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

IDAHO RIVERS UNITED, and)	
MORGAN and OLGA WRIGHT,)	No. 3:15-cv-169-BLW
)	
<i>Plaintiffs,</i>)	PLAINTIFFS’ MOTION FOR
)	TEMPORARY RESTRAINING
vs.)	ORDER AND/OR PRELIMINARY
)	INJUNCTION
DISTRICT RANGER JOE HUDSON)	
in his official capacity, and UNITED)	<u>Expedited Treatment Requested:</u>
STATES FOREST SERVICE,)	<u>Relief Needed Before July 6, 2015</u>
)	
<i>Defendants.</i>)	

Plaintiffs Idaho Rivers United and Morgan and Olga Wright respectfully move this Court, pursuant to Fed. R. Civ. P. 65, for entry of a temporary restraining order and/or preliminary injunction ordering Defendants U.S. Forest Service and District Ranger Joe Hudson to notify proposed Intervenor Idaho State Board of Land Commissioners and Idaho Department of Lands (jointly, “IDL”) that IDL is not authorized to use of Forest Road 652 on

the Nez Perce National Forest for any activities associated with IDL's Selway Fire timber sale and road construction project. (If necessary, Plaintiffs also seek injunctive relief against the IDL to prohibit it from proceeding with sale activities utilizing Forest Road 652 pending resolution of this case).¹

As alleged in the Complaint filed in this matter on May 19, 2015 (*Docket No. 1*), Plaintiffs challenge the November 20, 2014 determination by Defendants that Forest Road 652 is a "public road," and hence the IDL need not obtain a special use permit or authorization under Forest Service regulations to use the road for access to IDL's Selway Fire timber sale. IDL plans to construct over 3 miles of new road up very steep slopes near the banks of the Selway River, within the Selway River Wild and Scenic River Corridor, and clearcut some 6.9 million board feet of timber. IDL will use Forest Road 652 as the sole access for heavy equipment and logging trucks conducting the site preparation, road construction, logging, and timber removal.

Despite knowledge of this litigation and their motion to intervene, IDL auctioned the Selway Fire sale on June 19, 2015. IDL's counsel has advised Plaintiffs that its contractor will begin working on the sale project beginning July 6, 2015. Specifically, counsel for IDL advised Plaintiffs' counsel that: "IDL anticipates that [the contractor] will be moving/transporting fallers/chainsaws to the site during the week of July 6 to begin work on the state parcel portion of the access route and then move road building equipment (dozer/excavator, dump trucks, etc.) on site during the week of July 13 to start the actual road construction work." *See* accompanying Declaration of Deborah Ferguson. Accordingly, Plaintiffs request expedited treatment of this motion and a decision by the Court prior to July 6, 2015 in order to preserve

¹ Plaintiffs have filed a Statement of Non-Opposition to IDL's Motion To Intervene in this case. *See Docket Nos. 3 & 5.*

the status quo and avoid irreparable harm pending adjudication of this case.

As detailed in the accompanying Plaintiffs' Opening Brief In Support Of Motion For Temporary Restraining Order And/or Preliminary Injunction, and in the accompanying Declarations of Morgan Wright, Kevin Lewis, and Daryl Mullinix, immediate injunctive relief is necessary because Plaintiffs will suffer certain irreparable harms if injunctive relief is not granted, including deprivation of their procedural rights to participate in the Forest Service's determination regarding Forest Road 652 and its NEPA evaluation of a special use permit application for IDL's proposed use of the road; impairment or destruction of scenic, aesthetic, recreational, and other values associated with the federally-protected Selway Wild and Scenic River corridor; extensive equipment traffic on Forest Road 652 within the Wild and Scenic corridor and through Plaintiff Wrights' property, interfering with the Wrights' quiet use and enjoyment of their property; and potentially catastrophic impacts to the Wrights' property, the Wild and Scenic River corridor, and the Selway River itself due to mass erosion triggered by IDL's planned road construction and/or clearcutting activities.

As further explained in the Complaint and accompanying brief and declarations, injunctive relief is also appropriate because Plaintiffs are likely to prevail on their claim challenging the Forest Service's November 20, 2014 determination that Forest Road 652 is a "public road," and hence no special use permit is required for IDL's Selway Fire project activities using the road. The undisputed facts show that Forest Road 652 does not qualify as a "public road" under the Forest Service Manual's definitions; and it has never previously been designated as a "public road" before the November 20th determination challenged in this case. Further, the November 20th determination violates the Forest Service's 1977 Wild and Scenic easement encumbering the Wrights' property (including over Forest Road 652), which bars

industrial and commercial activities, such as those associated with IDL's sale activities.

Plaintiffs also request that the Court waive any bond requirement under Rule 65(c) or impose a minimal bond, not exceeding \$100, in light of the public interest nature of this proceeding and to ensure Plaintiffs' access to judicial relief. *Cal. ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985); *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999).

WHEREFORE, Plaintiffs respectfully move the Court to grant this motion on an expedited basis, and enjoin Defendants and/or the proposed IDL Intervenors from allowing or undertaking any use of Forest Road 652 for activities associated with IDL's Selway Fire sale, pending resolution of this litigation.

Dated this 24th day of June, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2015, I caused the foregoing PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY

INJUNCTION, along with the accompanying PLAINTIFFS' OPENING BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION, and the accompanying DECLARATIONS OF DEBORAH FERGUSON, MORGAN WRIGHT, KEVIN LEWIS, and DARYL MULLINIX (plus all attachments thereto) to be electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the counsel of record listed below:

CLAY R. SMITH
Deputy Attorney General
State of Idaho
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SHASTA KILMINSTER-HADLEY
Deputy Attorney General
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shasta.k-hadley@ag.idaho.gov

I further certify that I sent, via email, true and correct copies of the foregoing documents on this date to Christine England, Assistant U.S. Attorney, District of Idaho, whom I am informed is representing Federal Defendants in this matter (but has not yet entered a Notice of Appearance) addressed to:

Christine England
christine.england@usdoj.gov

/s/ Laird J. Lucas
Laurence ("Laird") J. Lucas