roads and 137 drill pads to carry out the drilling. Road and drill pad construction, and other drilling activities, are authorized to take place in and near streams and riparian areas and within the habitat of a rare and sensitive plant species, Sacajawea's bitterroot.

4. The Project site is 14 miles north of Idaho City, Idaho, in the headwaters of Grimes Creek in the Boise River watershed. CuMoCo claims the site is the largest unmined molybdenum deposit in the world, and a source of copper and silver. The purpose of the Project is to gather mineral information to evaluate the feasibility of building an open-pit mine.

5. The Forest Service first approved the Project in 2011, but in prior litigation this Court reversed and remanded that approval for violating NEPA. *See Idaho Conservation League, et al. v. U.S. Forest Serv.*, No. 1:11-cv-00341-EJL, 2012 WL 3758161 (D. Idaho, Aug. 29, 2012). This Court ruled that the Forest Service failed to take a hard look at potential impacts of drilling on groundwater, and remanded to the

Forest Service for further evaluation—including whether to prepare a full Environmental Impact Statement (EIS).

6. On remand, the Forest Service has violated NEPA by again approving the Project without preparing a full EIS or taking a hard look at potential impacts, particularly impacts on water resources and Sacajawea's bitterroot.

7. In its new groundwater discussion, the Forest Service failed to conduct sufficient monitoring and surveys necessary to understand baseline groundwater conditions at the Project site. The discussion also failed to include basic information about CuMoCo's drilling program, such as how close drill holes would be to each other. As a result, the Forest Service failed to adequately assess and minimize potential adverse impacts of drilling on water quality, in violation of NEPA and the Organic Act.

8. The Forest Service also failed to protect Sacajawea's bitterroot, a rare flower known to exist in only about 30 locations, all in the mountains of central Idaho. Since 2011, important new information has come to light about Sacajawea's bitterroot, including that the Project site is home to the world's largest populations of the plant; that the long-term survival of this species is at risk due to climate change, mining activities, off-road vehicle use, and other threats; and that populations at the Project site are critical to the survival of the entire species.

9. Nevertheless, the Forest Service approved the Project without up-to-date baseline information on Sacajawea's bitterroot at the site, without disclosing and evaluating the impacts of CuMoCo's drilling activities, and without protecting its habitat, in violation of NEPA, NFMA, and the Organic Act.

10. The Forest Service should have gathered and disclosed missing information to shed light on the Project's potentially significant impacts to water quality and Sacajawea's bitterroot by preparing a full Environmental Impact Statement. But instead the Forest Service signed off on the Project using an EA and FONSI. Without this missing information, the Project's impacts highly uncertain and controversial, in violation of NEPA.

11. Based on these and other violations of law, Plaintiffs request that the Court set aside and vacate the Supplemental EA and Supplemental DN/FONSI, and enter other relief as prayed for below.

JURISDICTION AND VENUE

12. Jurisdiction is proper in this Court under 18 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 Forest Service 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. §§ 2212, 2214.

13. An actual, justiciable controversy exists between Plaintiffs and Defendants. The requested relief is therefore proper under 5 U.S.C. §§ 701–706 and 28 U.S.C. §§ 2201–2202.

14. Venue is properly vested in this 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 occurred within this judicial district, Plaintiffs and the Defendant are located in this district, and the public lands and resources in question are in this district.

15. The federal governments has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

PARTIES

16. Plaintiff IDAHO CONSERVATION LEAGUE is a non-profit conservation organization incorporated under the laws of Idaho with its principal place of business in Boise, Idaho. The Idaho Conservation League was founded in 1973 and has approximately 25,000 supporters. The Idaho Conservation League's mission is to protect Idaho's wild lands, clean water, clean air, healthy families, and quality way of life through citizen action, public outreach, education, advocacy, and litigation, among other efforts. The Idaho Conservation League and many of its supporters have a deep personal interest in protecting and restoring forests, native plants and wildlife, and water quality throughout the Boise National Forest and the Boise River watershed.

17. Plaintiff IDAHO RIVERS UNITED is a non-profit conservation organization incorporated under the laws of Idaho with its principal place of business in Boise, Idaho. Idaho Rivers United works to protect and restore Idaho's rivers and fish populations through public outreach, volunteer events, engagement with policy makers, and litigation. Idaho Rivers United has over 3,400 members, many of whom are dedicated to the health and sustainability of the Boise National Forest and the Boise River watershed.

18. Plaintiff GOLDEN EAGLE AUDUBON SOCIETY is Southwestern Idaho's chapter of the National Audubon Society. Golden Eagle Audubon Society is a non-profit with its principal place of business in Boise, Idaho. Since 1972, Golden Eagle Audubon Society has worked to preserve and protect Idaho's environment. The Golden

Eagle Audubon Society engages in public outreach, volunteer events, citizen science, and litigation to support both local and national conservation efforts. Golden Eagle Audubon Society supporters include avid birdwatchers dedicated to building an understanding and appreciation of the natural world throughout the Boise National Forest and Boise River watershed.

19. Plaintiffs have members, supporters, and staff who work, live, study, and recreate throughout Idaho, including areas of the Boise National Forest and the Boise River watershed that will be impacted by the CuMo Exploration Project. Plaintiffs' staff, members, and supporters use and enjoy the public lands and waters at and around the Project site for recreation, conservation, scientific, aesthetic, and other uses, and Plaintiffs will continue to do so in the future. These uses will be harmed or eliminated by the Project.

20. Moreover, the Forest Service's violations of NEPA, as alleged herein, injure Plaintiffs and their staff, members, and supporters by denying them the ability to adequately participate in the public review process and denying them information concerning potential environmental impacts and other issues that NEPA requires agencies to disclose, analyze, and seek public review of prior to authorizing the Project by issuing the Supplemental DN/FONSI and Supplemental EA.

21. Defendant U.S. FOREST SERVICE is an agency or instrumentality of the United States within the U.S. Department of Agriculture. The Forest Service is vested with the authority and duty to manage and protect the public lands and resources of the Boise National Forest.

22. Defendant's violations of law, as alleged herein, injure the aesthetic,

commercial, conservation, scientific, recreational, educational, wildlife preservation and/or other interests of Plaintiffs and their staff, supporters, and members. These are actual, concrete injuries caused by Defendant's violations of law, and the judicial relief sought would remedy, in whole or in part, Plaintiffs' injuries.

23. Plaintiffs' interests have been, are being, and will continue to be irreparably injured and harmed by Defendant's actions as challenged herein. Unless the relief prayed for herein is granted, Plaintiffs and the public will suffer irreparable harm and injury to their legally protected interests.

LEGAL BACKGROUND

A. The National Environmental Policy Act

24. The National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370(h), requires federal agencies to take a "hard look" at the environmental consequences of their proposed actions. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976); *Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998).

25. To take this "hard look," federal agencies must prepare an EIS for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). An agency may avoid an EIS only if it finds, after preparing an environmental assessment (EA), that the action will have "no significant impact," in which case the agency may issue a finding of no significant impact (FONSI). 40 C.F.R. §§ 1501.4(b), 1508.9 & 1508.913. The standard for when an agency must prepare an EIS is a "low standard." *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006).

26. NEPA's purpose is "to foster excellent action," and the "NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." 40 C.F.R. § 1500.1(c). The NEPA process requires that "environmental information is available to public officials and citizens before decisions are made and before actions are taken." *Id.* at § 1500.1(b). Information agencies are required to gather and disclose during the NEPA process "must be of high quality." *Id.* "Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." *Id.*

27. The scope of NEPA review is quite broad. In an EA, a federal agency must consider alternatives to the proposed action and evaluate and disclose environmental impacts. *Id.* at § 1508.9. Impacts include direct, indirect, and cumulative effects of the proposed action and its alternatives on ecological, aesthetic, historic, cultural, economic, social, and health interests. *Id.* at §§ 1508.7 & 1508.8. Cumulative effects 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.*

B. The Forest Service Organic Act of 1897

28. The Organic Act requires the Forest Service "to regulate [the] occupancy and use [of national forests] and to preserve the forests thereon from destruction." 16 U.S.C. § 551. The U.S. Forest Service's mining regulations require that "all [mining]

operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest resources.” 36 C.F.R. 228.4(c)(3). The Organic Act also requires that those persons “prospecting, locating, and developing the mineral resources [in a national forest] . . . must comply with the rules and regulations covering such national forests.” 16 U.S.C. § 478. While the Forest Service cannot categorically deny a miner’s plan of operations, it must reject an unreasonable plan and prohibit mining activity until appropriate evaluation of the plan is completed and reasonable mitigation measures are in place.

C. The National Forest Management Act & the Boise Forest Plan

29. NFMA requires the Forest Service to prepare a land and resource management plan (commonly called a “forest plan”) for each national forest including standards and guidelines for how the forest shall be managed. 16 U.S.C. §§ 1604(a), (e) & (g)(3)(B). NFMA and its implementing regulations require that all management actions approved by the Forest Service must be consistent with the governing forest plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e).

30. Under NFMA and its implementing regulations, the Forest Service has a duty to “provide for diversity of plant and animal communities” in its forest plans. 16 U.S.C. § 1604(g)(3)(B); 36 C.F.R. § 219.9. To accomplish this, the forest plan “must include plan components to maintain or restore” rare plant communities and “maintain a viable population of each species of conservation concern within the plan area”, among other requirements. 36 C.F.R. § 219.9(a)(2) & (b)(1).

31. Department of Agriculture Regulation 9500-4 directs the Forest Service to manage “habitats for all existing native and nonnative plants, fish, and wildlife species in

order to maintain at least viable populations of such species” and to avoid actions “which may cause a species to become threatened or endangered.” Under this directive, the Forest Service has adopted a sensitive species policy, instructing the agency to:

. . . .

2. Review programs and activities as part of the [NEPA] process through a biological evaluation, to determine their potential effect on sensitive species.

3. Avoid or minimize impacts to species whose viability has been identified as a concern.

4. Analyze, if impacts cannot be avoided, the significance of potential adverse effects on the population or its habitat within the area of concern and on the species as a whole. (The line officer, with project approval authority, makes the decision to allow or disallow impact, but the decision must not result in loss of species viability or create significant trends toward federal listing.)

5. Establish management objectives in cooperation with the states when projects on National Forest System lands may have a significant effect on sensitive species population numbers or distributions. . . .

Forest Service Manual, 2670.32.

32. The Forest Service has adopted a revised forest plan for the Boise National Forest, which contains standards and guidelines for managing mineral resources and protecting the environment. *Boise National Forest Land and Resource Management Plan* (amended 2010) (hereafter “Boise Forest Plan” or “Forest Plan”). Forest Plan “standards” place “binding limitations” on the Forest Service’s management actions. *Boise Forest Plan* at III-3. Forest Plan “guidelines” represent a “preferred or advisable

course of action”, and “rationale for deviation [from a guideline] should be documented in the project decision document.” *Id.*

33. The Boise Forest Plan includes standards and guidelines to protect botanical resources, including Forest Service-designated “sensitive species.” Sacajawea’s bitterroot is a Forest Service sensitive plant species. The Boise Forest Plan’s first standard for protecting botanical resources (labeled “BTST01”) mandates: “Management actions that occur within occupied sensitive plant species habitat must incorporate measures to ensure habitat is maintained where it is within desired conditions, or restored where degraded.” *Id.* at III-35. The Boise Forest Plan’s first guideline for protecting botanical resources (labeled “BTGU01”) instructs: “For site/project-scale analysis, suitable habitat should be determined for Sensitive species within or near the project area. Conduct surveys for those species with suitable habitat to determine presence.” *Id.* at III-36.

STATEMENT OF FACTS

A. History of the Project

34. On February 14, 2007, private mining company Mosquito Consolidated Gold Mines Limited (now CuMoCo) submitted an application to the Forest Service seeking approval of a plan—called the “CuMo Exploration Project”—to explore for molybdenum, copper, and other minerals in the Boise National Forest. The 5-year mineral exploration Project would occur on approximately 2,885 acres of land in the headwaters of Grimes Creek in the Boise River watershed, approximately 14 miles north of Idaho City in Boise County, Idaho.

35. In response to this proposal, the Forest Service undertook a NEPA analysis and approved the Project in February 2011, when it issued a Decision Notice and Finding of No Significant Impact (“DN/FONSI”) based on an Environmental Assessment (“EA”).

36. The approval authorized CuMoCo to clear land to build 10.2 miles of new roads, four new stream crossings, and 137 drill pads in the Boise National Forest. From the drill pads, CuMoCo would drill a total of up to 259 drill holes to acquire detailed geologic data. Each drill hole would penetrate 1,500 to 3,000 deep. At each drill pad, CuMoCo would construct waste pits to hold drilling fluids. CuMoCo would operate between April 15 and December 15 each year, and during operations, CuMoCo would operate four drill rigs around the clock.

37. In July 2011, Plaintiffs filed a complaint in this Court, challenging the Forest Service’s approval of the Project. *See Idaho Conservation League, et al. v. U.S. Forest Serv.*, No. 1:11-cv-00341-EJL (hereafter “*ICL v. U.S. Forest Service*”). In August 2012, the Court issued a decision, finding that the Forest Service violated NEPA by failing to take a hard look at water quality impacts that could result from CuMoCo’s drilling program and failing to provide a convincing statement of reasons that an EIS is not required, but rejecting Plaintiffs’ other claims. *See ICL v. U.S. Forest Serv.*, 2012 WL 3758161 at *16–17 (D. Idaho Aug. 29, 2012).

38. As the Court explained: “The very nature of drilling holes 1,500 to 3,000 feet into the ground seems likely to impact the underlying surface including the groundwater. The appropriate course would be for the Forest Service to have conducted some baseline study and analysis of the groundwater in the area in order to reach the

finding of no significant impact.” *Id.* at 16. The decision found that the Forest Service was arbitrary and capricious in determining that the Project would have no significant impacts to groundwater, because it “inappropriately relie[d] upon mitigation measures to satisfy NEPA’s obligations” instead of providing any “baseline data, analysis, and monitoring of groundwater.” *Id.* at *16–17.

39. Accordingly, the Court vacated the portion of the EA dealing with groundwater and remanded to the Forest Service “to undertake further analysis concerning groundwater and determine whether to issue a supplemental EA or if a full EIS is required.” *Id.* at *18.

40. In the interim period between the Forest Service’s approval of the Project and the decision vacating that approval, CuMoCo carried out approximately 1 year of exploration. During that time, CuMoCo constructed 1.53 miles of new road, reconstructed 5 drill pads, and drilled 7 holes at the Project site.

B. The Forest Service’s Latest Approval of the Project

41. Rather than prepare a full EIS, the Forest Service decided to move forward with preparation of a Supplemental EA for the CuMo Exploration Project to undertake groundwater analysis and to address new information since the 2011 DN/FONSI was issued.

42. In August 2013, the Forest Service issued a “Review Supplemental EA” for public comment. The Review Supplemental EA included new sections and information related to drilling and water quality, as well as new information about Sacajawea’s bitterroot, emergency response procedures, and fuel transport, among other issues.

43. In September 2013, Plaintiffs submitted extensive comments to the Forest Service regarding the Review Supplemental EA. And in March 2015, the Forest Service issued a final Supplemental EA and a Draft Supplemental DN/FONSI. The Supplemental EA included additional new material regarding Sacajawea's bitterroot and fuel transport.

44. In July 2015, Plaintiffs submitted timely administrative objections, pointing out numerous flaws with the Supplemental EA and Draft Supplemental DN/FONSI, and raising concerns with CuMoCo's proposed drilling program. In response, the Forest Service's Objection Reviewing Officer instructed the Forest Service to provide some additional clarification and/or supporting references from the Supplemental EA and project record to better support the Draft Supplemental DN/FONSI; however, Plaintiffs' objections and proposed remedies were mostly denied.

45. On September 30, 2015, Cecilia R. Seesholtz, Forest Supervisor for the Boise National Forest, signed the Supplemental DN/FONSI, again authorizing the five-year CuMo Exploration Project and declining to prepare an EIS.

46. As before, CuMoCo is authorized to clear land to build up to 10.2 miles of new roads, four new stream crossings, and 137 drill pads, including within Sacajawea's bitterroot habitat; to drill up to 259 drill holes, each of which would penetrate 1,500 to 3,000 feet deep; to construct waste pits to hold drilling fluids and drill waste at each drill pad; and to simultaneously operate up to four drill rigs around the clock during the exploration season between April 15 and December 15.

C. Drilling Impacts to Water Quality

47. Because the Forest Service had failed, in the 2011 EA and DN/FONSI, to “address concerns regarding the lack of baseline data, analysis, and monitoring of groundwater,” this Court remanded the matter to the Forest Service “to undertake further analysis concerning groundwater and determine whether to issue a supplemental EA or if a full EIS is required.” *ICL v. U.S. Forest Serv.*, 2012 WL 3758161 at *17–18.

48. In response to that direction, the Forest Service declined to prepare a full EIS. Instead, the Forest Service supplemented the “Water Quality” subchapter of the EA, adding new sections which purport to describe existing groundwater conditions, analyze direct and indirect effects to groundwater from CuMoCo’s drilling, and analyze cumulative impacts to groundwater. However, the information and analysis in these sections is general and incomplete; and fails to fulfill the Forest Service’s NEPA obligations.

49. With respect to baseline groundwater conditions, the Supplemental EA lacks on-the-ground information. The Supplemental EA admits that “[s]pecific information on hydrogeologic units and aquifer systems is lacking within the Project Area,” and “[g]roundwater quality data from within or adjacent to the Project Area are limited.” *Supplemental EA* at 101, 110. Instead of going out and gathering site-specific information during the last 3 years, the Forest Service simply relied on general information plus the limited site-specific information it already had.

50. The Forest Service also failed to follow the instructions set forth in its own 2014 guidance document, *Working Guide: Evaluating Groundwater Resources for Mineral Exploration Drilling*. The stated purpose of the *Working Guide* “is to enable

field units to conduct adequate analyses of groundwater resources and potential effects to those resources using local expertise.” *Working Guide*, Preface. Among other instructions, the *Working Guide* notes that seeps and springs mapping should be used to explain groundwater depths. But the Forest Service never mapped seeps and springs at the Project site, omitting this information from the baseline description.

51. With respect to evaluating the direct, indirect, and cumulative impacts of CuMoCo’s drilling on groundwater, the Forest Service failed to provide quantified and detailed information sufficient to support the Finding of No Significant Impact. The Forest Service also overlooked important details from CuMoCo’s drilling plans in its effects analysis. For example, the *Working Guide* states: “A description of the type of drilling proposed . . . , the drilling materials/fluids that will be used, and the anticipated location, number, depth, and spacing of drill holes is essential for understanding the potential effects on groundwater.” *Working Guide* at 2 (emphasis added). But the Supplemental EA does not provide any information on CuMoCo’s anticipated location and spacing of drill holes, and never assesses the hydrological impacts of drill holes being clustered near one another.

D. Impacts to Sacajawea’s Bitterroot

52. Sacajawea’s bitterroot (*Lewisia sacajaweanana* or “LESA”) is a species new to science and the first plant species to be named in honor of Sacajawea. Sacajawea’s bitterroot is a small, ground-hugging perennial herb found in montane and subalpine openings, most commonly near ridge crests and associated upper slopes at elevations from 6,000 to 9,300 feet. Plants consist of a rosette of succulent leaves that emerge shortly after snowmelt, soon followed by the appearance of one or a few small white

flowers within the rosette of leaves at the ground surface. All above-ground signs of the plant disappear during or soon after flowering.

53. Sacajawea's bitterroot is endemic to the mountains of central Idaho, with approximately 30 known occurrences. The majority of Sacajawea's bitterroot populations have less than 2,000 plants. Eighty percent of known populations are in the Boise National Forest.

54. Sacajawea's bitterroot is the highest priority rare plant species managed by the Boise National Forest. Sacajawea's bitterroot is a designated "Sensitive Species" in the Boise National Forest. It is also classified as "Critically Imperiled" with a Global and State ranking of G1/S1—the highest rank possible.

55. Information regarding the size and significance of the Sacajawea's bitterroot population within the CuMo Exploration Project site has changed substantially since the 2011 EA. Previously estimated at around 1,500 plants, surveys in 2011 found much larger onsite populations, estimated at over 13,000 plants. This is largest concentration of Sacajawea's bitterroot in the world and it represents more than a third (38.3 percent) of all known Sacajawea's bitterroot plants. Only one other site of Sacajawea's bitterroot supports more than 4,000 plants. And since the Project site is found at the southern periphery of the species' range, this population is considered to likely be genetically distinct and unique. Due to the relatively large size of the population at the Project site, the Forest Service determined that the Project site probably contains the "majority of genetic variation for the species as compared to other sites."

Supplemental EA at 147.

56. In the Supplemental EA, the Forest Service paints a grim picture for the survival of Sacajawea's bitterroot, both at the CuMo site and across the species' range. The Forest Service notes that the CuMo site "is considered to be a stronghold for the species' future persistence," but warns that "given the extremely small amount of actual occupied habitat . . . the CuMo [Sacajawea's bitterroot] population remains at risk of extirpation from stochastic events including human disturbance and environmental stressors in the future." *Id.* at 149.

57. The Supplemental EA identifies many such sources of human disturbance and environmental stressors. For example, the Supplemental EA admits that many of CuMoCo's approved exploration activities—including road and drill pad construction, drilling activities, road maintenance, reclamation, and vehicle travel—cause adverse effects to Sacajawea's bitterroot populations by causing direct destruction, habitat fragmentation, facilitating the spread of exotic weeds, and otherwise degrading plant habitat and harming critical pollinators. Furthermore, the Supplemental EA finds Sacajawea's bitterroot's "vulnerability to climate change is high," *id.* at 148, and "any future rise in snowline could impact the viability of this population," *id.* at 149. The Forest Service also explains that the majority of Sacajawea's bitterroot habitat at the CuMo site is "highly susceptible" to invasion by exotic (non-native) weeds.

58. In light of these conditions and threats, the Supplemental EA admits: "Given the current degraded conditions at the CuMo site plus the inherent issues with pollination, climate change, and genetic factors, further reductions in the CuMo [Sacajawea's bitterroot] population size and/or impacts to pollinators would be expected to result in reduced reproduction and population persistence." *Id.* at 155. The

Supplemental EA also recognizes that, “because the CuMo population in the Project Area is the largest known LESA population in the world, impacts to the CuMo population can affect the viability of the species.” *Id.* at 139. And the Supplemental EA warns: “Even if additional [Sacajawea’s bitterroot] populations are discovered in the future, this species will remain an extremely rare taxon of high conservation concern and vulnerable to numerous natural and manmade threats.” *Id.* at 147.

59. Despite the significant adverse impacts CuMoCo’s exploration activities could have to Sacajawea’s bitterroot at the site, and in turn to the species as a whole, the Forest Service never evaluated the likely impacts of CuMoCo’s activities. While the Forest Service explained that many of CuMoCo’s approved activities would directly and indirectly harm plants and their habitat, cause fragmentation, and disrupt pollinators, it provided no quantified or detailed analysis for any of these.

60. For example, the Forest Service never estimated how many acres of roads and drill pads CuMoCo could build in occupied and suitable Sacajawea’s bitterroot habitat, or how many individual plants could be impacted by these activities. The Forest Service provided no estimate of the amount of habitat fragmentation that could occur. The Forest Service never estimated how much dust could be generated by CuMoCo’s construction and use of roads and drill pads, and what the impact could be to pollinators. And the Forest Service provided no detailed information on the extent to which the Project could further the spread of invasive weeds.

61. All of this information was available or could be readily gathered by the Forest Service. But instead, the Forest Service simply claimed—without adequate scientific and evidentiary support—that the Project’s effects on Sacajawea’s bitterroot

will range from “no impact” to “may impact individuals, but would not likely contribute to a trend toward federal listing or loss of viability of populations or species.” *Id.* at 172.

62. Unfortunately, on top of these threats, a wildfire (the “Grimes Fire”) burned through the Project site in July 2014, when Sacajawea’s bitterroot plants were likely still actively growing or in their very early stages of dormancy. To battle the fire, a large fire line was plowed through the Project site. The fire and associated fire line construction passed through the densest Sacajawea’s bitterroot habitat at the Project site, which encompasses approximately 75 percent of known plants at the site.

63. According to the Supplemental EA, the impact that the Grimes Fire had on individual plants, suitable habitat, and pollinators is not yet known, but may have been severe. But instead of taking the time to resurvey the site and establish an up-to-date baseline of Sacajawea’s bitterroot, the Forest Service approved the Project to go forward now without knowing the actual impacts of the fire. And despite the fact that 75 percent of known plants at the Project site have been adversely affected and even destroyed—a significant portion of all Sacajawea’s bitterroot in the world—the Forest Service downplayed the cumulative impacts of the fire and fire line construction and made no change to its vague assertion that impacts from the Project would be insignificant.

FIRST CLAIM FOR RELIEF:
NEPA & APA Violations for Inadequate EA/FONSI

64. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

65. This first claim challenges the Forest Service’s violations of the NEPA, 42 U.S.C. § 4321 *et seq.*, and NEPA’s implementing regulations, by authorizing the CuMo Exploration Project based on the defective Supplemental EA and Supplemental DN/FONSI without taking a “hard look” at potential impacts as required by NEPA.

Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

66. As alleged hereinabove, and as will be presented in further briefing before the Court, the Supplemental EA and Supplemental DN/FONSI are based upon unsupported assumptions, errors, and omissions which render them grossly deficient under NEPA, including but not limited to the following:

- (a) Failing to gather site-specific information to adequately characterize baseline groundwater conditions at the CuMo site;
- (b) Ignoring CuMoCo's exploration plans, including proposed drilling locations, and other important information when assessing the potential adverse impacts to groundwater and water quality;
- (c) Failing to conduct an up-to-date baseline survey of Sacajawea's bitterroot at the Project site in the aftermath of the 2014 Grimes Fire and associated fire suppression activities;
- (d) Failing to consider or disclose the numbers/amounts of individual Sacajawea's bitterroot plants, suitable habitat, and pollinator habitat that could be impacted by CuMoCo's road and drill pad construction and other exploration activities, and failing to provide any other quantified or detailed information regarding the extent of direct destruction, habitat fragmentation, the spread of invasive weeds, dust generation, and other adverse impacts that could result;
- (e) Failing to follow instructions in its own sensitive species policy (Forest Service Manual, 2670.32) to determine potential effects to Sacajawea's

bitterroot and analyze the effects of unavoidable impacts;

- (f) Failing to adequately evaluate the direct, indirect, and cumulative impacts to groundwater and Sacajawea's bitterroot from the Project, connected actions, and other past, present, and reasonably foreseeable actions; and
- (g) Improperly relying on post-approval monitoring and mitigation as a substitute for gathering baseline information and evaluating potential impacts in the Supplemental EA and Supplemental DN/FONSI regarding groundwater and Sacajawea's bitterroot.

67. Because the Forest Service violated NEPA's requirements in relying on the defective Supplemental EA and Supplemental DN/FONSI, its action approving the CuMo Exploration Project 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, Plaintiffs pray for relief as set forth below.

SECOND CLAIM FOR RELIEF:
NEPA & APA Violations for Failure to Prepare an EIS

68. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

69. This second 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, by authorizing the CuMo Exploration Project without preparing a full Environmental Impact Statement. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

70. NEPA requires federal agencies to prepare a full EIS for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Under NEPA’s implementing regulations, “significance” requires an evaluation of both the “context” of the action and its “intensity.” “Context” means that “the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality.” 40 C.F.R. §1508.27(a)–(b). “Intensity” refers to the “severity of impact.” *Id.*, § 1508.27(b). Factors relevant to this determination include impacts that may be both beneficial and adverse; the degree of impact on public safety; unique characteristics of the geographic area; whether the proposed action is highly controversial; whether the proposed action involves highly uncertain or unknown risks; whether the action will set a precedent for future actions; whether there will be cumulatively significant impacts; and whether the action threatens a violation of other federal or state laws, policies, or requirements. *Id.*

71. As alleged hereinabove, and as will be presented in detail in further briefing before the Court, the Forest Service’s approval of the CuMo Exploration Project is a major federal action significantly affecting the quality of the human environment and requires preparation of a full EIS under NEPA for many reasons, including but not limited to:

- (a) The direct, indirect, and cumulative impacts to groundwater and water quality at the Project site are highly controversial, unknown, and/or uncertain and may significantly impact Upper Grimes Creek and its tributaries, all of which flow to the Boise River; and
- (b) The direct, indirect, and cumulative impacts to Sacajawea’s bitterroot are

highly controversial, unknown, and/or uncertain and may significantly impact Sacajawea's bitterroot populations at the Project site—which include more than one-third of all plants in the world—and the species as a whole.

72. Because the Forest Service violated NEPA's requirements by approving the CuMo Exploration Project through the Supplemental EA and Supplemental DN/FONSI and failing to prepare an EIS, its action 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, Plaintiffs pray for relief as set forth below.

THIRD CLAIM FOR RELIEF:
NFMA & APA Violations For Failing To Comply With Forest Plan

73. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

74. 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 failing to comply with the Boise Forest Plan. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

75. NFMA and its implementing regulations require that all management actions approved by the Forest Service must be consistent with the governing forest plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e). The Boise Forest Plain includes binding standard "BIST01", which mandates that Forest Service actions "that occur within occupied sensitive plant species habitat must incorporate measures to ensure habitat is maintained where it is within desired conditions, or restored where degraded."

76. As alleged hereinabove, and as will be presented in detail in further briefing before the Court, the Forest Service's approval of the CuMo Exploration Project is inconsistent with BIST01 for many reasons, including but not limited to:

- (a) Allowing mineral exploration activities without knowing the full extent of occupied Sacajawea's bitterroot habitat at the Project site, without identifying occupied habitat that is within desired conditions, and without identifying degraded habitat;
- (b) Failing to ensure occupied Sacajawea's bitterroot habitat in desired conditions is maintained, and instead authorizing road and drill pad construction and other degrading activities in and near occupied Sacajawea's bitterroot habitat; and
- (c) Failing to ensure occupied, degraded Sacajawea's bitterroot habitat is restored.

77. Additionally, the Forest Service failed to follow Boise Forest Plan Guideline BTGU01, by failing to conduct up-to-date surveys of Sacajawea's bitterroot habitat and plant presence, without providing a rationale in the Supplemental DN/FONSI.

78. The Forest Service's approval of the CuMo Exploration Project is thus 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, Plaintiffs pray for relief as set forth below.

FOURTH CLAIM FOR RELIEF:
Organic Act & APA Violations for Failure to Minimize Impacts

79. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

80. This fourth claim challenges the Forest Service's violations of the Organic Act, 16 U.S.C. § 473 *et seq.*, and its implementing regulations, by approving the CuMo Exploration Project without minimizing impacts to forest resources. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

81. 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 U.S. Forest Service's mining regulations require that "all [mining] operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest resources." 36 C.F.R. 228.4(c)(3).

82. As alleged hereinabove, and as will be presented in detail in further briefing before the Court, the Forest Service's approval of the CuMo Exploration Project fails to minimize adverse environmental impacts of the Project for many reasons, including but not limited to:

- (a) Failing to take reasonable measures to avoid and/or mitigate impacts to groundwater and water quality from drilling approximately 250 exploratory holes up to 3,000 feet deep throughout the Project site;
- (b) Failing to take reasonable measures to avoid and/or mitigate adverse impacts to Sacajawea's bitterroot from building and using roads and drill pads in and adjacent to occupied and suitable Sacajawea's bitterroot habitat; and

(c) Failing to comply with the Forest Service's own sensitive species policy (Forest Service Manual, 2670.32) and Department of Agriculture Regulation 9500-4 by failing to maintain viable populations of Sacajawea's bitterroot, failing to avoid actions which may cause Sacajawea's bitterroot to become threatened or endangered, and failing to establish management objectives for a project which may have a significant effect on Sacajawea's bitterroot population numbers or distributions.

83. The Forest Service's approval of the CuMo Exploration Project is thus 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, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

A. Order, declare, and adjudge that the Forest Service's Supplemental EA and Supplemental DN/FONSI approving the CuMo Exploration Project are 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 Supplemental EA and Supplemental DN/FONSI;

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

D. Award Plaintiffs their reasonable costs, litigation expenses, and attorney 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 Defendant's violations of law and protect the public interest.

Dated this 15th day of January, 2016.

Respectfully submitted,

/s/ Bryan Hurlbutt
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