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

WILDERNESS WATCH; GREAT OLD
BROADS FOR WILDERNESS; FRIENDS
OF THE CLEARWATER; and FRIENDS
OF THE BITTERROOT,

Plaintiffs,

v.

LINDA JACKSON, Forest Supervisor of
the Payette National Forest; MARY
FARNSWORTH, Regional Forester for the
Intermountain Region; and UNITED
STATES FOREST SERVICE, an agency
of the U.S. Department of Agriculture,

Defendants.

Case No. 1:23-cv-295

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1. Plaintiffs Wilderness Watch, Great Old Broads for Wilderness, Friends of the Clearwater, and Friends of the Bitterroot challenge actions by Federal Defendants U.S. Forest Service *et al.* to unlawfully permit, promote, facilitate and carry out maintenance of facilities for

private aircraft landings within the Big Creek watershed of the Frank Church-River of No Return Wilderness in central Idaho.

2. The Frank Church-River of No Return Wilderness was established by the 1980 Central Idaho Wilderness Act (CIWA), under the general provisions of the Wilderness Act of 1964. Both the Wilderness Act and CIWA forbid aircraft landings within the Frank Church-River of No Return Wilderness, with only narrow, specific exceptions, and direct the Forest Service to protect and preserve its wilderness character.

3. Contrary to the directives of the CIWA and Wilderness Act, the number and frequency of private aircraft landings at four locations in the Big Creek drainage—called Simonds, Vines, Mile Hi, and Dewey Moore and collectively known as the “Big Creek Four”—have exploded in recent years, due in part to the Forest Service’s actions challenged in this Complaint.

4. The Big Creek Four have become increasingly popular with hobby pilots, conducting touch-and-go landings that are an ever-present disturbance, particularly in summer months. Aviation groups and State of Idaho agencies increasingly promote and use remote backcountry landing destinations in the Big Creek drainage for motorized recreation pleasure and for wolf hunting efforts.

5. Increasing aircraft use of the Big Creek Four is impairing wilderness character, disturbing wildlife, increasing human impact, and interrupting the statutorily-protected solitude and undeveloped nature of the Frank Church-River of No Return Wilderness. Aircraft landings at these locations are unlawful, as they meet none of the narrow criteria in CIWA’s special provision that excepted some aircraft access from the Wilderness Act’s ban.

6. The Forest Service has encouraged and promoted this expanded unlawful activity within the Frank Church-River of No Return Wilderness, including through a directive issued by the Regional Forester that adopted a policy of allowing the public to land at the Big Creek Four without restriction, as well as through the issuance of landing strip maintenance plans designed to facilitate the unlawful landings. The Forest Service's actions have ignored or contradicted its prior findings that the Big Creek Four were not among the few aircraft access points grandfathered in by CIWA and should be restored to their natural condition. Instead, the Forest Service's actions have and will continue to maintain these airstrips beyond the conditions that existed in 1980 when the Frank Church-River of No Return Wilderness was designated, in direct conflict with CIWA and its wilderness management plan.

7. Plaintiffs thus seek declaratory and injunctive relief holding unlawful the Forest Service's actions to authorize landings and otherwise promote the use, development, and maintenance of the Big Creek Four.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*; the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*; the National Forest Management Act (NFMA), 16 U.S.C. § 1600 *et seq.*; the Wilderness Act, 16 U.S.C. § 1131 *et seq.*; and CIWA, P.L. 96-312. The requested relief is proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

9. The federal government waived sovereign immunity and the challenged agency actions are final and subject to judicial review under 5 U.S.C. §§ 702, 704, and 706.

10. Venue in this case is proper in this District under 28 U.S.C. § 1391(e)(1) because Defendant Linda Jackson, the Forest Supervisor for the Payette National Forest, has her office in this District, and all the events giving rise to the claims in this action occurred in this District.

PARTIES

11. Plaintiff Wilderness Watch is a non-profit conservation organization whose mission is the preservation and stewardship of lands and rivers in the National Wilderness Preservation System and the National Wild and Scenic Rivers System. To that end, since 1989, Wilderness Watch has engaged in public policy advocacy, congressional and agency oversight, public education, and litigation to promote sound stewardship of federal Wilderness areas and Wild and Scenic River corridors. Wilderness Watch is headquartered in Missoula, Montana, and has staff in Idaho and Minnesota. Wilderness Watch has a long history of advocacy to preserve the wilderness character of the Frank Church-River of No Return Wilderness.

12. Plaintiff Great Old Broads for Wilderness is a national grassroots organization, led by women, that engages in and inspires activism to preserve and protect wilderness and wild lands. Conceived by older women who love wilderness, Great Old Broads for Wilderness gives voice to the millions of Americans who want to protect their public lands as Wilderness for this and future generations. Great Old Broads for Wilderness has over 10,000 members and supporters, including the Idaho-Palouse chapter that conducts stewardship projects and advocates for the protection of public lands in Idaho's Salmon River country and the Frank Church-River of No Return Wilderness.

13. Plaintiff Friends of the Clearwater is a non-profit grassroots advocacy group that works to protect and preserve the public wildlands, wildlife, and waters in and around the Clearwater Basin of north-central Idaho. Friends of the Clearwater was established in 1987 to

defend the Idaho Clearwater Bioregion's wildlands and biodiversity, and the organization has about 800 members in north-central Idaho and across the country. Friends of the Clearwater's members include biologists, outfitters, recreationists, and researchers who observe, enjoy, and appreciate Idaho's native wildlife, water quality, and quality of terrestrial habitat as well as wilderness and the unroaded character of the bioregion. Friends of the Clearwater engages in monitoring, administrative advocacy, public engagement, and litigation, when necessary, to protect areas including the Frank Church-River of No Return Wilderness from threats to wildlife habitat and wilderness character and from other environmental degradation.

14. Plaintiff Friends of the Bitterroot is a tax-exempt, non-profit public interest organization dedicated to preserving and protecting the wildlands, wildlife, forests, and watersheds in the Bitterroot National Forest, surrounding national forests and the Bitterroot Valley and works toward a sustainable relationship with the environment in these places. Friends of the Bitterroot's registered office is located in Hamilton, Montana. Friends currently has 397 individual members, many of whom live near and/or regularly recreate in the Frank Church-River of No Return Wilderness. Over many years, Friends of the Bitterroot and its individual members have been involved in monitoring and protecting the Frank Church-River of No Return Wilderness. The organization and its members highly value the wilderness itself and also the high ideal of the Wilderness system.

15. Plaintiffs' staff, members, and supporters have longstanding interests in preserving the wilderness character of federally-designated Wilderness in the Northern Rockies region, including in the Frank Church-River of No Return Wilderness. Members of these organizations value Wilderness and have interests in protecting Wilderness whether or not they ever set foot inside its boundaries. They value Wilderness for its own sake, for the sake of

wildlife who find increasingly scarce refuge there, and for the sake of current and future generations who rely on the preservation of Wilderness for a multitude of personal, spiritual, societal, and ecological reasons. Plaintiffs' staff, members, and supporters also visit the Frank Church-River of No Return Wilderness for wilderness-based recreational pursuits such as hiking, summer and winter camping, backpacking, snowshoeing, backcountry skiing, boating, hunting, fishing, wildlife viewing, and aesthetic enjoyment. They seek out the Frank Church-River of No Return Wilderness for these activities because of its incomparably remote, quiet, and untrammelled qualities and the opportunities for exceptional solitude and reflection that its character as Wilderness provides. They also work in fields like tourism, research, and academia that depend upon its wilderness character and minimally disturbed ecosystem; and they depend upon the integrity of its wildlife, its expansive and unfragmented natural landscape, and the immeasurable environmental benefits that stem from leaving the area as unmolested by people as possible—and as minimally disturbed as the law requires.

16. Within the Frank Church-River of No Return Wilderness, Plaintiffs' staff, members and supporters have a long history of seeking out and enjoying congressionally-protected wilderness values in the Big Creek drainage specifically. Plaintiffs' staff, members and supporters recognize this drainage as a special part of the Frank Church-River of No Return Wilderness, as valuable wildlife habitat, and as an important route for access on foot down to the Middle Fork of the Salmon. Plaintiffs' staff, members and supporters plan to continue to regularly visit the Big Creek area in future wilderness visits, including in the summer of 2023. But incessant, unlawful recreational aircraft traffic has injured the wilderness experiences of Plaintiffs' staff, members and supporters in the Big Creek area, with the natural quiet of the

wilderness constantly being interrupted by the roar of low-flying aircraft that circle in repeated pass-overs and make numerous landings at the Big Creek Four airstrips within the drainage.

17. The legal violations alleged in this complaint cause direct injury to the aesthetic, conservation, economic, recreational, scientific, educational, wildlife and wilderness preservation interests of Plaintiffs and their staff, members and supporters by facilitating increased aircraft use and landings in the Big Creek drainage within the Frank Church-River of No Return Wilderness that disturbs the peace and solitude they seek when they visit the Wilderness and disturbs and displaces the wildlife they wish to view on their visits. These are actual, concrete injuries traceable to Defendants' actions challenged herein and would be redressed by the relief requested.

18. Defendant Linda Jackson is the Forest Supervisor for the Payette National Forest, with responsibility for managing the Big Creek Four airstrips at issue here within the Frank Church-River of No Return Wilderness. She is sued in her official capacity.

19. Defendant Mary Farnsworth is the Regional Forester for the Intermountain Region at the United States Forest Service, with supervisory authority over the Payette National Forest, including the the Big Creek Four airstrips at issue here within the Frank Church-River of No Return Wilderness. She is sued in her official capacity.

20. Defendant United States Forest Service is an administrative agency within the United States Department of Agriculture. The Forest Service is entrusted with the management of our National Forests and designated Wilderness areas within National Forest Boundaries, including the Frank Church-River of No Return Wilderness within the Payette National Forest.

LEGAL FRAMEWORK

The Wilderness Act and Central Idaho Wilderness Act

21. Under the Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136, federal land management agencies “shall be responsible for preserving the wilderness character” of designated Wilderness areas. 16 U.S.C. § 1133(b). The Act requires Wilderness to be “managed so as to preserve its natural conditions” such that it “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable,” and to have “outstanding opportunities for solitude,” among other characteristics. 16 U.S.C. § 1131(c). An essential element of wilderness character preservation is minimizing human impact and keeping human infrastructure and machinery out; Wilderness is defined as areas “where the earth and its community of life are untrammelled by man.” 16 U.S.C. § 1131(c). Motor vehicle use, motorized equipment, motorboats, structures and installations, and the landing of aircraft are generally forbidden by the Wilderness Act. 16 U.S.C. § 1133(c).

22. The Wilderness Act’s ban on the landing of aircraft and the maintenance of structures and installations in 16 U.S.C. § 1133(c) allows for narrow exceptions, but only if “necessary to meet minimum requirements for the administration of the area for the purpose of [the Wilderness Act] (including measures required in emergencies involving the health and safety of persons within the area).” 16 U.S.C. § 1133(c). To invoke an exception to prohibited conduct in a wilderness area, an agency must make a “reasoned finding of necessity.” *Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1036 (9th Cir. 2010) (citing *High Sierra Hikers’ Ass’n v. Blackwell*, 390 F.3d 630, 646-47 (9th Cir. 2004)).

23. Congress adopted the Central Idaho Wilderness Act in 1980 to designate the River of No Return Wilderness under the Wilderness Act, Pub. L. No. 96-312 (1980); and later

renamed it the Frank Church-River of No Return Wilderness, in recognition of the leading role played by Idaho Senator Frank Church in securing its protection. Central Idaho Wilderness Act (CIWA), P.L. 96-312, 94 Stat. 948 (1980)

24. In designating the Frank Church-River of No Return Wilderness, Congress recognized it as the “largest block of primitive and undeveloped land in the coterminous United States and of immense national significance.” CIWA, § 2(a)(1). This Wilderness designation served “to provide statutory protection for the lands and waters and the wilderness-dependent wildlife and the resident and anadromous fish which thrive within the undisturbed ecosystem.” CIWA § 2(a)(2).

25. CIWA “grandfathered” in the landing of aircraft where it had “become established” at the time of the Frank Church-River of No Return Wilderness designation in 1980—a compromise worked out to secure protection of the area while also ensuring that limited air access to make wilderness visits to remote, challenging to reach areas “shall be permitted to continue, subject to such restrictions as the Secretary [of Agriculture] deems desirable.” CIWA § 7(a)(1). This provision further describes such established-use locations as landing strips “in regular use on national forest lands on the date of enactment.” *Id.*

26. As detailed below, the Forest Service has long recognized that the Big Creek Four are not “grandfathered” airstrips under this provision, as they were not in regular use on National Forest lands on the date of CIWA’s enactment.

The National Forest Management Act and the Payette Forest Plan

27. The National Forest Management Act (NFMA), 16 U.S.C. §§ 1600-1687, governs the Forest Service’s operations and administration of National Forest lands. It requires the Forest Service to develop, maintain, and revise Land and Resource Management Plans (“forest plans”)

for individual national forests. 16 U.S.C. § 1604(a). After adopting a forest plan, all site-specific actions and decisions must be consistent with that plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15.

28. The Forest Service first adopted a Payette Forest Plan in 1988 and revised it in 2003. The Forest Plan incorporates the Forest Service’s Frank Church-River of No Return Wilderness Management Plan (“Wilderness Plan”), which was completed in 1984 and revised in 2003. The Wilderness Plan is thus a component of the Payette Forest Plan, and all site-specific actions and decisions within the Frank Church-River of No Return Wilderness must be consistent with it under NFMA.

29. As detailed below, the Wilderness Plan makes clear that the Big Creek Four are not grandfathered airstrips under CIWA. The Plan defines public use airstrips as those listed by the FAA in 1980 (the Big Creek Four have never been listed); it prohibits all landings at non-grandfathered airstrips except in cases of emergencies; and it directs “reclamation and rehabilitation actions” to “naturalize” former airstrips acquired from private inholdings, like the Big Creek Four.

The National Environmental Policy Act

30. NEPA is the nation’s basic national charter for protection of the environment. *See* 40 C.F.R. § 1500.1(a). NEPA’s twin aims are: (1) to foster informed decision making by requiring agencies to consider the environmental impacts of their proposed actions; and (2) to ensure that agencies inform the public that they considered environmental concerns. 42 U.S.C. § 4331; 40 C.F.R. § 1500.1. To accomplish these goals, federal agencies must prepare an Environmental Impact Statement (EIS) to consider the effects of each “major Federal action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). An EIS must, among other things, rigorously explore a reasonable range of alternative actions and assess

site-specific, direct, indirect, and cumulative impacts. 42 U.S.C. § 4332(2)(c)(iii); 40 C.F.R. §§ 1502.4, 1502.16.

31. To determine whether and to what extent a federal action requires NEPA compliance such as the preparation of an EIS, agencies must engage with NEPA early in decision-making processes and “identify environmental effects and values in adequate detail” to aid informed decision-making. 40 C.F.R. § 1501.2(b) (2018); 40 C.F.R. § 1501.2(2)(b)(2) (2022). Agencies must consider both the short- and long-term effects of contemplated actions and whether any effects would violate federal laws protecting the environment. 40 C.F.R. § 1501.3(b)(2). In determining whether an EIS is warranted, agencies may first prepare an Environmental Assessment (EA). 40 C.F.R. § 1501.3 (2018); 40 C.F.R. §§ 1501.5, 1502.1 (2022).

32. Prior to completion of NEPA analyses, agencies may not take actions that would have adverse environmental impacts or limit the choice of reasonable alternatives available for analysis and consideration. 40 C.F.R. § 1506.1.

33. If an agency “makes substantial changes in the proposed action that are relevant to environmental concerns” or “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts[,]” an agency must issue a supplemental draft and final EIS. 40 C.F.R. § 1502.9(c) (2018); 40 C.F.R. § 1502.0(d) (2022).

FACTUAL BACKGROUND

34. The Frank Church-River of No Return Wilderness contains airstrips on both private lands and public lands within its external Wilderness boundary, and many of these are publicly accessible to pilots. The Forest Service manages eight of these airstrips for public access

on National Forest land within the Wilderness, and there are five legal airstrips in the Big Creek drainage.

35. The Big Creek Four are not included in this grouping of lawful airstrips.

36. As described below, air traffic in the Frank Church-River of No Return Wilderness has increased dramatically since its designation, and popular use of the Big Creek Four contributes to patterns of intensified aircraft traffic and frequent landings within the Wilderness.

1979-1982: Passage of CIWA and Recognition of Grandfathered Airstrips

37. During debate on CIWA prior to its passage, Senator Frank Church stressed respecting the established use of aircraft to access the Wilderness area, particularly as a means to experience the wilderness *as such*. He explained in a 1979 congressional hearing that “many people who want the wilderness experience fly in . . . and then move to the interior of the area from the landing strip.”

38. During that legislative hearing, Forest Service staff explained to Congress that there were at the time nine (9) Forest Service airstrips within the proposed act’s Wilderness boundary, out of 19 total including private airstrips.

39. The Forest Service provided Congress a report listing and describing the nine strips on National Forest land within the proposed wilderness. For six of the nine airstrips, the Forest Service documented their history of establishment on federal lands, use for public access, and Forest Service maintenance.

40. These six included Bernard, which originated to provide administrative access to a guard station and experienced “light use” for hunting, fishing, and camping just prior to CIWA’s enactment; Chamberlain, which was developed to serve a Ranger Station and received

“relatively heavy use by hunting and fishing parties”; Cold Meadows, which serviced a guard station and outfitter camp; Indian Creek, which provided access for boaters on the Middle Fork of the Salmon River when low water prevented entry further upstream; and Mahoney and Soldier Bar, which each had some established use for hunting access prior to CIWA’s passage.

41. For the other three, the Forest Service described a more complicated ownership and use pattern; they had not been developed on National Forest lands.

42. One, called Crofoot, was created on private land, and the Forest Service purchased this inholding in 1978. The Forest Service documented this former landing strip as “unsafe” and receiving “little, if any, use by the general public.” It has remained closed throughout the decades since Wilderness designation.

43. Another, Cabin Creek, was also privately owned until a federal purchase in 1974. There, however, the general public proceeded to use the airstrip following its public ownership. The Forest Service noted pressure from aviators to keep Cabin Creek open.

44. The final of the nine listed locations, called Simonds, was also a landing area developed for private access. The owner leased the land from the federal government under the 1962 Church-Johnson Act. He attempted to patent a placer mining claim there and occasionally accessed the property by air. The pursuit of the placer patent was unsuccessful, and the owner voluntarily relinquished his lease in 1981, after the passage of CIWA. Simonds is one of the four airstrips now known as the “Big Creek Four.”

45. In a November 1981 letter from the Forest Service to the Idaho Division of Aeronautics discussing the passage and application of CIWA, a Forest Service wilderness planner identified—as derived from the list above—seven airstrips that would be grandfathered

in under CIWA. The list omitted the former private landing sites at Simonds and Crofoot given their failure to qualify.

46. In a January 1982 letter, the Idaho Division of Aeronautics confirmed these same seven landing strips as those grandfathered under CIWA.

1982-1984: Analysis, Controversy, and the Un-Grandfathered Status of the Big Creek Four

47. The Big Creek Four, which are not among the grandfathered airstrips, include Simond's, mentioned above, as well as a former private landing area at "Vine's Ranch," another former homestead known as "Dewey Moore," and an upland clearing at "Mile Hi."

48. Vine's Ranch was private property developed as a homestead, only a couple miles upstream on Big Creek from the publicly available Cabin Creek airstrip. The Forest Service purchased this property in 1978. The Forest Service considered this airstrip abandoned in the years that followed, and it did not receive regular public use prior to Wilderness designation.

49. Dewey Moore sits only about four miles away from Vines, further up Big Creek from its confluence with Cabin Creek. After the Forest Service purchased the property in 1972, it removed all the site improvements and restored the area to as near a natural condition as possible, in keeping with the objective of its then-status as an Idaho Primitive Area. Dewey Moore was never a public landing strip and was not in regular use at the time of Wilderness designation.

50. Mile Hi sits on a mountain slope above and within two miles of Vines Ranch. It originated as a homestead, and the Idaho Department of Fish & Game purchased it in 1949. The location occasionally used for landings straddled State of Idaho and national forest land, and

Mile Hi lacked regular public use on national forest lands prior to Wilderness designation. The entirety of the former landing strip was brought into federal ownership in 2000.

51. In January 1982, a Payette National Forest District Ranger again confirmed that the Big Creek Four were not grandfathered airstrips, noting as follows: “The Forest Service has never recognized these airstrips as public and there is no history of established public use. . . . [I]t is important to address the management of these airfields before precedent setting use is established.” On a contemplated public notice of closure, the District Ranger wrote, “[n]or do we feel that we would be proposing any action that is contrary to the intent and direction of the Central Idaho Wilderness Act of 1980.”

52. In February 1982, the District Ranger wrote to the Idaho Department of Transportation’s Division of Aeronautics, noting that the Big Creek Four were “marginally operational at best,” with “safety hazards extremely high.” The District Ranger emphasized that “aircraft landings are restricted to existing public airfields,” *i.e.*, the grandfathered airstrips and not the Big Creek Four. Unauthorized landings, he wrote, are “regarded as trespass and a law-enforcement matter.”

53. The Division of Aeronautics responded in concurrence: “We agree that these airstrips are not suitable for general public use. . . . Our suggested course of action would be to let the strips revert back to a natural state[.]”

54. In the Spring of 1982, the Forest Service circulated a public information sheet regarding its analysis and proposed management of the Big Creek Four, which it identified as “Four Marginal Airfields.” The document noted that “[n]one of these airfields [*i.e.*, the Big Creek Four] are in regular use; none have ever been public airfields; and all are currently considered to be abandoned and have not received maintenance in many years.”

55. The public information sheet described four management alternatives that the agency was considering and noted the ongoing preparation of an environmental assessment (EA). Alternative 1 described the “no action” alternative, or generally allowing the landing areas to deteriorate without maintenance but also taking no active steps to restrict their potential use. Alternatives 2 and 3 were to formally prohibit use through public notification; Alternative 2 would allow the areas to deteriorate naturally, while Alternative 3 would add physical action to render the landing areas unusable. Alternative 4 described providing “maintenance at a minimum level” and thereby “establishing these strips as public airfields.”

56. Through the Spring of 1982, members of the public responded to the information sheet and the proposed management approaches. Most expressed support for “Alternative 2,” to prohibit use and allow the Big Creek Four to “revert back to a natural state without any physical action to make them unusable.” Idaho Fish & Game also supported Alternative 2.

57. The Forest Service completed its Big Creek Four EA in June 1982. The EA considered the four alternatives described above as well as a fifth alternative, which was to “recognize” the airfields but not maintain them.

58. Alternative 2 was the Forest Service’s preferred alternative in the EA, to formally notify the public of prohibition against use of the Big Creek Four but not to destroy them. The EA described the “no action” Alternative 1 as undesirable for failing to provide predictable resolution or to sufficiently address potential unlawful landings. Rejecting Alternative 3, the Forest Service noted that destructing the landing areas could inadvertently injure someone by creating a safety hazard if anyone ever attempted a landing based on dated information. The EA dismissed Alternatives 4 and 5 because they would proliferate nonconforming uses and improvements in the wilderness and conflict with wilderness management objectives.

59. On July 28, 1982, then-Payette National Forest Supervisor Kenneth Weyers issued a record of decision adopting the EA's Alternative 2: "All use will be prohibited by Special Order, except with prior approval of the Forest Service or due to extreme emergency. . . . This decision will provide management consistent with protection of the Wilderness environment for which the area is classified[.]"

60. The Forest Service received a flurry of letters through August 1982 reaffirming support for, or opposing, the decision not to recognize the Big Creek Four, and a local aviation group appealed the decision. In response to the appeal, on August 27, 1982, the Forest Supervisor rescinded the decision and stated that formal action on the Big Creek Four would be incorporated within the comprehensive Wilderness Management Plan for the Frank Church-River of No Return Wilderness, which was then under development.

61. The Wilderness management planning process continued for the next two years. During that process, the Payette National Forest prepared a memo "to document what is known regarding use of [the Big Creek Four]." The memo noted that backcountry pilots had used all four of the landing sites a handful of times during the 1982 season. Pilots made these landings "apparently simply for the purpose of establishing a record of aircraft landings," the memo noted, even though such a record would post-date the enactment of CIWA.

1984-2018: Evolution of the Wilderness Management Plan and Use of the Big Creek Four

62. In December 1984, the Forest Service adopted a Wilderness Management Plan (Wilderness Plan) for the Frank Church-River of No Return Wilderness that affirmed the Big Creek Four were not grandfathered airstrips and were not open for public use. The Plan read as follows:

The four fields that have not been in regular use (Vines, Simonds, Dewey Moore, and Mile-Hi) will not be maintained for public use as landing strips. Their use will be discouraged, except in emergencies. Do not include on Wilderness maps. Advise Idaho Division of Aeronautics not to include on aeronautical charts or directories. Notify air taxi and fixed base operators that the strips are to be used for emergency landings only.

63. Under the Wilderness Plan, the “[l]anding of aircraft, or dropping or picking up any material, supplies or persons by means of an aircraft, including a helicopter, except at designated landing strips, is prohibited.” Public-use landing strips are “defined as specific locations that were listed in the 1980 Federal Aviation Administration Airport/Facility Directory as designated public use/aircraft landings [sic] areas.” The Big Creek Four do not fall within that definition.

64. The FAA has never recognized any of the Big Creek Four landing sites in any capacity.

65. The Wilderness Plan directs that “[a]irstrips, acquired through acquisition of private or state in-holdings will not be converted to public use after acquisition. Appropriate reclamation and rehabilitation actions will be undertaken after property transfer to naturalize the location.”

66. For grandfathered airstrips, the Wilderness Plan directs that “aircraft landings are for wilderness-dependent activities, keeping take-offs and landings to a minimum.” It also authorizes some maintenance activities, provided that the public landing areas “are not enhanced over conditions typical of 1980. . . . Manage and maintain airstrip dimensions, conditions, and function, to those existing in 1980 at the time of wilderness designation.”

67. The Wilderness Plan provides that “[w]here conflicts develop in management of the airstrips, decisions will favor the wilderness resource to the extent allowed by law.”

68. During the 1980s and 1990s, illegal recreational aircraft landings at the Big Creek Four persisted and grew in number and frequency. The Forest Service documented and was well aware of this activity, but the agency made little effort to curtail it. Rather than proving necessary as last-resort locations for genuine emergency landings, the Big Creek Four more reliably served to *create* emergencies as pilots wrecked while attempting to land at these locations for fun.

69. The Forest Service updated the Wilderness Plan in 2003. This plan revision process included reconsideration of Big Creek Four management.

70. When discussing the purpose and need underlying the NEPA analysis that preceded the plan revision, the Forest Service wrote that the Big Creek Four “are not currently considered public use landing strips” and noted that aircraft use is generally prohibited by law in Wilderness. The Forest Service referenced CIWA’s clause grandfathering in airstrips where “use had been established before the date of enactment.”

71. The Forest Service did not engage at this time with its own historical record demonstrating the lack of prerequisite public use and lack of grandfather status for the Big Creek Four. Instead, the Forest Service noted “debate and controversy” over these locations due to “evidence that non-emergency aircraft use has increased at these landing strips and that commercial use is also occurring.” Despite the statutory and planning provisions prohibiting such activity, the Forest Service characterized the matter as one of “unresolved status and use controversy” warranting revisiting the management strategy.

72. The Forest Service considered several alternatives, including the continued practice of not maintaining and not managing the Big Creek Four for public use, maintaining and opening them for public use, and a hybrid of not managing them for public use but maintaining them to be “suitable for emergency landings.” Under that hybrid alternative, the Forest Service

noted that any minimal maintenance could end up attracting recreational pilots. Thus, “more law enforcement action would be taken until enforcement and education regarding the emergency use only status was successful in limiting non-emergency use.”

73. In its 2003 Record of Decision and final Wilderness Plan update, the Forest Service affirmed that the Big Creek Four were not open for public use. The updated plan explained that these former inholdings were acquired “with the intention of maintaining these areas as wilderness. The intention was to allow these areas to revert to natural conditions without use and maintenance.” The Wilderness Plan revision explicitly stated that the Big Creek Four “will not be managed as public use landing areas” and that the former landing sites were available for “emergency use only.” In an appendix, the revised 2003 Wilderness Plan defined “emergency use” as constituting only “an unplanned event.”

74. However, the 2003 update also purported to permit some maintenance at the Big Creek Four despite their status as closed to public use. In its Record of Decision, the agency provided that “[s]teps will be taken with the State of Idaho to identify and schedule maintenance activities and to discourage their use as recreation access to the wilderness.” The Record of Decision acknowledged that this was a change in management direction from the agency’s previous lack of maintenance. The updated plan reflected a need for future process to flesh out what the contemplated maintenance could entail:

The Forest Service, in consultation with the State of Idaho and Federal Aviation Administration, will define an appropriate maintenance standard for the 4 emergency use only airstrips along Big Creek, with the understanding that conditions will not be enhanced at these locations over what existed in 1980. An [Operations and Maintenance] Plan will be developed and implemented to reflect these emergency use standards.

75. Aviation groups appealed the plan revision and urged the Forest Service to instead open the Big Creek Four to public use. In informal discussions, the Forest Service assured the recreational pilots that it was amenable to their desires. A staff member at the Forest Service's Regional Office had a private, "sidebar conversation" with the Director of the Idaho Division of Aeronautics in 2006. This staff member apparently unilaterally and informally assured the aviators of further changed management status for the Big Creek Four, with no public process or engagement. "Our agreement," he wrote in a later message, was that "[t]he Big Creek 4 airstrips would not be available for public use, but that the public could land without fear of receiving a citation" and that "[t]he State agreed we would not have these four airstrips listed in the State airstrip directory, nor would they be placed on the aeronautical charts made by the State."

76. The Forest Service resolved the aviators' appeal by publishing "errata" to the Wilderness Plan in 2009. The "errata" deleted the definition of "emergency use" and modified the Wilderness Plan by changing the phrase directing future maintenance planning to "reflect these emergency use standards," quoted above, to "identify the maintenance needs and the hazardous conditions."

77. These changes to the Plan—published without public notice and comment—did not materially impact the status of the Big Creek Four. They remained closed to public recreational use. But the tweaks in language served to mollify recreational pilots as a nod to the agency's informal, unofficial assurance that it would turn a blind eye to illegal landings.

78. The Forest Service thus never followed through with its plan to accompany its minimal maintenance alternative, as analyzed, with "more law enforcement action . . . until successful in limiting non-emergency use." To the contrary, as the district ranger acknowledged in 2015: "We have not taken any actions to prevent use of the airstrips, we have only done

minimal maintenance to allow emergency use, and we have not issued any citations for use of the Big Creek 4.”

79. Whatever then-ongoing “minimal maintenance,” as the District Ranger described occurring, was not disclosed through public process and was not carried out pursuant to standards developed in an operations and maintenance plan or through consultation with Idaho authorities and the FAA, as directed by the Forest Plan.

80. Unauthorized use of the Big Creek Four as destinations for touch-and-go landings and other recreational flying has continued to increase dramatically over the years.

81. The increased use of the Big Creek Four has come with dangerous consequences. The agency has documented an increase in crashes as pilots seek out the hazardous destinations. For example, in 2013, after one such crash, the District Ranger wrote the following:

I will not be convinced that any private or commercial aviator is without adequate aviation access on the Payette National Forest and needs to put lives at risk by flying into places not recognized by the land manager or the FAA. . . . Since 2009, the Krassel Ranger District has documented increased use at the emergency use airstrips in Big Creek; use that is obviously not emergency use by anyone’s definition. Over the past several summers, we have documented many plane crashes, and thankfully have avoided any fatalities, but I fear it’s just a matter of time[.]

82. The Forest Service has never documented or substantiated its need to make these four locations available for emergency landings. Each of the Big Creek Four landing areas sits within only several miles of an open public or private airstrip.

83. The Forest Service has never documented or substantiated that “emergency use” availability of the Big Creek Four is necessary for administering the Frank Church-River of No Return Wilderness for the purposes of the Wilderness Act.

84. Upon information and belief, the Forest Service lacks any records demonstrating a single bona fide emergency landing at Vines since 1980.

85. Upon information and belief, the Forest Service lacks any records demonstrating a single bona fide emergency landing at Mile Hi since 1980.

86. Upon information and belief, the Forest Service lacks any records demonstrating a single bona fide emergency landing at Dewey Moore since 1980.

87. Upon information and belief, the Forest Service lacks any records demonstrating a single bona fide emergency landing at Simonds since 1980.

88. Instead, what the Forest Service's records demonstrate is years of perceived ambiguity in the "emergency use" label precipitating increased recreational use of the Big Creek Four. The "emergency use only" label, while enacting in legal terms a closure of these locations to all use except in cases of emergencies, has effectually been a restriction in name only.

89. Aviation groups have treated their inroads with certain Forest Service staff as resulting in permission for recreational, non-emergency use of the Big Creek Four, despite nothing in the law or the plan provisions substantiating such a perspective. Online and in hobby publications, aviators have popularized the destinations. And the State of Idaho reneged on its half of the above-described informal bargain by publicly listing the Big Creek Four in maps and directories. In 2017, the Idaho Transportation Department passed a resolution saying it "expressly finds that [the Big Creek Four] should remain open to aircraft."

90. The Idaho agencies' and recreational pilots' insistence upon treating the Big Creek Four as open to the public—and publicizing them as such—stirred a flurry of debates and internal briefings at the Forest Service and prompted informal meetings with aviation interest groups. During this period, Forest Service staff expressed much consternation about the

convoluted management approach and contradictory communications plaguing the Big Creek Four.

91. The following excerpt from a 2017 email between two Forest Service employees provides some illustration of the tensions at play:

I sincerely hope that through informal conversations with whomever, the [Idaho Fish & Game] and/or their attorneys have not got the message that there is another handshake that even though the Plan and all the correspondence from the Forest Service has been clear, that we should somehow continue to turn a blind eye to non-emergency landings. Unfortunately, we are well past that. I hope we are intending to be clear in our conversation on Monday about the FS position. Our position is they are not open for general public use.

92. Around 2018, the Idaho Transportation Department and Idaho Fish & Game began reaching out to the Forest Service to further their maintenance goals as well. These communications ultimately prompted action from the Regional Forester in the form of a new management directive; that action and subsequent actions taken pursuant to it are the subjects of this Complaint.

2018-Present: The Forest Service Allows Public Use of the Big Creek Four, Issues Maintenance Plans, and Undertakes Maintenance Activity

93. In 2018, the Regional Forester for the Intermountain Region sent the Payette Forest Supervisor a new directive regarding management of the Big Creek Four.

94. Although the 2018 directive quoted the Wilderness Plan provisions saying the Big Creek Four were to be managed for emergency use only, it officially ordered that “the Forest will not issue citations for any pilot that utilizes the Big Creek 4 airstrips for non-emergency use, since the airstrips are not closed.” It went on to direct the District Ranger to notify the public that “the airstrips are not closed.”

95. The 2018 directive also instructed the Payette National Forest to formalize maintenance plans for the Big Creek Four to facilitate public access and use, as well as to coordinate with third parties (e.g., the Idaho Division of Aeronautics) to carry out maintenance.

96. The 2018 directive constitutes the first formal, authoritative decision by the Forest Service to permit public, non-emergency aircraft landings at the Big Creek Four. Despite attempting to soften its impact in passive language such as “not closed,” the 2018 directive changed the “emergency use only” status of the Big Creek Four. It officially instructed the Forest Service to inform the public that non-emergency landings are allowed and the airstrips are not closed.

97. As instructed by the directive, the Forest Service completed maintenance plans for each of the Big Creek Four locations in June 2022—working from drafts and recommendations provided by the state agencies—and the Forest Supervisor signed them. These are the first formal maintenance plans the agency issued for the Big Creek Four to implement language from the 2003/2009 Wilderness Plan revisions. They noted the occurrence of some minor past maintenance activities that had occurred without public notice or process and without the consultation and planning directed by the Wilderness Plan.

98. The maintenance plans frame much of their language in the same terms as the Wilderness Plan provisions, describing the locations as for “emergency use only” and maintenance as consistent only with such use. The maintenance plans also cite as an objective that “conditions are not enhanced over what existed in 1980.”

99. But in reality, the maintenance plans direct improvements to match current use patterns and the desires of contemporary pilots. They do not conform to preserving 1980, pre-Wilderness designation conditions. The conditions of the Big Creek Four prior to 1980, as noted

above, were “marginal” and “abandoned,” having “not received maintenance in many years” and with “safety hazards extremely high.” As the Forest Service documented in 1982, it had “never recognized these airstrips as public and there is no history of established public use.” By contrast, the maintenance activities authorized by the new maintenance plans are predicated on public use standards and go well beyond the conditions and maintenance occurring at the Big Creek Four in 1980, and beyond what is necessary for emergency landings.

100. For example, the maintenance plans are rooted in the continued clearing and treatment of “current listed dimensions.” Other than noting that the Forest Service’s 1982 EA documented the lengths of two of the four landing areas, the Forest Service’s maintenance plans provide nothing to substantiate that the Big Creek Four were maintained or cleared to these dimensions in 1980 nor at the frequency required under the maintenance plans.

101. The maintenance plans also provide direction to remove vegetation intruding on a “5% glide slope for 300’ from runway end.” Nothing in the agency’s records indicate that such an approach standard reflects 1980 conditions or maintenance; instead, the direction appears to derive from the state agencies’ recommendations for desired conditions based on public airstrip regulatory standards.

102. The Forest Service’s actions under these plans further demonstrate the agency’s intent to improve the Big Creek Four to allow for non-emergency landings. The Forest Service has closely coordinated with Idaho agencies whose clear and explicit goal is to render the locations serviceable, safe, and amenable for modern recreational flying. The Idaho Transportation Department sent the Forest Service reports on each of the Big Creek Four, detailing recommendations rooted in general criteria for contemporary public airstrip specifications and approach and take-off dimensions.

103. In 2022, the Forest Service prepared a trip into the field to conduct some of the recommended maintenance at Dewey Moore, in coordination with Idaho Fish & Game. The Idaho Transportation Department's report had recommended removing a dozen trees from a hillside opposite Big Creek from Dewey Moore to ease the landing approach for pilots and bring it in line with public airstrip specifications.

104. The Forest Service's Wilderness management staff expressed doubts about the legality of such maintenance.

105. The Forest Service's Regional Wilderness and Wild and Scenic Rivers Manager also expressed concerns. He noted that historic photos "[r]eally make[] it hard for me anyway to justify the need to cut trees on that hillside or across the creek." He also wrote:

For maintenance we are in a difficult spot to maintain these for emergency use, but not beyond what was done before designation . . . We don't need to do exactly what the state asks, and shouldn't. We need to balance wilderness values with maintaining these for emergency use...not an easy task.

If we are looking at maintenance that was beyond what was generally done before designation then we really should consider some NEPA analysis and public involvement.

Our predecessors kicked the can by not addressing this with a clear open or closed status....at some point somebody will need to that [sic]...Is it time?

106. In another message, the Regional Wilderness Manager described how he had detailed his concerns to the District Ranger:

My general advice was that we have to follow all parts of the law so we need to maintain these to the extent that they function as emergency landing strips but also no more than at the time of designation and still need to preserve wilderness character. I suggested that it appeared to me that cutting those trees across the river was probably beyond what was occurring at the time of designation and perhaps beyond the scope of maintenance. I told

him I don't think it's something we should do without daylighting and some sort of NEPA and minimum requirements analysis.

107. The Payette National Forest staff did not heed this advice, and during their summer 2022 field trip to Dewey Moore, they began cutting down trees as requested by the state agencies.

108. Upon information and belief, more similar activities are planned for upcoming seasons under the 2018 directive and the new maintenance plans.

109. The Forest Service did not prepare any NEPA analysis nor any "minimum requirements" documentation showing public use of the Big Creek Four and/or maintenance of them is necessary to administer the area for the purpose of the Wilderness Act before issuing the 2018 Directive or the 2022 maintenance plans, or before cutting trees at Dewey Moore.

FIRST CLAIM FOR RELIEF
THE 2018 DIRECTIVE REQUIRING THE FOREST SERVICE TO MANAGE AND MAINTAIN THE BIG CREEK FOUR AS OPEN FOR PUBLIC USE WAS ARBITRARY, CAPRICIOUS, AND CONTRARY TO LAW.

110. Plaintiffs hereby reallege and incorporate all above paragraphs by reference.

111. This first claim for relief challenges the 2018 Directive issued by the Regional Forester for the Intermountain Region. This Directive constitutes final agency action which altered the Forest Service's management approach toward the Big Creek Four in a manner that was arbitrary, capricious, an abuse of discretion, and contrary to the Wilderness Act, the Central Idaho Wilderness Act, NFMA (and the Forest's enforceable plan provisions), and NEPA. Plaintiffs bring this claim under the judicial review provisions of the APA, 5 U.S.C. § 706.

112. The 2018 Directive violated the Wilderness Act by contradicting the Forest Service's mandate under that Act to manage designated wilderness, including the River of No Return, to preserve wilderness character. 16 U.S.C. § 1133(b).

113. Furthermore, the Directive’s authorization of public aircraft landings violates the Wilderness Act’s express prohibition against motor vehicle use, motorized equipment, and the landing of aircraft. 16 U.S.C. § 1133(c). The Wilderness Act only permits the Forest Service to authorize such nonconforming uses when they are “necessary to meet the minimum requirements for the administration of the area for the purpose of [the Wilderness Act].” The authorization of nonconforming uses must be backed by “a reasoned finding of necessity” prepared by the agency. *Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1036 (9th Cir. 2010) (citing *High Sierra Hikers’ Ass’n v. Blackwell*, 390 F.3d 630, 646-47 (9th Cir. 2004)). The Forest Service has prepared no such finding for the Big Creek Four to justify making them available for any use, including in emergencies.

114. The 2018 Directive violated the Central Idaho Wilderness Act (CIWA) by allowing aircraft activity beyond the scope of CIWA’s narrow grant of authority for the agency to manage as open only “established” airstrips in the River of No Return that were “in regular use on national forest lands on the date of enactment.” CIWA § 7(a)(1).

115. The 2018 Directive violated NFMA and its implementing regulations because authorizing public landing of aircraft at the Big Creek Four locations is inconsistent with numerous provisions in the Payette National Forest’s Land and Resource Management Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15. Those plan provisions include the following:

- a. Defining public landing strips as only “specific locations that were listed in the 1980 Federal Aviation Administration Airport/Facility Directory as designated public use/aircraft landings areas.”
- b. Requiring that “[a]irstrips, acquired through acquisition of private or state in-holdings will not be converted to public use after acquisition.”

- c. Directing that “Where conflicts develop in management of the airstrips, decisions will favor the wilderness resource to the extent allowed by law.”
- d. Providing that the Big Creek Four specifically “will not be managed as public use landing areas.”

116. The 2018 Directive violated NEPA because the Forest Service issued this directive without conducting any new environmental analysis of the effects of additional aircraft landings in the River of No Return and the Big Creek Drainage, or alternatively without supplementing any previous environmental analyses to take into account new information and changed circumstances relative to when previous analyses were conducted. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.9(d)(1).

117. Because the 2018 Directive was arbitrary, capricious, an abuse of discretion, and contrary to the Wilderness Act, CIWA, NFMA, and NEPA, the Court must hold unlawful and set aside the Directive under 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF
**THE FOREST SERVICE’S 2022 MAINTENANCE PLANS FOR THE BIG CREEK
FOUR WERE ARBITRARY, CAPRICIOUS, AND CONTRARY TO LAW.**

118. Plaintiffs hereby reallege and incorporate all above paragraphs by reference.

119. This second claim for relief challenges the four Maintenance Plans (one for each Big Creek Four location) signed and issued by the Payette National Forest Supervisor in June 2022. These 2022 Maintenance Plans constitute final agency actions that are arbitrary, capricious, an abuse of discretion, and contrary to the Wilderness Act, the Central Idaho Wilderness Act, NFMA (and the Forest’s enforceable plan provisions), and NEPA. Plaintiffs bring this claim under the judicial review provisions of the APA, 5 U.S.C. § 706.

120. The 2022 Maintenance Plans violate the Wilderness Act because they authorize maintenance of structures or installations, in the form of airstrips, in the Frank Church-River of No Return Wilderness in violation of the Wilderness Act's ban on such structures/installations, and its ban on the aircraft landings that they would facilitate, under 16 U.S.C. § 1133(c). Authorizing any exception to the prohibitions in 16 U.S.C. § 1133(c) requires the agency to prepare "a reasoned finding of necessity" demonstrating that the nonconforming activity is the minimum necessary to administer the area for the purpose of the Wilderness Act. *Wilderness Watch*, 629 F.3d at 1036. The Forest Service has prepared no such finding to justify the maintenance ordered in the 2022 maintenance plans.

121. The Plans' maintenance activity is also beyond the scope of CIWA's narrow exception permitting the maintenance and management of only those public airstrips "in regular use on national forest lands on the date of enactment." CIWA § 7(a)(1).

122. The 2022 Maintenance Plans violate NFMA and its implementing regulations because they order activities that are inconsistent with provisions in the Payette National Forest's Land and Resource Management Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15. Plan provisions dictate that the Big Creek Four "will not be managed as public use landing areas," and will be maintained for "emergency use only."

123. Even if the Big Creek Four were public use landing areas, which they are not, the Wilderness Plan directs that airstrip maintenance be constrained to the "dimensions, conditions, and function...existing in 1980 at the time of wilderness designation." As the Forest Service has documented, the Big Creek Four in 1980 were "abandoned," "marginally operational at best," and had "not received maintenance in many years." The 2022 Maintenance Plans are inconsistent with the plan direction because they authorize maintenance activity that enhances the Big Creek

Four beyond 1980 dimensions, conditions, and function. The maintenance will develop these airstrips beyond what is necessary for emergency landings to facilitate public use.

124. The 2022 Maintenance Plans violate NEPA because the Forest Service issued these plans without conducting any new environmental analysis of the effects of their authorized maintenance activities and of additional aircraft landings in the River of No Return and the Big Creek drainage, or alternatively without supplementing any previous environmental analyses to take into account new information and changed circumstances relative to when previous analyses were conducted. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.9(d)(1).

125. Because the 2022 Maintenance Plans for the Big Creek Four airstrips were arbitrary, capricious, an abuse of discretion, and contrary to the Wilderness Act, CIWA, NFMA, and NEPA, the Court must hold unlawful and set aside these plans under 5 U.S.C. § 706(2)(A).

THIRD CLAIM FOR RELIEF

THE FOREST SERVICE'S ON-THE-GROUND ACTIVITIES TO IMPROVE LANDING CONDITIONS AT THE BIG CREEK FOUR CONSTITUTE AGENCY ACTIONS THAT ARE ARBITRARY, CAPRICIOUS, AND CONTRARY TO LAW

126. Plaintiffs hereby reallege and incorporate all above paragraphs by reference.

127. This third claim for relief challenges the Forest Service's on-the-ground maintenance activities conducted thus far at Dewey Moore and other Big Creek Four locations. These activities, undertaken pursuant to the 2018 Directive and the 2022 Maintenance Plans, violated the Wilderness Act, the Central Idaho Wilderness Act, NFMA, and NEPA. Plaintiffs bring this claim under the judicial review provisions of the APA, 5 U.S.C. § 706.

128. As documented during the summer of 2022 and in communications with Idaho Fish and Game and Idaho Department of Transportation, the Forest Service's on-the-ground

maintenance actions at the Big Creek Four locations have enhanced and will continue to enhance these areas in line with public landing accessibility goals, well beyond what the law allows.

129. The Forest Service's maintenance actions have violated and will continue to violate the Wilderness Act and CIWA by maintaining structures or installations (airstrips) in the Frank Church-River of No Return Wilderness in violation of the Wilderness Act's ban on such structures/installations (and its ban on the aircraft landings that they would facilitate); and in violation of CIWA's narrow exception permitting the maintenance and management of only those public airstrips "in regular use on national forest lands on the date of enactment." 16 U.S.C. § 1133(c); CIWA § 7(a)(1).

130. The Forest Service's on-the-ground maintenance actions have violated and will continue to violate NFMA and its implementing regulations because the agency has carried out the activity inconsistently with provisions in the Payette National Forest's Land and Resource Management Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15.

131. The Land and Resource Management Plan and the 2022 Maintenance Plans themselves require that conditions not be enhanced over those present in 1980, and that the airstrips will be used for emergency purposes only. As the Forest Service has documented, the Big Creek Four in 1980, including Dewey Moore, were "abandoned," "marginally operational at best," and had "not received maintenance in many years." Yet Forest Service actions and communications in 2022 show the agency's intent to enhance the airstrips beyond 1980 conditions to meet standards desired by contemporary aviators.

132. For instance, in 2022, the Forest Service cut trees at Dewey Moore according to Idaho's recommendations to improve the landing approach in a manner well beyond the

conditions and function prior to wilderness designation, and beyond what is necessary for emergency landings.

133. Upon information and belief, the Forest Service will continue similar actions in the future to improve these airstrips beyond 1980 dimensions, conditions, and function.

134. The Forest Service's on-the-ground maintenance actions also violate NEPA because the Forest Service has acted to enhance the aircraft landing locations beyond 1980 conditions, and to facilitate public use, without conducting any new environmental analysis of the effects of maintenance activities and of additional aircraft landings in the River of No Return and the Big Creek Drainage, or alternatively without supplementing any previous environmental analyses to take into account new information and changed circumstances relative to when previous analyses were conducted. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.9(d)(1).

Furthermore, by conducting actions to cut trees and improve the landing approach at Dewey Moore already, the Forest Service has taken action with adverse environmental impacts and committed resources limiting its available scope of alternatives before carrying out legally required NEPA analysis. 40 C.F.R. § 1506.1.

135. Because the Forest Service's maintenance actions in 2022 at Dewey Moore were arbitrary, capricious, an abuse of discretion, and contrary to the Wilderness Act, CIWA, NFMA, and NEPA, the Court must hold such actions unlawful under 5 U.S.C. § 706(2)(A) and enjoin any future maintenance actions that similarly enhance the Big Creek Four contrary to these laws or beyond 1980 dimensions, conditions and function.

PRAYER FOR RELIEF

136. For all the above-stated reasons, Plaintiffs respectfully request that this Court grant relief as follows:

A. Declare that the Forest Service's 2018 Directive, 2022 Maintenance Plans, and maintenance actions in 2022 concerning use and maintenance of the Big Creek Four airstrips violate the Wilderness Act, CIWA, NFMA, and/or NEPA, and thus are arbitrary, capricious, and abuse of discretion, and/or not in accordance with law under the judicial review standards of the APA, 5 U.S.C. § 706(2);

B. Vacate and set aside the 2018 Directive and 2022 Maintenance Plans for the Big Creek Four;

C. Enjoin the Forest Service from actively maintaining or authorizing third-party maintenance at the Big Creek Four;

D. Order the Forest Service to communicate to the public and other governmental entities that all public use of the Big Creek Four airstrips is prohibited except for emergency landings and violators will cited;

E. Order such other declaratory relief and/or temporary, preliminary, or permanent injunctive relief as may be prayed for hereafter by Plaintiffs;

F. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees, under the Equal Access to Justice Act; and/or

G. Grant Plaintiffs such further relief as may be just, proper, and equitable.

Dated: June 20, 2023

Respectfully submitted,

/s/ Lauren M. Rule

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